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Wednesday 15 November 2006

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Mercredi 15 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

Présidente : Linda Jeffrey
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 15 November 2006

Mercredi 15 novembre 2006

The committee met at 1610 in room 151.

SUBCOMMITTEE REPORT

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

Our first order of business is the adoption of the subcommittee report. Could I have someone move and read the report? Mr. Duguid.

Mr. Brad Duguid (Scarborough Centre): I guess I'll just read the report straight out. Is that what you'd prefer?

The Chair: Yes.

Mr. Duguid: Your subcommittee on committee business met on Wednesday, November 1, 2006, and recommends the following with respect to Bill 130, An Act to amend various Acts in relation to municipalities.

(1) That the committee hold up to five days of public hearings in Toronto on November 15, 20, 22, 27 and 29, 2006, from 4 p.m. to 6 p.m.

(2) That the committee hold two days of clause-by-clause consideration on December 4 and December 6, 2006, from 3:30 p.m. to 6 p.m.

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the Globe and Mail, the London Free Press, the Ottawa Citizen, the Sudbury Star and the Thunder Bay Chronicle Journal. The ads are to be posted as soon as possible.

(4) That interested people who wish to be considered to make an oral presentation on Bill 130 should contact the committee clerk by 3 p.m. Thursday, November 9, 2006.

(5) That on Thursday, November 9, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 6 p.m., Thursday, November 9, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members.

(8) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That late requests be accommodated on a first-come, first-served basis as long as there are spaces available.

(10) That groups and individuals be offered 15 minutes in which to make a presentation (10 minutes for the presentation and five minutes for questions from the committee members).

(11) That the research officer prepare an interim summary of witness presentations by Wednesday, November 29, 2006, and a final summary by Friday, December 1, 2006.

(12) That the deadline for written submissions be 5 p.m., Wednesday, November 29, 2006.

(13) That the deadline (for administrative purposes) for filing amendments be Friday, December 1, 2006, 12 noon.

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any comments or questions?

Mr. Michael Prue (Beaches–East York): I was a member of the subcommittee and agreed to the terms and conditions. However, Madam Chair, as you are aware, the dates of November 15, 22 and 29 are problematic for me in my capacity as one of the assistant Deputy Speakers. It was agreed that on Wednesdays, if we were to meet, you would use your good offices to arrange for a substitute for me in the chair. When I approached you yesterday—you did try your best; I'm not saying anything against you—the chief government whip refused. I am therefore in the untenable position of having to ask the committee to cancel the dates of November 22 and 29, because if they are not going to provide a substitute for the chair, I must be in the chair, and I refuse to allow that there is no member of the New Democratic Party here.

The Chair: Mr. Prue, I understand you're moving an amendment.

Mr. Prue: I move the amendment, yes.

The Chair: Any comments or discussion?

Mr. Duguid: I'm a little hesitant to cancel committee meetings. They've probably been advertised, have the not?

The Chair: They've been advertised and we have scheduled speakers.

Mr. Duguid: I'm very hesitant to cancel advertised committee meetings. I understand, though, what Mr. Prue is trying to accomplish. I would have hoped that we could have found a sub to assist.

Mr. Prue: It was an outright refusal by the whip's office. I don't know what you expect me to do. I agreed to this in good faith and the Chair is indicating yes.

Mr. Duguid: I understand the motion. I'll be voting against it; however, I would undertake to see if we could resolve the issue in another way. I'd be happy to make some overtures on your behalf.

The Chair: Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you, Madam Chair. I apologize for being a little late, but my office is three floors away and it takes a couple of minutes to get up and back.

I just wanted to point out—and we're talking about cancelling the days of hearings. I know from a presentation that one of my municipalities had put forward—they wanted to present—they can't present at that time and it couldn't be changed because everything else was locked in. So with a change of days, I would suggest that, if we don't have those two, we have two somewhere else; that we move the two days of committee that need to be moved to the clause-by-clause and that we do the clause-by-clause the following week.

I would agree with the New Democratic member. It was quite clear at the subcommittee meeting that he could not be there those two days. I think he was left with the assurance—at least the feeling of assurance—that the chair upstairs would be looked after for those two days. I really don't see how anybody in good conscience could say, "No, no. We've got this far, and we're not going to accommodate the New Democratic Party for this." I would support the motion.

The Chair: Further debate?

Mr. Duguid: I guess there might be two ways we can deal with this, and I don't mind either way. I'll ask Mr. Prue to choose. If we stood this down to give us an opportunity to see if we can resolve his difficulties, I'd be happy to undertake, probably later today or tomorrow, to try to do that, and then deal with the motion at that time, or we could certainly deal with the motion now and then I would still undertake to do it. But my preference would probably be to defer the motion until we've had an opportunity to see if there is a way we can resolve this difficulty.

Mr. Prue: I certainly have no difficulty. We are meeting on the 20th, which is a Monday. I am not in the chair at that time. I will be here at the meeting, as I have agreed to be. I am, though, reluctant—if the answer comes back no, I still intend to put the motion forward, if I cannot be accommodated, because this was all entered into in complete good faith. The government office assured me that from a very large government contingent of some 70 members there would be someone to sit in there for those three Wednesday afternoons. As it is, I was able to get the Deputy Speaker to sit in for an hour and one of the assistant Deputy Speakers to sit in for the other hour this afternoon, but I cannot ask them to do that next Wednesday and the Wednesday after that as well.

I anticipated this problem. That's why the agreement was made, and it was broken. But if we come back next Monday and it has not been resolved, and if my motion were to succeed, then what do we do with the people who are going to be coming on those following Wednesdays? You're literally cutting it off with one day's notice. I'm trying to be amenable here. I am trying to see whether some compromise can be worked out. I was appalled when the answer came back through the good offices of the Chair that the answer was a flat-out refusal after that had been agreed to.

The Chair: Committee, I'm trying to get some clarification on whether we can proceed without approving the subcommittee minutes.

Mr. Duguid: Oh, I see what you mean.

The Chair: I think we have to resolve part of it.

Mr. Duguid: Can I just ask—I hate to do this—for a 10-minute adjournment? I've just been handed a note and maybe there's a way I can resolve this before we start. I don't have any information other than a request to suggest that we adjourn for 10 minutes. Would that be okay?

Mr. Prue: If you can do it faster than that. I don't want to be—okay, sure.

The Chair: We have to resolve this. We can't go forward without these—

Mr. Duguid: My apologies.

The Chair: We'll have a 10-minute recess.

The committee recessed from 1619 to 1628.

The Chair: Can we resume public hearings on Bill 130, An Act to amend various Acts in relation to municipalities? Mr. Prue.

Mr. Prue: Upon the assurance of the parliamentary assistant that they will endeavour to fix this problem before next Wednesday, I would withdraw my amendment.

The Chair: Any further comments or debate on the summary of decisions made at subcommittee? Seeing none, all those in favour? Carried.

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: Now we begin the public hearing portion of our hearings. Mr. Hardeman.

Mr. Hardeman: I have a motion I'd like to move before we start the public hearings. I think the clerk is

passing out a copy of the motion to make sure that the committee has the motion.

Before I read the resolution, I just wanted to point out that the Ombudsman has requested to be heard by the committee but feels he needs more than the 15 minutes. I move this because there is sufficient time on the calendar that we have just passed in the subcommittee report.

I move that the Ombudsman be given an additional 15 minutes and that this additional 15 minutes be taken after the last presenter of the day.

The Chair: Comments or questions?

Mr. Duguid: I just have this motion in front of me now, and I'm afraid I have some difficulties with supporting this at this time. I totally appreciate and welcome the input of the Ombudsman; in fact, the input has been extensive. The Ombudsman has taken the time—again, we appreciated it—to meet with the minister, to meet with the Premier on his concerns about the bill. We are definitely taking those concerns seriously. We're taking a very hard look at them.

A 15-minute presentation will give the Ombudsman, I believe, adequate time to outline his concerns, and I assume he'll be giving us a written presentation which will enable us to look at those concerns in greater detail. Should the committee, down the road, feel it wishes to have more information from him, I'm sure we could request that, but for the time being, I think the committee is quite capable of reading submissions.

I guess the major concern I have, frankly, is that the major stakeholder on this bill is AMO. AMO, really, has jurisdiction and interest in every clause within this bill; the Ombudsman's role is a couple of sections of the bill. I would have concerns about giving one party unequal opportunity to make a presentation where AMO and others as well don't have that same opportunity.

So I appreciate the request. I think the committee can more than sufficiently do its due diligence in hearing from the Ombudsman for an allotted amount of time equal to all other presenters. As I said, we can always leave the door open as the committee hearings go on. If the committee felt we needed more information from the Ombudsman, we could certainly make that request.

Mr. Hardeman: I believe this is going to take considerable debate, and our delegations have waited long enough. So I ask that we defer further debate on this motion till after we've heard from the delegations and then return to this. I believe that it's important to recognize that everyone coming in will talk about how the bill will benefit them. The Ombudsman has the opposite view, and I think maybe the only one who has that opposite view, of what it will do to the people of Ontario. So I think more debate is required on this issue.

The Chair: Thank you very much.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: We'll move on to the public portion of our meeting. The first group appearing before us is the Association of Municipalities of Ontario, if they could come forward—Mr. Doug Reycraft, president. Welcome. I know you've been here before and you're experienced, but I still have to go through the drill. You have 15 minutes. If you could state your names, if you're both going to be speaking, your titles and the organization you speak for, and when you begin you'll have 15 minutes. If you leave us some time at the end, there'll be an opportunity for questions and comments.

Mr. Doug Reycraft: Thank you, Madam Chair. My name is Doug Reycraft. I'm mayor of the municipality of Southwest Middlesex and president of the Association of Municipalities of Ontario. With me this afternoon is Pat Vanini, AMO's executive director. I'll try to get my comments in in about 10 minutes so that we leave five minutes for questions.

AMO will be submitting a more comprehensive document that sets out all of our amendment requests. It will also highlight some key matters that we believe should not be changed because the provisions are good public policy and reflect the spirit upon which this bill was formulated; that is, that municipalities are a mature order of government.

When Bill 111, the 2001 Municipal Act, was introduced, it was the first major overhaul of this core legislation. Bill 111 was a positive move and was much better than the 1998 draft act. Bill 111 was not the complete framework that we envisioned, but it was a better starting point. We also stated that we hoped the act would continue to evolve over time. That was during the November 21, 2001, hearings. Almost five years to the day, we are here again. We support Bill 130 as another very positive step in the evolution of the Municipal Act. We are here to make it the last step.

This committee has the opportunity over the coming weeks to make Ontario the leader in this nation when it comes to truly allowing municipal governments to govern. It is time to say loud and clear that municipalities are, without doubt, mature orders of government.

The public expect and want all three orders of government to collaborate, but successful partnerships demand clarity on roles and responsibilities. Accountability rests on that clarity. It does not rest with the province second-guessing municipal governments. There will be some shared interests, but how all orders of government choose to deal with them is what makes the difference. That is why we are asking for amendments to this legislation that articulate the provincial interest.

Municipalities have already demonstrated, by their responsible use of the powers included in the current act, that they are mature and accountable. They have already demonstrated that oversight provisions such as section 184 of the bill are unnecessary and inappropriate. Municipalities will employ the broad powers that are included in this proposed bill in an equally responsible manner.

The granting of broad powers and broad interpretation is most welcomed. It recognizes where the courts have landed. It is an important statement. However, section 184 is too open-ended and much too one-sided. It does not put any rigour into the relationship. Without some

clarity on the nature a provincial interest could take, it may be very difficult for municipal governments to do what the broad powers intend to provide or to do so with comfort.

We believe that the province can articulate provincial interests, for example, if there's a direct cost to the province. The province has had no problem in articulating its interests when it comes to land use planning. We believe that this bill deserves the same commitment to articulation so that greater predictability of actions results for each of us. This section in the bill is an overwrite provision that is not grounded nor scoped.

Once a council takes a policy decision, it's up to municipal administration to implement it, which may require procurement and the signing of contracts. How will this unfold when the status of the bylaw could be questioned by the province? What will be the cost of undoing something if the province declares a provincial interest and subsequently imposes a regulation? And if there is an overwhelming provincial interest, should the province not act faster than 18 months? This committee has the collective experience to scope the provincial interest through an amendment, and we are willing to assist you in doing that.

There are some other parts of the bill that run shy of recognizing municipalities as mature and responsible. There remains regulatory authority: for example, licensing and corporations. There are a number of changes that remove the micromanagement approach of the current act, such as a licensing registry, but a great deal of provincial regulatory power remains. It would be a welcomed move for the province to pre-state what would not be permitted for incorporation rather than the current case-by-case, specific approach.

Also of concern is how to implement the requirement for municipalities to adopt policies to "ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." The other policy areas in section 111 of the bill make sense and are understood, but this particular one brings too much uncertainty. How would a municipal policy interact with the existing Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code? I think you will agree that we have a collective onus to make sure legislation does not take away or confuse existing rights.

We would recommend that subsection 270(1.6) be deleted in the absence of the ministry articulating what such a policy could and could not look like. Passing legislation that does not have a clear and practical implementation is not good public policy. Perhaps the province might want to test drive this policy internally first.

AMO strongly supports this bill's coming into force January 1, 2007, and expects that the Legislature will make this happen in a collaborative manner. Councils need the time, however, to prepare and consult with the public and then approve the various required policies in section 111 of the bill as we'd like it amended. This will take some time, so proclamation of this section should be delayed until 2008.

Let me address the open meetings component of the bill. As fellow politicians, you understand how important it is to be able to properly understand an issue before you put it to the public, let alone debate it in public. In fact, I expect each of you has had some time with staff to understand this particular bill. As caucuses, you've spent time learning about technical matters such as restructuring the electricity sector, for example, a very complex situation. When elected, your caucuses go to school to learn about government rules and processes. You get to ask the dumb questions, knowing that they won't be used publicly.

Like you, municipal councillors need the opportunity to do their homework and ask questions of staff so that they can better engage the public. AMO is pleased that this bill will allow such discussions as one of the closed-meeting considerations. You will hear from the provincial Ombudsman that he might seek oversight of Ontario's 445 municipal governments. I respect his principles about how an ombudsman's role in authority should be clear.

1640

A proposal to impose a provincial Ombudsman on municipal governments, however, would offend the spirit of Bill 130. The office of a provincial Ombudsman does not have a monopoly on integrity, nor is the province superior to municipalities when it comes to openness, transparency and accountability. Rest assured that if it is appropriate for the provincial Ombudsman to be appointed and paid by the provincial government, it is appropriate for a municipal ombudsman to be appointed and paid by a municipal government; if the provincial Ombudsman can be trusted to carry out his responsibilities, a municipal ombudsman can be trusted to carry out his or hers; and if the province can be trusted to respect the work of an ombudsman, Ontario's municipalities can be trusted to respect theirs. As professional organizations, it is in our collective best interest to do so.

The goal is valid. I simply believe that it can be achieved without having to resort to a provincial model run out of Queen's Park.

This presentation has centred on three values: trust and respect, accountability and predictability. Bill 130 can set a true, value-based framework that says that our respective governments are working together. The days of micromanagement, of one-size-fits-all, of over-legislating and over-regulating must be over. That is the challenge and that is the opportunity.

The Chair: You've left about two minutes for each party to ask questions, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you for the presentation. There are a couple of areas I just wanted to go to. First of all is the issue of the corporations and the ability of municipalities to incorporate special corporations to provide certain services for themselves or for others. I've had some concern expressed that municipalities may actually go into the private sector business world to set up a corporation to go into the constructing of roads and bridges

for themselves and for others. Do you see that as a possibility for a municipal government as this is written?

Mr. Reycraft: I don't think it's the intention of municipal governments to form businesses that will compete with the private sector to do work in both private and public sectors. I've not heard that from any of my municipal colleagues. I don't believe it to be the case.

Mr. Hardeman: But do you think it's possible in this bill?

Mr. Reycraft: It's probably something that's more likely to be addressed through the regulations that will be enacted under the bill. But if there's a need to clarify something like that to prevent municipalities from doing that sort of thing, then I don't think we'd have any objection to such amendments.

Mr. Hardeman: The other issue is the open meetings portion of the bill. You deal quite extensively with that. It is your contention in your presentation that this bill does expand the ability of council to have closed meetings. Is that right?

Mr. Reycraft: Yes, it does. It would allow municipal councils to have closed meetings to receive briefings from staff members to deal with technical information and have an opportunity to have discussions around various issues. But it does preclude them from making decisions in closed sessions regarding those kinds of issues.

Mr. Hardeman: I just wanted to point out—

The Chair: It has to be a really quick question.

Mr. Hardeman: We've just gone through a municipal election and I've seen a lot of debates, and have watched them fairly closely, about what the incumbents were going to do or stand for and what the challengers were going to do and stand for. I never heard one mention that what they really thought municipalities needed was more closed meetings to have discussions away from the public. I wonder why, then, the representatives of municipalities after the election would support having that put in place, to have more closed meetings.

Mr. Reycraft: We've certainly heard from our members that they support this particular part of Bill 130. We believe that municipal governments at the present time are by far the most transparent, open and accountable order of government in the country. I'm certainly aware of the opportunity for provincial parties to have caucus meetings to deal with issues which are of a nature that they're not yet ready to debate in public, and we think municipal governments should have that same opportunity.

The Chair: Thank you. Mr. Prue.

Mr. Prue: Just questions on that same thing, an open and accountable government: Having been a former mayor and councillor over many, many years, I don't ever remember having open meetings being a bone of contention or a difficulty. I don't ever remember anybody complaining that they had to ask dumb questions in public. I don't remember the public ever being upset, except when we went behind closed doors. I'm just flummoxed that you are taking this position.

Mr. Reycraft: Well, I'm not sure how much more I can tell you than I told Mr. Hardeman in my last response. I would suggest to you that a councillor might want to ask what is perceived to be a dumb question, and being required to do that only in an open session of council might discourage them from doing so.

Mr. Prue: All right. Another provision here in the bill which you haven't talked about but with which I'm intrigued is allowing members of municipal council to vote when they are not present. They can vote if they're on a beach in Acapulco, phone up and say, "I vote yes." That's just one example of what can be done.

What's AMO's position on that? Should councillors be allowed to vote from somewhere else in the world if they're not present at a meeting? It's in the bill.

Mr. Reycraft: Certainly, technological and communication advances make it possible now for councillors to join meetings either by teleconference or by audiovisual conference. The section of the bill would allow those who do that to vote as part of the meeting. I think it's a practice that's becoming more and more common within the business sector, within the private sector, and one that would allow municipal councillors who were, for whatever reason, away from a particular council meeting—in fact, I've got a council meeting going on in Southwest Middlesex at the present time. It would allow me the opportunity to join that meeting and to vote on a resolution that was put forward by a member of the council.

Mr. Prue: This would be, then, the only level of government that would allow it. If I'm not in my seat in the Legislature when the vote comes up, I can't phone it in. I'm sure the same thing is true of my colleagues in the House of Commons. Why is this good law for municipal councillors and mayors and bad law for other levels of government?

Mr. Reycraft: Here's an opportunity, Mr. Prue, for the province to blaze a trail.

The Chair: Thank you. Mr. Duguid.

Mr. Duguid: Mr. Reycraft, let me first congratulate you on your ascendancy to the presidency and chairmanship.

Mr. Reycraft: Thank you.

Mr. Duguid: Secondly, in your presentation you talked about mature orders of government. You talked about trust and respect as being core values of this legislation, and, frankly, I think they're core values of our government when it comes to our relationships with municipalities.

My question for you is this: Are municipalities mature enough to handle the responsibility to appoint and define the role of municipally appointed ombudsmen? In your experience, would a municipality likely appoint a less-than-independent person to that role, such as, potentially, an employee?

Mr. Reycraft: I think a municipal council that appointed an employee to be its municipal ombudsman would be committing political suicide. I cannot imagine a municipal council doing that. I would think what is likely to occur is that they will appoint a solicitor or a law firm

to act as a municipal ombudsman, and allow them to deal with complaints about open meetings that are forwarded to the council.

Mr. Duguid: In terms of the ability to handle the role and the definition of the role, are you confident that municipalities across Ontario are capable enough to define the role of their ombudsman in an effective manner?

Mr. Reycraft: I certainly believe they are. The municipal world has changed considerably over the last decade. We now are down to 445 municipalities in the province, which is less than half of that which existed back in the early 1990s. Municipalities, as a general rule, are larger than those that existed before the many amalgamations that occurred in the late 1990s and in 2001. They deal with a much greater range of responsibilities now than they did in those days as a result of transfer of the delivery and funding of certain services from provincial government to municipal governments. I believe that if they're capable to handle important issues like social housing and land ambulance, they're certainly mature enough to handle an issue like this one.

The Chair: Thank you very much for your deputation today. We appreciate your being here and your patience with us at the beginning of the meeting.

1650

REGIONAL MUNICIPALITY OF PEEL

The Chair: Our next delegation is from the region of Peel—Chairman Emil Kolb and Patrick O'Connor. When you begin, after you've introduced yourself and the organization you speak for, you will have 15 minutes. If there's time left over, we'll be able to ask you questions. Welcome. It's nice to see the region of Peel here at the table.

Mr. Emil Kolb: Honourable Chair and honourable members of the standing committee, it is my pleasure to appear before you on behalf of the council of the regional municipality of Peel to offer comments and suggestions for amendments to Bill 130. I thank you for the opportunity to appear before you today.

Regional council is broadly supportive of many of the enhancements which Bill 130 will bring to the Municipal Act. As you well know, the expanded and rebalanced regional council elected on Monday in Peel region will face many challenges as it goes to work on behalf of Peel residents in the city of Mississauga, Brampton and the town of Caledon.

On October 26, 2006, the ongoing regional council, while generally supportive of Bill 130, expressed a concern with how the new broad authorities provided to both Peel region and its area municipalities will operate in a two-tier municipal system. The essential point is that Bill 130 must protect the systems of both the region and its area municipalities from being frustrated by the use of the new broad authorities.

There is a gap in the protection. Systems operated under spheres of jurisdiction, such as transit at the local level and waste disposal and sewer and water at the regional level, are not adequately protected. No doubt common sense is likely to prevail, and the wide range of broad authorities will not be used by one tier to frustrate the system of the other. Bill 130 clearly intends, in section 13.1, to legally prevent this interference from taking place. But in the case of systems like transit, sanitary sewers or water, the protection is not there. There is a gap which the outgoing regional council has asked you to close, and it has even provided the wording which could be used to close the gap.

I have with me today Mr. Patrick O'Connor, one of our regional lawyers familiar with this matter. He can speak to some of the technical aspects of the concern and the solution we are asking you to use in closing the gap. With that, I'll turn it over to Mr. O'Connor.

Mr. Patrick O'Connor: Our presentation is focused on the use of the new broad authorities under Bill 130 in a two-tier municipal system and on the purpose of the act to provide good government in that context of two-tier municipal systems. As the committee members will be well aware, two-tier municipal government continues in many parts of the province, including Peel. This means that two municipal governments are serving the same constituents in the same geographic area.

The drafters of Bill 130 faced a difficulty. They had to adapt the broad authorities that had been developed essentially for the city of Toronto, a one-tier municipal government, for use throughout the province, including in a two-tier situation such as we have in Peel. So what happened, and what we see in Bill 130, is essentially an engrafting of the new broad authorities onto the existing situation under the Municipal Act. The existing situation is essentially that you have a well-defined separation of responsibilities between the two tiers. Those assignments of jurisdiction occur under what we call spheres of jurisdiction and they occur under express statutory provisions throughout the Municipal Act and many others.

Here we have the drafters attempting to provide broad authorities to both spheres without upsetting the division of existing responsibilities under the spheres of jurisdiction under the specific authorities, and they're also trying to do it without setting any kind of paramountcy rule, by which I mean that under spheres of jurisdiction one level of municipal government's bylaws will prevail over the other. It's the level that has the exclusive assignment of the sphere of jurisdiction that is going to be able to enact bylaws in that sphere of jurisdiction.

This creates a fundamental tension in Bill 130 because you're now faced with giving two levels of government plenary powers, broad authorities, in the same bailiwick without the two getting into each other's businesses, so to speak. How do you do that? In an attempt to do that, the drafters have set up a number of rules in the bill. Peel council is now expressing a concern that these rules are too uncertain and may lead to duplication, even litigation, between municipal governments. It's not an attractive scenario.

Bill 130 makes it possible to have one-tier municipal government exercising its broad authorities over the busi-

nesses of the other tier when that other tier has precisely the same set of broad authorities provided to it. If that is to be the case, there is a provision—Chairman Kolb has specifically alluded to section 13.1, which is particularly insufficient. Section 13.1 prevents the use of broad authorities by one tier to frustrate an integral part of a system of another tier, and that's a good thing, but it offers that protection only to a limited class of systems. That's the class of systems that are based on the broad authorities. I regret I'm getting a little bit technical here. In other words, section 13.1 does not protect from frustration systems which are based on spheres or on other statutory authorities. In effect, it doesn't protect from frustration all of the existing municipal systems, because the existing municipal systems are all based on either spheres or other statutory authorities. No municipal systems existing today, whether local or regional, county or town, enjoy the protection of section 13.1. We view that as something of an oversight, something that 13.1 doesn't intend to result in.

By way of a hypothetical scenario, in Peel this could see a regional bylaw enacted under the region's new broad authority over such matters as health and safety, frustrating an integral part of a local transit system. The flip side of the coin: It could see a local bylaw enacted under an area municipality's broad authority over environmental well-being frustrating an integral part of the region's waste disposal system. We say the provision intended to address that, 13.1, doesn't do the trick.

Peel's council is asking that Bill 130 be amended very specifically to extend the protection of 13.1 to all systems of both tiers in a two-tier system. That is to say no broad authority could be used to frustrate an integral part of any municipal system. Regardless of whether that system is based on broad authorities, spheres or other statutory provisions, I think it just makes good sense.

That is the wording we've proposed in the resolution that's been attached to the written submission that I hope you'll all have received, and that is the request that we respectfully submit.

The Chair: You've left a little over two minutes for each party. We'll begin the questions with Mr. Prue.

Mr. Prue: You are right that it was a little arcane. I was trying to follow it as best I could. I just want to clarify: At the bottom of page 2 of the written submission, the boldface, is that the amendment you would like made—

Mr. O'Connor: No.

Mr. Prue: —or is the amendment on the back page?

Mr. O'Connor: The amendment is in appendix A, and it gets even more arcane and technical. It's wording that's suggested for section 13.1.

Mr. Prue: So you are requesting, then, just so I have it clear, that the committee delete 13.1 in its present form and substitute instead what you have contained in appendix A?

1700

Mr. O'Connor: Yes.

Mr. Prue: That will resolve the difficulties for the region of Peel.

Mr. O'Connor: It would.

Mr. Prue: Okay. Have you been in consultation with other regions with two-tier governments, and do you know whether or not they're in concurrence with what you have said?

Mr. O'Connor: I can't say we've had that level of consultation. We have had some discussion of this matter with representatives of the area municipalities within Peel. I can't address the implications for other municipalities.

The Chair: The government side.

Mr. Duguid: You're quite right when you say it was a challenge for the government to extend broad authorities to municipalities, which I think all of us support, and how do you do it with the two-tier systems, all of which are different in one way or another, so there's no standard two-tier system out there.

I've listened closely to your argument and certainly we'll take a close look at what you're suggesting. My understanding, though, of the legislation is that the programs that are currently provided within certain spheres, whether the regional government or the local government are providing that service, are protected and the status quo remains. You're suggesting that that protection is not complete, I think.

Mr. O'Connor: Yes. I think that intention is evident in the bill and there's a gap or a failure to achieve it because 13.1, which is one of the provisions that you used to achieve that end, is limited in a way that is unfortunate and we think should be removed.

Mr. Duguid: You're a lawyer, and far be it from me to argue with you on this, and I don't plan to because we'll certainly take a good, close look at it and get our legal staff looking at it. But again, my understanding of the way it's written, though, is that if the region of Peel looks after snow clearing, for instance—just an example; I don't know if they do but they probably do—that would remain the same and the lower regions would not be able to interfere with that the way it's written.

Mr. O'Connor: We think that's the policy the bill is aiming at and hasn't quite achieved it. We're trying to help you to get there.

Mr. Duguid: Okay, and you're supportive of most of the rest of the bill?

Mr. O'Connor: Yes.

Mr. Duguid: We appreciate that. Thank you.

Mr. Hardeman: Thank you for the presentation as it relates to the two-tier structure and the need to clarify that. I would totally agree with you that it's important, on the shared responsibilities, to make sure that one party doesn't disagree with the other and hold up the whole process because of it.

I just wanted, being municipal representatives, to touch on a couple of the other ones. In the region of Peel, the issue of closed meetings: Has that been a problem in the past, where the municipality was unable to get their discussion done or councillors were not speaking out because they had to speak out in public?

Mr. Kolb: I think there's always a fear that if you go into a closed session, you're going to be making decisions there that you're not going to be making in public. But in the process that we have, certainly in the 16 years that I've been chair at the region of Peel, we have followed the rules and procedures very closely. But, as I think was said in the previous presentation, there are times when it would be appropriate to have technical advice from your staff or from your legal counsel if you have difficult situations to deal with, which maybe some councillors don't understand as well as other councillors may understand, and to make sure that they understand what it is.

I don't find today that in camera meetings are very in camera meetings. Usually by the time you get out of your seat, it's already out in the news anyhow. So the best thing to do is to follow the process that is there and recognize—I think—that AMO is speaking on behalf of the municipalities. If there is a situation as it was described, maybe there really is no provision to do that. Rather than doing it illegally outside the legislation, you'd be better to have the legislation recognize that there are no decisions to be made in camera. That discussion is very important.

Mr. Hardeman: It seems strange to me that we keep talking about the discussion that takes place between staff and the councillors, that that's why we need to go into an in camera meeting. My understanding was that information from staff is available to any individual councillor in private any time they deem it appropriate. We're talking about council getting together and discussing the issue at hand and going behind closed doors to do that. Do you think there's a need for that?

Mr. Kolb: There are certainly times when there are very technical issues you have to deal with, and you need advice from your technical people or from your legal people on how to deal with those matters. We've had some very touchy issues in Peel. I appreciate the presentation that AMO made on how you deal with that appropriately within the law. There is freedom of information available, as you know, which anybody can ask for, and if something is inappropriately done, you can discover that through freedom of information. So I don't disagree with what AMO is asking for at this time.

The Chair: Thank you, Mr. Kolb and Mr. O'Connor. We appreciate your being here today.

ONTARIO GOOD ROADS ASSOCIATION

The Chair: Our next delegation is the Ontario Good Roads Association—Mr. Tiernay. Welcome, gentlemen. Please make yourselves comfortable. I only have one name here, so if you could identify yourselves and the organization you speak for before you begin. You'll have 15 minutes, and if you leave time at the end, there'll be an opportunity for us to ask questions.

Mr. Tony Prevedel: Thank you very much, Madam Chair and members of committee. My name is Tony Prevedel. I'm director of public works for the town of Whitby and president of the Ontario Good Roads Association. With me today is Joe Tiernay, the executive director of the association. I intend to make some general comments on Bill 130, and then Joe will comment in a little bit more specific detail on the bill. We're very pleased to be here this afternoon.

At the outset, I would like to say that our association supports Bill 130, not only the road-related provisions but the broader municipal provisions as well.

We represent over 400 Ontario municipalities, including all the small, rural and northern municipalities, right down to the city of Toronto. One of our mandates is to advocate on behalf of the transportation infrastructure concerns of municipalities.

In 2004, we participated on AMO's steering committee that prepared a report on what a new Municipal Act should contain. We supported the nine principles for achieving a mature relationship as the basis for a new Municipal Act, as well as the yardstick against which all municipally related legislation should be measured. We do have some specific concerns on some of the recommendations that we plan to comment on, and I'm going to turn the floor over to Joe to speak specifically.

Mr. Joseph Tiernay: Thank you, Tony, Madam Chair and members of the committee. First off, I want to say that OGRA supports the granting of broad powers to municipalities. We recognize that these broad powers make several specific powers unnecessary. Additionally, several sections have been repealed and replaced with the broad powers. We are also aware of the changes to the notice provisions, and OGRA stands ready to assist our municipalities in the preparation of notices required for all road and infrastructure-related matters.

As a general comment regarding the seven policies that must be developed by municipalities, we concur with others that the date of January 1, 2007, will be problematic. For example, the policy dealing with property and civil rights will impact how municipalities deal with their roads, particularly as it affects abutting property owners. This particular policy seems unclear in its intended scope, and may result in municipalities adopting policies that would not adequately address all foreseeable situations. We recommend that Bill 130 should be amended to provide that these policies do not come into effect until a later date. OGRA is prepared to work with the ministry to address these concerns.

I want to specifically mention section 44 of the current Municipal Act. This section deals with municipal liability and contains authority for the Minister of Transportation to establish, by regulation, minimum maintenance standards. In previous submissions on amendments to the Municipal Act, OGRA has strongly recommended that this section remain in place so that minimum maintenance standards continue to be set by regulation. It is OGRA's position that the standards will be more difficult to challenge in court if they remain established by regulation. The standards provide a degree of uniformity and standardization that can only assist in improving public safety. It remains our position that, in this case, a

greater good is served by a uniform standard. OGRA would like to commend the minister for retaining this section.

