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**Official Report
of Debates
(Hansard)**

Thursday 25 November 2004

**Journal
des débats
(Hansard)**

Jeudi 25 novembre 2004

**Standing committee on
justice policy**

Ontario Heritage
Amendment Act, 2004

**Comité permanent
de la justice**

Loi de 2004 modifiant la Loi
sur le patrimoine de l'Ontario

Chair: David Oraziotti
Clerk: Katch Koch

Président : David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Thursday 25 November 2004

**COMITÉ PERMANENT
DE LA JUSTICE**

Jeudi 25 novembre 2004

The committee met at 1001 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Bob Delaney): Ladies and gentlemen, let's bring the meeting to order. This is the standing committee on justice policy. Everyone should have an agenda. Our first item of business is the report of the subcommittee. Do I have a report of the subcommittee?

Ms Jennifer F. Mossop (Stoney Creek): Your subcommittee on committee business met on Friday, November 19, 2004, and recommends the following with respect to Bill 60, An Act to amend the Ontario Heritage Act:

(1) That the committee meet on Thursday, November 25, 2004, and Wednesday, December 1, 2004, in Toronto to hold public hearings on Bill 60;

(2) That the clerk of the committee be authorized to post an advertisement on the Ontario parliamentary channel and on the Internet;

(3) That the deadline for written submissions be Wednesday, December 1, 2004, at 12 noon;

(4) That the clerk, in consultation with the Chair, be authorized to schedule witnesses on a first-come, first-served basis;

(5) That the research officer provide the following: chronology of Ontario heritage legislation, by November 24, 2004; summary of presentations, before clause-by-clause consideration of the bill.

(6) That the deadline for amendments be 6 pm on the day before clause-by-clause consideration of the bill;

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

The Vice-Chair: Are there any questions and comments on the report of the subcommittee? Going once, going twice—hearing none, do we have a motion to adopt the report of the subcommittee? All in favour? Carried.

ONTARIO HERITAGE
AMENDMENT ACT, 2004

LOI DE 2004 MODIFIANT LA LOI
SUR LE PATRIMOINE DE L'ONTARIO

Consideration of Bill 60, An Act to amend the Ontario Heritage Act / Projet de loi 60, Loi modifiant la Loi sur le patrimoine de l'Ontario.

The Vice-Chair: Our first presenter today is the Escarpment Biosphere Conservancy, Bob Barnett, executive director. Are they here?

Mr Rosario Marchese (Trinity-Spadina): Mr Chair, it's not 10:15 yet. It's likely they could be coming, so you might as well move on to the next one.

DIANE CLENDENAN

The Vice-Chair: It is likely they could be coming. We know that we have one deputant who is here, and perhaps we could simply exchange positions with deputant Diane Clendenan, if she's willing to begin at this point. Diane, are you willing to do that? OK. Please come up.

Diane, welcome to the standing committee on justice policy. Despite the formality of the proceedings, the rest of it should be relatively informal. I'll ask you, first of all, to state your name for the purposes of Hansard.

Ms Diane Clendenan: My name is Diane Clendenan.

The Vice-Chair: You have 15 minutes to talk with the committee. You can use the 15 minutes any way you wish. You can speak for all of it. If you choose to leave some of it unused, then questions will rotate for the balance of the time evenly among the parties represented here. You can proceed any time you wish.

Ms Clendenan: As I said, my name is Diane Clendenan. I was born here in the city of Toronto and have roots that stretch back for five generations in this province. I'm a retired public school teacher, formerly with the Toronto Board of Education. My degree in sociology is from York University. I am a family historian.

In 2002, I also testified as an expert witness at the commercial appeal tribunal in the case of St Alban's Anglican Church Cemetery, Palgrave, Ontario: Ontario Government v the Ontario Historical Society. In this case, the government of Ontario had ordered, and then

argued at a public hearing, that it was in the public interest to relocate the cemetery for real estate development. I gave testimony that it was not in the public interest to dig up and move the cemetery.

I worked with the families and descendants, both in this case and the application to put a condominium development on the burying ground at St James Cathedral. I know personally how deeply distressed and appalled these families were, hence my interest in appearing at this public hearing.

First of all, I am pleased that there are to be changes made to the existing Ontario Heritage Act, which was passed nearly 30 years ago, but at the same time I am dismayed to find that there's no mention of, nor protection for, cemeteries. May I quote from an article that is entitled *Background* and dated April 21, 2004, that came from the Ministry of Culture:

"In Ontario communities, heritage is reflected in landmark buildings, small-town main streets, historic neighbourhoods, scenic landscapes, archaeological sites, special cultural places, including aboriginal sites, and such unique structures as lighthouses, mills and barns. These heritage resources are irreplaceable."

Are our cemeteries not heritage sites? Are our cemeteries not irreplaceable?

I have been researching my family heritage since 1978 and am currently a member of many genealogy and family history societies in this province, Manitoba, England and Scotland. Through the many years, I have spent countless hours walking through many cemeteries in order to find some trace of my ancestors and, might I add, in all kinds of weather. They have ranged from those found here in the city of Toronto to those found in the more rural settings of Bruce county and Haldimand and Norfolk counties. It is, however, the smaller ones which are of special interest to me, the well over 3,000 inactive cemeteries which are threatened by development pressures and are not protected.

During the last four years, since my retirement, I have been privileged to be part of a team of people who have been spending Wednesday mornings transcribing St John's Norway Cemetery here in the city. There's also another team actively transcribing St James Cemetery. We spend many hours on our hands and knees, prodding to find cemetery markers, angling our bodies in such a way to help the sun make a stone more legible and often just wondering about the lives of the people who are buried there. I was also involved with the transcription of St Michael's Cemetery in Toronto.

