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## **Official Report of Debates (Hansard)**

**Monday 20 November 2006**

## **Journal des débats (Hansard)**

**Lundi 20 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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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 20 November 2006

Lundi 20 novembre 2006

*The committee met at 1602 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 Vice-Chair (Mr. Jim Brownell):** Good afternoon, ladies and gentlemen. The standing committee on general government is called to order. We are here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

For those witnesses with us this afternoon, I welcome you. Just to let you know, those who are out in the audience at the moment, you will have 15 minutes to make presentations and if time is available at the end, before the 15 minute are up, we will split that time between the three parties.

**SHEILA JACOBSON**

**The Vice-Chair:** First this afternoon, I would like to welcome Sheila Jacobson. If you would like to come up, make yourself comfortable at the table, and state your name for Hansard as you begin your presentation, we'd appreciate it.

**Ms. Sheila Jacobson:** My name is Sheila Jacobson. I'm a citizen of Brampton, Ontario. I'm here today to make some recommendations on changes to the Municipal Act, I believe. I have 10 suggestions here. I have made copies for everyone so they can follow with me.

The first recommendation I have is to make voting mandatory by law at the municipal level. The turnout is between 20% and 25%. Those are the statistics on voter turnout, and that is unacceptable. We have to ensure that democracy prevails. Twenty per cent is not a democracy. As you can see, what I have explained after that suggestion is that as a result of this chronically low voter turnout, the majority of citizens who want to see a change in city and regional councils don't see any changes because they don't vote. The majority of citizens don't vote. We have the same group of people voting, election after election, and as a result of that the incumbents get

re-elected, election after election. Some of our city councillors have been on council for as many as 35 and 38 years. That's unacceptable. Today's Brampton is nowhere near what it was 38 years ago, so that council no longer reflects what Brampton is today. We are bursting at the seams at about 400,000 people.

To move on to recommendation 2, city and regional councillors should be allowed only two terms in office in any given position. I will leave the whole explanation that I have, but just to put it in a gist, the President of the United States is allowed only two terms in office, and he's the president of the most powerful country in the world. Why, then, are we allowing our councillors to remain on council ad nauseam, decade after decade. We need to put some boundaries on this so that new people get an opportunity to run city council. We have so many new generations of people and yet we see the same crowd, in and out, day in, day out, and we're just sick and tired of it. We need to ask the provincial government to put some boundaries on it and say, "You've had your turn, two terms at four years each. Eight years is a long time. Adios." But that means they can do two terms in any one position. So they can do two terms as city councillor, then two terms as regional councillor, and two terms as mayor. That is 24 years and I think that is more than fair.

To move on to number 3, candidates who have lost twice in municipal elections, running in any position, should not be allowed to run again in a municipal election. The problem we have in Brampton and Mississauga, which is what we have been watching closely, is that sometimes there are as many as 26 people on the ballot. Many of them are the same old suspects. They lose election after election but they will put down their 50 bucks or 100 bucks and put their name on the ballot. It splits the vote of good candidates. These people who lose all the time never get in, they don't even come close, but the really good candidates end up having to struggle with a split vote—26 ways, 11 ways—and sometimes not the best candidate gets in. So we've got to weed out this chaff. We don't have a party system at the municipal level. Parties get rid of these types of people, but in municipal elections the floodgates are open and they just keep on coming back. They just turn up in every election. We just cannot allow that to happen.

Number 4: The legal and political status of cities and regions should be changed to classify them as governments and not as corporations, and they should be

held accountable under the guidelines of the Canadian Constitution. What we've seen in the city of Brampton is that it has now been made a corporation of the city of Brampton. All of a sudden, there are these walls that go up. The minute we try to question any bureaucrat, civil servant, clerk or what have you, they behave as though they're not accountable to the people. They work for a corporation. They are no longer public servants. It is a very bad attitude. It sends a wrong message to the people who pay the taxes to run that particular body of governance. So we've got to change it. We've got to bring it back under the Canadian Constitution so that these people are held accountable under the laws of governance.

To move on to number 5, the chair of the regional municipalities should be elected directly by the voters of the region and not by the elected regional councillors. What has happened until now is that the regional councillors are voted in by the public. Then, in turn, those regional councillors turn around and, in an in camera voting session, elect the chair of the region of Peel or the region of Niagara, whatever the regions are. They vote in their pal, their buddy. It's the same chap. He's been around for decades. Nobody else seems to be able to get anyone else in. And he's not accountable to the public; he's accountable to his buddies on the council. We've got to break this grip that these people have had.

My family are visible minorities, fourth generation in North America. I am outraged that there is no representation on Brampton city council. There are 10 white people. They've been there forever. The one non-white person lost in this last election, but we've gotten a South Asian in his place. Nevertheless, at the end of the day, the council has not changed in over 35 years in terms of racial composition but the city of Brampton is over 51% visible minorities. You go into city hall or the region of Peel head offices and it doesn't even look like Brampton; it's like another zone altogether. We've got to change that by making sure that every one of these layers is accountable to the people, and we've got to put boundaries.

Number 6: There must be an opposition council put into place at municipal level to watch over the elected councillors. This is a serious problem, not just with the city of Brampton; we see it across Ontario. Our entire structure of Canadian government is to have a ruling party that has been elected into power and then another set of people that are called the opposition. We have it at the federal level, we have it at the provincial level, but we do not have it at the municipal level. What that does is give the councillors absolute power. And we know what absolute power does.

#### 1610

Entire families that are related to councillors work in either the city of Brampton or the region of Peel. It's an inner club. It's an outrage, because there is no one to hold them accountable, there's no one to watch over them. We've tried to turn to Queen's Park. I've called the Premier's office, I've called Minister Gerretsen's office,

and we're told that the cities are on their own, the regions are on their own. You cannot throw away the key. You cannot leave people to their own devices. You must have accountability, you must have a shadow council, an opposition council, because it hasn't worked until now without an opposition. These people just go off and they do whatever they want.

We had a terrible situation last week in the municipal election. The city clerk of Brampton changed the voting process without clearing it with council; it was not even voted on. All of a sudden the voting process changed in a way that people were able to vote multiple times—five and six times. There is an uproar in Brampton. The newspapers in Brampton—the Brampton Guardian, page after page, is rife with these irregularities. And every one of the incumbents was re-elected with a huge landslide.

I'm not surprised. It's an inner clique. They make their own rules, they help their own pals, they keep coming back. The whole city is in an uproar, but no one is doing anything about it because, well, the city clerk has a right to change the voting procedure. It violated our democratic rights. I have tried to get some answers, and there are no answers to be had.

What they did is, they did not split the voters list alphabetically, so people were coming in, there were eight voting tables in every voting hall, and people were going from one table to the next—the same person. Someone with the name Brown would go to table number 1 and the voters list was from A to Z, the full list. The next table had the full list from A to Z. So Mr. Brown would go to table 1, table 4, table 6, come back hour after hour and vote seven or eight times, as many tables as there were.

I feel as though I'm living in a Third World country entirely on its own. I don't feel I'm living in Canada; I feel I'm living in the country called Brampton. Perhaps I should ask for a passport from Brampton, because they seem to be entirely left to their own devices.

Number 7: There is a long history of rogue bureaucrats in both regional and city government. I can't speak for Toronto, although we have seen some news stories in recent years, but in Brampton and the region of Peel it is an ongoing nightmare. Week after week, month after month, we hear outrageous stories that are well founded—there is proof, there is backup. What happens with these rogue bureaucrats—not all of them. I think the majority of the bureaucrats in these municipalities are good, hard-working employees. But there are a certain number of them that use the publicly paid legal departments and so on to intimidate citizens. They grant contracts to their friends over and over again. They bully people. They go off on junkets. There are no laws, apparently. We've investigated it in Brampton. We looked into this, and we discovered that there are no laws in place to question the decisions of bureaucrats to see why they're granting contracts to certain favoured contractors over and over and over again. Minorities have tried to get those city contracts—very lucrative contracts—but they can't break in. There's a glass ceiling.

It's the same bureaucrats making the same decisions. When we watch where these bureaucrats go, they are off on junkets. We have proof. We know of stories where they've taken off on golf tournaments and so on, but we're not allowed to question it because there are no laws; they can do whatever they want. We want something in place where they can be prosecuted, held accountable. And if we find that they're giving contracts to their pals, to their buddies, it's got to stop.

Number 8: The voting process in municipal elections should not be left up to bureaucrats or civil servants in municipal government. We should have a third party. I'm a corporate accountant, and I have the highest respect for my profession. The Academy Awards in the US, I think we all know, are run by some of the major CPA firms in the US, usually PricewaterhouseCoopers. There's a reason for that. There's a great deal of money involved in these movies that are up for Academy Awards.

Similarly, there's a lot of money involved in running a city. I think we have to be careful and protect the rights of taxpayers by making sure that the people who are elected through the voting process—that that voting process is protected by perhaps a CA firm, one of the Big Eight or whatever. I think now it's the Big Five. We need to have it at arm's length.

In this last election, it was an absolute disaster. The city clerk changed the voting process without permission, without anything, and people were voting six and seven times, multiple times. It's just unacceptable. This is not a democracy.

(9) The citizenship of voters should be verified more thoroughly. This is a huge problem in areas where there are newcomers settling in, such as in the region of Peel. Every election, not only are there stories that I dismiss and discount, but if I've seen it myself, I have raised my voice. I have gone to the electoral officers in the voting station and said, "These people don't look like they live here. They've got tags on their cars that say Mississauga something or other." We're in Brampton, and I'm told, "It's up to them. We operate on an honour system." How naive is this, working on an honour system? We are expected to use the tools we have at hand, put some boundaries on this and demand some kind of proof. Nobody was asked for proof of where they lived; their IDs weren't even checked. I brought my driver's licence, my photograph, my address to prove that I lived in Brampton, but there were countless people—this happens in municipal, provincial, federal elections. It's an on-going abuse of the system.

(10) Finally, every candidate running in a municipal election must be required to pass an oral English language test which is to be administered by a local community college English language instructor.

**The Vice-Chair:** I just would like you to know that you have one minute left.

**Ms. Jacobson:** Okay.

I know that in recent years we all shy away from any sensitive topic that may seem to be discriminatory, but let me assure you, I'm a visible minority and I speak

standard Canadian English. When I have to sit there and sift through candidates who can barely say hello and goodbye, then I think I have a problem with it. I think what we're doing is a disservice to these people. We're not helping them to assimilate. We're letting them carry on in whatever form of English they think they're speaking. I think we need to help the people who represent these different minorities to speak proper English so that we all have a level playing field. Thank you.

**The Vice-Chair:** Thank you very much.

**Ms. Jacobson:** I'm prepared to take questions.

**The Vice-Chair:** Well, there's 19 seconds, so there really isn't time for questions here. Thank you very much for your presentation.

#### CITY OF LONDON

**The Vice-Chair:** Next, we have the city of London, Grant Hopcroft, the director of intergovernmental and community liaison. I would like to welcome you. Certainly, I have met Mr. Hopcroft. He's the great-great-grandson of the fifth Premier of our province, so I welcome you as being the great-great grandson of that esteemed leader of our province.

