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**Official Report  
of Debates  
(Hansard)**

**Monday 27 November 2006**

**Journal  
des débats  
(Hansard)**

**Lundi 27 novembre 2006**

**Standing committee on  
general government**

**Municipal Statute Law  
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**Comité permanent des  
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**Loi de 2006 modifiant des lois  
concernant les municipalités**

Chair: Linda Jeffrey  
Clerk: Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 27 November 2006

Lundi 27 novembre 2006

*The committee met at 1600 in room 151.*

**MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 2006**

**LOI DE 2006 MODIFIANT DES LOIS  
CONCERNANT LES MUNICIPALITÉS**

Consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 130, An Act to amend various Acts in relation to municipalities.

I'd like to welcome our witnesses and tell them that they have 15 minutes to make their presentations.

**ONTARIO FEDERATION  
OF AGRICULTURE**

**The Chair:** Our first delegate today is the Ontario Federation of Agriculture. Welcome, gentlemen. Please make yourselves comfortable. If you need to pour yourself a glass of water, I think there are glasses up there. When you get yourself settled, if you could state your name and the organization that you speak for for the purposes of Hansard, and you'll have 15 minutes after that. If you leave time at the end, there'll be an opportunity for us to ask questions.

**Mr. Paul Mistele:** Thank you very much. My name is Paul Mistele, vice-president of the Ontario Federation of Agriculture.

**Mr. Peter Jeffery:** My name is Peter Jeffery, senior policy researcher, Ontario Federation of Agriculture.

**Mr. Mistele:** I certainly would like to thank you today for the opportunity to speak before the committee. We have a handout, of course. Everyone should have it in front of them, so I'm going to go from that. I'm just going to go through the first part of our recommendations. We want to focus on schedule D, section 20, the Line Fences Act. We don't want to get into the whole ball of wax, simply because we don't have time here today.

To begin, the Ontario Federation of Agriculture is the voice of Ontario's farmers. We have roughly 38,000

individual members and 30 affiliated organizations. We've been constituted in this present form since 1970. The organization is active at the local level through 49 county and regional federations of agriculture. The OFA is also a member of the Canadian Federation of Agriculture, the farmers' voice on national issues.

The Ontario Federation of Agriculture does welcome this opportunity to provide its comments on Bill 130. I'm going to go through our recommendations, a summary of which is found on page 2.

We recommend that section 20 of the Line Fences Act be retained as it is currently worded.

We recommend that the amendments to section 20 be reworded to clearly include rented farmland.

The OFA also recommends that the current methods of enforcement found in the Line Fences Act be expanded to include the fences along former railroad rights-of-way, taking into consideration that the owners of these former railroad rights-of-way are often municipalities themselves or other entities that do not pay municipal taxes. Furthermore, we are prepared to work with Ministry of Municipal Affairs and Housing staff and other stakeholders to develop an effective means to compel compliance with the section 20 fencing obligations.

We recommend that the fence-viewers be given the responsibility for deciding on the type of fence to be built along former railroad rights-of-way.

We also recommend that the Line Fences Act be amended to protect the right of property owners whose land is bisected by former railway rights-of-way to continue to be able to cross that right-of-way, whenever necessary, and without prior notice, for as long as their property is landlocked by virtue of the right-of-way cutting their land in two. This right must be transferable to every future owner of the property.

We also recommend amendments to provide that whoever acquires a former railroad right-of-way be obliged to establish an annual fencing budget that addresses both the construction of new fences as well as maintenance or repairs to existing fences.

We go into a fair bit of detail in the following pages. I'm not going to do that at this point in time. It goes into more explanation as to where we stand on these issues on the Line Fences Act. From page 5 on, we are also making comment on the rest of Bill 130. Some of the recommendations in there, again, because of time, we won't have an opportunity to get into in great detail. I would

rather have an opportunity to answer questions. If there are any questions in regard to this, Peter and I will try to field them.

**The Chair:** Okay. You've left almost four minutes per party, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** Thank you very much, Paul, for your presentation. I just quickly wanted to touch first of all on the Line Fences Act. We've had some discussion and we now have some information on the table here concerning the interpretation of what the new act is actually doing with the Line Fences Act. The previous delegation was under the impression that in fact there would be no municipal obligation under the present regime. With the changes, it would enforce or make municipalities fall under the Line Fences Act so that it was an added cost to municipalities. The researchers tell us that's not the case. But your proposal goes the other way from what the proposal is and wants to make the Line Fences Act more applicable to the railroad right-of-way. Is that right?