1010

What can a cemetery tell us? One looks at the general layout. Family groupings are often found in plots that are close by. This might make it easier to show which Smith families, for instance, are related and which Smith families are not. The moving of a stone destroys this piece of Ontario's history. People who visit also want to know the exact place where their ancestors lie buried.

An inscription on a stone can reveal not only birth and death dates but the place where the event happened. It

might reveal the cause of the death, such as a drowning. It might reveal a regimental number which would help lead people to find military information. It might reveal whether the person is a mother or a father, a sister or a brother, a son or a daughter. The carving of the stone itself might reveal a hobby such as golfing or sailing, or it might display an insignia that reveals a membership in an organization such as the Masons. All of the above helps our fellow citizens learn more about their ancestors. It is essential that these cemeteries be kept in their original locations.

There is the importance of the heritage issue itself. I am sure that all members of this Legislature realize that cemeteries are a vital and irreplaceable component of Ontario's heritage. Unfortunately, Bill 60 does not reflect this. If it did, Bill 60 would have clear, undeniable protection for our cemeteries. Having appeared at a tribunal in 2002 as an expert witness against the province of Ontario, I know first-hand the importance of clear legal wording, especially when I am being cross-examined by lawyers from the Attorney General's office. You have a duty to ensure that this Heritage Act clearly protects our vulnerable cemeteries in their original locations, especially all our registered and inactive cemeteries.

In the past, we have found it important to stress the importance of heritage and, indeed, have assigned the month of February to be used for that purpose. As a former teacher, I know that that time is used to stress heritage in the schools. During Heritage Month at the school where I taught, we often had visitors to help us learn more about different cultural backgrounds. We would help children learn more about their own families and help them to chart their own particular family trees.

Cemeteries also help children to learn more about the history of Canada. When the weather is better, many teachers take their classes on field trips to cemeteries to learn not only about prominent people of the past but to learn more about the ordinary, or perhaps I should say extraordinary, pioneers who first came here, and to learn about the diverse cultures of Ontario.

This Heritage Act, by not clearly protecting our cemeteries, sends a terrible message to our children, our teachers and local governments that our cemeteries are not important. It also sends a very alarming message to developers who want to build on our cemeteries.

I work with families whose ancestors are buried in cemeteries all across Ontario. With this amendment to Bill 60, what message are you sending to those families? You have an historic opportunity to send a message of respect for all the peoples of Ontario.

Lastly, there is the dignity of the deceased. Having recently gone through the death of a parent, I simply cannot fathom why one might entertain the thought of relocating a cemetery. My mother believed that forever meant forever. Do you? What kind of society do we live in that could cheat our ancestors of their final resting places?

Thank you for your time.

The Vice-Chair: Thank you very much. We've got about six minutes remaining. That will give roughly two minutes, or perhaps a question to each of the parties. We'll begin with Ms Munro.

Mrs Julia Munro (York North): Thank you very much for coming here today to bring a personal face to this issue. As I listened to you, I couldn't help but remember in my own personal family background the kinds of challenges that you have identified for us. Certainly, I recall being out in one of the many, many little southwestern Ontario pioneer cemeteries with my mother, busy doing exactly what you're saying: trying to hook up family members by the location and so forth.

I certainly agree with you that it is an area that deserves our attention as legislators and one where we need to look at the best vehicle for protection. I think, by bringing this forward today, you are giving us that opportunity and, frankly, a big push in the direction of what is the best vehicle for the protection.

I want to thank you for doing that and recognize the importance of what you're doing as a volunteer, in terms of bringing greater awareness to the tremendous data that can be gleaned from even a casual walk through an old cemetery. Thank you so much for bringing that to our attention today.

Mr Marchese: Thank you, Diane. I just want to say to you that the New Democrats support Bill 60, but we also support greater protection for cemeteries. That's why it is our intention to bring forth amendments when we deal with this bill on a clause-by-clause basis.

In the meantime I want to ask you, have you had discussions with the ministry staff and/or the minister and/or her staff in terms of this issue, and what have they said by way of support or objections to what you're trying to achieve?

Ms Clendenan: To date, I have had no discussions with anybody at that particular office.

Mr Marchese: But have you made any efforts, or have others that you are aware of, made any efforts to reach them to talk about how you might, in this bill, make changes that would protect cemeteries in one way or another?

Ms Clendenan: I have written. I did make a written report to the Premier and I sent a copy to you as well, and to the Minister of Culture, but I have not had a response from them to date.

Mr Marchese: Diane, in your view, what are the objections to our interest in protecting cemeteries from being relocated or displaced?

Ms Clendenan: Could you please repeat the first part of your question?

Mr Marchese: Cemeteries are not included in this bill, in terms of how we protect them. What might you think are the objections to it?

Ms Clendenan: At this point I can't think of any reason why somebody would object to doing it. They are definitely historic in nature. They are very often crumbling due to weather, and we have to do something.

Mr Marchese: I understand that. Let me ask you another question: Do you think all cemeteries should be protected or do you think that some could be relocated?

Ms Clendenan: I think all cemeteries should be protected.

Ms Mossop: Thank you very much for your passionate presentation. I am so impressed with the history of your work.

I have a couple of questions for you. First of all, you mentioned that you had sent a letter to the minister's office. Can you tell me when you did that?

Ms Clendenan: I would say it would be approximately three weeks ago.

Ms Mossop: And you have yet to receive a response?

Ms Clendenan: That is correct.

Ms Mossop: I had similar questions with regard to this. I'm the parliamentary assistant to the minister. It's my job to get to know this bill fairly well, and I had posed this question as well. My understanding is that cemeteries are presently covered under the Heritage Act. They aren't specifically named, such as a bridge is not specifically named, as things that are protected, but they are presently protected under the Heritage Act. As such, these amendments that are being proposed are supposed to, and should, provide more strength to protect cemeteries as well as others. My understanding is that there are several cemeteries in the province of Ontario already designated under the Heritage Act. These amendments should provide more protection for cemeteries at present. Are there other measures that you feel we might be taking?