**Interjection:** He doesn't get extra time—

**The Vice-Chair:** No, he doesn't.

Mr. Hopcroft, you have 15 minutes. Please state your name for Hansard.

**Mr. Grant Hopcroft:** Yes. I'm Grant Hopcroft, as you mentioned, director of intergovernmental and community liaison for the city of London. To my left is James Barber, city solicitor for the city of London.

I'd like to begin by thanking the government for conducting this early review of the 2001 act. Overall, Bill 130 is an improvement to the existing legislation. However, we do have a number of concerns that we'd like to address in the short time that we have available. Those are (1) the issue of open meetings; (2) recognition of the maturity of local government, and you've heard about that from AMO already; (3) a request for an amendment pertaining to board of control, which is at the end of our paper and which addresses some desire on the part of council to see a different requirement for changing the structure of council.

Diving right into the open meetings, we've had some experience lately with a court case arising out of an interim control bylaw. I'll refer to it here in the presentation as the RSJ case. It's been to the Court of Appeal of Ontario and was argued last week in the Supreme Court of Canada. They have reserved their decision. There are a number of issues which were raised in the Court of Appeal's decision that we'd like this committee to consider, because they raise, I think, a number of pressing questions for how municipal governments can conduct themselves in the coming years. It is unfortunate that many of the proposed amendments, particularly as they pertain to section 239 of the bill, leave many of the issues which have been resolved legislatively in other jurisdictions to be resolved in Ontario through litigation

after meetings have occurred, with the attendant uncertainty, delay and legal cost to the taxpayers.

#### 1620

For example, the Court of Appeal stated, "There is nothing in section 38(3) of the Planning Act to suggest that consideration of an interim control bylaw can be done in a closed meeting. Section 239(2) of the act does not list interim control bylaws as one of the exceptions to the requirement that meetings be open to the public."

Neither Bill 130 nor section 239 references any draft bylaws that can be considered in a closed meeting, despite section 6 of MFIPPA and despite the requirement that a municipal council act by bylaw under section 5(3) of the act. No draft bylaw can be considered at a closed meeting, even in relation to the subject matters in the exceptions in section 239(2), based upon the Court of Appeal's decision. It is recommended that Bill 130 specifically permit at least the consideration of draft bylaws which relate to the exceptions that are already set out in section 239(2).

The second point I'd like to raise, again pertaining to the RSJ reasons by the Court of Appeal, is related to a report prepared by our planning staff which was prepared to supplement the report of the city solicitor: "... the Panzer report cannot be said to be litigation or potential litigation"; "the committee of the whole may have been entitled to have discussed the solicitor's report in closed session, but appending a solicitor's report to other documents, such as the Panzer report, does not operate to cloak all of the documents with privilege...."

For those of you who have municipal experience, interim control bylaws can be and often are an extremely litigious area for municipal councils to delve into, and to suggest as the court did, I think, reflects a lack of understanding of the nuts and bolts of how municipal government works.

Neither Bill 130 nor section 239 provides any direction as to who may communicate with council, what the scope of permitted communications is, or whether the statute applies at all to confidential communications which are not discussed at a closed meeting. The Court of Appeal's decision suggests that administrative staff may not communicate information provided to accompany a solicitor's report: legal advice without context. It is recommended that the bill permit communications from administrative staff that fall under one of the exceptions or that are necessary for solicitor-client privileged advice.

The next point pertains again to section 38(3) of the Planning Act. The court said, "There is nothing in section 38(3) of the Planning Act to suggest that consideration of an interim control bylaw be done in a closed meeting."

Again, neither Bill 130 nor section 239 provides any direction for closed meetings as to what matters which a municipality is not required or permitted to disclose under another statute may be considered, such as a draft bylaw, including a draft interim control bylaw provided under section 6 of MFIPPA; personal information, which is again exempt under section 14 of MFIPPA; or confidential business information of third parties, section 10

of MFIPPA. It is recommended that Bill 130 identify what matters under other statutes which a municipality is required or has a discretion not to disclose can indeed be considered at a closed meeting.

Again, the Court of Appeal stated in the RSJ reasons as follows concerning sanctions for breach of section 239 in an application under section 273(1): "We are of the view that the motion judge ought to have quashed the interim control bylaw."

Our concern here is that neither the bill nor section 239 contains any provision describing what the sanctions are for failing to comply with that section of the act. It is recommended that the bill identify what the sanctions are for a breach of section 239.

Again, the Court of Appeal in our case suggested that "... a municipality need not give prior notice or hold a public meeting before it passes an interim control bylaw. However, the meeting in which council is to consider and vote on the interim control bylaw is to be open. In the face of the 'draconian' nature of an interim control bylaw and the reduction in rights of affected persons by virtue of section 38(3) of the Planning Act," the court felt there was an even greater need that the meeting in which the bylaw was discussed be open to the public. However, neither Bill 130 nor section 239 contains any provision describing what considerations shall apply to the granting of a remedy, or what the standard of review is for a court reviewing a council's decision to conduct a closed meeting. It's recommended that the bill identify those considerations and what the standard of judicial review is for such decisions.

Fourth, the court stated that in the space of eight minutes, council passed the interim control bylaw that I've referred to before and 31 other bylaws. There was a complete absence of public debate or discussion on the interim control bylaw or the other bylaws, reinforcing the inference that the committee of the whole had already discussed it. Again, neither the bill nor section 239 contains a provision describing the quality or quantity of discussion following a closed meeting. We would request that the bill identify whether there is indeed such a requirement for discussion in public of matters discussed at closed meetings. Neither the bill nor section 239 contains a provision providing for a summary means of disposing of questions concerning compliance. It's not clear how much litigation such a provision could avoid, but it could result in substantial savings to the taxpayer. It's recommended that Bill 130 establish a summary procedure for determining compliance which does not burden ratepayers or communities with excessive costs to resolve issues regarding compliance.

Although the court quashed our interim control bylaw on appeal, it's interesting that the Ontario Municipal Board dismissed all appeals concerning the same bylaw in decision 0780, which was issued. They stated at that time, "The board, having considered all of the evidence in this regard, concludes that the purpose and intent of section 38 was followed by the city of London." Neither the bill nor the existing act contains a privative clause

limiting the scope of judicial review where there is a statutory appeal, such as this one to the OMB. We recommend that such a privative clause limiting judicial review to circumstances where there is no alternative remedy be considered.

I'd like to move on at this point to the issue regarding the material advancing decision-making. That is something that we consider to be very much in the eye of the beholder. While we welcome an attempt to move in that direction, again, there's no legislative standard or jurisprudence that we've been able to find where judicial review of legislative activity is based upon whether discussion materially advances the decision-making of a legislative body. We would suggest that the standard of review should reflect deferential treatment of decisions of municipal councils.

On the issue of maturity of local government, we're supportive of the position put forward by AMO last week.

I'll move on to the last point so that there's some time for questions, and that is with respect to our request for reform, pertaining to our board of control.

The board of control of the city of London was continued under section 468 of the current act. Also continued was the regime under part V of the old Municipal Act, regarding elimination or abolition of boards of control such that a two-thirds majority vote of council is required to eliminate a board, while the structure of the rest of council can be determined on a simple majority. We are seeking support for an amendment that would change this two thirds requirement to a simple majority.

I'd like to thank the committee for its attention. We have a table of other amendments that we haven't had time to address in our oral submission for your information as well. We certainly welcome an opportunity to follow up in discussions with ministry staff on any of these amendments, if there are any questions.

**The Vice-Chair:** Thank you. We have about a minute and a half for each party, so we'll start with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much, Grant, for your presentation. I noticed most of the presentation deals with the open and closed council meetings, though it's a little bit different in London's situation than some of the others we've heard. Generally, during the past election, you had a heated debate in London. Maybe you did hear it, but I didn't hear anybody asking for the ability to have more closed meetings or tell the public, "Vote for me, and I will be looking for getting more closed meeting at council." Did that happen, and if not, why is it that that's the number one issue in this bill, to have more closed council meetings?

**Mr. Hopcroft:** This issue has cost the taxpayers of the city of London a substantial amount of money to be litigated. It's an issue that we require some clarity on. We're seeking that clarity in the bill. We would suggest that it is appropriate for councils to hear legal advice in closed session. To suggest that you have to hear that legal advice entirely without context of the matters pertaining

to that legal advice, we feel, defies logic. We're awaiting the decision of the Supreme Court of Canada on that. But the act is currently open for review and we're asking the government to address it, to bring clarity and some common sense to it.

**1630**

**Mr. Michael Prue (Beaches–East York):** You talked about the closed meetings, and I must say that I share some of the concerns Mr. Hardeman has expressed. But there's another provision in here that I've tried to ask each one of the deputants about. There's a provision in here that would allow for members of council who are not present at meetings to vote by telephone, by hookup. I've given the anecdote of sitting on a beach in Acapulco with a drink in one hand and a phone in the other and voting. What's the city of London's position on members not having to be present to vote?

**Mr. Hopcroft:** I know this is an issue that has been discussed previously. I guess we've trusted voters in the last municipal election to cast their votes by mail without having to be present in a polling place to cast their vote. While I suppose the Acapulco example has some traction, there's also the example of sudden matters that arise that need to be dealt with by municipal councils and, to the extent that if someone is away on a business trip or for other reasons, they would be deprived of the opportunity of representing their constituents, that would be a concern.

Just on the open meetings issue, we certainly aren't trying to hide anything from the public. I think the current act does acknowledge that there are legitimate reasons to go in camera to protect the interests of the taxpayers. I note that certainly the provincial and federal governments have the opportunity to discuss matters in caucus. They have an opportunity to discuss matters in a variety of forums that are not public, and we feel we deserve the same consideration

**Mr. Brad Duguid (Scarborough Centre):** In the short time I have, I'll just make a few comments and hopefully there will be time for a response. I very much appreciate the detail of your presentation. A lot of it is fairly legal in its context. I'll assure you that we'll take a close look at it and share it with our staff, whom I think you've probably been in contact with on some of this stuff already.

**Mr. Hopcroft:** Yes.

**Mr. Duguid:** My comments are around the fact that what we've done here, for the first time, is ensured that there's a mechanism and a process for citizens to be able to complain when they feel that a meeting has been taken in camera or in private that shouldn't be. What we've also done is listen to AMO and to the municipalities that we've heard from right across the province that have said, "It is difficult for us to go into a session where we have to brainstorm, where we have to do some strategic thinking, where we may have to think strategically about a plan to maybe take on another level of government," but, right now, under our laws, they can't do that. We're trying to give them the ability to arrive at these decisions,

not necessarily go in camera—they can't make decisions in camera—but the ability to be briefed, to have a frank discussion about strategic issues. I think that's certainly going to be an improvement to what we have now. Would you agree?

**The Vice-Chair:** You've basically run out of time.

**Mr. Hopcroft:** Certainly that's welcome, but it would be very helpful, to avoid lots of money being spent on litigation, to have a better definition around what "materially advances" means, because it's very much in the eye of the beholder.

**The Vice-Chair:** Thank you very much.

#### CITY OF BRAMPTON

**The Vice-Chair:** Next we'll have the city of Brampton. We have Mayor Susan Fennell. Please make yourself comfortable at the table. As with the other deputants, please state your name and title for the purposes of Hansard.

