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Thursday 3 June 2004

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des débats
(Hansard)**

Jeudi 3 juin 2004

**Standing committee on
the Legislative Assembly**

Adams Mine Lake Act, 2004

**Comité permanent de
l'Assemblée législative**

Loi de 2004
sur le lac de la mine Adams

Chair: Linda Jeffrey
Clerk: Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 3 June 2004

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 3 juin 2004

The committee met at 1007 in room 228.

ADAMS MINE LAKE ACT, 2004

LOI DE 2004

SUR LE LAC DE LA MINE ADAMS

Consideration of Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes / Projet de loi 49, Loi visant à empêcher l'élimination de déchets à la mine Adams et à modifier la Loi sur la protection de l'environnement en ce qui concerne l'élimination de déchets dans des lacs.

The Chair (Ms Linda Jeffrey): Good morning. I'm going to call this meeting to order. This is the standing committee on the Legislative Assembly, and it's called to order. This morning we are called to consider Bill 49, the Adams Mine Lake Act, 2004. We meet today for the purpose of clause-by-clause consideration of the bill.

The committee has determined that each caucus is to be allowed up to 10 minutes to make opening statements at the commencement of clause-by-clause consideration.

I will now recognize Minister Dombrowsky to make the first 10-minute opening statement.

Hon Leona Dombrowsky (Minister of the Environment): Thank you, Madam Chair. I am very pleased to have this opportunity to take part in this part of the debate on Bill 49, the clause-by-clause. It is an important part of the McGuinty government's commitment to deliver real and positive change. We believe that Ontarians deserve a cleaner environment and cleaner communities that benefit the people who live in them.

Bill 49 is immediately important to the northern Ontario communities most directly affected by the Adams mine proposal. But the act also sets important protections and precedents for all communities. The Adams Mine Lake Act would help achieve our goal of clean, safe, livable communities across Ontario.

The local community has repeatedly voiced concerns about the Adams mine landfill. We have heard those concerns, and we took action with Bill 49, which stops the Adams mine proposal. We are not convinced that the Adams mine proposal could be operated safely to protect the environment. The act we are discussing is about protecting our environment, respecting our communities and ensuring fairness.

The Adams Mine Lake Act, 2004, has three broad objectives. I will briefly refer to them. The first is to

prohibit the use of lakes as landfill sites. For the purposes of the bill, a lake includes surface waters, including both man-made and natural lakes.

Second, the proposed legislation would prevent the use of the Adams mine site as a landfill. It would revoke all approvals and permits issued by the Ministry of the Environment prior to the date the legislation takes effect.

Third, Bill 49 would prevent any further legal action being taken against the crown as a result of the legislation. Bill 49 is not an expropriation of the Adams mine property. The Adams Mine Lake Act would require the province to pay the owner of the Adams mine compensation for reasonable expenses paid prior to the date of first reading of the bill. Under Bill 49, expenses would be defined as costs incurred for the purposes of developing the Adams mine landfill. Compensation would not be paid for any further profits the owner may or may not have received as a result of operating a landfill at the Adams mine site. The amount of compensation would be determined based on the expenses minus the fair market value of the site at the date the legislation comes into force.

The Adams Mine Lake Act adds up to an excellent piece of legislation that protects the environment and the people of Ontario and is fair to the owner of the Adams mine.

Stopping the Adams mine proposal does not address the root of our current waste management challenge. As we are now doing with electricity, we need to create a culture that values conservation, not consumption. Ontario has set an ambitious new provincial target to divert 60% of waste from disposal by the year 2008. Our government has announced a new strategy to manage Ontario's waste and reduce the burden on landfills in our province. It is a far-reaching strategy that will help us by setting targets for waste diversion over the next four years.

We will release a discussion paper in the coming weeks and consult across the province. Our strategy will also address root issues with the environmental assessment process that have led to so much uncertainty for so long. We have made a commitment to establish an expert advisory panel to identify ways to improve the environmental assessment process to provide greater certainty and timeliness while maintaining or enhancing environmental protection.

It is important that this committee understands the full context around the Adams Mine Lake Act. The important

protection measures contained in the act are part of a broad plan to ensure that our province's waste management plan is sustainable and responsible.

While we have put a lot of hard work into making the proposed legislation responsive to the needs of Ontarians, there is always room for improvement. Shortly, I will introduce three amendments to the act that are the product of the valuable contributions that the witnesses made and the fine work of this committee. Thank you, Madam Chair.

The Chair: Thank you, Minister. I believe Mr Barrett is making an opening statement.

Mr Toby Barrett (Haldimand-Norfolk-Brant): With respect to Bill 49, it has been close to two months now since the introduction of this proposed legislation, the curiously titled Adams Mine Lake Act, with a new definition of a lake: a man-made body of water of anything over one hectare—roughly 2.2 acres, for those of us who are involved in farming. I guess with legislation you can redefine anything. Conceivably, perhaps to use a precedent here, I suppose we could redefine the trillium as Ontario's state mammal. I'm not sure how far you could take this.

I've certainly received calls about the legislation from not only across the province but from Michigan as well, from people who feel that pulling off the table the only Ontario-based option for Ontario-based trash is not a good idea.

Again, referring to the title of this act, what we consider the unprecedented affront to property rights and the issue of whether compensation is appropriate or not—maybe it's not unprecedented. I'm sure some of this is coming up in the Oak Ridges moraine discussion as well.

What concerns us, when you look at this legislation, is that there is no plan with respect to the future of waste disposal. The long title itself does use the term "disposal of waste." When you go through the legislation, you don't see the words "recycling" or "diversion." There's really no discussion at all of where future landfill or expansion of landfill would be; really no presentation of any technical solutions.

Perhaps this was put together fairly rapidly. I understand there are some amendments coming, which we'll take a look at as well. We submit it's bad legislation to that point. We're not considering any amendments because we're opposed to this legislation. It's actually that simple.

No one really knew there was a lake anywhere near Adams mine. People who were involved were under the impression it was an open pit mine. It's an iron ore mine developed by Dofasco. I can quote the Toronto Sun, April 7, titled:

"It's Not a Lake, Stupid

"Dalton McGuinty's Liberal government doesn't know a lake from a hole in the ground."

Of course, as we're all learning more recently, people are indicating they are having little faith in the word or the words or the wordplay coming from this particular government.

More important than what I consider the curious wordplay at work here, however, is the fact that removing the Adams mine option underlines the complete lack of any plan for future waste disposal in the province of Ontario. As we know—the number varies on which side of the border you're hearing it from—there are something like 125 tractor-trailer loads of Toronto trash that cross the border into Michigan every day. I know when I was driving down to the Milton hearings—I think most of us are familiar with these tractor-trailers. The trailers themselves don't seem to have any markings on them. I'm not aware of any markings on the trailers themselves. The only thing on there is the licence plate that says "Ontario: Yours to Discover." That's what people would see as the loads go across the Bluewater Bridge into Port Huron, Michigan.

At the hearings down in Windsor we heard from Michigan Representative Daniel Acciavatti. He indicated very clearly the actions, resolutions and bills that he has taken the lead on, many of them directed toward limiting the importation of garbage into the state of Michigan. If anyone needs the list of bills—there are many bills, well over a dozen bills that have come forward from the state of Michigan.

Again, resolutions are being considered by the state aimed at protecting themselves from out-of-state waste and also in a more proactive sense encouraging Ontario to deal with its own garbage concerns. I know one bill that is before the House encourages the Ontario Ministry of the Environment to take action with respect to developing new landfill capacity and to take action with respect to expanding landfill capacity. The people in that part of Michigan are looking to this environment minister to come up with some solutions.

On May 17 of this year, Sarnia Mayor Mike Bradley is reported to have said, "The suicide ballet of trucks going down the highway every day is unacceptable."

Anne Marie DeCicco, the chair of the Southwestern Ontario Trash Coalition, has made clear her intention to seek solutions from this government. She's quoted in the London Free Press: "Instead of focusing on Toronto city council, it would be more effective for the coalition to target the provincial government."

Since the introduction of this bill, I, for one, as environment critic, have asked our Minister of the Environment about these concerns a number of times. In the answers, there's really little indication of a plan with respect to future landfilling. Certainly the 60% waste diversion commitment has been made clear. We know that's a moving target. I know in the Legislature on December 3 it was targeted to be fulfilled by the year 2005. At present, we're looking at the year 2008. There may well be another year in the future, 2010 or whatever.

1020

We know that marginal opportunity costs are going from 50% to 60%. There is evidence that it is much more expensive for our municipalities to go beyond the 50%, to 60%. Again, theoretically, once we reach the 60% goal, the question remains, where does the remaining 40% go? What landfill would it be directed to?

The Premier made a comment to the media April 6: "We recognize that we are going to have to open up one or more landfills.... Let's not pretend we are not going to have to do that." I think this is a challenge for this committee and for third reading debate as well, to assist our Premier and our government in that commitment.