Ms Clendenan: I still feel the word "cemetery" should actually appear, rather than, say, for instance, a word such as "property." I think cemeteries are special and unique. It is the final resting place of our citizens. I really feel quite strongly about that issue, that the word "cemetery" should appear.

Ms Mossop: Thank you very much for your time.

The Vice-Chair: Thank you very much.

1020

ESCARPMENT BIOSPHERE CONSERVANCY

The Vice-Chair: Our next deputation is the Escarpment Biosphere Conservancy.

Mr Bob Barnett: Thank you very much, Mr Chairman and members of the committee. It's a pleasure to be here.

The Vice-Chair: Good morning.

Mr Barnett: I do have copies.

The Vice-Chair: Please give the copies of your material to the clerk to distribute.

You'll have 15 minutes for your presentation. You can choose to speak for all of it or part of it. Any part that you leave remaining will be divided equally among the three parties and they can ask you some questions. So would you please begin by stating your name clearly for Hansard, and carry on.

Mr Barnett: I'll try to be fairly quick here and take less than the amount of time. I'm Bob Barnett. I'm executive director of something called the Escarpment Biosphere Conservancy. We create nature reserves on the Niagara Escarpment. I'm also the co-chair of the government relations committee of the Ontario Land Trust Alliance, which is the confederation of the 36 land trusts across the province. We've got quite a few volunteers involved, all in all.

The reason I'm here today is that we feel land trusts should have extra reasons for being able to protect land through the tool of conservation agreements or what are sometimes called conservation easements. Right now, only the Ontario Heritage Foundation and municipalities can perform some of this protection. We've got some, I think, pretty good volunteer charitable organizations out there in many communities across Ontario, and we'd like to involve them in this protection effort.

Incidentally, land trusts are now protecting more private land in southern Ontario than all levels of government put together, including federal, provincial, municipalities and conservation authorities. So we're there doing it. We would like to expand the purposes for which we can conserve land.

In the little presentation I handed out, you'll see that I've included such purposes as trails, recreation, agricultural land, cultural artifacts, buildings, archaeological sites, cultural sites, areas of aesthetic and scenic interest, restoration or enhancement of land and wildlife habitat, water protection, education, all sorts of good things that the Ontario Heritage Foundation can do right now. We appreciate all the good work they've done, but we would like to expand that work. We think we can support many broad aspects of the government's agenda, like the green-belt, efficient infrastructure, fitness and trails, preserving our agricultural lands, water source protection, land protection—we talk about the million acres—supporting provincial policy statements and supporting the international agreements on biodiversity, all by helping us to help you achieve your common objectives. We're here to help, the many volunteers in communities, I'd say from the Thousand Islands to Thunder Bay.

Why we think this is a good idea; we think it will make conservation more effective and more efficient. I don't have 10 reasons; I only have nine reasons why.

Right now, there's sort of a monopoly. Only the Ontario Heritage Foundation and the Agricultural Institute of Canada can perform many of these kinds of protection.

Right now, it's expensive to use those agencies for that kind of protection. Land trusts are run by volunteers, largely by donations, so we think this is a more effective way to achieve these objectives.

Right now, donors are not approaching those existing organizations, because the Ontario Heritage Foundation can't be in hundreds of communities across Ontario, whereas our land trusts have thousands of volunteers out there encouraging people to conserve land and cultural artifacts.

Right now, easements are sort of expensive to operate, because that's being done by the Ontario Heritage

Foundation; that's staff, and it's taxpayer-driven. We would like to see that devolved to local organizations, where it's being done by volunteers etc.

Right now, some existing agreements can't be enforced. We actually have agreements to protect farmland. If, in the worst case, it goes to court, I'm not sure we could enforce those agreements right now. We have agreements on trails. If some landowner in the future decides to fight that, we don't have the tools, through the act, to say, "Yes, we can enforce that."

Right now, we have to partner with the Ontario Heritage Foundation. That's been very positive, but it's a lot of extra work to do that partnering. We'd like to offer sort of one-stop shopping and just get it all done with one organization.

Right now, there are many properties that have many reasons for being protected. Let's say they have a trail, they have natural heritage, they have an historic building on them. We think it's wise to have one organization that can do the whole works.

Conservation is slow right now. The Ontario Heritage Foundation is doing a great job, but it's slow. They have a sort of ponderous process, whereas, working in local communities with volunteers, we can charge in and get things done a little more quickly.

Only one level or other of government can do some of these things right now, whereas land trusts dealing with a charity, which we are, a non-government champion—we think we can get the job done cheaper and more effectively for everybody's benefit.

Here we have a way to effect a lot of government programs, save a lot of money and get things done effectively at no cost. Yes, it's some words in regulations in the law, but it's no cost.

Thank you very much for the opportunity, and I'd love to have some questions.

The Vice-Chair: Thank you very much. We have approximately nine minutes remaining. Ms Munro.

Mrs Munro: Thank you for coming here today to give us kind of a different slant on much of this bill. I wonder if you could explain the process, hopefully not just for my benefit personally but for the committee. You talk about how, as a group of volunteers, you would be more flexible, easier, faster, less bureaucracy etc than the heritage foundation process. I wonder if you could explain for us what happens. Give me a case scenario of someone who has a piece of property and they've made a decision that they want to have it in this state in perpetuity. I'm assuming that would be the kind of circumstance where you might be involved.

Mr Barnett: OK, I'll give you a good example. I was invited up to Durham a week and a half ago on a Sunday. The folks there had invited in some of their friends and neighbours to talk about this. They offered me the opportunity in the old town hall to talk about it.

After the meeting, four or five families came up and said, "This is the right thing to do. We don't want our property to be a subdivision, a golf course or a gravel pit in the next generation. We'd like to make our con-

tribution during our lifetime to see that our land is protected.” Right after that meeting, I went out and met with several of those families, and I’ll be going up another weekend to meet with more of those families.

We word an agreement with them. It’s a legal agreement, so we word it. We get an appraiser in to put a value on it. For example, if your property is worth, let’s say, \$300,000 today, but once these restrictions are put in place it may only be worth \$200,000, we can give the landowner a tax receipt for that slice, the \$100,000 difference. We get that agreement approved by Environment Canada and get the appraisal approved so that the Canada Revenue Agency can’t come back and question the tax receipt later. They sign the agreement, and we give them the tax receipt. Then we become the stewards of that agreement. So if a future owner makes it his business to turn that into a golf course, we’re there to fight that in court.

1030

Mrs Munro: You raised the question that some existing agreements cannot be enforced. I guess, having laid out that scenario for me, now I need to know, what are the tools that are missing, or what is the issue in terms of the problems of enforcement?

Mr Barnett: What we need is a mention in the Heritage Act that land trusts are one of the operating agencies empowered under this act. Under the Conservation Land Act, another piece of legislation, we are specifically empowered to protect natural areas, and that’s good. All we need are the same rights as the Ontario Heritage Foundation has to go in and do the sorts of things they can do, which is to protect recreational land, trails, cultural artifacts, archaeological sites—the things I’ve mentioned. All you really need to do—maybe I’m being simplistic—is just add our name as an operating agency empowered by this legislation.

The Vice-Chair: Mr Marchese?

Mr Marchese: You are, at the moment, able to partner with the OHF, and you’ve been doing that, I suspect, most of the time or all the time, in terms of wanting to protect properties—you partner with them to do so.

Mr Barnett: When we’re dealing with natural areas, we do it on our own. When we have trails to protect or a heritage home of some sort, then we have to go and work with the second agency, which is the OHF in most cases.

Mr Marchese: Right. So that part works. But let me understand: Under the Conservation Land Act, you’re also empowered to protect certain lands or properties, and that gives you the additional power you need to do much of what you’re empowered to do.

Mr Barnett: Yes. We have the power to protect land—natural areas only—right now. We’re asking for the additional things in the bullets at the top of the presentation, which aren’t included in the Conservation Land Act. It was a good step forward, but it doesn’t include these interesting and necessary things.

Mr Marchese: The other question was asked in terms of what powers you’re asking for, and you answered it. You presumably had discussions with ministry staff

and/or political staff; I assume you did. Have you, or is this the first time we’re hearing about it?

Mr Barnett: Not too much. I’ve talked to Rob Leverty, and I think Rob Leverty has brought that forward. You’ll be hearing from Rob; he’s in the audience. But I have not personally discussed this with ministry staff.

Mr Marchese: So we don’t really know what they might want to say about this; we’ll get to the Liberal questions and get a good sense of either their support or objection to it, and then we’ll understand better what some of the limitations are and why we could or can’t do it. Thank you, Bob.

The Vice-Chair: Mr Flynn?

Mr Kevin Daniel Flynn (Oakville): I enjoyed the presentation. My home riding is Oakville. We’ve got a tremendous amount of interest in heritage preservation, and in the past few years, land preservation has become a huge issue as well.

Everybody brings up the topic of land trusts. They always say we could do better in the land trust business, and they cite examples in Britain and Europe and other places. Can you point to an example in the GTA, perhaps, an area that has fallen under an agreement with a land trust that I’d be familiar with?

Mr Barnett: I’m also on the board of the Oak Ridges Moraine Land Trust and the board of the Oak Ridges Moraine Foundation. There are some excellent examples, in the Richmond Hill-Stouffville-Claremont area, of large areas that have been protected. They’ve protected about 2,000 acres. Our land trust, which is on the Niagara Escarpment, has protected 3,500 acres from Caledon up to Manitoulin Island at this point. So it is happening.

Mr Flynn: And would they form a part of the Bruce Trail, or would this be independent of that?

Mr Barnett: Four of our properties are part of the Bruce Trail—these are our properties. Many properties of the Oak Ridges moraine are on the Oak Ridges moraine trail, and we in fact have our own trail system up on Manitoulin Island called the Cup and Saucer and we’re working to expand that across the island. So we’re working on that right now.

Mr Flynn: The point you were making made it temptingly simple: Just add my name to the act and everything will be OK. Are you sure you have the corporate structure to be an operating agency under the act?

Mr Barnett: Now, that’s a question I can’t fully answer, but we’re incorporated, we’re charities, and it seems to be working fine under the Conservation Land Act. I can’t see any reason why it wouldn’t be applicable here.

Interruption.

Mr Flynn: My friend, before he started to wreck the place, was asking the same question I was thinking of, and that is that to this date you really haven’t had a good discussion with staff yet.

Mr Barnett: I believe Ian Attridge has, and he’ll be your next presenter. But I have not myself. He’s also involved with the Ontario Land Trust Alliance and he’s a

lawyer. He will talk about some of the technical aspects of what we're talking about. I'm here talking about the why and the broad picture of how, and he'll talk about the details.

Mr Flynn: Thanks for coming today. I appreciate it.

The Vice-Chair: Thank you very much, sir. It wouldn't be a committee meeting if one of those panels didn't fall off.

1040

KAWARTHA HERITAGE CONSERVANCY

The Vice-Chair: Our next deputation is the Kawartha Heritage Conservancy. They'll be joining us by conference call. Are we connected here? Are we speaking to Mr Ian Attridge? Mr Attridge, can you hear us? Please stand by; we have technical difficulties. Our staff will try and reconnect.

Mr Ian Attridge: Yes, hello.

The Vice-Chair: Mr Attridge, I'm Bob Delaney. I'm the Vice-Chair of the standing committee on justice policy.

Mr Attridge: Thank you for making arrangements for me to attend by conference call and for your patience as we worked out the technical difficulties.

The Vice-Chair: Electronics is still an evolving science.

For your benefit, I'm going to give you a list of the names of the people who are present in the room and their party affiliation. You can write them down as I go: Julia Munro, representing the Progressive Conservative caucus; Rosario Marchese, representing the NDP; Mario Racco, representing the Liberals; Jennifer Mossop, representing the Liberals; Kevin Flynn, representing the Liberals; and Phil McNeely, representing the Liberals.

You have 15 minutes for your presentation. You can choose to use all of it or a part of it. For any time that remains, we'll divide the remaining time equally among the different parties. Please start off by stating your name very clearly for Hansard. Go right ahead.

Mr Attridge: Good morning. My name is Ian Attridge, and I'm the president of the Kawartha Heritage Conservancy. I'm also a lawyer who has been quite active in looking at the issue of conservation easements in legislation across the country and also in Ontario.

Maybe I can start with a question. I had circulated, through the clerk, Mr Koch, a submission late in the day yesterday, and I'm wondering whether committee members have that in front of them.

The Vice-Chair: It has, in fact, been distributed.

Mr Attridge: All right, thank you. I did hear the end of Mr Barnett's presentation. I only caught some of the last few questions, so I'm not sure of the full scope which he may have covered. I will cover a number of things, using the submission that I have made as an outline, and would certainly welcome discussion. I'll attempt to leave a good amount of time for that at the end.

One of the last questions that was raised is the issue of including conservation easements in Bill 60 and therefore

amending the Ontario Heritage Act, and the extent to which staff have been consulted and this issue has been raised. I must say that I have raised it in about at least a half a dozen submissions, whether it's on source water protection, the greenbelt, provincial parks legislation, the growth management plan, planning reform—quite a number of initiatives over the last number of months. I've consistently raised this idea of addressing and really improving easement legislation for the province through Bill 60.

I've also provided extensive comments to staff in previous reviews of the Ontario Heritage Act, and over the last several weeks I've been attempting to talk with one of the senior staff members. We have not been able to connect. We've both attempted it, but haven't been able to make the connection. However, I know that he is quite familiar with many of these issues. This is an opportunity to increase the awareness of your committee and hopefully to pursue further discussions after this.

The Ontario Heritage Act, since 1974, has authorized the Ontario Heritage Foundation and municipalities to hold conservation easements for diverse purposes. In 1994, two other statutes were amended to permit the use of conservation easements for more limited purposes. That's the Conservation Land Act, which I believe Mr Barnett was talking about, and there was also the Agricultural Research Institute of Ontario Act, with a limited application to farmland applications. I was working at the Ministry of Natural Resources at the time of development of the Conservation Land Act provisions and was the lead person involved in bringing that forward from a policy position. I was not in legal services at that time.

The Ontario Heritage Act has a number of provisions—I reference them at the bottom of page 1—that permit both the OHF and the Minister of Culture to hold conservation easements for a variety of really rather broad purposes, and I certainly support that. Municipalities may also hold these easements for cultural heritage purposes under section 37.

In my review of the bill, it does not include any provisions to address enhancements or clarifications or consolidations of these kinds of provisions across the various statutes. The bill appears to be addressing primarily regulatory matters, and that's fine. But I think there's a strong opportunity to enhance the use of conservation easements for this broad suite of purposes under the bill.

Starting on page 2, I highlight some of the advantages of dealing with conservation easements through Bill 60. First, these amendments would be non-regulatory and non-controversial. Many of the measures in the bill are regulatory. They're provisions that can be put in place by municipalities and empower the ministry and other agencies to participate in a regulatory process.

Conservation easements are agreements. They're agreements that are entered into by a landowner and by a qualified agency. They are really something that people can agree to or not agree to. They're negotiated. The terms are flexible. Once in place, they are registered on

the land title and can then protect those identified features through those particular measures in the agreement, typically over the longer term. They're typically written in perpetuity, although they can be written for a more limited period—say, 20 years. They're non-regulatory and they are non-controversial. We have them in place today under the Heritage Act for certain agencies to participate in them, and, as Mr Barnett mentioned, under the Conservation Land Act.

There are a number of gaps in legislative authority for conservation easements, and these limit the achievement of a diverse array of conservation objectives, many of which are under public consultation right now and are part of achieving a host of government objectives. For example, I believe Mr Barnett was talking about the limitation on the use of easements for trail and recreational purposes. Only the Ontario Heritage Foundation can hold easements for this purpose. While OHF is certainly qualified and is accomplishing some trails, they cannot do it across the whole suite of landscapes and initiatives in Ontario.

For example, the Oak Ridges moraine conservation plan identifies the need to link a trail across the whole moraine. It would be quite a challenge for the OHF to be negotiating with every landowner as part of that larger, longer trail, as well as the Ontario Trillium Trail Network that is being developed and, of course, the Bruce Trail. So we need to bring in other players to assist in that activity. This would allow these trails to go over more optimum routes, avoiding some of the changes that may happen. If you have a handshake agreement with a landowner to have a trail, that ownership may change. The access may change over time, causing significant upheaval in the establishment of the trail and users' experience.

The second point in limitation of authority is that only the Agricultural Research Institute of Ontario can hold conservation easements explicitly for preserving farmland. As we're looking at the greenbelt, as we're looking at mechanisms to support the regulatory measures that are in place for the greenbelt and for other parts of the province that are under threat from urban sprawl, we need to bring some more players into the picture to be authorized to use conservation easements. ARIO, as I understand, has not entered any easements at all under this legislation, which was put in place in 1994. We have organizations like the Ontario Farmland Trust which could become more active in this area and support the many greenbelt and food security issues that are arising out there.