**Ms. Susan Fennell:** Good afternoon, Chair and ladies and gentlemen of the standing committee on general government. My name is Susan Fennell. I am the mayor of the great city of Brampton, and with me today is Mr. Clay Connor, director with legal services for the city of Brampton. On behalf of council and certainly the citizens of our city, I thank you for this opportunity to speak on Bill 130, which is the Municipal Statute Law Amendment Act.

My purpose today is to inform you of Brampton's position on Bill 130, and perhaps you could refer to the binder under the tab "Bill 130." As committee members appreciate, reform of the provincial-municipal relationship has been a priority for successive governments. It's not an exaggeration to say that dozens of attempts have been made to rationalize service delivery, funding and governance responsibilities between our two levels of government. We are pleased that Bill 130 starts with the premise that municipal governments are mature, accountable and able to manage our own affairs.

My comments today therefore will focus on our support for the direction that Bill 130 takes for municipalities and some suggested amendments which will, in our view, strengthen the bill and improve its effectiveness. The council resolution, staff report, this deputation and our suggested amendments are included in this binder as our submission for your consideration.

Brampton council supports the amendments to the Municipal Act that provide greater autonomy for municipal government. Greater autonomy empowers municipalities to be more self-sufficient and therefore more sustainable. Bill 130 achieves this by (1) providing broader general authority; (2) providing greater onus on municipalities to establish policies in keeping with provincial standards and objectives, which is a welcome departure from provincial micromanagement; and (3) providing greater responsibility for municipalities to be accountable and transparent.

Therefore, Bill 130, we would say, is a positive step towards recognizing municipalities as a responsible order of government. However, our review of this bill, revealed inconsistencies in the legislation that contradict what we believe to be the spirit of Bill 130 by limiting or removing municipal authority.

Perhaps I'll take a moment or two and highlight these inconsistencies. Section 451.1 provides the Lieutenant Governor in Council with the ability to suspend the operation of municipal bylaws. This section creates uncertainty for municipalities to enact bylaws. In the absence of a demonstrated need for the Lieutenant Governor to have such broad powers, many municipalities, including my own, would ask the government to please provide examples of when this intervention would be necessary. In our view, this section is inconsistent with the government's stated objective to empower municipalities to manage programs and services within their jurisdiction.

Like my municipal colleagues across the province, I have always been accountable for decisions of council and will continue to be so, but the policy intent behind this provision in section 270 is unclear. Municipalities are already required to comply with the legal and procedural safeguards built into the statute and common law to protect a person's rights, including property and civil rights. The legislation however in section 239 states that meetings may be closed when the subject materially advances the business or decision-making of the council.

Brampton is concerned that this language is unclear and if left open to interpretation may lead to litigation. If the intent of the subsection is to allow for activities like councillor education and training, orientation and strategic planning or, Brad, as you said, council briefings, then the act should specifically please say so.

The proposed subsection 239.2(7) requires the investigator to report only where there has been a contravention of section 239 or a procedural bylaw passed under subsection 238(2). We believe that the investigator should be required to report the results of all investigations but should also have the ability to refuse to conduct an investigation where it is deemed to be frivolous or vexatious.

Section 290 of the Municipal Act requires every municipality to prepare a balanced budget. On January 1, 2009, in accordance with the new Public Sector Accounting Board standards, municipalities will be required to account for assets on an accrual or depreciation basis. Covering such depreciation expenses has the potential to raise property taxes to achieve a balanced budget.

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To avoid this additional burden on taxpayers, it is suggested that the province consider the implication of the new Public Sector Accounting Board standards for municipal budgeting and therefore make the appropriate changes to section 290. Alternatively, the province must provide municipalities with appropriate funding to insulate our property taxpayers from the impact of this provincial change.

The proposed section 158 gives the Minister of Municipal Affairs and Housing broad powers to make

regulations exempting any business from a licensing bylaw and to impose conditions and limitations on the powers of a municipality to provide for a system of business licences. This will have significant consequences for a municipality as well as diminishing the authority given to municipalities in the Municipal Act.

As a matter of respect to municipal partners, it is suggested that section 158 be amended to require the minister to consult with the municipality prior to exercising this power. It is incumbent upon the minister and government to demonstrate why a sector or business class should be exempted from paying their fair share. There's no evidence to suggest that municipalities will inappropriately apply their discretion when setting licensing provisions for their municipalities.

Bill 130 does not allow municipalities time to complete the necessary work before the new sections come into force. It is suggested that separate proclamation dates for sections 239.2 and 270 come into force one year after Bill 130. This time period is consistent with that given to complete the preparations for the Municipal Act, 2001.

That concludes my overview of what we believe are inconsistencies in the legislation. Our suggested amendments to address these inconsistencies are attached to the end of the document.

The amendments to the Municipal Act that are in Bill 130 are important tools to enable municipalities to be more autonomous. Brampton's suggested amendments ensure that municipalities are recognized as a responsible level of government accountable to our citizens.

However useful these tools might be, amendments to the Municipal Act do not replace or mask the need for a reliable and stable funding source for municipalities. The current fiscal situation is simply no longer sustainable. A long-lasting solution must be developed. I urge the province to move forward with addressing the fiscal imbalance that occurs between the province and the municipalities. Until such time as the financial stability of municipal government is realized, there cannot be true autonomy and accountability to taxpayers.

The province underwent a facilitated process with the region of Peel to determine a government model that reflected the needs and interests of all taxpayers. The province opted not to adopt that approach after it was thoroughly researched and instead imposed a Queen's Park solution. Hopefully, the provisions of the new Municipal Act will prevent the province from taking a similar approach to other municipalities.

I thank you for your attention. I'm happy to answer any questions you may have.

**The Vice-Chair:** Thank you. We have about two minutes each, starting with Mr. Prue.

**Mr. Prue:** You asked that we clarify the open meeting provisions. Are you seeking to have more open meetings or less open meetings? We just heard from Mr. Hopcroft and from a deputant from Brampton, both with diametrically opposed views, I think, on whether the meetings are open enough. What is your position? Do you think there's a balance here?

**Ms. Fennell:** I think this speaks to our submission. We're seeking clarity. Spell out what is appropriate to be closed and what is not appropriate, and we will abide by the rules. If you're allowed to have more closed meetings, but it's not very carefully spelled out for what purpose or for what position, then you could compromise the very integrity of the system you're trying to improve.

**Mr. Prue:** I think this may, in fact, be what happened in London. That's the way I see it, anyway. It's not clearly spelled out, so the courts grab hold of it and London finds themselves out many thousands of dollars.

**Ms. Fennell:** Well, currently we're bound by very strict guidelines of what can be in camera or not. In the city of Brampton, we read every specific item on that motion before we go in camera. No item can be added in camera. Once you're in camera, no other subject can be discussed, unless you've publicly stated the subjects you've added to the agenda, and then you have to come out of camera to report. So the concept of being able to meet with five or six members of council to explore ideas, and whether that should be done in closed session—currently, it's illegal for me to meet with six members of my council to discuss an upcoming council meeting and call it a briefing. That would have to be declared, therefore, in a public meeting. We'd all come to the mayor's office, perhaps. In Brampton, we simply haven't had briefings. We discuss all of our business in the open forum of council or committee, which is a public forum.

**The Vice-Chair:** Thank you. We'll move to Mr. Duguid.

**Mr. Duguid:** Madam Mayor, congratulations on your resounding victory a couple of weeks back. You're back again for four years now, so we congratulate you for that.

As usual, Brampton comes forward with a very in-depth review of what we're doing. We'll take a very hard, long look at some of the suggestions you've made here. Some I haven't heard from others, so they're original, and some we have heard.

My question to you would be, do you support the direction we're going in, in terms of the relationship with municipalities? I think this is one example of this. We've uploaded some costs in terms of public transit. We've uploaded some costs in terms of land ambulance. We've uploaded some costs in terms of public health. We're back in the housing business. So we're going, I believe, in the right direction there. Through this legislation, we're trying to give municipalities more authority, more autonomy, and recognize them as mature levels of government. Do you support that direction? Do you think we're going in the right direction? I recognize there's a need for more following this, but do you support that direction?

**Ms. Fennell:** I'll repeat, the tone of our submission is that we support the direction, but Bill 130 contradicts itself with its own inconsistencies. The bill is intended to provide more autonomy, yet it introduces clauses that take away that opportunity. That's why we made some suggestions where, in the spirit of what you're intending

to do, there are some inconsistencies that therefore conflict with your effort. I think that's why we have these consultations, so that we can get it right. We've just tried to be helpful.

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** I just quickly want to touch on the closed meetings. It has been an item in just about every presentation we've had to committee, one way or the other. Your presentation says that we should get it right, that if we're going to expand it, we should, as London also requested, more clearly define what more can be done in closed meetings than what you presently do.

In Brampton, has there been any request or any great pressures to increase the closed council meetings from what you presently do? You pointed out how it works in Brampton. Is that working fairly well? Or do you find there are a lot of times, for whatever reason, where you need more ability to go into closed session?

**Ms. Fennell:** It's not an issue, and it hasn't been an issue, for us in Brampton. It denies you the opportunity to sit with five or six members of council and say, "What do you think we ought to do?" So we do that in a public committee, and that's fine. We operate according to the way the act is now. Those subjects are stated quite publicly at a televised public council meeting, and those are the only subjects we discuss in camera. If your question is, are there other subjects that come into play where people wish they could? That's never been an issue in the city of Brampton. The rules are there, and we follow the rules.

All we're saying is, if the rules are changed, please spell them out very carefully, because we follow the rules very rigorously in the city of Brampton. We think right now that if you're broadening that opportunity, I'd say that it's unclear what would be eligible or not eligible to be discussed in camera under the new act. It's not uncommon to have a situation where somebody departs from one discussion into another topic, and I as mayor or the clerk will say, "Excuse me. Stop the meeting. That does not follow a discussion you can have. When we go outside of camera, you have to add it to the agenda or bring it to the next council meeting." That's the discipline with which we chair and lead council in the city of Brampton. So we just want the rules. We'll apply the rules, but they just need to be really clear.

**The Vice-Chair:** That brings us to the end of the deputation. Thank you for your appearance here today.

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#### READY MIXED CONCRETE ASSOCIATION OF ONTARIO

**The Vice-Chair:** Next we have the Ready Mixed Concrete Association of Ontario; John Hull, president. Once again, welcome. Make yourself comfortable at the table. You'll have 15 minutes. If there is some time remaining at the end of your presentation, we'll divide it up, as you've seen. Please state your name and position for Hansard.

**Mr. John Hull:** Thank you. I guess the good news here is, as I just heard, that we're not going to talk about closed meetings, so I'm not going to talk about closed meetings.

Mr. Chair and ladies and gentlemen of the committee, thank you very much. My name is John Hall. I'm the president of the Ready Mixed Concrete Association of Ontario.

The Ready Mixed Concrete Association of Ontario represents 95% of the concrete industry in Ontario. Just by way of background, we have about 4,000 employees and 3,000 trucks with a replacement value of \$180,000 each. About 96% of our membership are independent owner-operators, 4% being vertically integrated; in other words, owned by cement companies.

