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Tuesday 28 November 2006

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Mardi 28 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 Qaadri
Clerk: Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 28 November 2006

Mardi 28 novembre 2006

The committee met at 1533 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.

CINEPLEX ENTERTAINMENT

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

I would proceed immediately to invite our first presenter of the day, Mr. Fab Stanghieri, vice-president of Cineplex Entertainment. I'd invite you to come forward, Mr. Stanghieri. Please be seated. For you, as well as for all our participants this afternoon, the protocol is that you'll have 15 minutes in which to make your presentation. Within that, if there's time remaining after your formal remarks, it'll be distributed evenly amongst the parties for various questions. I invite you to begin now.

Mr. Fab Stanghieri: Mr. Chairperson and members of the committee, good afternoon. Thank you for allowing me this opportunity to come before you to speak about Bill 152.

My name is Fab Stanghieri and I am the vice-president of real estate and corporate planning for Cineplex Entertainment. On behalf of Cineplex, I'd like to voice our support for the many positive elements in this bill which advance consumer protection and consumer choice.

One of the most notable aspects of the bill for Cineplex is the sections that deal with gift cards. Cineplex recently launched its gift card program on November 19 of this year, a short while before these changes were announced. As a result, these new cards carry an inactivity charge of $2 per month after a 24-month period of inactivity.

The Retail Council of Canada, which we are members of, has been working closely with the government to ensure that our customers are protected and that businesses are able to address the technical and implementation issues associated with this measure. There is no doubt, though, that Cineplex will be forced to bear significant expense to make the required adjustments to the new gift card system.

I'd also like to take this time to talk about another area of concern for Cineplex, namely the regulatory amendments to the Liquor Licence Act. While I understand that these regulations will not be decided upon today, I appreciate the opportunity to comment on them.

When announcing these amendments, the government said that it would consider pilot projects to license bingo halls and to extend liquor licences at wineries to include vineyards.

Cineplex has been proposing a pilot project to license the VIP auditoriums at the Cineplex Manulife Centre Varsity Cinemas, located at Bay and Bloor. The Varsity Cinema is a unique 12-screen movie theatre complex within the Manulife Centre. The theatre is one-of-a-kind in that it has four VIP screening rooms that exhibit upscale art films geared to an older demographic with a premium price point. We see direct similarities between our proposal and the Liquor Licence Act reforms in Bill 152, specifically as they relate to bingo halls and wineries.

In making the initial announcement regarding these reforms, Minister Phillips noted that the government will consider licensing bingo halls because bingo is adult-centred entertainment and is an industry facing declining revenues, and because these operations are already licensed by the Alcohol and Gaming Commission of Ontario. Cineplex's proposal to license the VIP theatres is based on the same reasoning as it relates to the Varsity and the adult-centred clientele that frequent the VIP screening rooms. The VIP rooms that are in question here are four separate rooms from the balance of the complex, and they generally exhibit adult, genre-based art films.

Mr. Peter Kormos (Niagara Centre): Is that code?

Mr. Stanghieri: Is that code? No. In our industry, you would not see a Happy Feet picture, for example, which

is geared to a very young demographic. You would see a Little Miss Sunshine. You would see more adult pictures, like The Notebook.

Like the proposed changes to winery and bingo licences, Cineplex's pilot project is proposed in response to consumer feedback. Our patrons in the 35-plus age demographic have been clear in telling us that they would like to be able to enjoy a glass of wine or beer while watching a film.

Also consistent with the government's proposal, this facility is currently licensed by the AGCO. Our Varsity Theatre hosts a licensed section just outside of the VIP theatres. This area has been successfully operated for over one year without any incidents to report. We are requesting that our existing licence be extended to include the VIP theatres.

There is no unique risk associated with this proposal in terms of underage drinking or irresponsible serving. The Varsity VIP theatres are not typical multiplex theatre auditoriums, which you would see in suburban parts of Ontario. What makes it unique is that there are four VIP theatres at the Varsity complex, the only ones of their kind in Canada. These auditoriums hold a maximum capacity of 35 patrons and tickets are sold at a premium price point, which tends to result in a more mature audience. I've attached a picture of a VIP theatre for you in the package which is submitted to the committee to demonstrate how different these theatres are from the traditional multiplex theatres.

Under the pilot project, these theatres will be restricted to those 19 years and older. We will rely on the effective policies that we have in place at our licensed bar area to maintain our record as responsible servers and to prevent underage drinking. Moreover, this facility caters to an older age demographic. This is evidenced in our film selections, interior decor, concession stand offerings and the lack of other entertainment offerings that are generally geared to young children and families, such as arcades.

We recently had officials from the Alcohol and Gaming Commission of Ontario, including CEO Jean Major, tour the facility. According to them, a licence could easily be issued for these theatres considering the safety precautions in place and the layout of the facility.

Cineplex has extensive experience in managing similar licences in other jurisdictions. For instance, we have been running a pilot project at the SilverCity in the West Edmonton Mall since January 2006, and there have been no incidents to report. The West Edmonton Mall pilot is similar in that the auditoriums are restricted to patrons over the legal drinking age.

We would like to offer this to our customers because we have to, effectively. The movie theatre industry is suffering from declining attendance, sales and box office revenues. In fact, there has been a 14% decrease in attendance since 2003, and Statistics Canada reports that movie theatre profits fell 15.8% in 2003-04. Exhibitors are also experiencing enormous competitive pressure from other entertainment destinations and in-home entertainment options such as DVDs, videos, online streaming, video-on-demand, pay-per-view and the ever-growing problem of piracy.

Ironically, the industry is at a point where theatres will have to make significant capital investments in order to keep up with technology and to comply with accessibility standards. For example, within five years, projection will have to be transferred to digital technology, at a cost of approximately $150,000 per screen. That five-year window would actually commence within the next year or two and it would be a rollout over a five-year period.

1540

In order to attract customers, Cineplex has made a tremendous effort to meet and exceed our individual customers' expectations. Among other initiatives, we now show NHL hockey games on screen and we're introducing opera performances from the Met. Our intention with the Varsity VIP proposal is to enhance the entertainment experience for a segment of our patronage and to compete on equal footing with similar entertainment destinations, including sports arenas, concerts, in-home entertainment and now bingo halls.

We ask that you consider an amendment to the Liquor Licence Act regulations to include licensing of these select auditoriums.

Thank you for your time. I'll do my best to address whatever questions you may have.

The Chair: Thank you, Mr. Stanghieri. We have about two and a half minutes or so per side, beginning with the opposition.

Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford): Thanks very much. I appreciate your presentation.

With the gift card, I'm not really clear on what you're asking for, because I know the government says that they're going to work with the industry and have regulations. You currently have a two-year time limit. Are you looking to be exempt from having the time limit removed from your gift card or are you looking for time to adjust your situation?

Mr. Stanghieri: We just want to be on record that we are supporting the Retail Council of Canada and their position on the gift card programs.

Mr. Tascona: Which is?

Mr. Stanghieri: That they will work with the industry to come up with technical regulations so that the implementation will be easily absorbed by retailers and groups like ourselves.

Mr. Tascona: Okay. With respect to theatres, where would those 19 years and older be drinking? Throughout the theatre? Or would they just be drinking in an enclosed area?

Mr. Stanghieri: The Varsity theatre has a licensed lounge area now just outside of the VIP areas. The theatre is a 12-plex, but if you walk in, immediately to your left are four segregated VIP theatres, which have their own ticket-taker, and in behind those are the areas for the lounge. What we are asking for is that you can purchase your beverage at the lounge and take it into the auditorium with you and consume it during the movie.

The VIP theatres are very different than a traditional movie theatre, in that you have a side table, they are very small auditoriums of approximately—the smallest, I believe, is 25 seats and the largest has 35 seats. It's a very cozy environment, for which you're paying a $4 service charge. Today it is, for the most part, servicing an older clientele with the product that we put in there. Our plan is to make it only available to those 19 and older.

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

Mr. Kormos: Thank you very much. I don't know. Look, if you've already got the ear of Jean Major, you're halfway there, because the government will permit beverages in your theatres by regulation. It doesn't require the Legislature, and I'm not sure that anybody's going to quibble much. I don't think anybody would agree with the proposition of having a licensed theatre unless it was an adult movie, to wit, having children in there too. I don't think anybody's proposing that. You're not proposing that.

Mr. Stanghieri: We are not proposing that. We actually see that as a risk. We are a family-based entertainment. As moviegoers, a large part of our attendees are families and/or young kids under the age of 14.

Mr. Kormos: But people go to the live theatre and they have a drink at intermission.

Mr. Stanghieri: People also go to the Playdium in Mississauga, which is a giant arcade, and have the benefit of having a beer while they're walking and playing arcade games.

Mr. Kormos: What about bring your own wine?

Mr. Stanghieri: We've never considered that and we will not consider that. But what we are proposing is that we would serve only Ontario wines.

Mr. Kormos: That's a start.

Now the gift cards: You don't seem to like the proposition of having to carry a liability on your books for more than a specified period of time.

Mr. Stanghieri: Well, for us, we're looking at it as an administrative charge of $2 per month once the inactivity charge kicks in after the 24-month period—

Mr. Kormos: Horsefeathers. What expense is there for you to have that on your books with computerized bookkeeping?

Mr. Stanghieri: Well, it is an additional charge for our accounting group to account for that liability—

Mr. Kormos: It's on a computer. Nobody's entering it. There isn't a clerk with a quill pen entering the $20 gift certificate. That's pretty disingenuous.

Mr. Stanghieri: I'm not going to argue with you over the processes we have in our accounting policies. All I can say is that those are the policies we have in place. It is an inactivity charge, and we hope that we never have to discharge those cards for inactivity. We want for people to use those cards as often as they possibly can, to reload them and recharge them and use them as we have intended them to be used.

The Chair: Thank you, Mr. Kormos. Mr. Dhillon.

Mr. Vic Dhillon (Brampton West–Mississauga): Thank you for your presentation. What would the premium price be for the tickets?

Mr. Stanghieri: The current premium price point is a $4 service charge on top of the existing $11.95. The theatre is actually the most expensive theatre we have in terms of price point for all of Canada, and it is also wildly successful with people who are looking for an upscale movie-going experience, where they can have a cocktail in the lounge and then move into the auditorium. It's also one of the homes of the film festival. A lot of screenings are done there for the festival, so it is the type of clientele that is not looking for the SilverCity experience you would find in, say, Brampton, Thunder Bay or Mississauga, which is geared to the children of the community. We're working with a much more upscale demographic.

Mr. Dhillon: Do you not think that there would be disruptive behaviour with people consuming alcohol, even if they're over 19?

Mr. Stanghieri: That is a risk that we considered when coming up with how this program would work, and it is a risk that we cannot afford to take. The limit on beverages is two per person coming into the complex. We don't want yahoos who are going to be coming in under the influence. Our company puts through 60 million people a year, and the last thing we need is to have disruptive environments for people who are trying to escape their day-to-day lives and immerse themselves in a movie. So that is not an option.

With 35 people in an auditorium and regular checks, we don't foresee that being a problem. In the Edmonton pilot study we've actually seen that most people will buy a cocktail on the way in. No one will leave a movie in the middle of—if you're watching James Bond, you won't step out to buy another beer. What we would like is for you to have a cocktail—

Mr. Kormos: Not with the review I read.

Mr. Stanghieri: The ideal is to have a cocktail on the way into the movie and then possibly talk about the movie afterwards within our lounge.

The Chair: Mr. Leal.

Mr. Jeff Leal (Peterborough): Thank you, Mr. Chair.

The Chair: Very briefly.

Mr. Leal: It will be brief. How many gift cards would your organization issue in any given year?

Mr. Stanghieri: It's difficult to state at this point. The program was introduced only a few weeks ago and we're hoping it's wildly successful. We have no idea at this point how many gift cards we will issue.

Mr. Leal: What's your market estimate? If you're going to put in a new program, you have projections. What's your projection?

Mr. Stanghieri: I don't have those available with me now. The person who's responsible for that is actually on vacation, but back on Thursday. I can easily provide you with that information.

Mr. Leal: Could you provide that information to the committee—

The Chair: Thank you, Mr. Leal, and thanks to you as well, Mr. Stanghieri, for your presentation on behalf of Cineplex Entertainment.

TORONTO BOARD OF TRADE

The Chair: I now invite our next presenters, Mr. Norm Tulsiani and Prema Thiele of the Toronto Board of Trade. As you've seen the protocol, you have 15 minutes in which to make the combined presentation, with time remaining to be distributed evenly. I'd invite you to be seated. Please begin.

Ms. Prema Thiele: Thank you very much for the opportunity to address this committee. I'm Prema Thiele. I am the chair of the Toronto Board of Trade's business affairs committee. Also, I partner with the law firm of Borden Ladner Gervais in Toronto. With me today is Norm Tulsiani, who is the board of trade's in-house legal counsel and policy adviser to the business affairs committee.

Although Bill 152 is obviously very detailed legislation, covering a range of issues, the board's comments today are focused on amendments to the Business Corporations Act set out in schedule B.

The board supports many of the proposed changes to the act. We applaud the provincial government for undertaking this important initiative to modernize Ontario's corporate law regime. The Business Corporations Act regulates how many Ontario businesses, both large and small, are organized. It's the backbone of Ontario's business law infrastructure.

While the board of trade supports many of the changes proposed in Bill 152, we also believe that the legislation, as currently drafted, does not go far enough in certain areas and is somewhat ambiguous in others. We have some specific concerns with what some provisions of the bill propose to do, but more importantly, we have greater concerns about what the bill fails to do.

We want to start with what we believe is a significant missed opportunity in this bill, and it's in the area of unlimited liability corporations, better known as ULCs.

1550

The Toronto Board of Trade has been a long-standing proponent of allowing Ontario businesses to incorporate as unlimited liability corporations. Essentially, a ULC is like any other corporation, with the exception that the shareholders have unlimited, rather than limited, liability. US-based companies seeking to do business in Canada particularly favour the ULC model. That's because when organizing their Canadian operations as a ULC rather than as a traditional limited liability corporation, US companies are afforded certain tax advantages in the US.

For many years, Nova Scotia was the only province in Canada that recognized ULCs as a business structure, and by doing so, it was successful in attracting a lot of investment into that province. Partly in response to Nova Scotia's success, last year Alberta amended its corporate legislation to recognize ULCs. Ontario has yet to take any steps to recognize ULCs, and I think it's fair to say that this has resulted in a number of US-based companies, who would otherwise have located their Canadian operations in Ontario, establishing their businesses in Nova Scotia or Alberta.

The Toronto Board of Trade has urged the provincial government since 1998 to recognize ULCs, and we believe it's time to do so now. Failure to act now will likely lead to this issue being deferred for several more years. I think Ontario must take the lead of Nova Scotia and Alberta or risk losing more investment opportunities. For your reference, we've attached further details in letters that we have submitted to the Minister of Government Services, if you wish to look at those.

The second point is director's residency. Subsection 19(2) of the bill proposes to amend the current OBCA by eliminating the requirement that a majority of directors of a corporation be resident Canadian, but it replaces it with a requirement that 25% of the directors still be resident Canadian; the Toronto Board of Trade believes that this is a step in the right direction, but again, it doesn't go far enough. We agree with the Ministry of Government Services consultation paper, in phase I, that said that in the case of private corporations—those whose shares are not publicly traded—the current requirement to have a majority of resident Canadian directors is readily avoided through mechanisms such as unanimous shareholders agreements. As such, it serves no useful purpose, we believe, to put corporations through hoops to have resident Canadian directors.

We note that section 20 of the bill would eliminate the requirement that a majority of directors at a meeting be resident Canadians in order to transact business. This, in effect, permits the non-resident directors to transact business without the input of any Canadian colleagues. While we welcome this added flexibility, we note that it appears to be inconsistent with the goal of having Canadian input on business decisions.

Many countries have moved away from a protectionist approach to one that embraces a global economy. We note that director residency requirements are not common in other jurisdictions, particularly with our major trading partners in the US and the UK, so we feel that the requirement may have served a useful purpose in a protectionist era but it's outdated in today's world.

Thirdly, we'd like to address the conflict-of-interest rules for directors and officers. Bill 152, in subsection 23(1), proposes to amend the act to prohibit directors who have a conflict of interest in relation to a particular matter from taking part in discussions regarding the issue. We certainly understand that this change may be serving to improve governance standards, but while we support efforts to implement meaningful governance standards, we believe that the proposed amendment would in fact diminish the quality of decision-making of directors and officers. This is because many directors who are conflicted have a wealth of knowledge, information and expertise about the matter being discussed.

We agree that such directors ought to declare their conflict and should not vote on a final decision. However, we believe that notwithstanding the possibility of undue influence, in the majority of cases the interested directors will have valuable and knowledgeable information to share with other directors. So, for practical reasons, we believe that a model under which the other directors and officers have the discretion to hear from a conflicted director is preferable to one where such input is just summarily prohibited by legislation.

We also disagree with the proposed amendment because it continues an exemption from the same requirement we're talking about that allows management staff executives who are also directors to vote on their own remuneration. Consistent with our recommendation above, we believe that such management executives should be permitted to provide information and input on their remuneration but should be excluded from the final deliberations and the vote. So in this legislation, continuing this exemption will only make it that much more difficult to achieve meaningful conflict-of-interest regulation.

We also note that there seems to be a discrepancy in the explanatory note and the bill, in that the note indicates that all directors are going to be prohibited from voting on their own remuneration, and that's not what the bill says.

Lastly, directors' liability and the availability of the due diligence defence: Obviously, serving as an officer or director carries with it significant potential legal liability. Under the law, directors may properly shield themselves from potential liability if they can prove that they acted with due diligence. Section 25 of the bill proposes to expand the availability of the due diligence defence in respect of a director's reliance on certain reports and other's advice. The question we have is that although we assume that the intent of the bill is to expand the availability of the defence, if that's the case, we certainly support the amendment and note that there may be a drafting error that can be remedied easily, and we're happy to work with the committee members and staff offline to remedy this. If, however, the intent of the bill is to take away the availability of the due diligence defence with respect to a director's fiduciary duty and general standard of care, then the Toronto Board of Trade is gravely concerned. We believe that such a detrimental change would significantly hamper the efforts of companies to recruit the best-qualified and most talented directors. Accordingly, that should be removed from the bill. Obviously, we seek clarification on what the intent is of this provision.

I know we're running out of time here, but we have some other comments, a few of them that are technical in nature, and drafting errors. So what we have done in appendix B is indicate what those comments are, and we'd be happy to work with the committee or other staff members to address those points.

We support, obviously, the modernization of corporate law in Ontario, and it's consistent with what the board believes in. We hope that the proposed amendments outlined in the bill, together with these further changes, will improve Ontario's business law

I'd be happy to address any questions.

The Chair: Thank you very much, Ms. Thiele. We have about a minute and a half per side, beginning with the third party.

Mr. Kormos: Thank you, folks. Interesting stuff. Mr. McNaught, the issue around subsections 134(1) and (2), and the reference to 134(2) and not to 134(1): Could you respond, perhaps with the collaboration of ministry staff, to that very specific question? Because it's an interesting proposition.

Also, from a policy point of view, the ULCs—these are very similar to income trusts, where—

Ms. Thiele: No.

Mr. Kormos: Not at all?

Ms. Thiele: No. It's just another form of business organization. You can either incorporate a company or you can form a partnership or you can have a sole proprietorship or you can have an unlimited liability company. For Canadian purposes, it's a corporation—

Mr. Kormos: No, I understand, but you have a limited liability of the shareholders.

Ms. Thiele: Right.

Mr. Kormos: So the shareholder has higher exposure.

Ms. Thiele: Correct.

Mr. Kormos: But they get a tax advantage on the income.

Ms. Thiele: In the US.

Mr. Kormos: In the US. So that's why I say in that respect they're similar to income trusts.

Ms. Thiele: Well, I wouldn't put income trusts in the same category.

Mr. Kormos: Well, in 2010 it's all done and over with anyway.

Ms. Thiele: It's all gone in 2010, I agree.

Mr. Kormos: But most of them were scams anyway. They were inflated prices. They were the closest thing you ever saw to pyramid schemes, honest to God. Thank goodness somebody had the courage to put an end to them.

What we need, if I may, are some policy reasons in terms of these ULCs, which I've never heard of before today; a little bit of a better understanding of what these ULCs are and what is the Ontario policy reason for not recognizing—

The Chair: Thank you, Mr. Kormos. I will now offer it to the government side.

Mr. Leal: I appreciate your presentation. You talked about businesses that have left Ontario to go to Nova Scotia because of the treatment down there, and potential US businesses that would have come to Ontario to establish their presence here but went to Nova Scotia. I'd like to get some data on those numbers. Is that possible?

1600

Ms. Thiele: I don't think that would be possible because—I mean, it's an incorporation decision. So you would have to be in the minds of every US entity that's—

I'm a corporate lawyer and about 70% of my practice is cross-border. So you'd have to go into the mind of every corporation that may have established a subsidiary in Canada. You wouldn't be able to tell which decided to go to Nova Scotia. What I can tell you, though, is that if you use my practice, which, as I said, is primarily cross-border, it's very significant, because in the US, the treatment of a ULC, for the monies that go across the border, is something called check-the-box treatment. That means that they can be treated as a partnership income in the US, which is obviously significant savings and—

The Chair: Thank you, Mr. Leal. To the official opposition.

Mr. John O'Toole (Durham): Thank you very much. I did miss some of your presentation but I got enough from the questions that have been asked around the same line. I need to understand more clearly: Does it create problems for trade between countries that do have unlimited liability, either on the market side or on the actual business-to-business relationship side?

Ms. Thiele: In a sense of problems, trade, do you mean like a much—

Mr. O'Toole: For tax and other reasons for investment. You make that point. What is it, a shared liability?

Ms. Thiele: No. Instead of the shareholders being shielded from liability, they are completely liable.

Mr. O'Toole: They're exposed. That's what I mean. It's shared liability right across the investor, owner, operator, principal, whatever.

Ms. Thiele: Right.

Mr. O'Toole: Are there any transactional issues between jurisdictions, meaning an American parent company wanting to open a business here?

Ms. Thiele: The issue is that when they're deciding where to incorporate and set up, they're obviously looking at tax as the first reason. Where is going to be the best tax treatment? And if they do a ULC in Nova Scotia or Alberta, they can have a much better tax treatment and regime. In fact, in Nova Scotia, they don't have a director residency requirement. So not only do we have ULCs in Nova Scotia, but we've got no resident directors. So why would they come to Ontario and set up if we have a few more hoops to go through, and more significant hoops to go through, to achieve the same thing when they can just do it in Nova Scotia?

Mr. O'Toole: It's interesting; today there was a statement by the minister, Sandra Pupatello, with respect to competitiveness between Alberta and Ontario. They're using other issues. Specifically, this wasn't mentioned, but certainly energy is the growing and hot economy in Canada.

Ms. Thiele: And Alberta has recognized it by changing their statute last year and including this.

Mr. O'Toole: Yes, I see that in your note here. Thank you for your presentation. It helps all of us.

I would have to say I agree that I think Mr. Flaherty did the right thing in terms of the income trusts. I'd have to say it was a wise decision on his part.

The Chair: Thank you, Ms. Thiele and Mr. Tulsiani, for your deputation and presence on behalf of the Toronto Board of Trade.

ROGERS COMMUNICATIONS INC.
TELUS

The Chair: I invite now our next presenters, Mr. John Armstrong and Mr. Howard Slawner of Rogers Communications Inc., and Mr. Ian Bacque. Gentlemen, please be seated. As you've seen the protocol, you have 15 minutes in which to make your presentation, and I invite you to begin now.

Mr. John Armstrong: Thank you, Mr. Chairman and members of the committee. My name is John Armstrong. I'm the director of municipal and industry relations for Rogers Communications. Appearing with me this afternoon is Howard Slawner, director of regulatory matters for Rogers Communications, and Ian Bacque of Telus.

I'd like to note that the views I express here today are supported by both Telus and by Bell Mobility. Unfortunately, due to other commitments, a representative of Bell was unable to join us today.

My comments will be brief and then I will turn the microphone over to my colleague Mr. Bacque.

Rogers, Telus and Bell Mobility have reviewed Bill 152, and whereas our three companies are normally very intense competitors and we often take divergent views on matters, we find ourselves aligned with respect to concerns over one aspect of Bill 152. That aspect deals with the legislation around gift cards. More specifically, we are concerned that the legislation could capture a broader cross-section of prepaid cards than what may have been originally contemplated.

One of the primary methods used by wireless carriers to offer services and bill customers is through the use of prepaid cards. In effect, a customer purchases a card, either physically or digitally, and the dollar value purchased is placed on to the customer's account. The account is drawn down upon as the customer uses the minutes.

It's our collective submission that wireless prepaid cards are not gift cards in the traditional retail definition. Gift cards are generally bought by one person and are given to another person as a gift. Wireless prepaid cards are generally not given as a gift by one person to another; rather, they are generally bought and used by the end consumer. This is a significant point of differentiation between the two products. A customer who buys a wireless prepaid card is aware of the terms and conditions associated with it, and he or she buys the prepaid card usually with the expectation to use it almost immediately. In essence, the customer is buying the prepaid card as a tool to manage his or her costs associated with his or her personal usage of wireless telecommunications services.

Another important differentiation is that gift cards are essentially cash equivalents, whereas wireless prepaid cards are not. Customers exchange money for an equal value in gift cards. They then use the gift card to pur-

chase products and services in the same manner they would otherwise have used cash. On the other hand, a prepaid wireless card is essentially a billing mechanism that the carriers use to charge customers for a distinct service. A customer buys a prepaid card, activates it and thereby triggers the alignment of the wireless network with the associated billing systems. This alignment ensures that both the customer and the carriers understand how much usage is permitted by individual customers at a given rate. The purchase of a prepaid card is, therefore, a mandatory component for the provision of this wireless service.

The nature of the service purchased through a wireless prepaid card is also very different than most of the items purchased with traditional gift cards. For example, a gift card issued by a clothing retailer can be redeemed for potentially thousands of different clothing items. A prepaid wireless card is an actual purchase of one specific item, that is, minutes of airtime on a wireless telecommunications network over a defined period of time.

Unlike the clothing retailer who doesn't necessarily need to increase inventory because of the number of gift cards sold, wireless carriers must manage their network capacity, understanding the number of calls that may be attempted at any one time. It is, therefore, crucial that we have the tools to manage the usage of the wireless network by prepaid customers. The time limitation associated with a wireless prepaid card is an essential network management tool.

Wireless carriers also make provisions for our customers to keep and maintain unused airtime that they have purchased. If the airtime is not entirely used up in one month, the customer can roll the unused airtime over to the following month by activating a new prepaid card. As long as they maintain their active status, they do not lose their minutes. In fact, wireless carriers will contact customers when their cards are close to expiry to remind them to activate a new card in order to preserve their existing minutes.

Another differentiation between prepaid cards and gift cards is that even though the customer is only charged for consuming minutes of airtime, the carriers do in fact provide a service to that customer during the entire month. The customer receives the benefit of having available wireless services at all times, 24 hours a day, seven days a week, to make or receive calls at his or her convenience. In addition, emergency 911 service is available even when the customer does not have any airtime available to him or her under the prepaid program. This is unlike the traditional gift certificate where the customer receives no benefit until such time as the gift card is in fact used. Essentially, the prepaid customer is purchasing access to a wireless network, even though they are being billed by the minute.

In providing access, the carriers incur additional costs even when the customer does not have any airtime purchased. When a wireless device is on, but is not being used to hold a conversation, the device is actually continuously communicating back and forth with the network. As such, whether or not the customer makes or receives calls in any given month, the wireless carriers incur costs to run the network, provide 911 service and have IT management costs. These are costs that the carriers will only recover when the airtime is used up by the customer or when the prepaid wireless card expires.

In our opinion, all of these arguments significantly differentiate wireless prepaid cards from the traditional retail gift card. We are concerned that if the term "gift cards" is drafted too broadly, it could easily be interpreted to capture wireless prepaid cards. This would severely impact a wireless service relied upon by millions of Canadians.

In conclusion, Rogers Wireless, Telus Mobility and Bell Mobility assert that wireless prepaid cards are not gift cards. For the customer, wireless prepaid cards are a cost-management mechanism; and for the carriers, wireless prepaid cards are an account and billing management mechanism. We would encourage the government to interpret the legislation and draft regulations in such a way that clarifies that wireless prepaid cards are not the same as traditional retail gift cards.

Thank you for allowing me to make these submissions. I will now turn the microphone over to my colleague Mr. Ian Bacque of Telus to make any additional summary remarks that he may have.

1610

Mr. Ian Bacque: It's an honour to be here on behalf of the 32,000 Telus team members across the country to speak about Bill 152, including the 5,200 team members who call Ontario home now.

A few words about Telus: It's the country's second-largest telecommunications firm, with revenues in excess of $8 billion annually. In Ontario, from basically a standing start six years ago, we had 300 employees and no revenue. Telus in Ontario now has over 5,000 team members and it's a $1.8-billion-per-year business. It's a great growth story, and we've achieved it by investing over $7.5 billion in the province since that time. We're proud of our growth in Ontario, and we are committed to our province and to the city of Toronto.

You may know that we recently broke ground on an 800,000-square-foot office tower in downtown Toronto, and we're also intensely committed to our customers, which now includes the government of Ontario.

At the bottom of our pay slips is a simple but very true statement, and it's a reminder: "Brought to you by your Telus customers." I simply say this because it's in the spirit of commitment to our customers and doing what's in their best interests that I am here today.

As John said, with traditional retail cards the stored value is from the moment it's purchased, intended to be consumed by someone other than the person who bought it. That's a fundamentally different situation than our products.

One might say that with traditional retail cards, the gift cards, the end user is actually a stranger to the financial transaction that took place. They get a gift, but they were not part of the purchase transaction that took place.

With our cards—long distance, wireless minutes and Internet usage; dial-up in Ontario and high speed in our in-territory, as we say in western Canada and eastern Quebec—the purchaser buys and consumes the Telus service themselves. This again underscores a fundamental difference between the two scenarios.

Frankly, we're just not convinced that there is any compelling reason to include telecommunications cards in the definition of "gift cards." They're simply different situations.

Again, the real issue isn't what you might call a third-party transaction, where the card is gifted and the intent is that it be gifted; with our products, they're purchased and consumed.

Those would be my additional comments. We do indeed support what Rogers has said today.

The Chair: Thank you, Mr. Bacque. We'll start with the government side, about two minutes each. Mr. Kular.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): Thank you for your presentation. You tried to clarify what a prepaid wireless card is, as well as the difference between a gift card and the prepaid wireless card.

I had the experience a couple of times of visiting outside this country, and there you need Bell Mobility's card to use the telephone because in some of the places you cannot use anything besides the card. My question to you, Mr. Armstrong, is: What percentage of your revenues are from prepaid wireless cards? I think a lot of people waste a lot of money in the prepaid cards, because if you get it for $10, sometimes you don't use the last $1—they waste money. The second question is: Do you have any figures to tell me how much people waste on these prepaid wireless cards?

Mr. Armstrong: Thank you for the question. If you don't mind, the reason I brought Howard Slawner with me is so that he could answer the wireless questions.

Mr. Howard Slawner: The revenue portion of prepaid cards—do you mean versus post-paid, where you buy a monthly subscription?

Mr. Kular: Yes.

Mr. Slawner: It would be probably under 10% of the revenues. I can only speak for Rogers, of course, but the majority of our customers are post-paid, and the prepaid is a minority. I'm sorry, the second question?

Mr. Kular: What percentage of revenues would you say you have from that? Ten per cent?

Mr. Slawner: Yes, I would say in that area or under. Most customers are post-paid.

Mr. Kular: Do you have any figures of how much people normally lose by not using those cards? If you have $10 worth of card and you don't use $1, that's a wastage of 10%.

Mr. Slawner: Yes, again, what happens is if you don't use your minutes in a particular month, if you activate a new card, you do get—

The Chair: With respect. Thank you, Dr. Kular. We'll go to the opposition side.

Mr. O'Toole: Thank you very much for your presentation on a rather tenuous issue. I'd probably agree that these should be treated differently than the gift card issue that's covered in a bill that has some 56 statutes that we're dealing with. This is sort of stuck in there. I hope you've reviewed it and find that you're asking for it to be exempted from the listed regulations of those specific products. But the questions that have been asked here are fairly appropriate in terms of: they are popular, they are part of your growth plan, convenience and other things. I guess my question is—it may be quite naive—if I were to buy a card for one of my children, is it registered in their phone? Give me the deal on how the cards work.

Mr. Slawner: I don't know who the phone is registered to. If you bought a phone for your child and it was registered in their name and the phone number is associated with them, then yes. What happens if you get a gift card for them—sorry, I should say pre-paid card; even I get confused sometimes—the pre-paid card, you hand it to them, they would enter the PIN number using their telephone number.

Mr. O'Toole: Then they log it in, and when they log in, it's logged to that phone number.

Mr. Slawner: It would be logged to that phone number, exactly.

Mr. O'Toole: But it's open to start with, so, in fact, it is a gift card. Once it's initiated, though, it belongs to that phone, right?

Mr. Slawner: It belongs absolutely to that phone, to that account.

Mr. O'Toole: I understand that.

Now, on the Telus side and the wireless side, what's your view with respect to the use of cellphones while driving?

Mr. Bacque: If I may answer that. I think it's fair to say the real issue is distracted driving, not necessarily the use—it can be a hot cup of coffee, it can be a hamburger or a submarine sandwich, kids crying in the back, or the radio that's on too loud. People really need to pay attention.

Mr. O'Toole: That's generally what I say as well, Ian, but anyway. Another question on a humorous level is the income trusts—

The Chair: Thank you, Mr. O'Toole.

Mr. Bacque: On that particular issue, I'm going to say "no comment."

The Chair: Mr. Kormos?

Mr. Kormos: Gentlemen, look: I'm learning. I don't know anything about how people work cellphones with cards, because it sounds like a little bit of a consumer rip-off, Mr. Kular, because it looks like the person who post-pays is protected in terms of not having remnants left on a card that disappear. But you're saying, the minute the card is activated, the meter starts ticking with the base monthly rate.

Mr. Slawner: No. When the card is activated, in most cases you have between 30 days and 365 days to consume the dollar value on the card. Then you start drawing down upon that card.

Mr. Kormos: Oh, I see. Does that affect the cost of the card, whether it's a 20-day card or a 365-day card?

Mr. Slawner: Well, the bigger the value of the card, the more time you have to consume the minutes, basically.

Mr. Kormos: But do you charge that cardholder a minimum amount off the card each month, regardless of whether or not they're making phone calls? No, you don't.

Mr. Slawner: No.

Mr. Kormos: So you've got an expiration date on the card.

Mr. Slawner: Exactly.

Mr. Kormos: Even if there's 90% of the card left after one year, you've got an expiration date. That's a rip-off.

Mr. Slawner: No, I disagree. There are two reasons: One, because you are able to roll over the minutes each month if you do have unconsumed minutes. Secondly, as we discussed earlier, the phone is actually always being used all month long.

Mr. Kormos: Then why don't you simply say that once you activate the card the base rate is $4 a month whether you use the phone or not, and let the meter simply tick? What you're saying is if you don't use the card up within the next period of time, you lose it, whether you haven't used the phone at all. What about people who carry cellphones just for emergencies? You don't want people nattering away on their cellphone. The business about third party—come on. If I choose to go out and buy myself—because I'm a lonely guy with very few friends—my own Christmas gift by way of a gift card, that doesn't make it any different than Mr. Dhillon because all of a sudden he has found a liking for me.

The Chair: Thank you, Mr. Kormos, and thank you to you, gentlemen, on your testimony and presentation on behalf of Rogers Communications and Telus.

1620

ONTARIO COMMUNITY COUNCIL ON IMPAIRED DRIVING

The Chair: I would now invite our next presenters to please come forward: Ms. Shelley Timms, president, and Anne Leonard, executive director, of the Ontario Community Council on Impaired Driving. Ladies, I invite you to be seated. As you've seen in the protocol, you have 15 minutes in which to make your presentation. I invite you to begin now.

Ms. Shelley Timms: Thank you. Mr. Chair and members of committee, my comments address the amendments to the Liquor Licence Act. My name is Shelley Timms and I am president of the Ontario Community Council on Impaired Driving. With me is Anne Leonard, the executive director of OCCID.

OCCID is a group of members and stakeholders whose mission is to reduce and eradicate impaired driving. Our membership consists of police, public health, business, government and community groups.

We would like to address four points: first, mandatory liability insurance, which is not included in the amendments; resources for inspection of licensees; training of licensees; and the issue of bringing drinks into public washrooms. These issues were raised in a letter to Minister Phillips on November 7, 2006, a copy of which is provided to each member of committee.

I can say on behalf of the members of OCCID that for the most part we're disappointed with the amendments proposed for the Liquor Licence Act. The act has not been reviewed since 1989 other than the amendments related to the bring-your-own-wine legislation, which also includes some tightening of enforcement.

One of the ways of assisting the enforcement side, as well as public safety, would be to implement mandatory liability insurance. This was proposed at many of the public consultations and supported not just by OCCID but also by two hospitality organizations. If you tell the average person that there is no mandatory liability insurance for licensees, he or she is shocked, as the concept seems so logical that people assume the government has already put it into place in the Liquor Licence Act.

There is precedent in the form of the Compulsory Automobile Insurance Act for a statutory mandate of insurance. However, far more telling is the fact that a physician must have years of training, then must have insurance before he or she can administer or prescribe drugs. Alcohol is a drug, yet it can be sold by those with minimal training and sometimes minimal social responsibility.

We acknowledge the amendments regarding risk-based licensing, but this is just making the issue far more complex than is necessary. While no one has statistics as to how many establishments are operating without insurance, there was a two-year public consultation and no attempt was made to find out just how many licensees are operating without insurance. We do know that at least a few exist without insurance because of legal cases that exist.

Rather than create increased complexity, if you mandated mandatory liability insurance, there would be consistency and protection for those who might be overserved and, more importantly, for third-party users of our highways.

In 2004, Ontario had the lowest level of alcohol-related automobile deaths, but there were still 192 people who died on our roads as a result of alcohol-related crashes. Multiply that number by 4.5 and we have an additional 900 significantly injured people due to spinal cord, brain injury and burns. The factor is higher for minor injuries and significantly higher for those directly impacted, such as family and friends. There are clearly thousands of people in the province of Ontario who'd be comforted by the fact that one of the most common locations for a drunk driver to get drunk is at his or her local bar.

Secondly, regarding enforcement resources: The provisions we do have in place will be of no effect if the inspections are not carried out on a regular basis.

Anecdotal evidence from licensees in particular bars have some being visited several times a year while others have not seen their inspectors in two or three years. Given that there only 43 inspectors and approximately 18,000 licensees as well as 65,000 special-occasion permits, that's not surprising. While some licensees may not require regular inspection, a minimum of once a year should be required for all so-called "low-risk" establishments. The inspectors also need regular and consistent training in order to ensure that the licensees are treated in the same and fair fashion.

Thirdly, OCCID strongly supports ongoing training for bar managers and owners, and that Smart Serve be mandated and updated on a regular basis. We had understood that it was proposed that Smart Serve would be renewed every five years, but we understand it has also been put on the backburner due to some licensees taking exception to that.

Training in general and Smart Serve in particular, as well as some other programs such as Safer Bars, which is carried out by the Centre for Addiction and Mental Health, are essential for public safety. Too many servers do not understand that the act states they cannot serve a visibly intoxicated person, too many licensees do not understand how to deal with intoxicated patrons, and too many patrons do not understand that bars are not just allowed but are required to stop service due to intoxication.

Lastly, the issue of drinks in washrooms could create more problems than it solves. Licensees should be tracking and monitoring their guests' consumption. That has been made clear in many civil cases, and this will be substantially more difficult. There is the increased risk of underage drinking, as it will be much easier to give a drink by a 19-year-old to an 18-year-old in a washroom. There is the risk of violence with the use of glass in washrooms. There are basic public health concerns, and there is also the question of whether this increases an establishment's capacity, thereby allowing more people in a space.

Responsible establishments have methods in place for monitoring drinks and should be able to determine their own policy on this issue. Further, please keep in mind that most common date rape drugs are not GHB—they're not Rohypnol. The most common date rape drug is alcohol.

We're pleased to see amendments to allow greater examination of applicants for licences, but we ask you to take this further by re-examining amendments to include mandatory liability insurance, better training of applicants, and ensure that adequate resources are given to the inspection side.

Too often, we see a lot of ambivalence towards alcohol in this province, and quite frankly, the ambivalence exists on the government's side as well. Alcohol enjoyed in moderation is a delightful substance—I share in it myself—but it needs to be treated with respect, and it needs to start with the legislation that comes down from this House.

The Chair: Thank you very much. We have considerable time for questions. We shall start with the opposition side, about two and a half minutes. Mr. Tascona.

Mr. Tascona: Thanks for coming here today. I appreciate your presentation. I want to ask you a question on the first point you made with respect to mandatory liability insurance for licensees. It's not part of the bill. What explanation have you received from the government for why they didn't put it in?

Ms. Timms: I could only tell you what I've heard through rumours; I haven't heard anything substantial. I think there is a concern that the licensees in general will be concerned.

In a conversation that Anne and I had on the telephone, on the one side we were told that we can't expect 17,000 licensees to have to get insurance all at one time. I can assure you, it won't be 17,000 licensees. Most licensees are responsible and have insurance.

On the other hand, in the same conversation I was told that only four reported civil cases showed that licensees didn't have insurance. Well, as a former civil litigation lawyer I can tell you that 96% of all cases settle before the courtroom door, so if you took those four and added 96, there are at least 100 licensees. Then there are probably a lot of people who do not pursue action because, if they find out the licensee doesn't have insurance, there is no point.

Mr. Tascona: So I take it that the government's attitude is that there's no harm, no foul; they're not going to even listen to you. Is that what we're hearing?

Ms. Timms: At all of the various consultations we attended and that our various stakeholder members attended, this issue was raised, and it was raised not only by OCCID but by the Campus Hospitality Managers Association, which is an association of pub managers at universities and colleges.

Mr. Tascona: But you've never received an official position from the government as to why they don't believe this is important?

Ms. Timms: No.

Mr. Tascona: Okay. Thank you.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you very much, folks. I appreciate your comments. I am interested in your observations around the—there is so much fanfare around drinks in the washrooms and the date rape phenomenon. At first blush, I thought, "Hmm"; but for the foul nature of most washrooms in taverns, especially those that young people are inclined to go to—and when you talk about the public health issue, I think that's what you are reflecting on. What do you do with the drink when you get there? Do you put it on the floor of the stall? That is just disgusting.

But then, the other observation from young women is that they are most vulnerable in terms of something being put in their drink not when they go to use the toilet facilities, because then they leave their companions at the table—girlfriends, boyfriends, what have you; it's when they go as a group out to the dance floor to dance, when

they leave the whole table. That's when a predator has more meaningful access to their glass, their bottle of beer—whatever.

So that was just an interesting observation, one that, had I not been told about, I probably wouldn't have reflected on, because that's something young people—not that I'm not in taverns, but the table doesn't get up and go onto the dance floor. That's number one.

Number two: I am surprised and shocked. I just never for the life of me thought that there wasn't a requirement for minimum liability coverage on the part of a licensee. Holy moly.

Ms. Timms: And your response is similar—everyone you talk to, most people are surprised.

1630

Mr. Kormos: It is shocking, because you've got the phenomenon of, let's say, overserving, where there's very clear liability on the part of that server, but it's worth zip to the paraplegic—right?—a person who is crippled as a result of being overserved. That person doesn't have insurance coverage. What's recommended, in your view? You're talking about maximum liability of how much?

Ms. Timms: Most bars who do have insurance usually have CGL, comprehensive general liability policies of $5 million. Just to put things in perspective, the highest award in Ontario—I believe Saskatchewan has superseded this—but in 2001, it was a drinking and driving case, $8.7 million, and even with the $5-million coverage and two $1-million policies, it was inadequate to cover—

Mr. Kormos: And then hopefully you've got the insurance industry doing some of the policing, because they're going to be in there, if they're smart—the insurance industry isn't that smart. You know my views about that. But they'd be in there policing these taverns and licensees—

The Chair: Thank you, Mr. Kormos. I would now offer it to the government side. Mr. Dhillon?

Mr. Dhillon: Thank you very much for your presentation and your good work. Under this bill, there are proposals for the Alcohol and Gaming Commission to conduct risk-based licensing. Do you not agree that that would help target high-risk offenders?

Ms. Timms: At this point, we haven't been given any information as to what a high-risk establishment would be, and with all due respect, if you wait until someone is charged under the Liquor Licence Act, by then the problems could have occurred. If you are basing it on whether or not they have insurance, that would be helpful, and if they don't have insurance, and that's a good criteria for judging them as a high-risk licensee, that would be great. However, with all due respect, it just creates another level of bureaucracy.

You can simplify it by simply putting a section in the Liquor Licence Act that says, "All licensees must have a certain level of liability insurance." It just complicates it. It adds another layer of determination by an already overstressed Alcohol and Gaming Commission to make those decisions.

Ms. Anne Leonard: One of the bonuses for having mandatory liquor licence liability insurance—it's not just about them having insurance for an incident after the fact, but it builds a whole structure for good policy. If they know they're going to be sued or they could be sued, if they have to have insurance, they'll do things to try to reduce their risk so that they can get the best possible deal on that insurance. So they'll train their staff better, they'll walk the walk. They'll understand and explain to their staff what an intoxicated patron looks like and all of that. To just go out and get your liquor licence more easily and not have some of those requirements there undermines the importance of what they're doing.

Mr. Dhillon: Do we have time for another question?

The Chair: Very briefly.

Mr. Kular: Most of my question is answered. I'm a family doctor and a politician. As you know, drunk drivers cause a lot of mortality, morbidity for our province. It was about the mandatory insurance. Being a physician, I know what it means. I think it would be nice to be included, but still it should depend upon—

The Chair: Mr. Kular, I'll have to intervene at this point. Ladies, thank you very much, Ms. Timms and Ms. Leonard, for your presentation on behalf of the Ontario Community Council on Impaired Driving. Thank you.

FEDERATION OF ONTARIO MEMORIAL SOCIETIES–FUNERAL CONSUMERS ALLIANCE

The Chair: I now move directly to our next presenters, and they are Ms. Pearl Davie, president and chair, and Mr. Al Gruno, vice-president, of the Federation of Ontario Memorial Societies–Funeral Consumers Alliance. Please be seated. As you've seen, you have 15 minutes in which to make your presentation, and I would invite you to please begin.

Ms. Pearl Davie: Thank you. This is with respect to amendments to the bereavement-related statutes.

The Federation of Ontario Memorial Societies–Funeral Consumers Alliance—we use the acronym FOOMS–FCA—is an umbrella organization of memorial societies in Ontario, which was established in 1984 to work with governmental and non-governmental organizations with respect to consumer protection in the death care sector.

In case anyone doesn't know, memorial societies are non-profit, volunteer-run organizations advocating the pre-planning of simple funeral arrangements and access to alternatives. They are made aware, through their members, of difficulties encountered with the funeral industry and therefore approach the matter of legislation from a position of first-hand knowledge which no other organizations offer.

Representatives of the FOOMS–FCA legislation committee have been involved with legislation and regulation as consumer advocate during the formulation of the Funeral Directors and Establishments Act, 1990, the Cemeteries Act (Revised) and the Funerals, Burials and Cremation Services Act, 2002. Our concerns have always

been that any legislation related to the death care industry should contain strong consumer protection and not restrict choices of the consumer as to the type of disposition arrangement desired. All member of FOOMS are unpaid volunteers who donate their time and knowledge to this cause.

We are presently concerned with amendments to the Funerals, Burials and Cremation Services Act, 2002, and regulation, as outlined in Bill 152, bereavement sector, before the standing committee today. The government of Ontario has used many resources, including time, expertise, and tax dollars, over several years to enhance consumer protection in the legislation and regulation in this area. The process has been fair and open.

Legislation committee representatives participated in the bereavement sector advisory committee meetings and have appreciated the attention paid by the government to ensure that the consensus and standards set by the committee are met.

We have consistently advocated for a strong code of ethics for the industry as a whole and anticipate that the amendments to the act and regulation will enforce an ethical approach to consumers at this emotional time in their lives.

We are particularly concerned that where commercial enterprises are located on tax-exempt cemetery land, the appropriate realty and business taxes be assessed and paid to the local municipality and not absorbed into the care and maintenance funds of the cemetery. This would help ensure a more level playing field with other commercial enterprises that are not located on cemetery land. There may be not-for-profit cemeteries which have not-for-profit funeral establishments located on their property, and taxation in this case would be directed to the care and maintenance fund.

An example of the need for amending and updating the legislative and regulatory framework would be found in the case of so-called "visitation centres." These centres are, in effect, pseudo-funeral establishments where some activities normally carried out in a funeral establishment take place. These visitation centres presently lie outside the current legislation, are not licensed and pay no tax, but will be licensed and subject to taxation in the new legislation. They are part of a business. It is in the interest of Ontario consumers that all death care sector activities take place under the protection of the Funerals, Burials and Cremation Services Act, 2002, and the relevant sections of other acts, such as Bill 152.

FOOMS–FCA finds that although not perfect from our perspective, the act and proposed regulation achieves a good balance between protecting consumers at a time of vulnerability and allowing the industry a generous scope within which to conduct its business. The updated legislation allows for the orderly introduction of new technologies and changes in consumer's wishes such as greener or more environmentally aware dispositions. Oversights and imbalances from the existing regime are also corrected to a large degree. Again, imperfect, but that's humanity.

We therefore support the passage of Bill 152 and the proclamation of Bill 209 in a timely fashion. We've had numerous discussions over the past several years with consumer representatives and memorial society leadership in other provinces. These people look upon the Ontario legislation and proposed regulation as a tremendous achievement and a real advancement in this sector for both consumers and service providers.

I haven't taken up much of our time because we always try to be brief and to the point. I would certainly entertain any questions.

The Chair: Thank you, Ms. Davie. Yes, a generous amount of time, beginning with Mr. Kormos. About three minutes-plus.

Mr. Kormos: Thank you, folks, very much. Obviously this has caused some—now the Bill 209 you're talking about, is this the Consumer Protection Act?

Ms. Davie: No, this is the Funerals, Burials and Cremation Services Act.

Mr. Kormos: That's the Hudak bill from back in the last government.

Interjection: That's right.

Mr. Kormos: So three years later, it has still not been proclaimed.

Ms. Davie: No. It received third reading on December 13, 2002.

1640

Mr. Kormos: Wow. This is starting to make it a little more—what's going on? I talked to the minister, and the minister was very generous in his time with me. In his letter, he's got reference of this matter to Judge Adams, who mediated, brought everybody together—

Ms. Davie: Yes, the bereavement services advisory committee. It was a round table process. It was very, very useful. The intent was to achieve some kind of consensus within the different segments of the industry and to bring them all into sort of an agreement. The agreement was that consumer protection was, first and foremost, the most vital part of the process. With the current legislation, one is for funeral directors and establishments and one is for the cemeteries. The new legislation, Bill 209, will bring in all the aspects of the death care industry: monument builders, casket dealers, crematoria—

Mr. Albert Gruno: Cemeteries and the funeral establishments themselves.

Ms. Davie: —and the funeral establishments and transfer services. It's an umbrella type of legislation. Under it, for example, commission salespeople will be licensed.

Mr. Kormos: That's why I was surprised when the small mom-and-pop funeral homes expressed concern about this legislation, because I thought the matter had been resolved. What's happened? Do you know?

Mr. Gruno: Basically, from the BSAC, almost everything was resolved except some issues of taxation. Most cemetery land is exempt from taxation, so we can have a funeral establishment, a transfer service, we could have a crematorium located there, we could have a funeral home located on the cemetery land. So if it's not taxable land,

how is it dealt with? This is a tremendous business advantage to those who do not have cemeteries that they own to locate themselves upon.

The current thinking from the ministry, that we support, is that that portion of the cemetery land that's used for commercial purposes is taxed at the commercial rate—it's a commercial operation—and that tax is then due and payable to the municipality in which the land sits. This is only fair, the same as any other business. The other funeral establishments that don't sit on cemetery land are taxed and pay taxes to the municipality that they reside in. So we looked for a level playing field. It was one of the keys of the BSAC, and Bill 209 very much reflects and adheres closely to this consensus that was achieved.

The Chair: Thank you, Mr. Kormos. With respect, to the government.

Mr. Khalil Ramal (London–Fanshawe): Thank you for your presentation. We listened to a similar presentation yesterday. To my knowledge, I think some cemeteries are being used by religious institutions for their ceremonies and special issues. They're the only ones exempted from taxes. Do you agree with this?

Mr. Gruno: They would remain exempt from taxation.

Ms. Davie: They would remain exempt, yes: religious, municipal and not-for-profit.

Mr. Ramal: How would your proposal benefit your members?

Ms. Davie: Do you mean memorial society members?

Mr. Ramal: Yes.

Ms. Davie: The idea is freedom of choice. We would like to think that the funeral directors, the business as a whole, would treat people fairly and would give good prices for minimal service, which is what memorial society people require. Therefore, the level playing field means that the free-standing funeral home operator is in the same position as a funeral home operator on cemetery land, if the taxation is assessed and enforced. It benefits our members in that it creates the level playing field.

Mr. Ramal: Thank you.

The Chair: Thank you, Mr. Ramal. If there are no further questions, to Mr. O'Toole.

Mr. O'Toole: This part of the bill, this particular schedule, was sort of stuck in here at the last moment and hasn't received as much attention, perhaps, as it may have deserved. In fairness, I want to compliment you for an honest presentation. You're recognizing the work that's gone on in this area.

Ms. Davie: It has been tremendous. It's been policy people and everybody involved. It's just been tremendous.

Mr. O'Toole: I had a vague familiarity from my time in government with Bill 209 and the Adams report and a couple attempts at getting this thing right. I'm also looking at a memo issued by the minister today, because there have been meetings with House leaders to try to find consensus.

I have several calls to make today to people who have contacted me, because I guess I'm the only remaining member, to find if that consensus still exists. Are you familiar with Mr. Phillips's letter of today?

Ms. Davie: Just today, no.

Mr. O'Toole: Well, this one here says that any new activities would basically be treated as commercial. He added on the cemetery activities, and that's the future in the business, the crematoriums and other things, because that's a growing practice. The difference here is that they would be making payments in lieu of taxes, which is what municipal buildings pay today. But what is the rate? As long as it's a level playing field, I have no problem; if it's fair, and there's a responsibility under the act to make sure there are perpetuity funds. Are you satisfied that this bill, together with Bill 209, will achieve the fairness principle as well as the perpetual care—

Mr. Gruno: Yes, we're very much in favour of the bill as it stands now. As we say, it's not perfect from a consumer's point of view, it's not perfect from the industry's point of view, but given the conflicting concerns that both consumers and the industry would have over this issue, I think it's about the best we're ever going to get. It's ready to go, except for this one taxation issue, as near as I can see. It was a very long process. There has been a tremendous amount of consultation—

Mr. O'Toole: That's the big issue, though. People are going to be demanding more efficient delivery models, you know, what they call alternative funeral services. That's the future. They're going to be looking for—and we've got to protect the consumer. That being said, it's almost like tied selling on the other hand. Do you know what I mean? Once you get in there and you're a member of a church or a community—bingo—you've got the whole thing. You've got the flowers, you've got the monument, all the stuff that goes with it, and it's tied selling, something that I don't think should be treated as lightly as it has been. That being said, I wouldn't profess that I know what you've brought to the table here today.

Ms. Davie: As we see it, the ability to pay taxes—assessments, shall we say—into your care and maintenance model, for a commercial enterprise it is definitely a commercial advantage, because while they don't get to keep the money to spend, they have to put it into the care and maintenance fund, nevertheless that enhances their care and maintenance fund. They draw the interest off that, and they use the interest to improve the cemetery. Presumably, if you're a not-for-profit—

The Chair: With respect, thank you, Mr. O'Toole, and thank you, Ms. Davie and Mr. Gruno, for your presentation on behalf of the Federation of Ontario Memorial Societies.

CANADIAN BANKERS ASSOCIATION

The Chair: I would now invite our next presenters, Ms. Hubberstey and Ms. Stephens of the Canadian Bankers Association. As you may have seen, the protocol is that you'll have 15 minutes in which to make your

presentation. Any time remaining will be distributed evenly amongst the parties for questions and comments. I would invite you to begin now.

Ms. Caroline Hubberstey: Thank you, Mr. Chair. Good afternoon. I'm Caroline Hubberstey, director of public and community affairs with the Canadian Bankers Association. I am joined today by my colleague Sandy Stephens, legal counsel.

Thank you, Mr. Chair and members of the committee, for the opportunity to provide the banking industry's views on Bill 152. I want first to express our appreciation to the government for conducting consultations involving a broad range of stakeholders on these issues.

Bill 152, as you well know, covers a broad range of issues. Our comments, however, focus on three areas: title fraud, fraud alerts and the Personal Property Security Act.

I will start with title fraud. This fraud exists under a larger umbrella of real estate fraud. For example, with respect to the types of real estate fraud banks encounter, the vast majority are value flips, where there is an organized effort to defraud the lender; and fraud for shelter, where an applicant will, for example, inflate their income to obtain a larger mortgage.

Any given real estate transaction can involve a number of stakeholders: buyers, sellers, lenders, real estate agents, title insurers, mortgage insurers, lawyers, land registries, mortgage brokers etc. I want to state that the banking industry takes the matter of real estate fraud very seriously and is working with other stakeholders to combat it. Our industry works with police and other groups to share information and get a better understanding of how this type of fraud is committed and see what steps can be taken, individually and collectively, to prevent real estate fraud from happening.

We support the measures in Bill 152 as a positive step to help combat real estate fraud and protect innocent consumers, and we will continue to work on clarifying some technical matters. With respect to the bill, for example, we support the view of other witnesses who have stated 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 mortgagee can enforce the mortgage and sell the property under power of sale. As well, we are working with the government on the additional initiatives it is considering to further secure access to the land title registry.

We want to express our appreciation to the minister and the ministry staff for involving stakeholders in consultation and being receptive to stakeholder comments. Without a doubt, this co-operative effort is of great value in the fight against real estate fraud.

1650

Bill 152 also amends the Consumer Reporting Act to provide for alerts to be placed on consumers' credit report files. This measure is aimed at helping stop identity thieves from using an individual's personal information to commit fraud.

The banking industry supports these amendments and believes that the fraud alert system will benefit consumers. As our industry is already subject to substantive legislative requirements, we are pleased that the bill provides sufficient flexibility to enable us to adapt our processes. We hope to have a similar opportunity—as the recent consultation process—to contribute to the development of the regulations in order to help ensure that the system is easy for consumers to use, and effective and efficient for creditors. In the end, we look forward to working with the government, the consumer reporting agencies and other stakeholders to build a strong fraud alert system in the province.

The fraud alert initiative is a positive measure in the fight against fraud and identity theft. I want to take this opportunity, however, to also talk about some other steps that need to be taken and how the Ontario government can help make them happen.

For the most part, stories about identity theft are stories about fraud, fraud that has likely resulted from an identity theft incident. Some may say it is semantics, but we make the distinction for a reason. It is because identity theft, which is the unauthorized collection and use of personal information, is not a defined statutory offence in Canada. In short, it is not a crime. The misappropriation of personal information inevitably leads to a broad range of criminal activity: financial crimes, forgery and impersonation; abuse of government financial programs and identification documents, such as health card fraud; and to the funding of organized crime.

So why wait for the fraud to happen, and all the ensuing harm to consumers, businesses and government, before the criminals are stopped? The answer lies in this question: At what point in the continuum of criminal activity should criminal law be applied to an issue? We think that early intervention is needed.

This serious gap in federal criminal law is a consumer protection matter that must be addressed. In addition to making identity theft a defined offence, we are also calling for changes to make it illegal to possess multiple pieces of identification for a number of individuals and to traffic stolen personal information.

We strongly encourage the Ontario government, along with its provincial colleagues, to continue to press the federal government to make these needed changes.

In addition, we believe that efforts should be targeted at significantly improving the quality, integrity, consistency, security and reliability of identification documents issued provincially and federally. These are the foundation, or root documents, for identity theft and identity creation.

The integrity and security of documents is inconsistent, and there are few reliable ways to authenticate identification. For example, if you look at provincial drivers' licences, they range from one extreme to the other. Alberta has one of the most secure in North America. It incorporates such features as laser engraving, anti-copy ink colours, raised text, a high-definition photo with soft edges, fluorescent ink and more. New Brunswick,

however, just moved to mandatory photo drivers' licences in January 2005. Other provinces, including Ontario, have different standards as well.

Financial institutions and other credit and service providers need to verify customer identity. How well this is done depends largely on the integrity of the identifying documents received. It also depends on the extent to which the institution or business can verify the authenticity of the documents. To aid this process, we also think that systems could be adopted that would allow for the use of federal and provincial data banks for the purpose of validating identification documents. In this regard, we can learn a lot from other countries. Australia, for example, is prototyping a document verification service. No personal information is transmitted; it's just simply yes, it is valid, or no, it is suspect.

I want to reiterate that the banking industry supports the fraud alert measures in Bill 152, but we also encourage the government to take steps to improve the integrity of provincial identification and to press the federal government to modernize the Criminal Code.

The banking industry commends the government for its commitment to modernizing Ontario's business laws and for recognizing the importance of ensuring that Ontario's business laws are up to date and consistent with other jurisdictions. The Personal Property Security Act is extremely important commercial legislation which facilitates the provision of credit and economic growth in our province. We support the majority of the amendments to the PPSA introduced in this bill; however, there are a number of areas of concern which we would like to outline.

The check-the-box system for classifying collateral in the PPSA: The bill amends the PPSA by removing the check-box system for classifying collateral and replacing it with a system that requires the secured party to provide a narrative description that describes the collateral by item or type.

The current system is simple and effective, and there does not appear to be any pressing reason for change. Given the transitional issues that would arise and the costs of systems changes, it does not seem worthwhile to change a process that already works effectively.

Errors in security agreements: The bill has repealed subsection 9(2) of the PPSA, which provides that a security agreement is enforceable against a third party despite a defect, irregularity, omission or error unless the third party is actually misled. We do not believe that a defect, irregularity, omission or error in a security agreement should affect its enforceability against a third party who has not been misled. We believe that subsection 9(2) should be retained.

Incomplete collateral descriptions in security agreements: Subsection 9(3) of the PPSA, which provides that the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described, has been repealed in this bill. It has been questioned whether this subsection should be deleted on the basis that subsection 9(3) is redundant in light of the court's powers to preserve a security agreement with respect to collateral properly described by severing collateral that is insufficiently described. The banking industry believes that subsection 9(3) provides certainty on this issue and that deleting this section would not improve the PPSA. It is imperative that the PPSA be relied upon for clarity whenever possible, as opposed to court actions, which are timely and costly.

"Sales in the ordinary course of business" priority rule: Section 28 of the PPSA provides that a buyer of goods from a seller who sells the goods in the ordinary course of business takes them freely from any security interest given by the seller, even a perfected security interest of which the buyer was aware, unless the buyer knew that the sale constituted a breach of the security agreement. This provision is amended, in part, to add that the buyer is protected regardless of whether the buyer took possession of the goods. Similar amendments are made to clarify and enhance the protection given to lessees of goods from a lessor who leases the goods in the ordinary course of business.

We agree with these changes generally, subject to the caveat that a secured party who has perfected its security interest by possession of the goods at the time of sale to the buyer should prevail over the buyer regardless of the buyer's good-faith purchase in the ordinary course of the seller's business. This is consistent with the Ontario Bar Association's 1998 submission. If a lender has possession, it may well be at the time of default, and it would not be appropriate that a buyer would prevail over a lender at that time.

Section 62 of the PPSA is amended to exempt collateral goods that would be exempt under the Execution Act from seizure by a secured party upon the debtor's default, except in the case of a purchase-money security interest in specific goods or a possessory security interest. We believe that this is too broad an exemption, and that the exemption from seizure should apply only to apparel and basic household goods. Otherwise, credit availability could be affected.

Larger assets, such as automobiles, motorized homes, recreational vehicles, boats etc. are commonly pledged for routine loans, as these items are generally the best collateral, after a house, that a debtor can provide. If lenders were unable to count on the security taken by a loan, they would be reluctant to lend in such circumstances or be obliged to charge a higher rate of interest to compensate for the increased risk. This would not be in the consumer's interest, and therefore such an amendment should not extend to larger assets. Luxury items such as hot tubs, media and entertainment systems, pool tables, satellite dishes, paintings and other non-essential household goods should also not be considered exempt.

We also would be opposed to an exemption on personal property used by a debtor in their business, including farming. Such large asset items may be the only items that can be pledged for a loan, and to render them unenforceable would be problematic for direct lending to

individuals who derive their livelihoods from such activities.

Finally, the bill amends subsection 40(1) of the PPSA to clarify that a person obligated on an account or on chattel paper who has not made an enforceable agreement not to assert defences may set up against the assignee of the debt, by way of defence but not by way of counterclaim:

(1) Any defence that would be available to the debtor against the assignor arising out of the terms of their contract or a related contract, including equitable set-off and misrepresentation; and

(2) The right to set off any debt owing by the assignor to the debtor that was payable before the debtor received notice of the assignment.

While we generally agree with this provision and it is an improvement from the current wording, the banking industry believes that subsection 40(1) should be revised to reiterate the common law position that an assignee is not subject to defences arising outside the assigned contract and related matters other than those which qualify for legal set-off.

I've covered a lot very quickly, but thank you very much for your time. We'd be pleased to answer any questions.

1700

The Vice-Chair (Mr. Khalil Ramal): Thank you very much for your presentation. We have three minutes left. We can divide it equally among the three parties. We'll start with the government side first.

Mr. Dhillon: Thank you very much for your presentation. How big of a problem is real estate fraud?

Ms. Hubberstey: In looking at real estate fraud, as I noted in my comments, it is a larger umbrella, so there are different pieces under it. When you are looking at quantifying the extent of real estate fraud in its broadest sense, it's an equation: It's A plus B plus C plus D plus E. Lenders would be A. When you're looking at the bank industry in the province, or in Canada nationally, banks represent about 60% of the outstanding mortgages, so we'd even be just part of a lender number. When you're looking at it from the banking industry's perspective—we're not taking into consideration other lenders, title insurers, mortgage insurers or others, and you need those to get a comprehensive figure—if I look nationally and, as a proxy, at loan losses on the mortgage portfolio, we see that the banks hold about—

The Vice-Chair: Thank you very much. Mr. Tascona.

Mr. Tascona: Thanks very much for your presentation. Dealing with mortgage fraud, I think you're aware that last week, or before that, Justice Echlin rendered a decision with respect to mortgage fraud. I think he commented on the banks' practices in terms of their knowledge of what was going on and why he didn't allow the registered fraudulent mortgage to stand. Any comments on that decision?

Ms. Hubberstey: I can't speak to the individual case in question, but I will say that the banks engage in significant due diligence processes as they go through the application on a mortgage. I would love to get into technical detail on what they do, but when I put it in a public forum like this, criminals also read Hansard, and we don't want to put a lot of this information in the public domain because we know from investigative media stories that once that happens, anecdotally, certain frauds go up because it becomes a how-to. But there is significant due diligence that the banks do to be able to ensure that the mortgage is legitimate.

The Vice-Chair: Thank you very much. Mr. Bisson.

Mr. Gilles Bisson (Timmins–James Bay): You only had a minute and you were almost at the point of an answer to Mr. Dhillon's question, which is, how much mortgage fraud would you see within the banking industry?

Ms. Hubberstey: The banking industry as a proxy: We have $430 billion on a mortgage book. If you look at the loan loss provisions in the mortgage portfolio, it's about $33 million nationally; 45% of the book is held in Ontario, which is about $15 million on loan losses totally, of which a fraction of that would be losses attributed to fraud. As noted in my speaking notes, the majority of the fraud we see—

Mr. Bisson: So $33 million in defaulted loans or $33 million—

Ms. Hubberstey: Defaulted loans, and fraud would be a portion of that.

The Vice-Chair: Thank you very much for your presentation. Your time has expired.

BARRIE ASSOCIATION OF REALTORS

The Vice-Chair: Now we have with us the Barrie Association of Realtors. Welcome, sir. I know you know the procedure. You have 15 minutes.

Mr. Henry Spiteri: I'm kind of new to this procedure, but thank you for letting me speak.

My name is Henry Spiteri. I'm the political chair of the Barrie Association of Realtors. On behalf of the association, I would like to thank the Minister of Government Services, Gerry Phillips, for his initiative to help address title fraud in Bill 152. I would also like to thank Joe Tascona, MPP for Barrie–Simcoe–Bradford, for his initiative to help us stop title fraud in his private member's bill, Bill 136.

Title fraud is one of the most serious crimes that the people of Ontario face today. It undermines the very security of the land titles system and therefore the security that the people of Ontario have based their lives working for. For most people in Ontario, owning a home is the largest single investment they will ever make, a crucial base for their retirement planning and social and physical well-being. Title fraud will affect some people at a vulnerable stage of their life when they are looking forward to retirement and a quieter life.

The structure of the current registry system has been compromised and the resulting fallout is biased and unfair. We need immediate decisive action to stop further innocent people from having their property swindled

from them and having huge mortgages fraudulently registered against their properties.

We believe that the government should consider the following recommendations:

—that the innocent property owner victims of fraud be provided with a method to have illegal registration overturned immediately, failing which, due to time lags—if they're out of the country and unaware of what's going on—given immediate access to the land titles assurance fund as the fund of first resort;

—that the innocent buyer not be given the right to seek damages from the original innocent property owner; however, that they be allowed to seek immediate compensation from the land titles assurance fund, which should be, again, the fund of first resort;

—that the mortgage illegally registered against the property be unregistered and that the financial institution not be given the right to seek damages from the original innocent property owner;

—notifications of title transfer being sent to the registered title holder of any property owner prior to the transaction taking place;

—the establishment of a secure system of identification numbers to identify the registered owners and registered mortgages;

—discourage drive-by appraisals of properties;

—require certain transactions to take place in person;

—that all cases concerning title fraud are handled as expediently as possible with a minimum of expense to the innocent parties and that the right of the original property owners be of paramount importance;

—that the new changes and remedies be available to past victims of title fraud.

Thank you for your time. If you have any questions, I'll be happy to answer them.

The Vice-Chair: Thank you very much for your presentation. I guess we have a lot of time for questions, so we'll start with Mr. Tascona.

Mr. Tascona: Thanks very much, Henry, for attending here today. Your input is very helpful. Have you spoken to the Ontario Real Estate Association about what their feeling is on this? I think they're meeting tomorrow.

Mr. Spiteri: Yes. Actually, our meetings are starting today, and I have discussed this somewhat. Some of the points of view that I put forward were recommendations that they had expressed, but at this point I'm speaking on behalf of the Barrie real estate association.

Mr. Tascona: Okay. There is some suggestion from the government that they're going to—this is from Minister Phillips's letter, which I received yesterday, dated November 22, on controlling access to registered documents. He says, "Currently, we are proposing restricting the right to register a transfer of title to lawyers, while allowing other documents to be registered by those who meet the additional criteria," which would be standards relating to identity, financial solvency and appropriate qualifications. So it would appear that the government is going to work toward just dealing with lawyers, though they say they'll continue to work with the law society and other real estate professionals to further define the criteria. They're looking at restricting access, but it may be primarily focusing on giving lawyers the right to register. What do you think of that?

Mr. Spiteri: At this point, I don't know whether I really want to comment on that. As far as lawyers are concerned, they're an integral part of this process. Realtors, to some degree, are as well. At this point, I don't feel qualified to answer that question.

Mr. Tascona: Okay. In terms of power of attorney, do you come across dealing with power of attorney on transactions?

Mr. Spiteri: We do come across them very, very rarely. When we do come across them, we usually contact the lawyer who is representing the person to verify that there is indeed a power of attorney and that it's legal.

Mr. Tascona: What do you require, though? Do you require more than just a copy of one? What do you look for?

Mr. Spiteri: We get the copy of one and then again we do call the lawyer who is representing the client, representing the person who holds the power of attorney, to confirm if that power of attorney is in fact a legal power of attorney allowing them to deal in that transaction.

The Chair: Thank you, Mr. Tascona.

Mr. Tascona: Maybe John has a question. Do we still have time?

The Vice-Chair: We divided it equally, four minutes each.

Interjection.

The Vice-Chair: Yes, but equal time for each party. Mr. Bisson?

Mr. Bisson: That's fine.

The Vice-Chair: Do you want to give your question to—

Mr. Bisson: No.

The Vice-Chair: No? Okay.

Mr. Dhillon: Thank you very much for your presentation and for coming here all the way from Barrie. From a realtor's perspective, how big a problem is real estate fraud?

Mr. Spiteri: I last read in the Star it's about 32 separate cases—this is what I just read recently in the Star—that have been reported with title fraud. I'm not in a position to confirm that, but I know in our own city there is one case that has definitely gone forth. So I am fully familiar with that particular case.

Mr. Dhillon: Thank you.

The Vice-Chair: There are no more questions? Okay, thank you very much for your presentation.

1710

ONTARIO ASSOCIATION OF CEMETERY AND FUNERAL PROFESSIONALS

The Vice-Chair: The Ontario Association of Cemetery and Funeral Professionals is here with us. You are the legislative chair, Glen Timney?

Mr. Glen Timney: Right.

The Vice-Chair: You can start anytime you're ready, sir. I believe you know the procedure. You have 15 minutes.

Mr. Timney: Yes, I do. My name is Glen Timney. I've been working in the cemetery industry for 35 years, so I've got a lot of history behind me. I was involved in the legislation when it was passed in 1993, the current Cemeteries Act and the Funeral Directors and Establishments Act. I have been chair of the OACFP—if I may use that short form—legislation committee for the province for the past 10 years, negotiating the new legislation, the bereavement sector in Bill 152, that's before you.

I'll just give you a brief history of the association. It's a non-profit educational association that was established in 1913. Its membership services over 85% of all the burials and cremations that take place in this province on an annual basis, so it's coverage is extensive. Members originally represented just cemeteries. Our cemeteries are religious, municipal, not-for-profit and commercial in nature, so they're the entire breadth of cemetery ownership.

In 1930, as cremation expanded, the association changed to envelop and invite crematorium operators into the industry. In 2002, we expanded and changed our name and changed the mandate to include the entire breadth of the bereavement industry. Now funeral directors, transfer services and marker retailers are also members of the association, so we represent now all segments of the association.

I just want to speak to you on Bill 152. At the start, I want to say that I'm disappointed that some of my industry colleagues have made presentations to the standing committee expressing concerns about portions of the bill that are before you.

The Funeral, Burial and Cremation Services Act has been over 10 years in negotiation and in the making. A select group of industry representatives negotiated changes with the Cemeteries Act and the Funeral Directors and Establishments Act within the framework of the red tape secretariat about five or six years ago. Following a change in government, we then established a bereavement services advisory committee, which was established to reach consensus pertaining to legislative change.

Consensus was achieved within the bereavement services advisory committee amongst all segments of the industry participants after almost two years of negotiations. Those industry participants included funeral directors, cemetery and transfer service operators, marker retailers, casket retailers, consumer and industry association members.

The government policy advisory staff have been using the BSAC recommendations as the basis for proceeding with both Bill 209—regulatory development through clusters—and now into Bill 152. The regulatory development, which is not before you, was divided into seven thematic clusters. We have completed five of those regulatory clusters. As we worked through those clusters, we realized that there were some omissions in Bill 209 that needed to be changed, so what you see before you today in Bill 152 are the changes that needed to be incorporated as the development of the regulations took place.

My disappointment stems from the fact that the very individuals who participated in the negotiation process culminating in Bill 152 are the same individuals who stood before you yesterday and asked for extensive changes to the bill, making misleading, partial and erroneous statements.

When consensus is reached and agreed upon, an individual or association should stand behind that decision. I personally believe it is irresponsible to achieve consensus on one hand and then walk out of the room and continually lobby an attempt to undermine decisions that were thoroughly researched and openly discussed.

There are certain segments of the bereavement industry who have had and will incessantly lobby in order to derail legislation, in order to hide behind existing legislation, to protect their own self-interests, not the interests of Ontario's consumers.

The standing committee needs to be careful that the vocal minority does not negatively impact on and undo almost 10 years of hard work throughout the industry. No legislation is perfect. Each segment of the bereavement industry has had to give and take throughout the process.

The bottom line for Bill 152 is:

—Will the new legislation serve consumers well? The answer is yes.

—Will consumers be afforded increased protection? The answer is yes.

—Will all segments of the industry be covered under this legislation? The answer is yes, and that is a large consumer protection, because in the past, only cemeterians, crematorium operators and funeral directors were legislated. Marker retailers and casket retailers were not legislated. If someone sold a monument or a casket preneed, they could put the money in their pocket and walk away, and when the consumer came to claim it, nobody was there. So there was no protection for the consumer. All segments of the industry will now be under consumer protection and licensed and regulated.

—Has a level playing field been established to ensure all segments of the bereavement industry can compete fairly? Yes.

I could stand before you and give you all kinds of reasons why Bill 152 will be negative and we should not pass it. Are we 100% happy as an association? No. As I said before, everybody needs give and take. But there are things that we need to understand and things that we need to move forward with.

I understand previous presenters were concerned about educational requirements for licensing. Government staff have this well in hand and the minister has assured the funeral directors that the educational requirements that they currently have at Humber College will be respected. Educational requirements will be defined within the regulations. An industry committee has been established to discuss and negotiate educational requirements for li-

censing. The first meeting actually takes place this Thursday, and I believe the educational requirements can be successfully negotiated and defined by the steering committee and then adopted within the regulatory framework.

I want to focus on one issue. Concern was expressed regarding the ability of a cemetery to make payment in lieu of property taxes to their care and maintenance fund. The presenters either misrepresented the intention of subsection 54(1) of the bill or still, unfortunately, do not fully understand how the cemetery's care and maintenance fund works.

The intent of this legislation was to assist cemeteries throughout the province to improve upon the deficit positions they currently find themselves in within their care and maintenance funds. Over 96% of all cemeteries have insufficient care and maintenance funds to maintain their properties today. Insolvent cemeteries must be taken over and maintained by the local municipality in which they are located, without compensation. This has been carefully researched by the cemetery industry. It has been discussed at length, and the position of payment in lieu of property taxes is supported by both the Association of Municipalities of Ontario and the Association of Municipal Clerks and Treasurers of Ontario. Those two associations clearly see this position as it stands in the legislation as a win-win position. It recognizes that cemeteries have a unique perpetual obligation to maintain. No other sector of our industry has that.

AMO and AMCTO are the municipal bodies responsible for taxation, and they do not wish to assume administrative responsibility for this. I was present at a meeting when AMO, AMCTO and the Ministry of Finance were discussing this with the policy branch, and it was rejected that property taxes would be paid. They said the administrative burden versus the amount of property taxes that would be collected would be overwhelming. They prefer that the care and maintenance contribution would be a safeguard to cemeteries which would reduce the insolvency of cemeteries. If a cemetery becomes insolvent, the municipality is forced to assume responsibility. It is the unsuspecting taxpayer who lives in that municipality who must carry the burden through increased property taxes.

A level playing field is created for industry participants, and I want to explain that. I'll use an example. If, for instance, you had to pay property tax in Toronto, it might be $100,000. We're talking maybe, at maximum, if this legislation changes, 20 or 30 of these units that would pay property tax within the province. That $100,000 goes directly into a care and maintenance trust fund on an annual basis, instead of going to the municipality to pay taxes into their general coffers. The cemetery at no time can access any capital from that care and maintenance trust fund, so the belief that capital could be used by the cemetery as a building fund to build chapels, to build mausoleums, columbariums, funeral homes, visitation centres, whatever you wish to call it, is false and wrong. A cemetery cannot access capital within its care and maintenance fund. There is one exception. If you are a small cemetery, you do not have general funds, you're almost full and you wish to acquire an additional half-acre or acre of land immediately adjacent to your property so you can continue to sell interment rights, you can borrow from that fund, but you must repay it. That is the only exception in access to the care and maintenance funds.

1720

If you look at the care and maintenance funds—you don't have access to the capital. All you have access to is the investment income. That would generate $5,000 a year if I got a 5% return on that $100,000, and that $5,000 is restricted under the act and it can only be used to maintain roads, sod graves, regrade graves, fix fences, pay for security, fix sewer systems and maintain the property. It can never be used for a business venture by a cemetery. So the level playing field is accomplished with a contribution in lieu of payment to the care and maintenance trust fund because $100,000 is taken out of the general fund of the cemetery as it would if you're paying taxes and it's put into the care and maintenance fund where all it can do is benefit the community by making sure there are funds to maintain the cemetery. It is a level playing field because the same amount of capital comes out of the pocket.

Negotiations have been lengthy and detailed and they've been well-thought-out. There's a definite need to move forward with this legislation in its current form and bring closure to negotiations. Delays will only provide the vocal minority with an opportunity to continue to lobby government for self-serving changes to protect the status quo. The consumer will continue to be the pawn in the process.

OACFP commends the government for bringing forward Bill 152. They commend the policy and legal staff, Rob Dowler, the assistant deputy minister, and Liz Sandals, the parliamentary assistant who participated in this process, for preserving throughout the process an assurance that the BSAC recommendations, which were hammered out over a period of years, were adhered to in all processes in the changes in the act and the changes in the regulations.

While it's not perfect, the OACFP, which represents the vast majority of this industry, supports the passing of the bill in its current form without changes. The bill is written in a form that will provide industry participants and government staff with the latitude to make adjustments, where necessary, within the regulations before they can be proclaimed. The OACFP asks the standing committee to support Bill 152 as submitted and not to remove it from the overall modernization bill that's before you.

The Vice-Chair: Thank you very much for your presentation. We have about three minutes. We can divide it equally between the three parties. We'll start with Mr. Bisson.

Interjection.

The Vice-Chair: Okay. Government side.

Mr. Dhillon: Thank you very much. I have no questions.

The Vice-Chair: Sir, you have one minute.

Mr. O'Toole: Thank you very much. I appreciate your input because there have been some, if you will, people raising issues that I know are technical in nature and industry-specific. You're familiar with the clarification done by Minister Phillips that I received today?

Mr. Timney: Yes.

Mr. O'Toole: You've seen that?

Mr. Timney: I have not seen it, but I'm familiar with its content. It has been explained to me.

Mr. O'Toole: It has? That's good. The previous presenters were also more or less suggesting that the remnants of Bill 209 and the regulations, plus this Bill 152, would bring the industry to some level of fairness.

Mr. Timney: Yes. I believe Bill 152 and the regulations that will subsequently follow will—

Mr. O'Toole: For me, as a constituency person, I can only think of really three things that I'm genuinely interested in. I have no ties whatsoever, except I expect to be in one of those businesses some day for a brief period of time. It's the quality control issue, the affordability issue and the consumer protection issue. This all started back in the 1900s—

The Vice-Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: I thought there was three minutes. I'll use all the time.

The Vice-Chair: I'm sorry. The time was divided equally between the three parties.

Mr. O'Toole: But he has passed his time.

The Vice-Chair: No, he said no and the other one said no. My apologies. Your time is up.

Thank you, sir, for your presentation.

HULSE, PLAYFAIR AND McGARRY

The Vice-Chair: Now we have with us Hulse, Playfair and McGarry Inc. I believe we have with us Brian McGarry, the chief executive officer and owner, and Tom Flood, senior vice-president; is that correct?

Mr. Brian McGarry: Yes, that's right. Thank you.

The Vice-Chair: Sir, you can start any time. You know the procedure. You have 15 minutes. You can divide it equally between speaking time and questions and comments.

Mr. McGarry: I am pleased to be accompanied by my colleague Tom Flood. Already his involvement has been explained.

I must say, just in passing, that both of us have spent some time in elected office, so I think we can appreciate what you folks do day in and day out for the province of Ontario, albeit our experience has been on the municipal level. We appreciate being given some time today and a fair hearing. We will try to keep our remarks relatively brief. Perhaps questions are as significant as the presentation itself.

I will only be addressing three areas: fairness in taxation, educational standards and transparency in bereavement sector ownership, all of which are crucial, I think, not only to ourselves but to the public at large. The fact that these issues are in an omnibus bill is somewhat disconcerting, considering their importance to every citizen in Ontario. As we well know, death touches every family and every one of us eventually.

With regard to fairness in taxation as it relates to cemeteries, funeral homes and crematoriums, I have the following remarks.

Of course, as the previous speaker said, many of us have had the privilege to serve on the bereavement services advisory committee with Justice George Adams. There's no question—a very capable and fair gentleman who brought diverse groups together. His mandate was to create "a level playing field for industry participants that is open to competition, accepting of fair rules of taxation and regulation and responsive to the trends of changing consumer preferences." Indeed, they are changing.

From this mandate and principle, it is obvious that the legislation and regulations should not create a situation where privately owned, independent funeral homes, which I represent in part today, continue to pay taxes as we have for decades, while some cemeteries at least will receive, I believe, special favour—varying in degree from no property taxes to grandfathered tax exemption to a notion that some cemeteries would pay into a care and maintenance fund, referred to by the previous speaker, which I believe only compounds the unlevel playing field.

I'd say to you, and I ask you to listen carefully, wouldn't it be grand if privately owned funeral homes were able to set aside some of their tax and instead invest these funds into our landscaped areas, our parking areas etc., which is in fact part of the cemeteries' property now and currently comes under care and maintenance? There's no distinct definition of a cemetery at this point, and I'm concerned how it will be distinct in the future.

I have to say that there has been a history here that would warrant why we're here before you today. It's rarely said to you that before the legislation has been proclaimed and before any regulations have been written, cemeteries have been servicing funerals on their tax-free properties, some for over 10 years already—I think that's worth noting—while the rest of us in our industry have been paying the regular taxes—you can only imagine what they would be—in Toronto, Ottawa, Hamilton and indeed rural areas. I think the answer is very clear and very simple: If any entity is entering the bereavement sector by way of funeral homes, crematoriums or cemetery lands, all should be treated equally, that is, all pay municipal taxes as every other citizen in Ontario does now.

I won't go through why fire trucks, police, ambulance, water services etc. service all of us, and they certainly service cemeteries too. So if a care and maintenance fund has been low over the years, there's a formula there; it has been there. Generally, 40% of the sale price of whatever product goes into a trust fund. What has happened to these funds I can't answer, but if they're

short, it shows a lack of good governance on their part with their trusts.

Attached to our submission you will find support of this principle by the Canadian Federation of Independent Business. They have examined the formula as it is and they're no more impressed with what has been suggested than we are.

Issue number two, educational standards for individuals engaged in advising bereaved families across Ontario: Yes, we are getting some insurance and we thank the minister for saying that funeral director standards will be maintained. It's not the funeral director standards we're concerned about; it's the standards of those who will be entering under this new legislation who are not funeral directors.

1730

We have two great centres. We have Humber College in Toronto and Boréal in Sudbury. They're enviable in their accomplishments for education and we should make sure that all bereavement sector participants have at least exposure to the training at these centres.

I'm going to suggest to you, and I'll stand by it, some conglomerate, large cemetery operations are having a curious but significant influence, and we'll see how the regulations will be written. I must remind you that we had in our partnership of Hulse, Playfair and McGarry for a number of years a large conglomerate cemetery. I can only say to you the severance of that relationship was happy on both sides, particularly our side. But time and time again I heard, "When the legislation comes forward, we'll carve out certain aspects of education." What that means is that contracts might be covered by regulation but the training—and this is an exact quotation—"will be accomplished by the cemeteries themselves."

I know what that means. I've witnessed it for a number of years. Permit me to translate what that training means. It means that you go out on the street and you sell to your neighbours, relatives and friends, and when you've covered these community contacts, the sales person is not likely needed any more. A revolving door of new sales people could be the norm and indeed is the norm.

I'm going to draw your attention to recent experiences in Hamilton, Ontario. There is an addendum attached here that explains it. As of today, there is yet another experience in the Hamilton Spectator of what I'm talking about, about sales people on the street who have received less than any meaningful education.

Again, a recent CBC program also depicted—and there's reference to that in my presentation. I won't go through the example, but it's not very pleasing.

If you want an out-of-province experience of what can happen when you have untrained personnel, all you have to do is click on to the Calgary Herald and look at the number of articles that have appeared over the past few years and see a nightmare personified when there are insufficient educational standards and a lack of locally owned monitoring systems.

Our point is very clear: Sales training is not what bereavement personnel need but rather an understanding of grief and its implications. Please, don't let educational standards in the bereavement sector be eroded or carved up to appease a sales force imposed upon a vulnerable client base, that is, mostly senior citizens. Not exclusively, but mostly senior citizens.

Whenever I hear and see—and I have first-hand experience; I'm underlining that. We had a partner for a number of years. Whenever I hear and see the large corporate interests emphasize sales of products, do you know what I've said to them in our boardroom any number of times? I remind them that, in my 45 years in funeral service, I've never yet received a thank you letter for the nice mahogany casket—not once in 45 years. Our firm is 81 years old and my predecessors, I suspect, never received a thank you for a mahogany casket. But you know what they did receive? We've received complimentary letters—most of them complimentary, at least—on services provided by our staff, women and men who are educated by Humber College and dedicated in the understanding of grief.

My point: Products are of very little consequence in our work today. But I don't think that some of the larger conglomerate organizations have appreciated that as yet.

One more illustration, if I may, as to why transparency in funeral home ownership, crematorium ownership and cemetery ownership is necessary, if not in the bill, certainly in the regulations. I can assure you, transparency is being avoided as we speak. I'm going to give you an example. It's a bit graphic but it's accurate and we had the experience in Ottawa.

Less than one year ago, two Asian families flew from China to Ottawa—you may have read about it in the newspapers—to repatriate the remains of their two unfortunately murdered boys, university students in Ottawa. Think of this. En route to their lodging in Ottawa, the families passed a huge billboard displaying a large casket coming at them with the caption: "Think Outside the Box." In other circumstances perhaps this message might be humorous but not when you're collecting your sons' remains to take back to their homeland.

Their question upon arriving at our funeral home was exactly this—my wife happens to be Asian, so she was able to talk to them in their own language—"Are you associated with the people responsible for that billboard?" Thankfully, we could say, "We are not associated."

You know, the government has mandated that the bereavement sector advisory committee come up with a clear set of rules and "mandatory disclosure of ownership and business affiliations." Presently, funeral businesses are being bought up across the province at a rapid pace. Some have already gone; more will have that happen. Think of this: Thousands of families have trusted literally millions of dollars—the Board of Funeral Services can give you the figure of the millions of dollars that are trusted in prepaid funds—only to discover that their prepaid trusts are now administered through a new owner

that's barely identified, and never identified in most cases, in their advertising, whether it be electronic, newspaper or otherwise.

Transparency of ownership is needed, not only in prepayments but also for families arranging at-need funerals. I am going to suggest to you that large business interests tend to remain invisible behind the reputation of the former local owner: That's done on purpose. Conglomerates are reluctant participants in the provincial policy—and it is policy; we need it written in regulations—of owner transparency. It doesn't exist. The previous speaker kept saying, "Why are you worried?" That is why we are worried.

We provide a necessary service to the most vulnerable in their time of need—I mean, you can appreciate that. Is it too much to ask for laws and regulations? And I emphasize regulations. I think Mr. Dowler will do his utmost to see that what may be weak in the legislation will be picked up in the regulations. I certainly hope so. That will keep decency and professionalism at the forefront.

In its present form, Bill 152 downplays the importance of the three points I've raised, and I submit to you that without some change to the bill, accompanied by meaningful regulations, a great disservice will be done, not only to independent funeral service providers but also to the taxpaying consumers of our province.

I'd rather keep a little time for questions, and I thank you for hearing us out. We are pleased to answer any questions you may have.

The Vice-Chair: Thank you, sir, for your presentation. Now we will start with the government side. Does anybody from the government side have a question? Mr. Dhillon, go ahead, sir.

Mr. Dhillon: Thank you for your presentation. How would these amendments affect your business?

Mr. McGarry: They don't create a level playing field. I want to deal with taxation very quickly. They don't create a level playing field. I hear how the trust funds will allow—I don't care whether it's $100,000 or $5,000. We, independents, can't take one tax dollar for our care and maintenance of our grounds—never mind our buildings—or for our parking etc. Parking costs a lot, by the way, in urban areas today. Can you imagine 80 parking spots in downtown Ottawa or Toronto? That's a lot of money. We can't divert any of our tax funds to take care of that property. So I'm asking the question: Why would another segment of our industry be allowed to use some funds for care and maintenance of their properties?

The Vice-Chair: Thank you, Mr. Dhillon. Mr. O'Toole.

Mr. O'Toole: You raised three separate points, and some of them contradicted the previous presenter. I'm not trying to start a conflict here, but this is exactly what we as innocent elected people, you will say—one of the previous presenters said that 94% of the care and maintenance funds are in deficit and that this particular change to paying the payment in lieu of taxes will help to offset this deficit. Is the private holding, the for-profit or commercial enterprise in cemeteries—do they have deficits?

Mr. McGarry: Well, of course, we haven't been allowed to be—I'm talking about the independent funeral directors.

Mr. O'Toole: Yes, but I mean where there are relationships with—

Mr. McGarry: Do you know why I'm suggesting they're in deficit? If you can't use 40% of the fee paid by the consumer to the benefit of your care and maintenance, there's something wrong, somewhere, with management. I mean, we survive on downtown property.

Mind you, those who have been in the business for a while in cemeteries on non-taxable property hold up the fact that "Oh, we are much less expensive than McGarry." I guess they are less expensive. Do you know that we pay nearly a quarter of a million dollars in property taxes a year? A quarter of a million dollars—and these folks want to pay zero. How is that level?

Mr. O'Toole: I think that the industry—you really are quite a contradictory group of presentations is leaving me with some unsettledness.

The Vice-Chair: Mr. O'Toole, thank you very much. Mr. Bisson.

Mr. O'Toole: These hearings are just being rushed anyway, and they'll pass this and ram it through, so—

The Vice-Chair: Okay. Thank you, Mr. O'Toole. Thank you, sir, for your presentation.

Mr. McGarry: Thank you.

The Vice-Chair: Now we are adjourned until Monday. Thank you very much to the people who attended this session and to all the members from both sides of the House, especially Mr. O'Toole, Mr. Dhillon and everybody here, and the staff, the clerk and everybody.

The committee adjourned at 1740.

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CONTENTS

Tuesday 28 November 2006