1710

I also want to comment on the amendments to the Line Fences Act that are contained in schedule D of the bill. OGRA is disappointed that section 20 remains in the act. Bill 130 proposes two amendments to this section of the Line Fences Act that are intended to curtail fencing demands from adjoining landowners. Municipalities are still, however, responsible for constructing, keeping up and repairing the fences. This provision seems to be somewhat at odds with the government's trail strategy, which promotes the use of trails for economic development purposes, physical activity and an enhanced quality of life. In our opinion, the use of trails is threatened by various lawsuits claiming liability against municipalities and other trail owners. We believe the Occupiers' Liability Act should be amended to establish that those using trails do so at their own risk.

During the stakeholder meetings on the Line Fences Act, headed by Dr. Wayne Caldwell, it became clear that the majority of concerns of adjoining landowners and farmers centred around trespassing and landowner liability. If the concerns of trespass and liability are addressed through amendments to the Occupiers' Liability Act and the trespass act, section 20 of the Line Fences Act could be removed since it would no longer be necessary.

Notwithstanding these concerns, OGRA is very pleased to provide comments on Bill 130. We hope our comments will be useful, and we would be pleased to answer any questions you might have.

The Chair: You've left about three and a half minutes for each party, beginning with Mr. Leal.

Mr. Jeff Leal (Peterborough): I must say, Joe, it's good to see you again. I had the pleasure of working with Joe when I was a city councillor in Peterborough and Joe was the CEO of the county of Peterborough. We had a very good and long-standing relationship.

I'm interested in the Line Fences Act. Joe would know that in Peterborough county we had the issue of the abandoned rail lines, the development of trails and people wanting fences to curtail intrusions onto their properties. Joe, in terms of doing that and the liability issue, have you got any more additional thoughts on that than what's in your written remarks here?

Mr. Tiernay: All we know is that municipalities are still reluctant to proceed with the development of trails because of that issue, because of costs associated with fencing and the liability associated with that. Property owners obviously have their concerns, but we think the issue is better addressed through the trespass act or the Occupiers' Liability Act rather than the Municipal Act.

The Chair: Mr. Duguid.

Mr. Duguid: Just further to that, I'm trying to understand your issue here. It's the Occupiers' Liability Act that the liability falls under; is that correct?

Mr. Tiernay: I believe so, yes.

Mr. Duguid: Or is it a series of acts? I'm not quite sure, but I think that's it. What does that have to do with the Municipal Act and the changes we're making here? What is the linkage? Is that not something that should come under amendments to another act altogether? Maybe you could inform me further on that.

Mr. Tiernay: The issue we raised today is that, under the proposed Bill 130, the provision is still there that municipalities are responsible for the constructing, upkeep and maintaining of fences on trails. We think that if the other legislation was amended to put the liability associated with the use of trails on the users thereof, you could remove that section from the Municipal Act, thereby removing a financial burden and a possible impediment for the development of trails in Ontario.

Mr. Duguid: Have you had any discussions with the Attorney General's office or the Ministry of Health Promotion on this at all? Have you had an opportunity?

Mr. Tiernay: No, we have not.

Mr. Duguid: I appreciate that. Thank you.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you for your presentation. I too want to question you a little bit on the Line Fences Act. It seems that your interpretation is totally opposite from what I interpreted the act as being intended to do. Presently, all the railroad rights-of-way have an obligation to keep fences repaired on both sides of it.

Mr. Tiernay: That's correct.

Mr. Hardeman: This act limits that liability, or that responsibility, to future owners. It applies the Line Fences Act to that section where the adjoining property owners will have to pay for half the fence. The fence will be there where it's required; where it's not required, it won't be there. I don't understand from your presentation what the Line Fences Act has to do with liability.

Mr. Tiernay: I'll go back to, as Mr. Leal mentioned, my stint in Peterborough county. The county was looking at taking over ownership of several old rail trails to develop trails through Peterborough county but was reluctant to do so. Each of the area municipalities was reluctant to do so because once they took ownership of those lands, they would then be required to fence them in order to maintain safety for the users against the property owners.

Mr. Hardeman: That's the way I see it too, but without this section they will not only have to deal with the Line Fences Act but they will have to put a fence on both sides of the right-of-way for the total length of the right-of-way if they want to take it over for a trail, because that's the obligation that was put there when it was a railroad. This actually limits that responsibility so that they only have to do it where it's required by the adjoining property owner.

Mr. Tiernay: Which pretty much covers the entire trail.

Mr. Hardeman: Presently, the Line Fences Act does not apply to the fence along the railroad. With this, the Line Fences Act will apply, which is that both sides of the fence have to help pay for the fence. So I see this as a

positive, and I just caution you that if we take this out, it will make it, in my opinion, worse for the railroad right-of-way.

Mr. Tiernay: That's not the legal opinion we've received.

Mr. Prue: I really don't have a question; they've all been asked. I would just ask staff if they could please clarify the dichotomy between what Mr. Hardeman believes is in the bill and what the deputants believe is in the bill. I think we need to absolutely know what the impact will be. I would simply ask that and thank the deputants for their time.

The Chair: We'll get an answer for you.

Thank you very much, gentlemen, for being here.

OMBUDSMAN ONTARIO

The Chair: Our next deputant is the Ombudsman's office, Mr. Marin. Welcome. If you could identify yourself and the office you speak for, you'll have 15 minutes. Thank you very much for coming.

Mr. André Marin: Thank you. I'm André Marin, the Ombudsman of Ontario. I'm accompanied, to my right, by Wendy Ray, who is senior counsel, and to my left, by Barb Finlay, the Deputy Ombudsman of Ontario.

I thank the committee for allowing me the opportunity to address Bill 130 today. I intend to make a presentation and then answer any questions you may have. I am grateful to the committee for having granted me an opportunity to make submissions. I will confine my comments to one of the two issues that concern me, the municipal ombudsman provisions. I've asked for another appearance at which I would address the open meetings provisions, which fundamentally alter my jurisdiction as Ombudsman of Ontario.

At the time Bill 130 was introduced, I commented that the proposed amendments ensuring that municipalities hold public meetings and authorizing municipalities to create their own ombudsmen fell short of the mark. While purporting to introduce a degree of accountability into municipal administration, I believe these measures, as currently drafted, are fatally flawed and would result in an unfair, inequitable and unsustainable patchwork of procedures throughout Ontario.

Bill 130 proposes that municipalities would have the authority to create their own ombudsmen. While the city of Toronto, under the city of Toronto Act, 2006, will be required to create an ombudsman, this official is optional in other jurisdictions.

The Premier and the Minister of Municipal Affairs need to be applauded for their stated intention to increase oversight in the municipalities. The devil, however, is in the details.

As it currently stands, the proposed municipal ombudsman model is deficient and offensive to basic principles of oversight. There is a real danger that if the bill goes forward unchanged, Ontario will be left with a system of municipal oversight plagued by inequity, inconsistency and ineffectiveness—a far cry from what is intended by the government.

The current legislative proposal is severely flawed. It does not secure a basic tenet of oversight, the independence of the ombudsman. In fact, quite the contrary: Municipal ombudsmen can actually be city employees. An ombudsman is intended to be a watchdog and not a lapdog. Municipalities should not be allowed to use the goodwill associated with the name "ombudsman" to create public relations departments cloaked in the mantle of ombudsmen.

The proposed legislative framework creates an impotent oversight office in many respects. A fundamental defect is that the ombudsman powers and authority are not set out in legislation. Even though what is required is well known, municipalities are free to establish the powers and duties of their ombudsman. Indeed, the function provisions leave it to municipalities to decide when the ombudsman can conduct investigations. Municipalities can confine the kinds of investigations their ombudsmen can conduct by limiting them to specific complaints or preventing "own motion" investigations.

1720

The real test of an ombudsman's office is whether or not it possesses the four cornerstones that underpin all true ombudsman offices. These cornerstones are: independence, impartiality, confidentiality and a credible investigative process. I would like to propose to you that these cornerstones be incorporated in Bill 130 to ensure that Ontario's citizens have access to credible and effective ombudsmen at the municipal level.

We are not talking here about micromanaging details in municipalities. We are talking about supplying a framework to protect the meaning that's intended by the government in proposing this bill.

Contrary to what Bill 130 would allow, under no circumstances should ombudsmen be employees of the organizations they oversee. They should have a fixed term, adequate resourcing and operational independence. The ombudsman should have broad investigative authority, including the discretion to report publicly. A disciplined and consistent approach is required to ensure that the citizens of Ontario have access to fair, equitable and sustainable oversight measures.

As mentioned to you previously, the four cornerstones of true ombudsman oversight are independence, impartiality, confidentiality and a credible investigative process. They are necessary elements for an effective and accountable ombudsman office. They are all captured in the Ombudsman Act of Ontario. There are many complaint resolution mechanisms in the private and public sectors that are touted as ombudsmen but that are really consumer relations bureaus. While these may serve a useful purpose, they should not be confused with the role of an ombudsman.

Contrary to other oversight bodies such as auditors, there is no professional regulation of ombudsmen. Anyone can hang up their shingle and call themselves an ombudsman. There are hundreds of examples throughout

the world and in North America of such circumstances. In modern society, there has been a proliferation of complaint bodies using the term inappropriately. In some jurisdictions, by law, they have restricted the use of the name "ombudsman" to ensure that only those displaying the fundamental characteristics of an ombudsman can use that name.

Independence is often referred to as the hallmark of ombudsmanship. It is typically reflected in operational and financial independence. The ombudsman should be able to contract for services, hire staff, have security of tenure and have adequate financial resources. The ombudsman should not report through a body that the ombudsman is responsible for reviewing. The ombudsman's conduct should be free from actual and perceived interference.

Impartiality follows independence. Ombudsmanship does not involve advocacy on behalf of complainants or agencies, but rather the principled pursuit of reasonable and fair administrative process and good government.

The ombudsman's reviews and investigations must be carried out in private. Confidentiality guarantees protection for complainants and co-operation from authorities. It fosters accessibility and engenders trust in the ombudsman process. It makes the ombudsman a unique and safe place to turn. The ombudsman must be exempt from any relevant access to information legislation and not compellable, in law, to protect the integrity of the process. Only the ombudsman should have discretion to disclose information about his investigations where appropriate in the public interest.

The ombudsman requires clear investigative authority in order to carry out thorough fact-finding work. The ombudsman should be able to compel disclosure of information and to inspect. There should also be sanctions available to deal with individuals or organizations that fail to comply. In addition, the ombudsman should be able to deal effectively with any reprisal against whistle-blowers.

A municipal ombudsman scheme that does not possess these cornerstones will result in ombudsmen in name only. Such schemes will not have the tools available for them to deal with serious issues that will inevitably arise from time to time. They will not be credible, either to those overseen or to the public at large. They will not meet expectations. That is not the oversight that Ontarians deserve.

The United States Ombudsman Association, of which many members are Canadian governmental members, has developed governmental ombudsman standards that flesh out in much greater detail these four cornerstones. I've provided copies to the committee for your perusal.

In addition to providing the parameters for the proper set-up and functioning of municipal ombudsman offices, the province should provide an avenue of complaint to the provincial Ombudsman on the basis that a municipality has failed to abide by the legal standards set by the province in creating an ombudsman's office. This would ensure that the city of Toronto and other municipalities which either must set up or may contemplate setting up an ombudsman office are accountable for the way in which they do so and that the offices are effective and meaningful. This would safeguard against the temptation to take shortcuts in setting up ombudsman offices.

I'd propose that if a municipality does not appoint an ombudsman, citizens should have recourse to the provincial Ombudsman to complain about its administration.

The citizens of Ontario deserve a strong, credible, independent oversight mechanism to deal with complaints about municipal government administration. Accordingly, I'm making the following recommendations:

First, minimum standards should be established under Bill 130 to ensure that ombudsmen appointed at the municipal level are able to provide credible and effective service to Ontario's citizens.

Second, Bill 130 should provide an avenue of complaint to the provincial Ombudsman on the basis that a municipality has failed to comply with legislated standards.

Third, Bill 130 should provide that when a municipality has not appointed an ombudsman, citizens may complain to the provincial Ombudsman about that municipality's administration.

Once again, I would like to thank the committee for allowing me to provide my views on this one aspect of Bill 130. I believe that the importance of effective municipal oversight cannot be overestimated. This committee has an opportunity to ensure that genuine oversight of municipal administration is achieved through Bill 130. Ontarians need real municipal ombudsmen. There is no point in introducing window dressing, regardless of the fanfare that accompanies it.

The government has stated many times that this bill is not written in stone and that it will be open to suggestions to improve the proposed legislation. This committee has a unique opportunity to have its voice heard loud and clear to ensure that oversight of municipalities is not compromised by hastily developed provisions that will defeat the otherwise honourable intentions of the Municipal Act amendments.

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

Mr. Hardeman: Thank you very much for the presentation.

Obviously, we've already heard from some presenters from the municipal government that there is no need to have the provincial Ombudsman be responsible; that municipalities would appoint an ombudsman to do the job. You point out in your presentation that your concern is that they will not be able to appoint the type of structure that will accomplish what you would like done.

Could you tell me, if they do everything properly, what would be the difference between there being a municipal ombudsman office and municipalities using the provincial Ombudsman's office for the same purpose? If it was properly structured, why would it still benefit municipalities to have their own?

Mr. Marin: A properly structured municipal ombudsman should have the same look and feel as the provincial Ombudsman. The province should take a leadership role by at least setting basic standards. We're not talking about micromanaging. But why would 445 municipalities which have varying resources create the same kinds of offices? You're going to have 445 different offices; my concern is that there be minimum standards to allow municipalities to do the right thing and to set them up properly.

Mr. Hardeman: Again, to clarify, if you have a completely independent ombudsman, does it really matter whether the title is provincial Ombudsman or municipal ombudsman?

Mr. Marin: No. In my submission, I'm not challenging the bill's intention to allow municipalities to have their own ombudsman; what I'm saying is that there's a very strong public policy reason to do it properly. That's the interest that I'm representing today.

Mr. Prue: You have requested a second time frame, and although I support that, I'm not sure you're going to get it. So I would like, in my minute and a half, to ask you about the other aspect, because it's equally troubling to me, that of meetings closed to the public. What is your position on that? Sorry, I've got a minute and 15 seconds.

1730

Mr. Marin: The way the legislation is set up, any municipality can oust the jurisdiction of the Ombudsman simply by appointing their own investigator, who can also be a city employee. If the objective of the legislation, as stated by the Premier, is to increase accountability, there's no accountability there. You can appoint your own city employee to be your own investigator, and there goes the jurisdiction of the Ombudsman.

Secondly, I think to do this properly to increase accountability, if this is a jurisdiction that the province wants me to have, it should be as part of my role as Ombudsman. If someone wants to complain about open meetings, they should just avail themselves of the Ombudsman Act. There's no need to redefine the wheel. All you'd need is an amendment to the Ombudsman Act saying that citizens of Ontario who have a complaint about open meetings can avail themselves of the Ombudsman Act and the procedure set up by the office. It's as simple as that.

Mr. Prue: But within the four walls of this legislation, it allows not only for meetings to be closed to the public but it also allows people who aren't even present at the meeting to vote. Do you have any position on that?

Mr. Marin: No, I don't have any position on that. I'm more concerned with the aspect that right now to say that this gives this new, grand power for the Ombudsman of Ontario to police open meetings is an illusion. If that is the intention of the legislation, it should say so clearly and be part of my normal jurisdiction, not a jurisdiction that could be ousted by a municipality appointing their own investigator beholden to that particular municipality.

Mr. Duguid: I want to thank you, Mr. Marin, for coming forward with recommendations to us and a very thorough analysis of some of the issues here. I want to thank you for your proactivity in this.

My first question is along the lines of what the cornerstone of this particular legislation is, and that's respect for the maturity of municipalities across the province. I'm trying to square that with your suggestion that the municipal Ombudsman model is deficient and offensive to the basic principles of oversight. Is that not assuming that municipalities will be irresponsible with this new power? Is it your view that there's a good chance municipalities will act irresponsibly in appointing an Ombudsman?

Mr. Marin: I think we have to be realistic that the city of Toronto has resources that the city of Thunder Bay doesn't have, that the city of Ottawa doesn't have. I think that to not provide guidance here is to invite everyone to structure it according to their resources. The act allows the ombudsmen's offices to be delegated the exact power that the municipality decides. I think what you would be hearing from municipalities—I'm not suggesting at all that there is any kind of pernicious motivation on the part of municipalities. But the reality is—it's in today's paper—that municipalities are cash-strapped. The temptation to set up an ombudsman's office with no backbone, no structure, is something that the province should take a lead on, just like the province is taking a lead on open meetings. You could say the same thing: Why is the province not just allowing municipalities to decide when they have open meetings or not?