We are also here on behalf of a larger group of contractors and service providers. I've asked Minister Gerretsen to meet to discuss some of the issues. You have my letter in front of you. By no means am I going to read this letter word-for-word. I'd just like to give you a brief number of comments based on what we know so far of Bill 130.

We were made aware three weeks ago of this issue. With business being what it is, you can't always address what you need to address, but certainly I wanted to have the opportunity to bring to you some of our concerns and a couple of recommendations.

Our basic concern is that we don't know why the authority is changing the Municipal Act to give the municipalities more authority, particularly for the opportunity of competing, in our view, with private sector service providers. That's kind of it in a nutshell. We don't understand why the government would want to be able to go into competition with the private sector. We see big potential for job loss in the private sector. We see significant private sector job loss in specifically northern and smaller urban areas. Business failures might be expected, and that's certainly something that we don't want to see. Why does the government wish to move in this direction? Why do municipalities require sweeping new powers allowing them to move towards what we would consider traditional private sector work?

There are issues with public accountability; I won't go into them. As some of you have probably heard—many of them before or here today—we don't understand why there's only one public meeting to present a business case for establishing a municipal business corporation. We don't see that there's public accountability for these business corporations to even show a profit. There's very little public oversight, in our view.

We believe that, under the proposed regulations, if a municipal business corporation wished to use its regulatory authority to compete on an inequitable basis with local private-sector contractors and service providers, the private sector would simply not be able to compete. That, to us, just flies in the face of the government trying to support local businesses.

There are many sections in the act that I won't go into because of time. I don't profess to know the regulations

word-for-word. In fact, we haven't even seen the regulations. We have only seen bits and pieces of the regulations, which is also fairly disturbing.

I have two requests that I'll talk about anyway. We would request a six-month delay in implementation of any changes to the Municipal Act, as we were only made of this government's intent a short while ago. A further request is for a minimum six-month period to be able to properly review and assess the proposed regulations. As regulations are put together, it is of great benefit to bring in industry expertise in whatever pieces of legislation would be appropriate. But there doesn't seem to be any opportunity here to bring them together in time to do anything to affect legislation. Again, we would request a six-month delay in implementation and we would request a six-month period to be able to properly review and comment on the regulations.

Thank you very much. I'll answer any questions.

**The Vice-Chair:** We have about three minutes for each party.

Mr. Hardeman? I think I did a little mistake previously in the rotation.

**Mr. Duguid:** Either way. As long as we've got three minutes, it doesn't matter to me.

**The Chair:** Okay, you all have three minutes. Mr. Duguid, then. We'll start with Mr. Duguid.

**Mr. Duguid:** Thank you, Mr. Hull, for your presentation today. I'm trying to, I guess, put in—I hate to use the word “concrete”—more concrete terms the information you're trying to exchange with us. I was a municipal councillor for about nine years and was responsible for setting up at least a couple of municipal corporations for a variety of reasons. You're concerned about direct competition with the private sector. Are there any examples now of cities that have set up corporations that are competing directly with the private sector in Ontario? Are there any municipalities that appear to be expressing an interest to do that? I haven't heard of any, but it may well be that there are some out there that I haven't heard of.

**Mr. Hull:** At present, we know of no concrete facility that's owned by a municipality. I can't speak to a broad base. I don't know if a municipality is in competition with any other business. It has been practised in the past number of years probably, but not for 10. I think the most recent municipality was the city of Hamilton, which was I think the last municipality to be in the concrete business itself; that, in the light of having four other ready-mixed producers or four private businesses in the region itself. So they got out of that. There were a few examples a number of years ago, but still it's very alarming to us to be able to think that somebody—“I don't like the price of concrete; therefore, I'm going to get into the business myself.” Concrete is not a low-tech industry. It's perhaps not as high-tech as putting an Intel chip together, but it's reasonably high-tech. It's capital-intensive. We obviously have people who are landowners and employers and taxpayers and so on.

Again, we just don't understand the premise, if it can be read like this—and it can be, from what we know—

where a municipality would develop a corporation to say, “Okay, let's go into business with a concrete producer or a road builder or somebody to provide window-cleaning service,” because the legislation, to our mind, is written like that, with no justification.

**Mr. Duguid:** Do I have more time, Mr. Chair?

**The Vice-Chair:** About half a minute.

**Mr. Duguid:** I know of at least a few examples where, under the old regime, the municipalities had to come to the province for private legislation to set up corporations to do something that could be considered as a private enterprise. But those proposals were totally in the public interest and were well publicized, well documented. There were public meetings held. In fact, I don't think there were any objections from anybody to those particular proposals. The whole idea behind this legislation is to see municipalities as bona fide levels of government, accountable to the people who elect them. But I can assure you, we'll take a look at your concern and see if we can square that with the principles behind this bill.

**The Vice-Chair:** Okay, Mr. Duguid. You're out of time.

**Mr. Duguid:** That's all I have to say.

**Mr. Hardeman:** Thank you very much for the presentation. It's a little different from some of the ones we've heard thus far at the committee. Dealing with the corporation part of it, as the parliamentary assistant suggested, there are things in the municipal sector, such as garbage collection, where two municipalities want to do it together and the only way that they can work that on a proportionate system is to put it under the Corporations Act and make it an independent corporation for a public service. I think most would agree that that's not a bad approach for providing municipal services.

If this act were changed to limit the type of corporations that the municipalities could set up that had to be for municipal services, would that solve the problem of the association?

**Mr. Hull:** That's a good question. It probably could, although I'd hate to be on your side trying to hear from people on my side as to which sectors would be exempt. It's difficult from the point of view—as I put down here, municipalities are required to have only one public meeting to present a business case so they can hear all the issues, and then they can go away and do whatever they want, basically.

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In the issue of two waste management systems getting together for a municipality, sure, it might make sense to someone, but perhaps not to the private companies that are out there. So how do you justify? How do get all this information, the expertise, from the local industry to say it's either good or it's not good? There's no process to do that.

**Mr. Hardeman:** One of the other things that I've heard about private corporations—we have some now that deliver hydro in municipalities, who are the delivery agents. Now, instead of what used to be the PUC, it's a private corporation. And one of the concerns that I've

heard from my residents is that the information about the corporation's function is no longer public information. You talk about the private meeting, one meeting being required. Each year when the financial statement comes out, it comes out to the municipality, not to the public. If it were changed so that all corporations that were governed by the new Municipal Act would have to report to the ratepayers rather than the council, would that help any? So everybody would know whether they were subsidizing it or not?

**Mr. Hull:** I think it defeats the purpose. If the result was that they were in fact subsidizing—I mean the municipal corporation is under no auspices to make a profit or even to break even. It's kind of a root system to say, "Well, let's not go into business if we are going to lose money" because that falls against what the municipalities are for. But at that point, it's too late.

**Mr. Hardeman:** But they would have to, then, each year report loses if they were subsidizing it through the tax dollar. They would have report that to the people who were paying the tax dollar. And if I was going to continually lose, I won't be too long telling my local elected officials that that's not a business I wanted to be in.

**Mr. Hull:** I understand what you're saying, but at that point it's probably too late because somebody might be out of business already. They shouldn't be allowed to be in business at a loss at all.

**The Vice-Chair:** Okay, that brings us to the end of Mr. Hardeman. Mr. Prue, you're next.

**Mr. Prue:** Yes, I'm a little bit perplexed here. At the bottom of the second page, you say: "We believe that under the proposed regulations if a municipal business corporation wished to use its regulatory authority to compete on an inequitable basis with local private sector contractors and service providers, the private sector would simply not be able to compete." Are you saying a municipality that sets up a corporation can and will undercut you? Usually I hear everybody saying, you know, "Let's farm out." You heard in Toronto in the last election just last week, "Farm this out, don't have the local people do it, don't have the municipality do it, give it to the private sector, and we'll save money." You're saying exactly the opposite.

**Mr. Hull:** If there's no requirement to make a profit, to innovate—you lose innovation as soon as you do what we're talking about, develop a Corporations Act. There's no innovation; I mean innovation completely stops and competitiveness completely stops. It's just the same old, same old. And that's going to be very harmful for the taxpayer, but at some point it's too late; the horse is out of the barn already. If a municipality has no guidelines or restrictions to make money or even to break even with any public accountability, it's too late.

**Mr. Prue:** I mean, in my own experience as mayor, when we contracted out half the garbage in East York and the other half was privatized—one half was contracted out and other half was kept in-house—the privatized company in the first year or two actually did it cheaper. But in the long term, the public company ended

up doing it considerably cheaper and the private company walked away. Is that what you're saying is going to happen because they can't compete with the public sector?

**Mr. Hull:** Well, in that instance, I don't know under what parameters somebody came up with—

**Mr. Prue:** Well, it was because they couldn't make enough of a profit to make it worthwhile. In the end, that was the reality.

**Mr. Hull:** Again, I don't know how the comparisons were made.

**Mr. Prue:** But I'm trying to understand where you're going with this.

**Mr. Hull:** Well, where I'm going with this is I'm trying to present a fact—

**Mr. Prue:** It's to protect your business?

**Mr. Hull:** —that says we don't want municipalities to be free to go into competition with private industry.

**Mr. Prue:** Even though they might be able to do it cheaper for the ratepayers?

**Mr. Hull:** But there's nothing in here that talks about even a requirement to make sure that innovation is there; the new product's performance or end result specifications or end result requirements. There are no parameters in here at all. To me, it is a sweeping argument to say, fine, if you want to set it up—if somebody presents a reasonable argument to council, whether it's a reasonable argument or not—as I say, you have one public meeting, you comment on it and those comments may or may not be taken into consideration.

**Mr. Prue:** You've also said that rural, northern and smaller urban areas would be most hard hit. It seems to me that the opposite would be true. A city like Toronto or Ottawa or Hamilton, which has considerable financial muscle, could set up a corporation, but in a smaller town it probably wouldn't be worth it at all. They don't have the volume of business to justify setting up a—

**The Vice-Chair:** Okay, we've come to the end of the deputation.

**Mr. Prue:** Would that be correct?

**Mr. Hull:** No.

**The Vice-Chair:** Thank you very much for your deputation and have a good evening.

## REGION OF WATERLOO

**The Vice-Chair:** Next is the region of Waterloo. We have Ken Seiling, regional chair. Welcome. Make yourself comfortable. Please state your name for Hansard purposes.

**Mr. Ken Seiling:** Good evening. My name is Ken Seiling. I'm the regional chair of Waterloo, and contrary to a comment earlier, I am elected at large.

I want to thank you for the opportunity to speak to you this evening. Our points here are very brief, so you may be able to make up some time in your schedule. I'm going to try to limit it to those points.

Thank you for hearing us this evening. I want to express our broad, general support for the thrust of the

bill and where it's going. We believe this actually works toward a more mature relationship between municipalities and the province. You can read some of the details; I won't bother reading it to you; you already have the submission. But there are some areas I want to speak to specifically.

The first, and probably our most serious one and the one that is of most interest to us is the question of public transit authority. There is a legislative anomaly in the Municipal Act, 2001, with regard to the region of Waterloo's public transit authority that we believe should be corrected legislatively through Bill 130. Specifically, under the Municipal Act, 2001, all municipalities that have responsibility for public transit have the authority to employ any of the full range of higher-order or rapid transit technologies such as light rail transit except the region of Waterloo and the region of York, which took over transit six—almost seven—years ago. The Municipal Act, 2001, only permits the region of Waterloo to use buses for public transit.

How did this legislative anomaly arise? Under the old Municipal Act, RSO 1990, all municipalities in Ontario were limited to bus public transit. With the enactment of the new Municipal Act, 2001, the province modernized this authority so that all municipalities in Ontario that had authority under the old Municipal Act to operate bus public transit now had the expanded legislative authority to operate public transit utilizing any mode or technology of public transit, such as light rail transit. The region of Waterloo was expressly excluded from this legislative amendment.

Why is the public transit authority different for the region of Waterloo? The answer appears to be attributable only to the timing of the transfer of public transit to the region of Waterloo from its local municipalities, and not to any substantive policy reason. I should add that this is applicable to York region as well.

The region of Waterloo assumed responsibility for public transit under the now-repealed Regional Municipality of Waterloo Act and the now-repealed Municipal Act, RSO 1990, in January 2000. This legislation referred only to the authority to operate bus transportation systems and, accordingly, that was the extent of the authority transferred from the local municipalities to the region at that time. When the province updated and enhanced the public transit authority under the Municipal Act, 2001, by changing authority from bus public transit to the broader passenger transportation systems, the region of Waterloo was excluded from the benefit of this legislative change simply because the region of Waterloo had assumed responsibility for bus public transit from its local municipalities under the predecessor legislation. We believe it is artificial and without any substantive policy reason to exclude the region from the benefit of legislative authority to operate public transit that employs any of the full range of higher order or rapid transit technologies.

Further, there are important reasons why the region of Waterloo should have the same authority as other muni-

icipalities in Ontario that operate public transit. Currently, the region of Waterloo is undertaking an individual environmental assessment to look at a variety of modes of public transportation, such as light rail transit, in order to meet the aims and objectives of growth management strategies at both the regional and provincial levels. I should add that the province is paying 50% of that environmental assessment and the province has included within its own legislated growth plan the light rail system we're talking about right here. So it's really an anomaly that they're not giving us legislative authority to do it. It's really strange, I should say.

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In order to implement the provincial growth plan and the region's growth management strategy, the region must have the ability to evaluate and potentially implement any of the public transit technologies that prove to be most effective for the region of Waterloo. In order to do so, the region of Waterloo requests that Bill 130 include an amendment to provide it with the same authority other Ontario municipalities currently enjoy, to operate any of the full range of higher order or public transit technologies for both conventional and disabled public transit.

It has been suggested that instead of obtaining a legislative amendment, the region of Waterloo should initiate the triple majority process under the Municipal Act, 2001 in an effort to assume responsibility for all forms of public transit from municipalities. What a waste of time and what a detachment from reality. It introduces all sorts of anomalies and potential problems in that particular situation. With respect, we submit that this is a cumbersome approach that was not required of any other municipality in Ontario. Further, we submit that it would not have been the intention of the province to require the region of Waterloo to meet the aims and objectives of the provincial growth management plan without ensuring that it has the proper tools and legislative authority to achieve these objectives.

So the bottom line really is that it's incomprehensible to me and all of us why the government will not provide clean, unambiguous legislative authority when it is paying 50% of the environmental assessment for the rapid transit system, the rapid transit line is in the provincial plan, and every municipality with transit other than York and Waterloo has been given this ability

We're also suggesting that there might be a look taken at other amendments to reflect the responsibility municipalities currently have for community social housing, public health and social services. These should be reflected as spheres of jurisdiction in the Municipal Act to acknowledge the level of involvement of municipalities in providing these essential services to their citizens and to equip municipalities with the legislative authority and the tools they need to allow them to fulfill their mandated responsibilities under the Social Housing Reform Act, the Health Protection and Promotion Act, the Ontario Works Act and other provincial legislation.

A minor change should be made to the table in section 11 of the Municipal Act to clarify the current level of

responsibility of the region for the entire scope of waste management, including waste collection.

The final point is small, and it relates to the enforcement of the trees bylaw. It is a request that Bill 130 contain an amendment to the Municipal Act, 2001 to allow for the registration of rehabilitation orders on title to the subject land so that it is binding on successor owners. For those of you who have an interest in the Trees Act, particularly in the rural areas, our ability to enforce is really critical to us in doing this.

That's the end of my presentation. I said I wanted to keep it brief and tidy. If there are any questions, I'd be happy to answer them.

**The Vice-Chair:** Thank you. We have three minutes for each party. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I just want to go quickly to the spheres of responsibility and your need to have some of them changed. Is there going to be any presentation of opposition to the committee from lower-tier municipalities that would have a disagreement with that transfer?

**Mr. Seiling:** None whatsoever. They all bought into it. They actually had transferred—they agreed to transfer the transit to the region of Waterloo. They're working with us on the environmental assessment right now. It's being built into their growth management strategy, their OPs and their local plans. There would be no problem with it at all.

The fact is, when we go to implement this, we don't want to be faced with some legislative problem that crops up in the middle of it. We want to be able to move seamlessly right through it, as every other municipality in Ontario would be able to.

**Mr. Hardeman:** From your presentation, it's kind of a housekeeping thing we should look at and say, "Why would we have it different for Waterloo when everybody else is happy with the other way, and so would the people of Waterloo?"

**Mr. Seiling:** Yes, they would, and I think the same is probably true of York as well.

**Mr. Hardeman:** The other thing, quickly—you didn't have it in your presentation at all—is the issue of more in camera meetings, but going further, the issue of having an ombudsman appointed for people who object to having more in camera meetings, who think it was inappropriately done. Have you had any discussion in Waterloo about whether we need more in camera meetings and how we would deal with the public's right to question whether they were appropriately done?

**Mr. Seiling:** We haven't had any lengthy discussion. I think one of the concerns is the timeliness of any kind of legislative requirement to review decisions, because quite frankly, if we get into a situation where decisions can be reversed—and we're doing business decisions, we're doing planning decisions, we're doing all sorts of things—if they suddenly get turned around six months or 12 months down the road, how do we carry out business in municipalities? I think that's a real issue that has to be addressed if the government is going to proceed with

appointing somebody who can open up the issue months and months after it's been decided.

**Mr. Hardeman:** So from your perspective, we would be better off leaving the definition of in camera meetings the way it presently is and no further oversight of it, rather than expand it and then have oversight that could overturn the decisions that were made?

**Mr. Seiling:** I think we need clarity on what can be discussed. I think any kind of move to review that has to be a timely measure. If you're going to have one, it has to be timely so that things move ahead, the business of government can move ahead. Beyond that, I really hadn't given it a lot of thought today. I was coming in for this; I wasn't really geared up for that. But I would say, timeliness and clarity.

One of the areas where I think there is an issue in terms of closed meetings: This government and the previous government have encouraged municipalities to do private-public partnerships, and one of the issues that comes out of our council is, what can you discuss in terms of negotiating on behalf of the municipality? A private sector company can do all their stuff in private, but how do we protect the public interest in negotiations?

**Mr. Prue:** I have a question about your other regional programs and services. AMO has said, I don't know how many times, including on this bill, that the province of Ontario should upload the download in a whole broad range of things like public health, community social housing, social services. Your position is somewhat different. You're not asking that it be uploaded, you're asking that your responsibilities and obligations and, I suppose, budget be carefully spelled out. It's quite different from AMO's position.

**Mr. Seiling:** I'm not sure it's different from AMO's position. I think AMO's position really is the cost of running the programs. Personally, I'm a firm believer that the programs are best delivered at the local level. Who pays for them and how they're paid for, that's another issue. I think the question of uploading and downloading is really a cost issue, not a who-delivers issue.

**Mr. Prue:** It's your position that you continue to deliver it, but would you agree with AMO's position in terms of the cost?

**Mr. Seiling:** I agree in part. I think sometimes in some of these programs there is legitimate cost-sharing, quite frankly, but the government usually has to pay its share, and in some cases, that share should be altered and amended.

**Mr. Prue:** In terms of the issue of closed meetings and the current regime of how meetings are closed only when it's a personnel issue, when it's a legal matter, when something is before the courts, does that cause you grief or problems in the regional municipality of Waterloo?

**Mr. Seiling:** We've always had a very tight rule on how we run our closed meetings, and members of council remind me quickly when we step outside those bounds. The one I just referred to earlier I think is an issue that has been increasingly a problem for us. We've had some

negotiations with private sector partners where we would bring the deal out publicly and openly, but the question is, how can we legitimately talk about what's the best deal for the public, when you're negotiating the deal, when there's a restriction on being able to do that? You're allowed to negotiate land sales privately but you're not allowed to negotiate lease arrangements or buyback or any of those kinds of things if you follow the act to its word.

**Mr. Prue:** Do you think that allowing that to be moved in camera will be good for Waterloo or do you see potential problems? We had the city of London here, and all the court cases that have resulted.

**Mr. Seiling:** I think there has to be some flexibility to negotiate. At the end of the day, though, the deal has to be brought out publicly and an opportunity for public input and consultation on it prior to it being passed. You just can't do it and then suddenly table it and it's done two minutes later. I think that's the protection, that you have to require that there be some public scrutiny of it.

**Mr. Duguid:** I want to put on the record the fact that not only have you come here with an excellent presentation, you've reached back to my past and found a staff member in Waterloo who happened to grow up in my neighbourhood and who I happened to go to school with.

**Mr. Seiling:** And who I forgot to introduce: Debra Arnold, who is the regional solicitor. I'm sorry.

**Mr. Duguid:** You go to no ends to make sure that you get our ear, and I commend you for that strategy. I'm sure she is doing a great job for you in Waterloo.

*Interjection.*

**Mr. Duguid:** I actually was in the same grade as her slightly older brother, Gary, who I also played hockey with. He was a heck of a lot better hockey player than I was too.

Anyway, I'm going to leave some time for Mr. Milloy. Actually, I've probably used up enough time now. I'll turn it over to Mr. Milloy. If there's any time left after that, I'll let it come back to me.

**Mr. John Milloy (Kitchener Centre):** I was hoping Mr. Duguid might comment and give his thoughts on the presentation, but thank you for the presentation.

As a resident of Waterloo region, I'm interested in going back to the changes that were made in 2001, where they changed the authority from bus public transit to the broader passenger transportation system. What happened? Were you in front of a committee back then arguing for the same thing? Why was a similar route not followed for Waterloo at the time? I guess I'm just asking, why do we keep being left out of these things?

**Ms. Debra Arnold:** Perhaps if I could answer that question?

**The Vice-Chair:** Yes.

**Ms. Arnold:** Certainly there were submissions made at that time. I'm not sure what the thinking was behind the table and essentially carving the region of Waterloo and the region of York out of the broader definition, because every other municipality in Ontario that previously

operated under the authority of bus public transit, under the old Municipal Act, enjoyed the legislative change to the broader passenger transportation system. Now, at the time of the new Municipal Act, 2001, it really wasn't on our radar screen to look at other modes of public transit, so perhaps it wasn't as strenuously submitted as it maybe should have been.

