



**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Thursday 2 December 2004

**Journal
des débats
(Hansard)**

Jeudi 2 décembre 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

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 2 December 2004

Jeudi 2 décembre 2004

The committee met at 1008 in room 151.

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 (Mr Bob Delaney): Good morning, ladies and gentlemen. Welcome to the standing committee on justice policy. Today we're going to be considering Bill 60, An Act to amend the Ontario Heritage Act. Before you, everyone should have a copy of the agenda, a copy of the bill, a summary of the recommendations on Bill 60 and some late submissions that were not received in time to be included in that summary.

Are there comments, questions or amendments to any section of the bill, and if so, to which section?

Mrs Julia Munro (York North): I would like to move the following motion:

That this committee defer its clause-by-clause consideration of Bill 60 until such time as the ministry has addressed the concerns of churches, cemeteries and schools and provided a balance to the bill by including within it incentive to property owners.

The Vice-Chair: Are there any questions and comments?

Mrs Munro: I think the fact that we have had a bill put before us that has raised concerns among significant stakeholders, particularly the deputations that we've heard with regard to the churches and the schools, who have pointed out the limitations of the process that is currently in this bill with regard to their only option being an OMB hearing—obviously, the OMB hearing would be geared, as I understand the legislation, to be looking at the terms of the designation. I think representatives of both these institutions raise the issue that theirs is not with the question of designation. It's a question, then, of the implications of that designation and, frankly, their inability to support financially the kind of obligations and also the limitations that their properties have in terms of being used for other purposes. So it would be my submission that the ministry needs some time to look at that particularly important issue.

The cemeteries issue was again raised by many people within the province who brought forward specific examples of the limitations of the current legislation to protect cemeteries.

Finally, we have the whole area that heritage preservation must meet a balance between the public interest and the private. We've certainly heard deputations which demonstrate the limitations of this bill in that regard.

Ms Andrea Horwath (Hamilton East): I don't disagree with the comments raised by Ms Munro; I understand there has been some considerable concern raised.

However, I believe some of the amendments that have been put, certainly by the NDP, which we'll be discussing today if we move forward, are being asked to be put in place by our party to cover off some of those issues around cemeteries, around third-party intervention in the OMB hearings, or at least third-party access to that, as well as some of the other concerns raised.

So I hope, as we go through the clause-by-clause today, the government members who are in committee will see an opportunity to make some of those changes in this very forum by accepting some of the recommended amendments that we're bringing forward.

Ms Jennifer F. Mossop (Stoney Creek): We feel quite comfortable in proceeding today.

The Vice-Chair: OK. We'll now put the question. Those in favour of Ms Munro's motion?

Mrs Munro: Recorded vote.

Ayes

Munro.

Nays

Brown, Brownell, Horwath, Hoy, Mossop.

The Vice-Chair: I declare the motion defeated. Shall we proceed to the actual clause-by-clause?

Section 1: There have been no amendments put forth. Shall section 1 carry? Carried.

Section 2: Are there comments and questions on section 2?

Ms Mossop: I move that section 2 of the bill be amended by adding the following subsection:

“(1.1) The definition of ‘heritage attributes’ in section 1 of the act, as enacted by the Statutes of Ontario, 2002,

chapter 18, schedule F, section 2, is repealed and the following substituted:

“‘heritage attributes’ means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest.”

The Vice-Chair: Comments and questions?

Mrs Munro: I just wondered if we could have a further explanation with regard to the question of the attributes of the property. How would that be different from what we would have understood in the previous legislation?

Ms Mossop: What we’re attempting to do with this piece is to clarify and ensure that the definition of “heritage attributes” is applicable to the use of the term in part V of the act with reference to heritage conservation districts and not just to properties that have been designated individually under part IV.

The Vice-Chair: Any other questions and comments? The motion has been made to amend subsection (1.1). Shall the amendment carry? Carried.

Shall section 2, as amended, carry? Carried.

There have been no amendments proposed for sections 3 through 12. Shall sections 3 through 12 of the bill carry? Carried.

Section 13: questions and comments?

Mrs Munro: I move that the title to part III.1 of the act, as set out in section 13 of the bill, be struck out and the following substituted:

“Part III.1

“Standards and guidelines for provincial heritage properties and other specified properties.”

The Vice-Chair: Questions and comments?

Mrs Munro: The idea here is dealing with a later subsection, where the province has the right to list areas, or by a public body. This would simply allow that to take place.

The Vice-Chair: Questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Section 13: Questions and comments?

Mrs Munro: I move that subsection 25.2(2) of the act, as set out in section 13 of the bill, be struck out and the following substituted:

“Application

“(2) This part applies to,

“(a) property that is,

“(i) owned by the crown in right of Ontario or by a prescribed public body, or

“(ii) occupied by a ministry or a prescribed public body if the terms of the occupancy agreement are such that the ministry or public body is entitled to make the alterations to the property that may be required under the heritage standards and guidelines approved under subsection (5);

“(b) property on which a church, temple, synagogue or other prescribed religious building is situated; and

“(c) property on which is situated a building that is used as a school within the meaning of subsection 1(1) of the Education Act.”

The Vice-Chair: Questions and comments?

Mrs Munro: This is an attempt to give some recognition to those particular groups who felt left out of the act and the consultation process. It’s an attempt to bring them into the act, specifically through the right of the province.

The Vice-Chair: Questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Section 13: Questions and comments?

Ms Mossop: I move that section 13 of the bill be amended by adding the following section to part III.1 of the act:

“Application

“25.3 Section 37 applies with necessary modifications to property to which this part applies.”

The Vice-Chair: Questions and comments? Seeing none, I’ll put the question. Those in favour? Opposed? I declare the motion carried.

1020

Shall section 13, as amended, carry? Carried.

Section 13.1: questions and comments?

Mrs Munro: I move that the bill be amended by adding the following section:

“13.1 The act is amended by adding the following part:

“Part III.2

“Standards relating to cemeteries and burial grounds

“Standards for cemeteries and burial grounds

“25.3 (1) The minister shall prepare standards relating to the preservation and maintenance of the cultural heritage value or interest that exists in cemeteries and burial grounds that meet the prescribed criteria.

“Consultation

“(2) In preparing the standards referred to in subsection (1), the minister shall consult with the affected ministries, the trust and with the owners of the affected cemeteries and burial grounds.

“Approval

“(3) The standards prepared by the minister shall be approved by the Lieutenant Governor in Council.

“Compliance

“(4) The owner of a cemetery or burial ground to which the standards apply shall comply with the standards approved under subsection (3).

“Not a regulation

“(5) The standards approved under subsection (3) are not regulations within the meaning of the Regulations Act.”

The Vice-Chair: Questions and comments?

Mrs Munro: This amendment is put forward to address some of the concerns for greater understanding and consultation within this proposed act. It’s also with the idea that it would make very clear the protection, obviously, so that we’re not looking at groups within the heritage community putting out their volunteer dollars

and time to protect these in the processes we have heard of. I really think if we're looking at heritage—and everyone who has come forward has talked about how badly this bill needs to be updated, how far behind we are as a jurisdiction in this area. So the notion that we are going to leave out a significant part of the heritage of the province seems to me something that needs to be addressed.

Ms Mossop: This is an area of particular concern for us. We've been wrestling with this, because many people on the government side have a tremendous concern about this issue and about cemeteries as well. I've been discussing it with the staff—you know, the legal issue—and we're trying to find a meaningful way, a way that will actually address the concerns of the people and not just provide window dressing. My understanding is that at the moment, in the Heritage Act, cemeteries and burial grounds are covered, because we are talking about real property. In fact, under the act, 140 cemeteries are already designated by municipalities.

It seems that what is wanted here is for all cemeteries and burial grounds to be designated, which is a different issue. What happens is, we then come up against the Cemeteries Act, and in fact the Cemeteries Act would trump our legislation. So to put the term “cemeteries” in our legislation would be misleading to the people who want their cemeteries protected, because it would not lead to that. It would also lead to another potential problem, which is that if we try to start defining “real property,” we may get into a situation of omissions. So where does the list end of going on and on and listing everything?

We're trying to find the best way of approaching this, because this legislation and the proposed amendments will not provide the solution we're after. What we have done is, our ministry staff have undertaken to work with the staff at consumer and business services on the regulations of the incoming Cemeteries Act, which has received royal assent but has yet to be proclaimed until the regulations are sorted out. Our minister has undertaken to work with Minister Watson on this issue, and I've spoken to Minister Watson directly to let him know that this is a very big concern.

To put the word “cemeteries” in will not do anything. It will be window dressing and in fact it may actually cause more problems. So we will not be solving the problem and may create more. We want to do something that is real and meaningful here for you and not just mislead you that, “Oh, well, we've put the term ‘cemeteries’ in; we've looked after your concerns,” because in fact that won't be the case.

The other thing we have undertaken to do is to make sure we have very clear guidelines that will go out to the municipalities, to make it clear that cemeteries are included in real property and that they can be designated and protected under this act.

Mrs Munro: Certainly I appreciate the commitment you have made here today on this issue. I guess when I look at this amendment, it is enabling. It says, “Please consult.” It doesn't put you in any kind of restriction in

terms of what might come out of that. It asks you to create standards. It asks you to consult. It mentions the affected ministries, because we all understand the jurisdictional issue, and obviously it's asking you, then, to undertake a consultation. I think it doesn't in any way set out the limitations of that consultation or the parameters of it; it merely puts in writing your commitment to do so.

I would just suggest to you that what you have told us you plan on doing is essentially what this amendment asks you to do.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): I would like to make comment on this. I have a great passion for cemeteries, having lived in eastern Ontario and lost many of our cemeteries through a flood in 1958. Many people can't go to those cemeteries and burial grounds where their ancestors were buried, as I can't. My great-great-grandfather served here in York, in 1808, in the Legislature, in the fifth Parliament of Upper Canada. I cannot go to that site.

I have had to wrestle with this issue and with the people who have come in. I see people sitting back here today who have come in, made presentations, getting information from Dennis Carter-Edwards, chair of the Heritage Cornwall board, regarding this issue. When I looked at this, I thought, “Something has to be done with regard to cemeteries.” I had a dialogue with the parliamentary assistant to the minister, and hearing that Minister Watson, the Minister of Consumer and Business Services, will be looking at this, I am certainly going to look that we keep our feet to the fire and that we work with that ministry, with our ministry and with the people who have made presentations here today.

We have the documentation. We have all the documents in the world that say, “Yes, something has to be done.” When we read in here that roads and laneways are being constructed over burial grounds and sacred grounds, we have to do something. I know that as long as I'm here, I'm going to be fighting for this. But if we see and hear that the Cemeteries Act takes precedence over what may be included in this bill, then as this justice committee and this Ministry of Culture, let's work with the Ministry of Consumer and Business Services to get something that has real meaning, real teeth to it, and that we have the best we can to protect what those people who sit back here want to protect, and that is the burial grounds and the cemeteries of our province.

Ms Horwath: I agree with all of the comments made so far in regard to how important it is to make sure this area is covered off. I understand that the committee heard loudly and clearly from people who are heritage preservationists in many communities across the province that they want this cemeteries issue to be dealt with.

As you'll know, if you're looking through the package, I have a further recommendation on how to get that done, so I won't be supporting this particular motion. I'll be putting one forward from the NDP in the same vein.

1030

Mrs Munro: I don't want to drag this out unduly, but I would just suggest to the government members that it

would not be something extraordinary to pass enabling legislation. Essentially all this amendment does is give the government some opportunity within the legislation to move forward on an issue that appears to have struck the hearts of people around the table.

The Vice-Chair: Further debate? Shall section 13.1 carry? In favour? Opposed? I declare the section lost.

Section 14: questions and comments?

Ms Horwath: I move that the definition of “designated property” in subsection 26(2) of the act, as set out in section 14 of the bill, be struck out and the following substituted:

““designated property” means property designated by a municipality under section 29 or deemed to have been designated by a municipality under section 29.1.”

Just as a bit of information, this particular motion sets up the opportunity to then reopen the issue of cemeteries in another section of the bill, and that would be section 17.1.

What we’re hoping to do then is cover off the issue of having cemeteries designated by deeming them to be heritage properties. So we need first to amend this section that changes the definition of a designated property to include properties that will have been deemed to have been designated, and then, later on in the bill, I’ll be introducing the amendment to try to have the existing cemeteries deemed to be designated, and there are some specifics around that.

Again, this is a way to deal with the cemeteries issue in a way that, when the act is brought into force, all the cemeteries in Ontario will be deemed to have been designated, and then there are some particulars around the time frames of how that gets done, as well as covering off how various other acts are being affected by that.

This motion is simply to get the language changed, in terms of designated property, to include “deemed”, and then we will continue on; I think the next motion will be on page 9 of the package in front of the members.

Ms Mossop: I’m wondering if we can stand this down until we deal with the other section, if that would be appropriate.

The Vice-Chair: We’ll move to section 14. Questions and comments?

Ms Mossop: I move that section 26.1 of the act, as set out in section 14 of the bill, be struck out and the following substituted:

“Application

“26.1(1) This part does not apply to property described in clause 25.2(2)(a).

“Conflict

“(2) If a property described in clause 25.2(2)(b) is designated under section 29 or under section 34.5, and if there is a conflict between a provision of the heritage standards and guidelines prepared under part III.1 and a provision in part IV as they apply to that property, the provision in part IV prevails.

“Exception

“(3) Nothing in subsection (1) shall prevent a municipality acting under subsection 27(1.2) from including in the register referred to in that subsection a reference to property described in clause 25.2(2)(a).”

The Vice-Chair: Questions and comments?

Mrs Munro: Yes, I have a question. If I understand this properly, does this mean that the municipality would prevail over the province in designations?

Ms Mossop: That is not the understanding that I have. May I call on some technical response to that?

Mrs Munro: Absolutely.

The Vice-Chair: Would you please, for the purposes of Hansard, identify yourselves and then address the topic.

Mr Dan Schneider: I’m Dan Schneider, senior policy adviser with the Ministry of Culture.

Mr Dana Hall: I’m Dana Hall, legal counsel with the Ministry of Culture.

Mr Schneider: The intention with this amendment is to correct a provision in the bill that would mean that property occupied by the crown but not owned by the crown could not be designated by the municipality. We think that if the crown is simply leasing property, it should be subject to designation, because at any point they could move out.

Mrs Munro: OK. That’s all the clarification I was looking for. Thank you.

The Vice-Chair: Further debate? I’ll call the question: Shall the amendment carry? Carried.

Ms Horwath, do you wish to consider your amendment at this time or come back later?

Ms Horwath: I’m in your hands, Mr Chairman, in terms of the process, but I think there’s another government motion.

The Vice-Chair: We’ll return to that one after section 15, then. Considering section 15: questions and comments?

Ms Mossop: I move that subsection 27(1.3) of the act, as set out in section 15 of the bill, be amended by striking out “including a property that has not been designated under this part in the register under subsection (1.2)” and substituting “including a property that has not been designated under this part in the register under subsection (1.2) or removing the reference to such a property from the register.”

The Vice-Chair: Questions and comments? Shall the amendment carry? Carried.

Shall section 15, as amended, carry? Carried.

To return to section 14 to deal with Ms Horwath’s amendment—

Interjections.

The Vice-Chair: Before doing that, there are no amendments proposed to sections 16 and 17. Let’s take them one at a time.

Section 16: Shall section 16 carry? Carried.

Section 17: questions and comments?

1040

Ms Horwath: I move that the bill be amended by adding the following section:

“17.1 The act is amended by adding the following section:

“Deemed designation of cemeteries

“29.1(1) On the day this section comes into force, every cemetery situated in a municipality shall be deemed to have been designated as property of cultural heritage value or interest by the council of the municipality in accordance with section 29 and sections 33, 34, 34.1 and 34.2 apply to the property on which the cemetery is situated with necessary modifications.

“Registry

“(2) On or before the day that is 30 days after the day this section comes into force, the council of a municipality in which a cemetery is situated shall amend the register referred to in section 27 by adding to the register a reference to the cemetery and including the information that is required under section 27.

“Non-application

“(3) Sections 31 and 32 do not apply with respect to cemeteries that are deemed to have been designated under subsection (1).

“Definition

“(4) In this section, “cemetery” means any land set aside to be used for the lawful interment of human remains.

“Transition

“(5) A reference to sections 83 to 89 of the Funeral, Burial and Cremation Services Act, 2002 in subsection (4) shall be deemed to be a reference to sections 2 to 7 of the Cemeteries Act (Revised) until the day sections 83 to 89 of the Funeral, Burial and Cremation Services Act, 2002 come into force.”

The Vice-Chair: The clerk informs me I got one step ahead of myself. Before adding a new section, that being section 17.1, we should carry section 17, in which there have been no proposed amendments.

Shall section 17 carry? Carried.

Addition of section 17.1: questions and comments?

Ms Horwath: Thank you for your indulgence. My understanding is that, in the motion I’ve just read—am I to read it again? Is that what you want me to do?

The Vice-Chair: No. We have it on the record.

Ms Horwath: OK. But I’d like to amend it, actually, to omit the last section, which is the section that refers to “transition.” My understanding is that it’s not necessary, that it’s not necessary for it to be part of this motion.

The Vice-Chair: So you’re proposing deleting the section that says “Transition”?

Ms Horwath: Yes. So my motion would be just the balance.

The Vice-Chair: So your motion, then, concludes with the definition of “cemetery.”

Ms Horwath: That’s right.

The Vice-Chair: OK. Ms Horwath has proposed an amendment to her amendment. Shall the amendment to the amendment—not the amendment itself but the amendment to the amendment—carry? Carried.

Ms Horwath?

Ms Horwath: Again, this is the language that we think will do the appropriate thing in regard to cemeteries. I think all of the parties at committee when the hearings were taking place were very well informed by the community and by people concerned about heritage designation in communities.

I live in a heritage home myself, so I know very well how important these particular issues are and how passionate people are about heritage properties. In the city that I come from, we actually have walking tours of our cemeteries that are built in with historical information. They’re a way of not only bringing our community to a point where it’s valuing and respecting the heritage value of the cemeteries, but also providing opportunities for people to learn about the history of our city as well as the people who were active in making that history occur.

I would recommend that the government seriously consider this amendment as a way of including cemeteries in the bill. That way, we all know here at committee that it’s not something that will happen in the future, but in fact it’s something that can be addressed immediately. Then, at the end of the proceedings today, once we’ve completed clause-by-clause, everyone will know that the cemetery issue has been dealt with in a way that ensures that they’re deemed to be heritage properties—and, again, the process of ensuring that they are then put into the registry—and that they are dealt with appropriately by municipalities across the province.

Mr Michael A. Brown (Algoma-Manitoulin): We on the government side certainly appreciate the thought behind this amendment and have a great deal of sympathy. The argument has been made by the government that these properties are included and can be included for designation by municipalities. We have a problem, in that I think we’re trying to deal with this problem—which we all agree needs to be dealt with—in the wrong act. It needs to be dealt with in the Cemeteries Act.

I would point out to my friend across from me that the definition of a cemetery in the Cemeteries Act is different. In the Cemeteries Act, a cemetery means “land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains.” So we have a problem right off the top, in that the two definitions are not the same.

I would suggest that we all want to work together to resolve this particular situation, but I think in some ways this would make the situation not better, but worse.

Ms Mossop: I want to make it very clear that I think we’re all on the same page in terms of the goal here and the sentiment that’s behind this. This is a pretty emotional issue. More than even real property, this is about families. This is about people. The property in which our families are buried is covered by this act at the moment. I think what we’re looking for is something that has to be changed elsewhere. We have wrestled with it in a very real way. As I say, what we want to do is something real and meaningful and not just provide window dressing

and send these people away thinking that we've solved the problem, when we haven't.

You've heard from some of our members the passion with which they speak on this issue. I actually back on to a very old cemetery; and not to be flippant about it, but I consider them very good neighbours, in addition to it being very picturesque. I'd hate to see those neighbours go away.

I think, at this point, it might be helpful if we do call on some technical advice on this, so that you understand that we have done due diligence in this area and are really trying to come up with the most effective and real solution to this problem. They can explain to us the conflict that we're coming up against with the Cemeteries Act, and that that is actually going to trump anything we try to do here. So we need to work there.

The Vice-Chair: Once again, just identify yourselves for Hansard.

Mr Schneider: I'm Dan Schneider, senior policy adviser with the Ministry of Culture.

Mr Hall: I'm Dana Hall, legal counsel with the Ministry of Culture.

The issue here is the relationship between designation of cemeteries under the Heritage Act and the closure provisions of cemeteries under the Cemeteries Act. It's our view, having looked at the provisions of the existing act and the bill that's before the committee, as well as the motions to amend, that all these approaches don't deal with the fundamental issue, which is what we feel is the legal precedence that the Cemeteries Act closure provisions would take over the heritage designation of cemeteries under the Heritage Act. We feel that the appropriate way to deal with this from a policy point of view is to work with the ministry to integrate the two interests so that there's a comprehensive scheme and conflicts aren't created between heritage designation and the provisions in the Cemeteries Act.

1050

Ms Horwath: Just for clarification again, what's being suggested is that the closure provisions of the Cemeteries Act take precedence over the Ontario Heritage Act.

Mr Hall: We're of the view that the closure provisions of the Cemeteries Act would take precedence over the designation of a cemetery under the Ontario Heritage Act.

Ms Horwath: Why would that be the case?

Mr Hall: Because we feel the legislation is more specific in terms of the subject matter and, given normal statutory construction, the Cemeteries Act would take precedence. In any event, there would be an ambiguity, and we feel that the ambiguity should be resolved in an appropriate manner, not through new legislation creating further ambiguities.

Ms Horwath: Since they're here, can I just ask one other question? So it's not appropriate to narrow the definition of "cemetery" in the resolution I put forward? Having that narrow definition in this bill doesn't cover off that issue?

Mr Hall: I don't think it assists the matter, Ms Horwath. I think it may create the impression that the issue is being dealt with. I think it continues an ambiguity that has to be dealt with through an integration of the Cemeteries Act with the Ontario Heritage Act.

Mrs Munro: I appreciate this explanation that you've provided for us. I guess my question is, at the beginning of the hearings we kept hearing that because there was a definition of real property, that allowed for security, if you like, of the whole issue around cemeteries. Yet what you're telling us today is that if there is a problem, for lack of a better word, then the Cemeteries Act would take precedence over the Ontario Heritage Act. So I'm somewhat confused about the fact that we seem to have a mixed message here.

Mr Hall: The bill doesn't come to grips with this conflict. The conflict, quite frankly, was not in the forefront of our minds when we were preparing the bill. It's not part of our policy instructions. It's clear now that there is an issue, and we're aware of the issue, but when the bill was being drafted, it was not part of our policy considerations.

Mrs Munro: I think that's very important for us to understand. In looking at changes, this amendment before us today talks specifically about cemeteries and provides us with a definition here. But I wonder if, in your consideration, you would be looking at areas that can best be described as burial grounds, given the informality of burial customs 100 or 150 years ago—things like that. Those, obviously, from a heritage point of view, are just as important as ones with little fences and—

Mr Hall: I think the concern is with the interment of human remains generally, and that the policy parameter would not be confined to cemeteries but would be looking at all heritage burial grounds and cemeteries.

Ms Mossop: I just want to comment that I think it became more and more evident as we went along, too, that what was wanted was something that would provide something more concrete that we can't deliver here. It's not possible for us to deliver it here. That's why we delved further and further into this, to see how we could accomplish it in a more realistic way.

The Vice-Chair: Further debate? Shall the amendment, as amended, carry? Those in favour? Opposed? I declare the amendment lost.

Shall section 17.1, as amended, carry? In favour? Opposed? I declare section 17.1, as amended, lost.

Reverting back, then, to section 14: Ms Horwath has proposed an amendment to subsection 26(2) of the act. Shall the amendment carry?

Ms Horwath: Mr Chairman, considering the fact that the main motion in the further section that we just dealt with didn't pass, I might as well withdraw that other motion completely.

The Vice-Chair: OK. Shall section 14, as amended, carry? Carried.

There are no proposed amendments to section 18. Shall section 18 carry? Carried.

Section 19: questions and comments?

Ms Mossop: I'll get my reading voice on here; this is a long one.

I move that section 30.1 of the act, as set out in section 19 of the bill, be struck out and the following substituted:

“Amendment of designating bylaw

“30.1(1) The council of a municipality may, by bylaw, amend a bylaw designating property made under section 29 and section 29 applies with necessary modifications to an amending bylaw as though it were a bylaw to designate property under that section.

“Exception

“(2) Despite subsection (1), subsections 29(1) to (6) do not apply to an amending bylaw if the purpose of the amendment is,

“(a) to clarify or correct the statement explaining the property’s cultural heritage value or interest or the description of the property’s heritage attributes;

“(b) to correct the legal description of the property; or

“(c) to otherwise revise the language of the bylaw to make it consistent with the requirements of this act or the regulations.

“Same

“(3) If the council of a municipality proposes to make an amendment described in subsection (2), the council shall give the owner of the designated property written notice of the proposed amendment in accordance with subsection (4).

“Content of notice

“(4) A notice of a proposed amendment shall,

“(a) contain an explanation of the purpose and effect of the proposed amendment; and

“(b) inform the owner of the right to object to the proposed amendment by filing a notice of objection with the clerk of the municipality within 30 days of receiving the notice.

“Consultation with committee

“(5) The council of a municipality shall consult with its municipal heritage committee, if one has been established, before giving notice of a proposed amendment to the owner of property under subsection (3).

“Objection

“(6) The owner of a property who receives notice of a proposed amendment from a municipality under subsection (3) may, within 30 days of receiving notice of the amendment, file a notice of objection to the amendment with the clerk of the municipality setting out the reasons for the objection and all relevant facts.

“Where no objection

“(7) If no notice of objection is filed within the 30-day period under subsection (6), the council of the municipality may pass the proposed amending bylaw described in subsection (2).

“Application of section 29

“(8) If the owner of the property files a notice of objection under subsection (5) in relation to a proposed amendment described in subsection (2), subsections 29(7) to (15) apply with necessary modifications to the notice of objection.

“Notice of amendment

“(9) The clerk of a municipality shall provide a copy of the bylaw, as amended under this section, to the owner of the property and to the trust and shall register the bylaw against the property in the proper land registry office.

“Requirement to update old bylaws

“(10) If the council of a municipality proposes to amend a bylaw designating property made under section 29 before the day the Ontario Heritage Amendment Act, 2004 received royal assent, the council shall include in the amendment such changes as are necessary to ensure that the bylaw satisfies the requirements of section 29, as it read on the day the Ontario Heritage Amendment Act, 2004 received royal assent.”

Mrs Munro: Just one little question: With regard to (10), where it says “under section 29 before the day,” does that mean literally one day? What does “before the day” mean?

Ms Mossop: I’m going to refer that, as a technicality, to our technical staff.

Mrs Munro: I think it is too.

Ms Sibylle Filion: The answer to that would be, any day before the day. So it could be at any time before the day the act comes into force.

Ms Mossop: Any day prior to—including one day before—

Ms Filion: Royal assent. That’s right.

1100

Mrs Munro: I just wondered, from a practical point of view, how far back before the royal assent would the council be obligated to make—

Ms Filion: I’m sorry; this is only where there is a proposal to make an amendment before the day, not an amendment that would have been passed before the day. I don’t know if that answers your question.

Mrs Munro: OK.

The Vice-Chair: Further debate? Shall we call the amendment? Shall the amendment carry? Carried.

Shall section 19, as amended, carry? Carried.

There have been no amendments proposed for sections 20, 21 and 22. Shall sections 20, 21 and 22 carry? Carried.

Section 23: questions and comments?

Mr Gilles Bisson (Timmins-James Bay): I move the following amendment.

I move that subsections 34.1(1), (2) and (4) of the act, as set out in section 23 of the bill, be struck out and the following substituted:

“Appeal to board

“34.1 (1) If the council of a municipality consents to an application subject to terms and conditions under subclause 34(2)(a)(i.1) or refuses an application under subclause 34(2)(a)(ii), any person who considers themselves aggrieved by the council’s decision may appeal the decision to the board within 30 days of the day the decision is made.

“Notice of appeal

“(2) A person who considers themselves aggrieved by the decision of the council of a municipality shall, within

30 days of the day the decision is made, give notice of appeal to the board and to the clerk of the municipality.”

“Hearing

“(4) Upon receiving notice of an appeal, the board shall set a time and place for hearing the appeal and give notice of the hearing to the person who is appealing the decision and to such other persons or bodies as the board may determine.”

The Vice-Chair: Questions and comments?

Mr Bisson: I think it’s pretty straightforward. Mr Marchese has spoken to this at some length.

Laughter.

Mr Bisson: What are you guys laughing at? It’s pretty straightforward.

Mr Pat Hoy (Chatham-Kent Essex): I thought so.

Mr Bisson: I think it’s pretty straightforward. We all know the animal that we go against when trying as citizens to move forward on decisions at the Ontario Municipal Board. It’s not an easy thing to do, as many of you know. You’ve dealt with this in municipal councils, and as provincial members, I’m sure. It’s an attempt to try to facilitate to a certain extent the ability of the person who is in disagreement with the designation of the heritage site so they are able to get to the board. It’s a little bit more user-friendly, is the way I would view it.

Ms Mossop: I appreciate the intent of the amendment and I understand where he’s coming from. Again, we get into a bit of a hornet’s nest.

This bill is to give the kinds of protections and powers that have been lacking in the past, with the amendments that are proposed. If we get into a situation where you’re having, at the last minute, after something has gone through various appeals, to then have a party jump in, after due diligence has been done, with the extra protections provided in these amendments, we could get into more aggrieved parties than just one, and the aggrieved party situation may go on and on.

Mr Bisson: That would not necessarily be a bad thing, to an extent. We’ve all gone through these debates. I guess what Mr Marchese was trying to get at—and I appreciate what the parliamentary assistant is saying. We do end up in a situation where you have the person or the organization that owns the building, you have the position of the municipal council, and then you have third parties that get involved because they’re the ones that are, in some cases, pushing that the building be protected as a heritage building. I think that’s an attempt to get there. My question is, are you guys willing to support it?

Ms Mossop: My sense, especially when it comes to municipal councils, is that they are, like many politicians, vulnerable to public pressure. If there is public pressure—

Mr Bisson: That’s a good thing in democracy.

Ms Mossop: It’s a good thing in democracy.

Because we’re giving the municipal councils the extra powers to protect these buildings, I have a lot of concerns as to where this might lead. I think the whole intent of our amendments addresses that situation in that this is an

extra layer that might actually cause more difficulty, in fact, than help, although I know that the intent is absolutely valid and honourable.

Mr Bisson: Listen, I’m not going to hold up the debate the whole morning on this. But I know, in talking to Mr Marchese about it, the way I understand it is that we often get into—I don’t want to say heated debates; that’s probably not the right term—some controversy when it comes to heritage buildings. We know there are always two sides to that issue. Those people who happen to be third parties have real difficulty, sometimes, trying to make an impact on the decision one way or another. This was an attempt to deal with that.

I guess the only point I would make, and the government has to decide by way of their vote afterward: Is it necessarily a bad thing to allow a third party? If it does slow it down a bit, maybe it gives us an opportunity, at the Ontario Municipal Board, to be able to look at whether designation is a good thing or a bad thing.

I’ve been on both sides of this, as we all have, where a building in our riding or our own community, when we were on municipal council, was being pushed to be designated. It may not be the majority view of council or the majority view of the community, and vice versa, and who am I to say that’s right or wrong? I don’t think that having an extra step in there—although it will slow things down a bit, there’s no question; I don’t argue that for a second. It may be the sober second thought, to a certain extent, that we need to bring information to the board to hopefully make a good decision.

Ms Mossop: My concern is not really the slowing-down portion of it. I really do feel that we’ve addressed the kinds of concerns he’s trying to get at within this bill.

The Vice-Chair: Shall the amendment carry?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost. Shall section 23 carry? Carried.

There have been no amendments proposed for sections 24 and 25. Shall sections 24 and 25 carry? Carried.

Section 26: questions and comments?

Mrs Munro: I move that subsection 34.5(1) of the Ontario Heritage Act, as set out in section 26 of the bill, be amended by striking out “After consultation with the Trust” and substituting “After consultation with the Trust and with the approval of the Lieutenant Governor in Council.”

This amendment is proposed simply to allow a second sounding board in terms of decision-making in this particular bill. It’s really intended to do no more than that. Obviously, a minister is going to have the con-

confidence of the legislation and be able then to persuade the rest of the council to see the merits of decisions that are made under this bill, and that's what it does.

Ms Mossop: I suppose, to clarify: Actually, the wording of this exists in a number of other provinces, and it's fairly rare that there would be some kind of intervention. But if there is a need for some, the feeling is that it must be swift, and to add the extra step actually may slow it down. If you're trying to save something, that extra step might just slow things down enough to lose the game.

The Vice-Chair: Shall the amendment carry? In favour? Opposed? I declare the amendment lost.

Section 26: questions and comments?

1110

Mr Bisson: I have another amendment here.

I move that section 26 of the bill be amended by adding the following section to part IV of the act:

"Deemed designation of cemeteries

"34.5.1(1) On the day this section comes into force, every cemetery situated in a unorganized territory shall be deemed to have been designated as property of cultural heritage value or interest by the minister under subsection 34.5(1) and subsections 34.5(2) to (12) apply to the property on which the cemetery is situated with necessary modifications.

"Non-application

"(2) Sections 34.8 and 34.9 do not apply with respect to cemeteries that are deemed to have been designated under subsection (1).

"Definition

"(3) In this section,

"cemetery' means any land set aside to be used for the lawful interment of human remains."

The rest of that—"Transition"—is not part of the amendment.

I'd be curious to see what the government has to say. Well, we know this has been somewhat hotly contested.

Ms Mossop: I know. Mr Bisson missed a rather lengthy conversation on this exact issue, in addition to bringing up the technical support and all the rest. So because we've dealt with this issue a few times already, and in an attempt to get at it in various ways, I'm going to give you the Coles Notes on it and we'll go from there.

Essentially, we all feel the same way on this one, and we've been doing due diligence over here to try to get to the real heart of the problem. As we delved more and more into it, we realized that what was wanted from many of the delegations that came here could not be achieved here, because anything we put in the Ontario Heritage Act will essentially be meaningless because it can be trumped by the Cemeteries Act.

Cemeteries are already covered and burial grounds are already covered, because they're real property, and there are 140 cemeteries in the province already designated under the Ontario Heritage Act. We were trying to get at this. Is this effective? If we put in the term "cemeteries," "burial grounds" or whatever, are we going to have

solved the problem? That was my question. The answer was no, because the Cemeteries Act will trump it.

So we need to deal with the Cemeteries Act. We can't do that at this table. However, we are going to have very specific guidelines going out with our legislation to make sure it's understood that cemeteries and burial grounds are covered under this act already, and always have been.

The new Cemeteries Act is coming down the pike; it's already received royal assent. It's yet to be proclaimed. They're working on the regulations. Our staff has an undertaking from the staff at the Ministry of Consumer and Business Services to work on the regulations.

Mr Bisson: Just a quick question: When did we do an amendment to the Cemeteries Act? Was it under the Tories?

Ms Mossop: I think that was all previously done.

Mr Bisson: What bill was it? It was one of the omnibus bills, right? I'm trying to remember.

Interjection.

Mr Bisson: It hasn't been proclaimed?

Ms Mossop: It hasn't been proclaimed yet. We're working on the regulations.

Mr Bisson: I didn't know that.

Ms Mossop: So we're in a position, before it is proclaimed, to work with the Ministry of Consumer and Business Services on the regulations portion of it.

The other thing we are doing, and our minister has undertaken, is to work with Minister Watson on this issue. I personally spoke to Minister Watson about this issue yesterday to explain to him the concerns and that we would like to be able to deal with it, but we know this isn't going to be meaningful. It will be window dressing if we do it here, and it actually could create other problems for us if we start to get into the situation where, "OK, now that we've defined that cemeteries are included, do we have to define everything?" And then do we get into a situation of omissions and arguments?

Real property is always covered; it has always been covered under this act. Our amendments will actually give more protection than has existed before, but if we want to really serve the people who are coming to us with their concerns, then we have to do it in the real way, and that's with the Cemeteries Act, and we're undertaking to do that politically and at the staff level as well.

Mr Mario G. Racco (Thornhill): You explained that an hour ago.

Ms Mossop: Yes, I know, but Mr Bisson wasn't there. That was the long Coles Notes.

Mr Bisson: I appreciate that.

Ms Mossop: We have had our technical staff and our legal staff give us the opinions on these.

Mr Bisson: I guess there are only a couple of things I would say. One is, it's not uncommon in any legislation to amend more than the legislation that you're actually dealing with. As members who have been here for a while know, quite often you'll do, let's say, a change to the Environmental Protection Act and all of a sudden within that act you'll make an amendment to the aggregate act. That approach is not uncommon in changing

legislation. So I just have a quick question to counsel: Would it be too late, at this point, to propose an amendment to the Cemeteries Act?

Ms Filion: An amendment to the Cemeteries Act would require unanimous consent.

Mr Bisson: Yes, that's what I'm saying. It's not spoken to in the original act. Unless that act was spoken to, you'd have to do it by UC, right? Are you prepared to give UC on an amendment to the Cemeteries Act?

Mr Brown: No.

Mr Bisson: Well, that would fix the problem, according to the parliamentary assistant.

Mr Brown: If you'd been following this debate, you'd realize that the Cemeteries Act is a very complex piece of legislation that I don't think we should be trying to amend in 30 seconds.

Mr Bisson: I don't propose that we do it in 30 seconds. I propose that we write a proper amendment that's supported by the government and that, if it takes an extra day or two or we do it next week, it's not the end of the world. The reality is that we haven't yet proclaimed legislation from 2002 to deal with this. Waiting another week ain't going to make a difference. For those—

Mr Brown: That is precisely the point. The government is now reviewing the regulations under the Cemeteries Act. As we go forward with that review of the regulations, these matters will be considered. So I think that's the appropriate way, and I think if you reflected upon it, you'd understand that. This amendment you're talking about has been dealt with already, Mr Chair.

The Vice-Chair: Are there any more comments on the amendment?

Mr Bisson: Again, I don't want to lengthen the debate, but just for the record, yes, you're right, there has been a lot of comment on this particular issue within the bill. I know that most of you have been lobbied, because certainly I've been lobbied by church groups and others that are basically affected by this. All I'm suggesting is that if I take at face value what the parliamentary assistant says—and I'm not saying otherwise—that you need an amendment to the Cemeteries Act, I don't understand why taking an extra week to go back and do an amendment that fixes this problem to the satisfaction of those stakeholders that came to us would be the end of the world. I don't understand. If you're saying that we need to make an amendment to the Cemeteries Act, fine. Let's do that.

The Vice-Chair: Can we speak to the amendment before us here?

Mr Bisson: Yes. That's what we're doing.

Ms Mossop: A quick point of clarification: I didn't say that we needed to amend the Cemeteries Act. I said that we're working on the regulation portion of it, at this point, and with the minister.

Mr Bisson: All right. Let's just put it to a vote and deal with it that way.

First of all, I would ask for unanimous consent that we adjourn the committee for a week in order to deal with an amendment that amends the Cemeteries Act.

Mr Brown: No.

Mr Bisson: All right. That's on the record, the government saying no. So now we'll vote on the amendment.

The Vice-Chair: Mr Bisson has proposed an amendment to section 34.5.1 of section 26. Shall the amendment carry? All those in favour?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost.

Section 26: Questions and comments?

Mrs Munro: I move that clause 34.6(5)(a) of the act, as set out in section 26 of the bill, be amended by striking out "shall" at the beginning and substituting "with the approval of the Lieutenant Governor in Council, shall."

I spoke a moment ago about the opportunity for fuller discussion by including the Lieutenant Governor in Council, as opposed to the minister. My comments obviously remain the same.

The Vice-Chair: Comments?

Mr Bisson: I just have a question to the mover of the motion: Just to understand the rationale, why would you want to do that?

Mrs Munro: The rationale that I proposed for the other amendment of this was simply to provide an opportunity for the minister, in this case, to be able to have the support of the entire cabinet in moving forward on particular parts of the act.

Mr Bisson: So not make it just so the minister—he or she—has the ultimate authority, but rather that you need in an order in council.

Mrs Munro: Yes.

The Vice-Chair: Further questions and comments? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

1120

Shall section 26 carry? Carried.

There being no proposed amendments to section 27, shall section 27 carry? Carried.

Section 28: questions and comments?

Ms Mossop: I move that section 39.1.1 of the act, as set out in section 28 of the bill, be struck out and the following substituted:

"Application

"39.1.1 (1) This part does not apply to property described in clause 25.2(2)(a).

"Conflict

"(2) If a property described in clause 25.2(2)(b) is included in a heritage conservation study area designated under section 40.1 or in a heritage conservation district designated under section 41, and if there is a conflict between a provision of the heritage standards and guide-

lines prepared under part III.1 and a provision in part V as they apply to that property, the provision in part V prevails.”

Mr Bisson: Can you explain that to me, please?

