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Official Report of Debates (Hansard)

Thursday 23 November 2006

Journal des débats (Hansard)

Jeudi 23 novembre 2006

Standing committee on finance and economic affairs

Budget Measures
Act, 2006 (No. 2)

Comité permanent des finances et des affaires économiques

Loi de 2006 sur les mesures budgétaires (No 2)

Chair: Pat Hoy
Clerk: Douglas Arnott

Président : Pat Hoy
Greffier : Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

Thursday 23 November 2006

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Jeudi 23 novembre 2006

The committee met at 1004 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The standing committee on finance and economic affairs will now come to order. I would like to have the report by the subcommittee. Mr. Arthurs.

Mr. Wayne Arthurs (Pickering–Ajax–Uxbridge): The standing committee on finance and economic affairs' subcommittee reports as follows:

Your subcommittee on committee business considered on Thursday, November 16, 2006 the method of proceeding on Bill 151, An Act to enact various 2006 Budget measures and to enact, amend or repeal various Acts, and recommends the following:

(1) That, pursuant to the order of the House dated Tuesday, November 14, 2006, the committee meet in Toronto for the purpose of holding public hearings from 10 a.m. to 12 noon on Thursday, November 23, 2006.

(2) That the clerk of the committee, in consultation with the Chair, be authorized to post notice of the committee's public hearings on the Ontario parliamentary channel and on the Internet.

(3) That the deadline for receipt of requests to appear before the committee be 5 p.m. on Monday, November 20, 2006.

(4) That the clerk of the committee distribute to each of the three parties on Tuesday morning, November 21, 2006 a list of those who have requested to appear by the deadline for receipt of requests.

(5) That, if required, each of the three parties supply the clerk of the committee with a prioritized list of the witnesses they would like to hear from by 12 noon on Tuesday, November 21, 2006. These witnesses must be selected from the original list distributed by the committee clerk.

(6) That the clerk of the committee, in consultation with the Chair, be authorized to schedule the witnesses.

(7) That the time allowed for presentations by witnesses be up to 10 minutes for groups and individuals, followed by up to five minutes for questioning by committee members.

(8) That the deadline for receipt of written submissions be 12 noon on Thursday, November 23, 2006.

(9) That, pursuant to the order of the house dated Tuesday, November 14, 2006, the deadline for filing amendments is 12 noon on Thursday, November 23, 2006.

(10) That, pursuant to the order of the house dated Tuesday, November 14, 2006, clause-by-clause consideration of the bill be scheduled following routine proceedings on Thursday, November 23, 2006.

(11) That the clerk of the committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements to facilitate the committee's proceedings prior to the adoption of this report.

Mr. Chairman, that's the committee's report.

The Chair: Thank you. Any comments?

Mr. Tim Hudak (Erie–Lincoln): I thank the parliamentary assistant for reading into the record the subcommittee report. I do want to express on behalf of the official opposition our regret that this is yet another time allocation motion that has caused the committee to operate within very tight time constraints. I know the subcommittee would just have to work within what the motion was in the House; the subcommittee had no choice. But there are some weighty matters before us dealing with TIFs, dealing with the Canadian Public Accountability Board, concerns from groups like the Ontario Bar Association about such. Certainly, the Assessment Act changes deserve a lot of debate.

Because of the constraints of the motion brought forward by the government House leader, we really only have a couple of hours to consider what we've heard here today and then to craft amendments. I think my colleagues know, crafting amendments is a bit of a challenge, because you always need to have the proper legal language.

I know we have many groups before us; I look forward to hearing them. I just want to express our regret that the time to bring forward amendments is very constrained based on what we've heard.

Secondly, in an environment where we've seen the guillotine motion over Bill 107, the human rights legislation, and the evidence of a broken promise by the Attorney General to listen to groups at Bill 107, it's regrettable that this committee too is facing very tight time constraints which restrict our ability to bring forward thoughtful amendments.

The Chair: Further comment? Hearing none, shall it be adopted? Carried.

BUDGET MEASURES ACT, 2006 (NO. 2)

LOI DE 2006 SUR LES MESURES BUDGÉTAIRES (N^{O} 2)

Consideration of Bill 151, An Act to enact various 2006 Budget measures and to enact, amend or repeal various Acts / Projet de loi 151, Loi édictant diverses mesures énoncées dans le Budget de 2006 et édictant, modifiant ou abrogeant diverses lois.

CITY OF MISSISSAUGA

The Chair: I will call on our first presentation of the morning, the city of Mississauga.

Ms. Hazel McCallion: Good morning, ladies and gentlemen. Thank you for the opportunity to make a presentation. I think the time allocated to this bill is far too short: only two hours for a bill that has very serious implications, in my opinion, not only to the municipalities.

First of all, I want to introduce Mary Ellen Bench, our solicitor, and Bob Rossini, our director of finance.

There are two issues that we want to direct. First of all, the TIF legislation, where it refers to the TIF, should have gone before the MOU. We have an agreement with the province that any legislation that seriously affects all municipalities, which this would, should be before the MOU. This did not go to the MOU. AMO is quite concerned about it and so are we. It should have gone to the MOU. The DC legislation is more specific and therefore would not go to the MOU. So we want to clarify we've sorted that out very clearly.

The TIF legislation, AMO—and we are supporting AMO; I'm on board supporting that this has to be deferred and referred back to the municipalities for input. It's not acceptable, and the conditions under which it operates should be included in the legislation. We're not happy that the cabinet, really, has the authority over this. It's a very difficult issue that has not been discussed with the municipalities and should go to the MOU. I want to emphasize that. It looks as if a few things coming out of the Ministry of Finance ignore the MOU, I have to tell you, and we are concerned about it.

1010

In regard to the development levies, I want you to know that we have been asking for two years to get the development levy legislation opened up. For instance, I'm on the GO board, and at every GO meeting it comes up: When is the province going to open up the development levy legislation in order for us to get it updated to apply the same regulation that they've applied to the York plan? And that is, not 10 years back but 10 years forward in predicting the development levies. We have resolution after resolution, which we will file with the committee, that the city of Mississauga has passed, and the region of Peel. We estimate that the GO Transit system has lost some $400 million of development levies for the capital program of GO alone. We have not estimated what the municipalities have lost. We haven't done that.

It's very, very serious, and what shocked me—in fact, when I heard that Bill 151 exempted the York-Toronto subway, I even referred it to our solicitor, saying, "Are you sure that the legislation does that? I don't want to be misled." The solicitor confirmed that it does. It's discrimination second to none against all other municipalities in the province that need the legislation to be opened up. We have our bus rapid transit, a major one, that it should be opened up for. Kitchener-Waterloo has a plan. I could go on and on with the municipalities that have major plans. I just question why Mr. Sorbara, who represents that area, stuck it into Bill 151. That was not in the bill when we first reviewed it.

I tell you, folks, I'm very concerned about it, extremely concerned. I would recommend to the government that they immediately amend their legislation to open up the development levy. They've extended it, if I'm correct, three times, and it's going to have to be extended again, because it ends December 31 this year, and they've taken no action on it. I believe the Minister of Finance says it's a tax increase. It's far from a tax increase. So I say to the government, you've got to deal with it, folks. I mentioned it to the Premier. It is unacceptable to pick one project, to open up the development policy for one project, to eliminate something that we've been complaining about for years, that it's 10 years back instead of 10 years forward, and open it up for that and leave the rest of us in the province still with the old development legislation. It's absolutely unacceptable.

Why was the York plan chosen? Yes, it's a major plan—no problem—but there are other major plans in the province, one in Mississauga, one in Kitchener-Waterloo, one in Brampton, and we could go on. And we're discriminated against. They said, "Oh yeah, sorry, we wouldn't do it for you folks, but we'll do it for one plan."

You have our brief with all the details. I can assure you that we are very upset. AMO too says, why wasn't the development—we will file with you all the resolutions we've passed on opening up the development levy legislation in order for us to get on, to bring it up to date, to start getting the capital funding that the municipalities need for infrastructure. Capital funding—and they dilly-dallied on it.

I approached Mr. Sorbara in Ottawa after the AMO conference and said to him, "The municipalities, the regions around Toronto, have development levies. Toronto doesn't have development levies for GO, nor does Hamilton. We will contribute the development levies we collect for GO. But in addition to that, we're required to give property tax money towards GO." We have passed resolutions at the region of Peel, and York has passed it as well, that all GO will get will be development levies, period. The province, of course, is in control, because if we don't give property tax dollars in addition to development levies to GO, they can deduct it from our gas tax, and we're concerned. So, members of the committee, I tell you, I hope that the province will immediately amend the legislation to open up the bill.

Then we have a letter from the minister at GO, from the Minister of Municipal Affairs saying the development

levy issue should await this task force review on the gap or the relationship between the municipalities and the province. That's not going to be completed until 2008. Bob Rossini can comment on how long it takes for us to negotiate with the developers and to come up with an acceptable plan of the new development levy, because it can be appealed to the OMB and many have been appealed to the OMB. We will not get a development levy opened up for the rest of the municipalities in this province until 2009. Think about it, folks—think about it. Our infrastructure needs—gridlock is second to none; I went through it this morning coming in. I say to you, things have got to change. So I implore you and the government members sitting around the table, you've got to amend the legislation to include all of us. Why are we excluded? What is so different about the city of Mississauga or Kitchener-Waterloo or Ottawa or any other municipality? What is so different about it? We need the money just like the York subway needs the money. You can read the rest of our presentation.

The Chair: This round of questioning will go to the official opposition.

Mr. Hudak: The time, Chair, would be?

The Chair: Five minutes.

Mr. Hudak: Your Worship, good to see you again. Congratulations on your recent re-election, and thank you for your very thoughtful presentation.

I can probably understand Minister Sorbara's thinking here. Any minister, as an MPP, is going to want to cheerlead projects that are affecting his or her riding. If there's a pet project, you have the ability, as minister, to give it a special advantage, but you need to resist that temptation and treat projects fairly, no matter what municipality they occur in. In fact, I was just reading a letter sent in from Mayor Miller in the city of Toronto who expressed even his concerns about the legislation. So I'm not even convinced Mayor Miller is supportive of the way that Minister Sorbara has approached development charges with respect to the York-Toronto subway.

Is your suggestion to take this out of the bill and have a stand-alone bill to discuss this, to delay its implementation until it goes through an MOU process? What's your advice for moving forward with respect to development charges and TIF, both?

Ms. McCallion: That could be the way to go, to take it out of this legislation and do what we've been asking them to do for two years, yes, to open it up. Yes, Mr. Miller is happy with it. I guess I could be happy with it if it applied to Mississauga, but I think the stand I've taken on a lot of issues is I look at the needs of the municipalities across this province. As chairman of the Large Urban Mayors' Caucus of Ontario, I can assure you this issue will be a hot and heavy discussion at the large urban mayors, of all the municipalities that have been excluded with this legislation.

Mr. Hudak: In fact, Mayor Fennell, your neighbour in Brampton, has been kind enough to send a letter making a similar point. You mentioned Kitchener-Waterloo, and I'm sure if there was more time, other communities would express the same concern. Maybe I'd just ask the parliamentary assistant: Would the Ministry of Finance consider standing this section down, as well as the section on TIF, so we could actually get some input from the municipalities that are impacted?

Mr. Arthurs: Mr. Chairman, I think the process here is somewhat obvious to us. The member opposite has his time for the delegation, and we'll use our time when it's provided to us.

Mr. Hudak: Maybe when the parliamentary assistant has some time, he can respond. It seems reasonable. I don't see what the urgency here is that we have to have the amendments to these two particular schedules the mayor references done by the end of the day today. Bill 151, as Her Worship mentioned, is a thick piece of legislation. There are so many schedules we ran out of letters and had to go to Z.9, I believe. I'm not clear what the urgency is on particular sections, as the mayor references.

I'll ask, I guess, hoping that the parliamentary assistant responds to my initial question about tax increment financing: You had mentioned, Your Worship, that you had some concerns about cabinet's control on the TIFs and that the municipalities are not pleased with the government's approach on tax increment financing. What improvements would you suggest?

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Ms. McCallion: Let me give you an example: The freezing of assessment was not before the MOU. We read about it in the paper just like everybody else. The freezing of assessment affects the municipalities. We would have liked to have had input. I believe the system could have been fixed without freezing. The Ombudsman made recommendations, and MPAC could have been given the time to fix to it.

We agree with some of the changes that the Ombudsman recommended. Instead of freezing—think about what will happen, because market value assessment is the only system. It has its weaknesses. It's like democracy, but it's the best system, and in two years' time, if the economy continues the way it is, think of what the assessments will be under market value in two years. Who will take the flak? The local politicians. "Oh, my assessment's gone up so much."

Mr. Hudak: You're exactly right. In fact, conveniently, after the next provincial election, as my colleague Mr. Prue and I have pointed out, without response from the government, there will be three years of assessment increases hitting taxpayers at once.

Ms. McCallion: Exactly.

Mr. Hudak: How do you suggest we solve that problem?

Ms. McCallion: Well, they could unfreeze it and get on with it. It's quite simple. You know, if something's wrong with the system, you fix it; you don't freeze it.

Remember when the previous government capped the industrial commercial taxes? It will take us 10 years to get out of that.

Mr. Hudak: You like just the straight assessment system.

Ms. McCallion: Yes, and that will be the same with the assessment. It will take us quite a few years to calm down the public when we go back into market value assessment two years from now. No discussion, no input from the municipalities that will be affected; it didn't go to the MOU.

Mr. Hudak: So the government is in violation of its own legislation with respect to the MOU? You had mentioned the assessment changes, and you also had mentioned that tax increment financing had not been brought forward to AMO—

Ms. McCallion: No, and there are a few others. There's one on handling grow houses.

Mr. Hudak: Right.

Ms. McCallion: We got a conference call. There is an agreement signed by the government that says that any legislation that goes into the House that affects municipalities will be brought before the MOU, not that they may listen to us, but we have the opportunity to express our concerns. Who? The people who are affected by the legislation.

The Chair: Thank you, and thank you for your presentation before the committee.

Ms. McCallion: Thank you.

GREATER TORONTO HOME BUILDERS' ASSOCIATION– URBAN DEVELOPMENT INSTITUTE

The Chair: For the committee's information, our next presenter has cancelled. I would call on the Greater Toronto Home Builders' Association/Urban Development Institute to come forward, please. That would be number 3 for the committee. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that, and I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Neil Rodgers: Good morning, Mr. Chairman and members of the committee. My name is Neil Rodgers and I am the vice-president of policy and government relations at the Greater Toronto Home Builders' Association–Urban Development Institute, which is the newly merged association of the former GTHBA-UDI Ontario. We are pleased to present our comments on Bill 151, the Budget Measures Act.

We note that the bill seeks to amend various pieces of legislation and implements a number of policy measures iterated in the 2006 provincial budget. Of significant note was the TTC subway extension to York University and ultimately to the Vaughan Corporate Centre. We acknowledge that this capital project is an important infrastructure element to support the greater Golden Horseshoe's growth plan, and we are therefore supportive of Bill 151's attempt to move this project forward.

Of particular interest to the industry on this bill are the proposed changes to the Development Charges Act found in schedule H. The amendments propose two main changes: First, the bill will eliminate the historical level of service average over the previous 10-year period, traditionally looked to in order to calculate a development charge; and secondly, it proposes to exempt the Toronto–York subway extension from the 10% municipal co-payment for certain services.

We are not necessarily opposed to the two main changes. We acknowledge that the elimination of the 10% municipal copayment for the Toronto-York subway extension is consistent, as per the current Development Charges Act, with other hard services, such as roads and bridges.

We acknowledge that the subway extension is a long-term capital project, similar to roads and bridges, and should not be based on a 10-year capital program. A longer period is essential to fully recognize the life cycle of such projects and amortize the asset value accordingly.

Although we acknowledge that the proposed changes to the Development Charges Act are specific and narrow in nature, focusing only on the need for Toronto and York region to finance the subway extension, it does not, in our respectful opinion, address a number of the significant structural problems that the industry has consistently faced in discussions with municipalities in development charges.

Since the introduction of Bill 151, we have met with Ministry of Finance and Ministry of Municipal Affairs and Housing staff to address our concerns and presented a number of recommended amendments to the bill. For your reference, in the material we have provided, we have attached correspondence that we have sent to the Ministers of Finance and Municipal Affairs. In addition to that is an accompanying chart that provides additional specific detail and presents our full set of recommendations, which we believe will add value to the proposed amendments to the Development Charges Act through this bill.

In essence, we are looking to ensure that the principles of fairness, transparency and accountability are the foundations of this bill. Furthermore, we submit that this legislation must address consistency and certainty. Combined, these values, when properly addressed through this bill, should correct any unintended consequences of past drafting of the Development Charges Act.

One way to ensure accountability and transparency would be to have the transit DC collected proportionately on the basis of expenditures meeting the project's capital plan. In this way, a municipality can only collect what it will spend. This is the method currently used and supported by the region of York for the collection of their transit charge in their development charges background study. By incorporating such language in the bill, the province will ensure that taxpayers, future homebuyers and businesses will be safeguarded from making expenditures and development charge contributions for capital works that are not approved or being constructed.

We recommend that the historical service level approach be maintained and not necessarily amended in this bill. However, based on our proposal, Toronto and York region can continue to be able to collect develop-

ment charges under the old regime, up to the historical service level, but based on a longer-term projection. In this, we recognize that transit is a long-term capital facility and deserves to be planned and amortized for a period longer than 10 years, which is currently mandated in the Development Charges Act.

To ensure certainty, we recommend two measures: first, that the historical service level be calculated on a combined population and employment basis; and secondly, that the growth-related costs be split between residential and non-residential uses proportionately, and that these uses be measured and mandated by regulation.

To ensure a consistent approach in applying the above, we suggest that the population and employment estimates to 2031, found in schedule 3 of the Golden Horseshoe growth plan, be utilized for this purpose. Using these figures on a consistent and go-forward basis will eliminate the traditional disputes that the industry has had with municipalities when reviewing population and employment forecasts.

Ensuring certainty would require the government to re-examine the definition included in Bill 151 for the subway extension. In its current form, the definition, in our submission, is too open-ended and may allow for the collection of development charges unrelated to the intent of the bill. Particular attention must be paid to the following phrasing, which is in the bill: "and works and equipment directly related to that extension."

It is conceivable that, under this definition, the capital costs collected through development charges may exceed the commitments made in the 2006 provincial budget. We submit that the province must take a much more concerted and proactive effort to ensure prudent municipal conduct by following a similar approvals process to that used in the Education Development Charges Act.

GTHBA–UDI recommends that an appropriate amendment to the bill be made in order that the Minister of Finance approve the development charges background study prior to its being approved by municipal council.

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The protection of homebuyers is also of utmost importance to the industry and, we would hope, shared by the province. In order to safeguard those who have already entered into purchase and sale agreements, we recommend that a phase-in period for the imposition of a transit development charge be made. It should be applied equally over a minimum period of one year to a maximum of five years, and this should be explicitly stated in legislation and regulation.

Lastly, we recommend that an amendment to the bill be included, which would include a proclamation order that would allow schedule H of the bill to come into force at a later date, as opposed to at royal assent. This will permit the government to work in partnership with our organization, the city of Toronto and the region of York in formulating the regulations that, in our respectful opinion, would add clarity and value to the bill.

In its consideration of Bill 151 and the proposed amendments to the Development Charges Act, we are looking to the province to be supportive of the development industry and its continued economic prosperity. By doing so, the province also benefits by ensuring that vital social services, health care and quality education are provided to all Ontarians.

We are supportive of the government's attempt to implement transit infrastructure, and we are just as anxious to see shovels in the ground for the subway extension. Creating this enabling piece of legislation moves this vision forward, and we are prepared to work with the province on the related regulations. Upholding the principles of fairness, accountability, transparency and certainty will almost certainly keep the project's plans on track and will also ensure the protection of taxpayers.

Thank you, Mr. Chairman. I'd be happy to answer any questions.

The Chair: Thank you. You referenced that some material was presented to the committee. We have not received that.

Mr. Rodgers: It's here.

The Chair: Okay. The clerk will make sure that everyone gets it.

This round of questioning will go to the NDP.

Mr. Michael Prue (Beaches–East York): I wish I had seen that, because you were speaking very rapidly and it was hard to follow everything you said, but I tried my best.

You were in the room and heard the mayor of Mississauga and her discussion of her municipality and literally every other municipality in Ontario being left out. You remain supportive of this. How do you propose that this committee or the government deal with all the other municipalities that are not getting the same largesse?

Mr. Rodgers: This bill presents an interesting dilemma, because equally, other major transit infrastructure was announced in the budget: the Brampton and Mississauga projects respectively. You'll have to ask the government why they chose this particular project to be included in this bill. Quite frankly, the comments we raise herein are suggested amendments and regulations that would apply equally if there was a broader review of the Development Charges Act, and that certainly is within the purview and right of the government to open up.

Mr. Prue: What you're saying, of course, is true. But I'm curious because you've come out fairly strongly in favour of something which, if you don't live in Toronto or York and you're not going to be close to the extension of that subway system, I'm just—

Mr. Rodgers: We spoke to the project—

Mr. Prue: I always thought you represented a much broader area.

Mr. Rodgers: We spoke to the project that was contained within the bill. We weren't about to advocate broader for municipalities on their transit projects. I'm not quite sure that Mayor McCallion and other members of AMO would be particularly responsive and supportive of the ideas we've put in our submission. If we had a

much more fulsome discussion, we could have that conversation.

Mr. Prue: Toward the end, you talked about having, I think you said, a procurement order.

Mr. Rodgers: Proclamation order.

Mr. Prue: A proclamation order. Okay. I just wrote down "proc" and I couldn't figure out what it was. I take it that you do not believe the government should proceed immediately with this plan, that it's premature at best?

Mr. Rodgers: It's an enabling piece of legislation. There are a number of regulations that the government may be interested in talking to us and to Toronto and York about, but the way the bill is worded now, it comes into effect upon royal assent. We know for a fact that the region of York and Toronto are actively working on their background studies. York is wanting to bring theirs forward as early as February. Quite frankly, it would be premature to bring that background study forward if the province was motivated to pursue regulations. That would really clarify for both the industry's sake as well as that municipality's the ground rules on how to go forward in the development of their background study and development charge.

Mr. Prue: You talked about recognizing historical service levels, and then you tied that in with a split in payments between residential and non-residential properties. Who, in your opinion, should determine the historical service level? I wasn't clear, from your statement, who would determine that.

Mr. Rodgers: The historical service level average is a method and a measure that is already a part of the Development Charges Act. There's a lot of work that's been done, and it's a good body of work that people generally agree with. Where we've come into dispute with municipalities from time to time is how you actually calculate that. The reason York region is getting an exemption is that they do not have a level of service for a subway project for the previous 10 years because they don't have one. Toronto has a very long history by which they can measure the level of service.

Other municipalities that are implementing bus rapid transit systems, light rail transit systems etc. haven't had that, and so the municipal sector is not wrong in their request that this particular area be reviewed, and they've historically had significant concerns with this section. We're saying it needs to be recognized as we move into more forms of rapid transit, but we want to set the ground rules clearly; it can't be a wide-open process. That's really what we're asking for in our amendments.

The Chair: Thank you for your submission.

CANADIAN PUBLIC ACCOUNTABILITY BOARD

The Chair: I call on the Canadian Public Accountability Board to come forward, please. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourselves for the purposes of our recording Hansard.

Mr. Gordon Thiessen: My name is Gordon Thiessen. I'm the chair of the Canadian Public Accountability Board. With me is Keith Boocock, the CEO, and Linda Dundas, vice-president.

I would like to thank you for the opportunity to provide input to Bill 151, and in particular to the proposed Canadian Public Accountability Board Act. The introduction of this legislation granting CPAB, as we call ourselves, a statutory basis is an important milestone for us. It's the culmination of three years of effort to complete the original framework that was put in place when CPAB was set up. That framework was innovative, pragmatic and expedient, but it didn't give CPAB all the tools we need to effectively carry out our mandate on a sustained basis.

We're very grateful to the authorities in Quebec, which was the first province to pass legislation granting certain powers and immunities to CPAB. But their legislation, Bill 7, is unlikely to serve as a model for other provinces because of the unique legal and regulatory framework in Quebec.

We would like to think that the Ontario legislation could serve as a model for other provinces so that we could achieve a sound statutory basis right across the country.

We'd like to thank Minister Phillips for championing this initiative and for all the work that he and his officials have done in considering the issues and drafting the bill.

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The Canadian Public Accountability Board was created to oversee auditors. We were part of a package of investor confidence initiatives following the scandals of Enron and WorldCom and the demise of the accounting firm Arthur Andersen. We commenced operations just over three years ago, on October 1, 2003. Since then, we have conducted three rounds of inspections of Canada's six national audit firms and of a significant number of smaller audit firms. We have made many observations and recommendations to these firms to bring about more effective audits of public companies and other reporting issuers. In some cases we have imposed requirements and restrictions to correct more serious issues that we identified, and we've terminated the participation of two audit firms. We've issued three public reports on the results of our activities, and we're preparing to issue a fourth. We've signed a co-operation agreement with our American counterpart, the Public Company Accounting Oversight Board or PCAOB, and we've conducted a number of joint inspections with them. We're active participants in the International Forum of Independent Audit Regulators and have earned respect internationally as one of the most advanced auditor oversight agencies.

In our three years of inspections, we've already seen a marked improvement in the internal quality controls at accounting firms and in the quality of the public company audits of their clients. By developing and implementing a rigorous program of inspections of auditors

of public companies and promoting the importance of high-quality auditing, we believe we've contributed to the credibility of Canada's capital markets by making financial reporting more reliable.

We believe that the Canadian Public Accountability Board is a success story, not only for our achievements but for the pragmatic and collaborative way in which we were set up. When the accounting scandals came to light in 2001 and 2002, the Canadian authorities had to act very quickly to address concerns among investors about confidence. The creation of an auditor oversight agency in Canada, however, posed a challenge, because accounting and securities matters are a provincial jurisdiction, but we needed a national solution. As a result, Canada's regulatory authorities got together, formed a body called the council of governors and set up CPAB as a private, not-for-profit corporation.

That council of governors is comprised of representatives of the securities commissions, the superintendent of financial institutions and the Canadian Institute of Chartered Accountants. Together, they function as an effective oversight mechanism for us. They appoint the directors, they appoint the chair of CPAB, they approve any changes to our bylaws, they conduct an annual review of our activities, and we include their report in our annual report. We obtain our authority from the securities commission through national instrument 52-108, which took effect in March 2004. Essentially, it requires auditors of public companies to submit to the oversight of CPAB. We are a national agency operating under provincial authority.

However, that original legal framework was a short-term solution, and it's got certain shortcomings that need to be addressed. These shortcomings relate to the need for immunity from prosecution for directors and staff who are carrying out CPAB's mandate in good faith. We need access to private and legally privileged information if we're going to carry out our inspection process. It follows from that that we need protection from subpoenas. Bill 151 effectively addresses all of CPAB's requests. It builds on CPAB's existing accountability framework, and it recognizes and formalizes the role of the council of governors as the body responsible for assessing our performance. It's a stand-alone act that recognizes CPAB as an independent national entity. But it also includes important safeguards for private, confidential and privileged information. We feel that the bill addresses our concerns and, importantly, establishes a sound model for other provinces to work from.

There are, however, two aspects of the bill that we think could raise some problems of interprovincial co-ordination, where some adjustments would be desirable. There is a provision in subsection 16(c) that gives the minister authority to make regulations "prescribing rules in relation to the oversight program of the board and providing that they shall be deemed to be rules of the board."

This is very broad wording and extends to our entire oversight program. If there were to be a similar provision in legislation in other provinces, where each responsible minister could second-guess and potentially override CPAB's inspection program, it would make our task impossible.

We also have similar concerns about subsection 7(2), which effectively allows the minister to veto any new or amended inspection rules that we want to put into effect. Once again, a similar veto provision in other provinces could result in delays and in an unworkable patchwork of different rules.

To overcome these problems and ensure that they don't undermine our ability to function effectively and efficiently as a national oversight agency would require a level of very close interprovincial co-operation, a level that is hard to imagine. It would be better, from our point of view, if these subsections of the bill could be revised. In particular, paragraph 16(c) could be restricted to making regulations only with respect to issues of procedural fairness in the way CPAB deals with registered audit firms in Ontario rather than to our whole inspection program. Perhaps 7(2) could be made to work if, after a new CPAB rule had gone through the usual due process, the minister could only request reconsideration of the proposed rule within a specified period of time. I believe that there are ways of dealing with this that could make this work for us.

I also want to mention very briefly the question of legal privilege, because I understand that there are some concerns that have been raised about CPAB accessing privileged information.

First of all, Bill 151 specifically sets out a very limited scope for CPAB's access to privileged documents. Subsection 11(1) provides that "the board may require a participating audit firm to provide it with all the documents and information that the audit firm obtained or prepared in order to perform the audit firm's audit of a reporting issuer.... "

Essentially, we are only talking about access to documents in an audit file. It's also important to emphasize that CPAB can't use privileged documents for any other purpose. We've got to follow strict confidentiality obligations. There are other sections in the act which protect us from revealing information under subpoena and further limit access by the council of governors or the securities commission. Any fear, therefore, of misuse of privileged information or loss of privilege, I believe, is unfounded.

If CPAB is going to carry out its mandate effectively and assess the quality of audit work performed by auditors, it's absolutely necessary for us to have access to all of the information used by the auditor to verify the reporting issuer's financial statements. There have been instances over the past three years when access has been denied to us, although it has been provided to our American counterpart, the PCAOB, because they have a statutory basis under Sarbanes-Oxley. That's just not acceptable. It undermines our credibility, and it has prevented us, in certain circumstances, from completing inspections, and we've reported that in our public reports.

What Bill 151 effectively provides is a limited waiver of privilege that would allow us to carry out our mandate of promoting the reliability of financial statements, and that is in the best interests of the reporting issuers and their shareholders.

Finally, because we hope that other provinces are going to follow Ontario's initiative, we want to stress once again the crucial importance of a co-operative process among provinces to ensure that the end result for CPAB is consistency across the country in the application of our rules and an ability to carry out our mandate effectively on a national basis.

Thank you. We're open to your questions.

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The Chair: Thank you. This round of questioning will go to the government.

Mr. Arthurs: Mr. Thiessen, thank you for your presentation this morning, as we have had the opportunity to do to each of those who have presented to us so far and as we will do as we move forward.

I can tell you that I'm sure that Minister Phillips is particularly pleased with this legislation and certainly with the response in general from CPAB. Clearly, it's his objective in the longer term, as I understand it, to see a common regulatory framework for securities. To the extent that you see this as a potential model that could be adopted by other jurisdictions in whole or in part, distinct from Quebec, I think is an important acknowledgement for the work that he has been doing and certainly will lend support, I believe, to his efforts more broadly.

You've identified, clearly, a couple of issues. I was interested in the quick response—and maybe just elaborate for me quickly on that—that a private not-for-profit organization managed to pull together, if I can phrase it in that way, given the professional expertise that's there, following the disruption in the economic environment in 2001-02. How were you able to achieve that as readily as you were? In relative terms, this is a quick turnaround process compared to other activities of a similar nature. What drove you to this in that sense and what were the support mechanisms that helped you to achieve the outcomes as quickly as you have?

Mr. Thiessen: Well, thank you. What allowed us to do this so quickly was that our first CEO, who sadly has died recently, managed to pull together just a remarkable group of very senior auditors who were very committed to this. Keith Boocock was one of them, who has now become our CEO. They were committed to this idea. They understood how important it was, after these scandals, to ensure that audits were done to the highest quality. What they did was they put together an inspection framework quickly that was of remarkably high quality and went out within six months and did a thorough inspection of the four largest accounting firms. We have managed to do that with a remarkably small number of people. We are at the same level of operation as our American counterpart, who must have 10 times as many people as we have.

This is really quite a remarkable achievement. I'm the part-time chairman; I can't take any credit for this. But I tell you that the group that was put together by David Scott and is now managed by Keith Boocock has just done something which is nothing short of amazing, something that I think we should all be proud of. It was put together by this set of regulatory authorities essentially operating under provincial jurisdiction but acting as a national body. This is the kind of thing that is so important. I think we're a real success story from that point of view.

Mr. Arthurs: Thank you for that. I note the nature of the amendments or modifications you might suggest. I think the government difficulty is that on the one hand we want to ensure that we are providing a model for others. At the same time, there's a need for government, in something that's relatively new to us, to protect its interest by virtue of the minister having some control and can't be in a position where we have to accommodate other jurisdictions that may come onside in the event that they choose some other modest model. I appreciate the comments. I know the minister's staff are here in that regard and they've noted the comments you've made as well as your submission. Thank you for your presentation.

Mr. Thiessen: Could I just say how crucial it is for us to get other provinces on side? I mean, we cannot operate just with this Ontario legislation. We are national, so we need legislation elsewhere. It's why it is so incredibly important for this legislation to operate in a co-operative way so that it can work with other legislation. The moment we've got different rules and different regulations in different provinces, it will be impossible for us to inspect the large audit firms, which are national and which operate right across the country.

Mr. Arthurs: I can only suggest in the last few seconds that you have a champion in that regard in Minister Phillips. He has been pretty clear on the securities front and I think it's reflective of this initiative legislatively as well.

Mr. Thiessen: We appreciate that.

The Chair: Thank you for your presentation.

ADVOCATES' SOCIETY

The Chair: I call on the Advocates' Society to come forward, please. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Michael Barrack: My name is Michael Barrack. I'm the president of the Advocates' Society.

Thank you, Mr. Chair and members of the committee. We're going to be addressing the solicitor-client privilege issue that you just heard about. I preface my remarks by saying that the difficult policy choices are never between good and bad but between good and good, and you've got a classic situation of good versus good here. You may have some unintended consequences in the legislation that you are not aware of.

By way of background, the Advocates' Society is an organization with over 3,400 members. We're primarily

lawyers, there are some judges as well, who practise before courts and tribunals. We lobby from time to time with respect to justice issues and issues that are of concern to our members.

We're pleased to have the opportunity to make the submissions regarding the effect of the proposed Canadian Public Accountability Board Act. This is schedule D of the bill that's before you. I'll be referring to the act when I refer to it as "that act."

As you're aware, section 3 authorizes the board to maintain a register of public accounting firms that audit reporting issuers and to oversee the audit of financial statement of reporting issuers. In conducting those tasks, the board is authorized to conduct inspections of participating audit firms. In conducting those inspections, it has the ability to call for documents or to collect documents. I think that there's a problem in the legislation that occurs in subsection 11(1).

Subsection 11(1) of the legislation reads as follows, and it's section 11 of the act, which is in schedule D to the bill. So if people have it, they may want to turn it up. It says:

"11(1) The board may require a participating audit firm to provide it with all the documents and information that the audit firm obtained or prepared in order to perform the audit firm's audit of a reporting issuer"—then these critical words—"and that,

"(a) in the case of a reporting issuer to which the Business Corporations Act applies"—the first category is what the company, reporting issuers, are required to give under the Business Corporations Act.

In the second category:

"(b) ... are required to be supplied by the reporting issuer to the auditor under the laws of the jurisdiction under which it is incorporated...."

So the first question of interpretation that arises when you read subsection 11(1) is: In the two categories, (a) and (b), following the general language in the beginning of subsection 11(1), are we talking about a new category of documents or are we talking about an additional requirement that applies to the general words at the beginning? I'll come back to that in a minute.

Whatever this body of documents that the auditors are required to produce, they have to produce them notwithstanding that they might be subject to solicitor-client privilege. That's made clear by subsection 11(4), which reads:

"(4) A participating audit firm that is required under subsection (1) to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential."

That is a remarkable piece of legislation, in light of what our courts have said about solicitor-client privilege.

I'm just going to read you a couple of things the Supreme Court of Canada has said about solicitor-client privilege. They say: "Where the interest at stake is solicitor-client privilege, a principle of fundamental justice and civil right of supreme importance in Canadian law"—the usual balancing exercise referred to above is not particularly helpful. This is so because the privilege favours not only the privacy interests of the potential accused but also the interests of a fair, just and efficient law enforcement process. In other words, the privilege, properly understood, is a positive feature of law enforcement, not an impediment to it. I've given you some other quotes in the paper, but very simply, the reason the courts take that position is because the reason we grant solicitor-client privilege is so that people will go out and consult lawyers and obtain legal advice to understand what their obligations are under the law. When they do that, they will tell their lawyers everything and make complete disclosure to their lawyers, and their lawyers will tell them how to comply with the law in the circumstances.

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Let's go back to section 11(1), and let's think about this category of documents. If an audit firm in conducting an audit has a difficult issue that it's trying to resolve—and the issues where you're trying to protect the public will be difficult; simple audits won't be a problem—and the auditor itself wants to go out and seek legal advice and obtains legal advice in the course of preparing that audit, is that legal opinion subject to production? What the previous speaker just said is, "We want everything in the audit file." So perhaps the previous speaker and the people who framed this act are thinking that that document will not be producible, and that that may be the proper way to read 11(1), but it's not clear. Let's read those words and see if that document would be producible:

"The board may require a participating audit firm to provide it with all the documents and information that the audit firm obtained or prepared in order to perform the audit firm's audit of a reporting issuer...."

So if it obtained a legal opinion in performing that audit, that would be subject to solicitor-client privilege. And I submit to you that that's not what is intended. It goes on to say that it is required to be produced to it. If it was limited to those documents that were produced by the audit client, then the legislation, on one level, would be less offensive, and you may be able to cure that by some drafting changes to 11(1).

The second concern is with the scope of the solicitor-client privilege. It applies to everything in the audit file, as the former speaker just said. When you take the time to read the cases and the very short quotes from the cases that I've put out in the written material, what you'll see is that the courts have been very reluctant in Canada to give that kind of blanket waiver of privilege. They have required it to be much more limited and much more focused. That is because policy choices between good and good are difficult to make. They require a balancing of interests.

In our submission, what we say this legislation should do is, first of all, clarify what documents are being referred to under 11(1). Secondly, we would suggest that to the extent the board requires documents that are covered by solicitor-client privilege, it be required to demonstrate the need for those. There may be cases where the balanc-

ing of the interests will apply. There may be many solicitor-client documents that they have been given access to or that the company is prepared to produce, with a limited waiver for that purpose, but that have no relevance whatsoever to the work the board is doing. There should not simply be a blanket waiver for those cases.

I understand that this is not intuitive stuff, that you're focused on the good of trying to clean up financial statements, and I'm not derogating at all from the fact that what you're trying to do is promote one good. But we would caution you to take advice, to read the paper, to listen to the submissions of others, and to make sure that in your pursuit of a particular good, you're not trampling on another good and creating unintended consequences.

Thank you. Those are my submissions, subject to any questions you might have.

The Chair: Thank you very much. This round of questioning will go to the official opposition.

Mr. Hudak: Mr. Barrack, thank you very much for your presentation and your suggestions for the committee.

I might just ask a quick question of the parliamentary assistant: Is it the government's intention to bring forward changes to schedule D and make this debate moot?

Mr. Arthurs: My understanding is that government is working on an amendment to bring forward before the deadline. I'm not aware of the specific wording, but there is some work currently going on, and ministry staff are here so that they have the benefit of these presentations in the finalization of those words.

Mr. Hudak: I appreciate that. What I might suggest, through you, Chair, is that I know we had one cancellation. We have some time before lunch, and staff is here, which is very kind; they've taken the time. Perhaps they could come forward after we've heard from the OBA, the next delegation, and just talk about and respond to the concerns brought forward by Mr. Barrack and those that will be brought forward by Mr. Morton shortly. I know the ministry is very well aware of these concerns. I think it would help the committee and help us in opposition, as we craft amendments, if the ministry is already planning to solve this issue or not.

Mr. Barrack, you had talked about a—

Mr. Barrack: Just on that point, we're willing to discuss with ministry staff when we leave today; they know how to get hold of us. If they want further input on drafting our mechanisms, we're happy to provide it to them.

Mr. Hudak: The challenge we have is that the amendments have to be filed immediately after the OBA discussion, and then we have to vote on them by the end of the day today.

Mr. Barrack: Okay. That's fine. We'll make ourselves available today, if need be.

Mr. Hudak: Perfect.

You had talked about a limited waiver, a limited access to documents subject to solicitor-client privilege. What would be the mechanism to determine whether that access should be granted under your limited waiver suggestion for 11(4)?

Mr. Barrack: Probably an application to a single judge of a court somewhere.

Mr. Hudak: Is that reasonable? Will that cause undue delay? Will CPAB have strong concerns about that, do you suspect, or is that reasonable?

Mr. Barrack: I think it's reasonable in the circumstances because what you're doing is engaging in a forensic exercise. This isn't real-time review or real-time litigation that's going on. I presume that what the board is doing is looking at a situation where there's been an absence of disclosure. Where the board is going to function is where there's been improper disclosure, or an allegation or a concern about improper disclosure. They want to get the file, and if they can simply, just like in any search warrant-type procedure or any investigatory procedure that requires a balancing of interests—we have it in all kinds of legislation, where you have to go and get some sort of authorization. And it could be to any level of court you want to put it to, where they just simply go and seek that authorization.

Mr. Hudak: So that's commonplace, that type of procedure.

Mr. Barrack: Yes.

Mr. Hudak: On 11(1), you had given some good advice on clarity in terms of documents that the audit firm, subject to CPAB's investigation, would have received. Have you given a suggested amendment to the legislation to ministry staff already?

Mr. Barrack: No, we have not.

Mr. Hudak: Have you had a chance to raise this with them?

Mr. Barrack: No, we haven't. We've been running to catch up with your parade. I marched in the Santa Claus parade as a clown on the weekend and have had other things on, so we're catching your parade and kind of doing this in real time.

Mr. Hudak: I know staff were listening attentively to Mr. Barrack's presentation on clarity as to what would be subject in 11(1): Would it be the audit firm that has sought the privilege or sought the advice, or the firm that was subject to the audit review? But I appreciate those points.

One of the amendments the official opposition is looking at is trying to create some process to make sure that we actually get good advice. This is a major change. Ontario would be the first province outside of Quebec, within our system of law, to bring in a legal framework for CPAB, and I think we want to make sure we have the time to get it right. Do you see any reason why this would have to be done by the end of the day today?

Mr. Barrack: I'm not a legislative expert, so I'll leave that to the legislative experts. This is a world that I'm unfamiliar with.

Mr. Hudak: Then I'll give notice to the parliamentary assistant. I think we're trying to help with some mechanism so we could have proper review to make sure that CPAB could go about its important duties, but at the

same time that there would be proper due diligence and respect over solicitor-client privilege. I think we could probably achieve some balance; it just may take a bit more time than we've been allocated today.

Were there other aspects of schedule D that you had a concern with, aside from 11(1) and 11(4)?

Mr. Barrack: No. We're restricting our comments to those.

Mr. Hudak: That's my request, Chair: just in the additional time we have before us before noon, if ministry staff would be kind enough to comment on the presentation by Mr. Barrack and the next presentation by the OBA, because perhaps the concerns are already being solved in the amendments the government is going to table later on today.

The Chair: Thank you for your presentation.

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ONTARIO BAR ASSOCIATION

The Chair: I call on the Ontario Bar Association to come forward. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. James Morton: Thank you, committee, and thank you for allowing us to speak to you today. I am James Morton. I'm president of the Ontario Bar Association. Joining me today is David Sherman from the Ontario Bar Association's tax law section executive.

Our submission today is broken down into two parts. First, I will be discussing some of the serious concerns that the OBA has with respect to the provisions in schedule D that erode solicitor-client privilege. Our written submissions also deal with questions of disclosure. In the interests of time, I'll not be speaking on that matter. Second, my colleague Mr. Sherman will discuss the value of providing taxpayers with an appeal mechanism should disputes over assessments go unresolved for a period of time.

At the outset, let me provide a little bit of background on the Ontario Bar Association. We are the largest voluntary legal association in Ontario and we represent 17,000 lawyers, justices, law professors and law students.

Bill 151, the Budget Measures Act, 2006 (No. 2), provides, in our view, for a much-needed regulatory framework for the Canadian Public Accountability Board, which I'll call CPAB. This is groundbreaking legislation which no doubt will be replicated by other provinces in short order and may well open the door to discussions on the need for a single national securities regulator. Many of our member firms are multi-jurisdictional across Canada, and the OBA would welcome participating in such a dialogue.

Having said that, as Mr. Barrack has just noted, the pressing matter at hand, from our standpoint, is solicitor-client privilege. Solicitor-client privilege is a fundamental principle for the effective operation of the justice system. As earlier speakers have noted, solicitor-client privilege is a principle of fundamental justice and has been given constitutional protection by the Supreme Court of Canada and, of course, the Ontario Court of Appeal.

While many of our issues have been addressed in the existing provisions of the proposed legislation, we continue to have significant concerns relating to subsection 11(4), requiring a participating audit firm to provide information or documents to the board even where that information or documents are privileged.

The principle of solicitor-client privilege has been held by the courts to be essential, and while subsection 11(5) recognizes this principle, at least to a degree, we believe the onus must rest on CPAB to demonstrate absolute necessity to the courts. Police, who are given the right to use force to enforce the laws of Canada and Ontario, still have to get a court order if they are going to take solicitor-client privilege documents, and we see no reason why CPAB should be held to a lower standard.

Accordingly, we would recommend that the legislation require CPAB to attempt to obtain consent or waiver in order to access privileged information from the person or entity whose privilege is involved, and if no consent or waiver is offered or provided, then CPAB be required to obtain a court order prior to accessing such information. We also suggest and recommend that such requirements be subject to a review after two years to ensure that they are not, in fact, preventing CPAB from carrying out its mandate. Accordingly, we would strongly urge this committee to amend subsection 11(4) to require, absent consent of the party holding the privilege, a court order in which CPAB be required to demonstrate absolute necessity to obtain any documents which are subject to solicitor-client privilege. We also suggest that there be a sunset clause on this particular part of the legislation so that a review can take place after two years.

At this point, I would hand the presentation over to my colleague Mr. Sherman to discuss the taxation matters.

Mr. David Sherman: Thank you. Mr. Chair, committee members, my name is David Sherman. I'm a tax law specialist. I'm on the executive of the tax law section of the OBA.

I'm here to speak about the proposals in Bill 151 to amend seven tax law statutes to deal with the appeal mechanism. As you may know from reading those provisions, what they provide is that rule 14 will not be able to be used to go to the courts to get an answer to a tax problem, and that's because the appeal mechanism is supposed to be used. Ontario follows the same system the federal system follows. There's a mechanism for filing what's called a notice of objection, and that's dealt with administratively within the ministry offices by the appeals branch. If one is not happy with the result, then there's an appeal mechanism to the court, which in Ontario is the Superior Court of Justice, and that's all fine. The problem is that the Ontario Ministry of Finance appeals branch is backlogged and understaffed and they don't get to appeals very quickly. We've seen one figure that was quoted in the courts not too long ago of 17

months as an average for the objection to be considered. Certainly I've heard lots of stories of it taking years and years for objections to be resolved.

This is compounded by the problem that when a tax assessment is issued, the ministry has the right and does proceed to actually collect the tax. So there's an administrative decision made that a taxpayer under any one of these statutes, whether it's corporations tax, fuel tax, employer health tax, whatever it is, that the taxpayer owes tax, the ministry issues an assessment, the taxpayer has to pay that assessment, and if they don't, the ministry can go in without any court action and simply seize money out of the taxpayer's bank account under the garnishment provisions. All of that's well established, but there's no mechanism for the taxpayer to appeal unless that objection is dealt with.

Now, some taxpayers had creatively found a way to use this rule 14 to go to the courts and say, "Well, can we at least get a ruling on a point of law and then at least we can go back to the ministry with that?" That's what this bill is stopping. It's going to say, "You can't do that any more," which is fine because there is an appeal mechanism and you're supposed to use the appeal mechanism.

Now, federally, and certainly some of the other provinces—I haven't looked at all of them, but Quebec and Alberta certainly do and it's well established federally that once you file an objection, if it's not dealt with in a timely manner, and it varies between the statutes as to whether that's 90 or 180 days, but if it's not dealt with in a timely manner, then you have the right to go to court and file your appeal. There is no right to do that in Ontario right now.

What we're asking is that while this amendment to prevent rule 14 from being used is fine, we would ask that at the same time a simple amendment be made to each of the seven tax statutes so that that mechanism for appeal is there and it would match what's available federally. That's the essence of our presentation.

The Chair: Thank you very much. This round of questioning goes to the NDP and Mr. Prue.

Mr. Prue: I'd like to go back to the whole issue of CPAB. We heard Mr. Thiessen here today saying in some considerable detail how he and his organization have spent the last three years to get the amendments and the necessary approvals from government to go in the direction. You've shown up, I guess, at the 11th hour to say not to give it to them. Have you had discussions with CPAB or have you just seen for the first time the proposed recommendations?

Mr. Morton: We've not had discussions with CPAB. We have had some discussions with ministries. The legislation in this particular aspect when it came to us was something of a surprise. Our discussions with the ministry had seemed to suggest that there may be ways to amend the legislation that would meet the concerns raised. One of the points which is troubling is that if the legislation were to go through without the amendments, in our view it might well be subject to a court challenge and would be amended in effect by the courts.

Mr. Prue: Your second recommendation I'm not clear on, because I read it and I can read it two or three different ways, that "such requirements be subject to a review after two years have elapsed to ensure that they are not preventing CPAB from carrying out its mandate." Are you suggesting that the government proceed with the legislation and then review it to make sure that CPAB's not overstepping? Or are you saying that they don't do it and then CPAB that come back two years from now? It was the second one, I think.

Mr. Morton: Yes. If it was unclear, I apologize for that. Our proposal would be to put in the requirement that a court order be obtained, absent consent, and then after two years, if this does prove to be a true drag on CPAB, that the matter be reviewed and reconsideration given.

Mr. Prue: You're suggesting they don't get it, but two years from now, if it's a drag, then they come back?

Mr. Morton: Precisely.

Mr. Prue: Those are all my questions. Thank you.

The Chair: Thank you for your presentation before the committee.

Mr. Morton: Thank you so much for seeing us today.

The Chair: I'd like the committee's attention. We had an association that, my understanding is, cancelled and now has had second thoughts and wants to present. I'd appreciate a motion seeking unanimous consent to let this presentation go forward.

Mr. Hudak: I understand the group had previously requested and had sent an e-mail subsequently to say they'd like to be on. I think that's great. If they're already here, terrific. So I'd like to move that the Canadian Life and Health Insurance Association Inc. be allowed to present to the committee.

The Chair: Agreed? Agreed.

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CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION

The Chair: Therefore, I call on the Canadian Life and Health Insurance Association Inc. to come forward. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Ron Sanderson: Thank you very much, Mr. Chairman, distinguished members of the committee and good morning. My apologies regarding the confusion in our application to appear.

My name is Ron Sanderson, and I am the director of policyholder taxation and pensions for the Canadian Life and Health Insurance Association.

The CLHIA is a voluntary association whose member companies account for 99% of Canada's life and health insurance business, with products such as life insurance, annuities, RRSPs, RRIFs, disability insurance and supplementary health insurance.

The association greatly appreciates the opportunity to speak to you this morning. I believe you each have a

copy of a letter from the association's president, Greg Traversy, in your materials, and I would like to review the key concern noted in that letter.

Since 1993, Ontario has charged retail sales tax on employee benefits plans—workplace plans under which prescription drug, dental and medical costs, as well as disability income benefits, are paid to Ontario workers and their families. Last year, 8,600,000 Ontarians were covered by such plans and nearly $10 billion of such benefits were paid to Ontario residents.

How and when retail sales tax is charged on such plans varies on the basis of a number of factors, even upon the expected value of claims to be paid under the plan during the next 30 days. Let me emphasize: Not just the amount of tax, but the calculation method can depend on unknown future events.

In auditing retail sales tax returns and remittances, the Ministry of Finance has benefited from 20-20 hindsight. It has known exactly what contributions have been made and when, and what benefits have been paid and when. Employers, as plan sponsors, paying retail sales tax on an ongoing basis, based on the month-to-month variations in their plans' anticipated operations, do not have the advantage of hindsight. Where the ministry's audits have dealt with historical fact, the employers' remittances could only be based on the best estimates of expected experience. Under such a system, our shared goal of perfect compliance could only be attained by happy accident.

CLHIA member insurance companies have performed two distinct roles in this process: firstly, as service and benefit providers to such plans and, secondly, as the government's tax collection agents. Our members have been trapped in a catch-22 of not being able to comply with rules under which, for many cases, how taxes were calculated varied each month.

Over more than a dozen years, and in both of these roles, CLHIA has worked with the ministry to develop a more predictable and easily auditable means of assessing retail sales tax on employee benefits plans. Indeed, the proposals contained in schedule Z.4 of Bill 151 reflect a number of CLHIA recommendations and go a long way to removing the challenges and uncertainties of the existing assessment method.

Unfortunately, for a number of related administrative processes, the legislative proposals do not provide the clarity or certainty sought by the CLHIA on behalf of plan sponsors, and the proposed effective date for these rules, upon royal assent, may pre-empt efforts to obtain clarification of the ministry's administrative processes in order to ensure that employers can calculate and remit retail sales tax on a more reliable basis.

The association believes that the consultative process between the ministry and Canada's life and health insurers has accomplished much, but that it is inappropriate to enact schedule Z.4 without allowing that consultative process to properly address the remaining sources of uncertainty.

Our proposal is simple. We are proposing that the application of schedule Z.4 be deferred for up to two years; that is, until the second renewal date following royal assent of any service contracts under an employee benefits plan, to enable the ministry and its stakeholders to resolve the few remaining administrative issues so that Ontario employers, as well as their employees and their families, can benefit from a tax system that works as it should: efficiently, effectively and predictably.

On behalf of the association, thank you once again for making this time at the last moment available to us. I would be pleased to answer any questions or provide further information to the committee.

The Chair: This round of questioning goes to the government. Mr. Arthurs?

Mr. Arthurs: Sorry, sir; I didn't catch your name at the beginning. I was distracted momentarily.

Mr. Sanderson: It's Ron Sanderson.

Mr. Arthurs: Mr. Sanderson, thank you very much. I certainly appreciate the deputation this morning and the capacity to be able to accommodate that with the scheduling that's currently in place. Obviously, this has been a matter that has been under deliberation, consultation and discussion for a number of years through, I guess, three parties and four governments now. I was pleased to hear that over that extended period of time, taking no particular ownership for it as a government, there has been some positive movement and some headway that has been made. All of those things are appreciated, and I hope and expect that that consultative process will continue.

I have to say that at this time, though, it's my view that the government is not in a position to make the changes at this stage today that you're making the request for, because it does have some rather significant implications if we adopt this in the legislation at this particular point in time.

If you want to provide some additional feedback, that's great, but that's kind of where we're going to find ourselves, at least on the government side at this point in time.

Mr. Sanderson: I appreciate that view. The industry, obviously, through 13-plus years has had some differences of opinion. We are, I think, 95% of the way there. We have just that much further to go. My concern is that if this is treated as a fait accompli, then getting the right fix may never happen or may happen another 13 years down the pipe, and I think Ontarians deserve better.

Mr. Arthurs: Thank you, Mr. Sanderson.

The Chair: And thank you for your presentation.

Mr. Toby Barrett (Haldimand–Norfolk–Brant): Excuse me, Chair: I appreciate the flexibility of this committee to accommodate additional testimony. An additional issue I will raise with the parliamentary assistant and the ministry staff, if available, deals with schedule W changes in this legislation to the Oil, Gas and Salt Resources Act. The decommissioning of natural gas wells is a very significant issue in much of southwestern Ontario—the Niagara and Haldimand area, primarily. Is support or are resources available to landowners and farmers through the petroleum division of the Ministry of

Natural Resources to better enable them to decommission these natural gas wells that are on their property? These are natural gas wells that have by and large been depleted or have been abandoned.

I don't know whether ministry staff are present.

Mr. Arthurs: Some staff are here. I'm not sure which staff, in the context of being able to address that matter specifically—but there are staff here who can take that back now. Normally, I think the process would be—correct me if I'm wrong—that during our clause-by-clause, it's a chance for that expertise to be brought to the table, or for me to be able to ask for that expertise to be brought forward.

I appreciate the member tabling that concern and issue, and the opportunity and the time we have available for staff to be able to have a look at that. If, during our afternoon we find that they're in a position to provide a response—I hope that they will be—we can do that during the clause-by-clause consideration.

I'm glad it's on the table, so it helps them to be able to get a little bit of time now to see that as an issue that the member would like to have a response to as early as this afternoon, if possible.

Mr. Barrett: Okay. I know it would be certainly better to hear now, if we're working on an amendment, to have the information now, but if the staff don't have the information—

Mr. Arthurs: I'm not aware, in regard to that particular matter, that there are any amendments being worked on that are being raised here by a committee member at this point in time. But, having raised it, it gives them an opportunity to have a quick look at it, and for the skill sets they have, and during our clause-by-clause, when we think that one might call upon that level of expertise that we wouldn't have as legislators, would be an opportunity for us to get a comment from them in that regard.

1130

The Chair: And clause-by-clause would be that point in time.

Mr. Hudak: An ancillary question that I think is slightly different is the schedule D recommendations. You had indicated, and I appreciate that, that the government is preparing amendments to schedule D in response to what we've heard from the Ontario Bar Association and the Advocates' Society as well. I do appreciate the briefing that we had with staff and from Craig Slater, and his team of all-stars came in to help out with that. But the official opposition is preparing amendments with respect to schedule D. It would be helpful, actually, and save us a lot of time and effort, if we understood where the ministry was going on schedule D. I know staff is here. I know that they follow this issue closely. If they could indicate in what direction the government is going in responding to the concerns of the OBA and the Advocates' Society.

The Chair: If you wish to answer, you can, but—

Mr. Arthurs: It's a bit of a dilemma, given that this was a matter under active consideration. I think staff are in a little better position. We have experts here to provide a little bit of help to the opposition party in that regard—somewhat different from a matter that's just being raised that's new to the process. I think the ministry staff in this instance may be able to be helpful, even at this point.

Mr. Hudak: Thank you. That's very kind.

Mr. Arthurs: It's in your hands.

The Chair: So it's up to the parliamentary assistant whether he wants to move forward on this or not.

Mr. Arthurs: In our limited time, I think we can accommodate that request.

The Chair: Five minutes? And if you would identify yourself for the purposes of Hansard.

Mr. Craig Slater: My name is Craig Slater. I'm the director of legal services at the Ministry of Finance. As Mr. Hudak knows, the Ministry of Finance provides support to Minister Phillips in his responsibility as the minister responsible for securities laws.

I'd like to indicate to the committee that indeed the government has an intention of filing a government motion to amend schedule D to address issues that have been raised with the government over the last several days. In large measure, these amendments would essentially do two things. The amendments would provide that, where the board under schedule D, in this case CPAB, is requiring the production of information, if the information or the documents that are referred to under the board's requirement to produce are the subject of solicitor-client privilege, access to the information must be absolutely necessary for the purposes of the review of the audit. So, in large measure, the provision provides that the board must demonstrate that the access to solicitor-client privilege is absolutely necessary in the circumstances of the review of the audit, which is, in large measure, the legal standard that must be met in order to provide for the limited waiver of privilege.

The other amendment for CPAB addresses in part an issue that was raised by Mr. Thiessen, and that was in respect of the rule-making authority by regulation of the minister responsible. He had mentioned a concern around the effect of the rule-making authority having extra-jurisdictional effect. The government will be proposing an amendment that will make clear that the regulation-making authority is only effective in respect of Ontario, and that in essence the rules will have effect only in Ontario, so that those intra-jurisdictional concerns that Mr. Thiessen raised are answered.

The Chair: Thank you. I am not going to allow a debate on clause-by-clause consideration, but—

Mr. Hudak: First of all, thank you very much. I appreciate the parliamentary assistant's help on this. Craig, thanks again for the briefing that you led a few weeks ago.

Mr. Slater: You're welcome.

Mr. Hudak: Thanks for this response to Mr. Thiessen's concern. I think it brings a lot more clarity.

Just to make sure that I follow the language, when you indicate that CPAB, in response to the OBA and the advocates' concerns, would have to demonstrate that

access was necessary for the limited waiver—demonstrate to whom? What does that mean?

Mr. Slater: In large measure, what we've set is the legal threshold for access to the information. We need to take a practical view of it. The audit firm will have the information. The threshold will be absolutely necessary. If there's any dispute about whether or not access to that information is absolutely necessary for the purposes, then there will be access to the courts to determine that issue, as there are in all cases where the board, in this case, will be exercising its statutory power of decision, to which the audit firm will be subject. It clearly will allow the audit firm to have access to court or, in large measure, the holder of the documents to have access to court to determine whether or not the threshold has been met in those cases where there are disputes about it. There may, in fact, not be disputes.

Mr. Hudak: Fair point.

Mr. Barrack had spoken about 11(1) and definitions around access to documents—the subject firm versus the audit firm doing the review if the audit firm had sought outside counsel. Would that also be subject to access by CPAB?

Mr. Slater: All of the information, whether it be an audit firm's access to its own legal opinions or the reporting issuer's solicitor-client privilege, would be subject to the absolute necessity requirement.

Mr. Hudak: And there are no changes to that?

Mr. Slater: There are no changes to that.

Mr. Hudak: Thank you very much. I appreciate it. That was very helpful.

The Chair: We are recessed until 3:30 or following routine proceedings.

The committee recessed from 1137 to 1532.

The Chair: The standing committee on finance and economic affairs will now come to order. The first order of business I would like to address is motion 18 in your packet. I would like to rule on the admissibility of this amendment.

The motion before the committee is unintelligible and incomplete. According to Beauchesne, sixth edition, and the Marleau and Montpetit 2000 edition, amendments not in proper form are out of order and cannot be put by the Chair. I therefore rule this amendment out of order.

That being said, we can now move to your packet. The amendments are numbered. We will move to schedule A first. Sections 1 to 13 have no proposed amendments. Is there any comment?

Mr. Hudak: On your ruling on amendment 18, which I receive with regret, as I said, we had a concern about the amount of time, from the time the committee rose to the time to get amendments through, which was about 10 or 15 minutes. This was a presentation of the Ontario Bar Association, which took place around 11 o'clock. We did contact legislative counsel, who indicated that time was too tight. We then delivered it to the clerk's office as best as possible. This is an unfortunate casualty of the impossible time constraints, something that was brought forward by the OBA in terms of impacts on taxation—it was their appendix 2. We did our best in the 15 minutes or so available to try to get this on the record.

I guess, if I understand correctly the motion brought forward in the House by the government House leader, we can't even rewrite this to make sure it's appropriate. I thought the OBA had a substantial, well-thought-out and important amendment to bring forward. Unfortunately, it has been ruled out of order simply because of form, a casualty of the 15 minutes we had.

The Chair: Are there any comments on sections 1 through 13?

Mr. Arthurs: If I could, in response to Mr. Hudak—and if I'm not in order, let me know—it's my understanding that the inclusions submitted as proposed amendments that were not in appropriate form are already matters that are included in the bill, and that effectively they had been withdrawn from it as a point of reference. But one may want to look to section G to establish that, regardless.

Mr. Hudak: So basically you're saying that the intent of amendment 18 is already reflected in the legislation?

Mr. Arthurs: I'm saying we may even find that not only the intent but the words may very well be included under the Corporations Tax Act amendment. Time permitting, you may want to have a look at that and see. You'll find it's already accomplished.

Mr. Hudak: Okay. Thank you.

The Chair: Thank you for the point of information.

Any comment on sections 1 through 13? Hearing none, all in favour? Opposed? Carried.

We'll move to section 13.1. We have PC motion number 1 in your packet.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.1 The act is amended by adding the following section:

"Maximum increase in assessed value

"19.1.1(1) Despite any other provision of this act, the assessed value of each property for the 2008 and every subsequent taxation year shall not exceed the assessed value of the property for the 2007 taxation year by more than 5 per cent.

"Termination of cap

"(2) Subsection (1) continues to apply to each property until such time as the property is transferred to a person other than a spouse or child of the person who owned the property on January 1, 2008."

The Chair: Comment?

Mr. Hudak: This reflects the principles of the Homestead Act, which was my private member's bill that received support from Liberal members—

Mrs. Carol Mitchell (Huron–Bruce): Not from me.

Mr. Hudak: I know there were some who voted against it, but the majority of Liberal members in the House voted in favour of it, the NDP members voted in favour of it and, of course, the Progressive Conservative caucus voted in favour, so the bill passed second reading. It's still waiting for committee time, but it proved to have

significant support from municipalities, seniors' groups and taxpayers' groups.

I've brought up in the Legislature, as has my colleague from Beaches–East York, that the government's bill, as it stands, will mean a triple whammy of assessment increases in the 2009 tax year. Conveniently, after the next election, when—I think the Premier hopes—people have forgotten about this issue, they will get three sets of assessment increases all at once. Effectively, the valuation date for MPAC purposes, for their current value assessment would reset from January 1, 2005, to January 1, 2008, meaning your home's value would be assessed for its value on January 1, 2008. So it's three sets of assessment increases all at once. Seniors and working families are already struggling to make ends meet in Dalton McGuinty's Ontario. They're already struggling with massive assessment increases, and they ain't seen nothin' yet if this bill goes ahead as currently written.

What I'm proposing is something that was supported by members of the government and both opposition parties, which is a cap on assessment increases of 5% per year, as long as home ownership is maintained. I think this is reasonable protection for taxpayers, that when the freeze is lifted for 2008, they will still be able to afford their homes and not fall victim to a triple whammy of property assessments, as the government proposes.

Mr. Arthurs: When I read this, I thought I recalled, at least in principle if not in word, the member's bill, the Homestead Act, which did receive the support of the majority of members present to be sent to committee after its presentation. I think it's fair to suggest at this point that the two ministers haven't expressed support for capping, their view being that an MVA/CVA market-based assessment process is the appropriate one.

Having said that, I'm sure that they, like all of us, respect the will of the Legislature in sending the matter to committee for consideration by committee. Should the committee, and subsequently the Legislature, see value in approving the nature of this and, I would suggest, make a couple of subsequent amendments—I can probably say most of what I need to say now. If the committee and the Legislature saw fit to adopt it, then obviously the government would act accordingly in respect to the will of the Legislature. But at this point, the government can't support this amendment. Neither minister has expressed support for capping, nor is the government in a position at this point to support this amendment.

1540

Mr. Prue: I will be voting for the amendment, although, as my colleague from Erie–Lincoln fully understands, we have our own plan, which is not exactly the same as this. It is our belief, though, that something needs to be done.

Freezing the assessment for a period beyond the next election is tantamount to courting disaster. I realize that the government members aren't going to vote for this. But if that is what happens in the end, if house prices continue to escalate, particularly in certain areas—we've seen what has happened over the last number of years in the downtown core; waterfront properties are escalating out of all relationship to surrounding areas—I hazard to think of what will happen two years from now unless something is put in place. So I will be voting for the amendment. I realize it doesn't have much chance of success.

Mr. Hudak: I'd like to thank my colleague Mr. Prue for his support. I know he has done a lot of work on his own policy, which has the same goal: to make sure that assessments and the property taxes that come from those are affordable for seniors and working families in the province of Ontario.

I've said in the Legislature, and I do want to note for the record in committee—whether it causes suspicion; it should certainly cause alarm—that not the minister, not the parliamentary assistant, not a single member of the government mentioned this provision in the act, nor cared to confess to taxpayers that the goal of the McGuinty government is to hit them with three years of assessment increases all at once, conveniently after the next election. I thought that at least the minister or one of his colleagues would defend this move and tell taxpayers directly why they thought that was appropriate. But a quick check of Hansard will show you that not a single member of the government caucus—not the minister, not the Premier, not the parliamentary assistant—ever mentioned this provision in the act, which is an important provision. I'm concerned that they're trying to hide that their intention is to hit taxpayers with three years of assessments.

Nonetheless, I won't belabour that point; it's a thick bill. But I will continue to press the notion of caps on assessment increases as a strong taxpayer protection measure.

I'd ask for a recorded vote, please.

The Chair: Further comment? Hearing none, a recorded vote is requested.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Number 2 in your packet, a PC motion.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.1 The act is amended by adding the following section:

Maximum increase in assessed value

"19.1.1(1) Despite any other provision of this act, the assessed value of each property for the 2008 and every subsequent taxation year shall not exceed the assessed value of the property for the 2007 taxation year by more than the percentage prescribed by the regulations.

"Termination of cap

"(2) Subsection (1) continues to apply to each property until such time as the property is transferred to a person other than a spouse or child of the person who owned the property on January 1, 2008."

The Chair: Comment?

Mr. Hudak: The same principles here as in the last one: What I'm doing here is, if the government objects to the 5% cap, this would at least allow them, through regulation, to determine the level of the cap. If they wanted to do a further study and 5% was what they came up with, great; if they wanted 3% or 7%, it gives flexibility to cabinet to determine what the cap should be, beginning in the 2008 taxation year.

Mr. Arthurs: My comments would be basically the same: Whether it's a prescribed percentage up to 5% or some other amount that was determined by regulation, it would not be in accordance with the current direction the government is taking, and the government will not be able to support the amendment as presented.

The Chair: Further comment?

Mr. Hudak: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Number 3 is a PC motion.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.1 The act is amended by adding the following section:

"Maximum increase in assessed value

"19.1.1(1) Despite any other provision of this act, the assessed value of each property for the 2009 and every subsequent taxation year shall not exceed the assessed value of the property for the 2008 taxation year by more than 5%.

"Termination of cap

"(2) Subsection (1) continues to apply to each property until such time as the property is transferred to a person other than a spouse or child of the person who owned the property on January 1, 2009."

The Chair: Comment?

Mr. Hudak: It's pretty much the same thing as number 1, except I'm allowing the government an additional year to implement this. As you know, this bill, if not amended, would have a freeze until the 2009 taxation year and then unload a triple barrel of property assessment increases all at once. The initial amendments were for the 2008 taxation year. This gives another year for the government to think about it to bring in the 5% cap. Otherwise, it is the same principle of taxpayer protection, based on aspects of the Homestead Act.

Mr. Arthurs: The government's position would be the same. The principles, as laid out, are the same. In this amendment, obviously, it's a timing matter, with it being moved forward a year, but the government still doesn't concur with the principle laid out and thus won't be able to support the amendment.

The Chair: Further comment?

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

PC motion 4: Mr. Hudak.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.1 The act is amended by adding the following section:

"Maximum increase in assessed value

"19.1.1(1) Despite any other provision of this act, the assessed value of each property for the 2009 and every subsequent taxation year shall not exceed the assessed value of the property for the 2008 taxation year by more than the percentage prescribed by the regulations.

"Termination of cap

"(2) Subsection (1) continues to apply to each property until such time as the property is transferred to a person other than a spouse or child of the person who owned the property on January 1, 2009."

The Chair: Comment?

Mr. Hudak: It's the same as number 3 for the 2009 taxation year, with the exception that this amendment would give the government of the day the flexibility to determine the proper tax level, whether it's 5%, 3%, 7% etc.

The Chair: Any other comment?

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Page 5: a PC motion.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.2 The act is amended by adding the following section:

"Assessed value of home not affected by repairs, etc.

"19.1.2 Despite any other provision of this act, the assessed value of a property shall not be increased by reason of any increase in the current value of the property resulting from repairs, alterations, improvements or additions to the property having a value of not more than $25,000."

The Chair: Comment?

Mr. Hudak: This is based on a second aspect of taxpayer protection stemming from the Homestead Act. As you may recall, the Homestead Act allowed homeowners to make up to a $25,000 improvement to their residence without triggering a new assessment.

Again, I think all of us have heard complaints from citizens that there's a disincentive to improving their homes because of the impact on taxes in an uncapped current value assessment system. Having failed to get the caps, I would hope at least that this aspect of taxpayer protection from the Homestead Act could be incorporated into the bill so that if homeowners do make an improvement to their home, this would function as a $25,000 deductible and help protect them from the triple whammy of tax increases that Dalton McGuinty has planned.

Mr. Arthurs: I made my comments early on in regard to the Homestead Act and the fact that it is in the charge of a committee of the Legislature at this point in time. This will be considered within that context, I think, in its fullest sense as well. I think it's interesting. It was interesting at the time of debate in the Legislature at second reading for consideration on how to deal with various property assessment matters. But in my view right now, the appropriate place, having been discharged to committee for that purpose in a more comprehensive fashion, will ideally see that debate in that committee. At this point in time, the government is not in a position to support the amendment.

1550

Mr. Prue: I will be voting for the amendment, although in my own recommendations we said that the amount should be $40,000. It's still better than nothing.

Mr. Hudak: Did you?

Mr. Prue: Yes. So we will support it.

The Chair: Other comment?

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Now we come to PC motion 6.

Mr. Hudak: I move that schedule A to the bill be amended by adding the following section:

"13.3 The act is amended by adding the following section:

"Reduction in assessed value of home for seniors and disabled persons

"19.1.3 Despite any other provision of this act, the assessed value of a property in the residential property class shall be reduced by $10,000 if the property is the principal residence of a person who has reached the age of 65 years or who is disabled."

The Chair: Comment?

Mr. Hudak: This is the third provision of taxpayer protection from the Homestead Act. Basically, it would bring forward a modest but important tax break for seniors or for those who are classified as disabled under existing provincial legislation. Effectively, it means that the first $10,000 of their home's value would not be subject to property tax. So if a home was worth $100,000, they would pay taxes based on an assessed value of $90,000; if a home was worth $300,000, they would pay taxes based on an assessed value of $290,000. It is a progressive tax decrease, in that seniors who have homes of lower value would have the greater percentage gain in tax savings.

We certainly know that it's very difficult for seniors or those who are on disability payments to make ends meet in Dalton McGuinty's Ontario. This would be a helpful tax break for those individuals, especially since they'll be facing a triple whammy of property assessment increases conveniently after the next provincial election.

Mr. Arthurs: I don't want to be repetitious in any way, but the matter is before committee as part of that legislation, for the most part, for its consideration. I certainly find the amendment interesting. I'm curious, though, if not today then obviously at some point in the overall process, whether—and I presume, in the event of joint ownership, it would be the first of the owners to reach 65, not necessarily both or the second or some average, which is a little nuance one would have to consider. Many homes are owned by husband and wife, by spouses or whatever, so one would want to consider how that would come into play. But nonetheless, it rests with committee in a different format right now, and the government cannot support the amendment at this point.

Mr. Prue: It is at this point that I must deviate from my colleague from Erie–Lincoln. This is too open-ended. In our own policy, we wanted to have a rebate program for seniors and the disabled who needed the money. This is a universal policy. It is an extremely small amount of money, but it would literally go to everybody—million-dollar homes, the works. In a city like Toronto, it would result in only about $90 on taxable property. As I said, it would go to everybody. Better to give more money to those who need it than to people who own million-dollar homes and possibly have million-dollar incomes.

Mr. Hudak: I appreciate the advice from both my colleagues on the provisions here in 19.1.3. I do hope that the Homestead Act can come before this committee, for example, with the talent that we have across the way there, and my colleague to my left as well, and we could discuss in further detail these powerful taxpayer protection initiatives in the Homestead Act. I do thank

them for their comments and, as a gesture of goodwill, I hope at least one of them will vote for this particular amendment.

The Chair: Further comment?

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Prue, Sandals.

The Chair: The motion is lost.

There are no amendments for sections 14 to 41. Are there any comments? Hearing none, shall sections 14 to 41 carry? Carried.

Shall schedule A carry? Carried.

Schedule B: Sections 1 through 3, inclusive, have no amendments. Any comments? Hearing none, shall schedule B carry? All in favour? Carried.

Schedule C: Sections 1 and 2 have no amendments. Are there any comments? Hearing none, shall schedule C carry? Carried.

Schedule D: Sections 1 through 10 have no amendments. Are there any comments? Shall sections 1 through 10, inclusive, carry? Carried.

Subsections 11(4) and (5): There is a government motion, number 7, which is in your packet.

Mr. Arthurs: I move that subsections 11(4) and (5) of schedule D to the bill be struck out and the following substituted:

"Restriction on disclosure

"(4) The board may require the provision of information or the production of documents under subsection (1) that is, or are, the subject of solicitor-client privilege if access to the information or the documents is absolutely necessary to the purpose of the review of the audit.

"Privilege preserved

"(5) Disclosure of information or documents under subsection (1) does not negate or constitute a waiver of any privilege and the privilege continues for all other purposes."

The Chair: Any comment?

Mr. Arthurs: This was a matter of discussion this morning, both at the presentation and with staff, who provided some clarity on the intention of the amendment that was to be brought forward. It establishes that access to solicitor-client privileged information would be established, as absolutely necessary, through the board, and that a provision exist under law, under common law experience, such that if it were challenged, there are legal processes where one could challenge that. It's obviously an attempt to provide some clarity and comfort in the process, whereby the information would not be acquired ad hoc, but only in an absolutely necessary fashion for the intended purposes.

Mr. Prue: I need to ask the question—and I'm very troubled by the word "absolutely." I don't know why that was added. That means that there has to be literally no other circumstance in which that documentation could be gotten, and also that it's impossible—well, there it is; it's absolute. When something is absolute, there is no form of discretion whatsoever.

I noticed that what it replaces was quite open. I understand what the lawyers had to say, but this is what it replaces: "The audit firm that is required ... to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential."

So on the one hand you had, "We'll comply with it even if it is subject to confidentiality rules," and on the other, the onus is to prove that it is absolutely necessary. I think it would quite literally be impossible to ever get a court order or a judge's certificate saying that it is absolutely necessary. If you want to take out "absolutely," I can support it. It's necessary, but "absolutely" is too strong.

Mr. Hudak: We have the benefit of some staff here from the ministry. Perhaps they could help us with the definition. I did appreciate that before we broke for lunch and for question period, there was a description of the amendment given. Mr. Prue does bring up a good point about what "absolutely necessary" means with respect to implementation. Of course, my question will be, what is the appeal mechanism? If there is a dispute over what is and is not "absolutely necessary," what happens subsequently?

1600

Mr. Arthurs: Mister Chairman, I'd be more than happy, in answer to this question, to have ministry staff come forward and provide some comment.

Clearly, at the very least it's to establish a very high bar to protect the privilege.

Mr. Prue: I agree with that, but "absolutely"?

The Chair: We'll hear from these gentlemen. Please identify yourselves for the purposes of Hansard, and then you can begin.

Mr. Slater: I'm Craig Slater, director of legal services in the Ministry of Finance. With me is Colin Nickerson, manager of—

Mr. Colin Nickerson: —the securities policy unit of the office of economic policy within finance.

Mr. Slater: On my right is Alexandra Raphael, counsel in the legal services branch at the Ministry of Finance.

In answer to Mr. Prue's question, I want to put it in a little bit of context. The threshold of "absolutely necessary" was what the Ontario Bar Association asked for in their submission, and the threshold of "absolutely necessary" is one that is recognized in case law in Ontario and in Canada, because it's the subject of Supreme Court of Canada decisions, as the threshold by which parties may gain access to solicitor-client privileged information in a situation where, as in this case, the documents have been provided to an audit firm. That's the threshold the courts will require and the limited waiver of privilege that

applies for the production of solicitor-client privileged information.

The threshold is one that's recognized in case law up to the Supreme Court of Canada and one the OBA was asking for in its letters to the minister and in its submission before the committee today. In large measure, because that submission recognized and asked for a recognized legal threshold, my client the government was prepared to bring forward a motion that recognized something that was already recognized in case law.

Mr. Prue: What's the next rung below "absolutely necessary"? "Advisably"?

Mr. Slater: In fairness, Mr. Prue, the rung before "absolutely necessary" is "you don't get it." The case law is fairly clear in situations of limited waiver of privilege: Unless the party can prove that the production of the documents is absolutely necessary for the purpose for which they're required or sought, the production is not going to take place.

Ms. Alexandra Raphael: In order to understand why that language was chosen, you should probably look at the statute and see how this is going to work. In order to deal with the Canadian Bar Association's concern about the override of solicitor-client privilege and the importance of the principle of solicitor-client privilege in the Canadian legal system, they had asked that there not be any access to solicitor-client privileged information unless a court gave a ruling.

What we have done is craft an amendment that will address the concerns of the bar that solicitor-client privileged information be protected, while at the same time allowing CPAB to access information on a more expedited basis than would be the case if they had to go to court every single time.

What this allows is for CPAB to apply the standard that has been developed in the courts, which is one of "absolute necessity," and because they will be a statutory tribunal, because we are setting them up and giving them a statutory foundation, should someone wish to challenge their decision that information is "absolutely necessary," their decision on that point will be reviewable under the Statutory Powers Procedure Act. What this amendment will do is allow CPAB to make a preliminary determination and then will allow speedy access to the courts so the courts can decide whether their determination as to absolute necessity is supportable under our legal system.

Mr. Hudak: I appreciate ministry staff helping us out with this. Did you have a chance to discuss the proposed amendment with the Ontario Bar Association and the advocates group that was with us earlier this morning?

Mr. Nickerson: We're certainly aware of the bar association's position from the correspondence they've put in. Since that correspondence was put in, we had a chance to have a conversation with them to exactly understand their concerns, but we didn't have a chance to get through this precise language with them.

Mr. Hudak: I'll ask you in a different way, then. You haven't had a chance to speak with them, I guess, but do you suspect they will be satisfied with the language? Will this respond, to their satisfaction, to the concerns they brought forward with respect to solicitor-client privilege?

Mr. Slater: We hope they will. The motion tries to answer the concern they had with respect to ensuring that access was only provided when absolutely necessary, which was part of their submission. By crafting and putting forward the motion in the way we have, essentially we have provided an ability for courts to review the matter at hand and the application of the threshold. In large measure, my client hopes they have responded and we hope we've satisfied their major concerns.

Mr. Hudak: Maybe I could also ask the parliamentary assistant. Often at the political level these discussions take place as well, as to the degree of satisfaction. I'm just curious, is it solved? Would the Ontario Bar Association be happy with the way this is—

Mr. Arthurs: This is not a discussion that occurred, at least in my office, politically with the bar association. With what I heard from the ministry staff—and obviously the staff on the minister's side as well worked with this a bit. So there was correspondence and there was a conversation or conversations over the past short period of time, some interesting contact—not today necessarily, but prior to today.

Mr. Nickerson: They have written in—that letter has been made public, I think—and there was a conversation with them after that, earlier this week.

Mr. Arthurs: So from the standpoint of having had some consultation in that sense, there's the written concern, and having spoken to them about that, they've crafted the amendment they feel is best able to suit the government's need as well as address the concern of one party.

Mr. Hudak: I think the advocacy group basically had the—I apologize. Mr. Barrack, I think his name was. The Advocates' Society would view this similarly to the OBA; their position was essentially the same.

Mr. Slater: As I recall the submissions from the Advocates' Society, they clearly were looking—and I stand corrected; my memory isn't what it used to be—for some form of threshold of absolute necessity. In large measure, I believe the government motion attempts to respond to that.

Mr. Hudak: I'm pleased to hear that you had that conversation with the OBA and you're trying to respond to their concerns. On the other side of the coin, CPAB wants to make sure they can still carry out their duties, I guess subject to the concerns of those they'll have to work with. Will CPAB be pleased with this amendment as well?

Mr. Slater: We believe CPAB is generally supportive of the government motion. My understanding, although I did not have the direct conversations with the representatives of CPAB, is that there were discussions in the last few days with the officials from CPAB, and the issue of solicitor-client privilege and limitations on the access to documents to which solicitor-client privilege attached were the subject of the conversations with CPAB. So in large measure from what we gather, I think

it's the conclusion from staff—although the folks at CPAB can speak for themselves—that this is a process that certainly they're prepared to live with.

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Mr. Hudak: My last question, then, to the parliamentary assistant: At the political level, any contact from CPAB about satisfaction with this type of amendment?

Mr. Arthurs: Again, in my office not directly, no.

The Chair: Any other comment?

Mr. Prue: I can't vote for it. I mean, this is the result of a rushed process. We don't know whether the lawyers are happy, we don't know whether CPAB is happy. Even the people who are here advising us admit they haven't had an opportunity to bounce this any further than amongst the small group of themselves. I realize that the committee is in this awkward position because of the closure motion, but I think it's just too dangerous for me to put my hand up.

The Chair: Further comment?

Mr. Hudak: I, too, appreciate the work that has been done in an absence of comment back from either of the major groups, the three that had brought forward their concerns. I'm cautious about this and, as my colleague said, it's unfortunately a fallout of the time allocation motion that this committee was faced with. I think members do know that the next PC motion, number 8, would set up a process where we could give some due course to studying these issues to ensuring that proper balance is struck between protecting solicitor-client privilege and allowing CPAB to do their important work in maintaining the security of audit and financial markets.

As well, I'm not going to support this motion without some degree of support—the third party comment that it meets with satisfaction their concerns. Instead, I would suggest that we follow the process underlined in amendment number 8.

The Chair: Further comment?

Mr. Prue: Recorded vote.

The Chair: Hearing none, a recorded vote has been requested.

Ayes

Arthurs, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: The motion is carried.

Shall section 11, as amended, carry? Carried.

Now we come to the PC motion on page 8. Mr. Hudak. Oh, I'm sorry, I'm getting ahead.

Sections 12 through 15 have no amendments. Shall those sections, inclusive, carry? Carried.

Now we can go to Mr. Hudak and the PC motion on page 8.

Mr. Hudak: I move that schedule D to the bill be amended by adding the following section:

"Appointment of first advisory committee

"15.1(1) On or before February 1, 2007, the minister shall appoint an advisory committee to review issues related to the board's access under section 15 to information that is, and documents that are, the subject of solicitor-client privilege.

"Same

"(2) The committee shall review the issues and the needs of the board in relation to access to information that is, and documents that are, the subject of solicitor-client privilege and solicit the view of participating audit firms, reporting issuers and the general public in respect of those matters by means of a notice and comment process.

"Report

"(3) The committee shall prepare for the minister a report of its review and its recommendations including recommendations, if any, on regulations that in the opinion of the committee should be made in respect of the board's access to information that is, and documents that are, the subject of solicitor-client privilege.

"Same

"(4) The minister shall table the report in the Legislature.

"Committee review

"(5) Upon the report being tabled, it shall stand referred to the standing committee on finance and economic affairs, which shall review the report, hear the opinions of interested participating audit firms, reporting issuers and members of the general public and make recommendations, if any, to the Legislative Assembly on regulations that in the opinion of the standing committee should be made in respect of the board's access to information that is, and documents that are, the subject of solicitor-client privilege.

"Regulations

"(6) The minister may make regulations governing the board's access under section 15 to information that is, and documents that are, the subject of solicitor-client privilege.

"Same

"(7) Within 30 days of the adoption of the standing committee's report, the minister shall make the regulations, if any, set out in the report."

The Chair: Comment?

Mr. Hudak: This is a bit of a process, but it's one done with caution, which I think is important, given the views that we heard at committee and the caution from the Ontario Bar Association and from Mr. Barrack of the Advocates' Society, and CPAB's concerns as well.

I appreciate the minister coming forward with her amendment, and I do hope that it will find support among the groups that are going to have to deal with it down the road.

I also want to thank leg counsel for helping craft this particular amendment, which we did in response to the letter that the OBA had put forward dealing with schedule D.

I'm open to amendments too. If we want to shorten the process, that's fine, but I thought it was important for us

to make sure that we had some sober second thought. This would be the first province outside of Quebec which has a unique set of laws that would give legislative authority to CPAB, so I want to make sure that we got it right. In the absence of a third-party review of whether the government's amendment did get it right, I am suggesting we take some time in the new year to make sure that we do so.

The Chair: Further comment?

Mr. Arthurs: I appreciate the member's concern for whether or not, at the end of the day, the government's amendment has got it right. Respectfully, it is a rather extensive and potentially cumbersome process, ending with the Legislature directing the minister with respect to regulations. I understand it's not common, although maybe not unprecedented. I'm not sure what may have occurred in the past, and I'm sure probably at some point it has.

For us, the reality is that the threshold, as was discussed just a few moments ago, of the "absolutely necessary" is quite a high threshold. As well, there are windows of opportunity for direct court action where case law will have the opportunity to establish whether particular matters should be considered as privileged or not, and we'll then set out other precedents, if required, for a future time. Ideally, that provision would be used in such a limited number of cases that the system itself would work effectively in the absence of those court actions. The government doesn't see a particular need for putting in place this type of process to achieve what both the legislation itself and the provisions within the legal system provide for establishing those rules.

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Now we move to the government motion on page 9. Mr. Arthurs.

Mr. Arthurs: I move that section 16 of schedule D to the bill be amended by adding the following subsection:

"Same

"(2) A regulation made under subsection (1) has effect only in Ontario."

The Chair: Comment?

Mr. Arthurs: This amendment does, in effect, what was asked through our deputations as well, and that's to ensure that the regulation has effect only in the province of Ontario; it doesn't have implications elsewhere.

Mr. Prue: I have to ask the question, though: How could a law made in Ontario by the Legislature of Ontario be enforced or encumbered in any other jurisdiction in Canada? I've never seen this in any bill. Why is it necessary? Prince Edward Island would look at this and say, "We don't have to do this."

Mr. Arthurs: Again, I'd ask legislative counsel in that regard. The question is a fair one and deserves that reasoned and professional response.

1620

Mr. Slater: Mr. Prue, your question is, in fact, a good one. This, in large measure, clarifies a point that Mr. Thiessen indicated earlier today needed to be addressed. The concern raised was an interpretation that if the minister had the ability to make a regulation that essentially remade or imposed the CPAB rules, then there could be an interpretation that somehow suggested that the effect of that regulation had extrajurisdictional application, given that the CPAB rules themselves are developed for use across the country. The purpose in this motion is to ensure that where the regulation is made that would in fact impose CPAB rules, the effect of that regulation is only within the borders of Ontario. So it's in reaction to the issue of interpretation that Mr. Thiessen raised this morning.

Mr. Prue: I'm having a hard time understanding. A judge in a jurisdiction—pick any one; Manitoba—would clearly want to know, whether it's in there or not, under what authority an Ontario law would apply in Manitoba, would he or she not?

Mr. Slater: Let's assume the current state of affairs, which of course is that outside of Quebec there is no other province that has CPAB legislation, so if in fact the minister responsible—in this case, it's Minister Phillips—decided there was something in the CPAB rules which was contrary to the public policy of Ontario and then passed a regulation saying, "Your rules will be this," then it's capable of an interpretation that where in fact Minister Phillips has promulgated a regulation that changes the CPAB rule, that CPAB rule will have effect in let's say Manitoba where CPAB engages in review of an audit firm and an audit firm's conduct in respect of a company in Manitoba.

In a situation where let's say, for instance, Manitoba has a statute quite similar to that in Ontario, then there is a potential for an interpretation that essentially the minister in Ontario can change the national CPAB rules and the minister in Manitoba can change them back to what he or she wants, so the effect is—and I'll grant you that this is a matter of legal argument. There is also a contrary argument that says, as you've suggested, that any regulation that imposes a set of rules on CPAB or remakes a CPAB rule really has effect only within the borders of Ontario, and I grant you that there is a contrary argument to that, but given that there is this interpretation argument that somehow the minister in Ontario could remake CPAB rules that would be applicable in other jurisdictions, the government felt it was necessary to clarify that, to deal with the potential interpretation argument, and in doing so, address the issue that Mr. Thiessen raised this morning.

Mr. Prue: Okay.

The Chair: Further comment?

Mr. Arthurs: It certainly could be argued that the government is overstating the case, but having said that, at least if the case is overstated, given the fact it's a national body but this is local legislation, provincial legislation, it is clear to anyone looking at it as to what the intention is of any regulatory change that the minister may impose upon CPAB within its boundaries. I appreciate the comments of the member opposite as well.

Mr. Prue: Okay, so it states the obvious.

The Chair: Further comment? Hearing none, all in favour? Opposed? Carried.

Shall section 16, as amended, carry? Carried.

Sections 17 to 19, inclusive, have no amendments. Any comment? Hearing none, shall sections 17 to 19 carry? Carried.

Shall schedule D, as amended, carry? Carried.

Schedule E: sections 1 and 2 have no amendments. Are there any comments? Hearing none, shall those sections carry? Carried.

Shall schedule E carry? Carried.

Schedule F has two sections. Shall sections 1 and 2 carry? Carried.

Shall schedule F carry? Carried.

Schedule G has sections 1 through 12, inclusive. Shall they carry? Carried.

Shall schedule G carry? Carried.

Schedule H: sections 1 through 3 have no amendments. Shall they carry? Mr. Hudak?

Mr. Hudak: I apologize for interrupting there, but I did have a question on schedule H, and this would be to the parliamentary assistant. The parliamentary assistant knows we did have queries from Mayor McCallion here before us today, from AMO, from Mayor Fennell of Brampton and perhaps some others—I think the region of Peel—with respect to opening up the Development Charges Act and applying it to this project only. The mayor had spoken about the transit system projects in her community and was wondering why there seems to be—she used the term—"discrimination" in favour of one project and not the other major capital projects.

Mr. Arthurs: I know that shortly we'll deal with an amendment in respect to the Development Charges Act, but that's one that the home builders' association principally brought forward. I think it's fair to say that in this instance, the subway project in particular is probably unique in the province. They aren't built very often. There's currently nowhere outside the 416 Toronto jurisdiction that the subway exists yet. It's of a magnitude that requires some specialized consideration.

Certainly the issues of development charges, among other matters, are intended to be part of the municipal-provincial review undertaken through the MMAH, as announced by the Premier at AMO this past August, and certainly the window of opportunity for AMO and municipalities to have that discussion for a period of time, as the mayor pointed out, and certainly not necessarily to her complete satisfaction from the timing standpoint, but an opportunity to have that fuller discussion around development charges as part of that review process.

Mr. Hudak: I guess the mayor's issue is that she had hoped, and I think AMO had hoped, that those discussions would be further along. I appreciate the parliamentary assistant's answer that they're approaching that, but I think her other main point was that this is a bit of a departure, where the Ministry of Finance is actually bringing this forward under schedule H for a single project. I understand the member says it's for a subway, but is the ministry contemplating making specific changes to the act for other transit projects, or is this the one and only?

Mr. Arthurs: There's no current consideration of other transit or related projects to be dealt with in a manner such as—it's certainly the scale and uniqueness of this particular project that leads us to this approach.

Mr. Hudak: My last question, if I could, whether it's to the parliamentary assistant or staff: The GTHBA–UDI has brought forward some concerns with the definitions under this act. How does schedule H respond to the GTHBA–UDI's concerns, or will that be addressed under the regulations part of schedule H?

1630

Mr. Arthurs: In my view—and again, we can certainly, if the member likes, ask a staff person to come forward and provide some further clarity. The amendment that we're going to be dealing with shortly speaks to the section: "striking out 'on the day the Budget Measures Act receives royal assent' and substituting 'on a day to be proclaimed by proclamation.'" It provides for opportunities for further consultation with the various stakeholders, including the home builders and UDI, to have that discussion with the minister prior to the implementation. The window for that to occur has been extended so those things can occur, rather than just on royal assent.

The Chair: Thank you. Mr. Prue.

Mr. Prue: I would agree with all the rationale and the arguments you have made, but it also opens up the possibility that it would never be proclaimed at all, which happens to many, many bills. I would think some of the people who are hoping to have the subway go up to York University might look at this and say, "Wait. Hold on a minute. This is too open-ended." It might not be right away, and I can understand the arguments made by Mayor McCallion, UDI and others, but it also need never be proclaimed, if I vote for this.

Mr. Arthurs: I suppose that's a risk. It always is, I guess, at this point. We obviously still await the third leg of the stool to come to the table. The government's view, at this point, having heard the submissions that have been made, is that further deliberation and consultation should occur, in light of the fact that it's not a single or even a two-party initiative and not all the parties are fully at the table yet at this point.

Mr. Prue: So it's a matter of faith, then.

Mr. Arthurs: We're confident that the federal government is going to actually want to be there as a partner in this initiative.

The Chair: Thank you.

What I was discussing was sections 1 through 3, which have no amendments. Shall they carry? Carried.

In your packet, number 10, a government motion, Mr. Arthurs.

Mr. Arthurs: Section 4, schedule H:

I move that section 4 of schedule H to the bill be amended by striking out "on the day the Budget Measures Act, 2006 (No. 2) receives royal assent" and substituting "on a day to be named by proclamation of the Lieutenant Governor."

The Chair: Any comment?

Mr. Arthurs: In my view, we have covered some of that discussion in the last couple of minutes. The government is happy with this amendment as proposed.

The Chair: Any other comment? Hearing none, all in favour? Opposed? Carried.

Shall schedule H, as amended, carry? Carried.

Schedule I, sections 1 through 3 have no amendments. Any comment? Shall those sections carry? Carried.

Shall schedule I carry? Carried.

Schedule J: Sections 1 through 6 do not have amendments. Shall those sections carry? Carried.

Shall schedule J carry? Carried.

Schedule K: Shall sections 1 through 9 carry? Carried.

Shall schedule K carry? Carried.

Schedule L: On section 1, we have PC motion 11.

Mr. Hudak: I move that section 1 of schedule L to the bill be struck out and the following substituted:

"1. The definition of 'gasoline' in subsection 1(1) of the Gasoline Tax Act is repealed and the following substituted:

"'gasoline' means any gas or liquid, other than ethanol, methanol and natural gas, that may be used for the purpose of generating power by means of internal combustion and includes,

"(a) aviation fuel, but only when it is used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,

"(b) any of the products commonly known as diesel fuel, fuel oil, coal oil or kerosene, but only when the product is mixed or combined with a gas or liquid that is gasoline,

"(c) every product that is otherwise excluded from this act by the regulations, but only when the product is mixed or combined with a gas or liquid that is gasoline, and

"(d) any other substance except ethanol, methanol and natural gas that is mixed or combined with a gas or liquid that is gasoline; ('essence')"

The Chair: Comment?

Mr. Hudak: Yes. Thank you, Chair. In the past, there has been no taxation of ethanol when it has been added as a fuel supplement. Ethanol is generally more expensive than gasoline, and if we exempt it from taxation it will make it a viable fuel additive. With new requirements from the Ministry of the Environment for the addition of ethanol to gasoline, the current budget bill is adding ethanol to the definition of gasoline and that means it will be fully taxable.

What I'm trying to do here is to support the government's intentions—which the previous government, of which I was part, was also supportive of—to get ethanol into gasoline for environment purposes. It also has very positive spinoffs for our farmers in the province of Ontario. But I do believe we should have an exemption of ethanol from the tax. I brought similar motions forward before the finance committee and will continue to press the issue and hope we can make it part of Bill 151.

The Chair: Further comment?

Mr. Arthurs: As I understand it, this effectively would take us to the pre-budget time frame by the elimination of the tax on ethanol, by keeping it non-taxable. The financial resources are intended obviously for the ethanol growth fund as an incentive for the production of ethanol, and as early as January 1, 2007, I think, there will be a requirement for 5% content for ethanol. Thus we need to encourage the production. To do that, there is obviously a financial resource that is desirable to help make that happen. This provision will be in support of that.

The government will not be supporting the motion as presented.

The Chair: Mr. Hudak?

Mr. Hudak: I will remind my colleagues—they may remember from the finance committee considerations of the budget bill—the Progressive Conservative Party had brought forward a similar amendment to the one we just discussed. We also had suggested that the ethanol growth fund be funded out of general revenue so that could maintain investments in ethanol production facilities while maintaining the tax-free status of ethanol when added to gasoline. That's certainly our preferred route to support the environmental and agricultural benefits of ethanol in gasoline. We'll continue to press it, but I do hope I might get lucky with this one.

The Chair: Mr. Prue.

Mr. Prue: I would hope he gets lucky with this one too. It just boggles me a little—and I know I spoke to this in the opening comments on second reading—that there is a provision within here that is going to tax ethanol. It seems to me that if we are planning for a greener future, if the environment minister and the government are to believe in how we want to look for greener opportunities, the taxation of something that will help take pollutants out of the air that come with gasoline and oil products seems bizarre to me, that it would be taxed in exactly the same way, given that with the current technology it costs more to produce ethanol than gasoline. So I don't see the rationale here. I can see the rationale in terms of your wanting to keep the tax base. I don't see the rationale at all in terms of what the environment and energy ministers keep talking about: the Liberal plan for a greener energy policy.

The Chair: Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): I need some clarification. At the present time, there is no tax on ethanol. I pay the same price for ethanol as I pay for regular gas.

The Chair: That's a point of interest.

Mr. Barrett?

Mr. Barrett: Just to support the member from the NDP and my Conservative colleague, the member opposite is right: When you eliminate the tax break, you do pay the same price for a litre of ethanol as regular gasoline. So in that sense there's no tax incentive or competitive advantage for ethanol.

Just to follow up on what Mr. Prue has said, ethanol contains 35% oxygen. By adding oxygen to fuel, it results in more complete combustion, reduced emissions—something that's very important not only for smog but also for climate change initiatives.

1640

We understand the direction here to put the tax back on and then take that money and turn around and give it back to the industry, but I think it would be much more efficient to have the consumer make these economic decisions by having it be up to them to not pay the tax on ethanol, as has been the case for something like 20 years now.

Again, part of this is, say, a 10%—reducing smog, reducing emissions like carbon monoxide, VOCs and particulate matter.

Mrs. Mitchell: I just have a couple of comments with regard to the ethanol. The conversation that also needs to be a part of all of the discussion is that it has been mandated, and we're moving forward with an even greater percentage in the years to come. Ethanol production will not go forward without a fund that it can access, and that's what this speaks to.

Mr. Hudak: I appreciate Mrs. Mitchell's point. That's why when we brought forward these amendments before, the official opposition suggested that we make sure that when ethanol is added to gasoline, it doesn't become taxed like the rest of gasoline, and secondly, that the ethanol growth fund would be supported out of the general consolidated revenue fund. We thought that was a good way of approaching it and maintaining ethanol's tax-free status.

The Chair: Further comment?

Mr. Hudak: Recorded vote.

The Chair: A recorded vote is requested.

Ayes

Barrett, Hudak, Prue.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

Sections 2 through 9 have no amendments. Shall those sections carry? Carried.

Shall schedule L carry?

Mr. Hudak: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: The motion is carried.

Schedule M: Sections 1 through 3 have no amendments. Shall they carry? Carried.

Shall schedule M carry? Carried.

Schedule N: We have a PC motion, number 12.

Mr. Hudak: I move that schedule N to the bill be amended by adding the following section:

"0.1 The act is amended by adding the following section:

"No Ontario health premium after 2011

"2.3 Despite subsection 2.2(1), no Ontario health premium is payable by an individual for a taxation year ending after December 31, 2011."

The Chair: For the committee members, I would like to rule on the admissibility of this amendment. This motion before the committee is irrelevant to the bill and beyond its scope. I therefore rule this motion out of order.

Sections 1 through 6 have no amendments. Shall they carry? Carried.

Shall schedule N carry? Carried.

Schedule O: Sections 1 through 28 have no amendments. Shall they carry? Carried.

Shall schedule O carry? Carried.

Schedule P, sections 1 through 6: Shall they carry? Carried.

Shall schedule P carry? Carried.

Schedule Q: Sections 1 to 3 have no amendments. Shall they carry? Carried.

We'll move to PC motion number 13.

Mr. Hudak: I move that section 2 of schedule Q to the bill be struck out and the following substituted:

"2. Subsection 2(1) of the act is amended by striking out 'seven members appointed by the Lieutenant Governor in Council' and substituting 'seven members appointed by the Lieutenant Governor in Council who shall form its board of directors.'"

The Chair: Comment?

Mr. Hudak: I have a series of amendments that all work hand in hand. The reason for this one is that the PC caucus is objecting to increasing the number of government appointees on the LCBO board. We've certainly seen a pattern of Liberal bagmen, former members and fundraisers being appointed to these types of positions. Frankly, we think they've got about another four lined up and ready to go, so that's why we're objecting to that. This is a companion amendment to make sure that we hold the LCBO board, which seems to have functioned quite well, at seven members.

The Chair: Further comment?

Mr. Arthurs: There are a couple of comments. That the member opposite—I guess this is because of his many years of experience here—could characterize appointments by any government with that type of descriptor—I presume that's just from the experience of having been in government that he understands that's the way things used to work.

Having said that, the government is proposing in the legislation to increase the number of members from seven to 11. That's really the critical issue, not whether it's a board or not. This is a large organization. It's a very large province. People with a great variety of skills and backgrounds from across the province are drawn upon to serve in this capacity. It provides a slightly larger number. It provides for a greater set of views and a broader range of discussion. There are times, with small numbers, when you do have, with the physical distances one has to travel and the business commitments that people have, difficulties in establishing a quorum to carry out the business. If you manage just to get a quorum, the numbers are so small the debate may become rather limited in its scope. So it's the government's view and certainly the Minister of PIR's view that the extension from seven to 11 members will best serve the people of Ontario on this board.

Mr. Prue: I have a question. Did the LCBO board—the presently constituted board—ask that it be expanded?

Mr. Arthurs: I can't respond effectively to the member's question. I don't know whether that was the case or not, since I haven't had that discussion.

Mr. Prue: What was the genesis of this thought that more were needed? If it did not come from them, who did it come from?

Mr. Arthurs: I'm not suggesting that it didn't. I'm just saying I don't know whether it came directly from the board, but certainly the minister felt, through his interactions with the organization and with the board, that this would be an appropriate change to make.

The Chair: Further comment?

Mr. Hudak: Just to reinforce my concern, I know that one of the recent appointments by the McGuinty government was Phil Olsson to the LCBO board, a well-known Liberal bagman who has donated substantial sums to individual candidates and to the Liberal Party of Ontario. For example, there was $1,160 that Mr. Olsson donated in 2003, $1,650 he donated in 1995. I won't delay time here by listing the other years.

Mr. Olsson was then moved up to be the chair of the LCBO, hidden deep in a press release congratulating Andy Brandt. I think Andy Brandt did a tremendous job as the chair of the LCBO. Buried deep in congratulations from the Premier to Andy Brandt was some provision that basically said that since the chair has stepped down, the vice-chair automatically becomes the chair. Mr. Olsson was therefore able to sidestep being called to the agencies committee, which is regrettable for an agency that is—what?—a $3-billion or so enterprise.

1650

Based on that pattern that we've seen at the LCBO, I can appreciate my colleague's arguments. There hasn't been a level of trust established, given the way that Mr. Olsson's appointment has been handled. Therefore, I think we should leave well enough alone and maintain seven members; otherwise, we'll see the Olsson twins being appointed, whatever his equivalent is, in other parts of Ontario, another Liberal Party bagman.

Mrs. Mitchell: Just to add further to that, it's unfortunate that the member has chosen to speak in that manner, as when the LCBO was under the agency review, he specifically spoke to this issue. You also sat in on those committee hearings. It was talked about—all the members had conversations about the decision and the board composition—so I'm quite surprised at some of your comments today.

Mr. Hudak: If Ms. Mitchell wants to engage in debate on this, she will recall that I was sitting in the position of Chair of the committee. The person who sits at the front is the Chair of the committee and doesn't tend to enter into debates as members of the committee do, and I'm using this opportunity to bring it forward.

Mrs. Mitchell: Just a short comment. You also, as Chair, heard all of the conversations. As well, you could have chosen to step down, but you were privy to all the conversations that were happening, and I'm sure that you heard all of the discussions that day, when the LCBO went through the agency review, of the board composition.

Mr. Hudak: Of course I did, and that's why I'm bringing forward this amendment. If Ms. Mitchell heard the same conversations as I did, I'm sure she'd be concerned and hopefully will support my amendment.

The Chair: Thank you. Mr. Prue.

Mr. Prue: Ms. Mitchell, member from Huron–Bruce, was this discussed during the committee process, increasing the board membership? During the review of the LCBO, was this—

Mrs. Mitchell: He talked about the composition of the board. He also talked about the shifting of the CEO and the chair and that type of thing.

Mr. Prue: And the need for an additional four members?

Mrs. Mitchell: I can't recall specifically if that was mentioned, so I don't want to say that it was. I have heard it in conversation, but I can't say absolutely, without doubt.

Mr. Prue: I would gladly vote for this if the LCBO requested it, but I'm not hearing that. I'm not hearing that from anybody.

Mrs. Mitchell: And what I'm saying to you is that I cannot—I know that I have heard from the LCBO that they are looking for greater numbers, but I don't know if it was a formal request.

Mr. Arthurs: Mr. Chair, it has been indicated to me by a member of the minister's staff that a request of this nature did come through the LCBO to the appropriate minister.

Mr. Prue: To increase it to 11?

Mr. Arthurs: Again, I don't have the personal engagement in that, but I have confidence in the ministry staff person indicating that is the case.

Mr. Prue: Okay, thank you.

The Chair: Further comment?

Mr. Hudak: A recorded vote.

Ayes

Hudak.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Prue, Sandals.

The Chair: The motion is lost.

Shall section 3 carry? Carried.

Now we have a PC motion on page 14.

Mr. Hudak: I move that section 4 of schedule Q to the bill be amended by striking out section 4.0.1 of the Liquor Control Act.

The Chair: Comment?

Mr. Hudak: Section 4.0.1 states that a chief executive officer position could be appointed subject to the minister's approval. I do have concern about another high-priced bureaucrat at the LCBO and the cost to the taxpayer of such.

Secondly, Mr. Brandt conducted the position of chair and CEO extremely effectively for a number of years, basically acting in those types of positions. What I appreciated about Mr. Brandt's style was that he kept some—what's a good word for it? He used moral suasion to ensure or at least press that Ontario VQA wines, for example, would be treated fairly, Ontario microbreweries and such. It was a check on the bureaucracy at the LCBO.

I worry that the government, in moving to a part-time chair and bloating the bureaucracy of the LCBO, will lessen the ability of the chair to keep an eye on things and make sure that, for example, the goals in the Ontario wine strategy are met. Members will know that that strategy is well behind its schedule, and I think that if you withdraw the supervision of a chair position and you put another individual here on the administrative side, the ability to keep the pressure on to meet those goals and to address concerns of microbreweries, for example, will be lost.

The Chair: Comment?

Mr. Arthurs: The government won't be supporting this particular amendment. It's the government's view that, in spite of Mr. Brandt's excellent work over all those years, it's now time to separate the function of governance from the administrative, operational side of the business, that the CEO function becomes one that ensures the effective and efficient operation and the chair's function will ensure that the governance side is well managed, and that there's no conflict in those particular functions. So the government will not be supporting the motion as presented.

Mr. Prue: I can only speak from my own experience, not necessarily with the LCBO or what this motion is, but I know even in the time when I was mayor, we had this exact same debate in East York when we hired a CEO, and it was to separate the functions and to allow the executive to do the executive job and the CEO to look after the staff. It freed the mayor and the council from doing precisely that, and I cannot see how this is going to be necessarily a bad thing. We need to have full-time staff looking after an operation which nets this province billions of bucks.

The Chair: Further comment?

Mr. Hudak: My last point on this, and I appreciate the comments of my colleagues: I know my colleague Mr. Runciman had brought this up in the Legislature, objecting to Mr. Olsson's appointment and appointing effectively a part-time chair to a $3-billion enterprise. The LCBO really has two principal goals, and one is to bring in revenue—there are a number of principal goals, but it has two conflicting mandates, at times. One is to bring in more and more revenue to the government to spend; the second is to support domestic product, to ensure that there's adequate shelf space for Ontario VQA wine, for example, microbrews and such. I found that in Mr. Brandt's capacity, he was much more effective as a full-time chair to ensure that the proper balance was reached between maximizing revenues and making sure that VQA wines and microbrews were given appropriate shelf space and part of LCBO promotions. I do worry that now, moving to a part-time chair and a full-time executive officer, that link will be lost and that we'll see a loss of the gains that have been made for VQA wines and microbrews, so I'll continue to press this amendment. I appreciate my colleagues' concerns, and if my amendment fails, we'll just have to make sure we keep a close watch on what the new CEO would do.

The Chair: Further comment? Hearing none—

Mr. Hudak: Recorded vote.

Ayes

Barrett, Hudak.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Prue, Sandals.

The Chair: The motion is lost.

A PC motion on page 15.

Mr. Hudak: I move that subsection 4.0.2(2) of the Liquor Control Act, as set out in section 4 of schedule Q to the bill, be struck out.

The Chair: Comment?

Mr. Hudak: The intention here was part of a package to maintain a link between the political side and the LCBO in terms of appointing staff. This act, as brought forward by the government currently, delegates a lot of

that authority, first to the minister and then to the board. My intention would be to ensure that the Lieutenant Governor, as opposed to the board or the minister, would make those types of decisions.

Mr. Arthurs: The legislation as presented ensures that those in the bargaining unit are addressed in a fashion similar to those in the public service on the bargaining side, and those on the non-bargaining side are managed through the responsibility of the minister.

This, as I understand, would nullify that situation. We're of the view that it's important for the minister to have that ultimate responsibility for the non-bargaining part of the business and maintain the integrity of the bargaining unit through a more normal type of process. So we won't be able to support the amendment, though I appreciate the comments of the member opposite.

Mr. Hudak: I hear what you're saying and I appreciate the parliamentary assistant's views on this. Just by way of example, the new CEO, if the act passes, will have a certain degree of salary and benefits; there may be other administrative positions outside of the bargaining unit that will be assigned. Under this section, if passed, the minister would approve all of that. For a $3-billion agency that would now have a part-time chair, I think you need some sober second thought. If my amendment were to pass, the minister would then have to bring his or her recommendations to cabinet for cabinet approval. I just think it's important to be cautious and safe, given a part-time chair, given the size of the LCBO, that a recommendation for salary for the CEO, for example, or the CEO's staff would be approved by cabinet as opposed to the individual minister. I actually think it's an important protection for the minister as well, because it would mean it went through a more thorough review by his or her colleagues. That's why I'm bringing this forward to maintain the Lieutenant Governor in Council oversight as opposed to just a deal between the minister and the CEO.

The Chair: Further comment? Hearing none—

Mr. Hudak: A recorded vote.

Ayes

Barrett, Hudak.

Nays

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

The Chair: The motion is lost.

1700

For the committee members, it being 5 of the clock, pursuant to the order of the House dated November 14, 2006, all debates will cease and all motions which have not yet been moved shall be deemed to have been moved and I shall now put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The order of the House also authorizes the committee to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed, pursuant to standing order 127(a).

Shall section 5 carry? Carried.

Shall schedule Q carry? Carried.

Shall sections 1 and 2 to schedule R carry? Carried.

Shall schedule R carry? Carried.

Schedule S, sections 1 through 4: Shall they carry? Carried.

Shall schedule S carry? Carried.

Schedule T, sections 1 and 2: Shall they carry? Carried.

Shall schedule T carry? Carried.

Schedule U, sections 1 and 2: Shall they carry? Carried.

Shall schedule U carry? Carried.

Schedule V, sections 1 through 3: Shall they carry? Carried.

Shall schedule V carry? Carried.

Schedule W, sections 1 and 2: Shall they carry? Carried.

Shall schedule W carry? Carried.

Schedule X, sections 1 through 4: Shall they carry? Carried.

Shall schedule X carry? Carried.

Schedule Y, sections 1 through 5: Shall they carry? Carried.

Shall schedule Y carry? Carried.

Schedule Z, sections 1 through 3: Shall they carry? Carried.

Shall schedule Z carry? Carried.

Shall schedule Z.1, sections 1 through 2, carry? Carried.

Shall schedule Z.1 carry? Carried.

We have an amendment proposed. They having been deemed moved, motions 16 and 17, I would like to rule on the admissibility of the amendments that propose to direct the allocations of public funds. The motions before the committee can be characterized as money bill motions, and, pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule these motions out of order.

Schedule Z.2: Shall sections 1 through 28 carry? Carried.

Shall schedule Z.2 carry?

Mr. Prue: A recorded vote, please.

The Chair: A recorded vote has been requested for Z.2. We'll stand that down.

Schedule Z.3, sections 1 through 34: Shall they carry? Carried.

Shall schedule Z.3 carry? Carried.

Schedule Z.4, sections 1 through 7: Shall they carry? Carried.

Shall schedule Z.4 carry? Carried.

Schedule Z.5, sections 1 through 21: Shall they carry? Carried.

Shall schedule Z.5 carry? Carried.

Shall schedule Z.6, sections 1 through 2, carry? Carried.

Shall schedule Z.6 carry? Carried.

Schedule Z.7, sections 1 through 8: Shall they carry?

Mr. Hudak: A recorded vote.

The Chair: A recorded vote is requested. We'll stand that down.

Schedule Z.8, sections 1 through 2: Shall they carry? Carried.

Shall schedule Z.8 carry? Carried.

Schedule Z.9, sections 1 through 11: Shall they carry? Carried.

Shall schedule Z.9 carry? Carried.

You are allowed a 20-minute recess, those who called for the recoded votes. Do you wish to exercise that?

Mr. Prue: No, thank you.

Mr. Hudak: Can we have a chit and use it some other time? That could come in handy.

The Chair: Talk to the House leaders.

Shall schedule Z.2 carry? A recorded vote was requested. All those in favour?

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: Carried.

Now we're on Z.7. Shall sections 1 through 8 carry? A recorded vote was requested. All in favour?

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: The motion is carried.

A recorded vote was requested for this question: Shall schedule Z.7 carry? All in favour?

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: The motion is carried.

Shall section 1 of the bill carry? Carried.

Shall section 2 of the bill carry? Carried.

Shall section 3 of the bill carry? Carried.

Shall the title of the bill carry?

Mr. Hudak: No. A recorded vote.

The Chair: A recorded vote. We'll stack that.

Shall Bill 51, as amended, carry?

Mr. Hudak: A recorded vote.

The Chair: A recorded vote. We'll stack that, then.

Shall I report the bill, as amended, to the House? Carried.

A recorded vote was requested on this question: Shall the title of the bill carry? All in favour?

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak.

The Chair: It's carried.

A recorded vote has been requested for the following question: Shall Bill 151, as amended, carry? All in favour?

Ayes

Arthurs, Lalonde, Marsales, Mitchell, Sandals.

Nays

Barrett, Hudak, Prue.

The Chair: The motion is carried.

We are adjourned.

The committee adjourned at 1712.

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