In a sense, the province has taken the lead in Ontario in revving up the NIMBY pressure that we are all so familiar with over the decades. It really does beg the question. The question remains, whose backyard are we looking at for any new or expanded landfills in the province of Ontario, if state representatives like Daniel Acciavatti or presidential aspirants like John Kerry are successful in limiting or, as with some people's goals, closing that Michigan border?

When we had testimony in Milton we were certainly made aware that the regional chair of Halton doesn't want garbage in her landfill. She was quite clear, in her pleas to this committee, to look elsewhere. She said during her testimony:

"Surely the case has been made already to eliminate Halton's landfill waste management site as a possible short- or long-term solution to the waste disposal woes we have today. If you were to bring Toronto garbage to Halton today, in two years Halton would not have a landfill, and yet for Halton's purposes we have 40-year capacity. That is a very different number. This is a question of political fairness, and that's how we feel about it in Halton."

I'm disappointed we didn't have representation from Durham, Peel or York. Again, their garbage goes to Michigan. I would assume they feel the same way as the Halton chair, but I can't speculate on that. The Halton chair went on to say:

"Please eliminate Halton's landfill site and any municipal landfill sites which are unwilling hosts from the list of options to be considered in a time of crisis. Please amend the certificates of approval to include the option for private landfill sites to take this garbage."

I will say, farmers are nervous. There's a perception out there that if waste is not going into abandoned iron ore mines, where does it go? Does it get dumped on farmland? There is a concern there.

There is a bit of a shockwave. This hasn't been headlines in the Toronto media necessarily, but there's a bit of a shockwave across the province. People will not be calm until this government tells us exactly what it plans when the inevitable—in many people's minds—happens, when Michigan refuses to allow one more truck to dump out-of-state garbage across the border.

Do I have a signal on my time or not?

The Chair: Yes, you do. If you could summarize, please?

Mr Barrett: No, that's fine.

Mr Rosario Marchese (Trinity-Spadina): I just want to point out that I'm not the environmental critic for the NDP, but I hope that I'm reflecting Marilyn Churley's views as best I can. Second, I always get nervous about supporting the government because you never know when you're going to appear in some little flyer saying,

"Even Rosario Marchese supports this," kind of thing. So you get nervous. It certainly got Michael Prue nervous, when he appeared in the Hamilton by-election, saying, "Michael Prue supports so and so." So if it happens more than once, then the opposition says, "Hmm, maybe we should be careful about what we support of any government initiative."

Mr John Wilkinson (Perth-Middlesex): Why don't we use a picture with different glasses?

Mr Marchese: Then we could disguise ourselves.

We do support Bill 49. We are happy that this minister and this government have prevented the disposal of waste at the Adams mine site. It would have been an environmental disaster. I'm not sure how much of our garbage would have gone there, but it's something that, in my view and the view of many New Democrats, would have been a disaster. So this is a real victory for all the hard-working people in Kirkland Lake who opposed the Adams mine landfill, including aboriginal communities, because we know they were actively involved as well. It's also a real victory for environmentalists in both the north and south who took an active position against the sending of garbage into the Adams mine.

We were concerned about the compensation. In my view, it appears to be fair, reasonable. There are some changes and I'm going to be asking a couple of questions to see whether those changes affect the intent of the bill in any way. If they don't, we're OK with that part.

Your discussion paper around waste reduction: Let's wait and see. I'm not sure whether it includes the implementation of a deposit return system for beverage containers. Eight other provinces have it and Michigan obviously is doing it. We think you should be moving in that direction. I don't know whether you are or not. I don't know whether you're commenting or will comment on that.

We also think that we should require sectors like the computer and technology sector to deal with their own waste. There's a whole lot of waste that comes from that sector. I'm not sure what opinion you have in that regard or what you might be doing. We're interested to see how you're going to deal with the other waste that needs to be dealt with, but not sending it to the Adams mine is something that we support the government in.

The Chair: That concludes our opening statements. We will now commence clause-by-clause consideration of Bill 49.

At the outset, I am required by standing order 78 to ask this question: Are there any comments, questions or amendments and, if so, which sections? I understand that there have been amendments filed with the committee dealing with sections 6 and 7 of the bill.

Mr Ernie Hardeman (Oxford): I wonder if staff has an extra copy of the bill. I have all the amendments but I don't have the bill with me.

Hon Mrs Dombrowsky: Madam Chair, I would like to move some amendments. I just need to be clear, because this is the first time I've attended clause-by-clause:

Do you go through all of the bill or do you entertain amendments?

The Chair: I think we're doing it section by section. Currently, that's how we're doing it. At least, that's how I've scripted it today, that we would do that.

So I guess I'll begin with section 1, if everybody has a copy of the bill. It looks as though they do. Shall section 1 carry? All those in favour? All those against? That's carried.

Is it the pleasure—

Mr Hardeman: Madam Chair, if I could request that for the next sections there is a recorded vote for each section, or each time you call the vote.

The Chair: OK. That's recorded.

Is there a desire to go through each section until we get to 6, consecutively? OK. I get the direction that we will.

Mr Marchese: You could move the whole, from 1 to 6, if you like.

The Chair: That's why I'm looking for direction. If—

Mr Marchese: Why don't you do that?

The Chair: OK. There has been a request that we collapse comments or questions on sections 2 through 5 of the bill.

Mr Barrett: I do wish to speak to the next section, not all of them together.

The Chair: OK. We'll do it individually, then.

Are there any comments or questions on section 2 of the bill?

1030

Mr Barrett: I have a comment. Section 2 is a very brief section: "No person shall dispose of waste at the Adams Mine site." Again, that raises the question, which is not answered in this legislation: Where does a person dispose of waste in the event that there is a need for new or expanded landfill, or in the event, as we heard in the Windsor testimony—actually, I might draw people's attention to the paper put together by Andrew McNaught, the research officer helping this committee. He does highlight, as he titles it, "The View from Michigan," again speaking to section 2. "Michigan residents view the demise of the Adams mine project as evidence that Ontario is abandoning efforts to create a made-in-Ontario solution, and that the province is not concerned about the amount of solid waste being shipped across the border to Michigan landfills."

As we know, the state spent a number of years developing that landfill capacity. I'm assuming the capacity was planned and designed for the greater Detroit area. I don't have information from this research about the timelines or the future capacity of the landfills for Detroit, or whether it was a business decision—I know it's the private sector that runs the Sumpter township landfill; I think it's Republic—or whether Toronto is using up Detroit's future capacity.

It goes on to say in our research paper, and this came from Mr Acciavatti, the state representative: "Michigan's strict waste disposal standards could also make this option less attractive"—again, shipping in or trucking in

Toronto waste. "Until such time as there is 100% waste diversion, the responsible course for Ontario is to ensure that it has adequate landfill capacity. Michigan strongly urges the province to reform its environmental assessment process"—and I understand some of this is in the works—"to facilitate approval of solid waste disposal projects," and he makes reference to a resolution of the Michigan House of Representatives. "The current situation, which sees 250 trucks a day coming over the bridge into Michigan, creates a serious perception problem, one that is, unfortunately, beginning to shape the relationship between the two jurisdictions."

We also have testimony here labelled "Halton Region." "Halton region is concerned that Bill 49 could have a negative impact if the garbage from other municipalities ends up in Halton's landfill."

Those are my comments on section 2. We will not be supporting section 2.

The Chair: Minister, did you want to respond? I think there was a question at the beginning—

Hon Mrs Dombrowsky: No.

The Chair: Mr Wilkinson, you have moved the motion.

Mr Wilkinson: That was out of order, actually. You're running it.

The Chair: The motion has been moved for consideration of section 2. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Section 2 is carried.

We'll be considering section 3. Are there any comments or questions on section 3 of the bill?

Mr Hardeman: As wrong as I think the whole bill is, and that isn't going to change as we're going through clause-by-clause, the question on section 3 is whether it isn't somewhat redundant in preparing legislation to have one section, which the government has just seen fit to approve, which is, "No person shall dispose of waste at the Adams Mine site." If that section is approved by the Legislative Assembly, then what possible reason or need would there be to revoke all the permits that were previously given to do that? In my opinion, automatically, if no one can do that, then all the approvals that have been given for the site would be redundant, because they were given by the same minister. The same ministry that was there gave the approvals to put waste there, so if they've taken away the right to put waste in the Adams mine site, then obviously the process of that revokes all the permits.

On August 13, 1998, there was a permit issued under the Environmental Assessment Act for that step of the

process that the corporation went through in order to develop a landfill site in the Adams mine. At that point in time the proponents of the site had reason to believe that after they'd gone through all the requirements the province had put in place, they had reached the conclusion that at least this far in the process they were going to have an approval to put waste in that site.

When the minister now comes along with no further scientific evidence, with no further information, and says, "We're not going to allow any person to put any waste in that site," in effect she's saying, "I'm revoking that permit." It seems reasonable to me that's what it is. So I don't know why we would repeat that, except maybe to put salt on the wound: "Ha, ha. I told you it wouldn't work. Now it doesn't work." I just can't see any reason why that would be in.