**Mr. Mistele:** Yes, we do. We don't really want anything to be changed, Mr. Hardeman. We say in our very first line that we feel very comfortable where the Line Fences Act is right now in regard to abandoned railroad rights-of-way. We have to remember that we don't want a patchwork of fences either, where we have this section that's fenced and this section that's not fenced. I sit on the Ontario trail strategy, and this is an issue around that simply because for the trespass act you can't take away where we are without other tools already put in place. The trespass act has long been overlooked and there hasn't been anything done in that regard. It's long overdue. And then there are the insurance issues.

**Mr. Hardeman:** I agree with you: To have the fence-viewers make the decision on where the fences are required and where they're not required makes more sense than legislating it by the present land use, because obviously land use can change from one year to the next.

In the areas where we have already seen the movement of ownership on the railroad rights-of-way, how are they dealing with the right to crossing it without notice? Is that being left in place, where the farmers continue to have that?

**Mr. Mistele:** I'll let Peter—Peter gets those phone calls in the office, whereas I don't.

**Mr. Jeffery:** It's a bit of a mixed bag. Some of the trail organizations that are running the trails are quite responsible in allowing the farmers to continue to cross the trail as needed. Others are taking the position that they have no obligation to allow crossing. That was something that was done with the railroad when they were operating the line, and for whatever reason they feel it died when the railroad sold its interest. We'd like to have some clarification that that right to cross carries on, because it's necessary to continue accessing parts of the farm.

**Mr. Hardeman:** Thank you. Another one—I'm just wondering here, looking through the licensing authority that municipalities will get through this act, and the suggestion that businesses already licensed under the

Agricultural Tile Drainage Installation Act would be exempt from that. What would be the difference between that and any other organization that was already licensed by the province? Is it your presentation that you think they should all be exempt from further municipal licensing, or should it just apply to the agriculture community?

**Mr. Jeffery:** We were simply focusing on either farm businesses themselves or the tile drainage contractors, and we felt that since they were already licensed by the province, duplicate licensing was unnecessary.

**Mr. Hardeman:** But wouldn't that be true of just about any organization where you have an accreditation process that's done by the province that says, "I'm an auctioneer and I have a licence as an associate in the auctioneer association"? Should they also be exempt, then?

**Mr. Jeffery:** We didn't pursue that angle.

**Mr. Mistele:** We felt that with the contractors, the contractors' main equipment, their contractors themselves are licensed and it's fairly rigorous. That's our understanding.

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

**Mr. Michael Prue (Beaches—East York):** Okay, you're going to have to excuse this city boy when it comes to all this stuff.

I'd like to concentrate on your last point. Whoever acquires a former railway right-of-way—this would primarily be, I would think, either the conservation authority or a municipality. Is that who usually ends up with this?

**Mr. Mistele:** Actually, there's quite a mixed bag of ownership that ends up, and sometimes it's left in limbo; we're not exactly 100% sure.

**Mr. Prue:** Okay, but if it's a municipality or a conservation authority, who would obligate them to establish an annual fencing budget? Are you asking the province to tell them how to spend their money or how to set it in their budget?

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**Mr. Mistele:** We're asking that it should be part of the act that whoever is the owner of these properties have an obligation for maintenance, repairs and building of that fence. So yes, if a municipality is to be the owner and the municipality is using that right-of-way for whatever reason, it won't necessarily—there's a myriad of uses that these rights-of-ways can be used for, but they have an obligation to keep the fences in good repair.

**Mr. Prue:** I could understand if you had written that they be obliged to address the construction of new fences or do the maintenance and repairs, but you've been very specific here that they be "obligated to establish an annual fencing budget." When the province obligates a municipality or conservation authority, we say, "you shall"; we use those words: "You shall in your budget contain" whatever—a percentage, an amount of money, something to that effect. I don't know that we actually do that anywhere. I just want to know, is this what you intend, that we tell the county of Oxford—let's choose Oxford or Northumberland; I see all my colleagues

here—that we tell their county council or their municipality, “You will put \$1 million a year into fences along former railway rights-of-way”? Is that what you’re asking us to do?

**Mr. Mistele:** We’re asking that whoever is the owner or has control of rights-of-way have an obligation. So if it’s a municipality, they have that obligation, and that should be entrenched.

**Mr. Prue:** And the power to enforce that would be through the province?

**Mr. Mistele:** This is where we want to examine where we can get enforcement, because right now, we don’t have a mechanism of enforcement. This is where we’d like to explore different ways of making sure this gets done.

**Mr. Prue:** Those would be my questions, Madam Chair.

**The Chair:** Thank you. Mr Duguid?

**Mr. Brad Duguid (Scarborough Centre):** Thank you for taking the time to join us here today and for your input and written presentation. My first question is about the issue of rented farmland. You’ve expressed concerns that for some reason rental farmland may not be included under the definition of farmland in the Line Fences Act and in Bill 130. Could you explain to me what your basis is for that? I know that our ministry staff and our legal people are of the view that a farm business would include a rental use of the land as well; I think the term used is “farm business” in the act. Maybe you could try to extrapolate on that a little bit.

**Mr. Mistele:** I’ll let you go at that one.

**Mr. Jeffery:** We were seeking clarity that that would be the case, that there was no doubt that rented farmland would be included, because from time to time it changes hands from farmer to farmer over the course of the years. We wanted to make sure that there wasn’t something that fell through the cracks and allowed rented land to be excluded for some purpose.

**Mr. Duguid:** Okay. I hope I’ve been able to provide a little bit of clarity. The advice that I’ve been given from the ministry is that there’s no doubt in their minds at all that in fact rental farmland would be included, so it’s on the record here. I hope that gives you a little bit of ease. If there are any further questions on it, feel free, obviously, to contact me and we’ll see if we can get further clarification for you as well.

The second question I had was, you indicated that you’d like to work with the ministry to develop better compliance methods with regard to fencing obligations. Do you have any ideas that you are looking to put forward with regard to that? Right now, there’s the civil litigation opportunity. If somebody is not complying with the act, that’s where you’d go in terms of getting compliance. I’d be interested to know what other ideas you might have.

**Mr. Mistele:** Yes, you can use the stick or the carrot approach too here. We certainly want to build bridges. We want to work with people out there. I think education is a big component here, if we could get an education

component worked into making sure that people understand their obligations when they’re using a right-of-way. I’m thinking along the line of trails because I deal with trails more often than, say, pipelines or transmission lines on these rights-of-way. I think you’ve got the carrot approach.

As far as the stick approach, I guess a person would have to take a look, as was already pointed out by Mr. Prue over there. When you’re interacting with municipalities and the provincial government and private landowners, you’ve got a three-way race. You’ve got to understand what all is available to you, as far as tools. We’re not at that point yet at OFA, but what we are saying is we’d certainly like, from the private landowners’ and farmers’ perspective, to work with the other levels to make sure that we get it right.

**Mr. Duguid:** Thank you.

**The Chair:** Thank you, gentlemen, for being here today. We appreciate you coming.

#### AREND KERSTEN

**The Chair:** The next delegation is Arend Kersten. Welcome. Please make yourself comfortable. If you could state your name—I realize you’re not speaking for an organization, but if you could state that for Hansard. When you begin, you’ll have 15 minutes. If you leave some time at the end, we’ll be able to ask questions about your deputation, and we do have your presentation in front of us.

**Mr. Arend Kersten:** Thank you, Madam Chair. I’m new at this. Thank you for the opportunity to share some thoughts. My name is Arend Kersten. I’m a resident of Waterdown in the former town of Flamborough, part of the current provincial riding of Ancaster–Dundas–Flamborough–Aldershot.

Thank you for the opportunity to share some personal thoughts on the potential creation of community councils as you consider the new provincial Municipal Act.

I am currently the executive director of the 300-member Flamborough Chamber of Commerce and editor of BIZ magazine, a quarterly Town Media-Osprey publication distributed to over 20,000 business addresses in Hamilton–Wentworth and Halton.

I need to emphasize that what follows are my personal comments and do not in any way reflect the official or unofficial views of either Town Media or BIZ magazine. However, the executive committee of the board of directors of the Flamborough Chamber of Commerce at its meeting last Wednesday decided, without formally commenting on this lengthy preamble, to endorse the three specific recommendations detailed at the end of this presentation.

First, some context: For more than a dozen years, I was an award-winning reporter, editor and purposely provocative columnist with the Flamborough Review and Brabant Newspapers—the Dundas Star News, the Ancaster News, the Hamilton News, Mountain edition, and the Stoney Creek News. During my tenure, I was a

passionate champion of local democracy and an ardent opponent of municipal amalgamations, especially forced.

My claim to fame is that I survived four corporate takeovers while at the Flamborough Review, from the local Bosveld family to Southam to Hollinger to CanWest to Osprey. That all changed three weeks after Osprey sold the Review to Torstar, well known for its pro-megacity and pro-supercity positions, some three years ago.

I want to focus my comments on the concept of community councils. About a year ago, Hamilton Mayor Larry Di Ianni appointed me, along with over 20 others, as a founding member of the Flamborough advisory community council. I have learned much from that experience which I would like to share with you.

Before I get to my specific recommendations, it may be helpful and instructive to review the history of amalgamation in Flamborough and Hamilton-Wentworth, and this is something that I think particularly MPP Hardeman is very familiar with. When Hamilton councillor Terry Cooke decided to run for the position of regional chairman in 1994, the cornerstone of his campaign was the amalgamation of the city of Hamilton with its five suburban Hamilton-Wentworth neighbours—Ancaster, Dundas, Flamborough, Glanbrook and Stoney Creek. Considering the dire financial straits the former city of Hamilton was facing and the fact that Hamilton had double the population of the five suburban communities combined, Cooke's election was hardly surprising.

Shortly after Cooke's election as regional chairman, a handpicked constituent assembly was appointed to examine the issue of amalgamation. After a year of work, and despite howls of protest from the suburban Hamilton-Wentworth communities, the constituent assembly recommended, to no one's surprise, the creation of a new Hamilton supercity. Super-bureaucrats Gardner Church and David O'Brien later mirrored its conclusions.

The suburbs, however, had their own champions in then-Tory MPP Toni Skarica and then-Flamborough mayor Ted McMeekin. After receiving private assurances from the Premier of the day, MPP Skarica declared at an all-candidates debate in Carlisle during the 1999 campaign that "as long as I am the MPP" there would not be a Hamilton supercity. Skarica won nearly 60% of the vote on June 3, 1999.

When Premier Harris subsequently broke his word and imposed a new Hamilton supercity, MPP Skarica exercised the only honourable option available and resigned. To this day, he remains a hero among his former constituents, and the forced imposition of a municipal amalgamation remains one of the greatest affronts to local democracy.

In the 2000 by-election to replace MPP Skarica, then-Flamborough mayor Ted McMeekin ran under the Liberal banner. During the campaign, then-opposition leader Dalton McGuinty visited the riding and assured ADFA voters that they would be able to determine their own municipal future. Taking the Premier at his word,

ADFA elected Ted McMeekin as their new MPP with almost 60% of the popular vote. While the promises made during the 2000 by-election campaign did not come to fruition, MPP McMeekin was easily re-elected, taking almost 50% of the vote in the 2003 provincial general election.

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But sadly, to this day, despite MPP McMeekin's best efforts, Premier McGuinty has not kept the local democracy pledge he personally made during the 2000 by-election campaign. And with each passing day, realists—including me—reluctantly acknowledge that it is probably becoming increasingly more difficult to "unscramble the supercity egg."

Six years after its creation, the new Hamilton supercity has been an unmitigated failure. As predicted by pro-democracy champions, residential property taxes have gone through the roof, up 35% in Flamborough between 2000 and 2006, while there has been a dramatic, almost catastrophic decline in even basic municipal service delivery. In addition, the total number of municipal employees has increased from 4,462, in 2001, to 5,732, in 2005, an increase of over 28%.

Still bruised by the amalgamation experience, some cynically wonder whether the provision of community councils in the new Municipal Act is nothing less than a tacit admission by Premier McGuinty that he has no intention of keeping his promise to ADFA voters about local democracy.

Which brings us to the present and the proposed Municipal Act.

When the two Flamborough ward councillors declined an invitation by Mayor Di Ianni to establish a Flamborough advisory community council, as had been done by other ward councillors in Ancaster, Dundas, Stoney Creek and certain parts of Hamilton, the mayor proceeded on his own. First he recruited three blue-ribbon community champions to review the resumes of interested applicants. This small group was mandated to choose from among the applicants the 12 or 15 members of the advisory committee. However, the mayor subsequently decided to appoint all 22 applicants, including myself, to the advisory committee. That decision resulted in the agenda being hijacked by advisory committee members with a specific agenda or concern. The result was that many broad-minded community council members who wanted to unselfishly promote the best interests of the entire community got frustrated and eventually stopped attending.

As a result of those experiences, I respectfully make the following suggestions. These then are the three recommendations that have been endorsed by the executive committee of the Flamborough Chamber of Commerce:

(1) Members of local community councils must be elected with a manageable number of members, say eight to 12. That allows for greater credibility and accountability and mitigates the potential of the agenda being hijacked by special interests. Elected during the course of

the regular municipal election, the additional costs would be minimal.

(2) Complete with a local budget, community councils must have some real power and authority on issues of specific local concern, especially when it comes to setting municipal service levels, which will have tax-bill implication.

(3) Recognizing that most controversies arise out of planning issues, the community council must have a strong, albeit advisory, role when it comes to making recommendations to the municipal council on all local planning issues.

Thank you for the opportunity to share my experiences and suggestions. I stand prepared to answer any questions you may have.

**The Chair:** You've left about two and a half minutes for each party to ask questions, beginning with Mr. Prue.

**Mr. Prue:** Thank you very much. This is a topic near and dear to my heart. Has anything changed? Mayor Di Ianni was not re-elected; it was a close vote. Is anything changing in regard to the new incumbent mayor's position on this?

**Mr. Kersten:** The incoming mayor has made it very clear that he's a strong proponent of community councils. He may not choose the avenue which Mayor Di Ianni had identified in terms of getting there, but his comments are that he's very much committed to community councils, and said so even pre-amalgamation.

**Mr. Prue:** And in terms of those, you have the number eight to 12 community councillors. Where did you get that number from?

**Mr. Kersten:** We were looking at the Flamborough community council, using that experience. We were looking at somewhere between eight to 10 to 12 members to be chosen from the total number of applicants. We didn't know of course how many people would be interested. We have found 22 to be unwieldy, and it's led to problems relative to special interests.

**Mr. Prue:** Now, I just want to be clear on this, because I'm not clear from reading this. Is this eight to 10 from the Flamborough area and Aldershot would have eight to 10, or is this eight to 10 in total for the community councils outside of the old city of Hamilton?

**Mr. Kersten:** No, I think see this as eight to 10 in each of the communities, but not neighbourhoods. There are some folks who believe, for instance, that if you are a neighbourhood within the city of Hamilton you should have a community council. My recommendation to you is to take a look at the historic communities—Ancaster, Dundas, Flamborough, Glanbrook and Stoney Creek—and perhaps wards in the city of Hamilton, and create community councils for each of those, but not diluted to the micro level beyond that.

**Mr. Prue:** On the second or the third point that you've made here, you are looking for a strong, albeit advisory, role when it comes to recommendations on local planning issues. The argument that's being made for the city of Toronto community councils is that they would have a final say on most local issues and, in terms of

planning, would probably only kick in where it was a major issue or where something was contrary to or deviating from the official plan other than that. Is that what you're trying to see, or do you see the Hamilton council overriding the local councils on literally all planning issues, everything from committees of adjustment on up?

**Mr. Kersten:** My experiences as a reporter/editor with the Flamborough Review and watching the local scene is that the biggest controversies arose over planning issues, large and small. But I'm also a realist, because whatever planning decisions were even made by the town of Flamborough council had to be consistent with the local OP and the regional OP, and were subject to ratification by the regional council. So in a very glorified way, even the Flamborough council was an advisory committee to higher bodies. That's what I'm trying to recognize here. I think that local issues should come to a community council for public input, for discussion, with a recommendation made to the ultimate—in this case, the council of the city of Hamilton.

**Mr. Prue:** Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Mr. Kersten, thank you very much for coming today. I've had the opportunity to discuss some of these issues with you in the past and appreciate your input. As you know from some of our previous discussions, people like yourself and Mr. McMeekin, of course, and others have advocated for the need for greater opportunities for local democracy. That is one of the reasons why, despite some resistance from even AMO and others—quite often upper-tier councils—to decentralization of some of these decision-making authorities, we've decided to proceed ahead. Of course, as part of the bill, there will now be the ability to do, I think, much of what you're recommending, depending on how councils want to structure.

I've just seen your three recommendations as to what you think community councils should be able to do. From my read of it, I think they would be able to do all of this under the legislation. I guess my question to you is, is there anything of your three points that you think would not be allowed under the current legislation?

**Mr. Kersten:** No, I believe that all three are permissible under the proposed legislation, as I read it. I'm not an expert on these matters. I want to hasten to add that.

If I may use the opportunity also to say, I'm not so sure—I purposely left these three recommendations rather undefined. In discussions that you and I have had about this issue, we've talked about a cookie-cutter approach. What may work in Flamborough may not work in Toronto and may not work in another community, so if we set the parameters and leave some local decision-making to local councils, I think that's healthy.

Let me give you just one example of what we can do. In Flamborough, which goes from Burlington to Brantford to Cambridge—it's huge; it's the second-largest land mass community in all of Ontario—we have 16 different

communities, 16 different settlement areas—Carlisle, Freelon, Copetown, Rockton, Troy. In each of these settlement areas we had something called volunteer sub-committees. Folks who were local volunteers would help with recreational programs, with the baseball field, with cutting the grass, with looking after the arenas. They all had their own budgets and they were all accountable to council at the end of the day, but they saved taxpayers one pile of money. That's just one example, not only in terms of saving some tax money but also in terms of building communities because people would come together to work that way.

**Mr. Duguid:** Thank you.

**Mr. Hardeman:** Thank you very much for the presentation. I appreciate that. First of all, I agree with the parliamentary assistant suggesting that most of the things in your three recommendations could, in one way or another, be done with the new amendments to the legislation. As long as you stay with the voluntary, most of them could be done under the present act. I guess the question really is, how do we get it there on behalf of the people if the local elected councils, as was mentioned in your presentation, are not in the position or don't want to do that and how do we get it done?

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There are a couple of questions I have, though. First of all, if we elect the community councils, how do you keep them totally advisory? When people go to the polls and are picked by their peers in their communities to do certain things for them, they then become the same as anyone else who was elected to do their jobs. You have to then define who's responsible for what and make them responsible. How do you elect them and still keep them totally advisory?

**Mr. Kersten:** The recommendation to elect is to try and mitigate the possibility of hijacking the agenda, which has been our experience. There were people for this or against that and they started to dominate the agenda and frustrated people who were looking at the entire committee. We think that in electing them, particularly if you do it concurrent with a municipal election, the costs would be minimal. That would also give them some credibility. It would also call them to account. There would be some accountability factor in that, but they would also have some real power on strictly local issues.

I hate to use the speed bump analogy because it's a big-city analogy, but I think it can be defined in terms of where the stop signs should go, speed limits, strictly local issues that we think could be decided by this local committee. They'd have to have a bit of a budget. If they don't have staff support and if they don't have some money to spend—and who knows? If they could be given a budget for recreation purposes and they save the taxpayers \$50,000, they could—now, what happens then, if you get into a conflict situation between the elected councillor for the ward and the community council? I think that for elected councillors to ignore the advice of a responsible community council, complete with public input, they do so at their peril.

**Mr. Hardeman:** There's an example of this in the past—

**The Chair:** You have eight seconds left.

**Mr. Hardeman:** —police villages. Is that what you're really recommending here, the police village, which got a set budget to do local issues?

**Mr. Kersten:** Something similar.

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

#### CITY OF KITCHENER

**The Chair:** Our next delegation is the city of Kitchener. Welcome. Do you have a handout for the committee at all?

**Ms. Lesley MacDonald:** No, I don't.

**The Chair:** I just wanted to make sure. Welcome. If you could state your name and the organization you speak for, you will have 15 minutes, and if you leave time at the end, we'll be able to ask questions about your presentation.

**Ms. MacDonald:** My name is Lesley MacDonald, and I'm the city solicitor with the city of Kitchener. Accompanying me is Pauline Houston, the city treasurer for the city of Kitchener.

On behalf of the city of Kitchener, we've been asked to make submissions to you on Bill 130 and, more particularly, on two main issues or points of concern. The city of Kitchener will also be filing written submissions referencing a number of other concerns, comments and improvements.

I would be remiss if I first didn't acknowledge the continued progress that Bill 130 advances for municipalities. Kitchener has welcomed the opportunity to comment on this bill.

On behalf of the city of Kitchener, our comments today are focused on two areas: One is the municipality's ability to establish corporations, and the other is on the closed-meeting provisions and the absence of an exemption pertaining to information which, other than the fact that the information wouldn't be in writing, would otherwise be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act.

First dealing with establishing corporations, Bill 130 proposes to delete section 109 from the act, which specifically provides for the incorporation of community development corporations, and has rewritten section 203 of the act providing general powers for municipalities to incorporate. However, the authority to create the corporation is still predicated on regulation, for which new regulations have not yet been provided.

The city of Kitchener would welcome the opportunity to participate in further discussions with the province on the development of these regulations needed to effect the authority for municipalities to establish corporations. The current regulations under the Municipal Act are too convoluted and restrictive. For instance, they preclude corporations established by municipalities for certain purposes from actually owning land as it relates to the function of that corporation and the purpose of that corporation.

In order for municipalities to be more effective from an economic development perspective, they need the ability for their corporate entities charged with enhancing economic development to be able to hold land and be in a position to transfer land at a pace dictated by the prospective private sector customers.

As a stakeholder, Kitchener would like to participate in discussions centred on the development of these regulations. The establishment of corporations has limited value if the regulations don't address the needs of the municipality.

The other issue we have is focused on is the closed-meeting provisions and the absence of a Municipal Freedom of Information and Protection of Privacy Act exemption. As you know, there is one proposed change to section 239 of the Municipal Act pertaining to open meetings and the circumstances under which a meeting may be closed to the public.

The one area that has not been addressed in these amendments pertains to information that, but for the fact that it's not in a record, would be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act. Kitchener requests your further consideration in this regard.

Municipalities have business interests which involve public assets. Municipalities have an obligation to preserve and protect those public assets they held for the benefit of the community, yet the open-meeting provision doesn't always provide the appropriate opportunity for discussions in a closed-meeting environment to protect these public assets held for the benefit of the community.

In addition to public interests, municipalities are often seeking or involved in public-private partnerships. In order for municipalities to pursue these public-private partnerships and make responsible decisions in this regard, they need to be in a position where certain information can be received and discussed in a closed-meeting environment. Private enterprises need comfort when dealing with a municipality that certain financial and competitive information will be discussed in a confidential forum.

Under the Municipal Freedom of Information and Protection of Privacy Act at present, any such information found in a document would have benefit of protection, but in circumstances where it's being provided verbally, there is no similar protection available.

Kitchener would encourage the province to consider the addition of an exemption authorizing closed meetings to discuss information that is prohibited or information that, if it were presented in a document, would be prohibited from release under the Municipal Freedom of Information and Protection of Privacy Act.

Such a provision would greatly assist municipalities in their obligations to preserve and protect public assets and enhance their ability to pursue public-private partnerships.

Our appearance here today is as a stakeholder with positive yet constructive comments for what we believe to be even further refinements for the benefit of municipalities and the provision of services to their community.

I respectfully submit these comments on behalf of the city of Kitchener and welcome any questions you might have.

**The Chair:** About three minutes left for each group to ask a question, beginning with Mr. Duguid.

**Mr. Duguid:** Two questions, if we get time for the second one later on. You were talking about concerns about regulations in terms of the powers that are being afforded to municipalities to set up corporations. I haven't heard from anybody yet that the powers are insufficient. In fact, the new bill will provide greater autonomy for cities to do just that. Do you have any more specifics? Do you want to see even greater autonomy? Is there a way we can give municipalities greater autonomy? Is there somewhere we're holding back?

**Ms. MacDonald:** The regulations under the current act are very circular and very difficult to apply, and they restrict municipalities in five categories with five sets of different corporations being able to hold land. To us, that's a major detriment. One of the first things that should happen is, when the regulations are written for the new provision, they need to be expansive enough to allow that corporation to run its own business, in effect, and if they can't hold the land—and we're thinking economic development corporations primarily. If they aren't in a position to make land available at the pace the private sector needs, the private sector goes elsewhere.

It takes time going through a municipal structure to deal with those, and if you had an economic development corporation that could hold certain assets for the specific purpose of economic development, they would be in a much faster role in terms of disposing of those or making them available to the private sector.

**Mr. Duguid:** I think that responds to my question. Do I have time for a second?

**The Chair:** Yes.

**Mr. Duguid:** The second question is with regard to the open-meetings provision. You gave an example of public-private partnership discussions. In your view, the provisions in Bill 130 talk about discussions that do not advance decision-making. This is a challenge for us, to really determine what does and what doesn't and to give municipalities the flexibility they need to be able to discuss things that should be in confidence. Do you have any other examples of issues that should be discussed in public that currently can't be but that the new legislation will probably provide?

**1640**

**Ms. MacDonald:** We see the new section that's being proposed, or the amendment to the closed-meeting provision, as really dealing with sort of strategic discussions. Again, trying to follow the intent of the legislation and be very clear that the municipality isn't advancing decision-making, it's difficult to use that provision to deal with, like, public-private partnerships. Because, really, you'd be setting up two different meetings, one in the closed session and then trying to discuss it in a public session to advance the decision making, and there still may be need to discuss some of that confidential information. I don't

think we see the recommended provision that's being proposed as sufficient enough to deal with what we consider the problem dealing with corporations.

Under the Municipal Freedom of Information and Protection of Privacy Act, there are clauses that say that the municipality has an obligation to protect records that contain competitive information, financial, business practices—anything relating to that company that was supplied in a confidential manner, and unfortunately, there isn't something similar for the verbal.

**Mr. Duguid:** Thank you.

**The Chair:** Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I wanted to touch on the same items as we just did, with a slightly different view. The ability to form corporations under the Corporations Act: Much concern has been expressed by the private sector at our committee about municipalities setting up corporations to go into business in the private sector, that they would set up a construction company to build roads—the city of Kitchener sets up a company to do work for the city of Waterloo under contract and, because they have the assets of the community to work with, they can underprice it artificially, because they don't have to pay taxes because they already own the land. Your suggestion is that that would make that worse, that in fact they could hold land so they would have tax-exempt land to work from to provide services for others. Do you see that as a problem?

**Ms. MacDonald:** If I'm understanding your question correctly, municipalities can do that now. So nothing is going to change. Municipalities currently can enter into contracts with other municipalities to provide services that they need. Typically, those services are not directly in competition with the private sector.

**Mr. Hardeman:** Yes, but presently they cannot set up an independent corporation under the Corporations Act and do the same thing.

**Ms. MacDonald:** No, that's correct, but they can do it now.

**Mr. Hardeman:** That's the concern of the private sector, that they will do that. All the information now becomes confidential because they're under the Corporations Act instead of under the Municipal Act, so they can do things that the private sector can't do and provide unfair competition. They really believe that they need to open it up and that it should be open as the municipality is that owns them.

**Ms. MacDonald:** The current regulation actually sets out—I think it's about eight or nine different situations—the purposes for which the corporations can be developed. As long as those purposes are very clear as to what the intent is, I don't think the private sector would have to be alarmed.

Our biggest focus is really economic development in terms of industrial parks that we would hold and trying to convey the land. If you go through the normal process internally, that may delay a private company developing as quickly as they want, so they may move on to other land. We want to be able to have economic development corporations that have the ability to sell the land fairly

quickly, without any constraints in terms of the timing process that we would otherwise have. It's not the intent to take on other businesses that would be in direct competition to the private sector.

**Mr. Hardeman:** The other one is on the closed meetings. You bring up an interesting scenario. Up until now, all we've heard is how this is going to open it wide, because you can discuss all other matters providing it doesn't further the decision-making process. You bring up the fact that if you have a discussion, and it doesn't further the thinking or the process within council, then there wasn't much sense in having that discussion. If you use that argument, then this clause would not include any further items that you could take into closed sessions. Is that right?

**Ms. MacDonald:** I think I sort of lost you on some of your analogy, but bear with me. I'm hoping I will touch upon it correctly. The reality is that the section that's being proposed may have some merit strategically but, taking the section literally, with all the current exemptions, I would think most municipalities are going to be very cognizant of the public's desire to know what's happening, so they should be very careful and methodical when they participate in discussions to ensure that they don't breach the requirement that they don't advance the decision-making. It's a little difficult to see how else it would be used.

**Mr. Hardeman:** Thank you.

**The Chair:** Mr. Prue.

**Mr. Prue:** I'd just like to get on to the open meetings. This is quite the bone of contention. Many people are of the opinion that there are too many closed meetings in municipalities, and if you talk to ordinary citizens, they often think that deals are cooked up behind closed doors and that the councillors and the mayor would come out and pass a resolution that was already agreed to inside.

I used to be a mayor and a long-time municipal councillor. We never had many difficulties dealing with business. You would send somebody like yourself or the treasurer or some senior bureaucrat out to make the deal. