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**Journal  
des débats  
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**Mercredi 1<sup>er</sup> 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

Chair: David Oraziotti  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

**COMITÉ PERMANENT  
DE LA JUSTICE**

Wednesday 1 December 2004

Mercredi 1<sup>er</sup> décembre 2004

*The committee met at 0904 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 Chair (Mr David Oraziotti):** Good morning and welcome. I'd like to call the committee to order this morning to consider Bill 60, An Act to amend the Ontario Heritage Act. Members have the agenda in front of them and submissions as well.

ROMAN CATHOLIC  
ARCHDIOCESE OF TORONTO

**The Chair:** I'd like to call the first presenter forward, please, the Roman Catholic Archdiocese of Toronto. I'd just ask that you introduce yourselves for the purposes of Hansard recording. As well, you have 15 minutes for your presentation. If you leave any additional time from that, there will be an opportunity for questions from all parties and the time will be equally divided. Good morning, welcome, and please proceed.

**Bishop Richard Grecco:** My name is Richard Grecco. I'm an auxiliary bishop of the Archdiocese of Toronto. With me this morning are John McGrath, on my right, vice-chancellor of temporal affairs for the archdiocese; David Finnegan, on my far left, director of planning and properties; and Peter Lauwers, counsel to the archdiocese. Thank you for this opportunity to address you on Bill 60.

The Roman Catholic Archdiocese of Toronto extends beyond the boundaries of the city. The archdiocese owns many buildings that might well be considered to be heritage sites and has spent considerable sums in maintaining some of them. Some of these churches are listed in the appendix. Most recently, for example, the archdiocese spent \$4 million on St Michael's Cathedral in order to protect the foundations, \$2 million to \$3 million to restore St Paul's Basilica, and \$1.5 million to restore St Anne's parish church in Toronto. There are few property owners in Ontario that would have more buildings of

historical and architectural interest than the Archdiocese of Toronto.

We support parts of Bill 60, and we join with the province in its desire to ensure that every possible avenue be explored for the maintenance of heritage sites, but there will be regrettable occasions when we cannot continue to own and maintain certain buildings. Changes in demographics and in church attendance patterns will require the closure of parishes that are no longer self-sustaining. We must be able to dispose of surplus properties at fair market value in order to raise funds to re-invest them where they are needed in heritage preservation and in other activities, so that the archdiocese can continue to respond to the changing needs of the Catholic community in the greater Toronto area.

Bill 60 would change the Ontario Heritage Act from a statutory regime, under which property owners can be reasonably compensated by municipalities for heritage properties, to one in which the interests of property owners can be expropriated without compensation. This is a form of site-specific heritage tax that is not fair to property owners.

If the current version of the act can be criticized for leaving too much control in the hands of property owners, Bill 60 must be criticized for leaving too much control in the hands of municipalities. This is perhaps not surprising, given that what appears to have been the one-sided input into the bill. We were surprised to learn that while there has been extensive consultation with heritage groups and municipalities, there has been virtually none with property owners, like the archdiocese, who will bear the real burdens of the bill.

As an owner of numerous properties with potential heritage value, the Archdiocese of Toronto feels very much caught in the middle. Our spiritual and financial commitment to the preservation of historic buildings is probably unequalled in Ontario. Our interest in disposing of surplus properties is in large part about ensuring that we are able to dedicate the proceeds of sale to maintain other properties.

The Archdiocese of Toronto believes that with appropriate consultation, a balanced approach to the needs of property owners and the needs of heritage preservation can be achieved. That is why we are recommending that Bill 60 be withdrawn from the legislative agenda and be recirculated for further development in consultation with all of the stakeholders that will be affected by it, includ-

ing municipalities, heritage groups, property owners, land developers and professional bodies with expertise, such as the Ontario Professional Planners Institute.

**0910**

An inequitable burden will fall on certain property owners. There is no doubt that Bill 60 would inequitably burden certain organizations far more than others. Places of worship are often the oldest and most significant buildings in communities across Ontario. Religious organizations are essentially voluntary, and they rely on the contributions of congregations. They operate on a break-even basis and are simply not able to afford the considerable expense that this heritage tax would impose on them. It is important to recognize that payment of this additional expense will only come at the cost of other important services: ministry and charitable services that the archdiocese provides to the people of Ontario. The poorest citizens among us should not be compelled to bear a disproportionate burden if, as can be expected, funds available for charitable activities are diverted to extraordinary building maintenance.

**Mr Peter Lauwers:** The balance of our remarks will focus on proposing improvements to Bill 60 to try to redress what we see as its current imbalance. If the measures in Bill 60 come into force, we fear that municipalities will no longer exercise reasonable restraint in the designation of heritage sites. In the past, fiscal discipline has led to reasonable compromises, such as the preservation of facades rather than entire buildings, for example.

The basic problem with Bill 60 is that it, by giving all power to the municipalities, does not create enough ground for reconciling the legitimate needs of property owners with the interests of heritage preservation. The right of an owner to an OMB appeal is insufficient, in our view, because, in part, Bill 60 does not provide the OMB with any criteria for determining heritage value or the fair entitlement of affected owners.

We are recommending the addition of language found at page 5 of our brief: Where the owner would suffer financial hardship as a result of a refusal to issue a demolition permit or where the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural value, heritage value or interest in the municipality, then the municipal board should be empowered to specify as a term or condition of the appeal that the designating authority acquire the property for fair market value, or the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the owner.

We think the addition of these provisions—and probably others we haven't had time to think up yet—will encourage reasonable negotiations with municipalities. Density transfers have, for example, provided funding for heritage preservation across North America, and also in Toronto there are good examples.

We also have concern about bias and the composition of the appeal process and the Conservation Review Board. Section 25.1 of Bill 60 would permit a member of

the Conservation Review Board to be appointed to sit on a panel of the Ontario Municipal Board reviewing an appeal. In the view of the Archdiocese of Toronto, this imports a bias into the appeal process, since the Conservation Review Board will already have been involved in the decision-making process.

We address two recommendations on this subject at page 6 of the brief, including one that specifically requires that the member who is from the Conservation Review Board not be the only member of the Ontario Municipal Board sitting on an appeal.

In terms of transitional matters, under Section 34.7 of Bill 60, unless the building is in the course of demolition at the time the bill receives royal assent, the new act would force the owner to start all over again. The Archdiocese of Toronto believes that retroactive legislation, which is what this is, is administratively and substantively unfair. We're proposing a change on page 7 of the brief in order to address that particular issue and bring some fairness into the process.

**Bishop Grecco:** In 1982 the Supreme Court of Canada identified the moral basis of the Ontario Heritage Act. I quote: "The preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, certainly not in total disregard of the property owner's rights."

The Archdiocese of Toronto believes that reasonable respect for this basic principle should be maintained in any amendments to the Ontario Heritage Act. This respect has motivated our recommendations. We urge the committee not to report this flawed and unbalanced bill for third reading, so that a fuller and more open consultation process can occur and more ideas than those put forward in this short brief can be explored by all the stakeholders.

Thank you for this opportunity to address you on Bill 60. We would be happy to answer your questions.

**The Chair:** We have about four minutes remaining. We'll start with the opposition party.

**Mrs Julia Munro (York North):** I appreciate the aspect that you've brought here. I think all of us recognize the kind of built heritage that the churches collectively represent, and their importance. I think the main message you've provided here for us today in regard to the need for balance and for looking back at that Supreme Court decision as a basis for making any amendments is extremely important for us to consider.

I certainly look forward to comments from the government with regard to ways in which they will want to respond. Certainly I will be looking very closely at the amendments you have proposed, which we might bring forward if we feel that the government is not responding.

**The Chair:** Government party.

**Ms Jennifer F. Mossop (Stoney Creek):** My name is Jennifer Mossop. I'm the parliamentary assistant. I didn't catch your name, the second gentleman who spoke; I'm sorry.

**Mr Lauwers:** I'm Peter Lauwers.

**Ms Mossop:** Did you have absolutely no consultation at all with any of the ministry staff leading up?

**Mr Lauwers:** Not leading up to the bill.

**Ms Mossop:** Have you since?

**Mr Lauwers:** We have since.

**Ms Mossop:** Have you received any—

**Mr Lauwers:** We received no comfort from the ministry staff.

**Ms Mossop:** If there is an opportunity for us to work with you—first of all, some of you probably have seen instances in your communities where lovely old buildings have disappeared because the municipalities had no way of preventing their demolition. I'm assuming you might have witnessed something of that nature.

**Mr Lauwers:** I think the key message from us is that we don't oppose the goals of this bill; we oppose the methods. We think they are actually counterproductive in some ways. We look forward to a consultation process that would allow other ideas to be explored to provide for a more balanced outcome.

**Ms Mossop:** Do you think the ministry could work with you to look at potential resources for the churches?

**Mr Lauwers:** There are all kinds of different ideas that could work. Density transfer is one of them. The trust that's created by the bill is a good idea too, but the demands of heritage preservation are much more extensive than any trust endowment could probably equal. We would welcome the opportunity to work with the ministry and with the government on improving this bill, and with other affected groups as well, because we're not the only ones.

**Mr Jim Brownell (Stormont-Dundas-Charlottenburgh):** You made reference in your opening remarks here to the sums spent on some restoration—I guess it is restoration—done on St Paul's Basilica and St Anne's. Could you explain a little bit about what type of work was done there, exterior restoration? Were these buildings in a bad state of repair exteriorly?

**Bishop Grecco:** Mr Finnegan is our property and planning management officer, so I'd let him respond to that.

**Mr Brownell:** I'm quite interested in knowing what kind of work would have been done for that money.

**Mr David Finnegan:** In the case of St Michael's Cathedral, \$4 million was recently spent on repairs just to our foundations, to make sure the building was watertight and structurally sound.

We've also spent monies internally, repairing plasterwork in the cathedral, painting, and for removal of environmentally sensitive materials. At St Paul's Basilica we have replaced the roof. We have carried out repairs on the mortar and the stonework there. We did painting, again, internally, and stained glass window repairs. That's the nature of the repairs we're looking at: protection of the building envelope, protection of the heritage of the building and a lot of internal repairs to keep the building properly maintained.

**The Chair:** That's all the time we have for questions with this group. Thank you very much for your presentation.

0920

## MARCIA CUTHBERT

**The Chair:** I'd like to call the next presenter. Marcia Cuthbert, come forward, please. Good morning, and welcome. Please identify yourself for the purposes of Hansard. You'll have 15 minutes for your presentation. If you leave any time remaining, we'll have an opportunity for questions.

**Ms Marcia Cuthbert:** Mr Chairman and members of the committee, good morning. My name is Marcia Cuthbert. I'm an urban planner, now retired. I'm appearing today as a result of having responded as an individual to the Ministry of Culture's December 2002 report entitled Changes to the Ontario Heritage Act Discussion Guide, rather than as a representative of any of the organizations to which I belong.

Currently, I am a member of the Toronto and East York Preservation Panel and chair of its legislation sub-committee. The chair of the Toronto and East York Preservation Panel, Don Purdy, is here with me today.

Briefly, the Toronto and East York preservation panel is a city-appointed body dealing with heritage matters affecting the central part of the amalgamated city of Toronto. We report to the Toronto Preservation Board, which is the official municipal heritage committee appointed by Toronto city council for the entire city under the Ontario Heritage Act.

To give just a couple of examples of what the panel does, we have been assisting the city's preservation services staff by carrying out research on the buildings on Spadina Avenue between Dundas and College Streets for inclusion on the city of Toronto's inventory of heritage properties. Also, because Kensington Market is located within the geographic area covered by our panel, I chaired an ad hoc working group of members of the local community to have the Kensington Market area designated by the Historic Sites and Monuments Board of Canada as a national historic site for its role as an immigrant reception area. This matter is to be considered by the Historic Sites and Monuments Board in the spring of 2005.

As with many people who are part of the volunteer heritage community, I am a member of a number of heritage organizations. I am currently chair of the communications committee of Community Heritage Ontario, the province-wide organization of municipal heritage committees. I'm also a member of the Ontario Genealogical Society and served on the photo exhibit committee for their conference in May of this year. I'm a member of one of the jury panels for the Heritage Toronto Awards, and I played a similar role for one of this year's Ontario Historical Society's awards. I have been a member of the Architectural Conservancy of Ontario since the 1960s. But as I said, today I am appearing on my own behalf.

There are three main points I would like to make today. The first one is that I would like to thank Premier McGuinty, his government and Minister Meilleur for introducing the long-awaited amendments to the Ontario

Heritage Act contained in Bill 60, and for shepherding the bill through the second reading stage. I would also like to thank the other parties for giving their support to this urgently needed legislation. I would also like to thank this committee for providing the opportunity for these public hearings and for the interest you have shown in listening to the presentations being made to you, both last Thursday and today.

Most of all, I would like to thank those who worked so hard to include in the bill various much-needed provisions such as, among others, the provision to strengthen the control over demolition of designated properties; the provision to give municipalities the power to impose controls on areas that are defined as areas of study for proposed designation as heritage conservation districts while the study is underway—this was something recommended as far back as 1977, so I'm glad it's finally being brought forward; and also the proposal to allow municipalities to make bylaws establishing standards for the maintenance of the heritage attributes of designated properties. These are just some of the important provisions contained in the bill.

The second point I would like to make is that I believe the heritage community is united in its support for the legislation. For example, at last Thursday's hearing, you heard the representative of the Ontario Genealogical Society urge that the protection of cemeteries be specifically mentioned in the act. As someone with membership in both built heritage and genealogical organizations, I can say that I am strongly in agreement with the protection of cemeteries and I am very much in favour of finding a solution that will satisfy the concerns being expressed about cemetery protection. Putting it another way, I do not want anyone to be able to cause further delay by suggesting that there might be differences within the heritage community. I believe we are united, in that all of us have the same objective of protecting our heritage.

My third point has to do with the urgency of proceeding with the legislation without further delay. In my working life, I was an urban planner with the city of Toronto planning board and, later on, in 1973, was appointed as head of the historical preservation division of the Toronto Historical Board. While on the planning board's and the Toronto Historical Board's staffs, I prepared numerous briefs on the board's behalf, urging the province to provide effective legislation. In fact, I have a binder of all the reports I prepared.

My first such brief for the Toronto Historical Board was prepared in January 1975—that is over 29 years ago—providing comments on the first reading copy of the original Ontario Heritage Act, outlining both its potential benefits and some suggestions for improvement. That report was adopted by Toronto city council and forwarded to the then minister. Then, two years later, in 1977, I prepared a report entitled *Problems with the Ontario Heritage Act and Proposed Solutions*. That report was also adopted by Toronto city council and forwarded to the minister. Again, in 1980—but I won't go on.

Instead, I've submitted a four-page appendix listing the efforts of the Toronto Historical Board and the city of Toronto, actually from 1958 up to 2002, to obtain effective heritage legislation.

By the way, I might mention that a number of the suggestions contained in my reports were implemented when some housekeeping amendments to the act were made in the past, most notably the one which allows municipalities to refuse demolition of a designated heritage property when no permit has been issued for a replacement building. That amendment was effective in certain circumstances but was intended as an interim measure until such time as more comprehensive provisions such as the ones now contained in Bill 60 would come into force.