1720

**Mr. Milloy:** You said the triple majority process would be observed. What would that involve for the civilians watching?

**Mr. Seiling:** It means the public process of going back and getting each of the local councils or a certain percentage to approve every step of the way. Every time you want to make a change on the transit front, you have to go back and get a triple majority vote in the area municipalities. Now, in today's context, it probably wouldn't be a problem; it just gets in the way of doing business. As technology changes, everything else changes and we have to have a triple majority every time we want to make a change in the transit system. It doesn't make any sense. Nobody else has to do that.

**Mr. Milloy:** I'll pass it back to Mr. Duguid.

**The Vice-Chair:** You have 23 seconds.

**Mr. Duguid:** That's all I need. I just want to assure you, Mr. Chair and Mr. Chair, that we'll certainly be taking a close look at that—I think you've made a good case here—and potentially come forward with an amendment to the legislation to accommodate it.

**The Vice-Chair:** Thank you very much for your presentation this afternoon. Have a good evening.

#### ONTARIO ASSOCIATION OF EMERGENCY MANAGERS

**The Vice-Chair:** Next we have the Ontario Association of Emergency Managers. Alain Normand is the president. Welcome and make yourself comfortable. Please state your name and position for Hansard before your presentation. You will have 15 minutes. Any time remaining, as you saw, is split between the three parties.

**Mr. Alain Normand:** Thank you very much. My name is Alain Normand and I'm the president of the Ontario Association of Emergency Managers. Let me first thank you for having this opportunity.

The association represents over 500 professional emergency managers working in Ontario. Although some of our members work at the provincial and federal levels or in non-profit organizations for industry, the majority of our members actually work in municipalities.

The primary role of the emergency manager is to ensure that citizens, businesses and stakeholders are protected to the best of our ability during an emergency. With the increase in number, intensity, and range of impact of emergencies in Ontario that we have seen over the last decade, the work has become more and more complex. Our members are the ones on the front line of emergencies on a daily basis and they understand very

well what is at stake when an emergency strikes our communities.

Recently, we presented our concerns to this government during the debates on Bill 56, An Act to amend the Emergency Management Act. Our concerns did not see themselves translated in legislation. Since the concerns relate primarily to the role of municipalities during emergencies, we would like to take this opportunity to review various acts in relation to municipalities by this committee to bring our concerns to the forefront again.

The Emergency Management and Civil Protection Act of Ontario provides the ability for the head of council of a municipality to declare an emergency and to issue orders as required. However, there is no provision in this legislation for enforcement of these orders at this time.

With the introduction of changes to the Emergency Management and Civil Protection Act, the province has ensured that it had the full power to enforce orders issued under a provincial declaration of emergency. We contend that the responsibility for managing an emergency through all its phases lies inherently with municipalities. As such, municipalities need the appropriate tool to fulfil that responsibility. In order to ensure the safety and well-being of our citizens and community, the province must confer to municipalities the ability to issue orders and enforce them. In particular, the ability of municipalities to enact orders around restricting travel, evacuation, closure of facilities in the impacted area and procurement of goods, services and resources is integral to ensure a rapid, effective and efficient response.

Municipalities do not have the luxury of time to wait for orders to be issued by the province when lives are at stake. We are therefore submitting a number of articles, which we've annexed to my presentation, that should be introduced through Bill 130 to ensure the provision of such powers.

The first proposed article will see powers attributed to municipal first responders during emergencies prior to any formal declaration of emergency by a head of council, in the same way that the Commissioner of Emergency Management in Ontario can issue orders during a provincial emergency prior to having the Lieutenant Governor declare a provincial emergency.

It specifies the types of actions that can be undertaken under such circumstances, the authority conferred to the incident commander, along with statements indicating that it is an offence to refuse to comply with such an order issued under these circumstances and protection from liability for anyone issuing such orders. The next article will serve to provide the necessary power to the head of council during a declared emergency, with the same enforcement ability and the same protection from liability.

Although these provisions may already be implicit in the existing legislation, what is lacking is the recognition that a refusal to comply is an offence. We also propose that there should be penalties attached to such offences in order to provide real ability for action by the municipality.

Other clauses are included to extend the protection from liability to any municipality that may assist another during an emergency, to ensure that municipal emergency orders do not contravene the Occupational Health and Safety Act and send people into unsafe conditions, and to ensure that no bylaw is required to take action when time is of the essence.

As a representative for a force of over 500 emergency management professionals in the province, I offer my support and that of the Ontario Association of Emergency Managers to help in rewriting any parts of this legislation and to consult with this government in any way possible to make Ontario safer and better prepared. I want to thank you for providing us this opportunity on behalf of the association.

**The Vice-Chair:** Thank you very much. We have about three and a half minutes each. We now move to Mr. Duguid.

**Mr. Duguid:** The motions that you've put forward look familiar. Are they the same motions that you—because I know you must have appeared before committee on Bill 56—

**Mr. Normand:** We did.

**Mr. Duguid:** —the Emergency Management Statute Law Amendment Act. It was probably the justice committee.

**Mr. Normand:** That's right, the standing committee on justice.

**Mr. Duguid:** Yes, the standing committee on justice policy. Are these the same motions that you put forward for that legislation?

**Mr. Normand:** Very similar. There are a few motions that we've kept for later related to payments and some that we've put aside that were relevant to Bill 56 that may not be quite relevant at this point. We wanted to put the emphasis on the ones that were most important at this occasion. But yes, what we're presenting here is basically a repeat of what we had presented.

**Mr. Duguid:** So the appropriate way to have dealt with your amendments would have been during that original Bill 56, I would assume, had they had support. I'm not familiar with the rationale behind the reasons why your amendments were or were not accepted by the committee. Perhaps you could—

**Mr. Normand:** I'm not sure why they weren't accepted at the time. I did give a few examples of some of the situations that our emergency responders are faced with, which need to be addressed. For example, in an evacuation we give an evacuation order, but if people refuse to comply with the evacuation order, they will remain on location, they'll remain in the dangerous area, and we have no way of removing them from there. When they finally are in real danger, then we have to send our emergency responders to bring them out, putting the emergency responders at risk. This is one of the major examples we have for which we need to have the power to enforce any kind of orders that are given at the municipal level. We're coming at this point because we're talking about giving powers to our municipalities

to take action in various situations. To us, emergency management is one of the most important ones.

**Mr. Duguid:** I thank you for that. I guess I would ask, have you had any further discussions with the Minister of Community Safety or with staff on the emergency—

**Mr. Normand:** We've had some discussions with some of the staff. There's been quite a change in seats at Emergency Management Ontario, as you're probably aware. We're in a bit of a transition mode right now, so we're waiting for the new administration to be there to bring it up again. Certainly, we would like to have this considered by this committee as well.

**The Vice-Chair:** My apologies, Mr. Prue. You were to start this rotation. I'll turn it over to you now.

**Mr. Prue:** Along the same lines: Your association attempted to pass these regulations and get the ear of the government on Bill 56 but failed, and that's why you're bringing them back to this bill. Do you think that this bill is the right bill, the right course of action? Obviously, the other one was right on point. This one here deals with a whole bunch of municipal items—not so much this, but lots of other things.

**Mr. Normand:** I agree that it is maybe not directly related. However, the fact is that here we're trying to change acts that affect municipalities, we're trying to make changes in provisions for municipalities to take action, and we felt this was the time to raise it again, since we weren't successful at our first attempt.

1730

**Mr. Prue:** In terms of municipalities, I have not heard that municipalities have asked directly for the kinds of authorities that you've got here. Certainly, I know Peterborough, with the flood and the rainstorm, was able to cope; the Mississauga derailment of many years ago, they were able to cope. Whenever there's a natural disaster—the ice storm in Kingston, they were able to cope. Why is it that you believe they need more authority than they've obviously been able to rely upon in past years?

**Mr. Normand:** I think the reason why it's not being pushed is because we have been lucky, maybe I should say, that we have not had any casualties from these emergencies, for our emergency responders. However, we have had a lot of close calls, situations when some of our emergency responders' safety was put at risk in trying to respond; some of them, also, that we maybe don't hear about as much because they're not as taken up by the media. But there are regularly situations in northern Ontario where there are forest fires where people want to stay in their homes to try to protect their homes as long as they can, and finally we have to go in and rescue these people, take them out once they're inundated by the smoke, and we're putting our own firefighters at risk by doing this. Those are some of the examples.

The municipalities themselves may not have taken it up at this point because, again, they've been busy with other aspects of the legislation. Municipalities were supportive of the work that we did when we went to Bill 56. We had a lot of support at that time. Unfortunately, this is

not their main priority—we recognize that at this point—because the bill addresses other topics.

**The Vice-Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I guess just to show how much times change, when I was first involved in municipal politics, they said that the only difference between the head of council and the rest of council was that the head of council had the authority to call out the posse. The act has changed considerably since.

I just want to go to the part of your presentation that's an appendix, which is the recommendations of the things you would like added to the Municipal Act. The powers during an emergency—and I just look at them quickly here: “Command the assistance of persons present and any inhabitant of the municipality; remove property from buildings at risk; take charge of property; enter, break into or tear down any building; exclude and remove persons and vehicles from the building or vicinity; and generally do all things necessary to respond to the emergency.”

Is it your presentation that in fact those powers do not presently exist in the Municipal Act?

**Mr. Normand:** In the Municipal Act, no. But in the Emergency Management Act they are implied but not detailed. The head of council has the authority to take any action required as long as it's not contrary to law. That's what the exact text says. However, what we're saying is that, first, it's not very detailed. We're giving a little bit more detail. Secondly, once the order is given, there's no power to enforce it. What we are concerned with mainly is the power of enforcement, to be able to do this without having people refuse it. Right now, if a police officer wants to enter a property, he needs a warrant, he needs all sorts of documentation to be able to enter any property. We are saying that under emergency declaration conditions, police officers can go into a situation to take control of an emergency in different ways. So these need to be spelled out. People can block access right now for police, fire and ambulance and they have the right to do it because there is no enforcement power for this.

**Mr. Hardeman:** Are there any cases or documentation to show, where someone tried to use these implied powers presently, that anyone would go to court and win based on their rights being infringed upon after the fact?

**Mr. Normand:** I'm not familiar at this point if there are. We have had people refuse to comply and remain in situations where they have put themselves and emergency responders at risk. We can document some of that.

**Mr. Hardeman:** Regarding the offence and penalty part of the act, my question is: If you look at the things you need to do on the front lines of the emergency, what is the advantage to having penalties after the fact?

**Mr. Normand:** It's mainly that if people know they are going to be charged—if the police say you can be fined, you can be jailed—the police have that power to bring people out of an emergency situation.

**Mr. Hardeman:** I was in the fire service for 25 years, and we often talked about having to knock down the building next door and the owner of that building not necessarily supporting that. That person's knowing there was a penalty of a fine after the fact would not make much difference. The building would still get knocked down. To me, it seems kind of redundant to have penalties for things that would only be requested in an emergency. After the emergency, we'd be better off spending our time trying to rebuild what was destroyed rather than trying to penalize those who didn't help.