1050

There's also no direct authority for the use of conservation easements to protect water resources. We are certainly seeing a variety of initiatives coming into play to deliver on Mr Justice O'Connor's report on the Walkerton issue and source water protection initiatives, yet we do not have any direct authority for conservation easements for water resource protection. We might be able to accomplish that by protecting the land itself, and

that could be accomplished under the Ontario Heritage Act or the Conservation Land Act. However, this interpretation issue could leave a water protection easement open to legal challenge in the future, so we need to strengthen that legal authority.

As I've mentioned before, there are limitations on who can hold conservation easements under the Ontario Heritage Act. Only the Ontario Heritage Foundation and the Minister of Culture are authorized to hold easements for the broad array of purposes. Municipalities are authorized only for cultural heritage purposes, and non-profit organizations, non-profit charities such as my own land trust, which has a natural and cultural heritage interest, are not authorized to work on protecting historic buildings or an archaeological site.

I'll give you an example. We are authorized under the Conservation Land Act to protect shorelines and forests on an island in Stoney Lake just north of us, but we are not authorized to negotiate the historic buildings on that site. That leads to inefficiencies in that we will probably have to have one agreement for the natural features and approach the municipality or the Ontario Heritage Foundation to hold a separate easement for the cultural heritage features.

That leads to inefficiencies, which is really my next point. Easements are typically donated, so the costs to governments of acquiring and protecting certain features on the landscape can be decreased if they're donated. The fact that they are really only a partial interest in the land—the landowner still owns the property, subject to the conditions in the agreement. In that case, even if easements were purchased, they would be less than the full fair market value of that land. So it is really a cost and economic efficiency argument to enhance the opportunity to use conservation easements for this suite of diverse purposes.

Also, charities such as our own tend to rely on volunteers primarily. That, again, reduces the costs.

The Vice-Chair: Mr Attridge, you're down to about three and a half minutes. If you wish to have any questions, this would be a good time to wrap up to allow each party a chance to ask you one brief question.

Mr Attridge: All right, thank you. I have a number of recommendations here on pages 4 and 5, really to consolidate the pieces of legislation, to clarify the terms used and to strengthen the ability of easements to be defended through supportive amendments. I'll open it up for questions now, and we can go into those details if necessary.

The Vice-Chair: Thank you very much. Our leadoff in questioning will be Mr Marchese.

Mr Marchese: Ian, just a quick question: Is it possible that, if the Agricultural Research Institute of Ontario actually entered into easement agreements, it could address some of the concerns you raised? At the moment, you say, they haven't entered into any easement agreements. That would be one question. The other one is, if it isn't possible to permit the current institutions to do what you want, what objections do you foresee there might be

by either any one of these agencies, or the government, for that matter?

Mr Attridge: The ARIO certainly could enter into these agreements. They were initially authorized to purchase easements in Niagara region. In fact, a regulation limits the application of that section to the tender fruit lands of Niagara, so it does not apply to other parts of the province at the moment. ARIO could certainly enter into it, but I'm not sure that they would be able to negotiate the kinds of arrangements with landowners all over the province. When we look at land trusts generally, it is the local land trusts or non-government land trusts that are able to establish the kinds of relationships that allow people to feel comfortable in making a donation of those easements. So certainly I'd welcome it if they were doing that, but I think we need other players in place, and they are also limited in whether they could pass it on to other organizations under the legislation.

The Vice-Chair: Thank you, Mr Attridge.

To the governing side, Mr Flynn.

Mr Flynn: I have the same question that I asked the previous speaker, Mr Barnett, and that was about the corporate structure of the Ontario Land Trust Alliance and its ability to simply be named in the act and perform the functions you've just outlined.

Mr Attridge: The Ontario Land Trust Alliance is the umbrella organization of about 40 land trusts across the province. I would anticipate that you would want to authorize, like the Conservation Land Act does at the moment, charities that are incorporated and have a conservation mandate. They are the 40 land trusts in the province. You wouldn't name them specifically; you would probably adopt the same provisions in the Conservation Land Act which authorize non-profit charities to enter into these agreements.

Mr Flynn: A short follow-up question: You said that you had raised this point with our staff. Have you raised it specifically concerning its inclusion in Bill 60?

Mr Attridge: I have specifically referenced Bill 60 in oral presentations to the Greenbelt Task Force and in written submissions on the number of subjects I mentioned.

Mr Flynn: To the Ministry of Culture, though?

Mr Attridge: Not recently, no. I've been attempting to do that, but we have yet to make that connection.

The Vice-Chair: Ms Munro?

Mrs Munro: A number of the issues that I had concern about have been raised in the discussion so far, so I'm going to ask a very narrow question. On page 2 of your presentation, when you're talking about the role currently of the Ontario Heritage Foundation and the kinds of requests for its work, you go on to say that, for instance, provincially supported trails, such as the Oak Ridges moraine and so forth, "must be achieved through outright purchase or following roadways." How would you envisage this to be altered, in terms of what kind of assistance you are looking for from any changes in legislation?

Mr Attridge: In my proposal, the legislation would authorize conservation charities, land trusts, to enter into conservation easements for trail purposes with private landowners. So with a landowner who would be willing to do this—they would agree to it—it could cross through the back part of their farm, it could follow the optimum route of the trail. Often, the trails will get rerouted to follow roadways because it's not accessible across the optimum route. Does that answer the question?

Mrs Munro: Thank you.

The Vice-Chair: Thank you very much for your deputation this morning.

Is Mr Peter Currie in the room at the moment? No?

Ladies and gentlemen, we'll take a short recess. Would you please be back here at 10 minutes after 11.

The committee recessed from 1058 to 1123.

ARCHITECTURAL CONSERVANCY OF ONTARIO

The Vice-Chair: Catherine, welcome. You don't mind going a few minutes early?

Ms Catherine Nasmith: I'm ready. Just give me a second. I can't see. My glasses are fuzzy; you're backlit.

I'm here with a little bit of a scramble because the notice of when the hearings were happening was a bit short.