Now it's December 2004, and we've gotten farther than we ever have before. A number of amendments to the bill have been suggested by various speakers. My hope is that these can be worked on without delay since time is running out for some of our heritage properties. The ministry has a fine staff and I hope they will be provided with all the support and resources they might need to integrate the various suggested amendments into the package in a timely manner so that we will finally have an effective, state-of-the-art Ontario Heritage Act. Thank you.

**0930**

**The Chair:** Thank you very much. We have some time left. We'll start with the NDP caucus.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you, Mr Chair. You're so kind. Thank you, Marcia. The NDP is supportive of this bill.

**Ms Cuthbert:** Yes, I know.

**Mr Marchese:** We have no interest in delaying it. We will be making amendments, however, tomorrow—three of them. It doesn't mean that it needs to be delayed; it means that the government hopefully will reflect on them, because they know what's coming, and either accept the amendments or change them. Then it can go to third reading and it's all done.

The three amendments we intend to make are:

One, we want to protect cemeteries, and we don't think there is very sufficient or good protection of cemeteries.

Second, if a municipality decides not to designate a building that people think should be designated, there is no third party intervention or appeal, which we think is a useful thing to put in the bill.

Third, we know that heritage buildings are very expensive to maintain, and there's no provision whatsoever from the province to be supportive of that. I think we should be doing something or introducing a measure that would be helpful to people who need to maintain the buildings and don't have the resources to do so. What do you think?

**Ms Cuthbert:** Well, the third point that you make—they're all good points, but the third one is really important. We used to have what was called the designated property grants program, but that was cancelled. That

was one of the few things we could offer to people when they were reluctant to be designated. So I think your third point is something we're really looking forward to.

**Mr Marchese:** And you reserve judgment on the others?

**Ms Cuthbert:** No. I'm supporting the other points as well.

**Mr Marchese:** OK. Thanks very much.

**The Chair:** The government caucus.

**Mr Bob Delaney (Mississauga West):** First of all, I want to thank you for your very interesting deputation. We all certainly acknowledge your very rich personal portfolio of community involvement and in heritage preservation.

I know in my own case, coming from Peel region, how the imperatives of development have cost us so many hundreds of buildings, many of which, a valid argument could be made, are indeed heritage properties.

With that in mind, what I'd like to ask you is this: Some deputants have suggested additional and often lengthy consultation processes before the bill is passed. Can you describe from the benefit of your experience some of the risks of inaction by the government of Ontario with regard to heritage properties?

**Ms Cuthbert:** I'm not really good at public speaking, so the fact that I came here today indicates how important I think this is. I may not be able to think of the answers to your question off the top of my head. There have been many designated properties that have been demolished because there is not the power to say no, finally, to demolition. With a 180-day delay, it really is not adequate to ultimately prevent demolitions. This bill provides the answer to that long-time problem.

**Mr Mario G. Racco (Thornhill):** My question is a simple one: The prior speakers asked that this bill be sent for more consultation, and I suspect we will be speaking about it for three to six months, as an example. Would that, in your opinion, be a problem?

**Ms Cuthbert:** All I can say about that is that there has been consultation for the last 29 years or more. The ministry has introduced these discussion papers and we have all responded to this many times. So there has been a lot of consultation.

**Mr Racco:** But would three to six months be a problem?

**Ms Cuthbert:** What I'm afraid of is that it will be like the other times: Suddenly there will be an election and the whole thing will go back to square one.

**Mr Racco:** Thank you. The election won't be until 2007.

**Ms Cuthbert:** I know, but this has happened so many times before.

**Mr Racco:** You speak from experience.

**The Chair:** We'll move to the Conservative caucus.

**Mrs Munro:** Thank you very much for coming here. You have to be congratulated for your patience in being able to provide us with a history of 29 years. Those of us who feel that sometimes government moves slowly have a new example to demonstrate that.

I wanted to ask you just one question with regard to the cemeteries, because we've certainly heard some concerns expressed that way. In the bill, there is—I'm not sure it's specifically in the area of a definition, but the understanding is that we're talking about built heritage and that built heritage would include cemeteries. It also includes fences, for instance, if they were deemed to be part of that whole package of the need to preserve. I wondered if you could comment on why cemeteries specifically? Is there evidence of kind of danger if it's just under the assumed category of built heritage?

**Ms Cuthbert:** There is someone here today who will be speaking on behalf of the Ontario Genealogical Society, but at a recent meeting it was explained to us that at some of these hearings, lawyers would ask witnesses, "Are cemeteries mentioned in the Ontario Heritage Act?" and the person would have to say no. They want to make sure that it's clear to everyone that cemeteries are included in properties that can be designated. The speaker, I'm sure, will explain it more fully.

**Mrs Munro:** Thank you.

**The Chair:** Thank you very much for your presentation.

## COMMUNITY HERITAGE ONTARIO

**The Chair:** I'd like to call on Community Heritage Ontario. Good morning, and welcome. Please speak your names into the microphone for the purposes of Hansard. You'll have 15 minutes for your presentation; if you leave time remaining, we'll have an opportunity for questions.

**Mr Paul King:** My name is Paul King. I'm the president of Community Heritage Ontario. Beside me is Bob Saunders, who is the past president and a member of the board.

Community Heritage Ontario is pleased to submit comments on Bill 60, which is before the Legislature. We welcome the initiative of the government to substantially amend the Ontario Heritage Act. It's legislation in need of strengthening to provide protection for our cultural heritage similar to that in other North American jurisdictions. What's proposed here is not radical; it's really bringing Ontario up to the level of other jurisdictions in North America.

In case you're not aware, Community Heritage Ontario is an association of municipal heritage committees established under the Ontario Heritage Act. There are about 125 communities with these committees, and about 106 of those are members of CHO. These municipal heritage committees, together with the councils they advise, are the bodies responsible for the administration of parts IV and V of the act, so they deal with designation and protection of properties and the establishment of heritage conservation districts.

There are a number of provisions in the bill that we strongly support.

One is the ability of municipal councils to prohibit demolition. The way it's drafted, it's fair, because there is the possibility of appeal to the OMB.

Secondly, there are maintenance standards. I mean, there's been a problem in the past where you can have a property designated and owners can simply get around designation by allowing properties to deteriorate, so it really defeats the purpose of the legislation. It would be better if there were some kind of financial incentives to maintain buildings. Maybe that's something that can be dealt with.

Thirdly, there are provisions that strengthen heritage conservation districts, not only the plans but also the process. There's interim control during the study period, and there are specific provisions dealing with the plans and making sure that there's proper public consultation and information to the public. These are all good measures.

Next, for the first time there's authority to set up a register of properties, not only designated properties but also properties that are of interest. Many municipalities have had inventories, but it's never been officially recognized before. Even now, there's not much legal clout in having that inventory, but it's a useful planning tool.

**0940**

Also, there's the power of the minister to designate, which hasn't been there before, so there's a possibility for the province to protect properties.

There are also measures to allow for amendment to designating bylaws. A lot of the bylaws in place now were not particularly well drafted, are not clear. Now there's a mechanism to amend those bylaws in a way that's not too bureaucratic and cumbersome.

Lastly, there's a provision whereby the minister can issue a stop order to stop either alteration or demolition of a property that's of provincial interest.

**Mr Bob Saunders:** While we support the bill very strongly and would like the Legislature to move as quickly as possible to adopt it, and possibly then the ministry should commit itself to a further period of consultation for further amendments to the legislation, we do have one very serious reservation, and I think it's a reservation that you're going to hear about from a number of municipalities. That is that the proposed section 13 of the bill allows the minister to remove from municipal purview properties owned by the crown or properties owned by a prescribed public body.

I appreciate the reason for doing that; I can quite imagine the kerfuffle that would arise if a municipality issued a maintenance order to a provincially owned building. Nevertheless, we are concerned because, to be honest, the province has not been a particularly good steward of its heritage properties in the past. I need only take you into ORC properties in the northeast corner of Scarborough, for example, mid-19th-century farmhouses owned by the ORC in the Rouge park that are slowly crumbling simply because the ORC will not put any money into them. Yet I can think of two of those houses that are of sufficient architectural interest that they've been the venue for several movie shoots, one of them very famous, right on Steeles Avenue East on the south side, a green and white place that has appeared in several of the Green Gables series. I think of Fort Henry, for

example, where regular maintenance was not done over the years, in part because of a jurisdictional problem. The result of its lack of maintenance over the years is that the province is now on the hook for a multi-million dollar renovation and restoration job at Fort Henry because it wasn't maintained.

We would suggest that what is needed here, particularly because this term "prescribed public body" is a pretty open term, is a little transparency about what are prescribed public bodies. We would suggest, therefore, that rather than leaving it as a listing to be made by the minister, a listing of such prescribed public bodies be appended as a schedule to this act.

**Mr King:** There are some provisions in the bill which could be strengthened. It's good that the members of the Conservation Review Board can be on the OMB for some hearings. We suggest that where there are heritage issues it should probably be mandatory.

Secondly, we believe that any citizen of a municipality, any person, in addition to having the right to appeal a decision by the council to de-designate a property, should also have the right to appeal a municipal decision permitting demolition of a designated property to the OMB. In Bill 60, under subsection 34.1(1), only the owner of the property has the right to appeal to the OMB if an application is refused or is subject to unpalatable conditions. Sections 26.1 and 28 of Bill 60 exempt provincially owned properties—that's part III.1—that might happen to be within a municipally created heritage conservation district from the applicable guidelines within the district, but we believe that all properties within a heritage conservation district should be subject to the plan. This could be dealt with under the current legislation if the minister's guidelines parallel what's being done under the conservation district.

Next, section 15 of Bill 60 requires that the municipal council consult with the municipal heritage committee prior to adding a non-designated property to the municipal heritage register. However, the council is not required to inform the municipal heritage committee prior to demolition of a building on a listed, but not designated, property on the register. This should be amended to provide that, before the granting of a building permit or a demolition permit for a property listed on the inventory, the heritage committee should be consulted. That would be an easy amendment to the legislation.

Lastly, section 21 permits a municipal heritage council to delegate to a municipal official or employee the authority to approve alterations. This should be amended to allow a council, if it chooses, to delegate the authority to the municipal heritage committee. In many jurisdictions, that's what happens informally already.

**Mr Saunders:** There are a couple of further amendments we suggest might be introduced to the bill. You're probably aware that many municipalities now regard the cost of advertising for giving notice of designation to be burdensome, to the point where they now hesitate to move on designations of properties simply because the cost of

advertising is too great. Every municipality, like every level of government, is feeling the pinch financially.

For example, besides being a member of Community Heritage Ontario, I happen to be the vice-chair of the Toronto Preservation Board, and I know that in Toronto, for us to advertise for a designation costs in the area of \$8,000 to \$9,000, even for a little tiny ad. That's a very heavy cost for such a thing.

We think that maybe you should look at the Planning Act as the model for this. The Planning Act, under the regulations allowing for minor variances in planning, simply allows the municipality to put a sign up on the property and to make sure that all the property owners in the immediate area of the property subject to application are notified of this application and of its implications. We think this would be, frankly, a much more effective notice of intent to designate than the present little miniature ad that appears in the dailies, which most people probably simply skip over and don't even notice. Look at the Planning Act and the provisions in the regulations for dealing with minor variances, and that should be the key to handling notice for intent to designate for municipalities.

Second—and whether you want to convert this into a mini-omnibus bill is a question—I think you should think in terms of amending the Planning Act to ensure the decisions of the minister, municipal councils, planning boards and the OMB be consistent with the heritage standards and guidelines issued by the minister. There is that intent already with the provincial planning policy statement under the Planning Act, and I think the same thing should be happening in relation to the Ontario Heritage Act.

Finally, we think that every municipality in this province should have a heritage committee. Every municipality in this province which has an official plan is expected to have, as part of that official plan, provision for the protection and preservation of the heritage properties within it. Now, how does a municipality have the expertise and the knowledge to do this? We think that every municipality should be required to have a heritage committee. It's not a burdensome cost. Committees are very cheap to run; in fact, many of them don't even have budgets. In any case, the municipality could even designate a local historical society or could constitute itself as a heritage committee. But we really feel that this should be a requirement under the act.

**0950**

I have to come back to one other theme that Paul mentioned in speaking about the guidelines that the minister will prepare in connection with the preservation of its own buildings. We feel very strongly that the heritage community at large should be involved with this. If the ministry is going to go ahead, for example, to deal with buildings, as Paul mentioned, in heritage conservation districts which are owned by the province, we would like the province to try very consciously to mesh its own guidelines with what is common practice, best practice in municipalities.

Finally, I can only reiterate what has been said a couple of times already this morning, that it is not enough to introduce some sticks into the legislation to protect our heritage; there are going to have to be some carrots. While there is a property tax relief program in operation at present—and the province, to give the province credit, shares in that property tax relief through the education taxes—nevertheless, there have to be some further carrots in place, because the property tax relief program is being implemented in many municipalities not so much to assist heritage property owners as for other kinds of planning goals related perhaps to downtown redevelopment, brownfield redevelopment, this kind of thing, and we feel very strongly that there's got to be some further assistance to heritage property owners.

**The Chair:** You've used all of the time for your presentation. There won't be time for questions.

**Mr Saunders:** If any of the members of the committee would like to contact us informally to ask any questions, we'd be very happy to talk to them.

**The Chair:** Thank you.

I'd like to call the Old Durham Road Pioneer Cemetery Committee forward, please. They're not here?

*Interjection.*

**The Chair:** With the permission of the committee, perhaps we'll move to the next presenter, the Urban Development Institute.

**Mr Michael Stewart:** Good morning. Actually, I'm a little bit at a loss, because my colleague Neil Rodgers is also not here yet. I apologize.

**Mr Marchese:** Let's try the next one.

**The Chair:** Ontario Catholic School Trustees' Association? Ontario Heritage Foundation?

#### BROUGHAM PIONEER CHRISTIAN CEMETERY BOARD

**The Chair:** Is Anna Clapp here? Are you prepared to present at this time? Please come forward.

Good morning. You have 15 minutes for your presentation. If you leave time, we'll have an opportunity for questions, but you may take all of the time for your presentation.

**Ms Anna Clapp:** Mr Chairman, members of the committee, members of the Legislature, ladies and gentlemen, I am Anna Clapp, and I am here as a citizen of this province and on behalf of a cemetery board, specifically the Brougham Pioneer Christian Cemetery Board. This is a not-for-profit cemetery of approximately two acres in the village of Brougham, north of Pickering Village, south of Uxbridge and east of Markham.

I value this opportunity to speak to you concerning Bill 60. I and the board I represent are among those who are very disturbed that Bill 60 makes no reference to our cemeteries and historic burial sites, leaving them without protection as heritage sites.

The cemetery I represent as a trustee has been in existence for over 160 years. Its beginnings as a family burial site on a farm expanded, as did many others, to

provide a place of interment for the deceased of neighbours and the surrounding community as it developed. Once again, as was often the case, within a few years the parcel of land was extended and donated for the erection of a house of worship. The community members in this case identified themselves with the "Christian" denomination, more broadly part of the congregational denomination. I mention this to explain that term in the cemetery name. With the major changes in the structure of Canadian religious denominations in the early part of the 20th century, in particular what was known as church union in 1925, a number of congregations merged and some buildings became redundant. This was probably the main reason the chapel, as it was termed, on this cemetery site was dismantled. However, the cemetery continued to serve any choosing to be buried there, and was expanded in about 1960 to the present approximate two acres.

For as long as we have records, the cemetery has operated on a not-for-profit basis, and its affairs have been administered by a volunteer board of trustees. Annually for almost 100 years, there has been a decoration or memorial day service, as is and has been the long-time practice in many parts of this country and others. I see this cemetery as not unlike many others in this province. The ones which I have a personal acquaintance with and interest in include Quaker Hill, near Uxbridge; Goodwood, in Goodwood Village; Whitevale, in the Village of Whitevale; and Arkona, in the village of Arkona, Lambton county. We provide burial services at cost, and then, with volunteer labour or out of our own resources, we work to maintain and enhance the natural beauty of these sites. We trim the trees, we see that the grass is cut and often see that monuments worn with time are sympathetically restored in keeping with heritage conservation principles. This we see to be our privilege and our responsibility. We see ourselves as stewards.

As well as speaking for the Brougham board, I have a particular concern for the usually small historic burying places dotted throughout the province, many of which are no longer active in terms of receiving burials. It is my concern that many of them have no one, nobody, to speak for them. There are a number, most but not all in the Pickering-Uxbridge area, again that I visit with personal interest. These cemeteries are threatened by development. For example, the L'Amoreaux cemetery in particular: I know the descendants are very worried about the preservation of this cemetery. These places are probably like the places that Catharine Parr Traill was speaking of as she sailed into this province, Upper Canada then, for the first time. Writing home to her mother in England on August 29, 1832, she said, "Among other objects, my attention was attracted by the appearance of open burying grounds by the roadside. Pretty green mounds surrounded by groups of walnut and other handsome timber trees contain the graves of a family, or maybe some favoured friends slept quietly below the turf beside them. If the ground was not consecrated it was hallowed by the tears and prayers of parents and children. These household

graves became the more interesting to me on learning that when a farm is disposed of to a stranger, the right of burying their dead is generally stipulated for by the former possessor." That is in *The Backwoods of Canada*; I took it from the Prospero edition, page 48.

#### 1000

My own concern for this type of cemetery is also shared by the Brougham board, which as part of its governing document, under "Objects of the Cemetery Board," item e, commits itself to "undertake projects to encourage appreciation of pioneer cemeteries and communities."

The Ontario Genealogical Society, known for the tremendous amount of work it has done in recording tombstone inscriptions throughout the province, knowing my interest in cemeteries, approached me some years ago, asking me if I might serve as the cemetery transcription chairperson within their library division. This involves the maintenance of their provincial collection of cemetery transcriptions and liaison with the staff of the Canadiana department at the North York Central Library, who provide the public service for this deposit collection housed there. Working with this collection, which staff have repeatedly told me is their most heavily used resource in the Canadiana department, has given me, I believe, an overview and awareness of the thousands of burial sites documented in this province not shared by many others.

My work with this collection reinforces my conviction that cemeteries, particularly historic, inactive cemeteries, as cultural heritage sites, need clear legislated protection. This has been alarmingly brought home to us in the last few years, in three cases in particular. I refer to two hearings before the Commercial Registration Appeal Tribunal—the Clendennen cemetery hearing and the Palgrave cemetery hearing—and to the proposed disinterment of bodies at St James Cathedral in this city to make way for a condominium development.

I followed proceedings in these hearings, attending personally many days, and followed the controversy over the cathedral burying ground. In the end, most of us came away having learned that there is no protection for cemeteries in situ. In the first of these cases, the appeal hearing on the Clendennen cemetery, it was believed by those interested in heritage matters that the outcome was precedent-setting—a landmark decision. Disturbingly, this did not prove to be so. Heritage groups, at great expense that they can ill afford, had to argue the same matter again in the case of the Palgrave cemetery: that closing and moving cemeteries from their original location is not in the public interest.

Much of my professional working experience has been in the information field. I know the importance of primary sources in any type of research or writing. The cemetery is a primary source unlike any other. As another has said, "A burial site or cemetery represents an equivalent body of information that can be accessed, analyzed and understood, just as a library of books." I

would strengthen this statement to read “just as a library of manuscripts.”

If inactive cemeteries are not preserved in their original sites, I see it as a great indignity to human bodies and the obliteration of our heritage. Buildings and other structures may reflect our heritage. Cemeteries are who we are, our DNA resting where we have dwelt.

**The Chair:** Thank you very much for your presentation. We have just a couple of minutes left. We’ll start with the government caucus if they have any questions at this time.

**Mr Delaney:** Just a very short question: You make a very interesting point on the preservation of cemeteries. Certainly anyone who has visited Europe especially knows that if what you really want to do is see history up close and personal, one of the best ways to feel it and see it is to visit a cemetery.

Cemeteries are often seen as movable in development plans, a point that you’ve commented on very eloquently. In western Mississauga we have one Catholic cemetery in some danger because the church congregation is small and its ability to preserve and maintain the adjacent cemetery is in question.

What I’d like to ask your opinion on is this: What might you suggest if a church that is adjacent to a cemetery property is sold or especially if it changes denominations, or the church building itself, adjacent to a cemetery, is redeveloped? What might you suggest in that context?

**Ms Clapp:** Perhaps that they seek designation right away, although that is not ironclad and can be revoked. I would hope that there would be enough people speaking for a cemetery such as that, where there is a congregation, to organize and do something about it. It doesn’t take a lot of people.

**Mrs Munro:** I think you were here earlier when I made reference to the issue of cemeteries, so I’m really pleased that you’re here to be able to give us further insight. I have to say, as a family member who goes to decoration every year, I understand the importance of those community cemeteries and how important they are to the descendants, quite frankly.

In earlier public hearings, there was the comment made that cemeteries were part of built heritage and therefore were protected because they were seen in that definition. Could you just, and I know we have very little time, give me a sense and the committee a sense of how fragile that definition is for you, obviously in the kinds of situations that you’ve pointed out here with these hearings where the cemetery was obviously very much in question?

**Ms Clapp:** If I’m not exactly understanding your question, just catch me and tell me. So you’re talking about the fragility of—

**Mrs Munro:** Well, the argument that has been put forward is that cemeteries are covered under a definition of built heritage. Clearly, your experience would suggest that that isn’t strong enough.

**Ms Clapp:** Right. There’s certainly no mention of cemeteries that I see. When I look at the wording under that part of the act, I’m not sure that—for example, there are some cemeteries that have no markers; probably not a lot, but I don’t see that they would fall in there at all. The word “structures” is used in that clause, and I’ve been wondering, do tombstones count as structures? I kind of hope so, because that would perhaps include many cemeteries. But for those that don’t have stones standing, and I speak from experience, a stone can be on the ground and gone underneath in 20 years, so you either don’t know it’s there or, if somebody’s digging for some reason, they find it’s there, and perhaps others too.

**The Chair:** Thank you very much.

Old Durham Road Pioneer Cemetery Committee, are you present? Not yet.

Urban Development Institute of Ontario?

**Mr Stewart:** I apologize to the members of the committee; I’m advised that Mr Rodgers is stuck in traffic and should be here momentarily.

**The Chair:** OK, thank you.

1010

#### ONTARIO CATHOLIC SCHOOL TRUSTEES’ ASSOCIATION

**The Chair:** Good morning and welcome. You have 15 minutes for your presentation. Should you choose to leave any time in your presentation, there will be an opportunity for questions, but you may use all of the time for your presentation if you choose so. Please proceed.

**Mr Bernard Murray:** Good morning. I am Bernard Murray, vice-president of the Ontario Catholic School Trustees’ Association, and with me is Carol Devine, who is the director of political and legislative affairs with the Ontario Catholic School Trustees’ Association. We wish to thank you for the opportunity to make a presentation here on Bill 60 this morning.

The Ontario Catholic School Trustees’ Association has dedicated itself for the past 70 years to the promotion and development of the Catholic school system in Ontario. Our membership comprises 29 Catholic district school boards and five Catholic school authorities that collectively educate approximately 600,000 students and represent millions of supporters of the Catholic school system in Ontario. A majority of the activity of OCSTA is to represent the point of view, aspirations and needs of Catholic school boards and school authorities to the provincial government.

It is for this reason that OCSTA is compelled to offer the government its views on Bill 60. A number of OCSTA’s school boards own buildings of considerable age that might well be considered heritage sites. In general terms, OCSTA and its member school boards support the policy of ensuring that a careful process be followed to consider whether a heritage site should be designated. We share the province’s desire to ensure that every possible avenue be explored for the maintenance of heritage sites.

OCSTA supports parts of Bill 60, including the change to the Ontario Heritage Foundation. The new trust will hopefully provide resources to enable owners of heritage properties to maintain and improve those properties where they are still useful. We particularly support the enactment of regulations to prescribe criteria for determining whether a property is of cultural heritage value or interest, subject, needless to say, to further review of proposed regulations.

There will be times, however, when our member school boards cannot continue to own and maintain certain schools. As the Honourable Gerard Kennedy, the Minister of Education, knows and has stated, there are a number of problems with the school capital funding model. The benchmarks for construction in the jurisdictions of some school boards are too low, and consequently there is considerable shortfall between the school board's expenditures on new capital facilities and the revenue that it obtains from provincial grants. Many school boards have been looking to dispose of surplus schools at fair market value in order to make up the shortfall. Designation would have the effect of removing development potential from a property, thereby reducing or eliminating its market value. If surplus schools are designated under the Ontario Heritage Act and Bill 60 is passed in its current state, school boards and school authorities will be unable to dispose of surplus schools at fair market value and will find themselves in grave financial difficulty.

There is no doubt that Bill 60 would inequitably burden certain organizations far more than others. Our member school boards have indicated to OCSTA that they own a significant number of buildings in Ontario that are likely to be designated under the act. This is not surprising, since schools are often old and prominent buildings in the communities across Ontario.

We were especially disturbed to learn that while heritage groups and municipalities were extensively consulted in the development of Bill 60, property owners who might be affected by the changes in the legislation, such as school boards, were not. The consultative process did not seek the input of OCSTA or, to the best of our knowledge, the Ontario Public School Boards Association, even though school boards are owners of significant heritage properties in Ontario. As a result, the bill gives heavy-handed power to municipalities, and leaves property owners with little in the way of protection. OCSTA believes that a more balanced approach to the needs of property owners and the needs of heritage preservation can be achieved, but only after an open consultation process involving all the interested stakeholders and an open-minded exploration of other approaches to heritage preservation.

School boards and school authorities are public bodies that are dependent upon the provincial government for funding of their capital expenditures. This current school capital funding model is unable to adequately address the cost of maintaining heritage buildings. School boards and school authorities are simply not able to afford the con-

siderable expense that this heritage tax would impose on them.

It is important to recognize that payment of this additional expense will only come at the cost of other important services that school boards provide for their students and communities, and might affect the financial ability of school boards and school authorities to maintain their buildings.

It is also worth noting that other incentives, such as tax credits offered under 365.2 of the Municipal Act, are of no assistance to school boards or other public bodies.

People are often very attached to school buildings, even to buildings that have no obvious historical or architectural significance. School boards are aware that municipal councils are often highly susceptible to neighbourhood influences. This we know from our experiences in attempting to locate portables on school sites, which municipalities often resist at the behest of local community groups.

Our member boards fear that they will become embroiled in lengthy legal processes around buildings that are of dubious historical significance, only because it is politically easier for a municipality to designate a site or refuse to issue a demolition permit and refer the matter to the Conservation Review Board and the Ontario Municipal Board than it is to simply refuse the request of a local community group.

**Ms Carol Devine:** OCSTA is concerned because Bill 60 does not provide the OMB with any criteria to guide its decision-making. The authority given to the OMB by section 34.1 provides:

“(6) After holding a hearing, the board may order,

“(a) that the appeal be dismissed; or

“(b) that the municipality consent to the demolition or removal of a building or structure without terms and conditions or with such terms and conditions as the board may specify in the order.”

The experience of school boards is that the prospect of an appeal to the OMB does impose some discipline on municipalities that might otherwise be tempted to exceed their powers under, for example, the Planning Act. The prospect of legitimate appeals forces municipalities to negotiate with landowners. Similar pressure needs to be inserted into Bill 60 to make this process fair to property owners.

We recommend that the following subsection be added:

“(6.1) Without limiting the generality of subsection 6(6)(b), where it appears to the board that,

“(a) the owner would suffer financial hardship as a result of a refusal to issue a demolition permit; or

“(b) the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural heritage value or interest in the municipality,

“the board may specify as a term or condition that,

“(c) the designating authority acquire the property for market value, or

“(d) the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the” same “owner.”

Other bodies making submissions to this standing committee have argued that the presence of a member of the Conservation Review Board on a panel of the OMB reviewing an appeal would create the perception of bias. We agree that this perception would be created and join in the recommendation that section 25.1 be withdrawn.

If it is to remain in the bill, then we recommend that the bill be clarified to ensure that a member of the Conservation Review Board is only one of the members of the OMB hearing an appeal. We’ve provided language to that effect.

Under section 34(7) of Bill 60, unless the building is in the course of demolition at the time that it receives royal assent, the new act will apply.

#### 1020

OCSTA believes that retroactive legislation is unfair. We believe that if a property owner has, in good faith, complied with steps required by the Ontario Heritage Act in its current form, the process under the current act should be permitted to carry through to its final conclusion, so long as the demolition permit application was received before the bill receives royal assent. Again, we have provided language to effect that amendment.

**Mr Murray:** School board members of OCSTA are engaged daily in the preservation of heritage sites that are continuing to operate as schools throughout the province of Ontario. The commitment of school boards to heritage preservation is demonstrable.

At the same time, however, it must be possible for school boards to sell surplus school sites on the open market in order to be able to reinvest the proceeds of sale in preserving other school properties and in building new schools to serve their communities.

A more balanced approach to heritage preservation would be of assistance to school boards in Ontario. We believe that Bill 60 should be withdrawn and rethought. We believe that our proposed amendments to Bill 60 would provide some assistance in reaching a fair balance between the interests of property owners and the interests of heritage preservation.

The Ontario Catholic School Trustees’ Association regrets that Bill 60 was developed without a full and proper consultation process. Unfortunately, the haste in which groups affected by this proposed legislation were required to respond to it has severely limited the kind of creative thinking that can make a real contribution to public policy. We believe that there are solutions that can make a positive contribution to heritage preservation.

We’re grateful for this opportunity to address the standing committee on justice policy on the Ontario Heritage Amendment Act, 2004. Thank you.

**The Chair:** Thank you very much for your presentation. We just have time for one question, and the opportunity is for the NDP caucus.

#### **Mr Howard Hampton (Kenora-Rainy River):**

Thank you very much for your contribution. One of the issues which has been brought up on more than one occasion is that there is not a sufficient financial component. The cost of maintaining heritage buildings can be quite expensive. As it stands now, the costs would fall on to property owners or on to municipalities. We know municipalities don’t have the money. They are continuing to suffer from the burdens of downloading. We know, in your case, that school boards don’t have the money either.

While I hear your plea that the act be withdrawn and thought about some more, do you have in mind a specific financial concept? I take your comment that tax credits will not do school boards any good. Do you have some other ideas you can offer us? I think that without a financial component there is a huge hole in this proposed legislation.

**Ms Devine:** Actually, at the moment our answer needs to be no. Unfortunately, because of the timelines we have had to consider this, we have not really had the opportunity to think that through. We have identified the problem, but we would be more than happy to have the opportunity to sit down with a group of other interested citizens and talk about what the solutions might be.

We do support the preservation of heritage buildings. We just know the limitations on our own school boards to maintain our own buildings at this time. We look forward to the opportunity to be able to speak further about that and look for solutions, including financial solutions.

**Mr Hampton:** I would think that in growth areas—let’s say the Golden Horseshoe around Toronto—there might be some opportunities for trade-offs. In other words, you’d sell a building that doesn’t have heritage value on a market basis and get a lot of money, so you might be able to work some trade-offs. But in parts of Ontario that are not growing—once you get outside the Golden Horseshoe and into eastern Ontario, central Ontario and northern Ontario—not being able to engage in those kinds of trade-offs or cross-subsidizations would create real hardships for school boards, I would think.

**Ms Devine:** It would certainly be a more difficult situation. The suggestion, for example, around the transfer of density is one idea that would help in particular sites, if it were open to school boards and those owning property to be able to engage in that kind of work with developers. But in rural areas, it’s true, the potential is far less, so obviously outside help would be required in those cases.

**The Chair:** That is all the time we have for questions. Thank you very much for your presentation.

I need to move back up the list. Old Durham Road Pioneer Cemetery Committee: Are they here? No.

URBAN DEVELOPMENT  
INSTITUTE/ONTARIO

**The Chair:** Urban Development Institute/Ontario? Good morning. Welcome.

**Mr Neil Rodgers:** Good morning, Mr Chairman, and thank you for the indulgence of the committee. A combination of traffic and protestations made it a little hard.

**The Chair:** Just before you get going, I'd ask you to read your name into the microphone for the purposes of Hansard. You have 15 minutes for your presentation. Should you wish to leave any time in that presentation, there will be an opportunity for questions. Thank you.

**Mr Rodgers:** Good morning, Mr Chairman and members of the committee. My name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario. We are pleased to have this opportunity to present our views on Bill 60.

Joining me is Mr Michael Stewart, of the law firm of Goodmans. He has been offering both technical and legal advice to our association with respect to this bill. He may be asked questions of a technical nature, if I cannot handle them.

Many of you know who UDI is. We are the voice of the land development industry in the province, and we have been that for over 40 years. We have 300 members. We are actively involved in all facets of public policy research and advocacy, working with both private and public sector stakeholders across the province. We serve as a forum of knowledge and research on land use planning, urban affairs, land development and housing-related issues.

Our members collectively are a force guiding the creation and improvement of Ontario's built environment. We are committed to planning and designing the best possible communities for all Ontarians.

Our members also play a crucial role in the provincial economy and its sustainable growth. We are vital contributors to that economy. We account for over 10% of the provincial GDP, some \$50 billion, and we directly employ over 350,000 men and women.

Our industry expanded in 2003 at a rate of almost 9%, nearly twice the annual growth rate for the Ontario economy as a whole. This growth, in turn, allows the government to deliver quality health care, education and services for all Ontarians.

UDI believes that the foundation of the planning and development process in Ontario should be built upon the principles of fairness, transparency, accountability and certainty. These were the core values of the Liberal campaign commitments.

UDI recognizes the challenges presented by attempting to successfully balance the competing interests and priorities inherent in land use planning. We are concerned that Bill 60, as drafted, will upset that balance and lead to unintended consequences. UDI recognizes the government's intention to reform this process, but in our respectful submission, the proposed changes to the Ontario Heritage Act in Bill 60 will remove fairness, transparency, accountability and certainty from the process.

In fact, the principle of fairness and the ethics related to the Ontario Heritage Act were weighed by the Supreme Court of Canada in 1982. The court's opinion

basically states that the preservation of Ontario's heritage should—and I will amend for the record: the word “not” is a mistake; my apologies—be accomplished at the cost of the community at large and not at the cost of the individual property owner, certainly not in total disregard of the private property owner's rights. Unfortunately, Bill 60, in many respects, does not reflect this fair and balanced approach.

#### 1030

Under the Heritage Act, municipal councils may designate buildings that they consider to be of historic or architectural value or interest. Once designated, a building may not be altered or demolished without the approval of the municipal council. However, if the owner wishes to demolish the building, council must then decide whether the municipality will acquire it—if necessary, by expropriation. UDI believes that the municipal power to delay the demolition of a designated heritage property for up to 270 days in the current act represents the right balance between the public interest and private property rights and should not be amended. In the current system, the municipal power to delay means that it is in a municipality's interest to negotiate with the property owners to effect the preservation of heritage properties, which encourages, and often results in, innovative solutions.

Under Bill 60, municipalities would acquire the power to prohibit the demolition of property designated by the municipality or the minister. UDI believes that the addition of this municipal power opens up the process to potential abuse, as it creates the opportunity for effective expropriation without compensation. UDI submits that the benefits realized by the community of the preservation of historic or heritage properties is a public good, and in the interests of fairness the cost for providing public goods should not be borne by individual landowners.

However, if the government does not intend to remove this provision from the bill, UDI recommends that the province develop and integrate innovative fiscal tools and policy approaches to realize its goals. We believe that the preservation of heritage properties is a government priority, a public desire, and the province ought to develop means and tools to appropriately compensate owners of designated heritage properties for providing community benefits.

To that end, we suggest that the government consider creating a province-wide fund to compensate affected landowners. In addition, UDI also recommends that the government devise a mechanism whereby owners of designated heritage properties would be permitted to sell their density or development rights to neighbouring property owners. If properly implemented, this instrument would have the additional advantage of promoting intensification and assisting municipalities in reaching their targets while saving scarce municipal resources for other priorities. We would encourage that this measure be considered as part of the next phase of Planning Act reform, and further that this section of the bill be held in abey-

ance until such time as a comprehensive approach is developed that will deliver public good within a fair and ethical framework.

Under Bill 60, the owner of a designated property who is refused an application to demolish a building would be allowed to appeal the refusal to the Ontario Municipal Board. After holding a hearing, the board would have the power to dismiss the appeal, allow demolition or allow demolition with terms. To address the concerns of owner compensation for providing public benefits, we believe the board requires additional powers to those included in Bill 60. UDI recommends that Bill 60 be amended to allow the board, after holding a hearing, to award compensation to a landowner whose lands have been effectively sterilized and refuse the demolition under the condition that the municipality will acquire the property within a specified period of time, failing which, the municipality would consent to the demolition. These additional powers, in our opinion, do ensure fairness in the process.

Bill 60 would allow municipalities to prescribe minimum standards for the maintenance and repair of the heritage attributes of properties designated by the municipality or the minister. UDI understands that the intent of this clause is to provide municipalities with the tools to prevent demolitions by neglect. The wording of this section is confusing and sufficiently vague as to make unclear what standards would apply and if the municipality would have the power to impose significantly higher standards than those applicable to other types of properties. We are concerned that some municipalities would attempt to use this newly acquired power in order to secure the actual restoration of such properties by forcing owners to engage in costly refurbishment of the heritage elements of their designated properties.

There currently exists a framework to effect restoration of heritage properties. At present, if municipalities want to see extensive restoration work undertaken, they have the tools to encourage it. Municipalities can either help finance the work directly or, if the owner is proposing to redevelop the property, the municipality can agree to higher densities than are otherwise permitted in exchange for public benefits of the restoration of the heritage property. UDI acknowledges that there is a fine line between maintenance and restoration but believes that this section must be amended to close the potential back door that exists for municipalities to force restoration to be paid for by private monies.

UDI believes that the current Ontario Heritage Act works reasonably well to accomplish its goals. The rules are clear and unambiguous, and the interests of municipalities and property owners are relatively well balanced. We believe there are several potential unintended consequences that may arise if Bill 60, as drafted, is passed, including investment in redevelopment opportunities decreasing due to the uncertainty of the process, potentially affecting the ability of municipalities to reach their growth and intensification targets; municipalities becoming the owner of properties where the value of restoration

exceeds the value of the land; and scarce municipal resources spent on unnecessary Ontario Municipal Board appeals.

A consistent theme evidenced in legislation coming forward from this government has been the notion of retroactivity of landowner rights and approvals that have legitimately been vested by municipalities or other decision-making bodies. Subsection 34(7) of the bill states that unless the building is in the course of demolition at the time it receives royal assent, the new act will effectively take force and effect. I remind the committee and the government that UDI argued the notion of the point of retroactivity during the Bill 26 hearings, recently concluded. The government recognized that the bill, as drafted, was patently unfair with respect to this item and has dealt with the effective date of the bill in a manner that has been consistently applied across the province of Ontario in past legislation.

In summation, we submit that the bill, in its current form, risks simply bogging down planning in an even more protracted process, squandering scarce resources and threatening private sector investment. We are committed to the principles of fairness, accountability, transparency and certainty, and we hope that the government supports these principles also.

Thank you for your time. We'd be prepared to take questions.

**The Chair:** Thank you very much. We have just a couple of minutes for the government caucus.

**Mr Michael A. Brown (Algoma-Manitoulin):** Thank you for bringing us a rather comprehensive brief. In the second paragraph on page 5 of your brief, where you are discussing compensation, you suggest "that the government consider creating a province-wide fund to compensate affected landowners." I was wondering if your organization has some thoughts about how you would create a province-wide fund for compensation—where the dollars for that might come from. Are you suggesting there is something in a sort of broad property opportunity for government to raise those dollars? What exactly do you mean by that?

**Mr Rodgers:** I think we're all aware of the fiscal pressures on all levels of government. This is no different than proposals we've made in the past, whether it be on the issue of brownfields legislation, where we believe there's a public good. I think it comes down to the question of what the public expects of their government. Where do they want their priorities to be focused?

I'm not suggesting that this is more important than some of the other agendas that are in front of the government—health care and education—but I think the government has to make the decision as to how best to establish this fund. I think there are more creative measures, Mr Brown, which are presented in our brief that don't necessarily speak to the province putting up a fund. It is one of many ideas. We are simply putting in front of you a menu of choices.

**The Chair:** That's all the time we have for questions. Thank you for your presentation.

**Mr Rodgers:** Mr Chair, I will provide a revision to that point.

**The Chair:** That's not a problem. Thank you.

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#### ONTARIO HERITAGE FOUNDATION

**The Chair:** The Ontario Heritage Foundation.

**Hon Lincoln M. Alexander:** Good morning, Mr Chairman and members of the committee.

**The Chair:** Good morning and welcome. You have 15 minutes for your presentation. Should you leave any time, there will be an opportunity for questions. Please proceed.

**Hon Mr Alexander:** Thank you very much, sir.

Mr Chairman and members of the committee, it is a pleasure to be here today and see so many familiar faces, and to support this legislation. As chairman of the board of the Ontario Heritage Foundation, I appreciate the opportunity to speak with you about Bill 60.

I have with me today Richard Moorehouse, who is the foundation's executive director. Richard and I will be able to answer any questions you may have—I may not be able to, but he'd better.

Those of you who know me know that I believe strongly in community, in family and in tradition. For those reasons, I was pleased to join the board of the Ontario Heritage Foundation and, when offered by the Premier to become chairman of the board, I was humbled.

As you all know, the foundation is the province's lead heritage agency. It has a broad mandate to protect Ontario's heritage. It looks forward to swift passage of the bill and is committed to working with government, opposition parties and the community to ensure its effective implementation.

We receive our mandate under part II of the Ontario Heritage Act. It is a trust that's been given to us, as far as I'm concerned, and it should not be violated. We are there to protect and conserve. We advise the Minister of Culture on the conservation, protection and preservation of the heritage of Ontario.

I would like to congratulate the minister and the government on the introduction of Bill 60 and, as well, all parties for their work in support of heritage. We have recently been heartened by a groundswell of public support for heritage preservation.

I note it has been over 30 years since this act has been significantly amended.

Many of you are familiar with one of our newest programs: Doors Open. The program was launched in 2002 and has been tremendously successful, with nearly 1.2 million visits to community heritage celebrations. I can't imagine an Ontario that would not want to preserve buildings and natural landscapes.

You have my written brief, I think, on Bill 60, so I will only discuss a few highlights, but I know you have read the details.

Let me begin with municipal demolition control. It is a critical part of the legislative package. Municipalities must be given the tools to deny a demolition permit to protect a heritage property. Some recent lamentable examples where municipal demolition control could have made a difference are:

The historic Capitol Theatre in Cornwall was demolished in 1991 after the municipality repealed the designation;

The Salmoni building in Amherstburg, which was designated and protected by a municipal easement, was torn down last month;

The Bronte church in Oakville, a 19th century black congregation church with ties to the Underground Railroad, was demolished approximately five years ago;

Between 1985 and 2001, Kitchener-Waterloo lost 16 heritage properties to development; and

In Vaughn, 15 heritage properties listed by the municipality have been demolished in 2004.

The Ontario Heritage Foundation board has stated in the strongest terms that for the act to be successful in protecting our heritage, it must provide tight restrictions on demolition. We support the amendments proposed that are giving municipal and provincial power to prevent demolition of heritage sites.

We also support provincial designation and demolition control. The province must also have the authority to prevent demolition. We support legislation that gives the province authority to designate and to prevent demolition once a property has been designated.

The foundation has a strong role to play in this regard. As I said, we are the lead agency. We protect provincially significant buildings, cultural landscapes and natural heritage properties on behalf of the crown through ownership with heritage conservation easements. We work with partners and communities all over Ontario to accomplish this.

Provincial designation will provide another effective tool for protection.

Bill 60 proposes standards and guidelines for the protection of a heritage property owned by the province. This is a necessary provision.

Bill 60 provides improvements to the tools available to municipalities to protect heritage districts. More than 70 heritage conservation districts have been created in Ontario to protect more than 11,000 significant heritage properties in their context. This is a truly effective way to protect streetscapes and neighbourhoods.

There is a need to better align heritage conservation district plans with a municipality's general planning processes—no doubt about that. Heritage conservation districts have a significant role in building and maintaining communities. The Ontario Heritage Foundation supports this requirement for a district plan and guidelines for managing change to the district.

We also support the use of interim control bylaws for areas identified for study as heritage conservation districts. This is consistent with the interim control bylaw powers available under the Planning Act.

In conclusion, let me add that the foundation is strongly supportive of the provisions outlined in Bill 60, and we congratulate the government on its work. This bill will make a significant difference in our ability to protect heritage resources in Ontario. The Ontario Heritage Foundation is very excited about the new rules highlighted for it in the act, and we look forward to working with the government as it puts this proposed bill into action.

Thank you, Mr Chairman, ladies and gentlemen. We are open for questions.

**The Chair:** Thank you very much for your presentation this morning. We'll start with the NDP caucus. Mr Hampton, if you have any questions, go ahead.

**Mr Hampton:** I'd like to ask you three questions. These have been brought up by other organizations that have appeared before the committee. First, there are a number of organizations that have come forward and said that the bill, in its present form, would provide no protection for cemeteries. We have some very old and historic cemeteries in Ontario, particularly in rural, southern Ontario. They're asking for an amendment so that these cemeteries, which I think have great genealogical and historical value, are protected. I'd like to know your views on that.