Ms Mossop: Essentially, what we’re trying to do is to ensure that the designation of a property under part V of the act, the heritage conservation districts, would continue to apply to property occupied but not owned by the province or prescribed public bodies. Does that make sense?

Mr Bisson: So what’s the effect of that if the property owner is the province?

Ms Mossop: The intention, in excluding provincially owned or controlled property from the application of part V, was to avoid the overlap between the designation provisions of the act and the standards and guidelines for provincial property under part III.1. It’s a housekeeping thing.

Mr Bisson: I want to understand. It means to say that if there is a piece of property that would be privately owned and is moved by a municipal council to be one that should be protected as a heritage property, you can go through the process, but the province would not be subject to its own act, if I understand what this is all about.

Ms Mossop: No, I don’t think that is—

Mr Bisson: Can you explain it? Just so I’m clear here.

Ms Mossop: Let’s bring the technical support up here for you.

Mr Bisson: Could we call whoever from the ministry who could explain this?

Ms Mossop: Yes. He’s coming up.

Mr Bisson: This is why they pay you the big bucks.

Mr Hall: Dana Hall, senior legal counsel with the Ministry of Culture.

The bill, as it’s presently drafted—part V provisions with respect to heritage conservation districts would not apply (1) to property owned by the government or prescribed public body, and (2) to property occupied by the government or a ministry of the government and prescribed public body.

Mr Bisson: In a lease arrangement or—

Mr Hall: This cuts down the scope of that application. This clarifies that the non-application of part V provisions only applies to government-owned property. If the government occupies property under a lease in a heritage conservation district, the municipal designation bylaw would apply.

Mr Bisson: What is the practice now?

Mr Hall: Currently, the practice is—the law is that the designation provisions of the Heritage Act do not apply to the crown.

Mr Bisson: OK. I was right in my understanding.

The Vice-Chair: OK. Questions and comments?

Mr Bisson: Just as a citizen, never mind as a legislator: We do that far too often here in the Legislature. Far too often we pass laws such as the Employment Standards Act, and we say, “Well, it doesn’t apply to us here as legislators.” In this case here, we’re confirming

again in practice that we have a heritage policy for the rest of the province except for the people who write the laws, which is the province itself. That’s the effect of this clause and the effect of the current practice; right?

Mr Hall: The bill introduces part III—

Mr Bisson: No. We do that now. Let me back it up. As I understand the current law, if there is a property to be designated as a heritage property, provincially owned lands are not subject to that designation.

Mr Hall: Under the current Heritage Act that is correct.

Mr Bisson: And if the crown is leasing property, what would happen in that case? They would or they wouldn’t be, currently?

Mr Hall: The property owner, which is not the crown, would be subject to the designation.

Mr Bisson: And what this basically does is keep it in sync with the current practice.

Mr Hall: The bill introduces a provision, a part that provides for provincial standards and guidelines with respect to provincial government-owned properties.

Mr Bisson: So it puts the new act in sync with the current; right?

Mr Hall: It introduces a provision that provides for provincial standards and guidelines for provincially owned properties.

Mr Bisson: But the net effect is that currently, without this act, if the crown—which owns a lot of property in the province of Ontario, the last time I checked. If there is a heritage site, we’re not subject to that particular property being designated?

Mr Hall: That’s correct.

Mr Bisson: And that would still be the practice under this act?

Mr Hall: That is correct.

Mr Bisson: I’m just saying, isn’t it passing strange? Could the Parliamentary assistant comment on that, please?

Ms Mossop: I just wanted to clarify before you go away, did we not deal a few minutes ago with the crown leasing property?

Mr Hall: This is a companion motion to amend. The committee just dealt with, previously, a comparable motion to amend with respect to the application of part IV, designation of powers to crown-owned property.

Mr Bisson: Can you say that again? Sorry, I was—

Interjection.

Mr Hall: This is the companion motion to amend, with respect to part V.

Mr Bisson: I don’t mean to bother Mr Racco. If working on clause-by-clause is too troublesome for you, we could—

Mr Racco: No, it’s not. What bothers me, though, is that we had dealt with prior—

The Vice-Chair: Could you address your comments to the Chair, please?

Mr Racco: Do I have the floor?

The Vice-Chair: Yes.

Mr Racco: Just to answer his question: It's unfortunate that there are so many employees here who are waiting to go back to their offices, and the gentleman is asking questions that have been clarified. That's my concern. Otherwise, I don't have a problem. I think this committee should be a forum for discussion, but unfortunately such discussion has already taken place, and because you were late, we have to go over it. That concerns me.

Mr Bisson: I'd still like to have the answer. I really apologize if I want to be a legislator and I'm trying to do my job and it's bothering you. But if it is bothering you, you can leave and have lunch early. I won't mind at all. All right? Answer.

Ms Mossop: I'm trying to get you some clarification that you missed earlier.

Mr Bisson: I appreciate it. I just wanted to clarify for Mr Racco.

Ms Mossop: I want you to understand that—

Mr Bisson: Yes, I just want to understand.

The Vice-Chair: Could we bring the comments back to the amendment, please?

Mr Hall: There are two motions to amend that dealt with the application of part III.1, which makes provision for the creation of standards and guidelines that would apply to provincially owned properties and properties occupied by a ministry or public body of the government of Ontario.

The bill, as submitted, would have exempted the application of part IV designations and part V heritage conservation district designations from those properties. We thought that was overly broad, and we want to restrict it simply to provincially owned properties, not provincially occupied but not owned properties.

Ms Mossop: So, in fact, provincially occupied properties—that's different. Now we're giving the municipalities a greater ability to designate those properties, regardless of the fact that the province may be occupying them.

Mr Bisson: That's all I wanted to clearly understand. In the end, under the current regime, you can or can't do that?

Ms Mossop: You can't.

Mr Hall: Under the current regime, a municipality can designate a building—

Ms Mossop: We are moving forward.

Mr Bisson: So this further restricts the ability of the province to protect itself from its own act, which is not a bad thing, I'm just saying; right?

Mr Hall: I can't really comment on that.

Mr Bisson: Anyway, my point is not to fight with the parliamentary assistant.

Ms Mossop: I understand what you're trying to get at, and what we're trying to do is the same thing. We're getting there. We're inching toward it and trying to do it in a realistic way so that it'll actually happen instead of not happen. We understand the intent and the need for the province to lead by example. We're moving in that direction in a realistic, doable fashion.

Mr Bisson: I appreciate it. In fact, I'll vote in support of your amendment.

I always find it interesting, as we sit on committee and we look at legislation, that far too often the province exempts itself from its own legislation. I understand why sometimes.

Ms Mossop: But we're changing that. We're actually moving forward here.

Mr Bisson: You're moving forward. I'm not arguing that you're not. I'm just saying, it's always a bit passing strange—there are reasons why we may want to do that, but for the average person out there, they say, "Physician, heal thyself." That's the only point I'm making.

The Vice-Chair: Voting intentions having been made clear, are we ready to call the question on the amendment?

Mr Bisson: Excuse me. Is Mr Racco ready?

The Vice-Chair: Could you address the comments to the Chair, please?

Mr Bisson: I just wanted to make sure.

The Vice-Chair: On the proposed amendment, shall the amendment carry? Carried.

Shall section 28, as amended, carry? Carried.

There being no proposed amendments to sections 29 and 30, shall sections 29 and 30 carry? Carried.

Section 31: comments?

1130

Ms Mossop: I move that subsection 41.1(5) of the act, as set out in section 31 of the bill, be amended by adding the following clause:

"(a.1) a statement explaining the cultural heritage value or interest of the heritage conservation district;"

Mr Bisson: Rationale?

Ms Mossop: Oh, the rationale is that we're requiring a statement to be there. It's being made to reflect the distinction between why the district is being designated and what is being designated. It ensures consistency.

Mr Bisson: Was that a recommendation by leg counsel? I understand it, but I'm just wondering where it comes from.

Ms Mossop: We have the answer for you.

Interjection: Now, you get paid the big bucks.

Mr Schneider: The answer to the question is that in part IV, when you designate an individual property, the act requires that you provide a clear statement as to the cultural heritage value or interest. So this is really a consistency thing.

Mr Bisson: Got you.

Ms Mossop: Housekeeping again.

The Vice-Chair: Shall the amendment carry? Carried.

Shall section 31, as amended, carry? Carried.

There being no proposed amendments to sections 32 through 42, shall these sections carry? Carried.

Section 43: questions and comments?

Ms Mossop: I move that subsection 68.1(1) of the act, as set out in section 43 of the bill, be struck out and the following substituted:

"No rehearing by board, etc

“(1) Despite section 43 of the Ontario Municipal Board Act, the board shall not,

“(a) rehear any application made to it under this act, subject to subsection (1.1); or

“(b) review, rescind, change, alter or vary any decision, approval or order made by it under this act.

“Where rehearing allowed

“(1.1) The board may rehear an application made to it under this act if,

“(a) the application was first heard by a two-person panel; and

“(b) the two-person panel was unable to agree to a decision.”

Mr Bisson: Again, could the parliamentary assistant just give us a rationale?

Ms Mossop: The rationale is that this clarifies that hearings on Ontario Heritage Act appeals are permitted where a two-person panel of the board does not render a unanimous decision; for example, where a panel consisting of members from the Conservation Review Board and the Ontario Municipal Board does not agree.

Mr Bisson: Under the current act, not under the proposed legislation, are you allowed a rehearing? There’s no such thing as far as I know.

Ms Mossop: I’d better bring in the technical support again. They seem to satisfy you better than I do, so I’m going to bring them in right away.

Mr Bisson: I wasn’t aware you could do this in the first place, that’s why I’m asking the question. And if that’s the case, why do we need that? I’m just curious.

Mr Hall: Under the current act, there are appeals to the OMB with respect to applications to alter properties in heritage conservation districts, and the general provisions under the Ontario Municipal Board Act would apply.

Mr Bisson: Are you allowed a rehearing? I didn’t think you could.

Mr Hall: The act doesn’t exclude them.

Mr Bisson: But you only do it as a judicial review though, right?

Mr Hall: No. It’s the provisions of the Ontario Municipal Board Act that allow it to rehear and vary a decision.

Mr Bisson: Just so I understand—I’m sorry if I’m holding you up, Mr Racco—currently now, if there’s a decision made by the OMB, are you allowed, yes or no, to have it brought back before the OMB? I didn’t think you could.

Mr Hall: Yes, you can, under the OMB Act.

Mr Bisson: Oh, you can?

Mr Hall: Yes.

Mr Bisson: I thought you could only do that by judicial review if there was—

Mr Hall: There are rehearing provisions in the OMB Act, I think primarily to deal with its regulatory jurisdiction over municipalities; regulatory matters that come before the OMB as opposed to quasi-judicial matters that come before the OMB.

Mr Bisson: So you can take the very same case back to the OMB a second time if you lost it?

Mr Hall: My understanding is that the OMB will entertain a rehearing if the underlying facts have changed and there is new evidence.

Mr Bisson: That’s right. So it’s the same sort of standard as judicial reviews. You have to show that there has been an error or—

Mr Hall: I think in a rehearing it’s a factual change, whereas in judicial review it would be an error of law.

Mr Bisson: OK.

Mrs Munro: I have a question. With the proposed amendment here, where it suggests “the application was first heard by a two-person panel,” this opens up the question—and I need clarification—what the final disposition was with regard to the cross-appointments from the Conservation Review Board. Are we now mandating those cross-appointments in this act?

Mr Hall: The bill before you provides that the OMB “may” appoint a member of the CRB to a panel hearing and appeal under the Ontario Heritage Act, but is not required to.

Mrs Munro: That’s what I wanted clarified. Where we are suggesting that the board may rehear an application if it was first heard by a two-person panel, one of those could be the cross-appointment or not?

Mr Hall: That is correct. A rehearing would only be permitted in a situation where the two-person panel did not agree to a decision. There would be no rehearing if there was a unanimous decision of the two-person panel.

Mrs Munro: Does this mean that the individual who is appearing before the board has no guarantee—whether that’s a good thing or a bad thing doesn’t matter—as to the composition of the panel?

Mr Hall: That is correct.

Mrs Munro: It seems to me, then, that there might be some prejudice built into the system. You have no control whether there will be somebody from the Conservation Review Board cross-appointed. Whether you want them there or not is not the issue; the issue is that you have no knowledge or option. I find that to be somewhat problematic. Is that the reason why you’re saying “if the two-person panel is unable to make a decision”?

Mr Hall: This was brought to our attention by staff at the OMB as a remote possibility. The suggestion was made that we might want to address it. We were advised that in the history of the OMB there has never been a case where a two-person panel has never reached a unanimous decision.

Mr Bisson: There has never been?

Mr Hall: That’s what we were advised.

Ms Mossop: In our deliberations on this, my understanding is that in the past you have expressed concern about there being sufficient expertise when these sorts of decisions were being made. This should go some distance in addressing that.

Mrs Munro: That’s really why I wanted to have the discussion, because, yes, there was certainly some

concern raised about it. I just wanted to have it clarified in this amendment.

Mr Bisson: I have a further question. The net effect of this is to restrict further the ability for a rehearing from the current regime?

Mr Hall: That would be correct, yes.

Mr Bisson: Is that the intent of the government? I don't believe that would be. To the parliamentary assistant: I'm not quite sure that this is where you want to go.

Ms Mossop: I'm satisfied that we are putting expertise in place.

Mr Bisson: I hear you.

Ms Mossop: Decisions aren't being made without that.

Mr Bisson: This is where I'm coming from. You have good intentions in what you're trying to do here. Nobody argues that.

Ms Mossop: I understand.

Mr Bisson: But I would think that the government's net aim is not to further restrict the ability of the public to a rehearing if they should choose. I didn't think they were able to in the first place, but obviously I was wrong on that one. But if the net effect is to restrict the ability of the public or whoever is moving forward on the hearing to the OMB, why would you want to restrict it? I don't think you want to do that.

1140

Ms Mossop: I don't get the sense that that's—

Mr Bisson: Well, that's going to be the net effect. That's why I'm asking, why would you do it?

Ms Mossop: I don't get the sense that that is the net effect.

Mr Bisson: Last question to my friend here: What was your name again?

Mr Hall: It's Dana Hall.

Mr Bisson: Currently, under the rules of the Ontario Municipal Board, you can do a rehearing? Let me make sure I understand this before we vote on it.

Mr Hall: In the current act, there is an appeal to the OMB with respect to a request to make alterations to buildings in a heritage conservation district. That matter is appealed to the OMB. Under the current act, because these provisions in the OMB act with respect to rehearing a matter are not excluded, technically there is a possibility, if there were an appeal to the OMB and a decision were made, that the applicant could request a rehearing or further consideration of the matter after the OMB had considered it in the first instance.

Mr Bisson: So, as the person before the board who has gone to the hearing, my only option after this would be a judicial review. That would be my only option.

Mr Hall: That's correct. You would have had your hearing before the OMB, the OMB would have made a decision, and the effect of this amendment would be that the board could not further consider that decision except in the circumstance where they didn't make a decision because it was a split decision.

Mr Bisson: I'm not going to debate it ad infinitum. I think I've made my point. My point is, I don't think we should be restricting the rights of individuals to a rehearing.

The Vice-Chair: On those points being made, are we ready to call the question?

Mr Bisson: Yes.

The Vice-Chair: On the matter of the amendment, shall the amendment carry? All those in favour?

Mr Bisson: Of the amendment?

The Vice-Chair: Of the amendment. All those in favour? Opposed? Carried.

Shall section 43, as amended, carry? Carried.

OK, we're in the home stretch.

There being no proposed amendments to section 44, shall section 44 carry? Carried.

Section 44.1: questions and comments?

Mrs Munro: I move that the bill be amended by adding the following section:

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

"Review of act

"69.1 The minister shall undertake a comprehensive review of this act five years after it comes into force."

The Vice-Chair: Discussion?

Mrs Munro: There are two reasons that prompt me to consider providing this amendment today. One is the fact that when we look at the history of the Ontario Heritage Act, many of our deputants referred to the fact that there had been undertakings by governments of all political stripes that never made it into any kind of legislative changes. We had deputants who remarked about a 29-year span. Whether we're talking about increased public awareness, whether we're talking about new technologies, making an understanding of heritage more important, it seems to me that five years is a reasonable length of time by which to undertake and have a commitment that you're going to review the act.

I think also, when we look at the act as its amended form takes place, there are some areas in which the government has given us some undertaking this morning to provide changes. Clearly, there are some very unsettling aspects to this piece of legislation, things that I think are better described as being on a wing and a prayer in terms of how this is going to unfold for the heritage community.

So for those two reasons—the history of the inability of governments to tackle looking at the Ontario Heritage Act and the rather contentious parts of this bill—it's my view that a minister conducting a review of the act is, frankly, acting in the public good, and I can't imagine why it wouldn't be an appropriate thing to do.

The Vice-Chair: Further debate?

Mr Bisson: Just very quickly, although I support what you're trying to do here, I think in the end there are some issues in this act as far as how it's perceived and received by the public. Generally, this is not a bad piece of legislation, but I think, as you say, from the parliamentary assistant's perspective, some of this stuff is somewhat

complex. It will be interesting to see after five years how this thing has unfolded in the practicality of how it's been administered. I think your suggestion that after five years we do a review is not a bad one.

The Vice-Chair: Mr Racco?

Mr Bisson: Just a last point—sorry, Mr Racco. We all know that governments have good intentions and say, “We’re prepared to look at that, but we’re not going to put it in legislation.” Listen, I’ve been around, like Mr Brown and others, for a long time, and that don’t happen. That’s why you’ve got to put it in legislation.

Mr Racco: I have difficulty with the motion in front of us, only because of the comments that I’ve heard. I tend to believe that reviewing whatever we do, let’s say, every five years is normally within reason. But when the suggestion is that what we are doing is flawed and that’s why we have to do so, it concerns me. I believe the bill is—

Mrs Munro: On a point of order, Mr Chair: I certainly didn’t use the word “flawed,” and that would not be my intention. I did, however, suggest that there are undertakings that are given verbally here by the government and there are issues outstanding within the community. I just want to clarify that for the member.

Mr Racco: I accept the explanation. That was what I concluded, and that’s fair. My concern is that surely there are some changes that need to be done. Anything we do is never perfect. In fact, I have a letter from the town of Markham, which I just saw when I came here today, which says that unfortunately it’s not addressing all the issues. But I believe there are enough issues, even in that letter, that have already been addressed, so I feel comfortable to some degree. That doesn’t mean that changes cannot be made. Nonetheless, the minister has the option to make changes as he or she chooses. It could be done before or after the five-year term. So even if the motion does seem to have some merit, I don’t see it as necessary. I trust the minister will make changes when necessary, prior to or after the five years.

Mrs Munro: I used two reasons for putting this forward for a very specific purpose, in that the history of looking at this particular piece of legislation, quite frankly, isn’t stellar. We know—and I made specific reference to the fact—that governments of all political stripes have tried to tackle this. It’s the history of this bill and the difficulty that previous governments have had in looking at these issues that has prompted me to do this.

I just want to clarify that you’re absolutely right; a minister can review the legislation whenever he or she wishes. We don’t have a good track record of reviewing it, so I’m suggesting that five years is not unreasonable to have a look at it again.

Mr Racco: The Liberals are in power now. Maybe they will take—

The Vice-Chair: Mr Racco, please wait until you are recognized by the Chair. Mr Brownell.

Mr Brownell: This province has not had a good track record. I have to say, we are here today. The justice committee is serious about looking at this legislation,

getting it moving here in the province and listening to the stakeholders. We’ll hear from stakeholders after this; I know I will. I know I’ll hear from my community, as in the letter yesterday. But we have to move forward, we are moving forward, and I’m very excited about that. We’ll get this legislation and then we can add to it.

1150

The Vice-Chair: Any other questions and comments?

Mr Bisson: I’d like to say that I’ve been around here a long time, and I’ve heard that speech before.

The Vice-Chair: You’ll probably never hear it again.

Are we ready to call the question on the proposed amendment? Shall the amendment carry?

Mrs Munro: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop, Racco.

The Vice-Chair: I declare the amendment lost.

Section 44.1: Questions and comments? It’s getting near time to go and vote.

Mr Bisson: We have an amendment to deal with, and maybe we can deal with it in the afternoon. There seems to be some movement on the government side on a particular issue we raised earlier, so it might be a good idea just to come back. We don’t need the whole afternoon to deal with it.

The Vice-Chair: As we would need approval from the House to sit this afternoon—

Mr Bisson: Oh, it wasn’t in the original motion?

The Vice-Chair: Bring your amendment up.

Mr Bisson: Hang on a second. We’re just going to let the House leader’s office person do something.

The Vice-Chair: Go ahead.

I’ll read the amendment and we can debate that after. Section 44.1 of the bill (section 69.1 of the act):

I move that the bill be amended by adding the following section:

“44.1 The act is amended by adding the following section:

“Compensation for maintenance of designated property

“69.1 (1) The minister shall establish a committee to study and prepare a report with respect to mechanisms for compensating owners of properties that are designated under part IV or that are part of a heritage conservation district designated under part V for the costs of maintaining, preserving and restoring their properties.

“Report of committee

“(2) The report of the committee shall make recommendations as to the most effective mechanisms for compensating owners of properties referred to in subsection (1), including providing for relief from

property taxes, for provincial grants or for any other form of relief.

“Consultation

“(3) The committee shall consult with the owners of properties referred to in subsection (1) and with municipalities in preparing its report.

“Timing

“(4) The committee shall prepare the report and submit it to the minister six months after the day the committee is established.”

We’ve got a couple of minutes. I know you’ve heard Mr Marchese on this, and he’s spoken to me about it, and we’ve talked about it within our caucus. I think we know what the arguments are. I’d just be kind of interested to see what my friend Madame Mossop has to say—who’s doing a fine job this morning, by the way. I must say, you’re doing a very good job.

Ms Mossop: I’m on my maiden voyage of shepherding an act through committee, so thank you for that.

There are some concerns in this area as well, but essentially I suppose what we’re looking at with this one—can you just give me one half-second? Sorry.

The Vice-Chair: Further discussion?

Mr Bisson: She’s just checking something.

Ms Mossop: Sorry. I’ve just had to clarify, because I’m trying to juggle something else for the benefit of all.

We understand the issues around this but, again, we’re also trying to move forward realistically. The compensation issue does not have to be a part of the legislation, and can’t be in a realistic way at the moment, anyway, from the standpoint of the government’s financial affairs.

Having said that, we want to work together with all communities and parties affected by this to come up with ways to make this work, and that means coming up with creative ways of finding funding to help them with this. People are open to that process, from what we understand from the people we’ve talked to, and even from what I

heard yesterday. There is an openness to work with us, to be creative about this and find ways of helping. But compensation directly? No. This is a matter of zoning. This isn’t a matter of expropriation or anything of that nature.

Mr Bisson: So what I’m hearing is that in the end, the government will vote against the amendment. There is nothing I can do to change your mind, I take it, at this point. Am I reading you right, Mr Brown?

Mr Brown: Yes, you’re right.

Mr Bisson: I made the point. You understand the rationale.

Ms Mossop: Yes, absolutely.

Mr Bisson: Mr Marchese has made the points to me, so we’ll just move to the vote.

The Vice-Chair: Shall the amendment carry?

Mr Bisson: Recorded vote.

Ayes

Bisson, Munro.

Nays

Brown, Brownell, Hoy, Mossop.

The Vice-Chair: I declare the amendment lost.

There are no proposed amendments to sections 45, 46 and 47. Shall sections 45, 46 and 47 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 60, as amended, carry? Carried.

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

I declare the committee adjourned.

The committee adjourned at 1156.

CONTENTS

Thursday 2 December 2004

Ontario Heritage Amendment Act, 2004, Bill 60, *Mrs Meilleur / Loi de 2004 modifiant la Loi sur le patrimoine de l'Ontario*, projet de loi 60, *M^{me} Meilleur* JP-413
Mr Dan Schneider, senior policy adviser, Ministry of Culture
Mr Dana Hall, senior legal counsel, Ministry of Culture

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr David Oraziotti (Sault Ste Marie L)

Vice-Chair / Vice-Président

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Michael A. Brown (Algoma-Manitoulin L)

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh L)

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Kevin Daniel Flynn (Oakville L)

Mr Frank Klees (Oak Ridges PC)

Mr Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr David Oraziotti (Sault Ste Marie L)

Mr Mario G. Racco (Thornhill L)

Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

Substitutions / Membres remplaçants

Mr Gilles Bisson (Timmins-James Bay / Timmins-Baie James ND)

Ms Andrea Horwath (Hamilton East / Hamilton-Est ND)

Mr Pat Hoy (Chatham-Kent Essex L)

Ms Jennifer F. Mossop (Stoney Creek L)

Mrs Julia Munro (York North / York-Nord PC)

Clerk / Greffier

Mr Katch Koch

Staff / Personnel

Ms Sibylle Filion, legislative counsel