**Mr. Normand:** Certainly in different situations, I agree that you have to look at different scenarios. Maybe that's not the most appropriate one, but there are situations when we feel that this is—

**The Vice-Chair:** Thank you for your presentation.

#### ONTARIO ROAD BUILDERS' ASSOCIATION

**The Vice-Chair:** We will move on to Rob Bradford, executive director of the Ontario Road Builders' Association. Please state your name for Hansard. You have 15 minutes. Any time remaining will be divided among the three parties.

**Mr. Rob Bradford:** Thanks for the opportunity. I'm Rob Bradford, executive director of the Ontario Road Builders' Association.

You heard a little bit about what I want to talk to you about from Mr. Hull earlier. I hope that maybe I can bring a little more clarity to the issue. I'm going to skip over a lot of the rhetoric in our brief and maybe get right to some of the points.

We are very concerned that amendments to the Municipal Act and regulations that are to follow immediately, as we've been told, will give municipalities the ability to compete against private corporations for the provision of virtually unlimited goods and services. I think the important thing to recognize there is that we believe they're going to be given the ability to compete unfairly with the private sector, and maybe that gets to some of the questions that came up earlier.

We absolutely believe the private sector can compete every time with the public sector on an equal playing field. We think that the regulation, in many ways, unlevels that playing field. Municipal corporations would be able to borrow employees from municipalities. They'd be able to borrow monies on the strength of the taxpayers' guarantee. They could transfer land, equipment and other assets to the municipal business corporation without, necessarily, a recognition that this is a cost of doing business. Municipal corporations would be able to share costs with municipalities that would, we believe, further allow them to show a misleading competitive advantage compared to the private sector. They'd have unlimited accounting and reporting leeway to facilitate an apparent, if not necessarily accurate, comparison of value for taxpayer dollars vis-à-vis the provision of services by the private sector. Municipalities could even purchase or

enter into partnerships with private sector contractors or other service providers. You could buy 49% of a company.

Let's play it through a potential scenario. You buy a local contractor—maybe you pay higher than market price for it, because you can. You proceed to lock up all the work in the local area, because you no longer have to public tender—a huge, huge issue here is that private corporations could do this work without public tender. To us, that's one of the only ways you find out whether you're getting value for money. Essentially, we believe that with all the advantages that would be built up, that corporation, that partnership, could now lock up all the work. When the work was locked up, if the municipality chose to sell its interest in the company, you'd be left with a private contractor that had a monopoly on the local area. So whether a municipality had a monopoly in the local area of work or, eventually, a private sector contractor, it's still wrong. It still leads to an unfair advantage, leading to a monopoly on work in the local area.

Municipalities would also, for the first time, have the right to sell their services to other municipalities. Again, we find that very, very problematic.

**1740**

We dealt with this issue three years ago when it first came to us. The government, in its wisdom at the time, understood what we were saying, particularly in the areas of roads, highways and bridges, and we did receive an exemption at that time. We're certainly looking for that same exemption again as we go down the road, and we'd certainly urge you to give the same consideration to other private sector businesses that we'll be talking to along the same lines—waste management came up earlier. I think even in the waste management business, if a public corporation or a public entity has to show its true costs of doing business—which never, ever happens; let me guarantee you that—the private corporation will be collecting your waste. In areas where we have public entities collecting waste, doing construction work, any of that kind of thing, I don't believe in any of those cases the public has ever seen the true cost of doing business.

Municipalities carry liability insurance. It costs a fortune. A corporation can't operate under that liability insurance. Who's paying for that? The taxpayer is paying for it, but the corporation is going to be able to not have to show it as a cost. It's the same as if you borrow employees. I've given you a list of some of the things we see as an unfair advantage. We believe there's less public accountability in this than there's ever been before, because we don't believe there is a method or a way the public will ever be able to correctly determine whether or not that private corporation is competing properly, fairly and equitably, and whether or not it is delivering proper services to the taxpayers.

I think I'm going to leave it at that. The rest of our arguments are in the brief. I've attached a copy of what we submitted three years ago. The arguments haven't changed. The government keeps asking us why we are worried. Do we think municipalities are going to go out

and build corporations to build roads? Yes, we do believe they will do that. Once they have the ability to do that, there are many engineering departments in smaller municipalities in this province that would just love to consolidate their internal power, if you will, by setting up corporations and locking out the private sector. Yes, we believe it absolutely would happen. We have municipalities now building bridges, if you can believe it. They probably shouldn't be doing that, but we don't want to see that thing escalating so that we have municipal corporations building all of the province's bridges. It's just not good public policy and it seems to fly in the face of where we're going in the world. We're going to privatization, outsourcing. This drives work back to the public sector. If I were Machiavellian about it, I'd also suggest to you that it's driving work from the construction unions into the public service unions; not that that's anybody's intent, but that will be a direct result of some of the things we see happening.

**The Vice-Chair:** Thank you very much. We have a little over three minutes for each party. We'll start with Mr. Prue.

**Mr. Prue:** I'm starting this one?

**The Vice-Chair:** Yes. You're starting because I neglected you in the last one.

**Mr. Prue:** Okay. You're not making a mistake this time?

**The Vice-Chair:** No, I'm not; no. We're back to you.

**Mr. Prue:** Sir, the first place that experimented with allowing municipalities to tender for projects was Indianapolis in the United States. They found it hugely successful. It saved the corporation of that city millions, maybe billions of dollars over the years. It seems to me that's what's being emulated here. Do you have any information about the American Republican experience to save money? What you're saying flies—

**Mr. Bradford:** I have no experience with Indianapolis, but it doesn't fly in the face of common knowledge. I can pull studies out of the sky and deliver them to this committee showing that when you properly assess costs to public corporations, very seldom do they compete with private operations.

**Mr. Prue:** And why is that? It seems to me they don't have to make a profit.

**Mr. Bradford:** Why is that? That's a discussion for a different day. We obviously disagree, Mr. Prue.

**Mr. Prue:** No, no. You start from the premise that any good corporation has to make 10%, 12% profit in order to satisfy the shareholders. If the city can do it for 10% or 12% less and break even, you wouldn't think that was a good thing for taxpayers?

**Mr. Bradford:** If that were possible, I think that would be a good thing for taxpayers. There's not a construction company in the world that operates on margins anywhere near 10% or 12%. Dun and Bradstreet says it's 2.5%. I think it's a little more than that, but I don't believe that 10% or whatever the number is can be made up. The private sector far exceeds that in terms of efficiency and ability to do the work quicker and better.

**Mr. Prue:** And you're saying a public corporation run by a municipality couldn't do that?

**Mr. Bradford:** Not as efficiently or as effectively, no.

**Mr. Prue:** And why is that? If they had the same staff, if they hired someone to manage from the private sector, why couldn't they?

**Mr. Bradford:** Do you want to get into the culture of government? That's my answer, Mr. Prue. Government tends not to operate as efficiently as the private sector.

**Mr. Prue:** And the private sector tends to make profit a lot more than the government?

**Mr. Bradford:** Agreed. Is that a dirty word?

**Mr. Prue:** No, but is private—

**Mr. Bradford:** Are we looking at a day where we're going to bring all of our private work back into the public sector again? Is that where we're going in this province?

**Mr. Prue:** No. I've only had one experience when I was the mayor, and we privatized half. In the end, the private sector could not compete with the public sector.

**Mr. Bradford:** I don't believe that's true.

**Mr. Prue:** What evidence do you have that that's not true?

**Mr. Bradford:** I don't believe they had an honest benchmark to compete against.

**Mr. Prue:** They didn't even bother to compete at the end of the five years.

**Mr. Bradford:** Which says to me the playing field was made so unfair they didn't even bother.

**Mr. Prue:** You have all the answers. Thank you very much, Mr. Chair.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I don't want to get into—

*Interjection.*

**Mr. Bradford:** Well, we disagree.

**The Chair:** Mr. Duguid has the floor.

**Mr. Duguid:** My turn now. I don't want to get into a philosophical discussion with you on this stuff. I'm probably a little closer to your view than Mr. Prue is in that I think you need a good balance of service delivery mechanisms. I've been involved in local government where we've had opportunities to form corporations for private purposes, and it has been entirely in the public interest to do so. To me, our role as elected representatives at all levels of government has to adhere to what's in the public interest above all. I'm not sure where you can draw the line on this stuff and exempt one particular industry or another particular industry.

Certainly we wouldn't want to prohibit municipalities from being able to benefit from the freedom that comes with being able to set up these corporations. In the city of Toronto, the Toronto Community Housing Corp. is one of the best examples in North America of a housing provider that probably wouldn't have been as successful if set up under any other structure. Economic development corporations exist throughout.

So I'm trying to come to terms with exactly what you're trying to say here. Are there examples of cities that have gotten into the road building business and competed successfully with the private sector?

**Mr. Bradford:** I don't believe there are. Many municipalities do some degree of their own road work—emergency repair and stuff like that. In situations like that, it certainly does make sense to do it that way. I'm not aware of any municipalities that have established corporations to get into the road building business, but then I don't believe they've had the wherewithal to do that in the past.

**Mr. Duguid:** See, I have confidence that municipalities will make decisions that are in the best interests of their constituents, but at the same time, I'm not convinced that any level of government would do a better job of building roads than our private sector does. To be honest with you, I'd be very surprised if you saw competition coming from a municipal government wanting to get into private corporate business. I think they have enough challenges managing what they have now, to be frank.

**Mr. Bradford:** I would like to believe that's the case. If that's the case, then it probably wouldn't bother any municipality if we maintained the exemption.

**Mr. Duguid:** I think what we want to do, though, is open it up to give the municipalities the flexibility they need—

**Mr. Bradford:** And I agree with you, yes, there certainly are areas where municipalities can serve their taxpayers by entering into—hydro is one area. There are areas where they can do the job as well or better. I'm basically referring here to hard-core infrastructure services like construction, and I would include waste management. In those areas, I do stand behind my original statements. But yes, I don't suggest that municipalities can't find areas where they can operate in the best interests—

**The Vice-Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, could you tell me where you would draw the line in municipalities that provide road maintenance and road building on their own? When you turn that into a corporation, where does the problem arise, in your opinion? Obviously, every municipality, particularly in rural Ontario, has a roads department where they have their equipment and they can build their own roads. So where does the problem area start?

1750

**Mr. Bradford:** First of all, there's no public tender. That's the problem right there. You don't know how these deals get made. If there is a public tender, a contractor is bidding against an entity that doesn't necessarily have to carry the same real costs as a contractor, and therefore can come in every time with a lower bid. Whether or not that is a real bid and whether or not that's really what it's costing the taxpayer to get their work done is unknown. That's part of our problem here: There's no mechanism to lay it bare. So if we're going to go this way—if we have to go this way—let's at least look at requiring some mechanism to show that a municipal corporation is accounting for its true costs in its bids. And if they're doing that and they're low, then the taxpayer is getting a good deal.

**Mr. Hardeman:** Again, true cost: I think one of the things we are missing in our discussion here is that if it's a municipal corporation, they don't have to pay property tax or business tax within the community, so that reduces the cost. But it really doesn't reduce the cost to the municipality, because if they don't get it from the provider, then obviously it's going to increase the need for others to pay.

If the government decides they are going to allow the corporate structure in municipalities, what would be your suggestion as to what needs to be done to make that full-cost accounting? What type of thing do you think we should do to make it full-cost accounting so that it is a fair and equitable bidding process?

**Mr. Bradford:** I suppose if you went with commonly accepted standard form construction documents, and those documents became public knowledge after a tender process and were open for scrutiny to the public, we could certainly look at those documents and determine whether or not there was reasonably fair costing.

**Mr. Hardeman:** So the corporation is not the bad thing. It's the secrecy or—

**Mr. Bradford:** The ability to compete with advantage, yes. We'd love to not have to think that we've got to compete with the public sector, but if that's in the cards, we'd like to see transparent and fair competition.

**The Vice-Chair:** Thank you very much for your deputation this afternoon. That brings your time to an end.

#### COUNCIL OF OXFORD COUNTY

**The Vice-Chair:** Next we will have the council of Oxford county. We have Donald Woolcott, the warden, and Ken Whiteford, the chief administrative officer and clerk. Welcome.

**Mr. Hardeman:** I'd just like to say that this time the clerk did save the best for last.

**The Vice-Chair:** Thank you.

Make yourself comfortable there. Please state your name and position before any deputation or speaking point.

**Mr. Donald Woolcott:** I'm Donald Woolcott, warden of Oxford county. Thank you very much to the committee for hearing us today. We do have a written submission that we have given to you. We're not going to go through it verbatim, obviously, but we would like to bring up a couple of the issues we have highlighted in our review of the Municipal Act.

The nature of our problem in Oxford county is that we do have a 10-member council. We represent more than 100,000 people. We certainly believe that a 10-member council is a very effective council for the manner in which we conduct our business. The difficulty is that of the eight municipalities, seven of them have only one member sitting in that council chamber, and if there is an absence of that member for any reason, that municipality is left without a voice.

The proposed act leaves us with a situation where we cannot have a replacement member appear at county council for three months. Our members of council feel that that is unfair, that it deprives them of representation, and they ask that a change be made to allow an alternate to be applied from the lower-tier municipality, under a procedural bylaw between both the lower-tier and the upper-tier council, to sit as their representative at that council chair. We certainly recognize the opportunity for participation by a member through electronic means, which is a proposal that has been bandied about, and we recognize that this a possibility that could answer some of the problem. But we still feel the committee should consider our change. Perhaps the solution that is given, and some of the wording and whatnot, could be worked on much better.

I'll move on to some of the other areas that we did recognize. Waste management has come up several times here today and we recognize that waste collection is referred to. Bill 130 does not define the terms. There was a definition in some of the earlier iterations of the Municipal Act.

Furthermore, we need a definition of what exactly is recycling. I realize that a definition of recycling is somewhat fleeting. The term "recycling" is ever-changing and evolving, so I think we need to be aware of that in anything. Waste management also is an evolving term, but we're at a point now where we're looking to establish some certainty in relationships between our municipalities, and a definition would certainly assist us in that.

Economic development: The table in section 11 of Bill 130 indicates that it would be carried out exclusively by the county of Oxford, as it has been for a number of years. We have operated by passing bylaws, enabling lower-tier municipalities to carry out that function for us in a very capable and admirable manner. The three urban centres have undertaken that and just recently one of our rural townships asked for that ability as well.

The example of economic development in Oxford county would be in 2005 when we were asked to assemble land for a major economic project. It was the county of Oxford that was the assembler of that land, not the municipality, and the reason for that being that the land was in a rural township that did not have an economic development agreement with the county. We fulfilled all the terms and requirements of that economic opportunity and we now have an investment of some \$1.1 billion to \$1.5 billion coming to Ontario.

Again, back to waste management, not only do we need a definition, we became directly involved as a county in waste collection in 2002 after a successful triple majority vote of all our lower-tier municipalities. At that time, we recognized what was an area-wide—not just local—situation of waste management, something that could be managed effectively across the whole area.

We did this through contracts. We have both private sector and public contracts, with the city of Woodstock and the township of South-West Oxford providing services. It provides us with a very good comparative nature

of what the costs of waste recycling are in Oxford county.

The other items—spheres of influence, again. When the County of Oxford Act was established in 1975, we were given exclusive jurisdiction of water and waste water. It is not a jurisdiction that we exercised until late 1999. We started doing some of the work; we were doing all the groundwater work. We had PUCs that were coming under significant pressure to operate their systems. At that time, we amalgamated and, again, assumed all the responsibility for the water and waste water and water purveyance. It has been a very effective program. We see that this is certainly very much in line with what is coming down under the Clean Water Act and natural resources protection acts and the conservation acts. So we see requesting a continuance of that as being proactive to what the aims of the province of Ontario are.

We have raised these matters and hopefully I've left an opportunity for members to question. I hope you will give us consideration. If there are any questions or further comments that the committee wishes to make, we are certainly available at any time.

**The Vice-Chair:** Thank you very much. We have just a little over three minutes for each party. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Warden, for the presentation. First of all, I want to deal with an item that's not in your presentation. It has to do with one of the items that's had considerable discussion in our committee, which is the need for more in camera meetings in council. Obviously, being a member of both the local and the regional council, I guess it's fair to ask, have you had a lot of your people thinking that the present structure does not allow sufficient discussion in camera, that they need more in camera meetings?

**Mr. Woolcott:** I would say, from a local-tier, lower-tier municipality in the township of Blandford-Blenheim, no, there has not been a great request for any extension of that definition. We sometimes struggle at the lower tier with what exactly is the definition in cases, and the term that most comes to light is "potential litigation." It's very clear, on other points, what the issues are. At the upper tier, at the county of Oxford, again there's not a lot of demand for further closed sessions. We have members of council who wish for fewer closed sessions. Again, the problematic issue is the term "potential litigation," and sometimes it's extremely difficult to identify what that is.

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**Mr. Hardeman:** The devolution of some of the responsibilities from the original 1974 act: In your presentation, is the recommendation from county council consistent with the general wishes of the local-tier municipalities? I asked that of Waterloo, and they said that nobody in Waterloo would object to any of the recommended changes. Would that be true in Oxford, or is there some concern about some of the areas?

**Mr. Woolcott:** I believe there would probably be some concern from some of the areas, but it's very difficult to know. I would like the committee to realize that we are appearing on what effectively are notices of

motions that were introduced by members of county council. They were very sparsely debated, and there was no staff input to them. Those motions, for the most part, have been returned to the lower-tier municipalities for comment, and those comments have not all been returned.

On the issue of water and waste water, though, I believe that six of the eight municipalities have replied very clearly that they enjoy the status quo.

**Mr. Hardeman:** Thank you very much for your presentation. We hope the government will look favourably on some of your suggestions as to what could be changed for the county to make it work a little better.

**The Vice-Chair:** Mr. Prue.

**Mr. Prue:** I've just had a chance to read the whole brief here. It seems to me that all you're looking for, in terms of alternate, is to adopt what the county of Bruce had in its legislation in 1999 and which I imagine has not been amended in this act. Would that be it?

**Mr. Ken Whiteford:** That would be correct.

**The Vice-Chair:** State your name, please.

**Mr. Whiteford:** Ken Whiteford.

The county of Bruce change was through a restructuring order issued by the ministry. I have had discussions with the county. They have not had any change to that over the years since it was put into effect.

**Mr. Prue:** It seems to me that what you're proposing here makes eminently more sense than what the government has in its bill, which is to allow people who are not at the meeting to vote. Do you have any thoughts on that? I've given the example of somebody sitting on a beach in Acapulco with a drink in one hand and a telephone in the other, participating in a vote. That's the alternative here. Would you prefer to appoint someone, as Bruce has, to actually attend the meeting and vote in someone's stead, or do you like the idea of allowing someone who's not there to vote from wherever?

**Mr. Woolcott:** I'm very much a face-to-face person. I would strongly object to electronic participation in a closed session.

**Mr. Prue:** I congratulate you for that. You're the first person who has actually made a statement that strongly. This would be the only level of government that would allow that. Certainly I can't send someone to my seat upstairs, nor can they do it in the House of Commons.

The second question I have is about in camera meetings. You haven't dealt with that—Mr. Hardeman asked the question. Do you believe there should be more in camera meetings, or are you content with the way they are? Do you think it causes the municipality or the county council any difficulty having to hold its meetings in public?

**Mr. Woolcott:** I don't believe we've encountered any particular difficulties in doing so in public. We've always tried to be forthright with people. We do, though, take sensitive issues, whether they are personnel, financial or litigation, as very serious issues that we wish to keep in camera and wish to protect the rights of the municipality, and ultimately of the taxpayer, from undue exposure.

**Mr. Prue:** So the law as it exists—because that's what the law now says—is fine?

**Mr. Woolcott:** Yes, we've been able to work with it.

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

**The Vice-Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you very much for the deputation and for taking the time. I guess it was at the last AMO conference that we had an opportunity to talk about some of these issues, and I appreciate that very much.

**Mr. Woolcott:** Yes, we did, Mr. Duguid.

**Mr. Duguid:** Getting back to the closed meetings aspect, do you support AMO's contention that there are circumstances not allowed under the current legislation, such as the need sometimes to brief members on complex items, the need to engage in strategic planning or strategic discussions, for instance, about an issue with another level of government, a strategic issue with another order of government within the municipal sector or a strategic issue with a private company or something like that, which may not be land-related and may not be grounds to go in camera? AMO has been very concerned that they're having to engage in this in an almost a nefarious way and it's almost that these discussions have to take place in a coffee shop off-line—all that stuff—and it's not the way it's supposed to happen.

**Mr. Woolcott:** I think one of the things to consider when looking at Oxford county is that we operate, in my view, very much an executive level of government. I'm a full-time warden. I am in the office every day. I am able to consult with staff any day I'm there. That also gives me the ability to consult with my council on a one-to-one basis, and perhaps outside what one would consider the outside extremes of a meeting area. So, number one, to put it in the perspective of some issues we've had to deal with, we've been able to do it in that manner rather than bringing council together as a whole to discuss strategic planning. Number two, we have done our strategic planning in the open. We have met in the open and invited the public to participate in our strategic planning.

**Mr. Duguid:** How could a city the size of Toronto or Ottawa consult with each and every one of its councillors?

**Mr. Woolcott:** We're 100,000 people; we're not a million.

**Mr. Duguid:** I can understand how you could do it in a smaller council, but on a larger council it would be pretty difficult to consult with each and every member on those kinds of issues. But I recognize your thoughts on it and appreciate them. We'll certainly take a look at your submission and see if there's anything we can do.

**Mr. Woolcott:** I appreciate that, Mr. Duguid.

**The Vice-Chair:** Thank you very much for your deputation. Have a good evening.

To the committee members, this brings us to the end of our deputations today. I'd like to thank all witnesses, members and committee staff for your participation in the hearings. This committee stands adjourned until 4 p.m. on Wednesday, November 22.

*The committee adjourned at 1807.*



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