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**Wednesday 22 November 2006**

**Journal  
des débats  
(Hansard)**

**Mercredi 22 novembre 2006**

**Standing committee on  
general government**

**Municipal Statute Law  
Amendment Act, 2006**

**Comité permanent des  
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**Loi de 2006 modifiant des lois  
concernant les municipalités**

Chair: Linda Jeffrey  
Clerk: Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Wednesday 22 November 2006

Mercredi 22 novembre 2006

The committee met at 1600 in room 151.

**MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006**

**LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS**

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

I'd like to welcome all of our witnesses and remind them that they will have 15 minutes.

**ONTARIO WASTE MANAGEMENT  
ASSOCIATION**

**The Chair:** Our first delegation today is the Ontario Waste Management Association: Mr. Fisher and Mr. Cook. Welcome. Please make yourself comfortable. If you'd like to pour yourself a glass of water and get yourself settled. When you do get yourself settled, you'll have 15 minutes. Please say your name for Hansard, and the organization you speak for. Once you've started speaking, you'll have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask questions or make comments on your delegation.

**Mr. Rob Cook:** Thank you, Madam Chair and committee members. My name is Rob Cook and I'm the president of the Ontario Waste Management Association. With me today is John Fisher, who is vice-president and general manager of Walker Environmental Services, based in Thorold, Ontario. John is also the chairman of the board of the Ontario Waste Management Association.

I'd like to thank the committee for providing us with the opportunity to appear before you today to talk about our concerns with the fundamental principles contained in Bill 130 relative to waste management and municipal business corporations.

The Ontario Waste Management Association represents the private sector waste management industry in Ontario that invests in and manages the province's waste

management system, a system that all of us in this room have come to rely on as an essential service.

Private sector waste management companies directly manage over 95% of the waste and recyclables that are generated by Ontario's industrial, commercial and institutional sector annually and directly manage under contract to municipalities over 80% of the residential waste and recyclables generated annually by Ontario residents.

Ontario business, industry and residents have been well served by a historical separation of responsibility for the delivery of waste management services. Municipalities provide for residential waste services supported by municipal taxes, and the private sector provides waste services directly to the industrial, commercial and institutional sector on a business-to-business basis.

In 2003, our association objected to the introduction of broad powers to municipalities under the Municipal Act that facilitated the establishment of municipal business corporations. Our objections were based on the potential expansion of municipal responsibilities for waste management into the non-residential sector and the potential for the public sector to use municipal business corporations to unfairly compete with the private sector.

At that time, during the development of the municipal business corporation regulation number 168, it was recognized that the regulation should permit municipal business corporations to be established to provide services related to residential waste only. This provided for the use of municipal business corporations as a potential alternate service delivery vehicle for existing services, while not providing municipalities with the ability to expand business opportunities at the expense of the private sector. This restriction recognized the distinction between residential waste management, as a municipal responsibility, and ICI—industrial, commercial and institutional—waste management, which is the responsibility of the private sector.

On November 6, 2006, OWMA was informed of the government's plans to change the existing municipal business corporations regulation. The proposed changes to the regulation will be facilitated by the amendments to the act in Bill 130 and will reintroduce all of the concerns previously raised by the private sector. Specifically, municipal regulatory authority and service delivery through municipal business corporations will extend to the management of waste in the industrial, commercial and institutional sector.

We have been advised that when Bill 130 is approved, the new MBC regulation will follow immediately, with little or no consultation with the private sector.

OWMA believes that the proposed regulation changes do not adequately address fundamental competitive issues between municipal business corporations and the numerous private sector corporations providing waste management services.

The regulation changes fail to recognize the complexity of the relationship between the existing private sector industry and the public sector and the need for special consideration in areas such as the valuation of municipal waste management assets that are transferred to municipal business corporations, ongoing financial support to waste management municipal business corporations by municipalities, and the potential exclusivity that can be achieved by municipal business corporations with or without a private sector partner through the awarding of contracts without a competitive process.

We believe that the expansion of municipal authorities and the inclusion of ICI waste management in the municipal business corporation regulation without further and adequate consultation will set municipalities on a collision course with the private sector waste management industry and will erode existing provincial regulatory authority over industrial, commercial and institutional waste.

OWMA cannot agree with the inclusion of ICI waste in the proposed changes to the MBC regulation, given the lack of industry input and the potential to seriously undermine a significant private sector industry.

We are requesting a six-month delay in the implementation of Bill 130 to allow OWMA and other private sector organizations time to properly assess the potential impact of proposed amendments to the act and the proposed changes to the municipal business corporation regulation that the government intends to implement upon the approval of Bill 130.

In order to fully address industry's concern, we urge the Ministry of Municipal Affairs and Housing to engage in a meaningful consultative process that involves all industry organizations representing contractors and service providers that might be impacted by this fundamental shift in public policy.

The act and regulation have the potential to seriously jeopardize the continued existence of the private sector waste management industry in Ontario, an industry that employs over 10,000 people, has significant capital investment in the existing waste management infrastructure of the province and contributes significantly to Ontario's tax base.

In closing, I would like to thank you for the opportunity to appear before you today.

**The Chair:** Thank you. You've left about three minutes for each party to ask a question, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much for your presentation. We've had a number of pres-

entations concerning the issue of having private sector business corporations for municipalities, but what we haven't really got in the past presentations, in order to really hear it—and I think it's in part of the presentation that you didn't read—is what part of it is unfair in the relationship between public and private. I think it's come up a number of times. Why is it that the private sector is nervous about competing with the public sector to do the same job? Could you tell me, from your perspective, what it is in there that concerns you?

**Mr. Cook:** Sure. I think in the submission we've handed out there are a number of bullet points under two categories. One is transparency and accountability, and the other is a level competitive playing field.

I think municipal business corporations, as they're proposed, will be allowed to have things like bonusing, so they'll be able to receive municipal assets—land, equipment—with basically no cost attached to them. They'll be able to interchange municipal employees between the municipality and the municipal business corporation. They can leverage the borrowing power and the guarantee of the municipality. They are really a creature that is halfway positioned between what is truly a private corporation and a municipality and the things that go with that. So it's the structure of how municipalities can provide support to these entities that isn't on the same sort of level that the private sector deals with.

**Mr. Hardeman:** If we're presently having a municipal service that's being provided by the municipality, that would be when they would transfer assets over to a private corporation, but at the end of the process, I think what we'd all be interested in is the most cost-effective and efficient way of delivering the service.

**Mr. Cook:** Absolutely.

**Mr. Hardeman:** So if it's just the transferring, since they can already keep doing it the way they are, what's the challenge of making that a private corporation?

**Mr. Cook:** I think two things. The municipal business corporations would be able to engage in business potentially with private sector partners. So we see scenarios where potentially a municipal business corporation is established, and the municipality has 51% ownership and they partner with a private company for 49%. They then let all the municipal work to that municipal business corporation, with no competitive processes. They simply award work and start to engage in the IC&I side of business. While they may have to compete for that, they'll have all of those advantages that will essentially disadvantage their private sector competitors. So they may well be able to appear to offer a service cheaper, but there's a cost to all of that. It's just that it's not embedded in the municipal business corporation; it's embedded backwards in the municipality. At the end of the day, it'll be a matter of not only delivering the existing service, which they can do today—they can set up a municipal business corporation today under the existing regulation—it's their ability to expand into the IC&I, what has not traditionally been a municipal area of interest.

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**The Chair:** Mr. Prue.

**Mr. Michael Prue (Beaches–East York):** I've asked these same questions before, and I hope you can provide some better answers than some of the last deputants.

But before I get to that, there's a statement here, and I'd just like to know on what basis it was made. It's on the second page of your brief. It says, "We have been advised that when Bill 130 is approved, the new municipal business corporation regulations will follow immediately with little or no consultation with the private sector." Who told you this?

**Mr. Cook:** That was relayed to us at a meeting of Ministry of Municipal Affairs and Housing staff on November 6, at which time a number of private sector groups were brought in to be informed of the intent to modify the MBC regulation.

**Mr. Prue:** So it was ministry staff who told you that they're going to go ahead with this, and that when they do, there will be no consultations around the regulations.

**Mr. Cook:** Our understanding is that they have been charged with drafting the regulation and preparing it so that it's available immediately to be enacted when the act is approved.

**Mr. Prue:** Okay. Just a few questions about municipalities: It's only fairly recently that most municipalities have begun to contract out their garbage. When I say recently, I mean within the last 20 years; before that, it was unheard of. Many municipalities, of course, are now of the opinion that they might be better off to go back and deliver the service themselves because it's cheaper. What is wrong with that?

**Mr. Cook:** I would certainly challenge you on the contention that it's cheaper, because any substantive information or assessment would indicate the opposite. I know there is certainly information for other industries, not to the extent that there is for waste management, but there is substantive information on waste management that shows that private sector service delivery is less expensive. Probably the most telling numbers are those published by the city of Toronto itself, which has both in-house and contracted services. The numbers show a 40% differential on average between the areas that are delivered by the municipality and those that are contracted. The information is clearly available in a number of reports and in municipal documents that show that difference between costs.

**Mr. Prue:** But if any municipality thought they could do it cheaper, why would you not want them to do it? Whether their methodology was flawed or not, it is an elected government. They have to come to the conclusion of what's best for their citizens. Why shouldn't they be able to do it?

**Mr. Cook:** I don't think I would argue with the principle that value to the taxpayer is the number one objective. What I question is whether a municipal business corporation and the structure, transparency and reporting mechanisms it will exist under (1) can deliver it at less cost, and (2) whether you'll ever be able to find

out that it did or didn't deliver it at less cost. A municipal program is very easy to assess in terms of what the costs are. It's accountable to council; it's accountable to the works committee. These corporations will be accountable to a board of directors. There will be costs and assets moved between the two structures that I would suggest would be extremely difficult to sort out, so you won't know if the taxpayer is getting value or not.

**The Chair:** Mr. Duguid.

**Mr. Brad Duguid (Scarborough Centre):** I understand the concern you're raising, and it's similar to a concern raised by the road builders as well. It's the concern that municipalities would enter into private business and compete and utilize some of the assets that they have, some of the resources that they have, to transfer from the taxpayer-provided base into that new corporation. I guess the question I have for you is, why would you suggest that would be non-transparent? Municipal budgets are public. Municipal financial transactions are public. If a member of the public chooses to go deeper into those transactions, through freedom of information if necessary, if not just a direct request, they'd certainly be able to determine, I would expect, any transfer of resources from the public sector into a municipal corporation.

**Mr. Cook:** You're quite right: On the municipal side of it, it may be more transparent. The question would be, how transparent is the municipal business corporation and its accounts and accounting of how it's dealt with those assets? If those aren't recorded as value, if they don't attach a market value to those assets, then they can claim delivering service at costs that are not including those kinds of assets that a private sector company would. So it's not necessarily that you wouldn't be able to track what goes in. I don't think you'd be able to track how the corporation deals with those assets and how that impacts on what they report to the public as their cost to deliver the service. I don't think we'd be able to find out.

**Mr. Duguid:** I could be mistaken, but I've never seen a municipal corporation to date that is not publicly accountable for every dollar they spend and not forced to approve and have approved their expenditures at the end of the day. They still have to report, whether it's through the city or directly to the public. My understanding is that it's usually through the city, but I could be mistaken. Maybe there's not a requirement for that. I expect there probably is. Are you aware that there is or is not?

