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

**Monday 27 November 2006**

## **Journal des débats (Hansard)**

**Lundi 27 novembre 2006**

**Standing committee on  
social policy**

Ministry of Government Services  
Consumer Protection and Service  
Modernization Act, 2006

**Comité permanent de  
la politique sociale**

Loi de 2006 du ministère  
des Services gouvernementaux  
sur la modernisation des services  
et de la protection  
du consommateur

Chair: Shafiq Qadri  
Clerk: Trevor Day

Président : Shafiq Qadri  
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
SOCIAL POLICY**

**COMITÉ PERMANENT DE  
LA POLITIQUE SOCIALE**

Monday 27 November 2006

Lundi 27 novembre 2006

*The committee met at 1550 in committee room 1.*

MINISTRY OF GOVERNMENT SERVICES  
CONSUMER PROTECTION AND SERVICE  
MODERNIZATION ACT, 2006

LOI DE 2006 DU MINISTÈRE  
DES SERVICES GOUVERNEMENTAUX  
SUR LA MODERNISATION DES SERVICES  
ET DE LA PROTECTION  
DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

**The Chair (Mr. Shafiq Qaadri):** Ladies and gentlemen, I call this meeting to order of the standing committee on social policy. As you know, we're here to consider Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services.

SUBCOMMITTEE REPORT

**The Chair:** Before we begin hearing from our external presenters, I now invite a member of the government side to enter into the record the report of your subcommittee on committee business, for which purpose we have Dr. Kular.

**Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale):** Your subcommittee met on Tuesday, November 21, 2006, to consider the method of proceeding on Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services, and recommends the following:

1. That the committee meet in Toronto on November 27, 28 and, if necessary, December 4, 2006, for the purpose of holding public hearings.

2. That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the English Toronto dailies, and a French Toronto weekly.

3. That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative

Assembly website and in the Ontario edition of the Canadian Newswire.

4. That members of the subcommittee forward contact information for groups and individuals who wish to be considered to make an oral presentation to the committee clerk's office by 10 a.m. on Thursday, November 23, 2006.

5. That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, November 30, 2006.

6. That groups and individuals be scheduled on a first come, first served basis from the lists provided by members of the subcommittee and then from the committees branch database.

7. That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee.

8. That the deadline for written submissions be 5 p.m. on Monday, December 4, 2006.

9. That for administrative purposes, proposed amendments be filed with the committee clerk by 10 a.m. on Tuesday, December 5, 2006.

10. That the committee meet for the purpose of clause-by-clause consideration on Tuesday, December 5, 2006.

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

Thank you, Mr. Chair.

**The Chair:** Thank you, Dr. Kular. Before proceeding to consideration, I would just invite all of those gathered here to please turn off their cellphones. However entertaining the jingle may be, it does of course interrupt proceedings.

If there are any further questions, comments or debate—Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** I trust you'll be equally strict with committee members and their BlackBerries.

**The Chair:** Due process, Mr. Kormos. Thank you.

Are there any further questions, comments or debate on this subcommittee report?

**Mr. Kormos:** Yes. If we could get updated by the clerk as to what the demand has been, what the response has been.

**The Clerk of the Committee (Mr. Trevor Day):** We currently have a number of requests. We have enough

requests to fill next Monday at this point, so any further requests we'd be taking in would start to put us over. We'd have more than we could—

**Mr. Kormos:** Thank you.

**The Chair:** Any further comments? May I take it, then, it's the will of the committee that the report be adopted, as read, into the record?

*Interjection.*

**The Chair:** So moved. Yes, Mr. Tascona.

**Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford):** I agree; it's adopted. I agree.

**The Chair:** Thank you, Mr. Tascona.

#### SUSAN LAWRENCE

**The Chair:** We'll now proceed to our first presenter, and that is Ms. Susan Lawrence, who is coming here in her capacity, as I understand it, as a private individual. Ms. Lawrence, to you and to others gathered here, the protocol for the entire afternoon will be 15 minutes in which to make your deputation. Any time remaining will be distributed evenly amongst the parties for questions and comments. I would invite you to be seated, and your time begins now.

**Ms. Susan Lawrence:** Good afternoon. My name is Susan Lawrence, and I thank you for allowing me to speak before you on Bill 152, in particular the Land Registration Reform Act and how it affects mortgage fraud crimes in this province.

Please bear in mind that I'm not a lawyer, I'm not a legislator, just a business person who one day stumbled across the fact that the house I owned, I really didn't, and it was mortgaged, without my knowledge, to the tune of \$300,000. I've spent the past year learning about mortgage fraud, and I do believe that I now have a very good understanding of what happened, how it happened, but, more importantly, why it happened.

Today I would like to address how Bill 152, while it does address the growing problem of mortgage fraud in this province, in my opinion, just doesn't go far enough to stop this from happening.

In case you're not familiar with my story, it all started in November 2005, when basically all I did was put a "for sale" sign on my lawn. This was a symbol for criminals to forge a sale document, fraudulently register a change of ownership against my title and mortgage the property for almost \$300,000. Almost three months later, I stumbled across the fact that the home I thought I owned, I didn't, and it had been taken from me without my consent or knowledge.

The provincial government is now taking positive steps with Bill 152 to help victims like myself, but I believe that the portion of Bill 152 dealing with mortgage fraud does not go far enough to stop this vicious crime from happening. I believe that when you do something, you do it right, and when you know better, you do better. I also believe that fraud targets the weakest links, and controls within this system are definitely the weakest

links. There are several controls that, if in place, would have prevented this crime from happening to me.

First of all, access must be restricted to the electronic registration system so as to reduce the incidence of fraud. Once fraudsters have access to the Teranet system, they can perform any number of phony title transfers and fraudulent mortgage deals. I am told that it takes just \$600 and a one-day course at a community college to gain access to the land titles registry, and access codes and/or cards can be either stolen or passed over to almost anyone. There are no definitive controls to stop fraudulent access, nor are there any audit trails which identify queries to any properties within the system.

To protect against mortgage fraud, due diligence must be practised at all levels and at every single stage of the process, and particularly within our lending institutions. Banks and trust companies must insist on a face-to-face, on-site appraisals. Proper checks must be performed on both the buyer and the seller. A simple phone call is not sufficient to check on employment.

In my particular case, the fraudster said he worked at a car wash and he was paid in excess of \$78,000 annually. This is absurd and should have raised concern somewhere along the line. It turns out that the address of the car wash was a video store. Each and every page of the documentation put forth to the lending institution contained a different signature both for the buyer and the fake Susan Lawrence. The name of the buyer was even spelled differently on several pages. There's just too much pressure to close the deal. Depersonalization of the process of borrowing money and increased competition within the mortgage industry make it easy for fraudsters to commit this crime.

I believe there's a clause in the Land Titles Act which allows for a 21-day wait period before a title is actually transferred. If this were enforced, a check, either by mail or by some sort of identification, i.e., a PIN number, would be one more step in stopping this vicious crime.

During the past year, I've spent close to \$30,000 fighting against the criminals who so easily stole my home. If someone had knocked on my door to appraise the house, if someone had said, "Hey, \$78,000 is a lot of money to be paid to wash cars," if someone had noticed that every single signature on every single page was different, if someone had checked the driver's licence number accredited to me or even my social insurance number, or even closely examined the documentation they'd put forth and realized it was fake, this never would have happened to me, and it shouldn't happen to anybody else.

There's a fund set up to help victims of mortgage fraud like myself. It is set up by the government from taxpayers' hard-earned money. It's called the land titles assurance fund. Applicants presently have to exhaust all other avenues before applying for compensation from this fund. It involves lengthy and costly legal procedure. Even after everything I've gone through and everything I've learned this past year, I would not feel comfortable applying to this fund without legal counsel.

If procedures were put in place to restrict and stop criminals from getting away with this crime, it would not

be necessary to have these tax dollars pay for crimes committed by these disgusting individuals. I personally would rather have my tax dollars paying for medical help for victims of cancer, not fraud. But I am delighted that the government is finally addressing this atrocious crime and I implore you to do it right.

Thank you. Any questions?

**1600**

**The Chair:** Thank you, Ms. Lawrence. We have about three minutes per side, beginning with the official opposition.

**Mr. Tascona:** Thank you very much for coming here today, Susan. I appreciate that.

Bill 152 is not retroactive, as you're aware. It only takes effect as of October 19, 2006, for certain measures. Have you got any comments on that, because you won't benefit from it at all?

**Ms. Lawrence:** I won't benefit from it at all. I'm going to appeals court tomorrow to appeal the decision that was made in my first case, where they asked them to dismiss the mortgage. I'm planning on winning, I guess.

Personally, I really don't think the government is aware of how epidemic this mortgage fraud is. Everybody I speak to has a story—every single person. The other day I met a lady who said it happened to her. How they stopped it was that Hydro came to change the billing, and that's how she found out about it. None of these people is applying to the fund. They're stopping it. The crime is so ridiculously easy to commit, it's ludicrous. The police told me that it's more lucrative and less dangerous than dealing drugs.

**Mr. Tascona:** Just to follow up on that, as you know, I put forth a Bill 136 that would make this type of activity retroactive and provide for reasonable compensation for legal fees and that. I know that you've got a strong interest in this but, objectively speaking, do you feel it's fair, based on this being a government-run system that people have been impacted by, that this type of activity should be looked after retroactively?

**Ms. Lawrence:** Yes, I think it's fair. I'm victimized; I've been doubly victimized, actually. I've been victimized by the system and I've been victimized by the crooks. Any help that somebody in my position could get I'm sure would be truly grateful for it.

**Mr. Tascona:** Tomorrow, you're going to be going to the court of appeal. Is that to get your home back?

**Ms. Lawrence:** Yes, to get the mortgage dismissed on my home.

**Mr. Tascona:** Were you successful at the lower level?

**Ms. Lawrence:** I was successful in getting title to my house back. The judge was very sympathetic towards my case. He informed me that he could not overrule a decision that had been made in the appeals court, so now I'm in appeals court.

**Mr. Tascona:** The legislation, Bill 152, as I understand it, will not impact that court decision. If you lose tomorrow, you will still have the mortgage on your property because the government hasn't made this bill retroactive?

**Ms. Lawrence:** Correct.

**Mr. Tascona:** Those are all my questions.

**The Chair:** Thank you, Mr. Tascona. Mr. Kormos?

**Mr. Kormos:** Thank you, Ms. Lawrence. Help us to understand. You obviously had an opportunity to see the documentation or to see photocopies of it, with different signatures, different handwriting at different points in the document. Was this an electronic registration?

**Ms. Lawrence:** No. This was done by hand: the sale of the property and then the mortgage applications.

**Mr. Kormos:** And lawyers were involved in the transaction?

**Ms. Lawrence:** Yes. I'm not quite sure that the lawyers were above the law, but I—

**Mr. Kormos:** What do they have to say for themselves?

**Ms. Lawrence:** They provided documentation. Two pieces of ID have to be given when you present yourself to a lawyer. In my case, they gave a social insurance number and a driver's licence. The driver's licence was with my name and my address. It wasn't my driver's licence number; it wasn't my picture. The actual picture on the ID had been pasted on. You could see that it was crooked. None of the numbers and names and things lined up on either piece of documentation.

**Mr. Kormos:** Have the lawyers accepted any responsibility for what they did or didn't do?

**Ms. Lawrence:** One lawyer in my case was under suspension by the law society, and I do believe that you're not allowed to act on behalf of or as a lawyer during suspension. They're being investigated now. The other lawyer has referred the case to his insurance company.

**Mr. Kormos:** When I was a very young articling student—as a matter of fact, the articling students are the ones who go to the land registry offices and close the deals. Now, this is small-town Ontario and maybe there is a difference there, but the clerks would go through the document—this is still the old registry office—and they would examine signatures. They would look at the documents that way.

In the course of your litigation, did you ever find out what did or didn't happen at a land registry office in terms of—

**Ms. Lawrence:** It was all done electronically. Nobody showed up. Nobody saw a face. Nobody saw a signature.

**Mr. Kormos:** Ah, okay. You see, I've got this suspicion about the electronic registration. At first I thought maybe you had to scan the document and send the image down to the registry office. No. It's like when the accountant does your income tax for you and he doesn't send any of the documentation. It's just his or her say-so on the income tax form. That seems to me, ladies and gentlemen, to be a real, glaring, huge, Mack-truck-sized hole in the system.

**Ms. Lawrence:** That's why I recommend that there be some kind of restriction on who can get on to that system. In the Teranet system, apparently you have a number or a card, and if you lose it or give it to somebody else, anybody can use it. Plus, they don't track who goes on. They don't track to see who goes on to that system to

check on your house. For the crook to steal my house, he had to go on there and say, "Okay, she has lived there for so many years, she doesn't owe money on it," and so on. Nobody can backtrack and tell me who did that.