The Vice-Chair: Just before you start, you have 15 minutes for your deputation. You can speak for all of it, if you wish. If you choose to leave some of it at the end, then we'll divide the question time equally among the three parties. Just before you start, please state your name clearly for Hansard. Thank you for coming and especially for starting a little earlier than you anticipated.

Ms Nasmith: OK. I'm Catherine Nasmith. I'm an architect and heritage activist. I'm here speaking for myself and for the Architectural Conservancy of Ontario. I'm the vice-president there. I should let you know, too, that we were hoping to get a spot on Wednesday of next week, so what the conservancy will do is follow up with a written submission. So I can't give you my remarks today.

Let me just go. When I started as chair of the Toronto preservation board in 2000, I had two goals, both of which were important to changing the culture of architecture and city building in Ontario: One was to see Doors Open established and the second was to get the power to say no to demolition. It's wonderful to be able to sit here before you with Doors Open firmly established and be on the brink of having that power.

I'm one of Ontario's busiest activists. I'm vice-president of the ACO and past chair of the Toronto preservation board. I've been awarded the Queen's jubilee medal for work in heritage advocacy in Ontario. I publish Built Heritage News, an e-journal which has 800 subscribers and climbing. Over the past five years, I've been involved in raising issues around heritage, issues such as the Concourse Building, planning south of Fort York, and I've worked with the residents of Blythwood Road in

trying to save a neighbourhood landmark. I'm telling you all this not to brag, but really just to give you a sense of who I am, what I've been through and what life is like in the trenches in Ontario, trying to work without a decent law.

The ACO is a volunteer organization. We're in the business of advocating for Ontario's heritage buildings. We work to save buildings, and it's almost impossible. Heritage activists are working in impossible conditions.

The ACO has had significant victories over our 70 years. Most recently, our members achieved an important landmark legal decision at the OMB on a case in Chatham where the panel member had to remind the municipality of their obligations to protect heritage, and a recent case in Lakeshore, near Windsor. In that decision, the court ruled that municipalities could not refuse to designate because the owner was hostile. We've intervened and purchased properties and, often with volunteer labour, returned buildings to useful life in their communities. The Walkerton town hall is an example and, our earliest success, Barnum House in Cobourg.

The ACO wholeheartedly supports this bill and, not to put too fine a point on it, we're desperate to see it as law.

What I want to talk to you about this morning is why it's so important to have the power to say no to demolition and how not having it has been destructive, not just in the literal sense of losing buildings but in how weak law has undermined our ability to create a built environment that's worthy of us.

Doors Open has been key to getting communities across Ontario involved in discussing the importance of our built heritage and it has demonstrated the strong interest in preserving our best places. I believe it has contributed to bringing attention to our weak laws.

The ACO has a nagging doubt about the possible loophole available in giving property owners the ability to appeal to the OMB, but we're hoping that the OMB will join in the renewed spirit of stewardship embodied in these changes. The other nagging doubt is that the municipalities won't always act in the best interests of heritage, and if citizens don't have the right to appeal, important heritage buildings will be lost. But both of these concerns should not slow the government in moving Bill 60 forward as fast as possible.

All across the province, members of the ACO are in the trenches fighting to preserve their community cultural legacy. The improvements in this bill will bring an important level of certainty into the system, in particular in communities with councils that understand the importance of heritage to quality of life and place.

With this law, Ontario is finally coming of age, declaring that our built culture is important; not just kind of important or sort of important, but something that as a society we are committing to protect, not just for six months but, dare I say it, in perpetuity. What it offers to municipalities smart enough to take advantage is the opportunity to make sure that everything of value is kept, that only the unimportant is removed. For the first time as a society, we can again take an intergenerational approach to city building.

What people really dread is losing a beloved landmark and having it replaced with something crummy. We can generally live with losing a good building if the replacement is also worthwhile, but just imagine how great it would be if we got both to keep the good old building and to build a great new building.

1130

In England, some very serious discussion is going on of developing lists of buildings that communities would like to see removed—the flip side of buildings with heritage protection. That's very interesting if you think of our towns being made up of our best work. I think when people started building in Ontario, they had a real strong sense of building for the future.

I recently ran across this quote in Toronto Old and New, a civic boosterism publication of the day, published in 1891: "A city's commerce is not built up without making vast draughts on the toiler's brain and muscle. In his labours, both for himself and the community may there always be an ample and lasting reward."

For me, the big words in that are "and the community." To me, the "ample and lasting reward" is to have the work appreciated by the succeeding generations that it was actually built for. To do anything less demeans the builder and our own building process as well.

Communities do get this.

I'm going to go through a little history of a recent bunfight, as we call it in the business, just to show you the kind of never-never land that is created by having weak laws.

Two years ago, I got a call from Eric Melis. He owns a house on Blythwood Road in Toronto. The house across the street had been bought by a developer. The developer wanted to tear it down and build three crummy houses. Eric said, "I love that house. I don't want bad houses on my street." He was looking for help.

I said, "This won't be easy, and you're going to have to organize your whole neighbourhood. By the way, if you don't want to have to keep repeating the battle every time a house on your street is sold, you're going to have to be thinking about a heritage conservation district."

Eric said, "I can't do that. I've got a family. Surely the city can protect the house."

I said, "I wish that were true."

Eric Melis is very tenacious. It took two years of going to the OMB, of organizing the neighbourhood. The city stood very strongly behind the community on this one. And then the developer found a loophole in the law, went and applied for a demolition permit on the basis of a building he had no intention of building. The city fought him on that. The developer went to Divisional Court. The Divisional Court said to the city that they had to issue the demolition permit. And then the developer was still going back to the city, saying, "I want to build three houses. I'll save a piece. I'll save a bit," and there was this crazy negotiation going on. It went on for 18 months.