**Mr. Cook:** From what I understand in what we've been told about proposed changes, it's certainly not evident to us that there are clear requirements for reporting.

**Mr. Duguid:** Okay. I appreciate that. Thank you.

**The Chair:** Thank you for being here today. We appreciate your delegation.

#### CITY OF MISSISSAUGA

**The Chair:** The next group we're going to hear from is the city of Mississauga, Mayor Hazel McCallion and Mayor Ellen Bench. Welcome.

**Ms. Hazel McCallion:** Thank you very much. We appreciate the opportunity.

**The Chair:** Thank you for coming. If you could introduce yourselves, if you're both going to speak, and the group you speak for, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask questions. We do have your delegation package here.

**Ms. McCallion:** I'm going to turn it over to our solicitor to make the presentation.

**Ms. Mary Ellen Bench:** Good afternoon, Madam Chair and members of the committee. My name is Mary Ellen Bench, and I'm city solicitor for the city of Mississauga.

Bill 130 constitutes the first formal review of the Municipal Act, 2001, and the province is to be congratulated on its continuing efforts to recognize municipalities as mature, responsible and accountable levels of government. Mississauga staff, myself included, have had a great deal of opportunity to have input into Bill 130 through formal and informal consultations with AMO and various other professional groups such as the Municipal Law Departments Association of Ontario, and for the most part, the province has listened to their concerns. At the political level, through the AMO MOU meetings, politicians have also had a chance to voice their concerns to the province, and again, I think a number of those concerns have been addressed in Bill 130. Those changes are very welcome.

Last week, AMO made a presentation to you that was centred on three values: trust and respect, accountability and predictability. We would draw upon those same themes in our presentation today.

With respect to the actual legislation, the introduction of the broad permissive powers is clear recognition that the province has the necessary trust and respect for municipal government to act responsibly within their areas of jurisdiction. Broad municipal powers provide much needed flexibility to deal quickly with issues that arise today in our complex society. In addition to the broad authority that's contained in sections 8, 10 and 11 of Bill 130, the move away from defined lists to general requirements that municipalities have policies around areas such as the sale and the disposition of land, hiring, procurement, notice and delegation are welcome changes. Again, these provide a great deal of flexibility so that municipalities can tailor policies to their respective needs. It's recognition that all municipalities are not the same, and legislation has to be flexible so that one size doesn't fit all.

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It's the position of the city of Mississauga that the move towards broad general powers could go even further by deleting the spheres of jurisdiction. This would mean that in two-tier municipalities all tiers would have the same powers that single-tier municipalities are provided. It's difficult to see where this would impact the current division of powers in two-tier jurisdictions, given that section 13.1 of the bill clearly prohibits the exercise of broad powers in two-tier jurisdictions in a way that

would interfere with an integral part of a system of the other tier. Right now, most of the spheres of jurisdiction are non-exclusive, so that in a non-exclusive sphere, it's the same as the broad powers that are going to be granted because either level could regulate. Change is not going to happen because you'd be interfering with an integral part of the system of the other tier. In those areas that are exclusively granted to upper tiers, the argument is even stronger that lower-tier municipalities cannot interfere because they certainly have the only say in what that system is. They're the only ones who have developed it. This protection from interference is clearly one that would apply to the spheres of jurisdiction as well. If this was done, then the general rule that works for the spheres now, where the upper tier prevails, would not be required. Instead, it would fall back to an integral part of the system of the other.

The revised rules respecting the regulation of business licences are also welcomed. The removal of the prescriptive and cumbersome requirement to explain the purpose of licensing is supported. The power to suspend a business licence with or without conditions for health or safety concerns for up to 14 days is also welcomed. New provisions respecting delegation of authority from council will provide greater flexibility to municipalities to better determine which matters need to be determined by council and which matters can perhaps more effectively be dealt with by a committee of council or by staff.

We also note, however, that Bill 130 does not address our request that municipalities regulate the vehicle storage fees charged by towing companies. Currently, municipalities have the authority to regulate the charges for the towing of a vehicle. Storage fees are not regulated, however, and as a result, they range from reasonable fees to very exorbitant fees. Municipalities receive many complaints from both citizens and insurance companies concerning these high daily storage fees for vehicles that have been towed. I believe AMCTO is making similar representations with respect to this issue.

The new broad authority for the Lieutenant Governor in Council to make regulations imposing limits and conditions on the exercise of municipal powers is a concern because it extends to all powers under the act and not just the new broad powers. This power applies when the province determines that it's necessary to freeze a municipal bylaw for a period of 18 months for the province to assess a provincial interest. In addition to the concern about this power being so broad, there is also a concern that it does not indicate what a provincial interest is. You've heard from AMO very clearly that the province should define what the provincial interest is in a way similar to what it has done under the Planning Act, where the provincial policy statement sets out clearly what the interest is. If the provincial interest is financial, then that should be stated. There are ways to do that in broad terms. If it's something else, that should be clearly stated as well. That would remove some of the uncertainty as to what the intent of these regulatory powers is. We support

AMO's position in this respect and express the same concern, that the arbitrariness of the new regulatory power is an issue.

We also have some serious concerns respecting the new requirement to conduct investigations of complaints respecting closed meetings. Bill 130 proposes that any person could request that an investigation be undertaken to determine whether any part of a meeting of council or a committee was closed to the public. The municipality is required to appoint an investigator to investigate any such complaints, and if no investigator is appointed, then the provincial Ombudsman is charged with this responsibility.

The big concern is that there is no discretion in the bill to prevent municipalities from being bombarded with frivolous and vexatious claims that must be investigated. Unlike provincial tribunals, including the Ontario privacy commissioner and the Ombudsman of Ontario, there are provisions that allow them to determine whether a complaint requires a full investigation or not. Similarly, tribunals such as the Ontario Municipal Board and the courts have such powers, and this is required for municipalities as well. Consideration in this respect has to also be given to the potential cost that these investigations can have to municipalities. We have seen already, through the Municipal Freedom of Information and Protection of Privacy Act, that some of the processes can be used by lawyers as kind of a free discovery so that they get all the municipal documents upfront. We've also seen incidents where you have certain residents who are continually filing applications, and this is another avenue for such vexatious claims to keep coming forward. So, at the end of the day, there has to be a system in place that allows an investigator to determine if it is necessary to conduct a full investigation or to be able to conduct a lesser-level investigation.

The powers of the investigator are also questionable because, at the end of the day, the investigator makes recommendations in a report to the municipality. For the most part, I think that's probably fine because the municipality will act on the recommendations. If a remedy beyond that is required, though, that still must be achieved through the courts.

With respect to accountability and transparency, Bill 130 contains a number of new measures. The authority to appoint an integrity commissioner, a local ombudsman, an auditor general and a lobbyist registry are tools that will assist municipalities. Again, by making these tools discretionary and not mandatory, the flexibility that it provides municipalities to deal with local situations in a local way is definitely a step in the right direction.

This increased flexibility, while ensuring accountability, is also noted in some of the new financial tools that are provided in Bill 130. Recognition of the ability of municipalities to prepare multi-year budgets, clear authority to create small business incubator programs, and fewer restrictions on municipal powers with respect to creating corporations are welcome tools. The added flexibility provided to municipalities to obtain an interest

in condominium corporations helps municipalities meet the parking demands caused by intensification. Right now, we are often left where we have to acquire spaces in condominium corporation buildings and go through a very complex, stratified ownership process to achieve those, so this is very welcome. Also, allowing municipalities to accept donations of shares for fundraising projects will benefit the public. In Mississauga we have a campaign called Riverwood to develop a park system along the Credit River, which is one place that we anticipate this will be a benefit, as quite often donations in shares are reflected today. So these are some of the changes that are certainly welcome.

Mississauga, however, does have a great concern with respect to the introduction of new accounting rules for municipal financial reporting that are contained in Bill 130. Currently, regulations require municipalities to follow generally accepted accounting policy rules set out by the Public Sector Accounting Board in preparing their financial statements. The Public Sector Accounting Board has implemented new rules around tangible capital asset accounting which provide little, if any, benefit to municipalities. There is no benefit in depreciating the capital value of a road or a community centre. At the same time, carrying out this requirement is very expensive. Finance staff at the city of Mississauga have assessed the cost of this to be in the range of \$428,000 to \$574,000 for the city for the year 2007 alone. As a result, it's difficult to see why taxpayers should be required to pay for this requirement established by the Canadian Institute of Chartered Accountants when there is no public benefit that municipalities can identify. We're therefore requesting that this section of the bill be amended to enable the Minister of Municipal Affairs and Housing to make regulations exempting municipalities from this or similar requirements that really are not appropriate in the municipal context.

**1630**

In conclusion, I thank you very much for providing this opportunity to appear and bring these matters to your attention. If you have any questions, we'd be happy to deal with them.

**Ms. McCallion:** Thank you, Mary Ellen.

**The Chair:** You've left less than a minute for each party. We'll begin with Mr. Prue.

**Mr. Prue:** In less than a minute, my question then will go to the whole question around the ability of the province and the minister to freeze the municipal bylaw for a period of 18 months. I'm unaware that this exists in any other province in Canada. Have you done any research into this? This has come right out of left field, as far as I know. I have no knowledge of this. Can you explain?

**Ms. Bench:** We haven't seen it in terms of general municipal legislation. The only thing comparable is an interim control bylaw in the planning context, but never in the general municipal context.

**Mr. Prue:** But that interim control bylaw is done by the municipality itself, not by the ministry.

**Ms. Bench:** Yes.

**Mr. Prue:** Not by the ministry.

**Ms. Bench:** Not by the ministry. That's right.

**Mr. Prue:** You have obviously voiced your concerns. You've done it today; you've done it in the past to ministry staff. What has been the response?

**Ms. Bench:** It hasn't changed. It's in Bill 53, the City of Toronto Act, as well and it's going to remain is my understanding, at least at the staff level.

**The Chair:** Thank you. Mr. Duguid.

**Mr. Duguid:** A minute and a half doesn't give us much time, but—

**The Chair:** You have only a minute.

**Mr. Duguid:** Your Worship, I want to thank you for coming here today. But more than that, I want to thank you for your ongoing leadership at AMO and working with the province as we reshape the relationship between municipalities and the province. I think we're making great progress. We still have a way to go, but your assistance in that and your leadership have been very helpful to us.

My question really surrounds other questions that we've had during the course of the hearings. Do you feel that not only Mississauga but all municipalities are mature enough to make decisions with regard to appointments of ombudsmen, auditors general, integrity commissioners? Are they mature enough to put in place mechanisms that would be responsible to the public, accountable, and ensure that those bodies and those individuals would be independent, or do you think that they should be dictated to for those particular appointments?

**Ms. McCallion:** I think we have the ability to do that. Quite honestly, in my opinion it is essential, but it should not be mandatory either. In other words, it should be the desire of the municipality whether they want to appoint an ombudsman or an integrity commissioner. It shouldn't apply to everybody.

**The Chair:** Thank you. Mr. Hardeman?

**Mr. Hardeman:** Thank you very much for the presentation. Madam Mayor, your hard work on behalf of the constituents must be rewarded in the good re-election results in Mississauga. I guess it put Mississauga on the map as the only place where anyone could get that kind of plurality in the race for mayor.

**Mr. Prue:** Without putting up a sign.

**Mr. Hardeman:** I wanted to just quickly touch on the ombudsman. We've had a lot of concern expressed thus far by the Ombudsman that the municipally appointed ombudsman in this bill has absolutely no criteria around how they will operate. It could be just an employee of the municipality.

Your concern is that they would not be able to dismiss a frivolous application, and from what we've heard thus far, it means that the municipality could set the criteria for what the responsibility of the ombudsman would be because it isn't defined in the bill. In fact, it could say that unless there is this much of a problem, everything is frivolous. I'm wondering, from the legal perspective,

where we got the idea that this does not allow dismissal of frivolous applications on behalf of the local ombudsman.

**Ms. McCallion:** I'd like to answer it. First of all, who appoints the provincial Ombudsman and who sets the criteria?

**Mr. Hardeman:** The province.

**Ms. McCallion:** Thank you. We'll take it at the local level too.

**Mr. Hardeman:** My understanding is that this allows that. This bill doesn't say, "The province is going to set the standards for the municipal ombudsman." I'm just trying to figure out why we have that concern, because I would have it too.

**Ms. Bench:** The Municipal Law Departments Association of Ontario expressed that concern in the event there is no standard set, so you run into a situation where we're all inconsistent; we're all facing challenges. There was a concern expressed that there should be a set process in there like in legislation, in the OMB Act, for example, or in the Rules of Practice before the courts. There are set clauses providing that specific authority. When you put that together with the civil rights and property clause in here that's also very unclear, it raises that concern.

**The Chair:** Our time has expired. Thank you very much for being here today.

#### ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

**The Chair:** Our next group is AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. Welcome. Please get yourselves settled, and if you can introduce yourselves and the organization you speak for for Hansard. When you do begin, you'll have 15 minutes. Should you leave time at the end, there will be an opportunity for us to ask questions.

**Ms. Kathy Coulthart-Dewey:** My name is Kathy Coulthart-Dewey. I am president of AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. I am here to speak on behalf of my association about Bill 130, the Municipal Statute Law Amendment Act. With me today is Andy Koopmans, AMCTO's executive director. We're here today to express AMCTO's support for Bill 130, despite certain reservations, and to offer our suggestions for improvements to the bill.

First, let me say a few words about the association. We are Ontario's, indeed Canada's, largest association of municipal managers and professionals. Our almost 2,200 members work in various departments in 95% of the municipalities in Ontario, ranging in size from the city of Toronto, with 2.5 million residents, to Tay Valley township, with a residency of 5,000, where I am CAO. Founded in 1938, AMCTO has adopted the mission of promoting excellence in municipal administration and management.

One of AMCTO's key principles is our ongoing review of provincial policies, legislation, regulations and programs. In this work, we draw on a large and diverse pool of expertise within our membership. The perspective that we bring to the task is a very practical one. We ask such questions as, does the initiative take into account the diversity of municipalities? As we know, one size does not fit all. Does it avoid prescriptive solutions that hinder the development of innovative solutions? Have all of the implications—legal, financial, liability and human resources—been included in the review?

We of course also endorse the principles of the Minister of Municipal Affairs and Housing, recognizing, when he announced the review of the Municipal Act in 2004, that municipalities are an accountable and responsible order of government and that the days of micromanagement by the province are past.

This is the perspective that AMCTO has applied to our review of Bill 130 and which forms the basis of our presentation that I'll make to you today.

With respect to support of the bill, AMCTO believes that by broadening municipal authority and removing outdated restrictions, Bill 130 will lead to better decision-making and service delivery by Ontario municipalities. Among the provisions in the bill that will help us achieve that goal are: new wording to ensure that municipal powers are interpreted broadly; flexibility for councils to create, design and modify municipal service boards and corporations to deliver municipal services; removal of prescriptive rules governing the disposition of land, hiring of employees and procurement of goods and services; replacement of specific notice provisions which authorize councils to adopt general notice policies; streamlining of licensing and registration parts of the Municipal Act and harmonizing and enhancing municipal enforcement powers; and, finally, the resolution of the problem that plagues many municipalities that crown liens often create for municipal tax sales.

Taken together, these changes create a legislative framework that Ontario municipalities need to meet public expectations for first-rate customer service and prudent financial management.

We commend the Ontario government for bringing forward Bill 130 and hope that the Legislature will approve the bill as soon as possible.

**1640**

Notwithstanding many of the positives, AMCTO sees certain areas where the bill falls short of the vision of the Minister of Municipal Affairs and Housing when he painted that picture in 2004 and launched the review of the Municipal Act.

There are four major concerns that are covered in our presentation. The first major concern is Bill 130's failure to address the financial needs of municipalities. The province has rejected AMCTO's call for greater municipal control over local property tax policy, as well as greater authority to raise revenues through other forms of taxation. We remain hopeful that the Provincial-Municipal Fiscal and Service Delivery Review that has

recently been announced will address these issues, along with the critically important matter of reliance on property taxes to pay for income redistribution programs.

The second major concern is the power the province is giving itself to circumscribe municipal decision-making through regulation. Bill 130 not only carries forward most existing regulation-making provisions in the Municipal Act; it also creates new ones. The ability of a minister or the cabinet to change the rules of the game overnight creates terrible uncertainty for the conduct of municipal business. We hope that the regulation-making provisions in Bill 130 will be replaced with substantive provisions wherever possible.

The third major concern is the provision in Bill 130 allowing the province to suspend bylaws enacted by municipalities—again, by regulation. This will mean even greater uncertainty for municipalities, their stakeholders and their partners. We urge that Bill 130 be amended to at least require the province to consult with affected municipalities and to state the provincial interest before exercising a suspensive veto.

The final concern relates to the timing of implementation. We don't want to see the delay of what we understand is the target effective date for this legislation: January 1, 2007. On the other hand, some of the new requirements will need a longer lead time. Examples include the updating of municipal notice bylaws and the establishment of procedures for complaints about closed meetings. We hope that the government will take this into account when they decide when to proclaim certain parts of the act.

Such are the overarching concerns of AMCTO with respect to Bill 130. We respectfully ask the standing committee to take these concerns into account when the bill receives clause-by-clause consideration.

I would now like to cover some of our suggested amendments to specific provisions of Bill 130 that were included in our September 22 brief to the Minister of Municipal Affairs and Housing, a copy of which has been included in our material provided to you today. There is not time to discuss all of these amendments; however, I will zero in on just a few. I will go through them in the order that they appear in Bill 130 rather than the order of importance, with an eye to facilitating the committee's consideration of these issues during clause-by-clause.

Bill 130 does not address the problem municipalities have long faced that some municipally imposed charges added to the tax roll can be included in the tax sale process while others cannot. This leads to significant administrative difficulties and significant revenue losses. Our position is that all such amounts should have priority status under subsection 1(3) of the Municipal Act. If the committee does not want to go that far, priority status should at least be granted to the costs that a municipality incurs in carrying out work on a property where the owner refuses to obey an order. This could be accomplished by simply inserting one word, "priority," before the word "lien" in the new subsection 446(6) of the

Municipal Act. This change would, among other things, go a long way towards filling the gap in the legislation that was recently passed to impose responsibilities on municipalities for inspecting and remediating properties used for marijuana grow ops.

AMCTO fully supports the principle that meetings of municipally elected officials should be open to the public, with limited exceptions to protect privacy and essential business interests of the municipality. We have, however, previously recommended that the current list of exceptions found in section 239 of the act be expanded to allow closed sessions where council is undertaking strategic planning, receiving technical briefings from staff or participating in professional development activities. The government has endeavoured to address this issue with a new provision that reads, "A meeting may be closed to the public if, at the meeting, no member of the council ... discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council."

We believe that the vagueness of the phrase "materially advances" will give rise to controversy, dispute and litigation, particularly now that council's decisions about open meetings are subject to statutory complaint procedures. Accordingly, we have suggested an alternative subsection 239.2(1) of the act which eliminates this vagueness and also addresses our previous request. The specific details of this suggestion are attached to the material that I presented to you today.

With respect to the keeping of minutes, Bill 130 adds provisions to the Municipal Act clarifying that municipalities must record proceedings at closed meetings of councils and committees. However, the new subsection 239(8) says that this requirement "may" be satisfied by a record of the meeting made by the clerk. This creates uncertainty about who exactly is responsible for keeping those minutes. Accordingly, we recommend that subsection 239(8) be reworded to clarify that, in the case of a municipality, the requirement of subsection (7) "shall" be satisfied by a record of the meeting made by the clerk. This change will ensure that there's a central focus on the maintenance of corporate records and that the public has access to them.

We are pleased that many of the specific notice provisions in the Municipal Act are being removed by Bill 130. Municipalities need this flexibility to develop notice proceedings appropriate to local communities and their individual circumstances. In my own municipality, for example, we have no local daily newspaper. However, Bill 130 leaves 14 such provisions in the Municipal Act and does not address notice provisions in regulations. AMCTO recommends that the specific notice provisions remaining in the act be deleted or, at least, that a provision be added giving council the option to adopt an alternative form, manner or time for giving that notice where the prescriptive notice provisions exist in the legislation. If the municipality does not partake of that option, then of course the legislative provisions would prevail.

Bill 130 would impose a new requirement that councils adopt a policy on the "manner in which the municipality will try to ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." Municipalities are fully cognizant of the ramifications of failing to respect property and civil rights as required by common law, by the Constitution, by provincial legislation and by municipal bylaws. However, an all-embracing, open-ended policy as envisioned by the provisions in paragraph 6 are extremely difficult to operationalize. The policy will inevitably fall short of the expectations of one part of the community or another and will give rise to uncertainty, controversy and even litigation. Accordingly, we recommend that paragraph 6 be dropped from the bill.

Such are some of the improvements that AMCTO believes can be made to Bill 130 through amendments in committee.

Finally, I would like to comment briefly on the submission that the provincial Ombudsman made to the committee last week. AMCTO supports the need for accountability and transparency in all orders of government—federal, provincial and local. Where we differ with the provincial Ombudsman is that we believe the elected municipal councils can be trusted to devise procedures that work for their communities. We do not feel it necessary that the provincial Ombudsman should be authorized to investigate the municipal sector beyond the Bill 130 provisions allowing him to do so if the municipality fails to appoint an investigator. We are confident that Ontario municipalities will continue to demonstrate their ability to act responsibly through their adherence to the accountability and transparency provisions of Bill 130 in the years ahead.

1650

**The Chair:** You have one minute left.

**Ms. Coulthart-Dewey:** Such are the comments of AMCTO with respect to Bill 130, the Municipal Statute Law Amendment Act, 2006. The concerns we have raised about the bill and the amendments we have recommended must be viewed in the context that we strongly support Bill 130 overall. AMCTO believes that the new Municipal Act that will come out of Bill 130 builds on the legacy of the 1849 Baldwin Act and the 2001 Municipal Act to move Ontario along the road towards realization of the vision of municipalities as an accountable, distinctive and responsible order of government, equipped to serve the needs of the public.

I thank you very much for offering us the opportunity to speak to you today. If there is time, we would be happy to answer questions.

**The Chair:** I have 20 seconds left in total, so I don't think there is time. We appreciate the depth and the detail you took in to do this presentation. Thank you very much for being here today.

CITY OF WINDSOR

**The Chair:** Our next delegation is the city of Windsor. Good afternoon and welcome. If you could

identify yourself and the group that you speak for, you'll have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask questions.

**Mr. John Skorobohacz:** Thank you very much. My name is John Skorobohacz. I am the city's chief administrative officer and it's my pleasure to be here this afternoon to speak to you with regard to the city of Windsor's position on Bill 130, the Municipal Statute Law Amendment Act.

I'm going to deviate slightly from the written submission that I have brought and presented to you. I'm going to try to focus on the highlights of our submission so that perhaps we could get you back on track and moving forward.

Let me say that the city of Windsor in principle supports the majority of the changes that are presented in Bill 130, and certainly we welcome the recognition that municipalities are an accountable and responsible order of government. My colleagues just previously said that the minister did indicate that as part of the reason and the rationale for moving forward with the legislative changes.

Let me emphasize that the city of Windsor agrees and supports the basic direction of the proposed legislative reforms. We believe there is a general consensus that these changes represent good news for municipalities. First of all, the changes should allow us to be more flexible with respect to the legislative framework that we operate under. The changes should also broaden the scope of our authority. These changes should reduce the number of specific restrictions and controls that the province has over the years exercised over municipalities. Finally, the changes should allow municipalities to be more effective in the delivery of services to our communities and enable municipalities to fulfill those responsibilities.

I'm aware that you've already heard from several municipal associations and organizations as well as municipalities that have highlighted the positive aspects of the bill, so I will not belabour the points they've already raised, but simply add our support and reinforce those points.

First and foremost, we believe that the streamlining of the licensing and the registration provisions of the Municipal Act, part IV, is a positive development. In addition to that, we also believe that the authority to require payment of an administrative penalty for parking bylaw infractions, subject to issuance of enabling legislation, is also a very positive measure. We also see that the removal of provisions relating to service delivery performance reporting, otherwise known as the section 300 reports, is a positive and mature step.

The new power allowing municipalities to suspend licences for up to 14 days is also a positive measure. However, the city of Windsor would suggest respectfully that that should be increased to 28 days in order to allow the parties to adequately prepare for the hearings.

Also, we are pleased with respect to the provisions addressing the problem that crown liens create for muni-

cipal tax sales. We're also very supportive of the fact that we have specific authority to adopt multi-year budgets. Removal of many specific notice provisions and authorizing councils to adopt a general notice provision is also seen as a progressive move. Removal of unnecessary prescriptive rules for the disposition of land, hiring of employees and the procurement of goods and services is also very beneficial to us. Finally, the consolidation, rationalization and expansion of enforcement provisions includes a number of new powers. The creation of offences, the creation of a system of fines, entry provisions, restraint of continued bylaw contravention, the creation of work orders, the closing of premises and also the inspection of buildings containing marijuana grow operations are all welcome additions.

However, despite the various positive measures, the city of Windsor would also like to address some of the shortcomings of Bill 130. In terms of the prospect of regulations, we are concerned that without knowing the specific context of the regulations and in which areas the government intends to maintain existing regulations or issue new ones, it makes it difficult for municipalities and other stakeholders to evaluate the proposed legislation in a fully informed manner.

In addition to that, Bill 130 reserves extensive power by the provincial government to temporarily suspend a municipality's powers for a period of up to 18 months by enacting a regulation, if deemed necessary, in the "provincial interest." The bill should be amended, in our view, to have some type of mechanism in place to ensure consultation and identification of what the provincial interest is prior to exercising any action to suspend the municipal powers.

In addition to that, we are also concerned about expanding the authority of municipalities to raise revenue and make other financial decisions. The bill, in our view, does not provide any concerted opportunities with respect to the financial needs of the municipalities and in fact makes very few changes to the provisions in the Municipal Act dealing with certain financial issues. Municipalities desperately require broader financial authority to raise revenues and to make other financial decisions to address financial pressures.

The city of Windsor is disappointed that it will not be receiving the limited new taxing powers offered to the city of Toronto. Not only has Bill 130 failed to give municipalities additional revenue-raising tools, it also does not provide the municipalities with control over policy governing the distribution of existing property taxes. More permissive taxation provisions would not fully offset the high cost of providing the downloaded services, but they would provide a means to generate some revenue required by cash-strapped communities. That being said, the city of Windsor does applaud the effort of the government to undertake a wide-ranging review of the provincial-municipal relationship by way of the provincial-municipal fiscal and service delivery review announced this summer by the Premier.

With respect to bonusing provisions, the municipality is concerned that strategies for promoting economic de-

velopment within the city of Windsor are not addressed as a key priority within the legislation. The city of Windsor is facing some difficult and uncertain times. A structural change in the traditional North American automotive manufacturing sector, along with reduced tourism following 9/11, SARS and a stronger Canadian dollar, as well as the province-wide public smoking ban, has negatively impacted the American tourist as well as the local patronage of our bingo industry, leading to drastically reduced gaming revenues and significant challenges for the many charities in our community that have historically relied on a vibrant bingo and gaming industry. Greater local autonomy and flexibility is needed in the area of economic development to allow municipalities to deal with local economic circumstances.

**Licensing and regulatory powers:** In addition to that, as noted previously, we are pleased to see the streamlining within the legislation. We do note that we have concerns that the following three issues were not addressed: There does not appear to be explicit authority for municipalities to regulate vehicle storage fees charged by towing companies; it does not remove the requirement for municipalities to repay licence fees where the minister retroactively limits municipal authority to license; and, although the city of Windsor is pleased with the new power that allows municipalities to suspend licences, as I stated previously, our request would be to see that suspension for up to 28 days.

Additionally, the municipality believes that it is in their best interest to have the authority to set the hours of operation for restaurants and bars.

In conclusion, please keep in mind that the municipal councils are elected bodies. They're entrusted by the citizens of the community to make decisions that are in the best interest of the community at large. We urge the province to recognize the tools required to govern in an effective and responsible manner. It is suggested that drafting legislation with the expectation that municipal governments will utilize the powers bestowed upon them to govern effectively and responsibly will both strengthen the relationship between the municipalities and the province and provide municipalities with the tools necessary to govern in an accountable and responsible manner.

The city of Windsor, in conclusion, supports the general direction of this bill, and we're optimistic that our voices, along with the voices of those who have appeared before this committee, will be heard and our concerns will be considered before the final version of Bill 130 is enacted and proclaimed.

Thank you, Madam Chair, for this opportunity. I'd be pleased to answer any questions.

1700

**The Chair:** You've left slightly over two minutes for each party to ask a question, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you very much for taking the time to come to Toronto and join us and partake in these consultations.

You raised a question or an issue that we didn't hear too much on from the other municipalities—some prob-

ably felt more strongly than others—and that's alternative sources of revenue. The city of Toronto raised that very loudly and very strongly. For AMO and others, while they would have been welcome to have a look at it, it wasn't something that seemed to be front and centre. In fact, I think they were relatively satisfied with the idea that we would sit down with the municipalities over the course of the next 18 months and look at ways that we could continue to work with municipalities in reviewing the way some of the services are provided and funded. Infrastructure, public health, emergency services, social services and housing and some of the special challenges unique to some of our various communities are just some of the issues that will be on the table. Are you planning on being involved in those discussions, and will you be ensuring that Windsor's voice is heard in AMO as we move forward with those?

**Mr. Skorobohacz:** Most definitely we will.

**Mr. Duguid:** We'd appreciate that, because it does seem that you have maybe a little bit more aggressive needs in terms of revenue generation than some of the others have expressed, and I appreciate hearing from you on that.

The second question I have, with the limited time: You talked about the bonusing provision, and that's something I haven't heard from other municipalities. It has been discussed. There's always the concern that bonusing will make municipalities compete against each other for businesses and, at the end of the day, all that will happen is the tax base will go down and the same businesses will locate. Have you looked at other ways to try to attract businesses? There are some community improvement plan provisions in the new bill as well.

**Mr. Skorobohacz:** Most definitely. As a matter of fact, the city has engaged in a number of community improvement planning processes. Our biggest challenge as a border community is competition with the state of Michigan. From that perspective, we believe that there needs to be greater opportunities for municipalities, especially border communities, to remain competitive with other communities on the other side of the border. So that's the context in which I come today: seeking those additional opportunities.

**Mr. Duguid:** Thank you very much.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you very much for your presentation. It was very thorough as it relates to how the issues in Bill 130 will improve the operation of municipalities.

When we started the hearings on this bill—in fact, even before we got to the public hearings—it was quite evident when we heard presentations on behalf of municipalities that the major part of the bill was quite supportable by municipalities, because it does a lot of things to further their ability to operate effectively.

One of the concerns that was expressed, and it has come from almost every municipal presentation that has been presented, was about the regulatory authority to override municipal decisions. In fact, today we heard a

number of presentations where they actually said that the provincial control of the operation is greater after Bill 130 is passed because there are places where there was no regulatory power before and there is now.

Is that a major concern to the city of Windsor: that though it appears we're getting a lot more authority, that authority is quite limited by the ability of the minister at any point in time to make a regulation to take that authority away?

**Mr. Skorobohacz:** No question about that. Our concern is twofold: First of all, we would like to know what the provincial interest is prior to any regulation coming forward. Also, our concern is with respect to the suspension of municipal decisions. The ability to suspend those decisions for up to 18 months is a major concern to all municipalities.

**Mr. Hardeman:** The other thing is the issue of accountability and transparency in local government, in all government, in fact. As the minister spoke to this bill, he talked a number of times about this bill increasing transparency and accountability in municipal government. That would be not transparency and accountability to the provincial government but to the people that they are governing. What part of the bill would you suggest does that? What is it, of all the things we're doing here, that makes accountability to the taxpayers greater or that makes transparency to the taxpayers greater than what is in the present Municipal Act?

**Mr. Skorobohacz:** I would suggest to you that certainly the issue of transparency continues to follow in this legislation as it has in the previous legislation with respect to the various aspects of closed meetings. There are also increased provisions within this current bill that reflect upon the potential to create an ombudsman. Certainly, that aspect of it is an enhancement to the existing transparency concerns.

There are also opportunities within the legislation itself to engage the community in a more appropriate manner, I would suggest, as opposed to having the regulatory framework that suggests how we have to approach our residents and our citizens. It provides us with the flexibility to approach different issues in a different way. At the present time, the current legislation requires notice provisions to be followed in a standard, almost prescriptive type of fashion.

**The Chair:** Thank you. Mr. Prue?

**Mr. Prue:** I have a couple of questions. You listed here a whole bunch of things that are not very good things that are happening in Windsor—the downturn of the automotive sector, reduced border traffic, the smoking ban—but there's no mention here at all about the recent controversy of losing the racetrack and the ice rink going to Tecumseh. How is that going to affect Windsor?

**Mr. Skorobohacz:** If you examine the matter from a regional perspective, certainly the racetrack remains within the region, and all the efforts the city has put forward over the past several years with the county of Essex have been on a regional basis. From the city's

perspective, yes, that is a loss to the local municipality, but certainly it remains within the region, and that continues to strengthen the region's employment base.

From the perspective of the Ice Track itself, that's a separate issue, and that's something I'd prefer not to make any comment on.

**Mr. Prue:** Okay, but as per the loss, my understanding was that Windsor relied to a great extent on the revenues for its food program for kids and stuff. Those revenues may be lost. Is that in fact true?

**Mr. Skorobohacz:** That could be a possibility. It remains to be seen at the end of the day if in fact the racetrack itself will relocate and whether the slot revenues the city has enjoyed to this point in time in supporting a variety of different social causes within the community will be lost to the region itself.

**Mr. Prue:** This is where I go back to the first point. You're looking for additional revenues. Would you accept the revenue-generating process that Toronto has, or do you think that's enough? There are some who opine in Toronto that that won't do it: "Thank you very much for the money, but it's small amounts."

**Mr. Skorobohacz:** I would have to agree. I believe that there need to be much more creative approaches applied to the way municipalities could generate revenues. I don't profess to have all the answers with regard to the magnitude or the range of those opportunities, but I would agree with your assumption or your analysis that in fact it doesn't really go that far with respect to the needs that the larger urban municipalities have.

**The Chair:** Thank you. Sorry; we've exhausted our time. Thank you very much for coming today. We appreciate it.

**Mr. Skorobohacz:** Thank you.

**Mr. Prue:** I tried to squeeze in as many as I could.

**The Chair:** You did very well. I gave you some latitude, but I couldn't go anymore.

#### NEWMARKET TAXPAYERS ASSOCIATION

**The Chair:** Our next delegation is the Newmarket Taxpayers Association, Mr. Yorston.

**Mr. Ray Yorston:** Good afternoon, Madam Chair and gentlemen.

**The Chair:** Please make yourself at home. If you need to pour yourself a glass of water, please do that. When you begin, if you could say your name for Hansard and the organization you speak for, and you'll have 15 minutes. If you leave time at the end, we'll be able to ask questions. We do have your submission in front of us.

**Mr. Yorston:** My name is Ray Yorston. I'm with the Newmarket Taxpayers Association. Our concern regarding Bill 130 is to do with section 223.19, referring to the auditor general. We wish to comment on and make recommendations regarding the proposed provincial legislation that authorizes municipalities to appoint an auditor general who reports to council and who shall perform duties as may be assigned to him or her by the municipality. We feel this is a glaring weakness in this

legislation. Therefore, we take the view that there would be no guarantee that an auditor general appointed by a municipality would be independent or impartial. This is the same view taken by Mr. André Marin, the Ontario Ombudsman, regarding municipalities appointing their own ombudsman.

#### 1710

To give you some background—and I'll use Newmarket—let's look at the track record of the town of Newmarket and see how effective is an auditor general appointed by council, where his duties are determined by that council.

Case 1: From 2000 to 2006, the town's portion of property taxes increased 50% for the average assessed home. This is an average of 8.3% per annum. Would an auditor general who reported to council have been allowed to inform the property taxpayers that, due to out-of-control spending by the town of Newmarket, their money was not being wisely spent?

Case 2: What is particularly disturbing is the true increase in the town's portion of property taxes from 2000 to 2002 that the public was not told about. Through the Era Banner, the town stated that for the average assessed home the town's portion of property taxes would increase 8.5% for 2001 and 7.3% for 2002. That's 16% for these two years. The actual increase was 31% for these two years based on the town's own historical records. The property tax increases experienced by our executive was about 27% over those two years. Furthermore, these inordinate tax increases are built into the taxes we pay today.

When the town was approached to give an explanation, they indulged in convoluted obfuscations, stating that the tax hikes which were quoted in the Era Banner were accurate and there was no need for corrections. The letter made no attempt to explain the discrepancies between what the public was told through the articles in the Era Banner and what they ended up paying. This means that certain members of council and senior staff misinformed the public regarding the true property tax increases. Would the auditor general have informed the public? How effective would an auditor general have been reporting to council under these circumstances, particularly where his or her duties are determined by council?

It should be noted that the mayor and regional councillor are on the audit committees of the town of Newmarket and York Region. There are other egregious examples we could quote.

Independence of the auditor: The public good is the overriding concern and therefore the independence and impartiality of the auditor are crucial, particularly as there are no opposition parties at the municipal level, as there are at the federal and provincial levels, to help keep the municipal governments of the day honest and accountable. How effective would an auditor general hired by a municipality be where his future career prospects and audit duties are determined by the very people whose decisions he may have to audit? Would the auditor

general have the independence and authority to report to the public on any wrongdoing or wasteful spending habits by the municipality? It is essential that decisions by council be subject to audit, particularly where the impact on property taxes will be significant over a lengthy period of time. These duties are best performed by the Auditor General for the province of Ontario who will be truly independent and who will perform value-for-money audits and report his findings to the public.

Regarding the city of Toronto, we understand that the provisions of Bill 130 concerning an auditor general are modeled on the city of Toronto's auditor general. This may work for the city of Toronto, which is akin to a city-state or a province within a province, where the councillors are full-time and are of a generally higher calibre than otherwise to be found in much smaller municipalities, and where their decisions are much more open to public scrutiny, particularly by the media. However, this model would be totally inappropriate for municipalities such as Newmarket, where the councillors are part-time, where in a lot of cases they have no conception of financial planning and cost control and tend to overly rely on the mayor and senior staff for direction and advice without critically questioning budgets and major capital expenditures. This is unacceptable, as the public good is not being protected.

Regarding the costs of operating a team out of the Office of the Auditor General, we feel this approach would also be cost-effective. For example, if a team of six auditors reporting to the Auditor General audited the region of York and its nine municipalities on a rotational basis at a total cost per annum of, say, \$760,000—that's made up of \$100,000 per auditor to cover salary, benefits, travel and training, plus share of overheads, etc.—that would be \$76,000 per municipality, on average. Based on Newmarket's 2006 residential property tax rate, the impact would be \$3 per annum for the average assessed Newmarket taxpayer. This cost would be more than offset by operational and capital savings resulting from the Ontario Auditor General's audits and certainly in the case of Newmarket where we live. In practice, the cost charged to each municipality and the region of York would likely be based on the number of hours spent on the audit of each municipality.

#### Recommendations:

(a) That audits of municipalities be conducted by the Auditor General for the province of Ontario—excepting the city of Toronto—who will determine the audit duties and perform value-for-money audits. Such actions will ensure independence and impartiality, help improve corporate governance, including effective financial planning and cost control, which could lead to reductions in costs and property taxes.

Furthermore, audit teams operating out of the Office of the Auditor General for the province of Ontario would receive a higher level of training, be much more independent, motivated and effective. Such a structure will build up a bank of knowledge and experience to draw upon to provide a superior level of service to the

public to help ensure that their money is being spent wisely. Audit findings would be reported to the public.

(b) Complaints regarding municipal waste and wrongdoing: Establish a complaints/whistle-blowing department within the Office of the Auditor General of Ontario. Only legitimate complaints backed by evidence would be dealt with. At present, there is no effective mechanism available to the public to get their concerns heard and action taken regarding municipal incompetence and wrongdoing. The Ministry of Municipal Affairs, we are told, is not a policing ministry and only three audits have been carried out in the last 10 years. So where is the democracy? What about the public good?

The public's legitimate complaints must be heard and action taken. This would help build public trust and increase citizen participation in municipal affairs. After all, it is our money that is at stake.

Thank you for receiving our presentation. To quote Cicero, "The people's good is the highest law." We fervently hope our recommendations will be accepted and implemented. Thank you.

**The Chair:** Thank you. You've left just over two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. We haven't had many presentations concerning the citizens and how they feel about changing the way municipalities will be doing the governing. That's why I very much appreciate yours. I want to just maybe caution on the presentation, where you talk about full-time councillors being better than part-time councillors. I'm sure there are a lot of good municipal politicians in Ontario who would like to disagree with you on that. The calibre of politicians in some of the smaller municipalities, of which I was one, would take exception to the fact that, somehow, because they get paid more and spend more time doing it, they're better at it.

**Mr. Yorston:** I accept your point.

**Mr. Hardeman:** But the issue about the auditor and the Auditor General is a very good one. I think it relates to the part of the act too that deals with the ombudsman, who can be appointed to look after whether council is holding closed meetings when they shouldn't and things like that, and the fact that we need to find a way to make them arm's length from the politicians who are being investigated. The issue of having the Provincial Auditor do it has merit, but at the same time do you think it's possible that you could have the parameters set so that municipalities could appoint their own auditor and their own ombudsman at arm's length from themselves?

**Mr. Yorston:** No, absolutely not. I think it would be impracticable to follow that route. It would be an absolute and complete disaster. There has to be independence. We've been involved with the town of Newmarket for some time. We've attended all their budget meetings, particularly 2005 and 2006. I have given you an example where our taxes went up 31% in two years for the average assessed home. When we countered and asked ques-

tions on that, we just got gobbledegook answers. There was no oversight, no accountability, no transparency.

**1720**

The people's good is not being looked after. The crucial word is "independence." There has to be that independence. Just imagine an ombudsman, a local auditor reporting to council about the future. What about the salary prospects? It doesn't work in practice. It has to come from the Auditor General.

**Mr. Prue:** What you haven't said here is of some interest to me. This bill also allows—and you've not commented on it—for the possibility of more closed sessions, sessions to which the public is not invited, sessions in which the mayor and council can, although not making decisions, hold meetings in private. Do you approve of them holding meetings in private to which you are not—

**Mr. Yorston:** No. I don't approve of them holding meetings in camera at all, because in certain situations where meetings which should have been held in public have been held in camera, information resulting from those meetings which was absolutely crucial was not disclosed to the public, and this was again a mark against the system as it presently works.

**Mr. Prue:** Okay. So you would not want to see the present system expanded to include even more private meetings?

**Mr. Yorston:** No.

**Mr. Prue:** You go on to talk about tax increases. I assume the mayor and council were asked to comment and just didn't comment. Did any local newspapers or anyone other than your citizens' group take this up?

**Mr. Yorston:** We took it up with a person who is now the mayor of Newmarket when he was a councillor. We asked him to explain the discrepancies between what was reported in the Era Banner and what we actually paid, and he just ducked the question. He ended up by saying that what was reported in the Era Banner was correct. How can it be correct when the average increase per their own statistics was 31%, whereas what was reported in the Era Banner was 16%?

I went to the Ministry of Municipal Affairs and I was told, after talking to mid-level types, to vote them out at the next election, to go to the police, to sue them. The Newmarket Taxpayers Association is supposed to go to the courts and sue the town, which will defend itself with our money? This is absolutely crazy.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you for your presentation, sir. I'm very interested in the whole concern about the independence of the auditor. Your suggestion that this be done by the Provincial Auditor—how frequently would that occur? Would that be on an annual basis? And how would we manage to do that throughout all the municipalities in this province?

**Mr. Yorston:** If you take the region of York just as an example, which is a region plus nine municipalities, I would imagine that each municipality would be audited every year, perhaps every second or third year. It would

depend on how the audits went or how they initially proceeded. If there was a great need for more frequent auditing, then that's what would have to happen.

I would envisage that if, say, they went to the town of Newmarket and did their audit, they wouldn't need to audit it again for maybe two or three years. It could go on a rotational basis. The six auditors would rotate around the nine municipalities plus the region. I picked six auditors; it could be four auditors.

**Mrs. Van Bommel:** Would there be a complaint mechanism as well so that it could be complaint-driven?

**Mr. Yorston:** That's what I said here. There should be a complaint mechanism. Say if an association such as ourselves have come across wrongdoing and incompetence, we want a channel of communication to someone who's going to do something about it. We don't have that channel under the present system, in my opinion.

**Mrs. Van Bommel:** And you don't feel that you'd be able to complain to the municipality and they would be responsive to you?

**Mr. Yorston:** We did respond to the municipality, we did write them, and we got a gobbledygook answer. I've got all of the details here, actually. We did ask them and we did go through that process. We gave up and then went through the Ministry of Municipal Affairs and were told to take legal action.

Just remember, we are a crowd of old retirees here. We're not going to go to court carrying our money to sue the town, which will defend itself with our money. There must be another means so that democracy can work. And democracy is not working, because at the federal and provincial levels you have opposition parties and an Auditor General to help keep the government of the day honest; you don't have that at the municipal level.

**The Chair:** Thank you very much for being here.

#### SHOPPERS DRUG MART

**The Chair:** Our next delegation is Shoppers Drug Mart, Barbara Dawson and Rob White. Thank you for coming today. We have your submission in front of us. If before you speak you can identify yourself and the organization you speak for, you will have 15 minutes. Should you leave time at the end, we will be able to ask you questions.

**Ms. Barbara Dawson:** Good afternoon. My name is Barbara Dawson and I am vice-president of corporate affairs at Shoppers Drug Mart. With me today is Rob White, our Ontario district manager responsible for Shoppers Drug Mart pharmacy locations in Durham, and this includes the area of Pickering to Oshawa, Port Perry, Uxbridge and parts of Markham.

Madam Chair and distinguished members of the committee, Shoppers Drug Mart appreciates the opportunity to speak to the standing committee on general government considering Bill 130, the Municipal Statute Law Amendment Act.

Our comments today are limited to those provisions in the bill that will affect the regulation of store hours in the

province. These are the provisions in the bill which, when read together, would grant municipalities powers to require business establishments to be closed at any time, and would exempt or override the application of the Retail Business Holidays Act, the RBHA, to the municipalities—this is Bill 130, schedule A, section 79, and schedule D, section 15.

The written submission before you goes into greater detail than I am going to provide in my summary comments this afternoon, as we wanted to quickly outline the issue and leave time for questions.

Our concern with Bill 130 stems from an outdated provision in the Retail Business Holiday Act, the RBHA, that allows only pharmacies with less than 7,500 square feet of selling space to remain open on the eight public holidays of the year.

As you are probably aware, on the eight named public holidays, for example, New Year's Day, Christmas Day, Victoria Day etc., the RBHA prohibits retail establishments from being open unless they fall within one of the exemptions. Those exemptions include small stores, pharmacies, special services, art galleries etc. As you can imagine, as one of Canada's leading retail pharmacies, we fall under the pharmacy exemption, which permits pharmacies to open on public holidays, and as the statute specifically states, where "the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes" for "dispensing of drugs ... available to the public during business hours," and where "the total area used for serving the public or for selling or displaying to the public in the establishment is less than 7,500 square feet."

While the first two criteria remain relevant in describing the pharmacy exemption, today the square-foot restriction is no longer relevant. In 1989, a 7,500-square-foot limitation may have made sense; however, today, because of many factors, pharmacies are much larger. As an example, the average size of our pharmacies today is about 13,000 square feet. So in today's environment this restriction actually means that about one half of our Shoppers stores must remain closed on public holidays. Please remember that many of these stores are located in centres, towns and villages where they are the only pharmacy alternative. As a result, this square-footage limitation prevents many of the citizens of Ontario from having access to prescription drugs and over-the-counter medications that they require on these eight days of holidays. So, while the 7,500-square-foot limitation is problematic, at least overall the RBHA recognizes the provincial interest in having pharmacies available to the public on these holidays.

Unfortunately, Bill 130, and Bill 53 before it, negates this provincial interest. Bill 130 devolves the power to set retail hours—24 hours a day, 365 days of the year—to municipalities, which, when put into effect, will mean that municipalities will be able to override the provincial RBHA with their own bylaws.

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Shoppers Drug Mart currently has 509 stores in Ontario and together they account for 52% of our entire national pharmacy network. These stores, as I've mentioned previously, are not only located in large urban centres like Toronto, they are also present in many smaller towns and villages of this province. As such, our pharmacies are an integral part of the health care delivery system in this province. Because of that, the impact of this legislation on our business and on the citizens of the province is significant.

To provide you with a view of that impact, I would like to read several excerpts from a letter submitted by a city of London Shoppers Drug Mart associate. Her name is Carolee Coulter and we have included her letter in the written submission. You'll find it as an appendix. Carolee's pharmacy is located near a very busy walk-in clinic that is open on holidays, but because of the size of Carolee's pharmacy, she is not allowed to be open; she is required to be closed. I quote:

"As my store is currently over the 7,500 square foot restriction I cannot legally open on statutory holidays, which is putting my patients at a great health care disservice. My colleagues and I have had many discussions with our city councillors to try to come up with a solution for our municipality. Unfortunately, the issues have not been addressed as our municipality views health care issues as provincial responsibilities.

"Our community is currently underserved with family physicians and therefore many people are relying on emergency rooms, walk-in clinics and pharmacies for their health care needs. My store has two walk-in clinics in close proximity which choose to open on statutory holidays. Unfortunately, anyone given a prescription has to travel out of their way to have their health care needs taken care of. This is a huge inconvenience, especially when someone is ill.

"As we all know, illnesses, wounds, and pain can happen at any time—not just in 'regular' business hours. My store is open from 8 a.m. to midnight to help accommodate as many needs as possible. My pharmacists and I deal with many health care questions on a daily basis, including referrals from Telehealth Ontario. These questions don't stop for holidays."

It is for the reasons Carolee has outlined in her letter and the others I have touched upon previously that Shoppers strongly believes the legislation, as currently drafted, will have several unintended consequences.

Today Ontarians have the certainty of knowing they have access to a pharmacy to have their prescriptions filled, their over-the-counter medication needs dispensed and other health related needs met 365 days of the year, regardless of where they happen to live. By transferring these powers to the municipalities, this certainty will be lost.

In addition, the province could be left with a situation where some communities have full access to pharmacies every day of the year while others have much more limited access. As a consequence, there could be follow-

on pressures on other parts of the health care system. And where communities pass more restrictive bylaws, Ontarians could face a situation where they have even less access to pharmacy services.

Finally, the Minister of Health and indeed the Premier maintain that improving health care is a provincial interest and that pharmacy is an important provider of health care services. Quite frankly, not only is Bill 130 inconsistent with this stated direction, but it also prevents Shoppers Drug Mart, as a pharmacy, from delivering on this very accountability to both the government and the people of the province.

As a result, Shoppers would like to recommend that Bill 130 be amended so that the responsibility for the setting of pharmacy hours remains with the province and, specifically, that the square footage limitation of 7,500 square feet in the RBHA is removed.

With these amendments, we believe the interests of Ontarians will be met, as they support what the government has been and is doing to improve access to health care services across the province, and it also enables us, as a pharmacy, to deliver this health care service for Ontario.

Before closing, I would like to provide you with two verbatim quotes from an open-ended customer comment that we received on this particular topic. The first comes from Kitchener-Waterloo: "Great that it is a 24-hour service. Our city really needed that (I am an emergency RN and it is great to be able to tell patients where they can go to get their prescriptions filled during the night or on holidays)."

The second is from London: "I went in at 2:30 a.m., after spending the previous six hours in the hospital emergency department. I have many of my prescriptions at this Shoppers, however, it was a first for my daughter. I needed to fill out a prescription for a painkiller and antibiotics."

Of the more than 30 million prescriptions Ontarians entrusted to Shoppers last year, more than 500,000 of those scrips were filled in Ontario on eight statutory holidays. This is obvious evidence that illness and need do not take a holiday. As providers of health care services, pharmacies should be allowed to fulfill their mandate without restriction, like other health care providers.

Our written submission continues with answers to some of the questions we think the committee members may have, but I would like to stop here and take any questions in the time remaining.

**The Chair:** Just over a minute for each party, beginning with Mr. Prue.

**Mr. Prue:** You've made a very compelling case, but I can see what another part of the argument may be and I'd just like you to respond to it. The Shoppers Drug Marts in my community—and we have two; you can see them from each other, that's how close they are together. They're huge and they sell a lot more than the drugstore. One has a post office; they sell clothes; they sell literally almost everything—groceries. I can agree with keeping the pharmacy open for health care, for all the reasons

you've said. But we force The Bay and Dominion and those selling the same products to close. Would you see a compromise of leaving the drugstore portion open, as opposed to the enormous store, which is, to be fair, a lot more not drugs than drugs?

**Ms. Dawson:** A fair question. We are rooted in pharmacy. It is the majority of our business and it also accounts for the majority of our sales. So as a provider of those health care services, we deem that it would be important and fair to be available to patients and customers who need that. Much of the store area that is outside of pharmacy also includes other OTC medications. So when you really take a look at the footprint, the majority of the store is still dedicated to health care.

**Mr. Duguid:** I listened carefully to your comments and had an opportunity prior to coming into committee today to chat with you in a little bit more detail, and I appreciate that. I guess in listening further to your brief, under the bill, unlike the status quo—this would be my understanding; I'm going to ask you to confirm that—municipalities do have the ability now to allow stores like a Shoppers Drug Mart to open beyond the limitations. If this legislation passes, municipalities will now have that ability, which could mean that in some communities where they couldn't have opened under the Retail Business Holidays Act before, they may now be allowed to open, if the municipality chooses. Is that correct or do I have it wrong?

**Ms. Dawson:** I believe that's correct, but the whole idea that the decision is left with the municipality means that we could well be facing a patchwork of accessibility, because that's in essence what it all boils down to. So one municipality could choose to be very restrictive whilst another could be very open.

**Mr. Duguid:** Right. The municipalities would have to choose what's best in terms of their public interest, in their opinion, and sometimes—you're right—that could vary from community to community.

**Ms. Dawson:** And it's interesting because, building on the point that you're making with regard to municipalities, we have met with many municipalities and tried to put this forward, and they do not see this area as an area of their concern. They see health care and access to health care and health care services as a provincial matter, so they don't understand why they should be involved or why it would be of interest.

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**Mr. Hardeman:** Thank you very much for the presentation. First of all, I want to say that I would agree with the removal of the 7,500 square feet. To me, a store is a store, and if it has purpose to be open, it shouldn't matter how many square feet there are in it. I think a definition of the primary purpose of the store does make some sense.

I have some concern, though. It would seem to me that if municipalities are presently saying, "It's a provincial issue, it's a health care issue, so we will not let you open," that argument would be eliminated by this bill, would it not, to say, "You may be serving health care

needs, but you as a municipality get to decide whether that store is going to be open on behalf of your people or not"? It would seem to me that that would really put the onus on municipalities to make a decision on what was in their best interests, and if it's in the best interests of all the good folks who are shopping there, would that not drive municipalities to make better decisions than the provincial government?

**Ms. Dawson:** I believe it's a situation where they won't know what they don't know, so they would have to be met with and educated on the fact that this is even something that would be within their interests. When you look at the whole idea, the whole notion, of health care accessibility and the ability to have access to medication etc, the very fact that we would have to go out to 47 major municipalities and have that ongoing conversation is something that's really quite overwhelming. And that's only to assure a consistency, a floor, if you will.

**Mr. Hardeman:** Thank you.

**The Chair:** Thank you very much for being here today.

#### CITY OF OSHAWA

**The Chair:** Our next delegation is the corporation of the city of Oshawa. Welcome. Make yourself comfortable. Thank you for your patience. We appreciate your being here today. If you could state your name and the group that you speak for.

I want to just alert you and the next delegation that I have been told there will be a vote at 10 to 6, and if you hear bells, I'll explain what we're going to do next, but it's not because of anything you've said. I don't want you to be alarmed in the course of your presentation. It won't affect the time that you have.

**Mr. David Potts:** It wouldn't be the first time, Madam Chair.

Thank you for the opportunity. My name is David Potts. I'm the director of legal services for the city of Oshawa. I have with me my colleague Jerry Conlin. He's the acting director of municipal law enforcement and licensing services for the city of Oshawa.

I've separately had an opportunity to contribute to a written submission on behalf of the Municipal Law Departments Association of Ontario. Next week I'll be appearing with one of my colleagues on behalf of the Ontario Bar Association. But today Mr. Conlin and I appear on behalf of the council for the corporation of the city of Oshawa.

Again, we appreciate this opportunity to make a recommendation with respect to one aspect of this important legislative initiative, and that is the power to impose administrative penalties. Of course, the committee has our written submission.

The following recommendation is consistent with a recommendation by the Municipal Law Departments Association of Ontario, and the recommendation is this: It is recommended that part XIV of the Municipal Act be amended to include a general power to impose admin-

istrative penalties in addition to the specific administrative penalty powers currently proposed by Bill 130 respecting the enforcement of parking and licensing bylaws.

Following are seven material elements of an administrative penalty power that would protect the rights of individuals while providing an efficient alternative to the traditional prosecutorial process in certain circumstances.

First, and this is probably the most important part, along with the second element: An administrative penalty power should be integrated as part of the proposed “Orders and Remedial Actions” powers, such that an administrative penalty would be available where a person defaults in complying with a municipal administrative order that an activity be discontinued or that work be done.

Second, the underlying administrative order could include a notice of the administrative penalty as one of the means by which the order may be enforced. Any review process related to the underlying administrative order could also serve as the process by which the person against whom or which the penalty is imposed could be heard and the penalty could be confirmed or reduced.

Third, limits could be imposed on the power in terms of the amount of the penalty and the frequency with which it may be imposed during a period of non-compliance.

Fourth, the power should be expressed as being in addition to any other remedy and to any penalty imposed by the bylaw. However, where an administrative penalty has been imposed and has been paid in accordance with the notice of the penalty, the person should not be liable to be charged with an offence in respect of the specific contravention.

Fifth, the power should be subject to a limitation period which commences on the earliest date expressed in the administrative order for compliance.

Sixth, in order to enforce the payment of an administrative penalty, a municipality should have the power to add the penalty to the tax roll of any property within the municipality owned by the person(s) against whom or which the penalty was imposed and to collect the penalty in the same manner as property taxes with priority lien status.

Seventh, the Building Code Act, the Fire Protection and Prevention Act and the Planning Act should be similarly amended—that’s perhaps a discussion for a different day.

The following comments better explain this recommendation and its elements.

The law governing municipal government in Ontario continues to undergo significant change. Until recently, all Ontario municipalities were generally governed under the authority set out in the Municipal Act.

On June 12, 2006, the Stronger City of Toronto for a Stronger Ontario Act, 2006, was given royal assent. Included in its schedule A was the City of Toronto Act, 2006, which provides the city of Toronto with a broad legislative framework and increased freedoms, recog-

nizing Toronto’s unique status among Ontario municipalities.

Three days later, on June 15, 2006, Bill 130 was introduced for first reading in the Ontario Legislature. Bill 130 proposes a number of significant amendments to the Municipal Act, as well as changes to a number of other related statutes.

The explanatory note to Bill 130 notes that many of the amendments to the Municipal Act proposed by Bill 130 address the same subject matter currently existing in the statute, but change the amended provisions to reflect a new approach wherein municipalities are granted broader authority and new permissive responsibilities. For the most part, the changes in schedule A of Bill 130 parallel the approach adopted in the City of Toronto Act, 2006.

One of the changes introduced by the City of Toronto Act, 2006, and proposed by Bill 130 in its current form is the power to impose administrative penalties as a means of enforcing business licensing bylaws and bylaws respecting the parking, standing or stopping of vehicles.

This submission recommends a general power to impose administrative penalties in addition to the specific powers currently proposed by Bill 130 to impose administrative penalties respecting the enforcement of parking and licensing bylaws. Again, a key component of the recommendation is that a person upon whom an administrative penalty is to be imposed should be afforded a right to be heard by a tribunal that would have the power to reduce the administrative penalty.

To this end, a general administrative penalty power could dovetail with an administrative order process, which itself usually affords an opportunity to be heard respecting the technical merits of the administrative order. In fact, the existence of a right of appeal against an administrative order is considered so important that a person who enjoys this right of appeal is often prevented from challenging the administrative order in any subsequent prosecution for non-compliance with the order. The footnote to the written submission provides some authority for that statement. Likewise, an administrative penalty should be considered less controversial where the person is notified of the person’s right to be heard respecting the administrative penalty and is afforded an opportunity to have the penalty reduced.

A modest administrative penalty may, in some circumstances, be an appropriate alternative means of achieving compliance with an administrative order, particularly when one considers a municipality’s existing powers to achieve compliance.

#### **1750**

Municipalities enjoy broad powers to make and enforce administrative orders. In addition to specific administrative order-making powers, the current version of the Municipal Act provides that a bylaw passed under one of the “spheres of jurisdiction” respecting a matter may regulate or prohibit respecting the matter, and, as part of the power to regulate or prohibit respecting the matter, require persons to do things respecting the matter.

The existing Municipal Act permits a municipality to undertake remedial action as one means of enforcing its administrative orders. Specifically, a municipality that has authority to direct or require that a matter or thing be done (1) may direct that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense; (2) may enter upon land and into structures at any reasonable time; (3) may recover the costs of doing the thing, including adding the costs to the tax roll and collecting them in the same manner as taxes—footnote 9 in the written submission provides further details of the extensive costs that can be incurred; and (4) is not required to provide compensation as a result of doing the remedial work.

The exercise of the municipal remedial action power requires the municipality to incur the costs, which can be substantial, as noted, and which ultimately may be recovered from the individual without a hearing. These are existing powers proposed to be continued under Bill 130. Accordingly, a modest administrative penalty may, in some circumstances, be a reasonable alternative that encourages compliance without the risk of substantial costs.

Similarly, the existing power to license, regulate and govern a business—it's important to note that Bill 130 proposes administrative penalty powers for business licensing; that's welcome—includes the power to revoke a licence. The revocation of a municipal licence can be devastating to the licensee's business. Accordingly, a modest administrative penalty may encourage compliance with the municipality's system of licences in circumstances where the revocation of the licence is considered too extreme.

Finally, punishment by means of prosecution is the traditional means of encouraging compliance with municipal bylaws. Bill 130 proposes to increase significantly the maximum fines that may be imposed upon conviction of offences for failing to comply with municipal bylaws. Imprisonment continues to be a penalty that may be imposed for certain contraventions of municipal bylaws. A modest administrative penalty may, in some circumstances, be a reasonable alternative to punishment by prosecution.

Further, the perpetual shortage of justices of the peace continues to inhibit enforcement of municipal bylaws. The disturbing consequences of this shortage were expressed by the Association of Municipal Managers, Clerks and Treasurers of Ontario in its September submission to the standing committee on justice policy respecting Bill 14:

“[P]ublic confidence in the administration of justice is being eroded. Some citizens have learned that it is possible to get away with breaking society's rules and laws by simply exercising their right to request a trial. This is because sittings of POA courts are being reduced to the point that matters are being dismissed because they cannot be heard within an acceptable amount of time. The result is that these citizens are more likely to break

the rules again, while a sense of unfairness grows among those citizens who respect the law.”

**The Chair:** Mr. Potts, how much more of your deputation do you have?

**Mr. Potts:** One minute.

**The Chair:** I cannot see how long members have to go and vote. You technically have five minutes left in your deputation. So I'm going to recess—

*Interjection.*

**The Chair:** Oh, we have eight minutes. How about you finish and then we'll come back and ask you questions. You have time, and we have time to get back.

**Mr. Potts:** The Access to Justice Act proposes to improve the appointments process for justices of the peace, which is one important step toward properly resourced courts. However, the question remains as to whether all manner of enforcement should proceed by way of the traditional prosecutorial process. Bill 130 heralds a fresh approach by recognizing administrative penalties as an appropriate alternative to the traditional prosecutorial process for the enforcement of parking and business licensing matters. The recommendation in this submission flows from and complements this important policy initiative.

To conclude, the use of administrative penalties as a means of enforcing municipal bylaws is no longer a novel concept. Bill 130 currently proposes administrative penalties as a tool to enforce parking and business licensing bylaws.

It is recommended that part XIV of the Municipal Act be amended to include a general power to impose administrative penalties in addition to those currently proposed by Bill 130, subject to reasonable limits on the power as suggested in this submission. This submission is, of course, consistent with the recommendations of the Municipal Law Departments Association of Ontario.

Again, on behalf of council and my colleague Mr. Conlin, thank you for the opportunity to make this submission.

**The Chair:** You've got three minutes left. We'll get to your questions. Each member of the committee will get one minute to ask you a question.

We'll recess for the vote.

*The committee recessed from 1755 to 1807.*

**The Chair:** Committee, we resume our hearings. We have three minutes left, beginning with Mr. Duguid.

**Mr. Duguid:** Madam Chair, in light of the fact that the next deputant has to catch a train—a very good deputation. I thank you for it. We'll take a very close look at that. As a former municipal councillor, I think I understand what you're getting at. So we appreciate it.

**The Chair:** Mr. Hardeman?

**Mr. Hardeman:** Thank you very much. I want to congratulate you on the presentation. It's the first one that, after the presentation, I have no idea what it was about. I say that with tongue in cheek.

I just quickly want to ask: In principle, what's the problem with administrative fees being added onto all the

other charges, giving you just a free rein of it? My people at home—why would they object to that?

**Mr. Potts:** Being a lawyer, lawyers are wired to instinctively be offended by the concept of an administrative penalty which does not involve a judicial process. The manager in me and the manager in Mr. Conlin actually oversee the front line of enforcement—in my case, overseeing prosecutions for the city of Oshawa, occasionally myself appearing in court, seeing the process and seeing the number of different kinds of matters, the subject of enforcement and recognizing that one tool, specifically the punishment-by-means-of-prosecution tool, is not the tool that serves all purposes. The administrative order concept—that is, where you have people in the field who give a notice that says, “Do this work and you’ve got a certain amount of time to do it, and if you don’t do it, then we will prosecute you”—whether it’s fire services matters, building code matters or, in this case, municipal bylaw matters, the collective experience is that most people comply. That’s why the reference to dovetailing an administrative penalty power as part of an administrative order process was made in the submission, and the reason is, what concerns people about administrative penalties is the opportunity to be heard. They want their day in court, although in this case maybe it’s not a court in the traditional sense, but it’s an opportunity to appear before a group who can hear what the concern was and reduce the penalty.

The example in the footnote—I believe it’s footnote number 4 in the submission—is with respect to a property standards committee established under the Building Code Act, appointed by municipal council, which is arm’s length from the council because its term is consistent with the term of the municipal council, and they can do anything to the order that comes before them. This similarly constituted committee could have the power to do anything with respect to the administrative penalty that comes before it.

**Mr. Prue:** In this way, it would be no different than someone getting a parking enforcement ticket. You could either choose to go to court and ask for it to be gotten rid of or reduced, or you could just say, “I deserve the ticket,” and pay it. What you’re suggesting here is no different than that.

**Mr. Potts:** Actually, it’s no different. In fact, the current version of Bill 130 supports this submission because parking has been carved out and business licensing as well. So the significant policy decision has already been made by the drafters of the first reading version of the bill.

**The Chair:** Thank you very much for being here today. We appreciate your patience.

COUNTY OF MIDDLESEX;  
WESTERN ONTARIO WARDENS’ CAUCUS

**The Chair:** Our last delegation for the day is the county of Middlesex/Western Ontario Wardens’ Caucus. We saved the best for last. Thank you very much for

being here. If you’re both going to speak, introduce yourselves and the group that you speak for. You’ll have 15 minutes. If you leave time, there’ll be an opportunity for us to ask questions.

**Ms. Joanne Vanderheyden:** Thank you very much. My name is Joanne Vanderheyden. I’m warden of Middlesex county. I have with me our CAO, Bill Rayburn. We have a submission here on behalf of the Western Ontario Wardens’ Caucus.

I want to begin by thanking you for the opportunity to meet with you today. As you know, the Municipal Act is a vitally important piece of legislation to the citizens of Ontario and the municipalities where these citizens live. I applaud the government for taking the time to make sure that Bill 130 receives appropriate constructive criticism so that collectively we can develop a Municipal Act that will serve us well for many years to come.

I also want to applaud the government for working hard to enshrine municipalities with the powers that they require to be a true governmental partner in the delivery of services to our citizens. Municipalities have worked hard over the years to ensure that they are a responsible and respected order of government. The spirit of Bill 130 reflects the province’s commitment to recognizing municipalities as an order of government.

With this in mind, we are supportive of the position put forward by AMO last week. Local government should be given the flexibility and authority to legislate as mature orders of government for the matters within their jurisdiction. Retrospective provincial intervention is contrary to the spirit of many of the other changes in the act. There is no need to micromanage local government and, where there is a provincial interest to be protected, it should be clearly articulated in the bill.

Finally, I want to thank the province of Ontario for consistently reviewing the Municipal Act. I recall a conversation during the development of Bill 111, the 2001 Municipal Act, where I stated to a provincial official that the bill was far from perfect. His response was that it was an improvement and that the Municipal Act will continue to evolve over time. This version of the Municipal Act is part of that evolution. It is also a recognition that the needs of our citizens change, the requirements for municipalities change and the appropriate legislation must change as well.

Despite the best efforts of those who drafted the legislation, there are a few sections of Bill 130 that are detrimental to the autonomous management of municipalities. As you are aware, I have asked to speak on behalf of the Western Ontario Wardens’ Caucus today in an effort to bring to you an issue that is of significant concern to them.

When the province of Ontario amended the legislation governing the term of office for municipal councils, there was an unintended consequence. The act currently provides the opportunity for wardens to be elected for either a one-year term or the term of office for council. During the three-year term, that meant that wardens were either elected for a one-year term or a three-year term.

With the move to a four-year term, some municipalities believe that a four-year term for a warden may be too long. As a result, they would like to take the opportunity to have a warden for two two-year terms. With this in mind, I am respectfully requesting that you give consideration to amending Bill 130 to allow the term of office for the warden to be at the discretion of county council with no predeterminations of term length made in the Municipal Act.

I first drew this matter to the attention of the Minister of Municipal Affairs in early 2006. In response to my letter, the minister notified me that the most appropriate forum to present this concern was in front of this committee. Therefore, on behalf of the Western Ontario Wardens' Caucus, I respectfully request that you make this small change to the act.

I would be remiss if I did not also provide you with my thoughts on the new investigation provisions in the act. The new investigation provisions enable any citizen to direct a municipal ombudsman or an investigator appointed under section 239.2 to investigate alleged violations of that municipality's procedure bylaw.

While I am a firm believer in governmental accountability, I would ask you to consider the costs associated with the proposal for a municipal ombudsman. The provisions as they stand now are very open-ended. As a result, I am concerned that the provision for investigation will be misused by some, perhaps not even by citizens of the municipality in question, to carry out frivolous and malicious claims. The result of this type of open-ended opportunity will undoubtedly be a clogging of the municipal decision-making process, with deep financial impact.

As I mentioned earlier, I believe in accountability, but not accountability at all costs. The rules for when these procedures can be used must have a threshold and that threshold should be high if we are to protect the ability of municipalities to act in a reasonable and businesslike manner.

In closing, I want to draw your attention to the emergency management section of the Municipal Act. Last month, the Ontario Association of Emergency Managers developed a number of amendments to Bill 130. Specifically, they have asked for a new series of clauses that define "emergency services" and "incident commander." They have also added clauses that assist in clarifying powers during an emergency, emergency declarations, offences and penalties, and mutual aid.

I have reviewed each one of these proposed clauses and I want to encourage you to do the same as I believe that they are important additions to Bill 130 that will help to clarify roles and responsibilities in emergency situations. For your review, I have attached a copy of the proposed clauses.

Once again, thank you for this opportunity today. I look forward to any questions that you may have in regard to this submission.

**The Chair:** Thank you very much. You've left about three minutes for every party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. On the issue of the election of wardens, prior to a number of years ago, it was always a one-year term and a warden could run again for a second term. When the act was changed, my understanding is that you could stay with the old system of one year or you could elect them for the term of office, recognizing that that would stop this thing about having to change wardens too often.

Since you can still do it one year at a time—one, two or three, but you have to have the election three times—does that not solve the problem and still allow you to say that it's not for a two-year term; it is for the term of office?

**Ms. Vanderheyden:** It's our understanding that you can have either one or the term of office. We at Middlesex have one-year terms, so we're good to go. But there are municipalities out there that have specified the entire term of office, and the entire term of office now is four years and that's sometimes too long. So they would like the ability to say, "Don't put a number on it; just say you could have it at your discretion."

**Mr. Bill Rayburn:** If your point is in regard to one term being turned over and over again to make two in that process, you know from your past experience that there is machinery that goes along with those elections and there are expenses that go along with those elections. But more importantly, for some municipalities that are looking for the opportunity to have two two-year terms, there is an investment, so to speak, in raising the profile of a warden. You can't make that investment if you're not sure if that warden is going to be there for two years. This would allow you the mechanism. The added flexibility does no detriment. I would turn the question around: What harm would it do to have the opportunity to have two years and state it in your own procedural bylaws so there's certainty?

**Mr. Hardeman:** I didn't hear any great concern from the municipal people when it was changed from three to four years for the term of office. There was no concern about that being too long. It would seem to me that when they then go to the council meeting, that extension of one year—there's no reason to assume that that's different for the warden than it was for any other member of council. They, without any consultation, without any concern for the system, all agreed that four years was okay to replace the three in a budget bill, and yet now the councillors are saying, "That was okay for us, but now when we are the people doing the electing, we want to be able to change them and put different terms of office. Four years may be too long to have a warden."

**Mr. Rayburn:** It may be, and that's the problem. That's the problem we're trying to point out, that our hands are tied and that we only have one or four. I think you'll recognize as well that there's a difference between being a councillor and being a warden. One of the goals that we try to accomplish during the term of a warden is to raise the profile of the warden so they can represent the community. With the one-year turnover, that's really difficult to do. There are councils out there that say, "The

perfect balance for us, for our particular community, because of our size or because of our history or because of our geographical representation, is to have these two two-year terms.” That flexibility is something that would really benefit them.

**Mr. Prue:** I’m mindful of your train. I don’t want you to be stuck here. Would you like me to ask the question or do you want to go?

**Ms. Vanderheyden:** You’re good. Go ahead.

**Mr. Prue:** Are you sure? Okay, I only have one question and—

**Mr. Rayburn:** Can we decide after you ask it?

**Ms. Vanderheyden:** Can I slap the question around if I don’t like it?

**Mr. Prue:** —it’s the cost of the municipal ombudsman. We know, and this has been raised in the Legislature, a city like Toronto or Ottawa can afford a municipal ombudsman. Smaller towns and counties are going to have a great deal of difficulty. In your county, to pay someone to be an ombudsman, even just one person, would be a huge cost that you would not want to pay. Am I correct?

**Ms. Vanderheyden:** That’s correct.

**Mr. Prue:** So you would prefer not to have this provision or to have it that you had the option of either appointing one or not at your discretion.

**Mr. Rayburn:** Can I add to your question? You’re saying, yes, there’s this cost of actually hiring the person. We’re forgetting about the fact that if, for example, in the county of Middlesex the situation arose where we had to have an ombudsman, we would likely go out and hire a lawyer to act as that ombudsman, as you would expect. That person not only starts to bill on day one of the first requirement, they start their bill on the days of training to be an ombudsman, because a lawyer is not going to know what the rules are around this. There’s a whole lead-up administratively to this where I can see the bill being rather large.

In our county, we have eight municipalities. They’re all going to have to have ombudsmen. The upper tier is

going to have to have an ombudsman. When you start looking across the county of Middlesex at what this is going to cost, at what benefit, we wonder.

**Mr. Prue:** Okay, thank you.

**Mr. Duguid:** Just two very, very quick questions. The first is just to clarify your previous response. So you’re in favour of the permissive approach in terms of the province? Does that clarify it?

**Mr. Rayburn:** In terms of the ombudsman?

**Mr. Duguid:** In terms of the ombudsman and the other statutory officers.

**Mr. Rayburn:** Right. I think if it’s an option, something that municipalities can choose to do and may need to do, that would be fine.

**Mr. Duguid:** Okay. Just quickly because I know you’ve got to run, we are looking very seriously at the concern that you’ve raised with regard to the wardens and the appointment of the wardens. I can’t give any commitments here at committee at this point in time, but we’re looking very seriously at that. You’ve made a very valid argument.

**Mr. Rayburn:** Thank you.

**Ms. Vanderheyden:** Thank you.

**Mrs. Van Bommel:** I just want to say thank you very much for coming to Toronto. The warden is a constituent of mine and Mr. Rayburn is the administrator for the county I live in. I know in my area and certainly in most of rural Ontario, the issue of wardens and warden terms is very controversial. Thank you very much for bringing it to our attention.

**Ms. Vanderheyden:** Thank you, and if we miss the train, we’ll come back and you can drive us home because you know where we live.

**Mrs. Van Bommel:** Yes.

**The Chair:** I’m not sure she’s going home right now, but thank you very much for your deputation. We appreciate your being here today.

Committee, we now stand adjourned until 4 p.m. on Monday, November 27.

*The committee adjourned at 1823.*

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