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Wednesday 29 November 2006

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Mercredi 29 novembre 2006

Standing committee on general government

Municipal Statute Law
Amendment Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois
concernant les municipalités

Chair: Linda Jeffrey
Clerk: Susan Sourial

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 29 November 2006

Mercredi 29 novembre 2006

The committee met at 1601 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.

Before we begin to hear from the first presenters, members will have at their seats a copy of the written submission sent in by the Ombudsman. He has requested that his submission be entered into the oral record of the proceedings. This can only be done if a member of the committee reads Mr. Marin's submission out loud during the committee proceedings. It cannot be deemed read into Hansard.

I would need unanimous consent of committee for this to be done, and for someone to volunteer to read it. Do I have unanimous consent?

Mr. Hardeman? Do we have unanimous consent? Do I have nodding or not?

Mr. Brad Duguid (Scarborough Centre): I'm sorry, I was in another conversation.

The Chair: You weren't listening?

Mr. Phil McNeely (Ottawa–Orléans): We were talking about another topic, actually.

The Chair: Okay. I will read it again.

You have a copy of a written submission by the Ombudsman. You will recall that he asked for additional time and he was denied that time by the committee. Now he has requested that his submission be entered into the oral record of the proceedings. It can only be done if a member of the committee reads his submission out loud during the committee proceedings. It cannot be deemed as having been read into Hansard.

I need unanimous consent of this committee in order for this to be done and a volunteer to read it. Is there unanimous consent?

Interjection: No, no.

The Chair: Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Madam Chair, recognizing that we don't have unanimous consent to read it into the record—I know that as we get into clause-by-clause, I will need that information on the record to have further debate on the amendments in clause-by-clause—I can assure the Ombudsman that we will read it into the record as the time approaches.

The Chair: Thank you, Mr. Hardeman. So there is no unanimous consent.

MUNICIPALITY OF GREENSTONE

The Chair: We'll move on to our public hearings. I'd like to welcome our witnesses and tell them they'll have 15 minutes.

Our first presenter today is the municipality of Greenstone, Mayor Michael Power. Welcome. Please make yourself comfortable. I know you've been here before, but I'll go through the drill. If you want to pour yourself a glass of water, please do. You will have 15 minutes after you have identified yourself and the organization you speak for. If you leave time at the end, there will be an opportunity for us to ask questions. So whenever you're ready.

Mr. Michael Power: Thank you very much, Madam Chair. It is indeed a pleasure and an honour to be able to appear before you today. I know you have been very, very busy in dealing with this.

My name is Michael Power. I'm the mayor of the municipality of Greenstone, and I am the president of the Northwestern Ontario Municipal Association, which represents every organized municipality in the great northwest of this province.

I want to tell you that generally we're satisfied with the work that you have done on this bill and with the intended outcomes. But before commenting on specific aspects of the bill, I would urge this committee to do two things. Firstly, it should commit to ensuring that both the City of Toronto Act and the improved Municipal Act are enacted in order to come into effect on January 1, 2007. Synchronization will allow all of Ontario's other municipalities to be equipped with the powers to better manage our 445 municipal corporations and the communities we serve right across this great province of ours. This bill, however, does not solve the biggest challenge facing the municipal sector; that is, the $3-billion gap. Unless

we can undo the downloading of the 1990s, municipal governments will remain fiscally and financially vulnerable. I know that together, the municipal order of government and the provincial order of government can solve this.

Finally, I would be remiss if I did not remind this committee of the wider context facing many northern and rural municipalities in Ontario. Ontarians in many rural and northern communities are facing tough times. There are many in this room who are well aware of that. The combination of low commodity prices, high energy costs and increasing competition from developing nations is forcing many manufacturers to relocate or close their mills. These communities are counting on the government of Ontario to take a leadership role in developing solutions to stem the current crisis and to ensure a lasting legacy of sustainable economic development. While cities may be the engines of growth in the new economy, northern communities are key to providing necessary resources for these cities to survive and to thrive. They also play an increasingly vital role in environmental stewardship due to the stresses created by population growth, sprawl and climate change here in this part of the province.

Let me focus on a few matters in this large bill in the remaining time.

We in the north support the new broad authorities, because we believe they will help municipalities govern by enhancing their ability to respond to local issues. We support the provision that these new broad powers must not only be applied to the rest of this act, but to any other legislation that governs municipalities. This reflects how the courts have been interpreting municipal powers both in Ontario and across Canada.

Bill 130 must remove section 451 of the Municipal Act, which gives override authority to the province on the basis of provincial interest. This is inconsistent with the principles of the act's review. Restricting the use of the general powers by allowing cabinet to impose limits via regulation runs counter to the goal of recognizing municipalities as a responsible order of government. This will cause uncertainty for municipalities and could very well limit innovation. The province must exercise restraint and not get involved in purely local matters if the proposed changes are actually to achieve their desired outcome. The province should and can define its interest up front and insert this into the legislation. Without stated provincial interests, there remains a very large hole in the bill.

As fellow politicians, you understand how important it is to be able to properly understand an issue before you debate it in public. Municipal councillors need the opportunity to do their homework and to ask those questions as well. This bill will allow such discussions to occur outside of a formal council meeting. Learning about a matter is critical before you enter any discussions. You know this first-hand from your own caucus meetings and experiences.

Where a citizen of the community or a taxpayer believes council has not complied with the open/closed meetings provisions, they should be able to seek a consideration, but the provision is very open-ended. Any person anywhere can trigger this, without limitation. The committee should consider scoping who can trigger such an investigation.

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The bill proposes that a municipality can appoint a municipal ombudsman. It then enables any person to direct an ombudsman "to investigate any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally controlled corporations as the municipality may specify." This, members of the committee and Madam Chair, lacks the rigour necessary to prevent a multitude of frivolous and vexatious claims. As we know, in the Ontario Municipal Board, that is in place to allow the dismissal of frivolous and vexatious claims.

As with the closed meeting-investigator provision, a claimant does not even have to be a resident of the municipality in question to launch an administrative investigation. If this committee does decide to maintain this administrative investigation provision, it should amend it to be similar to the FOI legislation. That legislation was amended, as you all remember, after a rush of claims against a number of police forces. The addition of a minimal fee system such as that for FOI would be reasonable.

We strongly urge the committee to also clarify that the application of section 223.13 does not apply to deliberations and proceedings of council or any committee of council. This would be in keeping with the scope of investigation contained in the Ombudsman Act for the province. I know you don't want to be trying to second-guess decisions of councils or committees of councils across this province.

Bill 130 contains streamlined provisions for policies on a wide variety of matters. The proposed provisions are more flexible and more responsive to existing internal operating procedures and local need. However, the provision in subsection 270(1) requiring municipalities to adopt policies to "ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly" should be removed. This is already well covered by both the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. There is no precedence for this in North America. We do not really understand what it would achieve that has not already been provided. Simply referring to other legislation does not provide a policy benefit.

With new councils across Ontario just about to take office, municipalities will need time to develop new or to amend their procedural bylaws in order to implement this bill. Therefore, Madam Chair, we're recommending to you and to the members of the committee that the Legislature have a staged proclamation date for the policy provision. We suggest a year for the transition for all the policies and the Ombudsman investigator provisions. These require good planning, and, as you know, good planning generally gets good outcomes.

We believe Bill 130 represents positive steps toward recognizing municipalities as mature partners in providing good governance to the citizens of Ontario. Northern communities will benefit from the increased autonomy and ability to innovate. However, there is a need to recognize the higher costs to deliver programs in northern communities, as well as the reality that some policies might work very well in southern and urban Ontario but not so well in the rest of the province. Certainly, as this government has been very clear in stating, we ask you to remember that one size does not fit all.

I want to thank you for your efforts and tell you that on behalf of all of the municipalities in northwestern Ontario, we appreciate the work you've been doing and certainly look forward to the passage of Bill 130, with the suggestions we have made to you today.

The Chair: Thank you, Mayor Power. You've left exactly two minutes for every party to ask you a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much, Mr. Mayor, for the very thorough presentation. I just very quickly want to refer to section 451, the ability of the minister to override fairly much everything in the legislation in the present act and in the amendments, and how that relates to, as you've said in your presentation—this takes the authority away, so it really doesn't give as broad permissive powers as the intent of the bill would imply. But going on, then, to the extension of more in camera council meetings, at the start of the bill, this bill and these amendments were all about transparency and accountability. How would more closed council meetings translate, in your opinion, to more accountability and transparency for the citizens of the municipality, not the members of council?

Mr. Power: As you know from your own experience in local government, Mr. Hardeman, councils are very open and transparent in Ontario; they always have been. They have never really needed legislation to encourage that. Our citizens, as you know, are very engaged in our local government. But there are areas where it probably is better: if you're doing a training session; if you're doing a debriefing on some issue that has come forward to members of council; if you're doing a legal briefing. For example, in order to provide the appropriate briefing for council on this bill and to do it in an open public meeting, we're going to ask citizens to sit there for about two and a half hours. In most parts of this province, councils are not full time. They meet in the evenings. They have a lot of business to do. So we're not saying to you that we're going to be conducting all this business in camera and deprive citizens of their ability to have their input; we're saying we need to use some common sense and put in place these kinds of things, and that's why we've asked for that.

Mr. Michael Prue (Beaches–East York): Same question: What is to stop a council from exercising or not exercising the correct discretion, going into camera, not making a final decision but cementing the deal? I'm thinking here about citizens' concerns in some municipalities where it is alleged to happen regularly, where councils will go in, talk about a development deal, not make any final decision, but come out—somebody will move the motion, somebody will second it, it will all be done, it will all be over in five minutes. It will involve millions of dollars and leave the citizens furious. What's to stop this?

Mr. Power: I disagree with you, Mr. Prue, that this goes on now, that all of these things happen behind closed doors.

Mr. Prue: You don't know of municipalities where this happens?

Mr. Power: It certainly has not been my experience.

Mr. Prue: No, not in yours, but what about some of the development communities around Toronto where this is alleged to happen on a constant basis, where there's a huge fight in the courts going on just north of Toronto today?

Mr. Power: That's the key word in your statement: "alleged" to have happened, "alleged" to have occurred. As you rightly are saying, it hasn't been proven. I don't think that the provision of this bill is any different and provides the ability for that to happen to the detriment of citizens. We are saying to you that in terms of 451, that override is not needed and should be removed. You may have all kinds of stories that are brought to you that may not have any foundation until they're proven in a court of law. So to get into what-ifs—I think this is not the right place to do it.

Mr. Duguid: I doubt there's time for all my questions, but I'll do them as quickly as I can. First off—

Mr. Power: Just say yes to them all.

Mr. Duguid: Looking at subsection 270(1), the property rights and civil rights issue, I can tell you we're taking a very close look at that. We've heard that from a number of parties, so I can tell you we're looking seriously at that.

Getting back to the confidential meeting question, is the main goal of municipalities at this point briefings and education sessions? Is that really the main barrier? The real estate and the legal and all of that are already permissible. Would you say that's probably the primary goal?

Mr. Power: It is. If you want to really take it to its nth degree in the current system, if two members of council happen to be in Tim's at the same time for coffee—I know we're not supposed to give commercials here in the Legislature, but anyway—that could conceivably be deemed as a council meeting and therein conflict, because that may be where an issue comes up, something comes up: "What do you think about...?" This will avoid that kind of thing. But the key element is in terms of training, briefing, moving forward, so that councillors appropriately have the resources and the knowledge to make good decisions.

Mr. Duguid: Okay. Thank you.

The Chair: Thank you, Mayor, for being here today.

Mr. Power: Thank you very much.

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ONTARIO BAR ASSOCIATION

The Chair: Our next delegation is the Ontario Bar Association. Welcome. I have two names here as the delegation. Obviously you are not two people. If you could identify yourself and the group you speak for. You will have 15 minutes, and if you leave time, there will be an opportunity for us to ask questions about your delegation. We do have your submission in front of us.

Mr. John Mascarin: Thank you, Madam Chair, and good afternoon, members of the committee. My name is John Mascarin. I'm a solicitor with Aird and Berlis in Toronto. I am also a member of the executive of the municipal law section of the Ontario Bar Association. This afternoon, Mr. David Potts, who is the city solicitor for the city of Oshawa, was to have been here with me, so you would have had the ying and yang of the private and the public sector representation. Mr. Potts is unavailable. I believe you've already heard from him in any event. But I will be addressing one discrete issue with respect to the proposed legislation, Bill 130, on behalf of the OBA.

Let me say first and foremost that the OBA supports the government in the proposed amendments in Bill 130 to give more permissibility, more autonomous power, to municipalities. Our difficulty resides in the province having already enacted the City of Toronto Act, 2006, which you did on June 12. I listened to the Minister of Municipal Affairs twice that week. He made speeches indicating the uniqueness of the city of Toronto and made a very compelling argument that the city of Toronto should receive some enhanced, additional, autonomous powers than other municipalities.

The difficulty resides in the fact that three days after the City of Toronto Act was enacted, Bill 130 was introduced, and, as the explanatory notes to Bill 130 make manifestly clear, the purpose of the amendments is to give the exact same powers to all municipalities in the province that the city of Toronto got, with some exceptions, and I do highlight the major ones on page 2 of our submission.

In fact, I've written substantially on the City of Toronto Act and I was quite surprised at the position that it took, but it's there and it does give additional authority to the city of Toronto. But this, in my submission, will lead to difficulties of statutory interpretation. The City of Toronto Act contains a preamble and it contains a very different set of purpose provisions at the beginning of the act than the Municipal Act, 2001, is proposed to do.

The courts, in a series of decisions that go back to Madam Justice McLachlin's decision in 1994 in the Shell property and city of Vancouver case, have said that the proper way to interpret municipal statutes, municipal powers, is to give municipalities a deferential, generous treatment and approach. Municipal legislation is to be interpreted broadly and purposively within its context. There's also a principle of law as to statutory interpretation—in Latin, the term is "in pari materia"—which says that different statutes similarly situated with similar purposes but enacted at different times are to be interpreted similarly.

The problem is that there's a distinction of purposes between what is proposed in the Municipal Act, 2001, and what is already in the City of Toronto Act, which seems to not coincide with what the judiciary has been saying in the way statutes are to be considered and applied and analyzed. The proper legislative approach is in jeopardy here because it's very unclear what the provincial intention is.

At page 4 of our submission, there are three options highlighted. Let me say that option number 3 is our recommended option. It's at the bottom of page 4. Option 3 recommends that the City of Toronto Act, 2006, be repealed and replaced with a City of Toronto Act that only addresses the specific and precise powers in which the city of Toronto is differentiated from other municipalities in the province.

This is the manner in which Bill 51, the Planning and Conservation Land Statute Law Amendment Act, addresses the Planning Act with respect to the city of Toronto. It specifically says, "These sections do not apply to the city of Toronto," and they are dealt with in a different statute. It is our recommendation that that is the preferred option in the way the province should be treating the legislation and it would ensure that there's no difficulty of interpretation between similar provisions in the City of Toronto Act and in the Municipal Act, 2001, as amended.

I thank you for the opportunity to speak here on behalf of the OBA, and I'd be happy to answer any questions.

The Chair: You've left three minutes for every party, beginning with Mr. Prue.

Mr. Prue: Thank you very much. Just a question of logistics. This government passed the City of Toronto Act in June of this year. By August, they'd already amended it; they took out significant powers granted to the city of Toronto. What you're suggesting now is that they abrogate, they get rid of, the whole law save and except those sections that are unique. How realistic an option do you think this is to this government? I can't imagine, sitting here in opposition, that this would happen in 100 million years, but I'm asking you: This is your preferred option. How realistic is that to these guys over here?

Mr. Mascarin: Mr. Prue, I'm not sure that it is a realistic option. I believe the City of Toronto Act was enacted for political reasons. It is certainly not the city charter that the city of Toronto asked for, and it was tagged along with the review of the Municipal Act. Clearly, I think the Legislature heard loud and clear that the City of Toronto Act is perhaps unique but not all that unique and that certain powers should be granted to all municipalities. It's still the recommended approach.

Mr. Prue: If you can't get the recommended approach—the city of Toronto has been granted bylaws which are unique. The city of Windsor came here last

week and asked for basically the same thing. They want the right to be able to tax certain things because they need the money, taxing perhaps for parking or for theatre tickets or for tobacco or alcohol, and it's not contained within this act. How fair is that to those municipalities that need the same revenues but aren't getting the same opportunity as the city of Toronto?

Mr. Mascarin: Mr. Prue, you've hit upon one of the main contentious issues of Bill 130, which is that there are really no additional taxing powers given to other municipalities, or indeed any revenue-generating powers. I'm not really arguing whether there should or shouldn't be. I'm just saying that if there are, they should be carved out and be in a separate statute. I think you're going to have certain litigation coming out. There are certain provisions in both Bill 130 and in the City of Toronto Act that are going to be going to legislation.

Just let me give you one example. The broad authority section that's been brought up to the front, the old health, welfare and well-being provision that used to be a specifically defined power in section 130 and that the Ontario Court of Appeal has said should be interpreted broadly, has now been brought up to a broad authority power.

You're going to have a lot of those broad authority powers considered. The difficulty is, once you get a judicial interpretation on one statute and you have provisions similarly worded, even perhaps identically worded, in the other statute, but you have different purposes, different preambles to the statutes, how is a court supposed to consider it, and how are citizens supposed to apply those provisions in the future?

Mr. Prue: Do I still have time?

The Chair: You're pretty close.

Mr. Prue: Go ahead then. I'll pass.

The Chair: Mr. Duguid.

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Mr. Duguid: I'll put forward my first question with a statement. In your deputation, it's almost like you assume that these policies have been developed in some form of vacuum here in the government without any in-house legal assistance, without consultation with municipalities across the province through AMO and without consultation with the city of Toronto. Having been involved in all of that from day one, I can tell you that nothing could be further from the truth.

The City of Toronto Act is there at the request of Toronto. We came to co-operative agreements throughout on what should be in the act. The additional powers and the flexibility that the act affords Toronto are things that Toronto had been after for a very long time, and I know that because I was there for nine years as a city of Toronto councillor. Access to alternative sources of revenue in that act is something that Toronto specifically was after for a long time, because they do have challenges that are unique across the province. The accountability measures are something that Toronto readily accepted and, in many cases, was moving in that direction anyway.

On the other hand, AMO and municipalities across the province had other priorities and needs, and there was not a hue and cry for access to alternative sources of revenue. In fact, when we consulted with many municipal leaders across the province, they said, "At this point in time, that's not something we're necessarily interested in."

I guess my question to you is, why would you think a cookie-cutter approach to this kind of legislation would be more effective, given the diversity of challenges facing cities like Toronto and other cities across the province?

Mr. Mascarin: I didn't mean to imply at all that both pieces of legislation were created in a vacuum. I fully acknowledge that there has been lots of consultation—the city of Toronto was very strong in lobbying, demanding the City of Toronto Act—and I'm not advocating a cookie-cutter approach. I believe what I'm saying is, you don't need a City of Toronto Act that has 484 sections and a Municipal Act that has 464 sections—I'm using those very roughly; I may be off by a couple—that almost parallel one another 90% of the time, with different preambles, different purposes that may give the judiciary some cause for concern. It just creates an additional level of discomfort in trying to apply and interpret the statutes.

Again, I'm recommending the approach the Legislature has taken with Bill 51, the planning statute amendment act, where it says, "This does not apply to the City of Toronto," and it's in a different statute. I think that would work much better.

Mr. Duguid: Do I have time?

The Chair: No, sorry. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. First of all, I would agree with you that there is a direct parallel. When this bill was introduced in the Legislature, I had the opportunity to respond to it prior to having read it. The question I put to the minister very quickly was, "What's the difference between this and the City of Toronto Act?" He said, "Except for some small matters, the taxing powers." That's the major difference. As I hear the parliamentary assistant being questioned on it, I keep hearing, "This is what the city of Toronto wanted; this is what AMO, on behalf of all municipalities, wanted; that's why the difference." Again, it's primarily the taxing powers, and slightly different in the planning process.

But I haven't heard the minister or the parliamentary assistant or yourself really speak about what the people of Ontario wanted in order to see their municipal government function in the best possible way. Could you tell me if you think this will improve the relationship between the people in municipalities and their councils as much as it will improve the relationship between the province and the municipalities?

Mr. Mascarin: I think it will do both. Again, my comment is that the legislation is good. It's just that it's flawed in the way it's doing it, to have two separate pieces of legislation. That's really what I'm saying. But it is more permissive. It recognizes greater local autonomy

while having the accountability and transparency controls still in place that will give you those safeguards.

I'm not arguing against the legislation. I guess I'm complaining about the way it's being done. Having two separate pieces of legislation will, I think, cause interpretive difficulties.

Mr. Hardeman: Thank you.

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

GREATER TORONTO HOME BUILDERS' ASSOCIATION-URBAN DEVELOPMENT INSTITUTE

The Chair: Our next group is the Greater Toronto Home Builders' Association-Urban Development Institute. Welcome. Make yourself comfortable. We have your package in front of us. Could you state your name and the organization you speak for before you begin, for Hansard. When you do begin, you'll have 15 minutes, and if you leave time at the end there will be an opportunity for us to ask questions.

Mr. Bob Finnigan: Thank you. Good afternoon, Madam Chair and members of the committee. My name is Bob Finnigan. I'm the first vice-president of the Greater Toronto Home Builders' Association-Urban Development Institute, and senior vice-president of Heathwood Homes, an active builder and developer in Toronto and the GTA.

We have more than 1,500 members. The GTHBA-UDI was formed through the merger of the Greater Toronto Home Builders' Association and Urban Development Institute/Ontario, and is the voice of the land development and residential construction industry in the greater Toronto area.

I have been a volunteer with the association for a number of years and will be president of the association this January. We appreciate the opportunity to speak with you today regarding the Municipal Statue Law Amendment Act. Joining me is Lara Coombs, director of government and industry Relations for GTHBA-UDI.

Established in 1921, the association is comprised of residential and non-residential land developers; home builders; professional renovation contractors; subcontractors; suppliers; and service, professional and financial firms.

The land development, housing and construction industries are the economic engine of this province. In 2005, the residential construction industry in the greater Toronto area generated 211,000 jobs through housing activity. The value of our investment is over $15 billion, made up of new construction; land acquisition, excluding land value; renovation; and repair. Collectively—we've said it before—we are committed to working with government to remain a competitive jurisdiction for investment and job creation in order that such growth can deliver quality health care, education, social service and infrastructure.

We acknowledge the thrust of Bill 130, the Municipal Statute Law Amendment Act: the empowerment and granting greater autonomy to municipalities in their decision-making. However, we are of the opinion that a number of significant questions have not been addressed and unintended consequences will emerge if the bill is passed as is. We submit that the bill will not only affect the land development, residential and non-residential construction businesses, and taxpayers in general but also thwart economic development opportunities and perhaps Ontario's competitiveness.

We wish to bring forward to the committee's attention three specific matters—issues that speak to the economic impact of escalating costs—and recommend that home builders be exempted from business licensing by regulation in Bill 130; that municipal corporations, as defined by the act and its related regulations, not be granted the power to charge any taxes, levies or fees; and that the sections of the act which enable municipalities to prohibit and regulate the demolition and conversion of rental properties be deleted as well. Our comments also underscore the need for there to be greater transparency, accountability and certainty with less red tape and bureaucracy within municipal government. Taxpayers and our sector expect nothing less.

Firstly, in Bill 130, we are concerned with the issue of business licensing. GTHBA-UDI recommends that a regulation be passed to exempt the licensing of home builders. We make this recommendation because we are already licensed through the Tarion Warranty Corp. pursuant to the Ontario New Home Warranties Plan Act. Tarion is regulated the Ministry of Government Services under Minister Gerry Phillips. Tarion is fully financed by builder registration renewals and homebuyer enrolment fees. By law, every builder working in Ontario must register and enrol all the homes they construct. Tarion guarantees the statutory warranty rights of new home buyers and regulates new home builders. In addition, Tarion investigates illegal building practices, resolves warranty disputes between builders and homeowners and establishes customer service standards and construction performance guidelines for the industry.

It is the position of the residential home building industry across the province that Tarion, not the municipalities, is in the best position to protect consumers and builders and set standards which home builders and developers must abide by. Further, duplication of licensing of home builders by municipalities is an unwarranted tax grab.

Furthermore, for the record, we want to be clear with respect to the notion that licensing of home builders by municipalities would be on a cost recovery basis. GTHBA-UDI will not accept any model of licensing home builders other than through Tarion, no matter what conditions or terms may be attached.

Our experience with Bill 130 began with our involvement with Bill 53, the City of Toronto Act. Jointly with the Ontario Home Builders' Association, GTHBA and UDI made a number of recommendations for

amendments to the City of Toronto Act. With the goal of ensuring that Toronto remains and strong and vibrant, our main concern was how the City of Toronto Act would change the dynamics of how we do business in the city of Toronto. Then, and through to today, we remain concerned about the adverse financial impacts on housing affordability and industrial-commercial competitiveness through the ability of the city to charge additional taxes to residents, visitors and businesses. We stressed at the time that these additional taxing powers did not address the structural fiscal imbalance between Toronto and the province. This position is widely supported among provincial and municipal politicians, like-minded advocacy organizations, the media and citizens. We can't all be wrong.

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Notwithstanding the foregoing, we were satisfied that the government did not include the similar taxing powers in the Municipal Statue Law Amendment Act. However, we were disappointed to learn of a new proposed municipal corporations regulation that grants authority to municipal corporations to impose levies for economic development services. The draft regulation defines "economic development services" as including transit, housing, land redevelopment, parking, business improvement area types of services, and facilities for arts and heritage.

We are not opposed to municipalities being granted authority to establish municipal corporations like Viva in York region when they support specific public policy objectives. However, we must take strong exception when such special-purpose bodies are granted taxing powers. The notion is further ambiguous in that a corporation designed to promote economic development may create a regime that in fact acts as a barrier to investment and job creation through a backdoor tax. Clearly, GTHBA-UDI cannot support a multi-tiered system of development charges, fees and taxes in the name of economic development.

In the fall of 2005, we commissioned a study by economist Will Dunning called Jobs in Jeopardy. That study showed that with only a $1,000 increase in the cost of a home, 284 housing starts are lost, 1,000 jobs are lost, $20.6 million in government revenue could be lost and $2.2 million in future realty taxes would be lost. As acknowledged by Minister Sorbara in his 2006 Ontario Economic Outlook, the economy will grow at a slower rate, potentially placing a fiscal drag that will make it difficult for Ontario to compete globally. Our study demonstrates the need to ensure that additional taxes don't accelerate the effects of an already slowing economy.

We also seriously question if there is enough transparency and accountability with respect to granting these special-purpose bodies revenue-raising authority. We submit that the government must, for the benefit of taxpayer protection and Ontario's economic competitiveness, put more controls and oversight within the body of the regulation before we could consider supporting same.

On the issue of transparency, GTHBA-UDI would prefer to see a model whereby the composition of municipal corporations is mandated by regulation to include a balance of elected officials and citizen/business-related appointments. An amendment of this nature would be helpful and supported by us.

Municipalities and housing advocates have recently raised concerns regarding the shortage of rental housing in Ontario due to preventable losses. It has been suggested that municipalities should be given greater powers to prevent the conversion and demolition of Ontario's rental housing stock to ensure a sufficient overall supply of rental housing. This position, we believe, is founded on the inaccurate analysis of the rental market and reflects a lack of understanding of Ontario's rental housing supply, including the impacts of the conversion of units from rental to ownership.

We submit that over time the conversion of ownership to rental housing has considerably dwarfed conversions of rental to ownership. In the city of Toronto, the demand for rental accommodation as a percentage of overall housing demand is declining, as demonstrated by a decrease of some 48,000 renter households between 1996 and 2001. We submit that the power to prohibit and regulate conversions and demolitions will create further barriers to appropriate urban renewal and thwart any efforts to improve modernization of the housing stock. Preventing the demolition or conversion of rental stock does not take into account that investing the capital necessary to maintain aging rental stock is often not economically feasible nor prudent. Conversely, the freedom to convert or demolish rental housing affords landowners the opportunity to infuse needed capital to upgrade older housing stock or intensify a site.

Furthermore, limiting the rights of property owners in this way is a considerable deterrent to future development of rental housing in Ontario. Studies have revealed that conversions have little, if any, impact on the rental market and conversions often provide affordable ownership opportunities.

Regent Park here in Toronto is a prime example of appropriate urban renewal and intensification resulting from the demolition of aging rental housing. Home to 7,500 people, the plan to redevelop Regent Park calls for the replacement of the existing 2,087 rent-geared-to-income units as well as the addition of 2,500 market units, including 500 affordable units. It is widely acknowledged that the wholesale demolition of these rental units was required due to a combination of deteriorating buildings, poorly planned public space and a lack of community facilities. Bill 130 creates a double standard that could seriously impede the ability of private developers to transform aging rental housing, prohibiting urban renewal that could afford tenants with modern rental housing while adding market housing in the spirit of intensification.

GTHBA-UDI recommends that the government eliminate the sections of the act which enable munici-

palities to prohibit and regulate the demolition and conversion of rental properties.

In closing, we ask you to consider the recommendations we have put before you regarding this bill and to take action with regard to the fiscal imbalance between municipalities and the government.

Thank you very much, Madam Chair and members of the committee, and I look forward to hearing any comments or questions.

The Chair: You have left about a minute and a half. In case you're wondering about the bells, we have a 30-minute bell. There are about 26 minutes left, and I think we can get through questioning you and probably hear from another delegation before we have to leave for a vote. Mr. Duguid.

Mr. Duguid: Thank you, Mr. Finnigan and Ms. Coombs. It's good to see you again. I wanted to just get a little more background from you on your concerns about municipal corporations and the perceived ability of those municipal corporations to impose levies for economic development services. Municipalities would set up corporations and those corporations would still be accountable to municipalities. My understanding is that in the decentralization of powers, one of the things the city does not allow is decentralization of taxing powers. I guess I'm trying to get a better understanding, because communities can now area rate as it is. How would things change under the current legislation with the economic development corporations being able to be set up?

Ms. Lara Coombs: I don't think things would change. It's just another way for a municipality to charge tax or to levy residences and businesses. This is another power so that the municipality would collect revenue from a levy that a municipal corporation would charge and then give it back to the corporation. This is in addition to the development charges and that special rate levy.

Mr. Duguid: Is it your concern that the economic development corporation could independently set levies without having to be accountable to the city? Is that where your concern is?

Ms. Coombs: No, not at all. It's just an additional way to charge taxes for the municipality. The corporation is accountable to the municipality.

Mr. Duguid: But if the city can do it now, what's the difference? It just makes it easier for them to set up the corporation to enable them to—

Ms. Coombs: It's just an additional way to do it. It's another way to do it. So you have development charges plus the special area rate levy plus a municipal corporation charging levies. Our concern is the multi-tiered levels of being able to charge levies and fees.

The Chair: Mr. Hardeman.

Mr. Hardeman: I want to go to the same point about setting up a corporation and then having the ability to levy fees. Of course, the municipality can't give taxing powers to another authority, but I'm not so sure they can't provide them with the ability to set fees for services they're providing. Is that the concern, that in fact they could set those fees, not necessarily for the services presently in the development charges but in fact for the services they're providing to the municipality directly to the developers?

Ms. Coombs: It's just a broad authority, and so there is uncertainty because it's another tier of taxation that could or could not be implemented. We recognize that the only way a municipal corporation could charge that levy is if they're actually established by the municipality, right? That's where our uncertainty comes in, on top of the development charges that we're already paying, plus those special area rate levies, plus now this new draft regulation has the authority for the municipality to collect fees and taxes, in addition to those other ones that they have, through their municipal corporation.

The Chair: Mr. Prue.

Mr. Prue: I just want to be clear: The previous speaker from the municipalities was asking that all municipalities have the same authority to tax, or I guess that none of them do—it wasn't clear—but they should all be treated the same. Your position is that a municipal corporation, as defined by the act and its related regulations, not be granted the power to charge any taxes, levies or fees. So you think they ought not to be allowed to generate additional revenues they need.

Mr. Finnigan: That's correct.

Mr. Prue: Where do they get the money if they need it?

Ms. Coombs: They already have the power through that other regulation that exists.

Mr. Prue: In Toronto?

Mr. Finnigan: No, the Municipal Act levies.

Mr. Prue: You're talking about the levies and charges for subdivisions?

Mr. Finnigan: Correct.

Mr. Prue: What about a city that's built out, like Mississauga or Toronto?

Mr. Finnigan: Mississauga has infill opportunities and—

Mr. Prue: They have infill, yes.

Mr. Finnigan: Right.

Mr. Prue: And you propose that they get it from there?

Ms. Coombs: Where they get the money is from the province, I would assert.

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Mr. Prue: I can hear my friends across the—I don't have to laugh, because they're laughing.

This is the conundrum. The municipalities give the province $3 billion more than they take back in services, and they're looking to get some of that money. The province gives the federal government the alleged $23 billion more than they get back, and they're looking for money too. I would contend you're probably right, that there's enough money out there, but how is it regularized? How do the municipalities and the province get what they need, and the federal government, which doesn't appear to need it, stop taking it?

Mr. Finnigan: It all relates back to who gets charged. The development industry supposedly gets charged for growth, and when we get to a built-out charge like Mississauga, for example, there seems to be an inordinate percentage of that levy that goes to any growth. Our concern is that each and every time there's an establishment of a different level of levy, it is aimed at the development industry to pay.

Ms. Coombs: I just also want to make the point that the levies municipal corporations can charge are for residences as well as businesses.

The Chair: Thank you for being here today.

ONTARIO COMMUNITY NEWSPAPERS ASSOCIATION

The Chair: Our next delegation is the Ontario Community Newspapers Association. Welcome. Thank you for being here. Don't be distracted by the bells. We have ample time to hear you and get to the vote. If you could state your name and the organization you speak for, you'll have 15 minutes. If there's time at the end, we'll be able to ask you questions.

Mr. Gordon Cameron: Thank you very much. Good afternoon, Madam Chair and esteemed members of the committee. My name is Gordon Cameron and I represent the Ontario Community Newspapers Association, or OCNA. Thank you very much for selecting us to speak during your deliberations on this important piece of legislation.

OCNA represents over 300 community newspapers throughout Ontario that publish from once a month to three times a week. Our members have a total readership of 5.8 million each week, reach 4.7 million households and circulate in every provincial riding. Our papers range in size from the Hornepayne Jackfish Journal, which publishes 254 copies a week, to the Mississauga News, with a total weekly circulation of over 360,000.

While Ontario's community newspapers publish stories on a wide variety of topics, local news is our bread and butter. It's what our readers look to us for and is part of what makes us the voice of the community. Because of this focus, changes to the powers, structure or duties of municipal governments are of great interest to us.

Specifically, OCNA is interested in the sections regarding open meetings. We are firm believers that good government is open government, and you can't have one without the other. Currently, there are only seven instances that exist where a municipal council can exclude the public from what otherwise would have been a public meeting. OCNA has no problem with these exceptions, because they are precisely written and narrowly construed. However, that doesn't mean abuses don't occur. We often hear stories from members about how their municipal council has stretched the definitions outlined in the Municipal Act to absurd lengths to avoid discussing something in public. While this state of affairs isn't the norm in the majority of Ontario's municipalities, it does occur, and those councils that choose to break the law often do so habitually and with no regard to their duty to keep the public informed.

Several myths exist about strengthening current open meeting laws. First is the idea that having a province-wide set of rules equals the province micromanaging the affairs of municipalities. Not true. Ensuring all Ontarians have the same right to find out what their local government is doing, regardless of which municipality they live in, is very important. It makes no sense that citizens of Brampton could hear what their council discusses on one item while citizens of Sudbury could not. We're all Ontarians, and all Ontarians deserve equal access to our governments.

Further, following a common set of rules does not imply that municipalities are unable to make responsible decisions or be accountable to their citizens. Every one of us in this room is a responsible and accountable adult, and yet there are laws that make it illegal to rob a bank or steal a car. Does having those laws on the books mean that we're being treated like children by the state? Of course not. The only people who will see a negative impact from those laws are those people who choose to rob banks and steal cars, those who choose to break the law. Municipalities that choose to hold in camera sessions on topics that don't fit into the seven current exceptions are breaking the law, the same as if they stole a car or robbed a bank.

For the majority of municipalities that do not abuse the existing regulations, stronger rules won't limit their freedoms to conduct business because they are already operating quite well under current conditions. Strong open meeting laws only punish those who break them and do nothing to those who follow them.

One of the big challenges with the existing legislation is that there's no objective way to judge if an in camera meeting was legally held. OCNA is quite pleased to see a mechanism in Bill 130 whereby citizens could file a formal complaint against a council if they feel a meeting was improperly closed. OCNA likes the way the bill sets up the two options for judging such complaints, either through a municipally appointed ombudsman investigator or through the use of the provincial Ombudsman. This approach gives municipalities the flexibility to choose the option that's best for them while ensuring that the public's rights are protected. The inclusion of the provincial Ombudsman is key because it doesn't force small communities to hire another staff person to manage complaints, and it acts as a bridge for larger communities between the time the act comes into force and the time they will have hired and trained their own ombudsman.

OCNA supports the idea of municipalities appointing their own ombudsmen to decide these cases, but we would recommend that these offices be truly independent and protected in legislation. We feel that municipally appointed investigators should not be employed in any other capacity with the municipality. As you all well know, it's often not enough to do what's right, but you must be seen to be doing what's right.

This request also serves a practical purpose. For instance, if the municipal ombudsman in their other capacity gave a presentation to council in camera and then later that meeting was challenged by a member of the public, would it be fair for them to turn around and sit in judgment of that meeting? What would happen if that person acting as the investigator was laid off from their job after issuing a negative report on the activities of council? Even if the two events were completely unrelated, this would cause huge problems for the municipality. Hiring someone from outside the current municipal payroll would ensure an impartial arbiter of laws concerning open meetings, but would also guarantee that their chosen method of examining complaints was beyond reproach.

While we are very pleased with the new complaint system, we were disappointed to hear that the only consequence that could be levied against a council would be a negative report issued by an investigating officer. The theory goes that municipal officials would want to avoid a public shaming so much, they would follow the law for fear of a public backlash. There are times where this type of moral suasion is very effective, but it doesn't always work. Anyone who follows politics at any level can point to occasions when some elected official was reprimanded for some breach only to be re-elected the next time out. If the threat of the ballot box isn't a universal deterrent, then we must have additional methods to compel compliance.

However, the two most popular methods to discourage abuse of the closed meeting privilege—disallowing the decisions made during improper meetings and fining council members—both have their problems. First, if a decision is reversed, it could cost the municipality millions of dollars and have major repercussions for work that has already begun. Second, if fines were to be levied, who would pay them? The councillors? The municipality? Would the whole council be judged to have broken the law or only those who had voted to go in camera? In spite of these problems, OCNA thinks that both methods should be available to deal with councils that break the law. However, we advocate a measured approach.

For instance, a council that honestly believed it had grounds to hold an in camera session that later is judged to be outside the scope of the seven exceptions might only receive a warning, whereas a council that consistently breaks the law might see fines that increase with each offence. Disallowance would only be used in the most egregious cases where elected officials deliberately cut the public out of the decision-making process. Recommending penalties would be the job of the ombudsman, either local or provincial, who looked into the case, but would be imposed by the Minister of Municipal Affairs and Housing. The minister or his designate could conduct hearings on the appropriate level of punishment for the infraction. This proposal may not be popular with either municipalities or the ministry because of the potential consequences it imposes on the former and the adjudicatory function it gives to the latter. However, OCNA feels that in order to protect the citizen's right to know, there must be real consequences for those who break the law.

OCNA is also concerned with the addition of an eighth reason for municipalities to go in camera. This new reason, which was designed to facilitate long-range planning and technical briefings, is fundamentally flawed, both in its spirit and execution. The new section states, "A meeting may be closed to the public if, at the meeting, no member of the council or local board or committee of either of them, as the case may be, discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

When I read this for the first time, I couldn't for the life of me figure out what they were talking about. Was this an attempt to make sure that journalists didn't show up at the council Christmas party? What could a council discuss that wouldn't materially advance their business or decision-making? And why would it be worthwhile talking about something if it didn't?

OCNA implores this committee to recommend that, at the very least, this section be rewritten in plain language to set out very specifically what it allows to be discussed in camera. As it stands now, it wouldn't take much of a legal contortionist to find a way to shoehorn almost anything into a private session under this clause. However, OCNA sees no need to include this exception in the first place.

Unlike almost all of you, I have no municipal political experience, but what I do have is journalistic experience in covering municipal politics, which gives me an understanding of the process. As a former reporter, I have sat through numerous technical briefings and planning meetings, and, from my experience, I see no reason to close those sessions to the public unless they contain material listed in the existing seven exceptions.

As a reporter, particularly a community newspaper reporter, you have to be a 10-minute expert on everything. Not only do you have to learn it well enough to understand it yourself, you have to be able to explain it to the public. Having access to experts in more technical fields has enabled me to write more complete stories than I otherwise would have been able to. Basic questions that sometimes are asked by members of the council assist greatly in that pursuit. These technical briefings are not just useful for members of municipal council, but also for the public at large. If the only reason to deny the public their right to attend them is to prevent possible embarrassment to an elected official, then we don't feel that's a good enough reason.

1700

A strong case can also be made for including the public in the long-term-planning meetings. The public has a great interest in knowing where their hometown is going, so why should they be excluded? Presumably, holding these meetings in secret would allow members of council to think big and float all sorts of fantastic ideas

without fear that the musings would come back and be used against them at election time. Of course, any idea coming from these meetings will have to become public at some point anyway. The public has a great ability to distinguish between a trial balloon and a serious suggestion. If citizens react strongly against a proposal, then the members of council can decide if it's worth continuing the discussion or let it drop. Again, as with technical briefings, unless something falls within the existing seven exceptions, we see no reason to close the long-term planning-meetings to the public.

For the most part, OCNA likes the spirit of Bill 130. The municipalities are responsible, accountable levels of government in their own right. And while OCNA advocates a continuing role for provincial legislation to ensure that all Ontarians have equal access to meetings of their local councils, we do not see this type of legislation as reflecting poorly on municipalities as a whole.

Ensuring and enforcing strong open-meetings laws helps local citizens and the community newspapers who serve them to access the process through which decisions are made in their name. Democracy, like flowers and trees, thrives best when bathed in sunshine. Open-meetings laws are the windows into an otherwise dark room. Protecting the openness of this process keeps the sun shining on our municipal democracy, helping it to flourish and bear the fruit that the citizens expect it to.

Thank you very much for taking the concerns of Ontario's community newspapers into consideration during your study of Bill 130. At this time I'd be pleased to answer any questions you may have.

The Chair: You've left about a minute and a half, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. Your presentation is primarily on the issue of the open council meetings, and obviously that's your opportunity and your group's opportunity to get the message from the council meeting to the public so the public understands what's happening on their behalf.

In all the research and what you've heard from your members, has there been a lot of pressure to suggest that there are not enough open council meetings from the councils that are presently functioning, that they don't have the ability to close the meeting often enough for further discussion?

Mr. Cameron: The research we've found where they've been saying they need greater latitude to close their meetings may come from the municipal associations, not so much from specific councils. In fact, as I mentioned in the presentation, we have a number of our members, including some members who actually work for newspapers and sit on councils, who tell stories of cases where people around a council table will know that what they're doing is not within the bounds of the Municipal Act in declaring a certain motion in camera, yet they do it anyway. Certainly that does exist.

Mr. Hardeman: You also talk about the ombudsman office and so forth. What's your recommendation on how we should deal with the body that would look after making sure proper council meetings were in closed session and which ones were open?

Mr. Cameron: I think the act has it right and allows the municipalities to appoint their own ombudsman if they see fit. Certainly, that's not for everybody. I know there has been some mention of delaying the portion of the investigative leg of this legislation to some certain time in the future to allow them to set up their own ombudsman, but I think that's where the provincial Ombudsman could come in and, at least in the short term, fill that gap, because certainly improperly closed meetings are an issue now, and putting it off for a year would make it easier for the municipalities to set up this ombudsman. But if we have a stop-gap measure with the provincial Ombudsman, I think that's good, and it protects the citizens the minute this bill is enacted.

The Chair: Thank you. Mr. Prue.

Mr. Prue: I think you've hit the point. You've said it quite eloquently. We've been arguing that for a couple of days here.

Other than a councillor who doesn't want to ask dumb questions in public asking dumb questions, have you heard any other rationale for taking it into—I've not. I just wondered whether you've heard any other, except that some councillor doesn't want to appear stupid to his or her constituents.

Mr. Cameron: The only other thing that I've heard is, "We need flexibility. We need the ability to meet local conditions." But again, that doesn't seem to make a lot of sense to me. Where's that flexibility necessary? I've never heard somebody explain to me adequately what flexibility they need on that score.

Mr. Prue: Now, a second provision—and you haven't dealt with it, but I'm asking just about everybody because I find it bizarre in the extreme—is the opportunity for members of council who are not participating in a meeting, who can be on a beach in Acapulco with a martini in one hand and a cell phone in the other, to vote. Has your association discussed this, people not at the meeting entitled to vote by way of cell phones, teleconferencing or anything else?

Mr. Cameron: It's certainly not something we have discussed. It's an interesting idea, because if the member participated fully in the meeting, that would be perhaps one thing. If that member merely called in for the vote, very similar to what's going on now with the bells, if someone phoned them up and said, "It's time to vote," and they raised their digital hand and that was it, then perhaps not. But that's something we haven't studied.

The Chair: Mr. Duguid?

Mr. Duguid: From your deputation I gather you're not opposed to councils going into camera for legal purposes: real estate, internal employee-type issues, hiring and all the things that are currently in the act.

Mr. Cameron: Yes.

Mr. Duguid: Do you have concerns about the way the current provision is written or are you offended by the possibility of council going into a private session to conduct an education session, a team-building session, a briefing session or something of that nature?

Mr. Cameron: The problem with those: my question is, why is it necessary? If, for instance, the session is for new members, just as we had the recent municipal election, to say, "Okay, here's where the office is, this is the time it's open," that sort of thing, a very general orientation, then that may be fine.

Mr. Duguid: Have you ever been involved in a strategic planning session in the past, corporate or otherwise?

Mr. Cameron: Yes, I have.

Mr. Duguid: Was it something that was open to the public? I have been at the city of Toronto and I watched as a reporter came in and the entire session shut down and nobody said a word because it was a brainstorming session. If you throw something on a bulletin board for brainstorming, that reporter could pick it up and say, "Brad Duguid just said this." Politicians aren't stupid. They know that that could be picked up, which just totally killed the session. The reporter, thankfully, left on his own, but the city, which had scheduled this session, would have been absolutely powerless to have conducted this brainstorming session. Do you find that offensive?

Mr. Cameron: No. I think that part of the problem is that there needs to be a level of trust between politicians and journalists, which there isn't always. Certainly, there are bad journalists out there who would hear a snippet and then make that front page news. The majority of journalists, however, would go into a session like that, recognize it's brainstorming and, in so far as they come out with a story on it, say, "This is what council is thinking of in general terms." Like politicians, there are the good and there are the bad. I think that the majority of us in the journalist profession would not abuse that sort of ability to be in a session like that.

The Chair: Thank you for your delegation.

Committee, we are in recess, and the next presenter, I understand, is the Canadian Federation of Independent Business. They have to set up, so they have time to do that, and we'll be back in a few minutes.

The committee recessed from 1708 to 1718.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: We will resume our public hearings on Bill 130, An Act to amend various Acts in relation to municipalities. Our next delegation is the Canadian Federation of Independent Business, and they have a PowerPoint presentation. Welcome. If you could introduce yourself and the organization you speak for, you will have 15 minutes. If you leave time at the end, there will be an opportunity for us to ask you questions.

I'm sorry I'm distracted. I'm watching the clock. I understand that there's going to be another vote and I'm just looking to see how much time we have.

Interjection.

The Chair: Okay. You have lots of time to do your presentation.

Mr. Kevin Daniel Flynn (Oakville): Can't you control these, Madam Chair?

The Chair: Sorry; ignore the badgering.

Ms. Judith Andrew: Good afternoon, everyone. I'm Judith Andrew, vice-president, Ontario, with the Canadian Federation of Independent Business. With me is my colleague Tom Charette, who is our senior policy analyst.

We'd like to thank the committee for this opportunity to present the views of the Canadian Federation of Independent Business's 42,000 Ontario members on Bill 140. We'd like to review five topics with you: (1) the background to the bill; (2) its key provisions; (3) what Ontario's mayors, reeves and wardens really want in municipal legislation; (4) what CFIB members really need in municipal legislation; and finally, our recommendations.

First to the background of Bill 130: How did we get there? Bill 130 is one of the results of a five-year-old public relations campaign by big-city mayors and their associations for a new deal. It is a campaign for more money and more powers. It was based on the general claim of being shortchanged, but there wasn't really very much data to support that claim. The result for Ontario's municipalities so far has been GST relief on purchases, a share of the federal fuel tax, a share of the provincial gas tax for public transit and the City of Toronto Act with its new revenue and regulatory powers, and now we have Bill 130.

The key provisions of Bill 130 are here. Bill 130 replaced existing prescribed or very specific municipal powers with broad, permissive powers. It covers, among other things, regulation of economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the protection of persons and property, including consumer protection and business regulation. This is a huge grant of power. It is difficult to think of any proposed regulation that could not be tied to one or more of the above. Take, for example, the headlines a couple of days ago in the press around parking fees in Toronto. Those are clearly being hitched to the environmental wagon.

So what will this mean for municipalities? It will mean a modest increase in revenue from fees and charges, which will be reduced by the increased costs of regulation and enforcement. For small business, Bill 130 means an increase in regulatory costs and complexity, including more overlap and duplication with senior levels of government, an increase in fees and charges. One only needs to look at the municipal property tax raise to be assured that new powers will be directed at businesses. Many municipalities use small business owners and their families as cash cows. The track record is there for all to see.

Bill 130 is a step in the wrong direction for both municipalities and small businesses, but let's look at what Ontario's municipal leaders want. In April and May this year, as the terms of the new deal began to take legislative shape, CFIB surveyed Ontario's 445 mayors, reeves and wardens to get their ideas. The response rate was astounding: 37.5%, or 167 of them, responded. The

responses included over 60% of the local leaders in Ontario's top 100 municipalities by population, and seven of the mayors of Ontario's 10 largest cities.

What did they have to say? Some 84% of local leaders said they didn't have enough funds from current sources to adequately discharge their responsibilities. This is no surprise. Municipalities have been complaining for a number of years about the effects of downloading. The province has given this legitimacy by its silence. The whole exercise has been noticeably free of hard data. The uploading that occurred some years ago is simply not mentioned.

But now some surprises: 89% of mayors, reeves and wardens want relief from some of their current spending responsibilities, as opposed to new revenue-raising powers. Bill 130 goes in the opposite direction. Some 77% of Ontario's local leaders believe in the principle that the responsibility should be reconfigured such that the level of government that provides a program or service should be the level of government responsible for raising the required revenue. This, of course, implies clear lines of demarcation between the program spending responsibilities of the province and the municipalities. Bill 130 accomplishes nothing here. An overwhelming 93% of Ontario's local leaders would like a clear division of regulatory powers between levels of government to prevent overlap and duplication—just the opposite of what Bill 130 does.

So Ontario's local leaders do not agree with the broad permissive formulation. They want a clear division of spending responsibilities; they want the level of government responsible for spending to be responsible for raising the required revenue; and they want clear lines of demarcation in regulatory responsibilities. And by the way, we have survey data that shows that our CFIB members want exactly the same thing. If you want to look in the appendix to the "Local Leaders Survey," at the last page you will see our matching data.

It is fair to say that Bill 130 doesn't accomplish what Ontario's local leaders really want. What about small business's wishes?

Mr. Tom Charette: CFIB members need two things from new municipal legislation: a rationalization and reduction of the current regulatory overload, and elimination of the unethical provincial and municipal property tax load imposed on them.

Here are the most problematic regulatory areas revealed by our 2005 survey on regulation and red tape. Bill 130 will add to the regulatory overload and do nothing about the serious problems on this list. Let's look at the critical problem of business property taxes.

Here's how the province and the city of Brampton treated a small business person in the commercial class in 2005. Our full report is in your kit. It's called "Overtaxing Peter to Subsidize Paul." In this example, Paul earns his income as an employee and Peter is a small businessman. Both have homes with an assessed value of $200,000. In addition, Peter has a commercial property also assessed at $200,000. As residents, Peter, Paul and their families each contribute $1,888 to fund Brampton municipal services and each contributes $592 to the province to fund education. Everything's nice and fair at that point. Then, for no other reason than the fact that he earns his living as a businessman, Peter's family has to put another nearly $2,500 in the pot for municipal services and a whopping nearly $3,500 for education. That, we submit, ladies and gentlemen, is unethical and cries out to be fixed.

Here's the picture for some of the other municipalities in the ridings represented by members of the committee here. In Toronto, a resident would pay $1,800, a small business person nearly $11,000. That comes out of family income. Oshawa, $3,400; a small business person nearly $11,000. Pembroke, $3,700 for a resident; over $14,000 for a small business person. Oakville, $2,200 for a resident; over $7,500 for a small business person. Cobourg, $3,600; over $12,000 for a small business person. Finally, in Clarence-Rockland, nearly $2,800 for a resident and nearly $9,000 for a small business person.

Ladies and gentlemen, this problem goes right across the province; it's not just Toronto. It really is, in our belief, unconscionable to do this to small business people and their families.

Where does this leave us? Big-city mayors across the country and their association got this ball rolling. The citizenry wasn't crying out for municipal reform. Bill 130 does little of significance for Ontario's local leaders and we should note that the seven mayors of the 10 largest cities in Ontario who responded were identical in their responses to the kind of profile we showed you earlier. It does nothing for small business except create exposure to significant additional harm. It seems to be bad politics: It does little for two major stakeholders and subjects one of them to harm. We think the province should go back to the drawing board and start with one of the root causes of many of the current difficulties: the overdependence in this province on property taxes as a source of government revenue.

Ms. Andrew: Ontario's dependence on property tax as a source of government revenue is the highest in the OECD world. The following are our recommendations:

First, suspend consideration of Bill 130;

Second, reduce provincial and municipal government dependency on property taxes as a source of government revenue over a fixed number of years to 1.5%. Just going back for a moment, that would put us in the middle of the pack;

Third, realign provincial and municipal responsibilities in such a way that it:

—creates room for equalizing municipal property tax rates between classes over a multi-year period and mandates such an equalization;

—provides clear lines of demarcation between provincial and municipal spending responsibilities;

—supports the principle that the level of government that is responsible for the spending is responsible for raising the taxes and being accountable for that spending;

—supports the principle that municipalities should provide services to property and the province should provide services to people—it does not lead to an increase in taxes;

—begins a multi-year program of reducing business education property taxes, bringing them into line with residential.

1730

Where will the province get the money? This chart makes it abundantly clear that even though provincial spending has outpaced the combined growth in both inflation and population growth for the last 10 years—and that certainly needs to be adjusted—in the final analysis, spending is a matter of priorities. Certainly a program to accomplish the objectives we have outlined, if spread over a number of years, is within the fiscal capacity of the province. The only remaining question is, does the province have the will to treat small-business owners and their families in a fair and ethical manner? And does it have the will to bring municipal legislation into line with the views of small-business owners and Ontario's mayors, reeves and wardens as well?

The Chair: You've left about 45 seconds for each party to ask you questions, beginning with Mr. Prue.

Mr. Prue: The uploading and downloading priority, with which we in the New Democratic Party are in total agreement: How many years do you think it would take? We've recommended it be done over eight to 10 years. Is that sufficient time to upload what's been downloaded back to the provincial government? Is eight to 10 years a sufficient time frame, or do you think it should be done sooner or over a longer time frame?

Ms. Andrew: When we first started into this issue in 1995, we realized that the problem accrued over a long period of time and we weren't expecting it to be solved overnight. We said 10 to 15 years at that time, so eight to 10 years now—what small businesses need to see is a plan for doing it, a fair plan. I am a bit discouraged that the review that's been commissioned now by the ministry has I think 18 months before it reports, so that eats into the time already.

Mr. Prue: Is that my whole 45 seconds? It is.

The Chair: You've exceeded it. I was being generous. Mr. Duguid.

Mr. Duguid: There were some things in your report that I agreed with; there are a number of things in your report that I had some difficulty with. We're not here discussing the Municipal Act because of a call for a new deal by big cities. It's a review that's done on a continuing basis, and we're here as a result of the review. That's why the Municipal Act has come into it. It just happens that it coincided nicely with the City of Toronto Act, which was here for that particular reason.

You said that there's been provincial silence when it comes to dealing with municipalities and the difficulty with downloading. I don't think the billions of dollars we're investing in public transit is silence, I don't think the uploading of public health service costs is silence, I don't think the uploading of costs for land ambulance is silence, and I don't think the investment in housing is silence. I think that's action. The review that we're conducting is going to the next step in terms of looking at service alignments and services to see where we go from here. That's really what that is. But to say it's silence I think is inaccurate.

Ms. Andrew: What we said was silence in terms of releasing any of the data describing the fiscal position between the two levels of government. The city of Toronto, in the middle of their debate, put out a fairly half-baked thing they had commissioned charging that there was this big problem, and the province didn't respond. There was no information about what the fiscal position was. So whether you've spent money on things is immaterial. The question is that this was not justified by data. It was pushed in terms of a campaign—a well-orchestrated campaign right across the country, we grant you—but there was really very little hard financial information to support it. There was none in the joint task force report. Again, there's a general claim that municipalities need more money, but the public has certainly not been made privy to any data that would support that.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I want to agree with you. I've been bringing this up as we're doing the public hearings on this bill, that we've done a lot of discussion and planning and deciding on behalf of the relationship between the province and the municipalities, but very little on the challenges between the taxpayers on the property tax side and the councils that govern them.

I do agree with you. In fact, we had the total Legislature vote on a motion to speed up the review of the fiscal imbalance between municipalities and the province, to have a report prior to the next provincial election so that we could have a debate with the public about how that problem should be addressed. Of course, it's quite obvious that the government has decided they want that report to come in after the next election rather than before. So I agree with you and support your principle that we should get on with that and make a decision, if there is a fiscal imbalance, on how we would fix it and how we would make sure that the people who are providing the services are the ones who have to tax for that service. I think that's the most important part of that review, so we can get some accountability and transparency in the delivery of services rather than just finger-pointing.

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

ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

The Chair: Our next presentation is the Ontario Sewer and Watermain Construction Association.

Interjection.

The Chair: I'm going to offer an alternative.

Mr. Zechner, we have 11 minutes before we all have to dash out in order to get back for the vote. You are

entitled to 15 minutes. Would you like to do half of your presentation and after about five minutes we'll take a recess and go and vote, or do you want to do the whole thing?

Mr. Frank Zechner: I think I can get through my entire presentation and come back for the questions, if that works well for you.

The Chair: Perfect. So if we get close, if you happen to go a little over, I'm going to stop you when we have about three minutes left so that we have sufficient time to get back.

Mr. Zechner: I'll be looking for your hand signals.

The Chair: Okay. I'll do the "cut" sign, how's that?

Mr. Zechner: That sounds fair.

The Chair: If you could settle yourself, you'll have 15 minutes from beginning to end. I'll ensure that you don't lose any time. If you could say your name and the organization you speak for, when you're ready, you can begin.

Mr. Zechner: Good afternoon. My name is Frank Zechner. I'm the executive director of the Ontario Sewer and Watermain Construction Association. I'm here today to speak on Bill 130, on a relatively narrow number of issues and concerns that we have with respect to this bill.

I would just like to turn your attention to slide number 2, which gives a brief overview of what our association is all about. We represent more than 700 companies that supply and install the vast underground network of pipes and other infrastructure that make up the clean water system. That also includes the pipes and systems that take care of the sanitary and storm drainage back to treatment plants and other sources. We've been representing the sewer and water main construction industry for over 35 years. We've been advocating full cost pricing and accounting for water services, and we've been a major force in the development of the Sustainable Water and Sewage Systems Act, 2002, an act of this province that received royal assent back in December 2002. We are working on the front lines. We're literally in the trenches of this issue in terms of the pipes that make up our water infrastructure, and we've been closely monitoring the issue of the establishment of municipal corporations that might be present in the water and waste water sector.

We have three principal concerns. Bill 130 should be amended to expressly exclude the power to establish corporations for water and sewer infrastructure except if permitted by other legislation, such as the Sustainable Water and Sewage Systems Act, 2002. Some of you may know that as Bill 175.

Our second primary concern is that any municipal corporations that are established in relation to water and sewer infrastructure must be not-for-profit corporations and remain wholly owned and controlled by one or more municipalities.

Our third concern is that we're generally concerned about fair and open tendering practices and processes by municipalities and of course by any municipal corporations, and we recommend that Bill 130 be amended to require that municipalities, municipal corporations and local boards comply with the Building a Better Tomorrow framework of the province of Ontario.

If I may, I'll just expand upon those three primary concerns.

With respect to the first concern, to only allow corporations for water and sewer infrastructure if permitted by other legislation, we have on the books legislation that within a week will be almost four years old, the Sustainable Water and Sewage Systems Act, 2002. That contemplates full cost pricing and a dedication of reserves. There are regulations we are awaiting from the Ministry of the Environment on that legislation. They are in process. They will, according to the ministry, come in due course. We believe it is inappropriate to move forward and allow municipalities to establish municipal corporations in the water and sewer sector until that act, which is almost four years old, gets a chance to actually establish what the rules and regimen are for corporations involved in that sector.

The municipal corporations water sector should simplify full cost pricing and not complicate or allow municipalities to mask what their finances are. The only corporations permitted at this time under the Municipal Act are a limited number of powers related to transportation, parking and other municipal services. We are concerned that it gets thrown wide open and we are very concerned that it goes to the water and waste water sector before we have the other legislation come into play. We have the Watertight report from the Water Strategy Expert Panel. We also had recommendations about municipal corporations with respect to water services. Let's see what the government intends to do on those rather than implementing something now, only to change it six or nine months thereafter.

We propose a simple resolution for this. It might be achieved by a simple amendment to proposed subsection 203(3). In that, there is an exclusion for electrical distributors under the Electricity Act, 1998. We would expand that to include regulated entities within the meaning of the Sustainable Water and Sewage Systems Act, 2002. That is on page 5 of your materials. Again, that is a suggestion. We appreciate that the Legislature in its wisdom will be able to determine what is an appropriate means of moving forward on that principle.

The second major concern we have is the structure of any municipal corporation having control of water infrastructure. If and when it is appropriate to proceed with municipal corporations in the water sector, it is critical that any new corporate structures having control of water be not-for-profit. We have tremendous concerns about full cost pricing by the public sector. We have a number of MPPs who have expressed concerns directly to our association that we have to be careful about how quickly and how much we raise water rates for municipalities, be they major urban centres or more rural settings. If water rates are to increase, we expect to see that extra revenue applied to water infrastructure, whether it's in treatment plants, better training for operators or actually to replace

pipe. To have an additional component or increase to satisfy a dividend requirement, we think, would be problematic and unfair competition.

The city of Toronto is looking at increases of 9% per year for water billed over the next five years or more. If you were to go with a for-profit corporation, you would have to increase the water rates above that 9% per year, and we feel that's not appropriate.

We expect that the Ministry of Municipal Affairs and Housing wants to protect public ownership of water infrastructure, but we also want to ensure that it considers any adverse consequences associated with profit taking before they establish that legislation and move forward on that issue.

Our third major concern is with respect to an open and fair tendering process for public works.

The Chair: Mr. Zechner, can I stop you there so we have sufficient time to get upstairs.

Mr. Zechner: Of course.

The Chair: Then you can begin your third point. You'll still have eight minutes left, so you will have plenty of time.

We're going to recess for a few minutes to go for the vote.

The committee recessed from 1743 to 1752.

The Chair: We're back, and we're here to continue public hearings on Bill 130. Mr. Zechner, you have the floor.

Mr. Zechner: Thank you, Madam Chair. One last point on the corporate structure: In addition to being not-for-profit, the ownership and control of municipal corporations in the water and waste water sector should be restricted to one or more municipalities in a manner similar to the restrictions under the Electricity Act, 1998. If the municipal ownership requirement was appropriate for electrical distributors, it is equally as important for our vital water infrastructure.

I will now move on to the fair, open and transparent tendering processes. We have significant concerns about fair and open tendering practices with municipalities at this point in time, and we feel that the situation, by allowing municipal corporations to take charge of infrastructure, will be aggravated.

If we look at the current section 271 under the Municipal Act, it provides for a number of policies of municipalities and local boards with respect to procurement of goods and services, specifically clause 271(1)(d), the circumstances under which a tendering process is not required. Right now, a municipality could simply say, "Tendering is not required for any projects less than $50 million." There's got to be more of an overview, there's got to be more transparency. There's got to be more controls in terms of requiring open and fair tendering practices and not allowing jobs and projects to go to favourite connections through the backrooms.

There's also another provision in the current Municipal Act, clause 271(1)(e), the circumstances under which in-house bids will be encouraged as part of the tendering process. We see a number of problems with that in terms of how in-house bids would be valued, the potential for hidden subsidies, the lowering borrowing costs for municipalities, the lending of labour and equipment loans, etc.

Again, we want to have fair and open tendering practices for municipalities, municipal corporations and local boards. There is no mechanism in place at this point in time that would establish that standard. The province, however, does have a standard that it has put forward by way of a policy. That policy is known as the Building a Better Tomorrow framework that was released by the Ministry of Public Infrastructure Renewal. Our submission is that it's fair and reasonable to require that municipalities, local boards and municipal corporations comply with the same standards as the province when it comes to the construction of public infrastructure.

The structure of corporations must be transparent. We have seen in proposals a discussion about possible public meetings in order to establish a municipal corporation, but there are no follow-up transactions there. You could have a public meeting in place that would establish a municipal corporation, but the circumstances change and there's no way or there's no impact mechanism proposed in the act or anywhere else within the proposals under Bill 130, that would track what happens if circumstances change or what happens if there are abuses of the system. There's one public meeting to establish a municipal corporation, and off it goes. It can do what it wishes and there's no opportunity for the stakeholders, the municipal residents to actually feed back into that process.

In closing, we have three principal recommendations: It is our belief that municipal corporations should not be permitted in the water and sewage sector until we have the intentions of the government with respect to this area, and those would be coming forward through Bill 175 and perhaps through a response to the Watertight report by the water strategy expert panel.

Secondly, once municipal corporations are established in the water and waste water sector, it is critical that steps be taken now through the Municipal Act to ensure that they be not-for-profit and that they be owned and controlled only by one or more municipalities.

Lastly, we have the concern about entrenched defined procurement policies that have minimum standards for municipalities founded on principles that are applicable to the province.

Those, Madam Chair, are my submissions.

The Chair: Thank you. You've left about a minute and a half for each party to ask you questions, beginning with Mr. Duguid.

Mr. Duguid: When it comes to restructuring water/waste water, there are a number of different varieties of structures out there: boards, committees, commissions, utilities, departments—which is where Toronto's at—and stuff like that. One of the concerns that I've heard expressed by your industry has been the need to improve purchasing practices in municipalities where, up until recently, sometimes 50% to 60% of contracts that are in the budget are all that are actually let out.

Mr. Zechner: That's right. They're not spending the full capital allotment.

Mr. Duguid: Why would you want to put handcuffs on municipalities and their creativity in moving forward with other potential mechanisms that might improve things like purchasing? We've been through that in Toronto, and we made our decision to keep it in-house. But at the same time, why would you want to preclude that?

Mr. Zechner: We are in favour of open and fair tendering practices. We feel that is the best value for all concerned. There are needs for improvements in some municipalities in terms of their tendering process and the works department getting projects out. That doesn't mean you throw away the open tendering practices. What it means is you try to scale other efficiencies into your works department so they can get more of your capital budget out to the contractors.

Mr. Duguid: I'll make this real quick, because I'm almost out of time. There's a standard in the legislation that says that all municipalities would have to have a purchasing policy. Do you really think any municipality would move forward with a purchasing policy that's anything less than what you're proposing? You don't think there would be public scrutiny as they passed that purchasing policy?

Mr. Zechner: We have concerns about certain hydro-electrical distributors dealing only with a selected list of contractors, an approved list, and it basically doesn't go out to all qualified contractors. There could be a number of other mechanisms. Municipal corporations might abuse this process by limiting the competition, limiting the turnaround. Again, we feel that open and fair tendering practices work for all concerned. It works for the province, it works federally and it works at the municipal level as well. If we go to municipal corporations, we're concerned that there could be possibilities for abuse.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I too want to go to the water and sewer. I think you explained it in the presentation, but your analysis that we should not allow the incorporation of the water and sewer element, or the water and waste water, and if it went that way, it should be non-profit. Thirdly, we want to make sure that everything is properly tendered.

Mr. Zechner: Right.

Mr. Hardeman: How does not having it in a corporation and having a non-profit corporation direct it towards being equal tendering, when you have a non-profit corporation that doesn't have to show all their costs tendering against the private sector for the service? How does that make more accountability?

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Mr. Zechner: We have concerns about the municipal corporations competing with industry. We feel that there are a lot opportunities for hidden subsidies there. They could borrow equipment, they could borrow labour. We feel that they should go out to the private sector in terms of competition for tender and should not be subject to an in-house competition. That is something that is contemplated within the current Municipal Act. We don't feel that is a fair and level playing field, and we want to see that eliminated. They should be to private contractors. They then all compete at the same level. They all have to go to external bonding, they all have to hire their labour according to union rates and they can't borrow the snow-plowing equipment from the municipality in order to do their jobs.

Mr. Prue: It may be a philosophical difference, but I don't see how—if we recognize municipalities under this bill as a mature level of government able to make their own decisions, municipalities will, of course, have that choice of whether they want to contract out, contract in, do it themselves, put it out for tender. Who are we to say they shouldn't?

Mr. Zechner: Large projects haven't demonstrated, by a number of economic studies over the decades, to be in the best interests of the public, in terms of efficiency and in terms of cost controls, to let those projects out. There will always be internal workings. The works departments will be dealing with emergency repairs of various water infrastructures, but the relaying of miles and miles of new pipe or the construction of a new plant is not something that is generally within the expertise, the resources and the experience of municipalities. Those are "one of" jobs.

The municipal works departments are familiar with this system, they know what needs to be replaced or repaired the soonest and they are in the best position to identify what work has to be done. In terms of actually doing the work, go to the people with the expertise, the resources and the experience to do that work.

Mr. Prue: But what if they think they have their own experience in-house? Who are we to tell them they shouldn't do it?

Mr. Zechner: Certainly they will have some expertise in-house, and they do so right now on an ongoing basis, in terms of emergency repairs and coordination of some work, but in terms of major projects, we just do not see it as appropriate for them to do it in-house, no more than the Toronto Transit Commission uses its own forces to build a major—they let out that contract work to publicly competed companies in order to construct their work. That's been proven over and over again to be the most efficient mechanism in order to achieve the best value for the public.

Mr. Prue: And they probably still will, but who are we to say that in the end—that's what I'm getting at. In the end, if they look at all of that and say, "You can do it cheaper, you can do it better," and then make the foolish decision of taking it in-house, what are you asking the province to do? To tell them that they can't?

Mr. Zechner: Basically, the province is guided by a policy at this point in time, and we made reference to that. We feel it is appropriate that there be some form of policy for municipalities. Right now there is a gap. There is just absolutely nothing in there right now that directs whether or not municipalities simply say, "The policy

shall be anything under $50 million. I can go to whomever I want to send it to. And if it's over $50 million, then it'll go out to fair and opening tendering practices."

There has to be a little bit more to it than something like that. That may be an extreme example, but that's a possibility you could see under the current legislation. Under Bill 130, that would not be changed.

The Chair: Thank you very much for being here today. We appreciate your patience with us due to the time we had to break during your presentation. Thank you very much.

Mr. Zechner: Madam Chair, I appreciate your patience in hearing me out. Thank you for your time.

EASTERN ONTARIO WARDENS' CAUCUS

The Chair: Our next delegation is the Eastern Ontario Wardens' Caucus. Welcome, gentlemen. I have one name here listed on my schedule. If you're both going to speak, could you identify yourselves, and the organization you speak for, for Hansard. When you begin, you'll have 15 minutes. Should you leave time at the end, there will be opportunity for us to ask questions about your delegation. We do have your paperwork, I believe, in front of us.

Mr. Clarence Zieman: Thank you, Madam Chair. My name is Clarence Zieman. I am the current warden of Hastings county. I have with me today Mr. Jim Pine, who is the CEO for Hastings county. We are here today to represent, in essence, the Eastern Ontario Wardens' Caucus, a group that represents a large number of the population in eastern Ontario.

The Eastern Ontario Wardens' Caucus represents the 11 counties of eastern Ontario and the single-tier municipalities of the city of Kawartha Lakes and the county of Prince Edward. Over the past six years, the caucus has been active in championing the special issues and challenges faced by municipalities across eastern Ontario. The caucus appreciates this opportunity to speak with the standing committee on this very important piece of legislation.

The Eastern Ontario Wardens' Caucus is also a strong and supportive member of the Association of Municipalities of Ontario. Working together, the caucus and AMO share the same values and principles, particularly as they relate to the enhancement of existing municipal powers and responsibilities.

The Eastern Ontario Wardens' Caucus, like others in the municipal sector, including AMO, strongly supports the thrust of Bill 130 and its goal of modernizing local government in Ontario. The caucus is ever mindful of the importance of growing and improving our municipalities in order to continue the strong bond that we have with our property taxpayers and citizens. As AMO regularly points out, the public rates municipalities as the most trusted level of government in the country. Any new legislation that affects municipalities should help us build on that trust.

Bill 130 is another significant step along the way to modernizing our municipal governments and making them as responsive as possible to the changing dynamics and challenges that face us individually as well as the sector generally. This government should be commended for making good on many of its initiatives that support local government. Bill 130, in general, will further the improving relationship between our two orders of government.

With such a comprehensive piece of proposed legislation, it should be no surprise that the EOWC does have a number of concerns that it wishes to raise with the standing committee. Of particular concern to the caucus is the failure of the bill to provide municipalities with the fiscal tools to meet the unsustainable fiscal situation that has developed in every Ontario municipality. The ever-increasing gap between the cost of providing services and the amount of money available to pay for them must be addressed. This is not a theoretical debate, ladies and gentlemen; this is a sobering reality.

The EOWC has taken considerable time and care to calculate, document and highlight our members' financial plight. We have, for the past five years, retained the services of the highly respected accounting firm of Allan and Partners to examine in detail the financial position of the caucus members. As a result of the dramatic changes in the types of service now delivered by our members and cost thereof that began in 1998, it has been calculated that there is a built-in systemic shortfall of some $56 million annually. That represents the difference between all sources of funding and the cost of providing services like land ambulance, social housing, social services, downloaded former provincial highways and health-care-related programs.

AMO notes that on a province-wide basis the annual property tax subsidy for these types of programs to be $3.25 billion. Professor Harry Kitchen's work at Trent University has verified this subsidy. Professor Kitchen's work paints a very stark picture of the situation here in Ontario. In Ontario, municipal spending on social services for every man, woman and child is $177, while in the rest of Canada it is only $4. That means we are paying 4,325% more than municipalities in other provinces. In terms of affordable housing, it's $88 per capita versus $18 in the rest of Canada, or 389% more. Even our per capita municipal spending on health-related services is $50, while municipalities in the rest of Canada only spend $11. Ontario municipalities are paying 325% more.

This situation is particularly acute for us in the EOWC. Our smaller economy and the burden carried by residential property taxpayers make paying for these income redistribution services even more difficult. In eastern Ontario, residential property owners shoulder nearly 95% of the tax burden. Their capacity to fund more of the cost of our services has reached the breaking point.

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Bill 130 should have helped us move away from this unsustainable situation by broadening our authority to raise new revenues from sources other than property tax. Access to sales tax or provincial income taxes, for

example, would give us some ability to meet the rising cost of these income redistribution programs.

On the provincial interest override: The Eastern Ontario Wardens' Caucus believes there is a disconnect contained in the bill between the government's stated position that a more mature relationship with local governments is required. Specifically, the caucus is very concerned about section 451.1. This section will give the cabinet broad authority to overrule municipal decisions if it determines that there is a "provincial interest" in any particular matter.

If there is one thing municipalities need, in addition to more money, it is certainty. We need to understand what and when there may be a provincial interest in a matter. The bill, as it is currently drafted, will allow, as AMO has noted, an after-the-fact power to be granted to the government, and this will very clearly bring uncertainty to our decision-making efforts. It also runs counter to the principle of forging a responsible relationship between local municipalities and the province.

The EOWC recommends section 451.1 be deleted from the bill. At the very least, the government must establish, up front, the definition and principles that will guide their determination of what constitutes a provincial interest.

On the matter of corporations and boards: The EOWC strongly endorses the broader powers contained in the bill related to the establishment of new municipal corporations and boards for municipal services. If there is one principle that rings true, it's that there is no single, cookie-cutter approach or one-size-fits-all approach that works for all of Ontario in the provision of municipal services.

The flexibility to design our own service boards or corporations is a good step forward in allowing us to find fresh ways to deliver and manage our services. The EOWC, like AMO and other municipalities, does however urge the government to set out as soon as possible what corporations or boards will not be permitted. In other words, give us the rule book and we can pick the right play for our local circumstances.

Investigations: All of the members of the EOWC are firm believers in transparency and accountability. People get the best government when the decision-making process is clear and understandable. Not everyone will agree with your decisions; we understand that very well. In fact, our ratepayers often come to our meetings and, through the delegation process, let us know what is on their minds.

The new provisions contained in section 239.1 of Bill 130, however, are too open-ended. The current wording allowing anyone, whether they are residents, taxpayers or businesses in our municipalities, to file a complaint on any matter is far too broad in scope. The potential for frivolous or vexatious claims being made is, as was well stated in the AMO brief, one that has the potential of creating decision-making gridlock. The cost to our taxpayers both in terms of time and money could be substantial. The EOWC believes a more reasonable approach is necessary. This might be through some sort of fee process to help offset costs and reduce frivolous or vexations claims.

As with AMO, the EOWC agrees that any investigator of a valid complaint should not be a municipal employee. Equally, we fully agree with AMO that there is no need to extend the jurisdiction of the provincial Ombudsman to the municipal sector. Establishing an independent review system at the local level via the appointment of a non-municipal investigator is more appropriate. Having said that, we will need some time to make the right arrangements for an independent investigator, and recommend a delay of a few months before proclaiming a revised section into force.

Open meetings: The EOWC wishes to weigh in on the improvements contained in subsection 239(3.1). The recognition that councils from time to time need to meet in closed session to receive detailed technical briefings from staff or to consider broad strategies but not take specific actions is appreciated. As others have noted, the way municipalities go about their business is more open and transparent than any other level of government. This will continue.

On the matter of policies, the bill contains provisions for streamlining a host of municipal policies, from procurement of goods and services to hiring of our employees. Improving the efficiency with which we craft and implement such policies is a welcome initiative, but we strongly recommend that municipalities be given sufficient time to draft and enact any changes that will be required. The EOWC suggests that these provisions be proclaimed later in 2007 or on January 1, 2008. We simply need the time to complete these new policies.

Property and civil rights policies: Like AMO, the Eastern Ontario Wardens' Caucus feels it needs to state its real concerns about the proposed property and civil rights policy contained in the bill. Our caucus requires a clear and definitive explanation of how such policies will interact with existing rights that are already contained in senior government statutes. We simply do not understand the government's intent and what the possible ramifications of our decision-making process might be relative to an individual's property or civil rights. To date, we have not heard any explanation. Until there is clarification on this new and potentially litigious issue, we highly recommend that it be removed.

Thank you for the opportunity to address the committee.

The Chair: You've left about 45 seconds for each party to ask questions, beginning with Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): First, let me congratulate Your Worship on your recent election. And Jim, it's good to see you again. There's not much time to ask you a question. I wanted to take this opportunity to thank you for being here today and for the hard work that eastern Ontario wardens do. As part of that group of municipalities that will first initiate it, I know you've really hit home.

I wanted to compliment you on bringing forward the fiscal imbalance. You folks were instrumental in bringing

it to this government's attention. I think we've started to listen, but just on that piece, we recognized that. That is why the Premier, at AMO, announced the 18-month review to deal with that issue.

I did have a couple of questions, but 45 seconds doesn't leave much time. So once again, keep up the good work. We look forward to working with you.

The Chair: Mr. Hardeman is next, and I want to apologize. He should have been first.

Mr. Hardeman: No apology is necessary, Chair.

We've had a lot of discussion about the section of the act that deals with the closed council meetings times—you mentioned it too—when you need to have a meeting for technical briefings from staff and strategic planning. Could you tell me what would be involved in a technical briefing that the public shouldn't hear?

Mr. Zieman: I'll turn this over to my colleague, Mr. Pine. He's the manager at this.

Mr. Hardeman: I find that the best way for the public to understand the end solution is to get as much information about the debate that got us there. The more delicate the information is, it would seem to me, the more likely the public should hear it, to help them decide.

Mr. Jim Pine: If I may, it is probably a rare occasion when the need to get into perhaps a very detailed technical briefing would exist. In my experience, we are rarely required to work outside of the current open-meeting system that we have. But there may be times on particular issues, when we're trying to brainstorm, perhaps, with members of council from a staff point of view and with councillors back and forth in a closed session where we can probe and ask questions, discuss issues along those lines in order to be prepared to with the issue in a more public way. I find that it would just be a helpful opportunity to give the detail that may be needed on a particular subject. Nothing comes to mind at this point, but nonetheless, we think that as municipalities modernize, there are certainly going to be very complex issues out there or some strategies that need to be developed in a manner that allows us free and open discussion amongst council members and staff.

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The Chair: Mr. Prue.

Mr. Prue: This bill does not deal with finances, but let me be very blunt: In my view, the single greatest thing this province can do to assist municipalities is to upload the download. You've talked about that. That would reduce about 25% of your entire costs and put it back to the province. After all, they're all provincial programs. Would you agree with that assessment, that that would be the single biggest thing this government could do?

Mr. Zieman: Absolutely. Jim, go ahead.

Mr. Pine: The province has engaged the sector in I think a more detailed review of the fiscal situation. But there is no doubt, in Mr. Kitchen's work, that the burden of municipal spending that has to be done for social services, particularly, and others is a significant issue for us. I think that through the fiscal review, we're going to get an opportunity to look at all of the issues related to the arrangements between the province and the municipalities. Certainly, social services and other income-related programs are going to be a very big part of that.

Mr. Prue: And can you wait? This government says that they're going to study it for 18 months. How are you going to cope for the next 18 months? That's two budget periods.

Mr. Zieman: Just to get it done right. Jim?

Mr. Pine: Well, in essence, we know that this problem didn't occur overnight, and it's going to take some time to resolve.

Mr. Prue: Quite the contrary, it did occur overnight.

The Chair: I don't think we have time for the debate, but thank you. I think they said to do it right, and that's our guidance. Thank you very much for your time and your patience today with us coming and going.

ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

The Chair: Our last delegation today is the Ontario Restaurant Hotel and Motel Association. Good afternoon. I guess you're Michelle.

Ms. Michelle Saunders: I am.

The Chair: Welcome. If you can state the organization you speak for and your name, you'll have 15 minutes If there's time at the end, we'll be able to ask questions. We do have your deputation material in front of us.

Ms. Saunders: Good evening. My name is Michelle Saunders. I'm the manager of government relations with the Ontario Restaurant Hotel and Motel Association. With over 4,000 members, representing 11,000 business establishments, the ORHMA is the largest provincial hospitality industry association in Canada.

Interjections.

The Chair: Excuse me, can I just get some order so that the deputant can—

Mr. Rinaldi: Sorry, Madam Chair.

The Chair: That's okay.

You have the floor.

Ms. Saunders: Thank you. I want to thank the committee for the opportunity to be before you tonight, and I bring regrets from Terry Mundell, who unfortunately couldn't be here this evening.

The ORHMA membership is comprised of both the accommodation sector and the food service sector, all of whom are significantly impacted by this bill.

As you know, over the past number of years, the hospitality industry has suffered from the effects of 9/11, and the resultant border delays, and SARS, and continues to struggle with effects of the increased Canadian dollar and consumer confusion regarding passport requirements as a result of the western hemisphere travel initiative. All of these factors have been completely out of the control of government and industry. That is why it is so important that the government use this opportunity to ensure that Bill 130 be used as a tool to help support and sustain the industry.

The ORHMA has a number of concerns with Bill 130, but due to time constraints, I'll focus my comments today on the issues of taxation, public safety, and municipal accountability and fairness.

Let me begin with taxation. The ORHMA appreciates that Bill 130 does not grant taxing powers to municipalities. We think this is appropriate and fair policy. This leaves us to reiterate concerns expressed during debate on Bill 53 regarding new powers for the city of Toronto to levy a retail sales tax on the purchase of liquor. As Bill 130 contains no less than 35 pages of amendments to the City of Toronto Act, we respectfully recommend one more. Specifically, the ORHMA recommends that schedule B be amended to include a provision to amend the City of Toronto Act to revoke the city's authority to levy a retail sales tax on the purchase of liquor.

There are more than 8,000 food service establishments in the city of Toronto alone, 4,100 of which are licensed to sell and serve liquor. This represents a quarter of all licensees and a third of the beverage alcohol market in Ontario. As you may know from our discussion on Bill 53, Statistics Canada data show the operating margins in the restaurant and the pub, bar and tavern sectors at only 1.9% and 0.9% respectively. Ontario food service sales growth has seriously lagged behind the rest of Canada over the last seven years, and the pub, bar and tavern segment is actually experiencing lower sales levels currently than in 1999. Operators simply cannot sustain a decrease in sales that will result from an increase in liquor tax, a fourth tax line on a customer's bill.

The monies that can be generated through a municipal liquor tax will not even begin to address the city's financial situation, but a municipal liquor tax will threaten the sustainability of Toronto's licensee community. The city's books cannot be balanced on the back of one industry, particularly this small business sector, which is 63% independently owned and operated.

With regard to public safety, and again echoing our comments to this committee during consideration of the City of Toronto Act, the ORHMA has concerns with the provision of Bill 130, and similarly the provision of the City of Toronto Act, that would allow municipal councils to pass a bylaw extending the hours of sale of liquor in all or part of the city.

The ORHMA respectfully suggests that hours of service in licensed premises need to be consistent across the province in order to ensure community safety. Experience tells us that in border towns where neighbouring jurisdictions have different bar hours, drinking and driving continues to be a major public safety concern as patrons, against all better judgment, try to take advantage of extended hours in licensed premises in neighbouring communities. Public safety is an issue of provincial interest and, as such, demands consistency across Ontario.

The ORHMA opposes municipalities having the authority to extend bar hours, as this process is currently controlled without issue by the province. We therefore recommend an amendment to schedule B to withdraw the city of Toronto's authority to extend bar hours, and similarly, an amendment to section 6 of schedule D to revoke municipalities' authority to extend bar hours.

With regard to accountability and fairness, the ORHMA respectfully suggests consideration be given to increase municipal accountability and an amendment to Bill 130 that would establish an appeals process for local decisions on issues of fairness, specifically under the special charges section. There currently is no recourse for decisions made under this section.

Allow me a moment to tell you the story of one of our members, Andrew Weigel, who owns and operates the Carolyn Beach Motor Inn in the town of Thessalon. Mr. Weigel unfortunately could not be with me for today's presentation.

In 2005, the Thessalon town council agreed to extend the municipal water system to Lakeside Drive, which is currently home to 14 lots, including the Carolyn Beach Motor Inn.

After taking into account all project funding from government, the outstanding project costs, charged to the 14 lot owners, was $325,000. This amount was allocated on the basis of each owner's share of the total hectares. To compound the situation, council arbitrarily multiplied the hectares of each of two commercial properties, including the Carolyn Beach Motor Inn, by three to place a disproportionate share of the costs on those properties. Mr. Weigel's contribution is more than $86,000. Together with the one other commercial business owner, two of the 14 lot owners will pay 66% of the outstanding project costs. If that was not enough, the town has refused him a water meter, and he must pay a flat rate of $1,175 a month for water. The Carolyn Beach Motor Inn pays more for sewer and water per room than any other motel in Algoma, and pays more than 50% more than the municipally run rest home that has a meter and over 100 full-time residents and 100 staff, surely consuming more water. The Carolyn Beach Motor Inn, by the way, has only 50 rooms at peak season from April through November, and only 15 rooms are open between November and April.

Furthermore, the inn was the only property in the construction area to which the lines were run only to the corner of the property, whereas all other lots had the lines running across the full frontage of the properties. As a result, Mr. Weigel had to spend an additional $100,000 to install lines to the corner of his property and to install a sewage pump.

These decisions have been made behind closed doors. Indeed, the town of Thessalon commissioned a report specifically to examine the Carolyn Beach Motor Inn water usage and natural resources, yet Mr. Weigel, the proprietor of the establishment, has not been given access to any part of the report or its findings. Although the provincial privacy commissioner agreed that the report should be shared with him, council has refused.

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Mr. Weigel has discussed this matter with local and provincial elected officials, the privacy commissioner

and legal counsel. There appears to be no recourse for him, as there is no appeal mechanism under the special charges section of the Municipal Act nor any capacity or requirement for concerns related to fairness to be addressed. Mr. Weigel understands that he must pay the bill and, in order to do so, will take a loan from the town itself, which has also determined the repayment schedule.

This is just one illustration, just one story, just one business owner, but a clear example of the need for increased accountability and transparency at the municipal level to ensure fairness for all taxpayers.

In conclusion, the ORHMA submits to this committee that the Municipal Act should be the tool which allows municipalities to carry out their duties but, at the same time, in a manner which encourages business and stimulates the economy. The ORHMA puts to you that permitting the city of Toronto to introduce a liquor tax, allowing municipalities to extend bar hours, and continuing to deny any recourse under the special charges section will directly and negatively impact the hospitality industry. The ORHMA therefore recommends: the revocation of the city of Toronto's authority to levy a liquor tax; the revocation of municipalities' authority to extend bar hours; and measures to ensure increased municipal accountability that also provides a level of fairness for Ontario's business community.

Thank you.

The Chair: Thank you. You've left three minutes for each party to ask you questions, beginning with Mr. Prue.

Mr. Prue: I have a question—are you sure?

The Chair: Yes. He's looking at me sideways, but I'm leaving the best for last. That's my story.

Mr. Prue: Many businesses have come forward, including restaurant businesses, and said that the portion they are required to pay for the education tax is untoward, that it's way too high. You've not mentioned that at all. Do you have that concern?

Ms. Saunders: We've not mentioned that. We have focused on the liquor tax because we believe it is a tax that specifically targets our industry, and that is what we believe is unfair.

Mr. Prue: Have you taken your concern before the city of Toronto? They've just recently got this. They're not here to defend themselves. They probably don't know you're coming to say that, yet you're asking these guys over here to undo something they've just done. Have you told the city of Toronto that you're coming here today and what you intend to ask for?

Ms. Saunders: The city of Toronto and the government are well aware of our concerns that we raised during debate on Bill 53 at the time. We have met with the mayor's office to talk about the liquor tax portion specifically.

Mr. Prue: So he knows you're here today to ask for this?

Ms. Saunders: He doesn't know I'm here today unless he has seen the schedule, but he certainly knows the position of our association.

Mr. Prue: The bar hours: The city of Toronto and many municipalities ask for extension of bar hours for events, things that are happening in the city. You proposed that they not have that authority.

Ms. Saunders: Correct. The system currently works that municipalities have the authority to seek permission through the Alcohol and Gaming Commission of Ontario, which keeps it consistent. The act allows for municipalities to extend hours in either a part or all of the city, and there is no limitation on whether it would be for an event or just in general. We think that, for reasons of public safety, bar hours should be consistent throughout the province.

Mr. Prue: The bar owners in Toronto who have this authority would lobby their municipal council. Are they in the same accord as a bar owner outside of Toronto on what you're presenting here today?

Ms. Saunders: We have a regional board in the city of Toronto, and our regional board opposes the city having the authority themselves. We believe that that authority currently rests, appropriately so, with the alcohol and gaming commission, without issue. There is no problem with the issue if municipalities wish to extend it for an occasion. They certainly have the ability to do that, working with the alcohol and gaming commission.

Mr. Prue: Thank you very much.

The Chair: You have 43 seconds left.

Mr. Prue: That's all right. My questions have been answered.

The Chair: Mr. Duguid.

Mr. Duguid: Madam Chair, in light of the hour, I'll just thank Ms. Saunders for being here today, and Mr. Mundell, whom we've had an opportunity to have discussions with in the past on this, for their input. We very much appreciate it.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. We've had a number of presentations on different aspects of the bill. I'm not sure that asking a lot of questions is going to be very helpful at this point. But I do want to say that if I had a question, particularly on the bar hours, I would ask the government as opposed to the presenter. If there is a need to have consistency, which we've always had in this province, to keep people at a late hour at night to go from a place that's closing to a place that's still open and doing that while they're intoxicated, what would be the advantage to letting some municipalities extend them and not the others? Why not just extend it for everyone and then those municipalities where the bar owners don't want to stay would just close earlier? I would think that an amendment to just allow it for special occasions, as Mr. Prue was referring to, would serve far better than to just have a municipality-to-municipality difference.

The other thing I would say, having heard the presentations at the City of Toronto Act—and I suppose we should say thank you for small mercies from the government that they didn't include the taxing powers in the rest of the province. I guess we should ask them too

maybe, as they've already done once, to amend the City of Toronto Act by taking those out of the act, recognizing that the city says they won't use them and the bar owners say they would like them taken out. With that, thank you very much for your presentation.

Ms. Saunders: Thank you.

The Chair: Thank you very much for being here.

Committee, you have a detailed interim summary of the people who have been here for the last three of five days from our research officer. That's in front of you to look at.

I'd like to thank all our witnesses and members of the committee for their participation in the hearings.

This concludes my chairing of general government. There will be a new Chair.

Mr. Prue: No, tell us it's not so.

The Chair: I know you're going to be sad. There will be another person trying to keep order.

Just a reminder to members that amendments are due by 12 noon on Friday, December 1. This is an administrative deadline.

This committee now stands adjourned until 3:30 on Monday, December 4.

The committee adjourned at 1836.

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