Going to number 2: "Certificate of Approval No. A 612007, dated April 23, 1999," again, this corporation has moved on. A year later, it has done a whole lot more work in order to facilitate the disposal of waste in Ontario, with the assistance and advice of the Ministry of the Environment, saying, "Yes, you're following the rules. We've reached that point, the next step of the process, and everything looks like you could proceed and you should proceed, and if everything else follows along and falls into place, eventually you will be able to put waste in that site." I think section 2 automatically eliminates that possibility by saying, "No person shall dispose of waste" in that site. I can't see any reason why that would be there.

Approval number 3, July 9, 2001: The applicant has gone through a long process again and spent millions of dollars more. I don't know why that would be put in separately in this piece of legislation when one line, "No person shall dispose of waste at the Adams mine site," covers all that. I don't know why we have to have a piece of legislation that revokes each one individually.

It goes on: "Any permit that was issued under section 34 of the Ontario Water Resources Act before this act comes into force...." In fact, that approval is not under the Environmental Assessment Act. It wasn't approval for waste disposal; it would seem to me to be an approval to dewater the site, to pump water, and that's why it would fall under the Environmental Assessment Act. However, why would it fall under the Ontario Water Resources Act?

I guess I have some real concerns that technology changes and the needs in our society change. I expect 25 years ago—it's been almost that long ago that the corporation has been involved in trying to develop this site—or 50 years ago no one had envisioned that you might want to dewater the site and consider it for waste disposal. It's not unreasonable to assume that in the next 50 years some other purpose may be found for that site that requires the dewatering of the site for whatever other reason. If this application or this permit to dewater is not directly related to waste disposal, I see absolutely no reason to revoke that permit, so that whoever owns that site or wants to do something else with it, if their only

purpose was to dewater it, would still have the licence and the permit to do that.

I see absolutely no reason to do that, except that it falls under the same category that says, "No person shall dispose of waste at the Adams mine site." I think it's exactly the opposite side of the thing. I don't know why that section is in there at all, and, in this case, that's the reason I'm voting against it; not because I'm opposed to the bill, but because I think it's a redundant section of the bill and it's just putting salt on the wound. In that last one, number 4, it in fact goes well beyond not putting waste in the Adams mine site; it prohibits people from dewatering it for any other purpose. I'm opposed to that.

1040

The Chair: The ministry response?

Interjections.

The Chair: It was such a long question, I figured it deserved an answer. Perhaps the ministry will circumvent the question.

Hon Mrs Dombrowsky: I have with me this morning Leo Finnigan, who provides legal advice to the Ministry of the Environment. He can speak to all of the very good reasons why section 3 is a part of this bill.

Mr Leo FitzPatrick: Section 3 is included in the bill simply for greater certainty. It's intended to put the matter beyond dispute. In addition, subsection (2), which talks about issuance of permits, relates only to the application mentioned in paragraph 4 before that. If a new application for a different purpose were to be submitted in the future, it could be considered.

Mr Barrett: With respect to section 3, the one that's titled "Revocation of approvals related to Adams Mine site," as Mr Hardeman indicated, the August 13, 1998, approval to Notre Development is revoked, a certificate of approval of April 23, 1999, is revoked, approval of July 9, 2001, is revoked, and any permit that was issued under section 34 of the Ontario Water Resources Act.

I guess in broader terms, there was a huge process over many years that was followed by ministry staff, by proponents of the site, municipal staff, municipal councillors, experts from all sides, there was all kinds of scientific evidence, as Mr Hardeman mentioned, all followed according to the rule of law in Ontario. According to the rules of the province of Ontario, a conclusion was reached.

Today, this Liberal government is proposing before the Legislature that we throw all of that out the window. It just raises the question: What kind of message are we sending to the people not only in the landfill business but to investors and the business community in Ontario, or those from outside of Ontario that would invest in this province?

My understanding is we're not supposed to change the rules retroactively. We did witness that with this government just before Christmas with a retroactive measure targeting families who chose to send their children to independent schools. My understanding of our business here is that we don't change the rules retroactively, whether they are financial rules, taxation rules or rules

about the environment. We want to encourage people to have confidence in the rule of law, to have confidence in the province of Ontario as a place to invest and do business, to take a risk. We want them to have certainty about what the law is and what the process is. I find that this revocation of certificate of approval permits flies in the face of that principle. I'm very concerned about the precedent and the trend that we see, not only in this legislation, but in other legislation as well.

Mr Marchese: I understand Mr Barrett's concerns. But just to remind him, when they got elected in 1995, they became the government. When you become the government, you can argue that you have a mandate. Their mandate was to get rid of the anti-scab legislation because they thought it was bad; New Democrats thought it was good. They got rid of employment equity because they thought it was bad; we thought it was good. So new governments do different things.

In this case, we've got Bill 49 and it's in contradiction to what the previous government did. In this case, New Democrats support Bill 49. It's as simple as that, really.

Mr Hardeman: Just a quick comment to Mr Marchese's comments. I would agree with him that governments with new mandates have just that, new mandates, and they take government in different directions than the previous government did. That's why the people get to make that decision. I have no argument with that. But in both cases that Mr Marchese mentioned, there was no retroactivity. The situation that had taken place under the New Democratic government under employment equity, no one was asked to give up their job because they received it through employment equity legislation. This is all retroactive. These are all applications that were—

The Chair: Mr Hardeman, can I interrupt for just a second? Can we speak just to the bill today?

Mr Hardeman: Madam Chair, I am speaking to the bill.

The Chair: I really want to caution the committee, we're going to spend a lot of time going round in circles if we don't talk about the bill. So could you contain your comments to the bill, please?

Mr Hardeman: This bill is a very important piece of legislation. That's why I think we should spend considerable time discussing it. The only reason I mentioned the other issue is because, Madam Chair, you allowed Mr Marchese to put that on the record and, once it's on the record, I think I have every right to speak to that item.

The Chair: I think you have. I'd like you to speak to the bill, please.

Mr Hardeman: I do want to speak to the bill because it was in answer to the Ministry of the Environment's legal person who spoke on the need for revoking the approvals. I guess I have even more concern, and I didn't speak to that one, the last one, that no one can apply for the dewatering permit after the fact either. Going to the part I mentioned earlier, there may be other uses for the Adams mine. Again, I see absolutely no reason why you would then revoke the permit to dewater it for this

purpose, but why we would then put in a clause that no further application can ever be made to dewater the site seems to me even more redundant. I wanted a clarification on that.

Hon Mrs Dombrowsky: I believe that Mr Finnigan will be able to provide that clarification.

Mr FitzPatrick: If you read subsection (2) carefully, you'll see that it refers back to the specific application mentioned in paragraph 4. That was an application that has already been made and posted on the Environmental Bill of Rights registry and it relates to dewatering for the purpose of using the mine as a landfill. It does not apply to future applications that could be made for different purposes.

Mr Hardeman: Madam Chair, if I could. Further to the question to the legal branch, that means that if the first part of the bill should fail constitutionally, you can't take all these permits away and no new permit could be applied for unless you got that separately changed?

Mr FitzPatrick: Any new application would have to be considered. It's not prohibited. If it were for land-filling and landfilling were made illegal by the bill and turned down for that reason, a new application for some other purpose would be considered and could be approved if it's found appropriate.

Mr Hardeman: If I could, Madam Chair. I'm a little dense. With everything else in the bill, why would anyone—and we're going to assume they're brighter than I am—make a new application for dewatering the site with everything else that precedes it that says this site can never be used for landfilling? I mean, talk about redundancy.

Mr Wilkinson: You're arguing with yourself.

Mr Hardeman: Good heavens, talk about duplication and redundancy.

The Chair: Mr Hardeman, are you looking for an answer?

Mr Hardeman: No, I don't need an answer.

The Chair: OK. Thank you. Minister?

Hon Mrs Dombrowsky: Excuse me. For the record, I have mistakenly identified the legal counsel here. This is Leo FitzPatrick, who works for the Attorney General and provides advice to the Ministry of the Environment.

The Chair: Thank you for that clarification.

Shall section 3 carry? A recorded vote has been asked for.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Section 3 is carried.

Are there any comments or questions on section 4?

Shall section 4 carry? Sorry. Were you asking questions? You're voting?

Mr Barrett: We've asked to make comments on each section.

The Chair: Oh, on each section. OK. So comments or questions on section 4 have been asked for.

1050

Mr Barrett: Section 4 of this legislation kicks off by saying, "An agreement entered into by Notre Development Corporation or 1532382 Ontario Inc after December 31, 1988 and before this act comes into force is of no force or effect if the agreement is with the crown in right of Ontario," and it goes on from there.

This was actually raised in the Ontario Legislature. I would ask for comment from the representative from the Attorney General's office. We feel—and I know Mr Flaherty made mention of this as well—that the rule of law is being violated by this bill, just as it was violated by the retroactive legislation with respect to the equity in education tax credit, as I indicated before. I just wanted to mention that again, in case some people in this committee aren't clear of that connection.

If people don't understand that, I wish to quote from Sullivan and Driedger on the Construction of Statutes, page 553, where it is said, "It is obvious that reaching into the past and declaring the law to be different from what it was is a serious violation of the rule of law ... the fundamental principle upon which rule of law is built is advance knowledge of the law. No matter how reasonable or benevolent retroactive legislation may be, it is inherently arbitrary for those who could not know its content when acting or making their plans."

Again, we seem to have a pattern now of bouncing this over for comment from the minister or from the representative of the Attorney General's office.

The Chair: Minister, do you want to respond to that?

Hon Mrs Dombrowsky: I would ask Mr FitzPatrick to respond, please.

Mr FitzPatrick: In the strictest sense, this legislation before you is not retroactive. If it is passed by the Legislature, it will change the state of the law from that date forward.

Mr Barrett: I guess our opinion is that—and I know this was in Hansard and you've probably researched this—this government has brought forward retroactive legislation that affects the finances of the proponents. The bill itself talks about compensation. I'm not a lawyer. Maybe there's a mistake in the legislation around the issue of compensation if it's not affecting what was done in the past.

We know that many people were involved. They brought forward their environmental applications. They obeyed the law; they followed the process. They spent a great deal of money on lawyers, experts and environmental engineers. It does raise this issue. Is compensation warranted, given the position on this?

Mr FitzPatrick: The provision for compensation recognizes the fact that the things that the applicant has done in the past were done in accordance with the law at the time. The state of the law will change for the future if this bill is passed.

Mr Hardeman: I guess my comments are somewhat on the same line as Mr Barrett's. I understand the legal expression of the fact that this is not retroactive legislation because everything we're doing today, we're doing it today. But it is having a major impact on what happened in 1988. I guess that's my problem.

It relates to some of the presentations. One of the presentations in particular that seemed to catch the interest of all members of the committee, including the government side, was when we were in Milton. The presentation was made by the federation of agriculture. It relates somewhat to this section about how we are going to make null and void any agreements or anything that's happened between the government and the proponent, based on what could be a negative impact to the government if we didn't have the section in here. If this section wasn't in here, things would look different legally between the government and the proponent when this bill is passed.

Part of the federation of agriculture's presentation was, if I remember it, that you're doing a very good job, Madam Minister, of stopping waste from going into the Adams mine site, and we support that. But in protecting people from ramifications beyond this bill, you're doing a very good job of protecting the government, but you're doing diddly-squat for everyone else involved. If that's true, I guess I really have concerns about what privileges or benefits you're bringing to the government by holding yourself harmless in any deals that you've made, but not holding other people harmless in deals that may have been made.

If, as was just pointed out, it's legal, I think it's immoral. I think it's wrong if you're not providing the same protection for everyone else that you're providing for government. How come we're not holding safe and harmless everyone who owned the site prior to the present developers, and saying that they have to pay all the money back because nothing more can be done with the site? Why are we not nullifying all the deals that have been made, and only those that have been made with the government?

Again, I think this section is wrong, as I think the whole bill is wrong.

The Chair: Shall section 4 carry? A recorded vote has been asked for.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

Mr Hardeman: A question on procedure: I noticed the calling of the vote. I wonder how many Liberal members we have on the committee voting.

The Chair: We have substitutions here today.

Mr Hardeman: I just wonder if we have the right number voting. I guess the question is, is the minister subbed? Is the minister officially subbed as a member of the committee?

The Chair: Yes, she is.

Mr Hardeman: OK; thank you.

The Chair: Are there any comments or questions on section 5 of the bill? Mr Barrett, did you want to comment on section 5, or can we move on to section 6?

Mr Barrett: Yes, it raises the whole issue of property rights. Anyone who is in the Legislature would know that people in the Legislature representing people in the province of Ontario, and certainly the PC opposition, take property rights seriously, as they're affected, in our view, by this particular legislation.

As we understand it, the individuals, the proponents involved in this dispute, can't seek the remedy of the courts and can't seek legal recourse for any of the disputes involved. To me, that flies in the face of property rights. I know there's a debate whether we actually have property rights in the province of Ontario. I know I introduced legislation perhaps eight years ago to restore property rights to the province of Ontario.

I think we marry this with our perception that this legislation is dumping the rule of law, and perhaps is further evidence that the Premier of this province doesn't understand the basic principle of western civilization: the rule of law. I do recognize that there are a number of dictatorships around the world, but not in this particular province or in the state of Michigan, for that matter. I think Michigan was mentioned across the way. Again, principle holds that a law that is very clear, very public, very predictable, is the basis for our society, not the whim of a Premier or a cabinet minister who doesn't want garbage coming to his particular riding.

I guess, for that reason, we don't have amendments to this section. I know there was a body of opinion on our side that this section should be eliminated from the legislation. However, because it is a violation of the property rights of the proponents, we did discuss striking section 5 of the bill. We are not going to burden this committee with amendments because we're opposed to the bill in its entirety.

1100

The Chair: Mr Hardeman, did you have comments?

Mr Hardeman: I guess my previous comments relate more to this section than to the other section. I apologize, I have to repeat myself.

It really comes, first of all, to the basic fundamental rights that we all have as citizens of this province, and that's the same protection under the law as everyone else. Government has the same responsibility to everyone. If this section is needed—I'm not suggesting it is or isn't—that tells me we are in the process of trying to take someone's rights away, because without this section, we are all concerned that they have rights that we don't want to pay for as a society.

First of all, I want to say I personally, as a citizen of Ontario, don't want to pay millions of dollars to the proponents of this site because we have a government that is making the decision to prohibit the landfill from going there. I don't want to have to pay for that. At the same time, I do think the proponents have the same rights as everyone else, in fairness, to be able to sue the people who are causing this detrimental effect to them.

I think the government realized that when they put this section in here. They realized that without this section, without taking these basic rights away from the proponents, they stand to be at a great financial disadvantage. They see they are taking away a lot of rights that the courts may very well rule are rights that the proponents had, that have been taken away, and that they should be compensated for those rights.

If this wasn't the government, if this was Ernie Hardeman against the developer of the Adams mine site, the McGuinty government or any other government would not be coming forward and saying, "Why don't we pass a law to prevent this lawsuit from ever happening?" They would say, "No, according to the law, this should be decided by the courts, by an impartial third party, as to who is right or wrong and what they should be entitled to, not having one side of the equation decide what the other side of the equation is entitled to. Now tell us how much you think that would be in the carefully defined area that we think is important." I think that's taking away the right that the proponent has under the judicial system, which says that everyone is equal under the law and everyone has the same rights under the law. We are passing a law here that says we're taking it away from the developers of this site. I just don't know how we can do that.

Again, going back to the other part, the presentation we had from the federation of agriculture, if we are doing that on behalf of the government, so they don't have to face this challenge, why are we not including others under the same thing? In fact, it was mentioned that there was a lawsuit presently being either proposed or initiated or considered for initiation against individuals in the area for exactly the same project. I don't know why we wouldn't protect all, if we're protecting the government from it.

Hon Mrs Dombrowsky: I would like to make a brief comment to both of the members' comments. This is an extraordinary section of the proposed legislation. We, as a government, certainly believe in the rights of individuals. We believe that the people of Ontario must be protected, that their water sources must be protected.

One thing I've been struck by so far this morning is that this bill is about ensuring that water sources in a particular community are protected, not just in the Adams mine lake area but also across Ontario. The government has not been convinced that a particular way of managing solid waste would not have a negative impact on source water. It is for that reason that this legislation has been introduced.

There have been extraordinary measures introduced. I would suggest that the government has recognized that in

the subsequent section, to which we will be bringing some amendments.

Mr Marchese: To defend what's happening here, there are times when governments have to act in the public interest and, in doing so, some individual rights that might have been agreed to under a previous government may have to be overridden, which is what this bill does. Governments have a responsibility to protect the public interest. This bill does that, and that's what we should be worried about.

Mr Jeff Leal (Peterborough): I just have a quick question for Mr FitzPatrick. The question of property rights is a bit of a red herring from my perspective. If you go back to the Constitution of 1982, when the Prime Minister of the day put property rights on the table, it was rejected principally by three Premiers—Sterling Lyon of Manitoba, Mr Davis of Ontario and Mr Lougheed of Alberta—because they were concerned that if property rights were enshrined in the Constitution, provincial governments would never be able to expropriate for highways or hydro corridors, or municipalities wouldn't be able to get any roads.

I'm asking you, as a lawyer, to address this red herring that keeps getting thrown out. Ask Mr McMurtry, who was the AG of the day for Ontario and helped to craft the Constitution. Trudeau put property rights on the table, and the Premier said, "Get property rights off the table," because of expropriation, for roads and hydro corridors and other things.

Interjection.

Mr Leal: No, it's not a political question.

The Chair: Would you like to respond, Mr FitzPatrick?

Mr FitzPatrick: I agree with what you said. It is my understanding that in the field of property and civil rights, provincial governments are empowered to do whatever they wish to do.

The Chair: Thank you. Shall section 5 carry? Mr Hardeman, one final comment on this section.

Mr Hardeman: Oh, no, it may be more, Madam Chair. I just want to carry on. Again, I'm not disagreeing with Rosario that sometimes governments have to act in the best interest and protect the interests of the public, but I think this goes beyond that. There's nothing that is inherent in the fact that in order to protect the interests of the public, they have to pass legislation to take rights away from individuals, which is strictly related to money that the government may have to pay.

In my opinion, based on decisions that the government has made, whether we have a change in government or not, government always has to be held accountable for the decisions they have made in the past. A lawsuit that is presently in place, where someone is suing the province of Ontario for an accident that occurred on the 401, doesn't just fall off the table because there's a change of government. This lawsuit is to the government in general. If there is going to be any legal action taken by the proponents of this site, it is against the Ministry of the Environment, not the Liberal government of Ontario.

I think taking away that right is well beyond taking away an individual right to protect the public interest, because I think the public, represented by a Conservative government for eight years and now being represented by a Liberal government, has a responsibility, as well as protection from governments. So whatever decisions were made when the Ministry of the Environment gave all these approvals, we now, as the Ministry of the Environment, have to stand up for the consequences of giving those approvals. I think taking away, in this section, the rights of legal action for any part of it is inappropriate.

This also goes back to that presentation—and I was as impressed as anyone at the committee with the presentation—and the comments that were made from the federation, which said they weren't supportive of this bill because they think the landfill site at the Adams mine should have a new hearing and should be discontinued because of its merits, not for political reasons. I'm not agreeing or disagreeing with that, but that was his opinion. They are of the opinion that the ministry now knows more than they did then, and they don't want to go through the hearing process to find out what they disagree with now that they approved in the past. The federation believed all that should be brought out into the open now. I think this section really takes all this out of the realm and says, "Why don't we just all cover this up, get it over with, avoid as many lawsuits as we can, go on with life and worry about where we're going to dispose of our waste for the next 20 years?"

Mr Marchese: I think we've had a fair amount of debate on this bill in terms of listening to the opposition to this section. We're ready for the vote on this section.

The Chair: I understand that, but I want to make sure everybody has a fair hearing. Mr Barrett still has a comment.

Mr Barrett: Thank you, Madam Chair.

Mr Hardeman: There is no limit on how long we talk.

Mr Barrett: Yeah, there is no limit on how long we talk.

The Chair: Mr Barrett, you have the floor.

Mr Barrett: Just to respond to Mr Leal, who has put property rights in the category of a red herring, I feel very strongly that property rights are important. I feel the rule of law is very important. You made mention of Liberal Prime Minister Pierre Trudeau. In contrast to you, I'm with—

Interjection.

The Chair: Can I stop the cross-dialogue this morning? Can we give Mr Barrett full attention? Good.

1110

Mr Barrett: I want to make this clear. With respect to property rights, I'm with Pierre Trudeau on this one.

Mr Marchese: That was Mulroney.

Mr Hardeman: Madam Chair, I'm not sure this is relevant.

The Chair: I'm allowing a little latitude. Mr Barrett, you have the floor. You're done? Thank you very much.

Shall section 5 carry?

A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

On section 6 there is a government amendment to subsections 6(1) to (4). Is there a mover for the motion?

Hon Mrs Dombrowsky: I move that subsections 6(1) to (4) of the bill be struck out and the following substituted:

"Compensation

"6.(1) The crown in right of Ontario shall pay compensation to 1532382 Ontario Inc and Notre Development Corporation in accordance with this section.

"Amount

"(2) Subject to subsection (3), the amount of the compensation payable to a corporation under subsection (1) shall be determined in accordance with the following formula:

"A+B+C

"where,

"A = the reasonable expenses incurred and paid by the corporation after December 31, 1988, and before April 5, 2004, for the purpose of using the Adams mine site to dispose of waste,

"B = the lesser of,

"i. the reasonable expenses incurred by the corporation after December 31, 1988, and before April 5, 2004, but not paid before April 5, 2004, for the purpose of using the Adams mine site to dispose of waste, and

"ii. \$1,500,000, in the case of Notre Development Corporation, or \$500,000, in the case of 1532382 Ontario Inc,

"C = the reasonable expenses incurred by the corporation on or after April 5, 2004, for the purpose of using the Adams mine site to dispose of waste, if the expenses are for legal fees and disbursements in respect of legal services provided on or after April 5, 2004, and before this act comes into force.

"Same

"(3) The amount of the compensation payable to 1532382 Ontario Inc under subsection (1) shall be the amount determined for that corporation under subsection (2), less the fair market value, on the day this act comes into force, of the Adams mine site.

"Accounting

"(4) Subsection (1) does not apply to a corporation unless, not later than 120 days after this act comes into force, it submits to the crown in right of Ontario a full accounting of the expenses described in subsection (2), including any receipts for payment.

"Audit

"(4.1) 1532382 Ontario Inc and Notre Development Corporation shall provide the crown in right of Ontario with reasonable access to their records, management staff, auditors and accountants for the purpose of reviewing and auditing any accounting submitted under subsection (4).

"(4.2) 1532382 Ontario Inc, Notre Development Corporation or the crown in right of Ontario may apply to the Superior Court of Justice to determine any issue of fact or law related to this section that is in dispute."

The Chair: Is there any discussion?

Mr Marchese: I would like the legal counsel here to comment on the effect of the changes by the amendment versus what is in the bill, as it relates to sections 2 and 3.

Mr FitzPatrick: The changes will bring about a split so that the compensation will be split between the numbered company and Notre Development, instead of all going to the numbered company. Each of the companies will be compensated for their own expenditures. The numbered company is now the registered owner of the land, so fair market value of the land which they will retain, as evaluated on the day the act comes into force, will be deducted from the compensation payable to the numbered company.

Mr Marchese: Speak into the mike so we can hear you.

Mr FitzPatrick: Sorry. In the case of item B, there will now be an amount payable with respect to expenses incurred but not yet paid. As this could possibly amount to a large amount of money, there are now limits placed on those amounts that are incurred but not yet paid: \$1.5 million in the case of Notre Development and \$500,000 in the case of the numbered company.

Mr Marchese: OK. Thank you.

Mr Hardeman: First of all, I too have a question on the changes that are being proposed here. To me, the biggest change is that you're putting upper limits on total expenses. Is that true?

Mr FitzPatrick: No. We are putting upper limits only on expenses that have been incurred but not yet paid, so that if an order had been placed for a piece of equipment such that Notre Development incurred a cost of \$10,000 that they must pay at some time, they could be reimbursed for that, even though they do not pay that cost until some later time. It is those things that have been—

Mr Hardeman: The follow-up question wouldn't be a legal one; it would be more to the minister. What would be the justification for suggesting that we are going to pay, as a province, for those expenses beyond that point, from the time the bill was introduced until 120 days after the bill is proclaimed, but just in case they're higher than we think they are, we're not going to pay for them all? How could we as a province make a decision that we're going to set limits on that? If there were expenses, there were expenses; if they're not, they're not; and if we should pay for them, we should. I don't know how you can divide the moral obligation with a ceiling. I guess that would be the question: How would we justify having a ceiling there, if you've identified what they are?

Hon Mrs Dombrowsky: Mr FitzPatrick has indicated he would be able to respond to this.

Mr FitzPatrick: Items A and B relate to expenses incurred before the bill came into force. They don't relate at all to expenses that might be incurred today or after the bill is passed. The limit was imposed as a matter of caution with respect to expenses that were incurred but have not yet been paid. The limits were selected because, in the weeks since the bill was first introduced, we have come to a somewhat better understanding of the amounts and the relationship between the numbered company and Notre Development.

1120

Mr Hardeman: In developing that number, do you have some reasonable assurance that that would be an appropriate ceiling?

Mr FitzPatrick: For that item, yes.

Mr Hardeman: The other thing, and I kind of mentioned it in the other question: With all these legal things that are going to happen or have happened—it was presented to us that there were some other lawsuits ongoing concerning the site and its approvals—is the government looking at all that, making sure others are held harmless too? As we are protecting the general taxpayers, are we protecting individual taxpayers of the area for their lawsuits? I think it was mentioned that the federation of agriculture could be on the hook for \$10 million. Is that going to be addressed?

Hon Mrs Dombrowsky: That is not in this legislation.

Mr Hardeman: So the government, in this bill, although they're very anxious to make sure we're serving the interests of the people of Ontario, doesn't think that should go to the individuals who were involved in getting us to this point, shall we say? Obviously, if it hadn't been for their efforts, it's reasonable to assume that you would not be in the position you are in today. But they should be held accountable for those now and be liable for all those costs themselves, because as a government you don't care?

Hon Mrs Dombrowsky: This bill is about compensating the proponent and the owner of the Adams mine site.

Mr Hardeman: Madam Minister, this bill is not about compensating the owners of the Adams mine site, as you just suggested. My interpretation of this bill was that it is to stop waste from ever being deposited at the Adams mine site.

Part of that has been a 12- or 15-year process that has involved a lot of people who were doing the heavy hauling when you were not the minister and even since you've been the minister. I guess we're going to have to assume they were the ones who presented you with the scientific evidence that you should introduce this bill. But now you're saying you're willing to cut them loose because you've accomplished what you want for the government, and "individuals in the area are not important, so we won't worry about what's going to happen to them after the fact."

In fact—and these aren't my words; this is what was presented to us at the hearing in Milton from the federation of agriculture—they were very concerned. They didn't want the bill passed because of that concern. So I think it's important that we at least get on the record that you're suggesting the individuals are not important and the public interest overrides individual interest.

Hon Mrs Dombrowsky: Nothing could be further from the truth. The purpose of this bill and this particular section is to recognize that there have been companies that have received permits from the provincial government to move forward on an initiative. Since this government has made a determination that we do not believe it is in the better interests of the people of Ontario for this project to proceed, we are prepared to compensate that company for its out-of-pocket expenses.

I would suggest to the honourable member, if he so wants to advocate on behalf of the presentation he heard, why didn't they bring amendments to this section?

The Chair: Mr Marchese has the floor.

Mr Hardeman: Madam Chair, I take exception to that. My intention is not to make amendments to this bill, because I think it's a bad bill. I don't think it can be amended to deal with one issue. I think just giving everybody enough money to go away is not the appropriate way to deal with this matter.

The Chair: Mr Hardeman, can I ask that you speak just to the amendment, please, and not get into debate with the minister on this issue. I think she has responded to your comment.

Mr Hardeman: I was doing that, Madam Chair.

The Chair: Thank you.

Mr Hardeman: I was speaking to the minister's comments.

The Chair: I understand. I sense we're going down the argumentative route. At this point, speak to the amendment, and if you do have another comment or a question—

Mr Hardeman: No. I just wanted to say that when the minister makes comments impugning my motive as to questioning it, then I have every right to respond to that comment. I think that's exactly what I did.

My concern, really, as the minister suggested, is that this bill was to stop waste, and I think she's conceded the bill was to stop the waste from going to the Adams mine. As we look at what impact that will have on the area and the people of the province, individually and collectively, I think it's important that the minister deal in the bill with all those issues: not just with the ones that are most likely to be in court to try to sue the province, but all those people who will be impacted by this bill.

The federation made a very good case, saying that they were going to be impacted, and are being impacted, by the lawsuits that will evolve when this bill is passed. Then the only ones there to defend the Timiskaming Federation of Agriculture will be the federation, because the minister has said, "We have covered our ass, so we don't need to go any further." That's a real concern to me.

Mr Marchese: Just out of curiosity, monsieur l'avocat, how do you come up with the numbers that are there: \$1.5 million and \$500,000? Is there a rule that you apply to this?

Mr FitzPatrick: No. The numbers were arrived at in consultation with representatives of the Adams mine project.

Mr Marchese: Is there a formula or just a discussion about expenses incurred?

Mr FitzPatrick: Just a discussion.

Mr Marchese: So you arrive at that number by reviewing their books, basically, and maybe you say, "I think we've got a balance here." Is that the idea?

Mr FitzPatrick: Once again, we're speaking only about expenses incurred but not yet paid.

Mr Marchese: Right, since there was an announcement that the bill would be introduced or after?

Mr FitzPatrick: All these expenses are expenses that happened before the bill was introduced.

Mr Marchese: Ah, but not yet paid.

Mr FitzPatrick: Expenses that have been paid will be compensated.

Mr Marchese: Right. But my main question was—

Mr FitzPatrick: These expenses which have been incurred but not paid are limited by these numbers on the advice of representatives of the Adams mine—

Mr Marchese: On the advice of—

Mr FitzPatrick: —that these are appropriate numbers.

Mr Marchese: So you presented the numbers, and they said "OK." Is that basically the way it works?

Mr FitzPatrick: It was an exchange.

Mr Marchese: But there must be some thought about how one arrives at a certain number, isn't there?

Mr FitzPatrick: The notion that there should be some limit was presented to the representative of the Adams mine. He suggested that these were appropriate limits.

Mr Marchese: I understand that. I understand the notion of limits, and I was asking you how you arrive at a figure. I'm not understanding how one arrives at a certain figure, other than that a figure was thrown out and the Adams mine people said, "Yes, that seems OK."

Mr FitzPatrick: Exactly.

Mr Marchese: That's it?

Mr FitzPatrick: An acceptable figure.

Mr Marchese: But it won't be necessarily \$1.5 million. It'll be based on whatever it is we are going to—

Mr FitzPatrick: That's quite correct, but it will not exceed that.

Mr Marchese: It won't exceed it but it could be less, based on whatever numbers they present to you.

Mr FitzPatrick: Correct.

Mr Marchese: Have you had a chance to review some of those numbers, or not yet?

Hon Mrs Dombrowsky: Not yet. However, I would like to share with the member that whatever will be paid in this venture, if the bill is passed, will be available to the public. That information will be public information.

Mr Mario G. Racco (Thornhill): I wonder if the minister could potentially reassure me. My understanding

is that we are trying to make sure every expense incurred prior to reintroducing the bill—we are prepared to pay those expenditures, within reason. Yet the PCs keep on insisting, and I read from what they're asking, that there is a perception that in fact we are not going to pay those expenses. Can you assure me that we are prepared to pay all those expenses unless some of them are questionable in nature? Could you do that, please?

Hon Mrs Dombrowsky: I can assure this committee that compensation is assured with this legislation for both the numbered company and the corporation that received approvals from this government for its business venture.

Mr Racco: So you will be paying those.

Did you also say a minute or two ago that the Adams mine group reviewed the dollars and they are in favour? Is that what you, or your assistant, said?

Hon Mrs Dombrowsky: I believe the information that's been provided is that in order to arrive at what would be a reasonable amount, there has been a dialogue between a representative from the corporation and the numbered company. I believe there is agreement that those are reasonable ceilings.

Mr Racco: So then the people interested in this matter have agreed with the numbers you are prepared to pay.

Hon Mrs Dombrowsky: Those who have had direct business with the government on this file, yes.

Mr Racco: Thank you.

1130

Mr Barrett: This amendment on compensation—there's a section on compensation, section 6. Section 5 discusses compensation as well. It's regrettable. I understand this is probably the first Liberal environmental bill that's ever been brought forward in Ontario. I know other legislation—PC legislation or NDP legislation—has been amended by the previous Liberal government, but I find it a little sad that we're discussing compensation and we're not discussing recycling, diversion, the search for landfill and what have you. Granted, the words "waste disposal" are contained in this legislation, but I'm not sure if it's maybe your crowning moment to have this as the first piece of your own legislation as Liberals in the province of Ontario.

I guess the problem is, why are we talking about compensation again? Because the rules were changed. They were changed retroactively. The applicants were successful over a number of years, and now we're taking the rules back six years to 1998. We're changing the rules. We've essentially changed the property rights of the proponents. As I understand it, they have lost the fundamental right, which all of us have in the province of Ontario, to go to court.

I feel uneasy or reluctant to be sitting here, almost as judge and jury, discussing the lesser of \$1.5 million for Notre Development and \$500,000 in the case of the numbered company. I don't feel comfortable being judge and jury on these dollar figures that weren't in the original legislation. I understand these dollar figures have just been presented today. I hope you have talked to the proponents. This seems very unusual.

My only request is—

Mr Marchese: She said they did.

Mr Barrett: OK, then, could Notre approach the witness table and give us their side of the story, or do they not have the right to talk about these dollar figures? I don't have the bills. I don't have the receipts. I don't want to be in a position of negotiating this deal.

Hon Mrs Dombrowsky: That's not what clause-by-clause is for, Toby. You know that.

Mr Barrett: I've made this request. I suppose I could ask for unanimous consent, because I did see nods from the other two parties.

I understand one of the proponents is sitting here today. I don't feel comfortable talking about \$1.5 million, \$500,000 here. I don't have the receipts. I'm not going to pass judgment on that one.

The Chair: I think it would be difficult to provide you with a complete picture of what compensation has been, since not all the parties are here today. So I would say that I won't honour that request today. I don't know if the minister wants to respond to this comment.

Hon Mrs Dombrowsky: No.

The Chair: OK. Now I'm prepared to put the question on the amendment to 6(1) to 6(4) before the committee. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: The motion is carried.

Again, on section 6, there is a government amendment to subsection 6(7). Is there a mover for the motion?

Hon Mrs Dombrowsky: Madam Chair, did you want to do 6(5) and 6(6), or will you do that after—

The Chair: We'll complete it at the end. We'll just do the amendments now.