The province is setting some standards. What I'm advocating is that there should be some standards set for municipalities as well as to how to set up an Ombudsman's office. Throughout North America—cities, universities, corporations, government departments—there is a history that's well established, in the hundreds, of those organizations that are noble, trustworthy and have the confidence of the public taking a shortcut when it comes to setting up ombudsmen's offices. So I think we should be inspired by the history and try to show some leadership on this issue.

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

GREG LEVINE

The Chair: Our next delegation is Mr. Greg Levine. Welcome. Make yourself comfortable. Do you speak for a group or are you independent?

Mr. Greg Levine: I am independent.

The Chair: Okay. Great. If you could state your name for Hansard, when you begin you'll have 15 minutes. If you leave time, there will be an opportunity for us to ask questions.

Mr. Levine: Thanks. I'll try to be brief. My name is Greg Levine. I'm a lawyer in London, Ontario, and Southampton, Ontario. I have some expertise in government ethics law. I've been doing it for about 18 years, various parts—code of conduct, conflict of interest, ombudsmen and so on. I was the general counsel to the

provincial Ombudsman in British Columbia for nine years. I advised the city of Toronto, prior to going to BC, on ethics issues and so on. So I come to this with some interest in the accountability provisions, and that's all I want to speak about today. I agree with most of what the Ombudsman has just said about the ombudsman part, so I'm going to be very brief in those bits of my comments.

Bill 130 introduces a discretionary accountability system, which has positive elements but many gaps. Left as it is, the bill runs the risk of not being used—because it is discretionary—of not dealing with ethical questions, which are of pressing public concern, and of creating the appearance of establishing effective ethics systems without actually doing so.

A couple of general things, one of which the Ombudsman has touched on: What he said about the ombudsman and independence is true of all of the officers that are being created. The three that I'm interested in are the integrity commissioner, the lobbyist registrar and the ombudsman. The administrative law literature and the practice of these kinds of offices indicates that independence is critical, and independence is not enshrined in these statutes, in these sections of the statute. The provincial Ombudsman is an officer of the Legislature. I would suggest you should make something like an officer of the council position. You need mandatory fixed terms. You need fixed salaries. You need budget lines fixed for these offices if they're not to be simply tools. I'm thinking of this from a public point of view, as well as someone who's been involved in this stuff.

The comment I heard when I first sat down here while you people were debating whether you'd go on today or not—that AMO is the major stakeholder—isn't right. The public is the major stakeholder. The public matters, and you have to have credible institutions for this accountability stuff to work, and they aren't.

On the ombudsman stuff, just briefly, I think there are some things—and I have 14 recommendations here; I'm not going to run through them all. The idea of standards: There should be an administrative justice code within the ombudsman piece, just as there is in provincial legislation. There should be an established code of refusal as well in the legislation so that we know why the ombudsman is refusing to investigate. There should be a complaints mechanism. If you look at the ombudsman section, there's no complaints mechanism. Is this a public entity or not? It doesn't have to be, and many ombudsmen are not. They're employee ombudsmen or, as the Ombudsman said, they may be consumer and somewhat public, but not necessarily public. So that's my comment on the ombudsman piece.

I've talked about and stressed independence. Related to that, a problem that I'm hearing a lot about from councillors and the public is, who can afford these? That was something that the Ombudsman also alluded to. The bill doesn't prevent municipalities from banding together to have a regional ombudsman, but it doesn't promote it either. I would strongly suggest that you consider having some sort of multi-municipality or regional accountability officer possibility in the legislation to encourage that.

I'm going to go backwards in my presentation, actually, so I'll go to the lobbyist registry. There is no definition of lobbying in this bill; it just asks the municipalities to define lobbying. There's a debate that's gone on in Toronto in the last while. They haven't settled on what lobbying is, as many of us know, but it shouldn't, in my view, include unpaid lobbying. Paid lobbying is the focus of all other lobbyist registrations in North America, and it will be very interesting; Toronto is on the cusp of adopting a system which will actually try to regulate unpaid lobbying. I think that's a road you don't want to go down. So I would put in this bill, and in the Toronto bill, that it's only to regulate paid lobbyists.

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It's interesting that the other two officers—the ombudsman and integrity commissioner—are required to report to council, but the lobbyist registrar isn't. Why? I don't know why. It should be required to report to council. That's a piece of the independence puzzle.

The last thing I'll mention is a big thing. It's about the integrity commissioner and about conflict of interest. What's being set up here has the potential to be a very confusing system. Pecuniary conflict of interest is dealt with by the Municipal Conflict of Interest Act. The code of conduct that can be established under municipal legislation can deal with apparent conflict of interest, and it could deal with private conflict of interest. So what you've got is a potential for different systems to deal with conflict of interest—by the municipality or by the court. I just think there is serious potential for confusion here. I can also tell you, as a lawyer who gets called at least a couple of times a month by citizens and residents worried about conflict of interest, that it is by far the most pressing ethics issue, and it's not dealt with in Bill 130 and you've left ground open for real, serious confusion. If you don't believe that, you should look at what the integrity commissioner is being asked to do in the city of Toronto.

Those are my thoughts, very briefly.

The Chair: You've left about two and a half minutes for each party to ask questions, beginning with Mr. Prue.

Mr. Prue: Thank you very much—an intriguing idea of a regional ombudsperson. Are you looking at this as upper tier in those places that have upper-tier governments?

Mr. Levine: You could do it that way, but even two lower-tier municipalities could band together theoretically.

Mr. Prue: And I guess kick in whatever the approved money was and then sort of leave the ombudsman alone, because I do recognize what Mr. Marin had to say. So it would be merely a funding mechanism.

Mr. Levine: Yes, I think so. Are you getting at what functions they would also expect—they'd have to agree on the function.

Mr. Prue: Well, yes. That's where I'm trying to get to.

Mr. Levine: I think they would have to, but I do support what he also said about having a serious parliamentary ombudsman.

Mr. Prue: Okay. The definition of lobbyist: I was a mayor and then a member of the megacity council of Toronto in its first term and a half. There's a very difficult definition of what constitutes a lobbyist. Is someone coming from a church group saying, "You've got to do more to help the poor," a lobbyist? In my view, I never really quite considered them to be the same kind of lobbyist as Jeff Lyons when he would come to my office on behalf of some mega corporation seeking contracts. There was quite a difference. One I would see—the church person—the other one I would not, because in my mind I knew the difference. In your mind, is there a difference? Should we be including somebody from a church group seeking to help the poor as a lobbyist?

Mr. Levine: You see, I wouldn't put it that way because somebody from a church group could be a paid lobbyist. I think the reason that, almost worldwide, lobbyist registries deal with paid lobbyists is that it's about people being able to use resources other than their own to influence public policy and overwhelm public policy through hiring people to represent them. I think that's what I would want to capture in a lobbyist registry. I understand that there can be influential unpaid people; I do understand that. But I don't think I would go there. It is a basic right of a resident of a municipality and a citizen of the country to contact people, and I don't think I'd want to get into trying to register every conceivable contact from an unpaid person.

Mr. Kevin Daniel Flynn (Oakville): Thank you, Mr. Levine. I enjoyed the presentation. I spent 18 years on council in the region of Halton, town of Oakville, and conflict of interest was something that was very, very clearly understood by anybody I served with. It had never been a question in 18 years. You're saying the experience is different.

Mr. Levine: I don't agree with you at all, sir, because I get calls from councillors and the public, and they don't understand it.

Mr. Flynn: But have you ever seen an offence of that act in the region of Halton or the town of Oakville?

Mr. Levine: Have I ever seen an offence? I can't answer that.

Mr. Flynn: Have you seen anybody offend that?

Mr. Levine: I can't answer that, no. I can't answer that. I'm not in Oakville.

Mr. Flynn: Okay. It's tempting to drift into the theoretical or the academic—

Mr. Levine: It's not theoretical, though.

Mr. Flynn: Well, it certainly is in our case in Oakville.

Mr. Levine: Well, that's interesting.

Mr. Flynn: I'm just wondering about the independence and the Ombudsman. Where does a person go when they think they've been treated unfairly by the Ombudsman?

Mr. Levine: In BC you go to the Speaker of the House.

Mr. Flynn: Okay. What is the remedy in Ontario currently?

Mr. Levine: I would assume you'd do something similar.

Mr. Flynn: The only practical experience I can think of in my own community of what's being talked about today is the ombud position at our local hospital, if somebody thinks they've been treated unfairly: They've gone into emergency and they've waited too long or they got the wrong procedure or the ambulance was late or whatever. My experience has been that people aren't always pleased with the answer they get, but I've yet to—here again, in the 18 years I've been in elected office—have a complaint about the process. The decision is one thing, but people seem to have been accepting of the process that's been set up by the hospital. Is there a reason that could not be done by other regions or towns or cities?

Mr. Levine: No, I don't—I was trying to suggest how you would structure it so it would be more effective, but I've heard lots of complaints about university ombudsmen.

Mr. Flynn: Is that right?

Mr. Levine: Yes. So it really does depend on the structure. University ombudsmen, if I can—I don't know a lot about hospital. I know a certain amount about American long-term-care ombudsmen. In the university system, they range from a legislative type—Laval has somebody who is actually the equivalent of a provincial Ombudsman because it's a legislated position. Other places have ombudsmen who only deal with student issues; they can't help employees, they can't help members of the public who have a problem with the university. Some are investigators; some are mediators. There are all kinds of different roles. I think it's a problem, if you're saying we want a full complaints system for municipalities, if you're just going to say they can do what they like.

Mr. Flynn: Is there a—

The Chair: Thank you. I'm sorry, Mr. Flynn. Mr. Hardeman?

Mr. Hardeman: Thank you very much. I just want to continue on with the comments about the Ombudsman and where you go after the Ombudsman. I think we would all agree, provincially, in Ontario, that's the end of the line. When a citizen has a complaint, the Ombudsman looks at it as to whether something can be done about it and that's the end of the line.

I'm just a little concerned. In your opinion, will how the Ombudsman is appointed and who they're working for have an impact on the public's confidence when they don't agree with what council has done and they know that the person they are going to complain to was appointed by council and works on council's behalf? Are they going to feel as confident that they're going to have their complaint dealt with fairly?

Mr. Levine: I think they could, but it does go to setting the conditions of independence. It really goes to that problem. I think you'd want an appointment process that wasn't—there's nothing about the appointment process in the bill, and you would want an appointment process that council actually makes the appointment and a significant majority of the councillors make the appointment. I think you really need something like that, as well as a fixed term that goes beyond council.

Mr. Hardeman: I would agree, and you mentioned the other issue about the conflict of interest and the need to deal with that. And you're right. I've been a number of years in this business, both municipally and provincially, and now in my office, when we get calls about municipal government, I would say what at least 50% of them are about is that they believe someone is in a conflict of interest, and presently there is no way of dealing with it, other than with the courts. In your opinion, does this bill provide any relief for that?

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Mr. Levine: Not really. If you want to deal with pecuniary conflict of interest, it may be that the municipality will empower its integrity commissioner to give an opinion, but the process is laid out in the Municipal Conflict of Interest Act. What we've seen in Toronto is that they've tried to divorce the pecuniary interest piece and the conflict-of-interest piece from the rest of the code of conduct because they know you have to deal with it through the Municipal Conflict of Interest Act. I do think it's a huge problem.

Can I just speak to "There are no problems in Oakville"? I don't know Oakville but I—

The Chair: I'm sorry, Mr. Levine. Your time has expired. I appreciate your being here today. It was a very entertaining and interesting delegation. Thank you very much.

Committee, our next delegation, the County of Middlesex, Western Ontario Wardens' Caucus, was unable to attend today. We are trying to reschedule them.

That brings us to the point in our committee where we are going to be dealing with Mr. Hardeman's motion, which is with regard to giving the Ombudsman an additional 15 minutes. Mr. Hardeman, did you want to speak to the motion?

Mr. Hardeman: Thank you very much, Madam Chair. The motion is self-explanatory. When the Ombudsman was in today to make the presentation as it relates to the position of the Ombudsman as in the bill, I think he was quite clear that he had more to say on other parts of the bill that I think we should hear.

The parliamentary assistant suggested that it wasn't necessary because the Ombudsman has spoken to the minister and the minister has taken that into consideration as he's preparing amendments and so forth, and I'm quite prepared to accept that as a fact. At the same time, the Ombudsman's coming here made a point that he would like to have the opportunity to speak 15 more minutes on other issues within the bill. So, obviously he must not be as convinced as the parliamentary assistant that the minister has bought into the argument and that he's dealing with the issue.

Since we have scheduled the time to hear delegations, we have sufficient time to hear from the Ombudsman, and I think it would serve us all well to hear him point out what he believes are some of the shortcomings. That doesn't mean that the government side will change the bill because of what they heard, but I think it's important that all of us here, not only the members of the committee but also the public, in the interest of open, public debate, hear what the Ombudsman feels are the shortcomings of the bill, and that we can do our best as parliamentarians to correct it, for all of us and for the people of the province.

Lastly, I don't think it's unreasonable to make the comment that the Ombudsman's position on the bill and his reason for wanting to present are not necessarily the same as most of our presenters' who are speaking, based on how it will deal with municipal government. I think the Ombudsman's position is strictly to look at how it will handle the concerns of the general public as it relates to the new powers within the bill. So I think it's important that we hear all that we can from the Ombudsman to make sure we can make the best possible decisions for the people.

Mr. Prue: I'm in general agreement with what's just been said, with a proviso. We have five days of hearings scheduled. Are all of the time slots filled at this point?

The Clerk of the Committee (Ms. Susan Sourial): They're not all filled. One of the points in the subcommittee report was that latecomers would be taken on a first-come, first-served basis. So we've had a couple of late requests that we're in the process of scheduling. Sitting here, I can't tell you what happened in the office this afternoon, where we are at in terms of—

Mr. Prue: Okay, but as of before you left—

The Clerk of the Committee: There were spaces.

Mr. Prue: There were spaces. So if we were to do this, we would not be taking someone else's. I just want to make sure: We would not be taking away any other person's 15-minute time slot that you know of at this point.

The Clerk of the Committee: When I came here at 3 o'clock, there were spaces available. I do know that my office was working on filling those spaces. So what the situation is now, I don't know. I'd have to get back to the committee on what's available.

Mr. Prue: If I could, then, Madam Chair, I would agree with the motion on the proviso that no one else is displaced. I do recognize that every individual was given 15 minutes. However, the Ombudsman is raising issues that I do not believe are going to be raised by any other individual. His first 15 minutes was well used; it was a cogent and clear argument of a flaw in the bill in the minute and a half that I ceded to him. By not asking questions on what he'd already said, it seems that there was considerable information that may be forthcoming on this second application. If time permits and if no one is denied an opportunity, I would be more than happy to hear an additional 15 minutes from the Ombudsman.

Mr. Duguid: The concern I have with granting any deputant a second opportunity to appear is the precedent that that sets. I know it's not a legal precedent, just in terms of our procedures, but it's not providing equal treatment to all of our presenters.

There are a number of presenters that we heard from today. I'm sure that AMO would be offended if we were to give one party double the amount of time that we gave them, considering that they represent municipalities right across the province. I wouldn't blame them for being offended if we were to do that. I think we have to treat everybody equally. A 15-minute presentation doesn't give you an opportunity to, word for word, go through your entire argument. We're experienced members of the Legislature here. We're all capable of reading presentations and briefs. If the Ombudsman wanted to articulate his views to any of us, he would have an opportunity to do so—we all have open-door offices—over the course of the committee's considerations. We're considering this over an extended period of time. I think that the Ombudsman will have every opportunity to make his views known. In the interest of just equal treatment for all deputants, I don't think we should play favourites with one or the other. I think we should treat everybody fairly and equally.

Mr. Hardeman: I accept the arguments the parliamentary assistant makes, but the truth of the matter is that the Ombudsman is not a presenter presenting on the interest of his membership. He's a servant of the Legislature to make sure that the people of Ontario are being treated fairly and equitably by the province. So if he believes that the Legislation presently before this committee is not meeting the goal he was given as a servant of the Legislature, I think he has an obligation to present that to us so we can deal with that as we go forward with the legislation.

I don't think there's a connection or a similarity between AMO presenting on behalf of the municipalities and a servant of the Legislature presenting on behalf of the people of Ontario, to that body to which he is a servant. I think it's totally different. Having said that, I see absolutely no reason why—and we've done it before in this committee on different bills, where exceptions were made for certain presentations because of the nature of their presentations—we would not use that time to our best advantage so we can make the best possible decisions. We have the time; we've agreed to the time. I have no more to say on that, but I would request a recorded vote on this motion.

The Chair: Any further debate? Seeing none, a recorded vote has been requested.

Ayes

Hardeman, Prue.

Nays

Brownell, Duguid, Flynn, Leal.

The Chair: The motion is lost.

I'd like to thank all the witnesses, members in this committee and staff for their participation in the hearing. This committee now stands adjourned until 4 p.m. on Monday, November 20, 2006.

The committee adjourned at 1759.

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