**Hon Mr Alexander:** I think, Mr Hampton, that once you introduce legislation, in my experience and I know your experience, it's never perfect. That's why you have first reading, second reading, committee. It's at that time you get the views of those who are adversely affected. It's at that time that you, as members of the committee, will have the opportunity to accept that as an amendment. I don't expect that this bill is perfect. It's not perfect. I don't know any perfect legislation. So in terms of protecting cemeteries, as I related to one just a while ago, they ripped that apart. That's not good business. I think the committee would be wise to look at that particular need for an amendment very carefully.

**Mr Hampton:** Just a few moments before your presentation, the association of Catholic school trustees presented and pointed out that one of the problems for them is that they believe they have a number of older schools that likely will be designated and that they believe should be designated.

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**Hon Mr Alexander:** Should be.

**Mr Hampton:** They would support that.

**Hon Mr Alexander:** So what do they want?

**Mr Hampton:** The problem they have is that the cost of maintaining a heritage building is often significant and they do not have in their funding formulas, as the funding formulas stand now, either the capital monies or the ongoing operating monies, in some cases, to adequately protect those heritage buildings. I put the question to them if they believed there needs to be some additional financial component to this bill.

I know from talking with municipalities that they feel they are already cash-strapped. They have a whole long list of new responsibilities.

**Hon Mr Alexander:** So is the provincial government, as I understand it.

**Mr Hampton:** What I hear municipalities, private landlords and school boards saying is that, if this is to be done properly, there needs to be some kind of financial component to this; otherwise, there's a big hole. I wanted your views on that.

**Hon Mr Alexander:** I knew you were going to ask a question like that, Howard, because you're so sharp.

All I can say is that I think we're all faced with the same problem: We all need more money. Whether we're going to get the money and how we're going to get it is another problem, but I do think the committee will have to determine what kind of money we've got and how it can be spread around in order to bring about equality and justice. All legislation is steeped in the need for money. I can't deny that.

**Mr Hampton:** I know that heritage organizations across Canada have thought about this. Whether you're in Saskatchewan, Manitoba, Ontario or Quebec, heritage organizations have spent some time thinking about this issue. Do you have any suggestions as to concepts, structures—I would agree with you that these are public goods. This is very important for Ontario going forward, so I think there has to be a strategy whereby we share in this important undertaking.

**Hon Mr Alexander:** One thing about a good chairman is, he knows when he's in trouble. So I now pass this over to Richard Moorehouse, who is the expert, and he'll tell you what's going on.

**Mr Richard Moorehouse:** With respect to financial incentives, maybe I could explain to the committee the role that the Ontario Heritage Foundation has had in the past in this situation. The foundation, acting as a trust, has had provided to it, from the government, challenge fund money. As such, we received, in this case, \$5 million from the provincial government and then worked with communities to have them match that money to be able to have \$10 million to do conservation work across the province. That was seen as a very effective tool to help support communities in the many issues that you're hearing before the committee. It forces communities to raise funds as well and together, by matching, be able to do a lot more in the conservation of the heritage in the province.

**The Chair:** We have to move to the government caucus. Mr Racco.

**Mr Racco:** A simple question: Do you agree or disagree that the cost of maintaining heritage buildings is a community expense and not the owner's expense?

**Hon Mr Alexander:** I'll leave that one with you.

**Mr Moorehouse:** I would suggest to the committee that it is a shared expense. In working with community groups and individuals all across Ontario who are involved in the preservation of heritage buildings, what we found is that you need a committed owner, a willing owner, and you need support where it can come to provide necessary restoration dollars and support in the conservation.

Many times, too, it's just good education and good information to assist the property owner to make the right decisions with respect to their properties. Many have donated funds or provided funds directly for the restoration of their buildings.

**Mr Racco:** Do you think those funds should come from the municipality, the province? Which area would you recommend?

**Mr Moorehouse:** The most effective way is to come from many sources so that more and more people are committed to the preservation, be it from an individual, from governments or from other sources.

**The Chair:** Ms Mossop, a quick question? We're just about out of time here.

**Ms Mossop:** First of all, I just want to thank both of you very much for coming today. It's always a pleasure to see you—

**Hon Mr Alexander:** Would you speak a little louder? I'm old and I can't hear.

**Ms Mossop:** It's always a pleasure to see you, Mr Alexander, once again.

**Hon Mr Alexander:** It's very nice to be in this atmosphere, because I remember you have those who attack and those who want—

**Ms Mossop:** I promise I won't attack you.

**Hon Mr Alexander:** Oh, you can.

**Ms Mossop:** I just wanted to ask you, there have been some concerns raised today with regard to the financial component that might support this. We all know that money is tight, as you pointed out so directly. From the ministry staff I've worked with, I certainly get a sense that there are ideas, plans, ways that we could try to be supportive of people and come up with that. Do you see any reason why we should hold up this legislation because it does not have any specifics around funding at the moment?

**Hon Mr Alexander:** No, because you have to face reality. If this act hasn't been amended for 30 years, it is now due time. What the committee has to do is sit down in their deliberations to find out how you can meet the discrepancies that have been pointed out, the need that has been pointed out, how best we can act together in partnership to bring about the desired result. The desired result is not necessarily for the municipality, the churches or cemeteries but for the people of Ontario as a whole. So it's a shared responsibility.

**The Chair:** Thank you, Mr Alexander. That's all the time we have.

**Hon Mr Alexander:** Oh, give her one more, Chair. Let's be generous.

**The Chair:** Make it quick.

**Ms Mossop:** Do you think that the public good is only the responsibility of governments?

**Hon Mr Alexander:** I didn't hear the question.

**Ms Mossop:** Do you think the public good is only the responsibility of governments?

**Hon Mr Alexander:** Oh, heavens, no. No, no. We can't ask the government to do everything for us. The community must get involved. The individual has to get

involved. That's the problem with this country. They think governments can do anything. I say that governments should lead, but they lead in consultation with those who are affected. It's not just government. I would never say that, I've never said it, and it's not true anyway. That's why we're in a mess now, because government has been doing everything for everybody. Now it's time to bite the bullet, but don't bite my bullet too hard.

**The Chair:** Thank you, Mr Alexander, for your presentation.

**Hon Mr Alexander:** Thank you, Mr Chairman.

#### OLD DURHAM ROAD PIONEER CEMETERY COMMITTEE

**The Chair:** The Old Durham Road Pioneer Cemetery Committee. They've made it; that's great.

**Ms Carolynn Wilson:** I'm just not sure if I sit or if I stand.

**The Chair:** Have a seat, please.

**Ms Wilson:** Thank you.

**The Chair:** Good morning and welcome. You have 15 minutes for your presentation. Should you leave any time remaining, there will be an opportunity for questions. Go ahead.

**Ms Wilson:** Good morning, Mr Chairman and members of the standing committee on justice policy. My name is Carolynn Wilson and, along with my uncle, Howard Sheffield, and black descendants from Collingwood, I wish to address the standing committee on justice policy pertaining to Bill 60, An Act to amend the Heritage Act.

We are of the understanding that inactive cemeteries will not be protected under this new proposal.

I am president of the Old Durham Road Pioneer Cemetery Committee, an affiliate of the Ontario Historical Society. In 1990, concerned citizens recovered four broken tombstones from this black cemetery which had been ploughed under for a potato field. We still believe that there are dislocated graves and missing headstones. Without interest, concern and protection, cemeteries such as this would be obliterated and the history of not only the people but the area would be lost.

This is evident at Negro Creek Road in Holland Centre in Grey county: another black settlement which has lost its cemetery due to being physically dug up and moved to an undisclosed area. Again, lack of protection and public awareness were key factors in the removal of such a vital part of history in the Grey county area. The names of those early black pioneers were lost. At Negro Creek Road, if it were not for the interest and concern of the local white residents and the black descendants, the name Negro Creek Road would also have been erased due to its political incorrectness.

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We are at a focal point in Canada's history where we are recognizing and honouring our war veterans for the sacrifices they have given to ensure we live in a free country. It is also vital at this point in time that we recog-

nize and perpetuate the honour of our forefathers and pioneers of all our diverse cultures who gave us this country which we can call our own. What better way to thank them than by honouring their memory and protecting their resting place? Simply because they are dead and buried does not make them of lesser importance than a living person, because they too have rights.

On behalf of not only black cemeteries, but in the interest of all cemeteries across Canada, historical sites, museums and institutions that promote the history of Canada's peoples, I would ask that the standing committee on justice policy recommend to the Legislative Assembly of Ontario that all cemeteries, active and inactive, be preserved, protected and maintained in their original historic site.

Humbly submitted. Thank you very much.

**The Chair:** Thank you very much for your presentation. We'll go to the Conservative caucus.

**Mrs Munro:** Thank you very much for your presentation. We certainly are very sympathetic to the value, not only in an emotional way in terms of our forefathers, but also in recognizing how important they are as historical records. I went with my late mother to a pioneer cemetery and we dusted off tombstones and we were able then to put together a more complete sense of family history. So I certainly come to this with an understanding and a sympathy for the issue.

We've heard from the government that in the bill there is a definition that is built heritage, and that is assumed to include cemeteries. However, you and a number of other presenters have given a different perspective on how protected cemeteries are in our current legislation and in the proposed legislation. So we will be looking for some surety in amendments that make sure your issue is addressed.

**Ms Wilson:** Thank you.

**Mr Hampton:** I wanted to ask you the next question: I know from reading some of the other briefs that many of the older cemeteries are in fact maintained by volunteers.

**Ms Wilson:** Yes, they are, sir. They're maintained by volunteers. That's exactly how it is.

**Mr Hampton:** In your view, and I recognize you may or may not be an expert on this, is there a financial component to this in terms of looking after these cemeteries? I agree with you. I think it's important historical and genealogical information that otherwise may not exist anywhere else. Is there an aspect of this that needs some financial redress or is there some other way that these historical cemeteries can be looked after?

**Ms Wilson:** Let me just say it this way: Our volunteer committee looks after the Old Durham Road Pioneer Cemetery. We took on the responsibility. We weren't too sure if the municipality would carry the responsibility of that cemetery, so we took it upon ourselves, for over 20 years now, to maintain it and put money in and do a little fundraising. In that aspect, we gained the support of the public interest.

I'm certain that we can have, or other cemeteries I'm sure could have, extra support, but in our particular case, those black cemeteries, we didn't have confidence that municipalities would protect or care for our tombstones and our lands. So we took the stand and came forward on that.

**Mr Hampton:** And you've been able to do that?

**Ms Wilson:** We have. With some support and people coming in, we've just maintained it. We took responsibility for that black cemetery. We felt we didn't want to lose it again.

I'm not sure if I answered all that, sir. Perhaps other cemeteries do need support. I can say we probably could do a lot more, but we were just very cautious. That's why we're here today, saying that we feel the protection of cemeteries must be at a higher level.

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

**Mr Hampton:** I want to confirm: It's your decided view that there must be firm language in the bill protecting our historic cemeteries?

**Ms Wilson:** Definitely, yes, there has to be, and understandable at a public level, that we can all understand that and agree.

**The Chair:** Government caucus, Ms Mossop.

**Ms Mossop:** Thank you very much for your input today. This is a question that I had initially as well and put to the staff of the ministry, and we've been working on this one. Actually, cemeteries are covered in the Heritage Act presently by real property. It is not specifically stated, just as other structures are not specifically stated, but it is real property, and about 140 cemeteries are designated right now throughout the province.

Bill 60 makes protection of our heritage-designated properties stronger, which would include stronger protection for cemeteries that are presently designated. We have a commitment now from our staff that we will be more specific in our communications about stating that cemeteries are specifically included in this act and in this bill.

Where we have run into a little bit of trouble, and we now have an undertaking from our minister to carry the ball on this, is that we come into conflict to a certain extent with the Cemeteries Act, which comes under another ministry, but we have an undertaking to work with the Ministry of Consumer and Business Services with regard to this. Also, our minister has undertaken to work with Minister Watson on this specific issue because it's one that we all feel very strongly about. So this is what we have been able to determine so far. Do you feel comforted by that?

**Ms Wilson:** I believe so, if I'm understanding correctly. I just know that we need accountability for our inactive cemeteries. From our own personal point of view, a lot of our stones are throughout the area and no one takes on that responsibility. Perhaps if you're saying they're included in this legislation at that higher level, then I comprehend that.

**Mr Brown:** I just want to thank you for coming this morning. I think it's incredibly important.

I come to this from a number of perspectives. I have a degree in history and have spent a fair amount of time in cemeteries, given the fact I'm a funeral director. I also represent a very rural constituency. It would make Grey county look like a positively urban area. I represent about 86,000 square kilometres.

I have actually had the experience myself as a funeral director of going with families out to the back of a family farm—we actually had to use a half-ton truck to get back to where we needed to be. So I know how important these cemeteries are to people and to the heritage of the province.

I just want to clarify that the Ministry of Consumer and Business Services is in the process of drafting regulations to some bereavement sector acts that were passed actually in the last Legislature. I know that our minister in this ministry is working very hard with the other ministry to resolve this.

I would tell you that I appreciate you being here and raising these issues.

**Ms Wilson:** I certainly appreciate your response.

**The Chair:** That's all the time we have for questions. Thank you for your presentation.

**Ms Wilson:** I left copies, if people would like copies or members would like copies.

**The Chair:** Thank you.

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#### SEVENTH TOWN HISTORICAL SOCIETY

**The Chair:** The Seventh Town Historical Society. You're here. Great. Good morning and welcome. You have 15 minutes for your presentation. If you leave time within that 15 minutes, there will be an opportunity for questions, should you choose to do so.

**Mr Ian Reilly:** Thank you, Mr Chair. My name is Ian Reilly. I am president of Seventh Town Historical Society. The name "Seventh Town" comes from 1783, when the British surveyed the original eight towns, starting with what is now Cataraqui and ending at what is now Sidney ward in the city of Quinte West, as they prepared for the arrival of the Loyalists after the American Revolution. Seventh Town became Ameliasburg, named after Amelia, the daughter of George III.

We have 135 members across Canada, the USA and New Zealand. We own and operate the Marilyn Adams Genealogical Research Centre, a research library containing genealogical research material from across North America, Europe, New Zealand and many other areas of the world, with emphasis on Ontario and the Quinte region.

The Marilyn Adams Genealogical Research Centre is a two-storey, modern, wheelchair-accessible building with up-to-date computers, a microfilm/fiche reading room and a microfilming lab where we film historic documents: genealogies; local municipal, church and other organizations' histories; early atlases and maps; Hastings county land records from before 1867 to past 1955; Tudor and Cashel township records going back to

the 1850s; Ontario birth, death and marriage records and microfilm indexes; census microfilm for much of eastern Ontario; and cemetery transcriptions for much of Lennox and Addington, Hastings, Prince Edward, Northumberland, parts of Durham, parts of Haliburton and Peterborough counties, totalling over 264,000 stones and over 300,000 names.

In the past summer, our library grew by 120% and the core value went up by 167%, bringing the value of this library and its related assets to about three quarters of a million dollars, and that is without counting our priceless records. Our on-line database, a names database, is now over 1,135,000 names, with thousands of people accessing this site and our Web site.

We are staffed totally by volunteers, who put in about 10,000 hours a year in the library, in the field transcribing cemeteries and performing other duties.

We also have a group known as the Friends of Marilyn Adams, which has over 325 members from around the world who support our activities. Hundreds of people seeking Quinte and Loyalist roots visit us every year, some staying as long as three weeks. These are people looking for the answers to where they came from, where their family is buried and where their ancestors are. Unless you have stood at the grave and touched the stone of your ancestor who died as much as 200 years ago, you cannot know the feeling of connection it provides.

The University of Canterbury, Christchurch, New Zealand, is conducting a study of migration patterns of people moving back and forth across borders in the 18th and 19th centuries. The head of their anthropology department, Arnold Parr, has used the Marilyn Adams Genealogical Research Centre as his base of operations in Canada each of the past three summers, with another five to go to complete the study.

The time when only North Americans looked offshore for their roots has changed, as those from Europe and elsewhere are coming here. These people visiting us spend a lot of money, both locally and getting here, and they all agree on one thing: If they visit or attempt to visit cemeteries, cemeteries, by and large, are in very bad shape.

We are proud to be part of the Ontario Historical Society. While we are only 35 years old—and I might add that the Marilyn Adams Genealogical Research Centre is only 10 years old—they started trying to preserve and protect cemeteries in the 1890s. We are fully involved in this great effort to preserve this important part of the history of Ontario and Canada, which tells the story of our multicultural people and the life-and-death challenges they faced, as recorded on many grave markers.

I was born in Toronto. I spent most of my life in Northumberland, Hastings and Prince Edward counties. My fourth great-grandfather was John Weese, the first permanent settler, in 1784, in Seventh Town—Ameliasburg—if not the first permanent settler in Prince Edward county. He was a Loyalist of German descent, part of the cultural mix that arrived after the American

Revolution. They began to build Upper Canada and Ontario, as well as our way of life, which is now even more diverse in its multicultural makeup.

Not to protect his gravesite and that of all those who came with him and their descendants up to and past now is to abandon our history and the places where it is recorded and visible, which are not all buildings and locations where treaties were signed, such as the Gunshot Treaty, lighthouses, mills, barns that were built and quaint main streets that have evolved, to mention only some Ontario history that is and needs to be preserved.

There are two types of cemeteries in Ontario that need provincial protection under the Ontario Heritage Act: (1) inactive cemeteries, including those places where the earliest settlers were buried; and (2) active cemeteries that are still open to further burials.

The important thing to remember is that the first type, the inactive cemeteries, have very few and in some cases no one to speak for them. They are the most vulnerable and threatened by development, while the second type has many to speak for them, such as the plot holders, living relatives, friends, the owners of the cemeteries and others.

Can we save our cemeteries, especially those that are inactive, in an ever-changing society? We think the answer is yes, but it will only happen if the provincial Legislature shows leadership by amending the Ontario Heritage Act to clearly protect inactive cemeteries in their original locations.

Municipal governments generally have not protected cemeteries and can be expected to do less in the future as tight finances and exploding development pressures continue to worsen due to amalgamation and age-related population shifts. Land values are rising very rapidly in the Quinte area, as across Ontario, and many cemeteries are on prime land, such as waterfront, where the municipal tax base can be enhanced by more development. With developers putting on more and more pressure, can we expect local councils to always act for history and heritage? I personally doubt it.

Municipal cemetery boards are appointed or re-appointed every three years by ever-changing councils, not a good mix for continuity, but the way it is and will be. Only the Ontario government, through the Ontario Heritage Act, can protect cemeteries. We know from experience, having two of our members, myself and Hugh Heal, the chair, on the Prince Edward cemetery board, the problems faced by these boards. I might add that I also served on the Prince Edward heritage committee prior to the cemetery board.

There is no heritage protection for cemeteries in the Cemeteries Act, which is administered by the Ministry of Consumer and Business Services, a great place for the business end of cemeteries. We are certain that those administering the act know about business, but they demonstrated that they are not tuned in to the cultural needs of Ontarians when they joined with municipal governments and developers and said it is in the public

interest to move cemeteries and build houses and condos in Markham and Palgrave.

As I mentioned earlier, these inactive cemeteries are a huge tourist asset. Why would the province want to help municipal politicians and developers destroy them?

It is true that these cases were overruled by tribunals, but only after hundreds of thousands of dollars were spent by the government and the heritage community to prove the obvious to anyone involved in culture and heritage. Our members donated money to these legal battles and paid taxes to help offset the government costs. Think what could have been done with that money to assist in cultural preservation, including restoration of inactive cemeteries.

The revised Ontario Heritage Act needs to spell out that cemeteries, especially inactive cemeteries, are a part of our history that needs to be preserved by the province of Ontario for Ontario and Canada.

#### 1120

When our descendants look back to the 20th and 21st centuries, do we want them to shake their heads and ask why we did not do something to protect all historical places to the best of our abilities? To do nothing may mean that your grandparents', your parents', your children's and even your own grave may be the next host of a condo. Even worse, it may just disappear, as many in Ontario already have, such as the two cemeteries on Big Island in Prince Edward County, where the stones just disappeared in the last few years and what is under the land went back to agriculture.

I've included some pictures which are captioned: One is of a group taken in Prince Edward county of the remains of a cemetery that stood in a field over 40 years ago, when it was recorded by historian Loral Wanamaker as having 17 stones. It was partially dug up in the spring of 2004 by a group led by Mr and Mrs Emmerson Smart, in their 70s and 80s, of Newbury. It somehow got moved and buried, and became part of a fence bottom. You'll find those pictures—there are three pages of them—at the end. It says who they are and what they're doing.

I'd like to thank you for this opportunity to address this very important issue, and I'm prepared to try to answer any questions you may have.

**The Chair:** Thank you very much for your presentation. We'll start with Mr Marchese, if he has any questions.

**Mr Marchese:** Yes, I do. Thank you for your presentation. I want to ask you, have you talked to any of the ministry staff and/or minister or parliamentary assistant or other staff with respect to this? What have they told you?

**Mr Reilly:** I haven't talked to any of those people. The only person we've talked to is our local member, Mr Ernie Parsons. He's quite in favour of our position and spoke to a group of 80 people 26 days ago, actually. He said that he was in favour and, in fact, delivered the petitions of those people directly to the House.

**Mr Marchese:** That's great. We're glad. Ernie, hopefully, is speaking to the caucus in the background, urging them to do the right thing.

The other thing is that we believe cemeteries should be protected. You and others made the case that, with the example of Clendennen cemetery and Palgrave cemetery, we discovered not only that the Ministry of Business and Consumer Relations wasn't supporting cemeteries, which you would think would be their job, but also that municipalities weren't doing that either. So when the parliamentary assistant last week said that cemeteries are protected in this act, you would argue, as I would, that they're not, and that you can't rely on municipalities to designate cemeteries because, with those two examples, we've seen how they don't protect our cemeteries. So obviously, you support the idea of making sure the language is in the bill to protect them. Otherwise, we're in trouble, right?

**Mr Reilly:** Absolutely, because money's involved in all the parties that you just mentioned.

**Mr Marchese:** And you're going to go back and talk to Ernie so that he lobbies the parliamentary assistant quickly, because tomorrow morning, we're introducing these amendments.

**Mr Reilly:** We understand that. We have talked to him. In fact, I talked to him as short as a week ago.

**Mr Marchese:** OK. So Ernie must have made the call to Jennifer Mossop.

**Mr Reilly:** So I've talked to Ernie, and I'm sure you all know Ernie.

**Mr Marchese:** That's great. Thank you very much.

**The Chair:** The government caucus?

**Ms Mossop:** Thank you very much for this presentation. Ernie has not lobbied me, and he doesn't have to, because I do support what you're saying and I have already made inquiries, as I mentioned to the other delegation that just came in here. What we have said is that cemeteries are covered in the Ontario Heritage Act presently. They are covered by real property. We've discussed the issue of having to clarify that a little bit more distinctly, and we're working on those issues.

You ask why at this point the province would want to help municipal politicians and developers destroy cemeteries. We don't want to. The whole concept of Bill 60 is to make the Ontario Heritage Act stronger so that it can protect all the property covered under it. There are 140 cemeteries presently designated. I understand the issue of the inactive cemeteries. The sense is that they are no different and that they are, too, covered under the Ontario Heritage Act and that Bill 60 will give municipalities and people better ability to protect cemeteries.

Having said that, we are also undertaking to work with the Ministry of Consumer and Business Services, and our minister is going to be working with the Minister of Consumer and Business Services to make sure that we go forward in the direction we all want to go in.

The other thing is that you mentioned—

**Mr Marchese:** Ask him some questions.

**Ms Mossop:** I think it's my turn, Mr Marchese. I just wanted to clarify also that, when you were talking about the tribunals, my understanding is that three cases went to the OMB. One was withdrawn because the hue and cry was too great, and the other two were successfully appealed. There was a cost of \$100,000 to the historical society. So we appreciate that and would like to try to avert those situations in the future.

**Mr Reilly:** There were even more costs than that, madam. There were costs to the government. I mean, as soon as you hire lawyers, \$100,000 hardly pays the first day. I know. I've hired thousands of them in my day, seriously; hundreds at least.

But the big thing is, I don't quite agree with you that cemeteries are already covered in the act. When you asked the last presenter if she was comforted by that—I'm not comforted at all. I even feel that by the time it's passed, there will be less protection than there is now. We need a clear statement to say that cemeteries are covered by the Ontario Heritage Act. That isn't going to interfere with the Cemeteries Act in the other ministry.

The reason is that some cemeteries are not cemeteries, as in everybody's mind. For instance, last week representatives of the Seventh Town Historical Society were in the woods. We put up steel stakes around one cemetery and erected a cross because it was about to be lost. And there are no names; they're unknown sailors down on Point Petre who had been buried there, seven or eight of them, since 1883. I don't think that's covered by the act.

We went to another one, which is one of the earliest cemeteries in Upper Canada, and we have unearthed 50 stones at the moment, in the woods. Some of the stones are that high, some are that high, some are that long. They're all pieces of shale, which was all people had. They couldn't call up our friend the undertaker in those days. They just took them out behind the house about 800 or 900 feet, dug it up and buried them and they've become regional burial grounds. Those cemeteries are now being found. We found another couple already this last fall. They're burial grounds, not cemeteries as we think of them. We think of cemeteries as nice stones. You go to Glenwood and there's a mausoleum. You go up the street where there are some nice cemeteries. They could maybe be classed as buildings. I don't think we can count those other burying grounds. They're the ones we have to protect. That's where the very first people gave their lives, so that we can sit here today and have this debate about whether we should protect their graves or not. So I'm not comforted at all. I think you can put a few lines in the act which will not encumber the Ministry of Consumer and Business Services in the administration of their act, other than to point out that, when they're dealing with it, it's the government's policy and the policy of the people of Ontario that they're dealing with historical sites. When it comes to money, they know all about it. When it comes to historical sites, they don't, and they've proved it.

I don't agree with you. I don't feel comforted at all, but I think I will if you do your job.

**The Chair:** That's all the time we have for questions. We'll have to move to the—Ms Munro, do you have a quick question?

**Mrs Munro:** Yes.

**The Chair:** Go ahead.

**Mrs Munro:** I appreciate, Mr Reilly, you coming here today because certainly last week we were given an indication that it was covered. Clearly by the deputants that we've heard today and the kind of examples you've provided for us, whatever that comfort was that we were given last week has certainly dissipated.

I agree with you that we do need to move very carefully in this area and to understand the difference, as you've pointed out—that we're talking about burial grounds in some cases. I would simply want to say to you that we will be holding the government's feet to the fire on this issue.

**Mr Reilly:** Thank you, and thank you, Mr Chairman and members, for this time.

**The Chair:** Thank you very much for your presentation.

1130

#### ONTARIO GENEALOGICAL SOCIETY

**The Chair:** The Ontario genealogical association: Good morning and welcome. You have 15 minutes for your presentation. Should you wish to leave any time in the 15 minutes, there will be an opportunity for questions.

**Ms Marjorie Stuart:** Good morning. Thank you for the opportunity to address. My name is Marjorie Stuart, and I am here today on behalf of the Ontario Genealogical Society, OGS. The OGS board of directors, at a meeting held on November 20, 2004, passed a motion that the Ontario Heritage Act be amended to recognize the cultural, historical and natural heritage value of Ontario's cemeteries.

1130

OGS was established in 1961. We are a provincial non-profit corporation and a registered charity with 30 local branches in communities across the province of Ontario. The mission statement is to encourage, assist and bring together all those interested in the pursuit of family history. Our current membership is over 5,000 individuals, organizations and institutions. Our membership is worldwide, although there is naturally a heavy concentration of members who reside within Ontario. It is safe to say that the 5,000 have an interest in the preservation and protection of Ontario roots, particularly cemeteries where our ancestors are buried.

I am a family historian who has volunteered for over 50 years, working across Ontario, preparing family histories, recording cemeteries and assisting cemetery boards, historical societies, museums and other heritage organizations to preserve and protect Ontario's cemeteries, especially Ontario's inactive cemeteries. Since

1989, I have been the OGS representative on all legislation affecting cemeteries, particularly the Ontario Heritage Act and the Cemeteries Act. I also represented OGS when it appealed the Ontario government's 1995 order, that is the Cemeteries Act, that it was in the public interest to dig up and move the Clendennen cemetery in the town of Markham for a luxury condominium development. At those provincial appeal hearings, I was recognized by the tribunal as an expert witness in the heritage value of cemeteries.

Few realize that tombstones and grave markers in inactive cemeteries are very often the only record of a person or even a whole family. Civil registration did not come into effect until 1869, but it was not compulsory to register a birth or death until 1912. The first census which recorded all family members was in 1851. Those of us who research into a cemetery often find an entire family that died in a short period from smallpox or other diseases. Their tombstones stand as a silent sentinel and are the only record of that family's existence. Those who administer a cemetery are custodians of an outdoor archive with records carved in stone that do not exist elsewhere. These are original, authentic, irreplaceable heritage documents that are not protected by either the Cemeteries Act, the Ontario Heritage Act or the proposed amendment to the Ontario Heritage Act, Bill 60, as presently worded.

The OGS position is that all our inactive cemeteries are of equal importance to the heritage of Ontario and that they must be protected by the province. It is our experience that many local municipalities in Ontario do not have a heritage conscience or the inclination to preserve these cemeteries. Our members see escalating land values and a variety of threats and pressures to relocate our cemeteries. For example, since last April, the Haynes cemetery, of 1784, in St Catharines has been under siege at great cost emotionally and financially, including legal costs, to the family. There was no legislation that clearly protected this cemetery.

In Northumberland county, there are two cemeteries, Russ Creek and Red Cloud, which have outstanding natural features with native grasses that are endangered species. The only other place that some of this plant life remains today is Walpole Island. At Russ Creek cemetery, descendants urged the municipality to preserve this cemetery. In the end, the descendants took the municipality to court, which cost local taxpayers almost \$100,000. They won their case, but the unique natural features are still at risk.

In fact, in recent years, my colleagues and I have donated our time to work tirelessly with families on countless cases where their ancestors' final resting places were and continue to be threatened by development. Those who contact us cannot fathom that a burial place is not sacred.

I could cite many recent examples today, but there isn't time. To mention just a few: Spookhorn, 1786 to 1836, in the Napanee area where the municipality, which has been the custodian for decades, has recently approved

dividing and selling the cemetery in five separate parcels; and in West Gwillimbury, the municipality has allowed a local farmer to remove a fence and the tombstones and to plough the land and plant corn on the site of the 10th Line Methodist Cemetery, which was established in 1826.

Quite obviously, the protection of Ontario's inactive cemeteries by municipalities is totally unpredictable and unreliable.

Across Ontario, families are spending their money to defend cemeteries. Since 1995, OGS and the Ontario Historical Society have spent hundreds of thousands of dollars at appeal hearings to stop the province of Ontario from relocating cemeteries for private real estate development. I refer to the Clendennen case and the St Alban's Anglican Church cemetery case. We estimate that in those two cases it cost taxpayers close to \$1 million to argue that it was in the public interest to dig up and move these two pioneer cemeteries so that private developers could benefit.

Let me illustrate again why we do not feel that we can rely on municipalities to protect the interests of descendants and inactive cemeteries. In the Clendennen case, the town of Markham joined the developer and the province of Ontario in vigorously opposing full participation in the public hearings by the Clendennen descendants. I had researched and assisted the Clendennen descendants. They wanted to testify to support the OGS position that their family cemetery should not be desecrated for real estate development. Needless to say, the Clendennen family were deeply distressed that both levels of government would try any tactic to prevent them from participating at a public hearing on the public interest. In the end, after an expensive battle, Harold Clendennen represented his family and testified. In 1999, the tribunal ruled that it was not in the public interest to relocate the Clendennen cemetery from its original location.

OGS believes that this is a disgraceful situation and that the Legislative Assembly has a duty to include cemeteries in the Ontario Heritage Act, Bill 60, so that very scarce private and public resources and volunteer time are spent on more productive projects.

OGS is very alarmed and disturbed at the increasing rate of vandalism and incidents of racism in our cemeteries. A new Heritage Act that clearly fails to recognize and protect our vulnerable and threatened cemeteries is unacceptable. It sends a message that the province doesn't really care, and that clearly is not in the public interest.

The Ontario Heritage Act does recognize Ontario's built heritage and, when passed, will help to preserve that important part of our heritage. But with respect to cemeteries, your government inherited a terrible mess. Now, you have a rare and historic opportunity to address these problems and chart a new direction for our ancestors and descendants.

Therefore, OGS recommends that Bill 60, An Act to amend the Ontario Heritage Act, (1) state clearly that all inactive cemeteries are of provincial interest and importance and are a significant part of the cultural, historical

and natural heritage of Ontario and, (2) state that it is in the public interest that all of Ontario's inactive cemeteries be protected, preserved and maintained in their original locations.

I am confident that if these changes are adopted, the OGS and its members will join the government of Ontario in a new partnership to preserve Ontario's heritage. Thank you for this opportunity to address this committee.

**The Chair:** Thank you. Ms Mossop.

**Ms Mossop:** Thank you very much for your presentation and for making the time to come here today to talk to us about this issue, which is of concern to all of us around the table, obviously.

As I've mentioned before, this is something that I've been actively discussing with ministry staff and the minister. At the moment—and I'm going to reiterate "at the moment"—active and inactive cemeteries are covered under the Heritage Act where it says "real property." The previous gentleman had said that some of the areas he was concerned about, some of the inactive cemeteries, weren't even called cemeteries. So my worry is in the wording. If we start to try to specify cemeteries—inactive cemeteries, burial grounds, buildings, what type of buildings, bridges, fences, all those sorts of stuff—we might actually leave something out. There might be an omission. That's why I am, actually, comfortable with "real property," understanding that that includes cemeteries, burial grounds. And I do have an undertaking from ministry staff to be more specific about that in its communications.

The new bill gives more teeth to protect all real property, including cemeteries, inactive cemeteries and burial grounds. As I say, I'm worried about getting into specifics because I'm worried about there being an omission. We also have the undertaking from the minister to work with Minister Watson with regard to the Cemeteries Act.

Do you agree that these measures are taking us in the direction that we are all concerned about?

**Ms Stuart:** I think we'd feel more comfortable if the words "burial ground" or "cemeteries," something that denoted a burial location, were in the act. The act really covers built heritage. Yes, there are mausoleums and tombstones and so on, but there are also cemeteries that have nothing on them. Nobody is aware of the fact that they are a cemetery, and those seem to fall between the cracks.

**Ms Mossop:** The term is "real property" in the act.

**Ms Stuart:** I'd like to see the word "burial ground" or something that denotes burial ground.

**The Chair:** We need to move to the Conservative caucus. Ms Munro?

**Mrs Munro:** Frankly, I'm troubled by the comments that have just been made with regard to staying with the "real property" definition because it seems to me that throughout the morning we've heard the way in which that has been open to challenge. Obviously, you wouldn't have the cases that you can recite to us if in fact the current wording had been definitive in a way that

wouldn't have even allowed municipalities and developers and so forth to challenge that wording.

Certainly, from our position, we understand the points you have made with regard to the opportunity for challenge and will keep the government's feet to the fire, so to speak, to make sure that that kind of clarification is there to avoid the kinds of things that you are able to bring forward here today.

I totally agree with you. As a taxpayer, as a donor, we're funding both sides of this argument. That doesn't make any sense at all.

**The Chair:** For the NDP caucus, Mr Marchese.

**Mr Marchese:** Thank you for your presentation. We take no comfort in the comments made by the parliamentary assistant. We really believe language needs to be included in the act.

At the moment, in part IV it says, "designated property' means property designated" blah, blah, blah, and then "'property' means real property and includes all buildings and structures thereon."

The next page talks about the designation process: "Subject to subsection (2), if the council of a municipality intends to designate a property within the municipality to be of cultural heritage value or interest, it shall cause notice of intention to designate" and so on.

The way I understand it, if a city council decides not to designate it, then it doesn't get designated. So you leave it to the municipality to determine the designation on the basis of cultural heritage value or interest. If they decide differently, what do we do? There isn't even a third party intervention that would permit people to take it to the OMB.

I'm not sure what Jennifer Mossop is talking about by tweaking the language, and it certainly can't be tweaked in the other ministry. The language needs to be in this document. I hope you're here tomorrow when we're discussing the specific language about how to protect heritage, because I don't think we're going to—

**Ms Stuart:** It's going to be discussed tomorrow only?

**Mr Marchese:** Yes. Is that the case?

**The Chair:** Clause-by-clause tomorrow at 10.

**Mr Marchese:** Clause-by-clause?

**The Chair:** Tomorrow at 10.

**Mr Marchese:** Thank you.

**The Chair:** Thank you very much for your presentation. That's all the time we have.

ANGLICAN, BAPTIST,  
EVANGELICAL LUTHERAN,  
PRESBYTERIAN, ROMAN CATHOLIC,  
AND UNITED CHURCHES IN ONTARIO

**The Chair:** I'd like to call the next group—the Anglican, Baptist, Evangelical Lutheran, Presbyterian, Roman Catholic, and United Churches in Ontario—forward, please.

Good morning and welcome. You have 15 minutes. Any time that you don't use will be allocated for questions to the various caucuses here. Please proceed.

**Bishop Richard Smith:** Mr Chairman and members of the committee, we would like to thank you most sincerely for allowing us to speak with you this morning.

I'm Bishop Richard Smith, Bishop of Pembroke, president of the Ontario Conference of Catholic Bishops. With me are Bishop Colin Johnson, Anglican bishop in Ontario; Bishop George Bruce, Anglican bishop in Kingston; Ken Pennock of the United Church of Canada; and Archdeacon Harry Huskins of the Anglican Church here in Ontario. We represent together the Anglican, Evangelical Lutheran, Roman Catholic and United Churches in this province.

We're very pleased this morning as well to have the Baptist Convention and the Toronto and Kingston Synod of the Presbyterian Church join us in presenting this brief to you.

Over 30 years ago, we strongly supported the introduction of the original Ontario Heritage Act and its intention of preserving buildings of importance to our communities because of their beauty and history. We continue to strongly support this principle and the many parts of the bill that reinforce this. Other portions of the bill before you, however, create very serious difficulties for us.

The churches in Ontario are the single largest non-governmental group affected by this bill because we have so many buildings across the province that are already designated now, or may be in the future. These buildings exist, however, because many faithful people in the past donated time, energy and money to further the mission and ministry of Jesus Christ, and erecting these buildings was part of their contribution to doing so.

When the churches accept funds from faithful people, given for mission and ministry, we consider this a moral trust. These people have trusted us to use these funds for this purpose in the most effective way we can. In many cases, continuing to use these buildings as they are is still the best way of honouring this trust and of keeping faith with these people who have gone before us.

As is only to be expected, however, circumstances change and in some cases this can no longer be done, and for many of our older buildings this will increasingly not be so.

The principle on which this bill is based is a good one, but what happens when it comes into conflict with this moral trust? What happens when the most effective way of carrying out ministry is to make major alterations to these buildings, such as new space for social outreach programs, Out of the Cold facilities, affordable housing and other community-centred facilities? What happens when the most effective way of carrying out mission, and honouring this trust, is to dispose of the building and the site, thus freeing up the funds originally donated and using them for mission in another, more effective location?

The principle of the bill is clear. Communities, and now the province as a whole, may designate buildings of specific worth, and the community's interest then prevails over that of the holders of the buildings. That building must be maintained under the terms of the act. The bill before you, however, is premised on there only being two sectors: governments, who hold buildings and can continue to maintain them out of public revenues, and commercial enterprises, who can either raise the price of their product or sell the building to another commercial owner who will maintain it.

The churches are a very large stakeholder, yet we have no place in this structure. The money our faithful people put on the offering plate on Sunday mornings maintains our buildings. What happens when a congregation that had 500 people in the pews a century ago finds itself with only 50 today? People know that they no longer have the money to carry on as things are and realize that effective ministry calls either for major alterations to the building or a move to another location where their ministry can be effectively carried out.

A commercial enterprise can sell its head office to another commercial enterprise, but there is a very limited real estate market for church buildings that have been designated under the act, particularly outside the greater Toronto area. Very few potential purchasers want to assume the responsibilities required of them by this act, and this both limits the ability to sell the building and substantially lessens its value.

Under the terms of the bill, the shrinking congregation can no longer pay for spiralling heating and insurance costs, yet it cannot adapt to better kinds of ministry or free up the assets for mission elsewhere. The point comes when it cannot carry on, worship services cease, the building and property then become subject to property taxation, worsening the financial situation, and it inevitably defaults to the municipality for unpaid taxes. These are the likely consequences we foresee if this bill is passed as it stands.

It seems very much in conflict with the opinion of the Supreme Court of Canada when it considered this aspect of the Ontario Heritage Act. Writing in judgment, the Supreme Court said, "It is equally evident that the Legislature recognized that the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, certainly not in total disregard of the property owner's rights."

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This present review of the act was in response to the concerns of citizens, historical groups and local architectural advisory committees. It is the community at large that wants to preserve these buildings, and rightly so. But the responsibility for maintaining the unique features of the structure and the resulting cost is imposed exclusively on a small and shrinking congregation. This is very much at variance with what has been done in other jurisdictions such as the United Kingdom, Europe and Quebec.

An attempt to balance this is provided in a provision for appeal to the Ontario Municipal Board. We must be frank in telling you that most of our congregations cannot afford to retain lawyers and various kinds of experts and would be entirely overwhelmed by the procedural implications of such an appeal. Even in this, however, the options available to the OMB on appeal are limited. We believe that these should be expanded to enable the board to require a designating authority to purchase a building they've designated if the current charitable holder cannot sell the building for a reasonable price. This is consistent with the position taken by the Supreme Court, but it is not the position taken in the bill as it stands.

The argument has also been advanced that most churches have not been designated. In the words of Winston Churchill, "It is no comfort to be told that few men are wrongly hanged, if you are about to be one of them." This is the situation that our congregations that have been designated find themselves in, and it completely overlooks that question of how many more may be designated in the future. We do not think that this needs to be so, and we do not think that this was the intention of the drafters. There are other ways of proceeding that ensure preservation and allow the designating authority to assume responsibility for helping to maintain the building or purchasing the building at fair value, as is done in many other jurisdictions.

No one in the ministry developing the text of this bill has talked to the churches about any of this or, it would seem, with the school boards, which are also major stakeholders. None of the advocates who want these changes have asked us to work with them to resolve these difficulties before this bill has come to you.

This has not been our experience with other pieces of legislation put forward by governments of all three parties represented here today. Only recently, we presented a brief to the committee dealing with the Health Information Protection Act, in which amendments were made that resolved a number of difficulties to everyone's advantage. Even now, we are working with a number of ministries on matters such as the development of regulations for the new cemeteries legislation and the regulations under the Safe Drinking Water Act, which had serious unintended effects on our rural congregations as originally written, but which are being resolved in a spirit of mutual benefit and collaboration. This is not the case with this bill. As it stands, this bill will create and not solve problems in our sector.

We want this act to do the best possible job of preserving our heritage. We pledge to you our fullest collaboration with the government and our fullest cooperation in working with the advocates of the changes in this act to find the right balance that achieves its ends in the best possible way. Given the very difficult situation we have been put in because of the lack of consultation, we must ask that this bill not go to third reading as it stands.

Thank you very much for allowing our presentation. We're happy to entertain your questions.

**The Chair:** Thank you for your presentation. We have a couple of minutes for questions. The Conservative caucus: Ms Munro, do you have any questions?

**Mrs Munro:** Yes. I really appreciate your coming here today and providing us with this perspective. Clearly, the fact that you have had no consultation in the process of this bill has left an enormous hole, I would argue, in the fact that you are a major holder of built heritage across the province. Certainly, I would agree with you that the notion of being left with the consequences of this could be quite disastrous from the perspective not only of the church, but also of the community, where there is no opportunity for the kind of maintenance and preservation that is particularly expensive and without having the opportunity to do anything with the building.

The obvious question for me to ask you is, of course, what particular recommendations would you have? I have a sense that I already know the answer to that question, but I do think that it is an issue upon which greater discussion and consultation needs to be taken. Your suggestion with regard to assuming responsibility or purchasing the building at fair value—I wonder if you could put that in a context of other jurisdictions, because you mentioned a couple.

**Bishop Smith:** I think Archdeacon Huskins can speak to that very well.

**Archdeacon Harry Huskins:** Maybe just a brief comment on that. What we would really like to see preserved in this bill are the two elements that are common in, say, European jurisdictions, the United Kingdom or Quebec, in which there is a balance between the community's need to preserve something of particular beauty or historic value, but at the same time a recognition that often the current property holder is incapable of financing that. So where the importance to the community prevails—and that's a judgment the community should make—the community also assumes a shared responsibility for maintaining that in some way, or, as I think has been suggested by a number of other deponents, in the last resort, particularly in our case, if a struggling congregation is down to three or four people and cannot do it any longer—they can't sell the building for any reasonable price—in that case the designating authority assumes the responsibility for that. I don't know if that's any help to you.

**Mrs Munro:** It certainly is, in the sense that we know other jurisdictions do a very good job in the preservation of their built heritage.

**Archdeacon Huskins:** As I said, our problem is that this stresses one element over the other.

**The Chair:** We have time for just one more question. Mr Marchese, make it quick, please.

**Mr Marchese:** Thank you for your presentation. I want to support the argument, because when we put restrictions on what people can do, in this case churches with property that was given to them in trust in the way you presented, then it seems to me that governments have to play a bigger role of financing that particular common

good. We can't, in my view, leave it to the municipalities because we are downloading so much on to them that they have such limited resources in terms of where they can get the money from property taxes that it would be an undue burden, in my view, to have the designating authority, which in this case is the municipality, pick up the cost.

That's why we're introducing a motion that says that the province ought to give support, either in the form of a tax credit or a grant. It may or may not be enough—I'm not sure—in terms of what you think might be adequate to compensate for the costs you're talking about. Originally, we felt the property owners of designated buildings needed some support, and I think a tax credit or a grant might do it. I'm not sure whether that would do it for you.

**Archdeacon Huskins:** The problem with a tax grant, of course, is, as long as worship services are conducted in a church building, it's not taxable. The inner-driven logic in the bill as it stands now is, if the maintenance costs become too great and the congregation ceases holding the worship services, it immediately becomes taxable, doubling the burden or tripling it. The last thing municipalities want is for it to default to them and they then end up with the maintenance of the entire building, as opposed to part of it. So you can see that there's a very difficult dilemma in here.

We would love to work on coming up with some kind of creative, innovative solutions to this, looking at what happens in other jurisdictions, but frankly, we've had less than a week to do this.

**Mr Marchese:** You would support a delay, is what I hear you saying. I'm not sure you can come up with an agreement in the next few hours.

**Archdeacon Huskins:** If you could come up with the language to fix the problem, we would be delighted. But in less than a week—you can imagine what consultations among six major denominations are like.

**Mr Marchese:** We're dealing with this tomorrow morning, by the way. So you don't have much time.

**The Chair:** That's all the time we have for your presentation. Thank you very much.

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CITY OF TORONTO,  
HERITAGE PRESERVATION SERVICES

**The Chair:** City of Toronto, Heritage Preservation Services, Councillor Kyle Rae.

Good afternoon. Do you have a written presentation?

**Mr Kyle Rae:** Good afternoon. Yes, we do have a written presentation. I'm Kyle Rae, city councillor for ward 27, and this is Brian Gallagher from the Heritage Preservation Services of the city of Toronto.

**The Chair:** I just remind you that you have 15 minutes for your presentation. If you leave any additional time, there will be an opportunity for questions, should you choose to do so. Please proceed.

**Mr Rae:** The city of Toronto would like to congratulate Minister Meilleur and her staff and the Liberal government for bringing forward this bill amending the Ontario Heritage Act. Heritage preservation is a critical element in building the livable city of Toronto.

These amendments are important to the city. City council took a position on these amendments on October 26 of this year. The proposed amendments are, for the most part, a step in the right direction for the cause of the protection of heritage resources in the province. The city is very pleased, for example, at the proposed allowance for heritage property maintenance standards and increased protection for heritage conservation districts. In fact, I'd like to say, I've got three heritage districts in my own constituency, and they've all been warmly received by the residents in downtown Toronto. A full report on the city's input is now being circulated.

Today I would like to touch on three main areas: demolition control; the issue of proposed exemption of provincial and, potentially, other heritage properties from municipal review; and the newspaper advertising issue.

First, demolition control: I know the minister, Madame Meilleur, has had the opportunity recently to meet and hear from Anthony Tung, who is the former head of the New York Landmarks Commission and a well-known authority on heritage preservation. Mr Tung's message is that to really make a difference in heritage preservation, the province needs a binding law on demolition of heritage properties. This bill goes a long way toward achieving that objective.

The city strongly supports the provision of stronger demolition control. To make the new provisions for demolition even more effective, we suggest that the right to appeal a municipal decision regarding demolition be extended to everyone, not just the property owner. Also, the appeal should be to the Conservation Review Board, similar to the appeal process currently in place of councils' decisions regarding designation of properties.

If you wish to proceed with the appeal, as you've suggested, to the Ontario Municipal Board, we have a concern. Your bill today suggests that the OMB may invite a member of the Conservation Review Board to sit with them. The city feels it should be a requirement that a member of the Conservation Review Board join the panel; otherwise, the OMB may not have sufficient expertise to address the heritage impact of demolition. We have consulted with colleagues in other cities across the province, and officials in Ottawa have the same concerns as those of the city of Toronto.

Exemption from municipal oversight for provincial and possibly other properties: The city's main concern is with the proposal to specifically exempt from review by the municipality all provincially owned properties, including Ontario Realty Corp and the former Ontario Hydro properties, plus the property of any agency the province puts on the list as prescribed public bodies. The province's rationale is that some municipalities do not act to protect provincial heritage buildings, so this will bring

the buildings into the provincial fold and provide protection across the province.

However, the proposals will eliminate open public involvement in decisions regarding demolitions and alterations for all provincially owned properties plus the agencies that are arbitrarily added to the list of prescribed public bodies. The current municipal process for decision-making regarding heritage properties is open, it is accountable, and it carries appeal procedures. The proposed system would be carried on in-house, behind closed doors, without any requirement for public involvement or any opportunity to review the decision.

The amendments also propose that the minister may create standards and guidelines to be used by the province and the agencies to govern demolitions and alterations to their heritage buildings. The ministry itself says that it will take years to institute such procedures. In the meantime, there will be no effective oversight for the province's heritage buildings, and the municipalities will be helpless in trying to preserve these heritage resources. If the proposed system is mandated by the amended act, at least the legislation would require the minister to create the standards and guidelines before municipal review of these properties is ended.

Staff are concerned that the province may add agencies such as the University of Toronto or the school boards or the art gallery, the AGO, on the list of prescribed public bodies.

The city recommends that rather than exempting the province and potentially other agencies, all of these should be made specifically subject to part IV and part V of the act, the parts that allow municipal review. This will achieve the province's stated objective of heritage preservation better than the provincial proposals, as all interested parties will have the ability to be involved.

Nothing prevents the province or other agencies from properly caring for its own buildings, even if they are subject to municipal review. However, having municipal review can protect the building that may fall through the cracks. If the province wishes to have standards and guidelines for its own properties, that is fine, but they should be combined with the existing system of municipal review. The Planning Act gives the precedent, in that it makes certain that properties of Ontario Hydro are subject to the Planning Act.

As an aside, I can speak directly to this issue of provincially owned properties not being properly maintained by the province. The wonderful heritage buildings on Jarvis Street known as the Massey buildings—one of them is The Keg; I think the other one is Gooderham House—and the two on the street behind were in the hands of the Ontario Realty Corp under the last government, and they were deteriorating dreadfully. The roofs were collapsing. The city of Toronto intervened when the province was trying to sell them and designated them so that any new property owner would know they would have to maintain them. The province failed to maintain its properties; I'll make that very clear. We have a case in point.

On the issue of advertising, one final comment: The current act requires newspaper advertising for various actions under the act, including designation. Newspapers must have general circulation in the municipality. Although this may not be an onerous requirement in many areas, it is very expensive in the city of Toronto. The city proposes that municipalities be permitted to determine their own notice requirements as part of their official plan. Alternatively, advertising in community newspapers would achieve the objective of public notification and education. A provision which addresses the unusual situation in Toronto would be helpful to the cause of heritage preservation.

I'd like to thank you for your attention on this matter. I'd be very happy to take questions, as will Mr Gallagher.

**The Chair:** We'll start with the government caucus, if they have any questions.

**Ms Mossop:** First of all, thank you very much for your time today in coming with these recommendations and also for the work that you do. We've run into each other a few times now at various events, so I appreciate everything that you do.

There is sort of a starting point in the bill that indicates that the province does have to get its own house in order in terms of looking after its properties, and that is recognized in this. Of course, you also understand the cost involved in that. That's part of the issues we're dealing with here. You do recognize that is something we are making a point of: that we do have to start to lead by example, and we have indicated that we're going to begin those measures in this bill.

**Mr Rae:** I understand that. I think what's important, though, is that the city has a great heritage in dealing with heritage matters. So I think it's more useful for the province to be using the already existing staffing and requirements of the municipality as you move forward. I think we are a good model to be following.

**The Chair:** Further questions?

**Mr Brownell:** I come from a largely rural area of eastern Ontario, Cornwall. We've had very responsive municipal governments with the protection of our heritage. I was an activist down there myself before arriving on the scene here.

You talked about the cost of advertising. Could you give me a little more information? Because I know that really hasn't been a problem down in our area.

**Mr Rae:** I think having to put an ad in the Globe and Mail or the Toronto Star—\$2,500 for an ad in the local papers, which are the Globe, the Star or the Sun. They can be very onerous, given the number of heritage properties we list and designate.

**Mr Brownell:** So, if I could just ask a supplementary, every time that you've gone to designate and whatnot, you've had these costs?

**Mr Rae:** That's right.

**The Chair:** Mr Racco, quickly.

**Mr Racco:** Someone suggested that a sign, just like the committee of adjustment, outside, in front of the

building, is acceptable. In your opinion, in Toronto, is that acceptable?

**1210**

**Mr Rae:** You're right that the current practice on planning applications is to put notification on the property. However, we do have community newspapers that are more reasonably priced in terms of advertising, that get large coverage across the city. Almost every neighbourhood has a community newspaper. If we were able to advertise at that level and that cost, it would be more affordable. But both suggestions might be useful.

**Mr Racco:** Thanks.

**Mrs Munro:** Thank you for coming and giving us a perspective here. On page 4, you're talking about the provincially prescribed designation criteria. I think this responds to criticisms we had heard about the fact that in individual communities there are different levels of expertise, in-house or in the community, and that sometimes something would be designated in one community that would never have been designated in another community. That's really the motive behind this. I appreciate your comment, though, in terms of the set of criteria and how can they be made to do the one size fits all. In defending the notion of the province creating that set of designation criteria as an assistance, would you think that if these were viewed in a manner similar to provincial policy statements in the planning process, for instance, that would give the kind of discretionary power you're looking for? I really feel that there is a need to have some kind of standards.

**Mr Rae:** I understand that. You're right. There will be some municipalities that will not designate a building that we would in Toronto, especially modern or industrial buildings. Some places will say, "That's ephemeral and we don't need that any more," whereas we are going out of our way in doing that.

I think it might be useful to have some guidelines from the provincial government, but you need to let municipalities be the masters of our communities and our neighbourhoods. There are going to be differences across the province, and I'm not sure one size fits all. I think there needs to be some latitude given. There are mitigating circumstances in each community in dealing with their heritage, their ability to do it or the ability of the owner to maintain.

I would welcome questions about how the churches are having difficulty dealing with this issue. In the municipality, we have an enormous complement of heritage buildings, and we need to find a way to give property owners a means of maintaining them, instead of hitting them over the head with increased taxes as they improve their heritage properties. We need a heritage tax incentive program and we need that now. We needed it five years ago. We asked for it five years ago but didn't get anywhere, and I'm hoping, with this government, we will.

**The Chair:** Mr Marchese, last question.

**Mr Marchese:** Thank you both; thank you, Kyle.

**Mr Rae:** Nice to see you.

**Mr Marchese:** On this one, I do agree with Julia. I'll explain briefly why and then make some other quick remark.

First of all, I don't think we should worry that the minister will be overly engaged in designating properties. But you and I both agree the ministry has been very negligent in terms of protecting its heritage. All of a sudden, we have a bill that says the minister has a stake in it. Am I going to take that away when, for all these years, we've never had any ministry involvement at all? So I'm very happy to see it there.

**Mr Rae:** You can always delegate to municipalities that interest from the minister. That's happened on many occasions. Our medical officer of health is delegated from the Ministry of Health, and we do a superb job in delivering public health.

**Mr Marchese:** Let's disagree briefly on that, because I wanted to say that my sense is this government wants to pass this bill this term, and so do we. But I suspect they won't introduce a lot of amendments tomorrow on clause-by-clause. That's my sense. Given that, of the amendments you proposed, which ones do you believe they could do tomorrow morning? The ones I'm going to be talking about are clearly the one that you spoke to as well, which is introducing a tax credit; protecting cemeteries with language in the bill; and the third one, allowing for third party interventions. I think they're doable. Are there others that you think they could do for tomorrow?

**Mr Rae:** I think the demolition is clear—  
*Interjection.*

**Mr Rae:** That's a good point—the Conservation Review Board piece. There should be a member on the panel, if it's the OMB that's dealing with it.

**Mr Marchese:** I originally interpreted it as that being the case. I didn't realize it wasn't made. I agree with you.

**Mr Rae:** The city of Toronto has a long history of dealing with the province and the federal government, as they feel exempt from our development controls, from our official plan. There are properties on Jarvis Street developed by the federal government, which they abandoned 20 years later, that became crack alleys—the Jarvis RCMP building, also the building to the north, the Mulock building. They left them. They built them, they're eyesores, and they do not conform with our official plan or zoning bylaw.

We have a history of dealing with senior levels of government that feel they don't need to be compelled to live within the rules of the municipality. And I think, as partners, you should recognize that we're working together and not at cross purposes. I think this bill goes a long way to doing that.

**The Chair:** Thank you very much. That's all the time that we have today for your presentation. That concludes this morning's proceedings.

**Mr Marchese:** Mr Oraziotti, I have a motion. In the context of what we heard today, in the context of so many people having so many other suggestions and recommendations, I would like to propose that we move the clause-by-clause to next Wednesday so as to permit the parliamentary assistant and the minister to adequately review the changes that have been proposed. I move that.

**The Chair:** Any comments or discussion on the motion from either caucus?

**Mrs Munro:** I think that this particular motion is one that the government should give serious consideration to. We have heard from very significant players in the community who have not been consulted in this process. We've also heard some issues of ministerial co-operation to take place. For reasons such as that, I think it would be in fairness to the government, quite frankly, to support this motion and give due consideration to the complexity of the issues that have been brought before us.

**Mr Marchese:** David, just quickly. I have no interest in delaying this bill beyond this session. It would be my purpose, if we get the amendments, or many amendments that people have recommended, to make sure this legislation passes before the end of the session. That's my commitment to this, so they know.

**The Chair:** Government caucus.

**Mr Brown:** I really appreciate my good friend Rosario bringing forward this motion at this very, very, very late date. The subcommittee obviously ordered the business knowing what was about to happen. The subcommittee obviously understood that when the deputations were made, there would be difference of opinion, that there would be suggestions. I can commit to you that the government caucus will work very hard with the ministry to take into consideration all of the deputations that were made today and that we will be in a very good position tomorrow to be able to assimilate those into our thoughts.

We would think that perhaps the opposition could move forward just as rapidly to focus their minds on the various amendments that were suggested today and the various differences of opinion that, I think, we've heard today, and assimilate those and be ready to put their amendments in the morning.

**The Chair:** We have a motion on the floor from Mr Marchese that clause-by-clause be postponed until next Wednesday, December 8. Call for a vote.

**Mr Racco:** Can I speak—

**The Chair:** We've had one speaker from each caucus, Mr Racco. I think we're prepared to vote on that at this time.

All those in favour? Opposed? The motion is defeated. The committee is adjourned until tomorrow morning at 10 am to consider clause-by-clause.

*The committee adjourned at 1219.*

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