Hon Mrs Dombrowsky: Madam Chair, I move that subsection 6(7) be struck out and the following substituted:

"Reasonable expenses

"(7) For greater certainty, subject to subsection (8), a reference in this section to reasonable expenses incurred for the purpose of using the Adams mine site to dispose of waste includes reasonable expenses incurred for that purpose for,

"(a) seeking to acquire and acquiring the Adams Mine site;

"(b) surveys, studies and testing;

"(c) engineering and design services;

"(d) legal fees and disbursements;

"(e) marketing and promotion;

"(f) property taxes;

"(g) seeking government approvals; and

"(h) seeking to acquire the lands described in schedule 1.

"Same

"(8) For greater certainty, a reference in this section to reasonable expenses,

"(a) does not include any expense that exceeds the fair market value of the goods or services for which the expense was incurred; and

"(b) does not include any expense for which 1532382 Ontario Inc or Notre Development Corp has been reimbursed by another person."

The Chair: Thank you. Are there any questions or comments?

Mr Hardeman: Just a very quick question. First of all, I'm trying to understand this, and maybe it would be easier if somebody could give me an example or two of what wouldn't be included, because this seems like quite an exhaustive list as to what we've included. The list is so exhaustive that it would be hard to believe that we're trying to define what is included, rather than trying to point out what wouldn't be included. I'm just wondering if someone could give me what somebody suggested should be on the list and isn't.

Hon Mrs Dombrowsky: I would only offer that I believe in our attempt to be as fair to the corporations as possible, we've tried to present an exhaustive list of reasonable expenses that could and should be considered if the bill is passed.

Mr Hardeman: I guess I need clarification. If I look at (h), the cost of "seeking to acquire the lands described in schedule 1," is that definitive? How would we define the cost of doing that as we were looking into purchasing the site? Was that three years of looking into the possibilities? Why are we defining that item, and what does it mean when I read that?

Mr FitzPatrick: The lands in schedule 1 are lands adjacent to the Adams mine site, and the costs involved might have been for things like surveys and legal fees, things like that.

The Chair: I will now put the question on the amendment to 6(7). Did you have more questions, Mr Hardeman?

Mr Hardeman: Yes. I'm wondering again on the definition under "Same (8)(a) does not include any expense that exceeds the fair market value of the goods or services for which the expense was incurred," what does that mean?

Mr FitzPatrick: It's simply an attempt to illustrate what we mean by "reasonable expenses." So if a payment were made for something and the payment far exceeds the actual value, we would not repay that.

Mr Hardeman: But I guess my question, really, would be, when the bill is produced for the service, wouldn't that automatically be a reasonable market value? Isn't that how you would define the market value? Why would you say, "We won't pay it because it's too high; somebody else would have done it cheaper"? "Reasonable expense" is one thing, but then to say you also have to identify it as a value for money before you

can turn your bill in—maybe the proponent made some bad deals and paid some consultants too much money. That happens from time to time. Is the government now going to say, “You don’t get paid for that consultant because somebody would have done that job cheaper. That’s above market value?”

The Chair: Mr FitzPatrick, did you want to respond to that question?

Hon Mrs Dombrowsky: If I may, we are managing taxpayers’ dollars, and we want to ensure that any expenditures are made reasonably and that if a fair market value for a survey—and I’m taking the numbers out of the air, please understand. If it’s in that area, it would be fair to assume that a survey could be had for \$5,000, and if a bill would be submitted for \$15,000, that would not be seen as reasonable. The province wants to compensate for expenses, but we also want to be sure that we are expending taxpayers’ dollars reasonably.

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Mr Racco: I suspect that what you’re also saying in this section is that if somebody hired to do the job was paid significantly higher than what is reasonably expected, they would only get the reasonable amount. That’s what you’re saying.

The last section: If you can give me an example, otherwise it’s fine. The last words say, “by another person.” Can you give me an example of that or not, or do you want me to read it all? I’m just trying to think what that could be.

Mr FitzPatrick: The primary reason for that is because of the relationship between Notre Development and the numbered company. Notre Development started this project and the numbered company acquired certain rights and the ownership of the site in the last few years. It may be that the numbered company has reimbursed Notre for some of the things they previously expended. This would avoid double payment.

Mr Racco: It would pay one party, not both.

Mr FitzPatrick: Exactly. It may be that there are other examples.

Mr Racco: That’s fair. Thank you.

The Chair: I will now put the question on the amendment to subsection 6(7) on the floor. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: The motion is carried.

There being no further amendments to section 6 before the committee, I will now put the question. A recorded vote has been requested. Shall section 6, as amended, carry?

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: That’s carried.

On section 7, there is a government amendment to subsection 7(1). Is there a mover for the motion?

Hon Mrs Dombrowsky: I move that subsection 27(3.1) of the Environmental Protection Act, as set out in subsection 7(1) of the bill, be struck out and the following substituted:

“Lakes

“(3.1) Despite subsection (1), no person shall use, operate, establish, alter, enlarge or extend a waste disposal site where waste is deposited in a lake.”

The Chair: Any discussion? Mr Racco?

Mr Marchese: Mr Marchese.

The Chair: Sorry, I looked at him. Mr Marchese, I apologize.

Mr Marchese: Could you again, monsieur l’avocat, explain the difference, because there appears to be a difference between the two. One says “where waste is deposited in a lake,” and the other “if any part of the site is located in a lake.” There is a substantial difference between the two. Could you explain the significance?

Mr FitzPatrick: The amendment will focus on what was our intention, and that was to prohibit the placement of waste in a lake. As originally drafted, it would have gone beyond that and prohibited the use of a waste disposal site if there was, for example, a large pond used for storm water management or possibly a lake at the far end of the site that was not involved at all with waste management operations.

Mr Marchese: OK.

Mr Barrett: We have a further motion. I haven’t heard an explanation of this motion. You read the motion, but could we have an explanation of the motion?

The Chair: An explanation has been requested. I think it was just given, but you were—

Mr Barrett: The minister explained it? Maybe I missed that.

The Chair: No, it was just explained while you were talking. Mr Marchese asked that question. Could you repeat it, please?

Mr Barrett: I’m sorry, who—

The Chair: Mr FitzPatrick will answer it.

Mr Barrett: I see. You made an explanation of the motion?

Mr FitzPatrick: The amendment will focus this prohibition, as we originally intended, on the placement of waste in a lake. The version that is in the bill now is broader than that and would prohibit the use of a waste disposal site if there were, for instance, a large pond used for storm water management purposes, or even if there

were a lake at the far end of the site not involved at all with waste management.

Mr Barrett: We know from testimony—the Canadian Environmental Law Association raised the issue—that if the legislative intent is to prohibit landfills in manmade bodies of water then, in their view, the bill's definition is adequate. We now have an amendment that changes the definition of a lake, if I'm clear on this. CELA indicated in testimony that if the legislative intent is to prohibit landfills in all bodies of water, whether they're natural or artificial, then the definition should be broadened. I'm not sure if this amendment meets their criteria to broaden the definition of a lake or a landfill. They suggested that a lake means any natural or artificial body of water, river, pond, stream, creek, brook, spring, reservoir or other watercourse, and includes the beds of such bodies of water.

I guess my question, perhaps on behalf of CELA, the Canadian Environmental Law Association, is, is this amendment in a sense a change in the definition of the lake in section 7? Is this adequate, from their perspective? I always used to know what a lake was, but we're redefining and redefining. I think we made mention of irrigation ponds, which are very important down in my neck of the woods.

Mr FitzPatrick: I will admit I've had some difficulty understanding their criticism. Lake means lake, just as you said. It is only for the purposes of this section of the Environmental Protection Act that we have expanded the meaning to include manmade bodies of water. Otherwise we have not affected, in any way, what the normal meaning of lake is.

Mr Barrett: OK. Going back to the big picture, which, unfortunately, doesn't really come up in the legislation, but even with respect to this issue, we're talking about potential contamination of groundwater, surface water, aquifers—source protection by extension. We heard testimony in Milton that—these weren't my words—leachate in Adams mine potentially would be causing problems for 1,000 years. By extension, if you buy into that, we do have other sites, other lakes, by this definition, that do contain landfill. For example, I think of the cleanup of various hot spots in the Great Lakes. In my riding, for example—I think it was the Edwards landfill in Haldimand. A certain landfill has been removed from that site because it was deemed inappropriate and it's being used for construction waste.

This legislation, in my mind, opens the door for Love Canal-type cleanups on all the other newly defined lakes that have contained garbage and potentially are going to leach into the water table for the next 1,000 years. Is that where we're heading with this, Minister? Because water is water. An aquifer is there, whether garbage is going to be put in it in the future or was put in it in the last several years. Does this legislation now open the door to clean up these other—I won't use the term "hot spots," but to clean up past Adams mines—garbage in lakes?

Hon Mrs Dombrowsky: I must confess I have some difficulty tracking the question, as the member meanders

through a variety of scenarios and examples. This legislation is intended to protect the people of Ontario, to ensure that their water sources are protected. We believe that placing landfill in bodies of water can potentially expose the water sources in communities. The intent of this amendment is to clarify where in fact, anywhere in the province, landfill material will not be deposited in a lake. That is the intent of the clarification of this section.

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Mr Barrett: In the examples I used—it may be Marathon harbour on Lake Superior or Wheatley or Leamington on Lake Erie where mistakes were made in the past—there is product in the sediment. There has been a movement to remove that sediment. We have now identified, through this legislation, that lakes are not to receive garbage or landfill. In the past, landfill has been put into pits and quarries and mines. That product is in there. It is exposed to the aquifer. It is exposed to the groundwater.

In the spirit of this legislation, are we going to be considering excavating that product from other sites? The evidence here seems to indicate that leachate goes into the water table. This is all about water, in my view. I know much of the discussion has been around property rights and compensation, but from an environmental perspective, do we let this lie?

Hon Mrs Dombrowsky: The intent of this legislation is to protect water sources in Ontario. The intent of this amendment is to ensure that a waste disposal site will not deposit waste in a lake in Ontario.

Mr Leal: Indeed, this section is about protection of water resources. If you think of a landfill, the way landfills are developed in Ontario today, you have a footprint of a landfill, and then within the footprint of the landfill, you actually have the fill area. The fill area, of course, is always much smaller than the footprint. In the footprint of the landfill, you often have a detention pond which collects the water that you eventually pump out so that water doesn't leach into the fill area creating a leachate problem.

I'm surprised my friends across the aisle haven't picked up on that. If they've toured any landfill sites in southern Ontario in the last little while, that's exactly the way they've been established.

Mr Hardeman: Just in clarification directly to the amendment, my understanding—and correct me if I'm wrong—is that the previous legislation was that there could be no identified lake, man-created or otherwise, on a landfill site. So if the owner of the site owned 50 acres, and that 50 acres contained an identified lake, then you couldn't have a landfill site on it.

This amendment changes that to the fact that you could have a lake—in fact, you could have a group of lakes—and right in the middle of it could be your approved site, and as long as you didn't deposit waste in the lake, that could be approved. Is that correct? Is that how I can interpret this amendment?

Mr FitzPatrick: That's correct. The director would have to make a decision on—

Mr Hardeman: Going back to Mr Barrett's comments about the environmental association, they wanted it clarified that we were going to be more restrictive, that we include more bodies of water, such as rivers, streams and lakes that may not quite be the full size—the two and a half acres or whatever it is—that we have to have. They thought they should be included in any way; that the landfill was going to contaminate the groundwater. This is really taking us, in fairness, in an opposite direction to what they suggested. Is that not right?

Hon Mrs Dombrowsky: In my opinion, that would not be accurate.

Mr Hardeman: I hate to argue with a minister of the crown, but this amendment does make landfilling more likely in areas where there are bodies of water. In the original bill, you could not have a lake anywhere on the site and have a landfill site on that same piece of property. With the amendment, you can have a landfill site on the same piece of property that you have a lake. That, to me, makes it more likely to have landfills close to bodies of water. It doesn't make it so; it just makes it more likely. Is that not right?

Hon Mrs Dombrowsky: Depending on the size of the site and so on, that is a possibility. It's important to recognize that one of the reasons this amendment is being considered is that there are many landfill sites that also manage their own waste water. Their concern was that those storm water ponds could be considered lakes. For that reason, we believed that we needed to be more clear in terms of the intent of this legislation, and that is to ensure that henceforth no garbage will be placed in a lake in Ontario.

Mr Hardeman: First of all, though I disagree with the whole bill, I want to say I agree with the amendment to the extent of what it would accomplish if I thought the bill were the appropriate thing to do.

I don't know how the minister can suggest that this amendment doesn't make it more likely to have landfills closer to bodies of water. If you're going to use the argument that this is only to deal with storm water management on landfill sites, why would the amendment not speak to storm water management bodies of water and separate them from lakes and just deal with those? This amendment makes it more likely to have landfill sites closer to bodies of water than the original bill. So from an environmental point of view, I don't know how one could support this amendment.

Hon Mrs Dombrowsky: In terms of whether a landfill would be sited within proximity of a lake, that reality would be determined through the environmental assessment process. The honourable member should know that is the process in Ontario and that any proposed landfill that could potentially impact a lake or a river, as was referenced with the CELA presentation, would all be considered during the environmental assessment.

The Chair: Thank you, Minister.

Mr Hardeman: Madam Chair, this speaks directly to the bill. Again, using the analysis that I should know that all these things will be dealt with in an environmental

hearing is very good news for me, but it doesn't do much for the people who own Adams mine. They went through all that process, had it all approved by the ministry and now find that the ministry changed its mind. I just want to make sure that this isn't going to encourage a lot of people to apply and then have it turned down and they say, "You should have known that we really didn't want it anywhere near a lake."

The Chair: Mr Hardeman, could I ask you to speak just to the amendment, please. That's all that's in front of us right now.

Mr Hardeman: Madam Chair, I don't know how much closer to the amendment I could get when I'm talking about what the amendment does. Let's be fair and honest here. I'm talking about, this amendment putting landfill sites closer to lakes.

The Chair: I know, and I would like you to be specific rather than—

Mr Hardeman: I can't be specific because I can't get specific answers. I want it to be more general, because it seems we're having a problem with the minister understanding what the amendment does.

The Chair: With respect, I think the minister does understand, and you do, but you disagree on what the interpretation is.

Mr Hardeman: No. Madam Chair, again—

The Chair: Could you ask direct questions or make a statement, and then we'll move on. You have the floor.

Mr Hardeman: I'm not going to suggest that the Chair, the minister or even myself doesn't understand it. Of the three, likely I am the least understanding of the three. But the minister has made it quite clear in her answers that she does not believe that this amendment would be more likely to have landfill sites closer to bodies of water that she's defining as lakes than the bill the way it is presently written. If that is not the case, then I see absolutely no reason for this amendment. I think that's exactly why this amendment is before us, so in places where there are large bodies of water on the site or storm water management ponds—whatever—if there are bodies of water that are not going to be impacted directly by the landfill, they would still be considered for landfill areas.

Under the present bill, that is not allowed. The present bill is quite clear that if it contains a lake on the site, that site would not be considered for landfill; don't even ask. The amendment says, provided the site with the lake has a good corner on it for landfill, you can go ahead and apply.

The Chair: Thank you, Mr Hardeman. I will now put the question on amendment 7(1). Did you have another question?

Mr Barrett: Yes, thank you. Further to the amendment to section 7, we understand the reality is that the government of Ontario—and certainly this is becoming very clear through this legislation—is the regulator. The government of Ontario makes the ultimate decisions on where and when landfills are implemented and makes decisions whether existing landfills or—

Mr Marchese: Merciful lord, it's the bell.

Mr Barrett: Are we done?

The Chair: If you'd like to finish your comments, we could finish this section, if it's the will of committee, or we could plow through and perhaps be finished and not come back at 3:30. It's the decision of the committee. Do we want to come back at 3:30?

Mr Barrett: Is this a five-minute bell?

Mr Hardeman: It's a five-minute bell. They must go and vote.

The Chair: I'd be happy to recess, if you want to complete your comments.

Mr Hardeman: It's not a choice whether we sit during the bells ringing.

The Chair: I understand that. I'm trying to be courteous to the speaker. Would you like to finish your comments, Mr Barrett, or would you prefer to make them later?

Mr Barrett: I can wrap up when we come back.

The Chair: Thank you. We'll recess. We'll be back at 3:30.

The committee recessed from 1201 to 1552.

The Chair: I'm going to call this meeting to order. I'll now put before the committee the question that we were dealing with prior to recess, and the question was on the amendment 7(1). We were asked for a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

The Chair: Anybody opposed? No? The motion is carried.

There being no further amendments to section 7 before the committee, I will now put the question before the committee. We've been asked for a recorded vote. Shall section 7, as amended, carry?

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

The Chair: Section 7 is carried. Are there any comments or questions on section 8 of the bill? Any questions on section 9? We could possibly do them together, or did people want to comment on either of those sections?

If not, shall sections 8 and 9 carry? We have been asked for a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Mr Marchese: You're against.

Mr Barrett: I'm not aware of what we're doing.

The Chair: That's carried.

Are there any comments or questions on schedule 1 of the bill? If not, shall schedule 1 carry? Since we've been asked for a recorded vote—is there a request for a recorded vote on the schedule, Mr Barrett?

Mr Barrett: Yes.

The Chair: This is a recorded vote on schedule 1.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

On the issue of the title carrying, shall the title carry? This is a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Shall the bill, as amended, carry? This is a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Shall I report Bill 49, as amended, to the House? Recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett.

The Chair: That's carried.

This concludes the committee's consideration of Bill 49. I'd like to thank all of my colleagues on the committee for their work on the bill. The committee also thanks the ministry staff and the members of the public who have contributed to the committee's work.

The committee is now adjourned. Thank you.

The committee adjourned at 1556.

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