**The Chair:** Thank you, Mr. Kormos. With respect, we'll offer it to the government side too.

**Mr. Vic Dhillon (Brampton West–Mississauga):** Thank you very much for coming before the committee this afternoon. I just wanted to make a couple of comments. You were mentioning that you hear about these transactions all the time. Our research has indicated that there are millions of transactions taking place every year, and we found that the incidence of this type of fraud is very low, although it's totally unacceptable. Even one case is unacceptable. But we've found that in millions, I believe, fewer than 50 cases have been brought up, and other provisions in this bill are meant to restrict and control who is making the registration. So your points are well taken. Thank you very much.

**Ms. Lawrence:** Can I ask you one question? When you report on how many cases of fraud go through, where do you get that information from? Is it from the insurance fund?

**Mr. Dhillon:** We can—

**Ms. Lawrence:** Because I've never been given—I've asked several times. I've asked the banks. I've asked the insurance companies.

**Mr. Dhillon:** Can I have somebody from the ministry, maybe, to answer that?

**Ms. Kate Murray:** The numbers that we have in terms of application with respect to the incidence of fraud are related to the applications to the insurance fund.

**Ms. Lawrence:** Okay. Not all fraud victims go through the fund. I'm not going through the fund.

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

**The Chair:** Thank you, Ms. Lawrence, for your deputation and presence today.

#### WINE COUNCIL OF ONTARIO

**The Chair:** I would now invite our next presenter, the Wine Council of Ontario; Ms. Linda Franklin, president. Ms. Franklin, as you've seen, you have 15 minutes in which to make your presentation. Please begin now.

**Ms. Linda Franklin:** Thank you. As folks know, this is a bill with a lot of diverse components, so my presentation will be entirely on another subject: the components of the bill relating to the Liquor Licence Act reforms.

The Wine Council of Ontario, as many of you will know, is the wine industry's trade association. It represents over 65 wineries in Ontario. We're very pleased to be here today to support the Ministry of Government Services Consumer Protection and Service Modernization Act as it relates to changes in the Liquor Licence Act.

Fifteen years ago, when I first came into this job, we had 20 wineries in Niagara and southwestern Ontario, most of them mid-sized producers and most of them only

selling wine to the liquor board. Today, of course, with over 100 wineries in the province, the vast majority of our members are small estate producers and all of them are very dependent on tourism and on-site sales. In fact, in many cases, 100% of the wine that's sold is to tourists visiting their properties.

Over the same period of time, winery tourism has now become a significant economic driver in southwestern Ontario and Prince Edward county, as well as Niagara. The Niagara-on-the-Lake Chamber of Commerce has recently presented a study showing that winery tourism is the number one reason for visiting this area for the over three million tourists who come to the community every year.

#### 1610

So this, folks, is a huge departure from just a decade ago, when the wine industry was putting up booths at Casablanca Boulevard in Niagara with question marks on them, hoping to draw people off the highway. In fact, what we were hoping was that they would come to use the bathroom facility that we put on site and, if they did that, maybe then we could hand them a wine brochure suggesting a tour of wineries. We've gone from that about 15 years ago to a situation now where we get 750,000 to a million tourists down Niagara way. As Mr. Kormos will know, it is a huge part of the industry now. It's good for the regions where wineries are located, it's good for the provincial economy, and it drives a lot of other economic activity.

This is all good. Unfortunately, liquor laws haven't addressed this changing landscape. The liquor laws predate winery tourism; they predate winery visitation. They leave wineries drowning in a sea of paperwork and unable to accommodate really simple, basic requests from their visitors.

The legislation reforms for the Liquor Licence Act before you today, along with the pending regulatory and policy changes, we think will begin the process of modernizing this act and aligning the rules for wineries with the realities of the tourism industry that has grown up around our wine industry in the past two decades.

Wineries offer visitors a range of educational experiences on site. All require that visitors walk through the winery property so that they can look at various activities in the wine cellars, in the vineyards, and see what happens in the process of winemaking. Right now, a winery can't pour a taste of wine for a visitor and have them walk with that glass through that experience. You can't carry a wineglass from the tasting bar to the vineyard, for example. So you can't have a discussion of the grape-to-wine process with the glass in your hand. The proposed changes today will allow for this interaction with visitors, winemaking sites and vineyards and will recognize consumers' increasing interest in an interactive winery experience.

Similarly, wineries that want to offer wine for sale by the glass on their properties currently can't do that. The only way to allow this to happen right now is for the winery to take out what's called a tied house licence.

That requires wineries to become virtually full-service restaurants. They have to offer several meal selections, they have to have the on-site ability to prepare these meals, they have to have full-service kitchens, and these provisions, as you can imagine, are fairly onerous for wineries whose only goal in life is to sell somebody a simple glass of wine and let them sit at a picnic table and look at the vineyards. Frankly, all those wineries would like to do is offer some bread and cheese to go with the wine.

Right now, as well, particularly in Niagara region, this provision is causing huge consternation for the escarpment commission and has for quite a while, because when they see applications come through from wineries for a tied house licence, their concern is that all these wineries are going to open full-scale restaurants: "That will be bad for the escarpment. What will we do with all the various and sundry issues that arise from that?" In actual fact, most of these wineries would have no intention of doing anything like that.

Again, I think the proposed changes to allow wineries to sell a glass of wine to consumers will recognize that this kind of activity can take place in a socially responsible way, in an educational environment, in a way that lets visitors enjoy the ambience of the winery without the requirements of full meals, so our wineries won't have to open a restaurant in order to serve a glass of wine.

Another important issue in tourism that these changes will address is to give tour operators the ability to offer tourism packages that include beverage alcohol in the price of the package. You can imagine that's helpful in wine country for many of the folks who offer tourism experiences. That way, visitors can know exactly what the cost of their total package is. Right now, hospitality providers in wine regions can't include wine in a tourism package that includes accommodation and food. Similarly, hotels can't include a bottle of wine in the cost of the price of a room and they can't charge for that wine in the room rate. So again, it makes it almost impossible to provide a complete package to guests to ensure that the guests know exactly what the cost of that package is going to be and to allow for an interactive experience that includes wine as part of the tourism experience.

This is particularly important to us because current research makes it really clear that tourism visitors want packaging that takes care of all their needs. Folks are busy, their time is at a premium, and they're not all that interested in figuring out all the bits and pieces of their travel agenda. So to the extent that we can accommodate all the elements of that agenda, we're better off. Certainly that's how it's done in the rest of the world. So it takes away an irritant, I think, that's a problem for the tourism sector in the province, not just in wine regions.

Finally, among the issues meant to address social responsibility, the new rules will let wineries charge a nominal fee for wine sampling. Right now, the regulations actually prohibit wineries from charging for a sample of wine. We think that's silly, frankly. We think it's a good idea to be socially responsible and allow for a

small fee that we think will help discourage folks from simply sampling too much and drinking too much, and it places a value on the alcohol being served at the tasting bar. So wineries welcome this change, and we think it's in the public interest.

Overall, we believe the changes being proposed to the Liquor Licence Act piece of this legislation will really help us move liquor policy and regulation into the 21st century and into closer alignment with the needs and realities of a vibrant winery tourism industry, which we certainly have in the province today. So we welcome these changes.

**The Chair:** Thank you, Ms. Franklin. We have about two minutes per side, beginning with Mr. Kormos.

**Mr. Kormos:** Thank you kindly. No quarrel from me on any of these. You're right: I come from wine country down in Niagara, and it's literally the only real growth there is down there, in terms of industrial job losses. It's the small boutique wineries that are still continuing to grow and that are a huge draw. But most of what you're speaking of is being done by regulatory change.

**Ms. Franklin:** Correct.

**Mr. Kormos:** The problem is that here we've got a bill that addresses one very serious issue, the land titles issue, title fraud, while the regulatory changes with respect to wineries could have been done without this bill; they don't need the bill. That's one of the difficulties we have, because we want to be fair to all the people that are impacted by the bill. I don't think anybody is going to quarrel with you here, but we've got some real concerns about the effectiveness of the bill in terms of protecting people like Ms. Lawrence—you heard her—from fraud artists. So if it appears that maybe we're a little pre-occupied with the bill, it ain't because we've got concerns about wineries accommodating their visiting guests.

**Ms. Franklin:** We certainly wouldn't feel hurt by that.

**The Chair:** To the government side.

**Mr. Dhillon:** I have no questions. Thank you very much for appearing before the committee, Ms. Franklin.

**Ms. Franklin:** You're welcome.

**The Chair:** Any further questions from the government side? Seeing none, Mr. Tascona.

**Mr. Tascona:** I'm sure you know Tim Hudak, our member from Niagara, and I'm sure he's in favour of this.

Specifically, because Mr. Kormos asked you about whether this was a regulatory change—you said it was—was there anything in this particular bill, Bill 152, that impacts your industry?

**Ms. Franklin:** Yes. Most of what's going to happen is going happen, as Mr. Kormos pointed out, through regulatory and policy change. A good deal of—

**Mr. Tascona:** But is there anything in the bill—it says that minor housekeeping amendments have been made to update the references to the Wine Content Act, and to the Wine Content and Labelling Act, 2000.

**Ms. Franklin:** Right.

**Mr. Tascona:** Is there anything in the bill that touches on your industry?

**Ms. Franklin:** Other than those housekeeping changes? No, not in the legislation itself.

**Mr. Tascona:** In terms of those housekeeping changes, what specifically are those?

**Ms. Franklin:** Honestly, I couldn't tell you. They're minor.

**Mr. Tascona:** They're very minor. Not to be facetious here, but the thing is, we've got about 54 acts being amended here and this is minor housekeeping. How are you aware of exactly what they're going to do, which you support in this submission? Have they told you that by letter?

**Ms. Franklin:** Yes, they've advised us through the consultation process, and there were ministry briefing notes that came along with the legislation when it was made public that indicated what would be happening in terms of the regulatory side of our industry.

**Mr. Tascona:** So they gave you ministry briefing notes on that?

**Ms. Franklin:** No, they're publicly available. They're up on the website.

**Mr. Tascona:** Did they give your industry a letter on this saying that they were going to do this?

**Ms. Franklin:** No, but there are briefing documents, press releases and things on the ministry website. They're publicly available. They weren't just delivered to our industry.

**Mr. Tascona:** Okay. So that's how you became aware of how it was going to impact you.

**Ms. Franklin:** Right.

**Mr. Tascona:** Okay. That's good. Thanks very much.

**Ms. Franklin:** You're welcome.

**The Chair:** Thank you, Ms. Franklin, for your presence and deputation on behalf of the Wine Council of Ontario.

#### ROBERT FREEDLAND

**The Chair:** I invite now our next presenter, Mr. Robert Freedland. Mr. Freedland, as you've seen, you have 15 minutes. I invite you to be seated. Your time begins now.

**Mr. Robert Freedland:** Thank you. My name's Robert Freedland. I'm a former commercial real estate agent. I now work in social services.

Just as a general comment, I wanted to say that it's great to have committees and it's great to draft legislation, but if there's no teeth, if you're creating paper tigers, there's no point; it's irrelevant.

**1620**

Specifically, I was cheated by a real estate agent about a year ago. He was an unscrupulous, unethical, despicable real estate agent, a member of the Toronto Real Estate Board. I filed a complaint with the Real Estate Council of Ontario and, to make a long story short, they did absolutely nothing. They gave him a caution.

Anyone who's familiar with the Real Estate and Business Brokers Act knows that it covers just about everything. It covers fiduciary duties, dual agency, what the obligations of an agent are to their client or customer; it spells out everything. It's unequivocal, it's in black and white, there's no grey area, and yet there's no one to enforce it. The people left to enforce it are the industry itself. It's like going to a prison and asking the inmates to set the rules and govern themselves.

I worked in real estate and I can tell you first-hand that many of the people who work there not only should not be working in real estate, they should be in prison, they were so unscrupulous, dishonest and unethical. I can tell you first-hand that the stereotype of the used-car-salesman kind of real estate agent is very true. Their salary is earned by commission, and do you know what? When your bills are due at the end of the month, if you have a family to support, you get desperate. There are a lot of agents who, regardless of their desperation, act unethically, do things that are outrageous.

In my case, I purchased a condo and found out after the deal had closed that there was not one, there were six identical units to mine for sale in the same building for 40% less than what I had paid. My agent had lied to me. He was acting under dual agency. Not only did he not disclose that these other, cheaper units existed, he lied to me and told me that there was just one one-bedroom unit for sale. He didn't tell me that there were six, and he tried to buy them behind my back. These properties were also listed on the multiple listing service.

When I filed the complaint with the Real Estate Council of Ontario, the deck was stacked against me: Number one, upon filing my complaint, part of the condition was that none of the evidence provided by the real estate agent could be used against him at the following civil lawsuit, which I filed. As well, I wasn't allowed to see his defence. So he was able to see my complaint, but I wasn't able to see his defence. I have no idea what lies or what he said to the Real Estate Council of Ontario that they did nothing to discipline this agent or punish the brokerage.

Again, getting back to the Real Estate and Business Brokers Act, when I was a student studying to be a real estate agent, it was like going through law school. We went over, section by section, fiduciary duty, all these clauses. We felt completely empowered; we felt like we were joining a professional industry. I got out there and it was nothing like what we had learned in class. The real world was really different. They're just dishonest, backstabbing, lying, and they get away with it. There's no one to police the real estate industry.

The largest consumer purchase that an individual is going to make, on average, is real estate. We hear about travel, people's holidays going wrong, tour operators and this and that, airlines going bankrupt, but people are out of pocket a couple of thousand dollars. With real estate, people can be out literally millions of dollars. I feel for a lot of the immigrants who come here. Passive immigrants come here and they have to deal with unscrupulous law-



yers. That's another issue altogether. The law society is also a group of hucksters. It's a self-governing body, and they're such hypocrites that about 10 years ago they insisted that the police were not capable of policing themselves—

**The Chair:** Mr. Freedland, I appreciate the passion and energy which you bring to this particular deputation. I would remind you that this is a committee of the Parliament of Ontario, and were we to say some of these words in the House, we would be asked to withdraw. With that, I would respectfully ask you to continue, abiding by that.

**Mr. Freedland:** Okay. Just to continue with the SIU, it was lawyers who insisted that the police were not trustworthy—is that fair to say?—and that they were not capable of policing themselves, and the SIU, the special investigations unit, was formed to investigate. Police would no longer investigate themselves when members of the public were injured and police were involved.

To have lawyers investigating lawyers is also outrageous. One of the lawyers at the subsequent trial I had failed to show up at trial. He lied to me and said he never received the trial notice. I subsequently found out that he had. Not only did he know about the trial date, but he had corresponded with the defence counsel. I filed a complaint with the law society. It has taken almost a year, and this lawyer is ignoring the law society. As of this morning, I followed up and asked the investigator at the law society, "What's your next move? What happens now?" It's almost comical. Their response was that he has until November 29, which is two more days, and they're going to consider some sort of disciplinary action. In the meantime, almost a year has passed and nothing was done to this unscrupulous lawyer.

Getting back to my original comment: Legislation is great on paper, but someone has to be enforcing it. At the end of the day, there has to be some penalty; there has to be some deterrent.

I guess it was about six or seven years ago that the Conservative government introduced mandatory insurance—it was in the first year I was a real estate agent. This was meant to protect consumers; that was the purpose of it. It has actually had the reverse effect. What it has done is that real estate agents can be much more cavalier in their behaviour, and they're covered by insurance. Using my situation as an example, my unscrupulous real estate agent was covered by an insurer. The insurer provided him with a Bay street law firm; he was very well protected. It didn't serve me, because I had to go and hire my own lawyer and go up against this Bay Street law firm. How is the government protecting individuals and consumers? The answer is, they're not. So that backfired; I don't know why that's not under review.

On the issue of dual agency, with respect to real estate agents representing both the buyer and seller, it should never be legal. In some jurisdictions, it's not at all. It's a complete conflict of interest. The Real Estate Council of Ontario acknowledges, in the brochures that they require real estate agents to hand to consumers, that it's a conflict

of interest. Well, if they acknowledge it, then why is it allowed? It's similar to going to trial and your defence counsel is also the prosecutor. It just can't be. Yet somehow this industry has persuaded the government of Ontario to allow dual agency. It should never, ever be legal.

If I had the time, I could tell you dozens and dozens of first-hand stories of my experiences as an agent where agents acted in a dual-agency capacity and their loyalty was to one party. When I was a commercial agent, my loyalties were to the landlord. If I'm leasing an office building, I have a relationship with the landlord. Me and him go back years. He's paying me and somebody walks in off the street and wants to rent a small office. Who's kidding whom? My loyalties aren't to some guy walking in off the street. For me to sign a dual-agency agreement and mislead a consumer into believing that somehow I'm going to act fairly borders on fraudulent. It's completely misleading. People who are well-informed, well-read, educated investors can, for the most part, defend themselves. But you're dealing with a multi-cultural society. People are not familiar with our laws. They look impressive on paper; they look impressive on television. But when incidents like mine and like these title insurance fraud people occur, we find out the realities and weaknesses of our system.

Again, legislation is great, but where are the teeth? Any of you who have seen the travel section of this week's newspaper can see lots of tour operators offering flights to Florida for \$29. Wasn't there supposed to be some legislation insisting that tour operators and travel agencies include the taxes? That's not happening. Who's enforcing this? Who's policing all these nice rules and laws that are on paper?

That, in a nutshell, is my comment. Anyone who has any specific questions or who would like to speak to me further about the real estate industry, I have plenty to say. I hope the real estate council will end as a self-governing body. They have no business policing themselves.

1630

**The Chair:** Thank you, Mr. Freedland. We have about one minute per side, beginning with the government. Mr. Ramal.

**Mr. Khalil Ramal (London-Fanshawe):** Thank you very much for your presentation. I'm just confused about—I don't know. What you said may be correct or may not be correct; I'm not sure about this stuff. I don't know what the relation is between what you said and this bill. So anyway, you're telling us we shouldn't trust the real estate and the lawyers who are acting on the behalf of the landlord and the tenant at the same time, and that this should be illegal? This is your position?

**Mr. Freedland:** Well, no. The way the laws exist now in the Real Estate and Business Brokers Act, a real estate agent can represent two parties in a transaction.

**Mr. Ramal:** I understand that.

**Mr. Freedland:** It's called dual agency.

**Mr. Ramal:** So you think it should be illegal.

**Mr. Freedland:** Absolutely. It should never be allowed. It's a conflict of interest.

**Mr. Ramal:** But how do you connect it with this bill? How do you relate it to this bill?

**Mr. Freedland:** Well, the Real Estate and Business Brokers Act should be amended. It should be amended, and dual agencies should be scrapped. The business brokers act is part of consumer legislation in Ontario. Right now they have the right to legally represent two parties in a real estate transaction. It should never, ever be legal.

**The Chair:** With respect, thank you, Mr. Ramal. To the opposition side. Ms. Elliott.

**Mrs. Christine Elliott (Whitby–Ajax):** Thank you very much, Mr. Freedland. Based on your past experience, I'd be interested in hearing your views on what you think would be effective enforcement to put into this legislation. What would be your suggestions as we go forward?

**Mr. Freedland:** Again, there has to be fear. If a real estate agent knows he's facing the Real Estate Council if he does something unscrupulous, there is no fear—and this actually happened. When I called the boss of that unscrupulous real estate agent, I told him what happened and I said, "Listen. Either we settle out of court or I'm going to file a complaint with the Real Estate Council of Ontario." He said, "So what? Go ahead. I've been before them many times." He was laughing.

He had no fear of the Real Estate Council of Ontario, and I wasn't sure at the time whether he was posturing. I didn't know if he was posturing, bluffing or if he was being honest. I found out later that he was being honest. The Real Estate Council of Ontario did nothing, and my case was as clear—cut and dried. What about cases that are ambiguous?

**The Chair:** Thank you, Ms. Elliott. Mr. Kormos.

**Mr. Kormos:** Thank you, Mr. Freedland. You're too young, but Al Capp did a comic strip called Li'l Abner. There was a character in there called Joe Btfsplk who walked around with a cloud over his head all the time. Jeez, I don't want to be standing anywhere near you during a lightning storm, I'll tell you that.

But you were a licensed, trained real estate person. Why did you go for the double agency?

**Mr. Freedland:** Why did I—

**Mr. Kormos:** Why did you accept this agent as your agent?

**Mr. Freedland:** Why did I? Because I know the rules. I know what his obligations are to me as a customer versus as an agent. When he signs a dual-agency agreement, I become his client. I have a different status. If I walk in off the street and I see a real estate sign and I call him up and I want to rent a store or buy a store, I'm just a customer. There's a legal difference.

**Mr. Kormos:** I just wondered why you wouldn't get your own agent.

**Mr. Freedland:** It was a small property, and I tried to—

**The Chair:** Thank you, Mr. Kormos, and thank you, Mr. Freedland, for your participation and deputation today.

BOB AARON

**The Chair:** I would now invite our next presenter, Mr. Bob Aaron, who also comes to us in his capacity as a private individual. Mr. Aaron, as you've seen the protocol—15 minutes. I invite you to be seated. Your time begins now.

**Mr. Bob Aaron:** Thank you, Chair. My materials are being distributed. It's a brief presentation.

I have been a real estate lawyer for about 35 years. I'm making this presentation as someone who has a lot of experience in the real estate field. I also write a column in the Toronto Star in the New in Homes section, but I do not appear and speak for anybody except myself, and certainly not for the Toronto Star or Torstar.

For about four or five years, with increasing frequency in the last year or two, I've written an awful lot of articles about real estate fraud, mortgage fraud and title fraud. Lately, they have been picked up by Mr. Levy of the Star, only he gets page 1 and I get buried in the New in Homes section. Mr. Levy is sitting behind me, and I think some of the impetus for this legislation is the publicity that lately has been given—especially in the Star—to these incidents of mortgage and title fraud. I even act for one or two of these people who have been unfortunately caught up in the mess, in the morass, of title fraud.

I received a telephone call on Thursday from Minister Phillips in which he shared with me some of the material that appeared on the front page of the Star which has not yet made its way into any amendments to the bill, but I was thrilled to hear that he had made some proposed changes which were on the front page of the Saturday Star. I have attached them to my paper.

I am generally in agreement with the changes to the system, in particular the power to limit access to the ability to register deeds and mortgages to lawyers. I like the idea of having the ability to freeze the title, to send out postcards or letters to people who have recently changed their title. I believe that one important factor in the spate of mortgage frauds is that funds are being advanced too impersonally. It's possible to arrange a mortgage over the Internet. As you can see from the photograph of my dog's driver's licence on the front of my materials, it's very easy in this province to get phony ID. If Benjy can do it, my guess is that—well, it's not a guess; I know that there are people out there who show up in lawyers' offices with phony ID. It's easy to delaminate these things, put a new picture and writing inside and then laminate it back together again. It's very easy to buy these things. As a result, it's very easy to do some title transferring and fraud. Unfortunately, it's costing us and the government a lot of money.

Justice Echlin, in a recent case, which I refer to in paragraph 12, talked about the banks not doing enough due diligence, and that's very unfortunate, that it is very easy to get a mortgage these days and, as long as there seems to be some inkling of value, the banks aren't really careful. They can get their losses insured by CMHC. It's possible to take a property—I've written about a property at 33 Earl Grey Road attached to the paper. You can take

a place worth \$115,000 and keep flipping it so that it appears to be worth \$430,000, get a huge mortgage, walk away from it and the bank gets stuck with it. At 33 Earl Grey Road in Toronto—that was done to CMHC twice within a couple of years. The place was ultimately worth \$180,000, which was the price immediately after a phony sale at \$429,900. These things happen.

I'm very concerned about the ministry's ability to suspend registration of a lawyer's ability to register documents in the Teranet land registry system. If that happened, there is no appeal process, there's no hearing immediately and, as a result, if somebody walked into my office with a driver's licence with a picture on it like my dog's and completed a title fraud and I was perfectly innocent, the ministry would have the right—without even notifying me, without telling me in advance, without the opportunity for a hearing and without an appeal—to yank my ability to register in the system. Basically I would be out of business in about five minutes, with no right of appeal. I think it's unconstitutional, draconian and I'm recommending to the ministry that there be some sort of consultation with the law society, because we're tightly governed by the law society. We don't have much room within the parameters of the rules of professional conduct, but it seems to me draconian to take away somebody's livelihood without notice and without the right of appeal. I think it's contrary to the operation of law in this province.

The land titles assurance fund: The minister told me on Thursday by telephone that this is now going to become a fund of first resort instead of last resort, and I applaud that decision. I understand that you heard from Susan Lawrence today, who had her property stolen. It will help a lot of people retain title to properties which were stolen from them. The fund, the minister tells me, is going to become more user-friendly. Access is going to be streamlined. I appreciate that the fund will become a fund of first resort rather than last resort and will resolve cases with a proposed service standard of 90 to 120 days. Based on the two or three years that we've had in the past, I think that's wonderful. I applaud the decision to make this fund a fund of first resort.

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We do, however, have a problem with those people who are caught up in it already. There are 20 or 30 people who are in process. I really urge the government to, as much as possible, make the provisions of the application and the streamlining retroactive so that those people already caught up in the system will be suitably pushed along, so that they don't have to spend \$30,000 or \$40,000 of their own money to recover from the government. I'm looking forward to that.

One of the problems is power of attorney. We've seen some court cases where a forged power of attorney is used to transfer title and to mortgage properties. If somebody shows up in my office with a driver's licence, at least I have a chance. But if somebody shows up with a power of attorney, purportedly signed by their relatives or friends in Hong Kong or anywhere else, it's very diffi-

cult for me, as a real estate lawyer, to verify who signed it, and yet I'm supposed to accept that.

I understand that now the government's proposal is—and I applaud this—that a lawyer will be required to electronically sign off on the validity of the certificate. So if I, as a real estate lawyer, am not absolutely, 110% convinced that it's a valid power of attorney, I won't allow my client to use it. He's going to have to satisfy me, even if I have to call the notary in Hong Kong or anywhere else in the world to determine where and when it was signed and that the notary there or the lawyer in some foreign country—or, frankly, the lawyer anywhere else in Canada—actually checked the ID of that person. So the intention to limit the use of power of attorney on the Ontario registry system to where the lawyer is willing to sign off on its validity I think is a wonderful change. That's a change for the better and I applaud the government on that.

Finally, restrictions on access to the registry system: Access to the electronic register, the ability to register documents in Ontario, should be regarded as a privilege and not as a right. I support the government's decision to restrict access to the system to lawyers so that we who are disciplined, regulated and insured will be able to register deeds and mortgages by certifying that we have satisfied ourselves as to who the people are, that they are who they purport to be. We, of course, are responsible to the law society and our insurers. So I commend the government on its suggestion that it is going to restrict access to the legal community and that we will not allow people who are unlicensed, unregulated and uninsured to tamper with the government registry system.

Those are my comments. I thank you for your attention, and I'm here to answer any questions that you may have.

**The Chair:** Thank you, Mr. Aaron. We have about 90 seconds per side, beginning with Mr. Tascona of the opposition.

**Mr. Tascona:** Thanks very much, Mr. Aaron. I appreciate the work you do with respect to writing in the Toronto Star.

**Mr. Aaron:** Thank you, and I your work in your legislation, your private member's bill.

**Mr. Tascona:** Thank you. I find it very informative, as an aside.

The minister was kind enough to provide us—I didn't get mine till today. He wrote a letter on November 22 to members of the standing committee. Perhaps if you read the letter you may not be as enthused as what your conversation would indicate. I'll provide you a copy of that letter or the committee will provide you a copy.

**Mr. Aaron:** Thank you. I haven't seen it.

**Mr. Tascona:** With the power of attorney, he basically says, "We will also work with our stakeholders to strengthen the current standards for dealing with powers of attorney."

The amendments are supposed to be in by 10 a.m. on Tuesday. If there isn't an amendment coming forth, all I can presume is that what we're going to be dealing with

is consultation on power of attorney, which would be unfortunate, because that's the way this is drafted.

He doesn't go as far as to say, though, that the land titles assurance fund will be a fund of first resort. He's putting forth a mechanism which will be very interesting to see how it works from a mode of operation.

You've read Justice Echlin's decision. He basically said that mortgage fraud was a plague in this province. Also, he felt that something has to be done because it's a government-run system—

**The Chair:** With respect, Mr. Tascona, we'll have to move on to Mr. Kormos of the third party.

**Mr. Kormos:** Go ahead, Joe.

**Mr. Tascona:** What do you think about the fact that it's a government-run system and we've got mortgage fraud and it's a plague and they're not going to make this retroactive? This government knew back in 2004 there were real problems. Susan Lawrence is hanging out there. She's not going to get anything back after tomorrow in terms of real compensation for what she's gone through. Do you think the bill should have been made retroactive—

**Mr. Aaron:** Simple answer? Absolutely.

**Mr. Tascona:** Okay. Peter?

**Mr. Kormos:** Thank you very much, Mr. Aaron. Surely we can make the fund access retroactive.

**Mr. Aaron:** A hundred per cent. It has to be retroactive.

**Mr. Kormos:** The floodgates argument won't hold water, if I can dare put it that way, because many are already resolved. The number that are literally hanging out there in the total scheme of things isn't a whole lot.

**Mr. Aaron:** Well, 25 or 30. It's not a lot unless your house has been stolen.

**Mr. Kormos:** Exactly. It's not as if we're talking about a huge, huge, huge financial burden.

**Mr. Aaron:** No, it's not.

**Mr. Kormos:** Of course not. Thank you very much. I appreciate your analysis.

**The Chair:** Mr. Ramal.

**Mr. Ramal:** Thank you very much for your presentation. I've been listening to the opposition's questions. You don't agree with us that there has to be a starting point? We have to start from a certain point. Do you think this bill is a very important piece of legislation to protect the consumer?

**Mr. Aaron:** We do have a starting point. The starting point could be the earliest application that's already on file with the land titles assurance fund. I don't think we should have two classes of defrauded citizens in this province: one class for the people after the legislation and one class for the people before, so that it's Susan Lawrence's unfortunate luck that she is in the old system. I strongly think that it should be dated back to the day that the first outstanding claim was made to the land titles assurance fund.

It's not going to cost the government that much money and there are a lot of injured people. They're going to have to pay anyway, so we're not talking about whether

or not they'll be compensated; we're talking about how quickly and how streamlined. They will be compensated. Susan Lawrence will get her money. She was defrauded. It's a question of whether she gets it in 2006 or 2009. That's the only question.

**The Chair:** Thank you, Mr. Aaron, for your presence and deputation.

FIRST CANADIAN TITLE  
CHICAGO TITLE CANADA  
STEWART TITLE

**The Chair:** I'd invite now our next presenters, title insurers Susan Leslie, Wendy Rinella, Steven Offer and Marco Polsinelli. When you speak, you might just identify yourselves individually for the purposes of Hansard recording. You've seen the protocol. I invite you to being now.

**Ms. Wendy Rinella:** Thank you, Dr. Qadri. I'm Wendy Rinella, with First Canadian Title. Thank you very much for inviting us to present today. I'm going to allow my colleagues to introduce themselves, starting at my far left.

**Ms. Reta Coburn:** Hi. My name is Reta Coburn. I'm senior vice-president of Chicago Title Canada.

**Mr. Steven Offer:** I'm Steven Offer. I'm with Chicago Title.

**Mr. Marco Polsinelli:** My name is Marco Polsinelli, from Stewart Title.

**Ms. Susan Leslie:** I'm Susan Leslie, vice-president of claims and underwriting at First Canadian Title.

Just before Wendy gets started, I did want to point out that First Canadian Title is the largest single customer of Teranet. We do approximately 25% of the registrations on the land title system in Ontario.

**Ms. Rinella:** Since that's a bit of a topical issue, I'd also like to note that Lawyers Title has endorsed this position, but they cannot be here today to join us.

We're not part of an association. We're actually making separate written submissions but we've come forward together today because we have some common viewpoints about Bill 152 that we want to share with you.

We appreciate the province is currently facing a political challenge of explaining why it is that the original owners of a house do not have the title restored to them after the fraud has been discovered, and furthermore, why these victims are still required to pay fraudulent mortgages. Intuitively, it just doesn't make sense.

When a car, wallet or other form of property is stolen, the victim has it returned, but not when it's your home, your most important investment. To add insult to injury, why is it that the victims have to pay the fraudulent mortgages? If a stolen car was involved in traffic violations, the victims would not have to pay the fines. So why are these title and mortgage fraud victims, as Susan Lawrence pointed out earlier, being further victimized by existing interpretations of law?

We commend and support the province's step in clarifying whether interest in real property will be valid or void. The greater the legislative clarity in the applicable sections of the act, the less likely there will need to be additional clarity through court interpretation of these new sections of Bill 152. We have been involved in a number of legal disputes, representing the interests of our insureds in the courts on whose rights are protected on title as a result of a title or mortgage fraud, and we welcome the introduction of this legislation to provide greater clarity to all parties in a fraudulent transaction.

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Title insurers are on the front line of preventing mortgage and title fraud. We have accumulated expertise in detecting title and mortgage fraud. This expertise allows us to prevent fraudulent mortgages being granted by Canadian lending institutions that cloud the title of innocent homeowners and potentially lead to increased fraud claims in the public system. We have actively encouraged all parties to the transaction—lawyers, lenders and Canadian homeowners and borrowers—to protect themselves against it.

Our companies all send representatives to the Ministry of Government Services real estate fraud committee. We have been working with this group to find solutions to issues of title and mortgage fraud in legislation and regulations. However, this is a complex area, as there are many parties to a real estate transaction including—and these are not singulars in many cases but plurals—the owner(s)/seller(s), the owners' lender(s), the buyer(s)/borrower(s) and the buyer(s)' lender(s).

These parties may also have legal representatives, so the lawyers and their E&O insurer, which in Ontario is LawPro, are also involved. Some of these parties may have title insurance and/or mortgage insurance, so there is also the contractual duty of these insurers to defend the interests of their clients.

According to the law society, 90% of residential real estate transactions were title-insured in 2005, long before title and mortgage fraud became hot issues. Title insurance protects the holder of an interest in real property, either as an owner or as a lender, by indemnifying against loss that may be suffered if title is other than as stated in the policy. It includes a duty on us to defend the insured's interest in the title in addition to the indemnity coverage.

Homeowners have bought title insurance for over a decade to protect themselves from many issues including defects, liens, encumbrances, lack of building permits and tax arrears. Title insurance for lenders protects their interest in the real property by insuring the priority, enforceability and validity of the mortgage that is registered on title.

As title insurers, we provide policies to all parties involved in a transaction, whether they be owners, borrowers, buyers or lenders, and on both sides of the equation. So for us the issue of clarity in the legislation is a priority. Clarity in Bill 152 as to whose interests are protected will dictate the timely and expeditious resolution of incidents and claims.

While we support in principle changes that prevent mortgage and title fraud, our submission focuses on the need for clarity in some provisions of the bill to ensure that the government intent is achieved in the legislative drafting. The legislation must be clear as to whose rights are protected. This clarity will allow parties to fraudulent transactions, such as title insurers, to deal with their client's needs more quickly and avoid endless litigation.

We believe that some of the proposed amendments could be further strengthened to meet the government's objectives and avoid unintended negative consequences. We would also like to make some recommendations on some key public policy questions of access and privacy, which will be dealt with in the regulations/director's orders—we're not really clear now because there's some memo out there that none of us have seen and you guys have seen, so that's a little add-on, but maybe there's a bit more information and we can get a copy of that memo too. We believe that these are important issues to raise.

I am now going to ask Susan to discuss our recommendations to provide greater clarity in Bill 152.

**Ms. Leslie:** As Wendy stated, all of these organizations have been participating in the real estate fraud committee. We, as members of the title insurance industry, would like to present some recommendations to you that you will likely see from other members of the real estate community, most notably the Ontario Bar Association, or the OBA, who I believe are presenting after us.

Once again, our focus is clarity. We want to make sure that we stay out of court on these files and that we can resolve claims for our customers as quickly as possible. One thing we have done, spending a lot of time with Kate Murray and her team, is work through scenarios and figure out how the law will impact various fraud scenarios that we have seen in our claims handling.

The first issue is the non-fraudulent buyer, often referred to as the bona fide purchaser. If a person has acquired title from a fraudulent person, under the bill that person's deed would be void and he/she could never be considered the registered owner of the property. This is problematic because it undermines the chain of title and the chain of ownership in the land title system. Any interest, such as a mortgage, created by that bona fide purchaser could never be valid.

The concept of traditional deferred indefeasibility: Once a person is shown on the parcel register as the owner, that person can deal with the property and would not be the fraudulent person as defined. We are requesting a change in the wording in the bill to give this assurance in the case of a bona fide purchaser for value, which would create certainty in the chain of title.

The recommendation on this issue: We support the recommendation that the definition of "fraudulent person" be amended in the Land Titles Act to exclude the non-fraudulent buyer. I should say that in our written submission we're providing specific wording on these issues, not just conceptual recommendations.

The second issue to address is the mortgage flip and the mortgagee's interest in the property after a flip. What

sometimes happens is that a fraudster will make an acquisition of a property, usually using a fake name, and then flip the property several times to inflate the value of the property, taking mortgage proceeds on every transaction, and then eventually walk away from the property once they've done this a number of times. In these cases, the only party with a legitimate claim to the property is the mortgagee who has been left holding the bag.

Unfortunately, under the bill as currently drafted, assuming that the mortgage was given by a fraudulent person using a stolen identity, that mortgage would be considered to be a fraudulent instrument and would be void. This would prevent the lender from enforcing on their interest against the property and recovering a portion of their mortgage proceeds. Providing the mortgage lender with the ability to conduct a power of sale provides resolution to the abandoned property. It's our position that this is in the public interest because it ensures ownership of the property and ensures that someone is taking control of the property and preserving the chain of title. We've seen this in Bill 128 on grow ops and the clandestine drug facilities where the lenders are being asked to take control of the property.

So our recommendation in this regard: Once again, we agree with the OBA's position that in those cases where there is no innocent owner claiming that the mortgagee's mortgage is invalid because it was fraudulent, there should be an assumption that the mortgage is valid so that the lender can enforce the mortgage, sell the property and realize on the proceeds of a sale.

Issue number three is where there's only one fraudulent party out of two or more parties to a transaction. This issue arises most often in the case of spouses, where one spouse forges another spouse's signature on a mortgage relating most often to the matrimonial home. In our experience as title insurers, we've seen a number of instances where this fact scenario plays itself out. In these cases, often the ex-spouse is saddled with the mortgage and the fraudulent spouse has taken off with the mortgage proceeds. The current case law in Ontario has developed in such a way that more often than not, that mortgage is enforceable against the fraudulent spouse's interest in the property. So in that way, the innocent spouse is not burdened by the mortgage, but the fraudulent spouse who signed their own name and forged the spouse's signature is obligated to the lender.

Our recommendation in this regard is that a fraudulent instrument shouldn't be completely invalid where one of the signatures on the document is not forged, but should still bind the interest of the person whose signature was real. We feel that this will act as a deterrent to those who might engage in this fraudulent activity.

The fourth issue that we'd like to address is privacy and fraud. We are supportive of the new regulation-making authority under the Land Titles Act that would override privacy laws in limited cases to allow the sharing of information in cases of suspected fraud. We as title insurers have accumulated expertise in detecting mortgage fraud and removing those fraud losses from the

public purse. We frequently encounter situations where we need to be able to collect, use and disclose personal information without consent for the purposes of investigating, and more often preventing and detecting, fraud.

**1700**

Through our underwriting practices, if we receive reasonable information that leads us to believe that identify fraud or mortgage fraud is about to take place, we would like to be able to share it with our customers, our lenders, our lawyer customers and also our competitors. Specifically, we would like to disclose the information on parties to the transaction—the borrower, the seller, the lawyers involved—and also the property address.

Our recommendation in this regard is that the regulations should facilitate this sharing of information and the investigation, prevention and detection of fraud so that a further option is available to companies to alert and work with other companies and other parties to limit fraudulent transactions.

The last issue to deal with is the suspension of access to the registry system. While we support the ability of the director of land titles to suspend the authorization of an electronic document submitter on the grounds indicated in the amendments to the act, we're concerned that a duped user of the system is being treated similarly to a fraudster.

As it's already been mentioned, over 100 lawyers are under investigation by the Law Society of Upper Canada for mortgage fraud. Currently, they continue to do real estate transactions while under investigation. If these individuals were all suspended immediately, there would be a number of other homebuyers and clients affected by this decision. Many of these lawyers, in our experience, have just been duped. The duped user is likely involved in many other real estate transactions, and it would jeopardize these clients and their real estate deals if the lawyer's access was suddenly and immediately suspended. With this backlog of investigations at the law society, there's a potential for havoc if all of these lawyers have their access suspended.

Our recommendation in this regard is in line with the Ontario Bar Association's recommendations that there should be a quick and speedy process to determine if the user is a dupe in a one-off transaction or a confirmed fraudster.

We thank you for the opportunity to present today and welcome your questions.

**The Chair:** Thank you. We have just 30 seconds each, beginning with the third party. Mr. Kormos.

**Mr. Kormos:** I'm particularly interested in issue 2: "mortgage flip/mortgagee interest." I'm hoping that at some point we can have ministry staff explain that concern in the context of the bill, because it makes sense. I only have 30 seconds.

**Ms. Leslie:** That's good.

**Mr. Kormos:** I wish I had more.

**The Chair:** Thank you, Mr. Kormos. To the government, Mr. Dhillon.

**Mr. Dhillon:** I don't have any questions. Thank you, folks, for your presentation.

**The Chair:** Thank you, Mr. Dhillon. Mr. Tascona.

**Mr. Tascona:** Would you have any opinion on if you were excluded as a title insurer from access to the land titles assurance fund?

**Ms. Leslie:** We haven't talked about it, but I don't think that we as a group have an issue with that. We're insurance companies and we take premiums for the risks we take.

**Mr. Tascona:** Would that affect the premiums?

**Ms. Leslie:** No.

**Mr. Tascona:** Are you sure about that?

**Ms. Leslie:** I'm sure from our perspective. The other companies may want to answer. Just for your information, there's never been a successful claim by a title insurance company to the fund. The fund is never paid out to a title insurance company, so it's not in our premium structure today.

**The Chair:** Thank you, Mr. Tascona, Ms. Leslie, Ms. Rinella, Mr. Offer and Mr. Polsinelli, for your deputation and presence on behalf of the various title insurers in Ontario and Canada.

#### ALAN SILVERSTEIN

**The Chair:** I now invite our next presenter to please come forward, Mr. Alan Silverstein. Mr. Silverstein, as you've seen the protocol, you have 15 minutes in which to make your presentation, which begins now.

**Mr. Alan Silverstein:** Thank you very much, Mr. Chair and members of the committee. My name is Alan Silverstein. I've been a lawyer since 1977, primarily practising real estate and mortgage law. I've been certified by the Law Society of Upper Canada as a specialist in real estate law. I'm an elected bencher of the Law Society of Upper Canada. I've spoken a number of times on mortgage fraud issues at various forums and I write occasionally for the Toronto Sun. I'm here today as a private citizen and not in any of those capacities.

What we're dealing with today in Bill 152 really is a serious policy issue, and that is the decision of choosing between two innocent victims. In most cases, we have an innocent property owner and we have an innocent purchaser. The question really is, which of the two will the law favour? Which of the two innocents is more innocent? Which of the two innocents is more deserving of legal treatment and legal protection? Unfortunately, Bill 152, and the whole concept of deferred indefeasibility, which will be restored by Bill 152, if enacted, really does very little to protect people in those circumstances and it will still favour the innocent purchaser in some circumstances.

I'm talking today about real estate fraud. We talk about mortgage fraud. It really should be called real estate fraud because there are two components to real estate fraud. There is the title theft, where the title is stolen, and mortgage fraud, where the equity is stolen. To me, real estate fraudsters are the human cockroaches of

society. Cockroaches find a fertile home until they're basically eradicated. We have to do the same here in Ontario. We have to eradicate these cockroaches from our presence. We need a two-pronged approach. We need preventive measures, and we need enforcement. Unfortunately, I don't believe that Bill 152 goes far enough in doing either of those.

I am sure you've heard about the Ontario Court of Appeal decision that sent shock waves through the province last year, about a year to this day, where the court said, "No, it doesn't require two transactions any more for a fraudulent transaction to be recognized or a registration to be recognized; we'll recognize even a fraudulent transaction if the other party is innocent—bona fide and innocent." As I said, it really did send shock waves through the province. By knocking one transaction off the requirement of validating title, what the Court of Appeal effectively did was play into the hands of the fraudsters, and all of the issues that have arisen basically have arisen since then.

Unfortunately, not much happened over the winter, spring and summer of 2006, and all of a sudden we saw two bills before the Legislature: Joe Tascona's Bill 136, on which, I will disclose, I was a consultant; and Bill 152.

Bill 152 effectively does four things:

It would reverse the Court of Appeal decision, so we'll be back to what's called deferred indefeasibility, where the second transaction would be required in order to validate a transaction involving a fraud rather than simply validating the first transaction.

It would deny lender claims against the land titles assurance fund unless lenders have demonstrated due diligence. Effectively, that is meaningless because most lenders these days get title insurance and would never look to the fund anyway.

It would deny title insurer claims against the land titles assurance fund that are derived from subrogated claims. That would effectively dump the burden of fraud on the title insurers. Whether that is right or wrong is something that will be decided, but I fear that it will have some impact on premiums.

Lastly, it would allow the director of land registration to suspend the electronic registration privileges of a submitter.

If you go through the legislation, it really is draconian because what we have here is a situation where the director of land registration becomes omnipotent. The director of land registration will decide whether or not there will be a suspension. The director of land registration will decide if there is going to be a hearing in oral or written form. The director of land registration is going to actually conduct the hearing and decide if there is going to be a revocation. To me, that's a blatant denial of natural justice, and it has to be removed from the legislation before it goes any further. It cannot stand. There's too much power being given to one person, and as we've heard, especially when you do have potentially innocent parties who are part of a transaction that is fraudulent.

What could Bill 152 do better? I'll give you a number of ideas, and they're outlined in my materials.

First, end the current system of unlimited access to the electronic registration system. We have to look to other jurisdictions. BC has a system where lawyers and notaries have to electronically sign the document. They have to certify that they witnessed the document. We don't have any of that here, even in the provisions that are being put forth in the Phillips letter.

Second, Bill 152 makes it optional whether or not notices should be sent to a former property owner or a lender when a document is registered. In Saskatchewan, that is mandatory. Bill 136 would make it mandatory.

There is no discretion to refuse a registration if the refusal could prevent fraud. New Brunswick's Land Titles Act specifically has that kind of provision. Why can't we have it here?

There is a proposal in Bill 136—not Bill 152—to have PINs, just like your PIN card when you access your bank account. It would be a simple matter to issue a number, and it would have to be used when a document was being registered.

We've talked about or referred today to the fund of first resort. I'm not going to go into more detail. On page 7, I've given you particulars of the legislation out of Alberta dealing specifically with the requirement that an original power of attorney be registered. As has been noted earlier today, the legislation or the Phillips letter doesn't specifically say that we're going to set certain standards. Here are the standards from Alberta, that you have to have an original power of attorney plus an affidavit from a witness. We don't have to look much further than to our friends to the west for some answers.

But the real essence of Bill 136 versus Bill 152 deals with the issue of registration subsequent to a fraud. Bill 152, as I said, would negate the Court of Appeal decision—by the way, there is a hearing taking place tomorrow on this very issue—but would validate subsequently registered documents. That's clear, not only from the legislation but also from the explanatory note. So we could have situations like we had prior to the Household Realty decision, where people could lose their title or be suffering from mortgage fraud because of the fact that a subsequently registered document was considered to be valid. It's a legal fiction, but that's the situation with deferred indefeasibility. The alternative would be to say that any document registered subsequent to a fraudulent document would be null and void: every document, every subsequent document—what I call “no-fraud indefeasibility.” In other words, if there's a fraud, it wipes everything clean and nothing can be supported in the future.

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That, to me, is what the public is demanding. We've heard the analogy of cars, the situation where a car is stolen and there is a need to go to the compensation fund, but title is always restored to the rightful owner. The public is saying, “Why can't we have the same thing for real estate? Why do we have to go through these legal

fictions of deferred and immediate indefeasibility where I could still end up with a document registered against my title that is valid even though I didn't sign it? I could still lose my title, even though I never signed the deed.”

I have reference in my materials to a proposal that was put forth by one of Ontario's most distinguished real estate lawyers, Laura Legge, the first female treasurer of the law society. She wrote me a couple of days ago saying she supports this concept of “no-fraud” indefeasibility because that's what the public wants. It really is what we are trying to do—to protect the public.

What we have to decide here, really, when all is said and done—we have to put politics aside. We have two pieces of legislation, but we have one public. It's really essential that you, the parliamentarians, our elected representatives, do what's in the best interests of Ontario residents. To me, that is your mandate; and to me, that is our expectation of you.

I am more than happy to answer any questions you may have regarding anything I've said or in my materials.

**The Chair:** Thank you, Mr. Silverstein. We have about two and a half minutes or so per side, beginning with the government. Mr. Ramal.

**Mr. Ramal:** Thank you very much for your presentation. You are recommending that any document shouldn't just go electronically; it should be signed by and witnessed by a lawyer before being sent to registration?

**Mr. Silverstein:** No. I didn't mention this, but it's in my materials at page 10. New Zealand has a provision that when a document is registered, the party who is delivering the document for registration certifies that certain things have been done. They certify that they have the authority to act on behalf of the party, they certify that reasonable steps have been taken to confirm identify and they certify that statutory requirements have been complied with. We don't have that in our legislation today. So what would happen, effectively, is that the seller's lawyer would be saying to the buyer's lawyer, “I've done my job.” We don't have to go much further than our friends in New Zealand to say, “You've got legislation that says there's certification by the seller's lawyer. Why can't we have that here in Ontario?” Then the certification process would include the affidavits.

**Mr. Ramal:** Do you think that will increase the cost for the consumer that way?

**Mr. Silverstein:** It's a statutory requirement. Affidavits were done years ago. Legal fees have not gone up at all over the last 10 or 15 years. I don't see that increasing costs at all. But it would offer safeguards to a buyer's lawyer that the seller's lawyer has done their job.

**Mr. Ramal:** I wonder if you were here. Before you, a gentleman was talking about real estate and that the lawyers acting on behalf of the customers are also committing fraud; and that there should be legislation to protect people from the real estate and the lawyers—

**Mr. Silverstein:** I'm looking at the process, and the process is that when a document is delivered electron-



ically, there is no certification or verification by the seller's lawyer of what they've done. I am saying: Why can't we look elsewhere in the world for answers? New Zealand has a wonderful answer: that the seller's lawyer makes certain representation they've done their job. It would help the fraud investigators at the law society elsewhere, because then they would have clear proof that the law was breached.

**The Chair:** Thank you.

**Mr. Silverstein:** We in Ontario don't always have to reinvent the wheel. There are good ideas out there in other jurisdictions, and we should recognize that.

**The Chair:** Thank you, Mr. Ramal. We move to Mr. Tascona.

**Mr. Tascona:** Thanks very much, and thanks for coming here today, Alan.

Looking at the situation from retroactivity, Justice Echin's decision cried out for some justice on a government-run system where the government basically did nothing to deal with the problem and continues to do nothing. What do you think about retroactivity?

**Mr. Silverstein:** The public demands it, and I think it's essential that we have it. Otherwise, as my colleague Bob Aaron said, we have two classes of people: those people who, unfortunately, were victims of fraud prior to October 19, 2006, and those people who are victims of fraud after October 19. I don't think that's what we want to do in this province.

**Mr. Tascona:** Dealing with the treatment of lawyers in Bill 152, Bob Aaron commented on it. What are your views, in terms of treating lawyers the way they are treated, in terms of losing their livelihood without any due process?

**Mr. Silverstein:** As I mentioned in my materials, I am very concerned that an innocent party, an innocent lawyer—and again, we don't know what the term “submitter” means. It doesn't say “lawyer”; it's a “submitter.” It could be a title insurance company. If a title insurance company—we heard that First Canadian does 25% of the business—lost their opportunity to register, they'd be out of business.

Who is a submitter? Assuming it's a lawyer, a lawyer would be out of business without a hearing, and the same person would be deciding—

**Mr. Tascona:** Well, based on Phillips's letter, it's going to be a lawyer, subject to some exceptions.

**Mr. Silverstein:** He talks about allowing lawyers to register transfers, not mortgages necessarily, and we don't know the conditions that will be associated with it. I'm assuming there would be some conditions, so the devil's in the details, Mr. Tascona.

**Mr. Tascona:** Okay. Thank you.

**Mr. Kormos:** Thank you very much. I truly appreciate your participation in this debate, both through your published material as well as your presence here today. Again, I'm going to ask ministry staff to specifically respond to some of your proposals at some point, especially when we get to clause-by-clause; for instance, the Alberta proposal and the New Zealand proposal: in and of themselves modest, not cumbersome, not expen-

sive by any stretch of the imagination. Why did they not find favour with the ministry in the course of drafting this particular legislation?

Now, help me and everybody else here understand this: If I have title insurance and I'm a victim of fraud, I'm going to go to my title insurer for compensation.

**Mr. Silverstein:** Correct.

**Mr. Kormos:** If I don't have title insurance, then I go to the assurance fund.

**Mr. Silverstein:** Correct. But if you have title insurance, it's no guarantee that your title may not be lost, because if a court were to rule that your title has been lost to a bona fide purchaser, then all the title insurance company can do is compensate you or all the fund can do is compensate you, but they will not go to court and reverse the court's decision.

**Mr. Kormos:** Right. Two very, very separate issues, and all of us know what a pleasure it is to deal with insurance companies, trying to collect on a policy.

**Mr. Silverstein:** And that's why I said really the issue is, what do we want to do? Do we want to say that the public register is paramount or do we want to say that the public of Ontario is paramount? That's the decision that has to be decided, and that's what I said right at the beginning: Which of the two innocents do you want to favour, the property owner or the bona fide purchaser?

I will be very frank, and I speak from my heart. My late father-in-law was a victim of the concentration camps. His entire family was wiped out. To his dying day he could never understand how he was chosen to live and his family was chosen not to live. It is one of the toughest decisions anybody ever makes. You are asked to make that decision. Do you favour the property owner, Susan Lawrence, or do you favour the bona fide purchaser? It is a tough call and it's certainly not in the wording of the legislation, but that's effectively what you are being asked to decide upon today. It's interesting that we're talking about it in the committee on social policy. It couldn't have been a better forum.

**The Chair:** Thanks, Mr. Kormos, and thanks to you as well, Mr. Silverstein, for your presence and deputation.

#### ONTARIO FUNERAL SERVICE ASSOCIATION

**The Chair:** I invite now our next presenters. They are Mr. Philip Screen and Mr. Robert McKinlay of the Ontario Funeral Service Association. Gentlemen, please be seated. You've seen the protocol, and I invite you to begin now.

**Mr. Philip Screen:** Thank you for hearing us on our critical issues. I'd like to introduce the two of us and our group. My name is Philip Screen. I'm a licensed funeral director in Ontario and I am the current president of the Ontario Funeral Service Association. Next to me is Mr. Rob McKinlay. He is the legislative chair of the Ontario Funeral Service Association. Our association is made up of over 240 independent, family-owned funeral homes from across the province of Ontario.

In opening, there are many measures related to our profession as funeral directors that the government has brought forward and is continuing to bring forward through regulation. We have seen many positive developments for our profession. However, we do feel the need to comment on two very critical issues, those being fairness in taxation and the educational requirements of the funeral profession. We want reforms to our profession to move forward, like licensing the many reception-type centres that have been in licensing limbo so far, but we would like to work with this committee to eliminate some of the flaws that we see in this legislation.

There are sections that still need some work, as the ministry has promised, like measures to allow one-stop shopping at funeral homes, stricter controls and monitoring of care and maintenance fund monies, and the single use versus mixed use of these facilities on cemetery grounds.

Our association, OFSA, has been an active member of this process since the Red Tape Commission process in 1997. We have been and we will continue to be willing participants. We are not willing to quit at this time when we see this act as flawed.

I'm going to turn it over to Rob to speak to taxation.

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**Mr. Robert McKinlay:** Good afternoon. The Ontario Funeral Service Association appreciates and values the opportunity to speak to your committee today. We are here to support most of the proposed legislation, but have some major concerns about a few fundamental issues of unfairness that are on the verge of now being enshrined in legislation.

To begin my presentation, I want to go back to the government's principles when they asked Justice Adams in 2000 to lead us through the Bereavement Sector Advisory Committee process. The four principles that were to be respected were: (1) options to create a single regulatory regime; (2) strengthening of consumer protection provisions; (3) clarity of rules setting out the conditions under which combinations would be permitted; and (4) measures to foster a "level playing field" for industry participants.

Our association believes the single regulatory regime will eventually come to pass. This is absolutely necessary for equal enforcement of the legislation across the bereavement sectors. Our concern is the length of time that the ministry anticipates it will take to put this piece in place.

This act will most definitely enhance consumer protection.

The rules will certainly allow the government's wish to do away with the separation of cemetery and funeral home operations and clearly allow combinations to operate legally.

The reason the OFSA is before you today is that we do not believe a level playing field has been achieved. It is our belief that to be fair, all activities that are commercial in nature require the same tax treatment. The only

exclusion would be the traditional cemetery activities of interment, entombment and the niches.

The minister has explained to us the objection of religious organizations and the municipalities to the principle of paying tax. We understand the government's dilemma. Our simple solution is, if you don't want to pay taxes, stay out of commercial enterprise. We're asking for a level playing field for property taxes. The present proposal will give all existing crematoria, both for-profit and non-profit, a property tax exemption forever, while it allows all not-for-profit municipal or religious cemeteries to open a funeral home or a visitation centre on their property without paying tax to the municipality. Rather, they will make a payment equivalent to that amount to the cemetery's care and maintenance fund, where the interest is drawn upon to beautify the cemetery.

This legislation will be a disadvantage to any new crematorium or funeral home trying to enter that marketplace. It also provides a competitive disadvantage to existing funeral homes which pay their fair share of taxes. As an independent family-owned business, we pay our fair share of taxes. The government is allowing our direct competitors to avoid paying property tax to the municipality. We ask that any group wanting to engage in a commercial venture pay their fair share. We are concerned that the visitation centres in existence on the cemetery properties now will put independent, family-run funeral homes like mine at serious a disadvantage and eventually will hurry the disappearance of the family-operated funeral home. The government is legislating a competitive advantage to one group over another, which is not a level playing field.

This payment to a care and maintenance fund is a further disadvantage because the fund is used to beautify the cemetery. A beautiful cemetery will lead to more business for the visitation cemetery. It is a cycle which could lead to independent funeral homes closing shop because their competitors can avoid paying tax to the municipality and they cannot offer the same one-stop shopping that cemeteries can.

The visitation cemeteries and eventually funeral homes on cemetery property are using municipal services: sewers, water, garbage collection, fire protection etc., and ask other taxpayers in that municipality to shoulder that cost. Businesses engaging in commercial ventures should pay their fair share of taxes.

We have brought these arguments forward to the government and they have not acted on the needs of independent business in Ontario. We appeal to you to listen to our concerns.

I have a quote from Judith Andrew of the CFIB, and it says:

"Regrettably, it has come to our attention that the principle of fair competition may be compromised in rules being considered for the treatment of municipal and religious cemeteries. As these entities are property tax exempt, the issue of unfair competition arises if these so-called non-commercial cemeteries decide to engage in commercial enterprise..." This was a letter sent to Rob Dowler on October 13 of this year.

We have a solution that would be a compromise. So here is what we propose as a solution: We propose that this committee approve an amendment to this legislation. We propose an amendment with the following provisions:

Regarding commercial activities in cemeteries, like visitation centres, that all existing religious and municipal cemeteries with such facilities make a payment in lieu of property tax to their care and maintenance fund. Should the cemetery from now on decide to enter into a commercial venture, they must make a payment of property tax to the municipality. In other words, grandfather what exists, but allow no more favouritism.

Regarding crematoria, we reluctantly would agree that all existing religious and municipal crematoria can remain property-tax exempt. All other crematoria and all future crematoria must be charged property tax.

**Mr. Screen:** I'd just like to take two minutes and speak to the topic of education, if I could, so we can allow time for some questions.

Quickly on education, presently there is a proposal for what's called a funeral sales representative category to be added into our profession. That person would be allowed to sell to families and arrange funerals for both pre-need and at-need. We find it troubling that this needs to come about. Families come to us in a time of need when a death has occurred, when someone close to them is dying or when they want to plan their own arrangements ahead of time. These are obviously not very comfortable circumstances for most. Current statistics show there are 86,000 funerals conducted annually in Ontario, and our licensing body, the Board of Funeral Services, records less than 30 complaints each and every year. Right now in Ontario we have some of the highest standards in North America. Ontario is the leader in this area, and we, as a funeral profession, OFSA, see the need to maintain these high standards and ensure that the vulnerable consumers in Ontario are protected while purchasing funeral services, both pre-need and at-need.

I do have some instances of people who have been taken advantage of in Ontario; however, I think I'd prefer to allow time for questions.

**The Chair:** Thank you. We have about two and a half minutes per side, beginning with Mr. O'Toole of the opposition.

**Mr. John O'Toole (Durham):** Thank you very much for your presentation. I was very pleased with the work your organization has done. I know in my own riding, one of the sections—I think there are 53 statutes being amended in the bill. It sort of didn't go under a fair amount of scrutiny. I'm not sure, if the industry hadn't drawn our attention to it, how it would have changed the landscape for you. So I just want to put that on the record.

In my riding, the family-owned business is an important business when you look at the option in the future, the vertical integration of the cemeteries and the funeral directors, as well as the corporate, for-profit, share business that's emerging.

I'm pleased that you have provided an amendment. I know Rob Dowler, whom you referred to, is here. He's aware that I was a member of government at the time this thing was being discussed 10 years ago, and it's still being discussed.

I think you've made a very valid point of grandfathering. It has been an issue, the religious, not-for-profit group and the commercial—it's a commercial activity, and it's a competitive activity. Certainly your amendment, formally, if you would just repeat it: Anything would be grandfathered that exists on the not-for-profit side, the religious and municipally owned, and any new crematoria, visitation centres or on-site homes would be—

**Mr. McKinlay:** Yes. It would be up to the cemetery to decide whether they want to enter into a commercial venture beyond the traditional cemetery activities, and if they want to have a funeral home or if they want to have a flower shop or if they want to have a monument business or any other thing that would be a commercial venture beyond the traditional cemetery business—

**Mr. O'Toole:** Just in the limited time I have, just another question: When you talked about a new classification for persons selling—

**The Chair:** Mr. O'Toole, with respect, I will have to move on to Mr. Kormos.

**Mr. Kormos:** Thank you, gentlemen. I got a letter from Daniel Haine. He owns Hammond Funeral Home in Thorold, down where I come from. I've been in there many times for many funerals.

We had a House leaders' meeting today, and both the Conservative House leader, Mr. Runciman, and I talked to Mr. Bradley about what the heck this schedule was doing in this bill. It would make life so much easier for everybody if this schedule were pulled. We could then proceed on the primary thrust, which is the land title stuff and title fraud. Everybody, of course, wants to see that dealt with promptly. I did ask Mr. Bradley, "Where's this coming from? Who's driving this?" I haven't had a single phone call in my constituency office from any of the non-profit sector saying, "We want to expand, and we want to retain our non-profit status for the purpose of not paying taxes." Where's it coming from?

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**Mr. McKinlay:** There are existing examples in Ontario right now where non-profit cemeteries are offering funeral services on-site. There are plans by different for-profit and non-profit organizations, as soon as this act is in place, to go ahead with their exemptions.

**Mr. Kormos:** But how did they get access to the ministry? Where did the clout come from? Who's got the Polaroids? Who's got the brown envelope? How did they get their bill?

**Mr. McKinlay:** Well, it would be speculation on my part.

**Mr. Kormos:** Well, go ahead. How?

**Mr. McKinlay:** I feel that for years and years there has been a strong lobby. I can remember being at a committee like this 18 years ago, when the last act was put in place, and at that time there was a strong lobby by

cemeteries to have on-site funeral homes. In the wisdom of the law at that time, they decided not to do it. But continuous from then, there have been—

**The Chair:** With respect, Mr. Kormos, thank you. To the government side, to Mr. Ramal.

**Mr. Ramal:** Thank you very much for your presentation. I was listening to you carefully when you mentioned about the religious cemeteries, visitation centres and funeral homes. As you know, those religious centres have been opened on a religious basis, so I don't see how they can be in conflict and competition with you as an independent funeral home, visitation centre or cemetery. So that's the reason behind it not making profit or being in competition with you; it's to do the religious ceremonies. So can you tell me how it can be in competition with you.

**Mr. McKinlay:** Presently in Ontario the cemeteries do not have funeral homes, and they are operating what we call "visitation centres," which kind of just slip under the radar. They are in direct competition with the family-owned, private, independent business. If they can continue to operate in a cemetery on a non-profit basis and pay no taxes, then we don't feel that's a level playing field.

**Mr. Ramal:** What about the religious ceremony?

**Mr. McKinlay:** The religious ceremony? The religious ceremony can take place in a church or in a hall or anything, and that has been accepted as part of Ontario's tradition. It's just when it's an active commercial enterprise where they're providing visitation, embalming, caskets, all the services and products that are associated with funerals, that they are in competition with the private enterprise.

**Mr. Screen:** They've gone outside of their realm of the religious portion, if you will. They are now entering into—

**Mr. Ramal:** So you're okay with the religious portion, to hold the ceremony—

**The Chair:** Thank you, Mr. Ramal, and thank you, gentlemen, Mr. Screen, Mr. McKinlay, for your deputations and presence on behalf of the Ontario Funeral Service Association.

#### JACOB ZIEGEL

**The Chair:** We'll now move directly to our next presenter, and that is Professor Jacob Ziegel, whose written presentation we have in front of us. Professor Ziegel, I invite you to please be seated and begin.

**Mr. Jacob Ziegel:** Thank you very much, Mr. Chair. I appreciate the privilege of appearing before the committee today. I have prepared a written submission. I believe copies have been circulated.

I had feared that I might not be able to attend in person this afternoon because I've just returned from a funeral and hadn't expected to come back downtown until well after 5. However, the gods were favourable and I managed to come back somewhat earlier so that my research assistant, Mr. Carlin McGoogan, who had kindly offered

to substitute for me—he's here. He's no longer needed, but I do want to express my appreciation.

Mr. Chair, my short submission deals with the highly technical area of an act called the Ontario Personal Property Security Act. There are a substantial number of amendments that appear in schedule E to Bill 152 governing amendments to the OPPSA. All of those amendments were originally drafted and prepared by a committee of the Canadian Bar Association—Ontario, of which I was a member, and I support the amendments which, after an eight-year delay, have finally been introduced in this bill.

However, there is an important omission. One very important item that our committee recommended for inclusion in the amendments to the OPPSA was concerning the use of licences as collateral. Now, licences are extremely widely used in modern commerce, both for purchase and sale, and also as collateral for loans. In many instances, obtaining a licence is so expensive—for example, a nursing home licence, a taxi driver's licence, a tobacco grower's licence—that a buyer cannot afford to buy it without financial assistance. That financial assistance is usually secured by the banks. But the banks will not provide the financial assistance without security. The natural security for such loans is the licence itself. Unfortunately, a decision of the Ontario Court of Appeal rendered in 1989 decided that a licence did not come within the Ontario Personal Property Security Act because it did not characterize a licence as a species of property. So that was the problem: the characterization of a licence as a species of property.

To address this problem, our committee recommended in its 1998 report that we should add a small amendment to the definition of "intangible" to make it clear that "intangible" includes a licence. Also, to put to rest the concerns of some of the regulatory agencies in Ontario, we also recommended an amendment to make it clear that the giving of a licence as collateral in no way restricted the hands of the regulatory agency in denying or granting a licence in question. The members of the committee will find the 1998 committee recommendations on page 8.

We have not been given any reasons for this omission. The reason I had been given privately is that government officials felt that the issue required further study. I query whether that is an adequate explanation. Eight years have elapsed since our committee made its recommendations. Many other jurisdictions recognize that granting a security interest in licences is perfectly legitimate, as legitimate as granting a security interest in any other type of collateral. Neither I nor my colleagues have been given any reasons, in my view, that justify excluding a critically important form of collateral for modern commerce.

The current government has announced on several occasions its commitment to modernize Ontario's commercial law and to make it the most modern in Canada. I would urge your committee to take the government's commitment at face value and to test the government's good faith by recommending now the addition of this amendment to the Personal Property Security Act so that

all of the recommendations made at our committee in 1998 will be adopted and collateral in the form of licences will not continue to be excluded.

I should add, we're not talking about some abstract, theoretical problem. It's a real problem, not only in terms of what happens every day, but also in terms of the amount of litigation. There have been at least half a dozen cases I know of in Ontario, including two court of appeal decisions and at least three or four more trial court decisions, wrestling with this problem. We believe—I believe, because I'm only speaking for myself—that it's time to put the problem to rest, and it can be done easily by adopting this amendment to the definition of "intangible" in the Personal Property Security Act.

**The Chair:** Thank you, Professor Ziegel. Three minutes per side.

**Mr. Kormos:** Thank you, Professor. There's ministry staff here. Professor Ziegel makes eminent good sense—because you're talking about a licence that has value, a licence that can be bought and sold. And you're talking about protecting the security interest of a lender.

**Mr. Ziegel:** Well, making it valid, obviously. Unless it's valid, it has no value to the lender.

**Mr. Kormos:** Quite right. I, for the life of me, find that argument, albeit brief, just oh, so persuasive and good common sense. So I will be—and Mr. McNaught might help when he prepares his list of recommendations—getting leg counsel to come up with an amendment to that effect, but the government might want to do it in its own right. We'll certainly be asking, during clause-by-clause, for the government to explain why this long-standing recommendation hasn't been incorporated.

1740

Professor Ziegel is the guy who knows all this stuff. He's been doing it for a long time. He's been a master and a proponent of consumer protection in this province, and he's not charging anything today. He's here on his own time. For Pete's sake, listen to him.

**The Chair:** We'll move now to the government side.

**Mr. Dhillon:** Thank you very much, Professor Ziegel. Have you done any consultations with the Ministry of Agriculture, Food and Rural Affairs?

**Mr. Ziegel:** I point out in my written submission, Mr. Dhillon, that the committee, or at least some members of the committee, met with representatives of the Ministry of Agriculture back in 1999 or 2000. We discussed the issue at length. They were concerned about what the impact of the amendment would be on the regulatory powers of the licensing bodies, and we assured them that it would have absolutely no impact. But just to put their concerns totally to rest, we inserted a special clause in the proposed amendment saying that nothing in this definition would affect the granting or denial of a licence by a regulatory body.

Let me say again that we are in exactly the same position as the 50 American states that have adopted this legislation and the other provinces in Canada that have adopted PPSA legislation. They've had no problems with the use of licences as collateral. Ontario seems to be, curiously, the only province in Canada still wrestling

with the problem. So basically, we are asking, sadly, that we fall into line with the cure that has already been adopted in the other provinces.

**The Chair:** Mr. Tascona.

**Mr. Tascona:** Thanks very much for your presentation. I would just ask legislative research if they could follow up on that point by Mr. Ziegel in terms of how other jurisdictions have handled the licence issue and the definition of "intangible." I'll leave it at that.

**The Chair:** Thank you, Professor Ziegel, for your presence, deputation and your written submission.

#### CANADIAN GAMING ASSOCIATION

**The Chair:** I now invite our next presenter, Mr. William Rutsey, the present chief executive officer of the Canadian Gaming Association. Mr. Rutsey, welcome. As you've seen the protocol, you have 15 minutes in which to make your presentation, beginning now.

**Mr. William Rutsey:** Good afternoon, Mr. Chair and committee members. Thank you for inviting me to appear before your committee. I'm Bill Rutsey, the president of the Canadian Gaming Association.

The Canadian Gaming Association is a not-for-profit organization with the fundamental goal of creating balance in the public dialogue about gaming in Canada. The association's mandate is to create a better understanding of the gaming industry by bringing facts to the general public, elected officials, key decision-makers and the media through education and advocacy. The association is co-owner of Canada's premier gaming industry event, the Canadian Gaming Summit, which is taking place in Toronto this year, and the publication Canadian Gaming Business. Our members include industry-leading suppliers, operators and others engaged in the industry nation-wide. The association speaks to important national and regional issues as the voice of the industry, including commissioning and publishing national studies and surveys. We've established relationships with government agencies and industry stakeholders on multiple issues, including responsible gaming policies and practices, codes of conduct and social responsibility. Our members are licensed by gaming regulators in multiple jurisdictions across Canada and internationally to operate gaming properties and supply gaming-related products and services.

Personally, I've been in the gaming industry for almost 20 years as a senior adviser to the private sector and governments, including assisting in the creation of gaming policy and casino development in Ontario and Nova Scotia, and as the CEO of operating gaming businesses in Nevada and Ontario. I have been licensed by gaming regulators in Nevada and Ontario and have commented on gaming issues in various media and before the government.

I've been advised to keep my remarks relatively brief so as to afford the committee some time to ask me some questions.

I would say that the elephant in the room today, which Canadian law enforcement, regulators and most govern-

ments don't seem to want to talk about, is Internet gambling. So I do congratulate this government for breaking with the pack.

Let's be clear: In Canada, Internet gambling is illegal unless operated by a provincial government or agency. The Ontario government has made the policy decision not to offer gaming over the Internet. The consequence of this is that, in Ontario, Internet gambling is illegal, and those offering Internet gambling to Ontario residents and visitors are breaking the law. Under the law, it's a criminal activity. So we endorse and support the government's action with Bill 152, to ban the advertising of a criminal activity, as a good first step.

The reality today in Canada, including Ontario, is that Internet gaming is thriving and available to anyone with an Internet connection. Over the past five years, Internet gambling has almost tripled, emerging as a significant industry segment. For example, current estimated Internet gaming revenues in Ontario are equal to the combined net incomes and win contributions—that's the 20% win tax paid to the province—for the Niagara Falls, Windsor and Rama casinos. That's more than \$400 million just disappearing into the ether.

What we have in Canada today is what I like to call illusionary prohibition, a see-no-evil approach by law enforcement that has led to Canada being the host of the largest Internet gaming server park in the world, just outside of Montreal, at Kahnawake Mohawk First Nation. This lawless situation became abundantly clear last week with the arrest of major organized crime figures in Quebec. This also puts the lie to those who suggest that Internet gambling in Canada is simply a technical issue. It has been reported that the arrested organized-crime figures have been operating an illegal Internet sports gambling site, gaining over \$25 million annually in illicit profits, principally through the Kahnawake server park outside Montreal, as well as offshore.

We believe that it's time for us in Canada to get off the fence, either to start applying the current law or to begin developing a framework for the regulation of Internet gaming for three very good reasons: first, to stop the revenue leakage, including ceding large amounts of money to the criminal community; second, for many people it has become a mainstream product, and it's only fair to those above-ground organizations that finance, supply and operate Internet gaming, including many Canadian and Ontario companies; finally, it just isn't fair to our membership and the like, the bricks-and-mortar gaming industry, the people and companies who have expended great effort and dollars to earn gaming licences in multiple jurisdictions in an effort to ensure the highest level of integrity for our industry.

The bricks-and-mortar industry has worked diligently over several decades to build a strong reputation for fair games offered in safe and secure environments. Through government regulators conducting independent background checks, audits and continued due diligence, the industry has fought back and overcome the image of being the bad guys.

It's all about delivering fair games in secure environments and creating a level regulatory playing field, in contrast to the Wild West of the Internet where there is currently no real assurance of the fairness of the games, the integrity of the systems, the confidentiality of customers' personal and financial information and the payment of winnings. You can add to this the absence of responsible gaming features and controls, including controls regarding gaming under-aged players, on many sites together with the certain knowledge that some of the online operators are criminals, including organized crime.

In conclusion, Internet gaming should be the subject of increased attention from governments and regulators in Canada. We support Bill 152 as a first step in this regard. Those who do not, seem to have either missed or have wilfully ignored the rather straightforward difference between legal and illegal activities. Thank you.

I went through that rather quickly just to see if I could keep as much time available for questions.

**The Chair:** Thank you, Mr. Rutsey. We have about three minutes per side. There's going to be an intervening vote, by the way, at Parliament at about 6 p.m. Mr. Leal.

**Mr. Leal:** Mr. Rutsey, as you know, I take a particular interest in this section of the bill because it essentially picks up on my private member's bill, Bill 60.

I want to ask a question: In terms of estimates of leakage that you talked about, what numbers are we talking about here?

**Mr. Rutsey:** In Ontario it's estimated as being about \$400 million annually right now. Internet gaming is projected to grow by the double digits, in the 15% to 20% range, per year. Worldwide right now, the Internet gaming market is about \$14 billion.

**Mr. Leal:** Part of the problem is the federal government and their lack of enforcement that clearly gaming is in contravention of the Criminal Code of Canada. Through your work, have you witnessed any movement on the federal government to take this issue seriously, as all other countries in the G8 now are taking it very seriously?

1750

**Mr. Rutsey:** The short answer is no.

**Mr. Leal:** Could you comment on the British experience? I understand they're making Internet gaming legal as a way to enforcement.

**Mr. Rutsey:** There are two approaches internationally. One is what's currently taking place in the United States, and I guess de facto in Canada, except that we're not really pursuing the issue here. In other jurisdictions it's regulation and taxation. In the UK, they're moving to move the business above ground—high levels of regulation and enforcement, real penalties for people who break the laws—and it will be a source of continued taxation revenue for the government there.

**Mr. Leal:** Thanks for your presentation.

**The Chair:** Mr. Tascona.

**Mr. Tascona:** I have no questions. Thank you for the presentation.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you kindly. I understand your comments. I praised Mr. Leal extensively when I spoke to Bill 152 with respect to his initiative around addressing the advertising of these illegal gaming sites. It's frustrating because the Internet has changed a whole lot about our world.

It came up when we talked about film classification and the absurdity of a government trying to regulate what stuff people see or what stuff people can buy in their video stores. The fact is that the Internet has made that irrelevant, and sometimes tragically in the cases of child porn.

What jurisdictions have been successful in prosecuting illegal Internet gaming?

**Mr. Rutsey:** Actually, there was a successful prosecution in Canada: Starnet. The US is arresting people now and those people will be brought before the courts. There's also been action taken in Germany, where gaming executives have been arrested and organizations put on notice.

**Mr. Kormos:** I wonder if legislative research would help us and give us some brief illustrations of how those took place, how the investigations took place, how people were prosecuted?

**Mr. Rutsey:** Sure. I'd be happy to assist you with that. Just give me a call at my office.

**Mr. Kormos:** Thank you. I appreciate your coming.

I've got to apologize; I believe there's one more presenter. I've got a meeting of the clerk's selection committee that my party is a member of. I'm going to have to leave. I will not hear your submission. I hope you've got written material, and I will read it. It's from the funeral home sector. I think you could infer from my comments earlier that we're sympathetic to you.

**The Chair:** Thank you, Mr. Rutsey, for your presence and deputation on behalf of the Canadian Gaming Association.

**Mr. Rutsey:** Thank you.

*Interjection.*

**The Chair:** One moment. All right. There's no vote.

#### FUNERAL DIRECTORS FOR OPEN DIALOGUE

**The Chair:** We'll proceed to our next presenters: Mr. Doug Kennedy, president of Funeral Directors for Open Dialogue, and colleagues. I invite you to be seated and introduce yourselves for purposes of recording. As you've seen the protocol, I invite you to begin now.

**Mr. Doug Kennedy:** Thank you very much. I appreciate that. My name is Doug Kennedy. I'm president of Funeral Directors for Open Dialogue and I'm also a licensed funeral director. Beside me is Kate McMaster, who is the executive director of Open Dialogue and also a licensed funeral director.

Funeral Directors for Open Dialogue has been participating in the bereavement sector reform process since 1999. Open Dialogue represents 17 independent family-run funeral homes in the greater Toronto area, and we serve almost 9% to 10% of all the deaths in Ontario,

which go through the doors, currently, of our member funeral homes. We are grateful to be afforded the opportunity to bring our comments regarding Bill 152, and particularly to the amendments to the Funeral, Burial and Cremation Services Act.

There are only two issues we'd like to address today: first, the inequities in the application of property taxes for funeral homes and, secondly, inequities in the application of property taxes for new crematoria.

First, with regard to property taxes for funeral homes, non-commercial cemeteries, that is, cemeteries that have a non-profit charter, are religious in nature or municipal, will be able to establish funeral homes on their cemetery properties upon proclamation of the act as amended by Bill 152.

All cemeteries are exempt from property taxation, and in this new act, non-commercial cemeteries which decide to establish funeral homes on their cemetery properties will be assessed for property taxation by the Municipal Property Assessment Corp. Because these non-commercial cemeteries are not traditional taxing entities, the government proposes that they make a payment in lieu of taxes into their care and maintenance funds.

Care and maintenance funds are designed so that a percentage of each sale of interment rights, whether it's a grave, crypt or niche for cremated remains, are placed into the cemetery fund and the interest from those funds are then used to perpetually take care of that particular cemetery. Reportedly, 85% of the care and maintenance funds in the province are actually deficient.

The problem that exists under the current proposal is that it places storefront, independent family funeral homes at a competitive disadvantage. Funeral homes owned, operated and situated on religious, non-profit or municipal cemeteries will be taking their property tax payment and paying those dollars into their own care and maintenance fund, essentially taking money out of one pocket and placing it in the other. Storefront, independent funeral homes will never be able to change their zoning, such that they will be situated on a cemetery and will not have the same opportunity.

Cemeteries with funeral homes on-site will have access to care and maintenance monies and will be used to beautify their grounds surrounding the on-site funeral homes as well, a provision that is not available to storefront independent service providers in the funeral sector.

The larger problem is that non-commercial cemeteries already have an advantage over off-site funeral homes as they also do not pay income tax due to their non-profit or charitable status. The ministry's taxation proposals create an unlevel playing field for independents competing against non-commercial cemeteries offering funeral goods and services from their on-site funeral homes.

Further, these proposals also create an unlevel playing field in the cemetery sector as the large, active cemeteries will become more profitable and the smaller cemeteries less profitable. There will be a greater likelihood of an abandonment of small cemeteries in Ontario as they will be unable to compete with large cemeteries and unable to

generate the dollars to take care of the cemetery in perpetuity.

The unintended consequences of the proposed act the way it reads are that if a cemetery places a funeral home on-site and then lines the inside of that funeral home with niches and crypts, which are above-ground compartments used to house human bodies and cremated remains, MPAC will be forced to make a determination of predominant use of that facility, and then the decision as to whether the building's predominant use is that of a funeral home or a cemetery becomes a question. Should MPAC decide that the predominant use is that of a cemetery, then the on-site funeral home will be completely exempt from assessment and payments in lieu, even into their own care and maintenance funds. Should MPAC rule that part of that funeral home is deemed a cemetery because of the crypts and niches embedded in the walls, money from the cemetery care and maintenance fund could be used to upkeep the funeral home.

Off-site funeral homes will never be situated on a cemetery, will not be able to place crypts and niches in the building and will not be able to petition MPAC for a property tax exemption. This, in our view, is not a level playing field.

But we propose a solution. Firstly, all funeral homes, whether on or off cemetery property, should be assessed for property taxation purposes and should pay their fair share of taxes into the municipality. Property taxpayers of the community should not be forced to subsidize cemeteries that choose to conduct commercial business.

Secondly, funeral homes situated on cemetery property should be prohibited from lining their walls with crypts and niches in order to skirt property taxation or gain access to care and maintenance funds for funeral home upkeep. On-site funeral facilities should serve the sole purpose of offering and delivering funeral goods and services, preventing assessment of the facility from being blurred in the eyes of the MPAC folks.

I'm going to ask Kate, my colleague, to continue with the inequities with regard to crematoria.

**Ms. Kate McMaster:** Mr. Chair, thank you for providing us the opportunity to speak to the committee today. Committee members, thank you.

I'd like to talk about our second point in terms of taxation, which is inequities in the application of property taxes for crematoria.

Currently, it is proposed in Bill 152 that existing crematoria will remain tax-exempt while newly established crematoria will be fully taxable from a property tax perspective.

Of course, the problem here is that independent funeral homes, and others in the sector wishing to establish crematoria under this new act, will be fully taxable from a property tax perspective, so that new entrants who will be competing with established crematoria will again be at a disadvantage because the established crematoria will enjoy a property tax exemption.

The greater problem then, however, is that existing religious cemeteries, we understand, need the revenue generated from their current on-site crematoriums to sup-

port the care and maintenance of their cemeteries. Clearly, religious cemeteries cannot afford to pay taxes for their cremation facilities and still generate the necessary funds for cemetery care and maintenance.

In terms of unintended consequences, however, the ministry's property tax proposal in Bill 152 for crematoria will discourage new entrants from establishing new cremation services businesses in the sector, as they will be forced to compete with property and income-tax-exempt cremation providers who are already established in the community.

So what in fact is the solution? What we propose is that the ministry would legislate that all crematoria, whether existing or newly established, on or off cemetery property, pay property taxes to the municipality in which they are situated. But then, of course, you wonder what we should do about the religious crematoria. Our organization supports that religious crematoria would be given a property tax exemption as long as they serve their religious constituency exclusively.

Finally, just to support one of the proposals put forth by our colleagues at the Ontario Funeral Services Association, I would like to briefly mention the fact that one of the proposals currently put forward by the ministry in terms of licensing for funeral personnel is including a watering down of the funeral director's licence to allow for sales licences—licensed sales representatives in the funeral services sector for at-need families and pre-need families.

Again, I think that it would be prudent for the Legislature and the members of the Legislative Assembly to consider how they would feel having commissioned sales forces working with families who are in need of funeral goods and services, both at-need and pre-need.

Finally, I do want to thank you, Mr. Chair, for allowing us to come before the committee today to present our concerns regarding Bill 152's amendments to the Funeral, Burial and Cremation Services Act, 2002. We ask that you and the members of the committee would give consideration to the issues we have raised today, and we ask that you would recommend that Bill 152 be amended to achieve a level playing field from a property tax perspective in the bereavement sector. Thank you, and at this time, if there are any questions, we would be pleased to address them.

**The Chair:** Thank you, Ms. McMaster. We'll have about two minutes per side, beginning with Mr. Tascona.

**Mr. Tascona:** I don't have any questions. I think it's pretty straightforward, and I appreciate your presentation. Thank you.

**The Chair:** To the government side. Mr. Dhillon.

**Mr. Dhillon:** Thank you very much for your presentation. I have no questions. Thank you.

**The Chair:** Thanks again, Ms. McMaster, as well as you, Mr. Kennedy, for your deputation on behalf of Funeral Directors for Open Dialogue.

This committee stands adjourned, unless there's any further business, until hearings tomorrow in this room at 3:30.

*The committee adjourned at 1804.*







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### **Also taking part / Autres participants et participantes**

Ms. Kate Murray, director, title and survey services office, Service Ontario

Mrs. Christine Elliott (Whitby–Ajax PC)

### **Clerk / Greffier**

Mr. Trevor Day

### **Staff / Personnel**

Mr. Andrew McNaught, research officer,  
Research and Information Services

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