Finally, it became very clear to the developer that even though he had a right to take that building down, he was not going to get permission to build the houses he

wanted. So he put the house back on the market, just to see what would happen. This is 18 months of people hanging on by their fingernails, really being concerned, residents upset. The house did sell, and it was sold to somebody who wanted to restore it.

So that story had a happy ending. But it's loony. That kind of process is absolutely ridiculous, and nobody should have to go through that kind of stuff to save a neighbourhood landmark.

At the same time the developer bought that house, there was no protection on it; so he didn't know. He got caught in an awful situation.

What we're saying is that this law will bring certainty. "No" is very, very important.

The Vice-Chair: If you wish to allow the parties to ask you some questions, you may want to leave a little bit of time.

Ms Nasmith: OK. How am I doing?

The Vice-Chair: You've got about six minutes left.

Ms Nasmith: Six minutes? OK. I think I've pretty much covered what I wanted to talk about on the lunacy. But, really, it is. Every time there is discussion of a heritage building, this is what happens. Heritage people who want to keep these landmarks that were so carefully built have to be crazy—and we are considered kind of nuts.

It's destroyed the whole culture of making beautiful things. I think, as an architect, if the work of the Group of the Seven at the Concourse Building isn't sacred, why should I bother? Why should I try to make the best buildings I can?

So "no" is absolutely critical. That's my key message here.

People have figured out how to save buildings with a weak law. We do save a lot but it's painful.

I just want to talk a little bit about certainty here. There's a member of the ACO who owns a building on the main street of Port Hope. Now, any of you who have been to Port Hope notice how spectacular that main street is. It has taken 10 or 15 years of real commitment on the part of everybody on that street to make that happen, and it has become a heritage district late in the game. But that's an example of real, serious local commitment to preserving. The owner of this building said, about being in a district, "What's so great about in being in a heritage conservation district is, I know that I can invest in my property and nobody's going to build something awful next door." The certainty in the system that saying no creates really demands excellence of everybody.

I've abridged what I've said a little bit, but I think you've got the message.

The Vice-Chair: Thank you. We'll have time for one quick question from each party.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): It's really not a question; it was more just a comment. First of all, I want to congratulate you for coming in. You need not apologize in any way or make comments that you shouldn't be recognized for what you've done for Doors Open, for what you've done by

receiving recognition from the Jubilee medal. I think that's wonderful.

We have something in common, because I've done both things too. I'm delighted to be here as an MPP, but in my community, I lobbied to have the first Doors Open, and we got it. I did get a medal for that too.

Ms Nasmith: They're nice to get.

Mr Brownell: I want to say, it's very important that you make the address to this committee. The positive comments you've made about where you've been in the past and where we have to go in the future are extremely important. I just wanted to say that to put in on the record.

Ms Nasmith: I think we are now just reaching the beginning of having heritage conservation in Ontario. We haven't had it until now.

Ms Mossop: Just a very quick comment. It's nice to see you again. I met you at the dual conference in Hamilton not that long ago. I just have to commend you for your passion, your hard work, your conviction and your unrelenting will to do the impossible. I'm so glad that you feel we're giving you the tools you need now, although I think heritage in Ontario has had the best tool in you. I would never want to fight you. I say this because at the conclusion of the dual conference, we decided that what we really should be doing is introducing legislation to introduce capital punishment for crimes against heritage. That's how tough this group is. We commend you for all you've done.

Mrs Munro: I certainly appreciate your being here. In a former life, as the person responsible for the consultations that have led to what we have today, I recognize how important moving forward is.

I wanted to ask you a question that I remember being one that was raised, and that is the question of the expertise that lies within municipalities in regard to designations, and if you have anything to offer us in looking at that particular problem that might give a higher level of comfort to people. It seems to me that within our smaller communities there may not exist the same level of expertise, obviously, as we have here.

Ms Nasmith: Let me just speak to that. I think that's actually a very important question. I serve on the municipal heritage committee in Muskoka Lakes, and we're working with a council that's really just getting its feet wet in heritage preservation. They're very nervous about designating a building. Somehow they don't feel empowered to protect the community's culture, and there are some excellent people on that panel doing work.

The other part of that is that I think the development community deserves certainty. When a property is sold, people should know whether or not it's important. We've been sitting on a 30-year period of relying on volunteers to produce all of that information, particularly in small communities where there isn't a heritage plan or there aren't the resources. But even in the city of Toronto, we've only scratched the surface. The point is that follow-up resources need to go into the system to create the expertise in order to establish what is important.

Mr Marchese: Some quick points, Cathy. I welcome you here. I want to say that all three political parties support this bill. We are likely to have the Liberal government introduce this for third reading, I suspect, next week, which would be good. Then we could debate it and pass it. So I don't fear that it will fail. It will pass, but some amendments will be made.

One of them, by me, will be the issue you touched upon, which is that this should be changed to allow third parties to appeal to a board the consent of a municipality to a demolition. We're going to introduce that motion and debate that, because we think it's a fair and reasonable thing to do. It won't stop this bill, I suspect, but we'll at least have a debate on that.

I wanted to say that Doors Open really helped, through its advocacy, to educate and politicize a whole lot of people and to create a meaning around the issue of

heritage. In that regard, I wanted to thank you and the group for doing that.

I wanted to ask you a quick question on cemeteries. I have an interest in protecting cemeteries, personally. There are 3,000 inactive cemeteries, and I suspect they're probably all registered. Do you have an opinion on that?

Ms Nasmith: This question has been put to me before, and in each case I have referred it to the Ontario Historical Society, which has done a lot of work in this area. My interest really is in buildings.

Mr Marchese: Very good. Thanks.

The Vice-Chair: Catherine, thank you very much.

Is Mr Peter Currie in the room? Going once, going twice—gone.

As we have no further deputants on the agenda, this committee stands adjourned.

The committee adjourned at 1142.

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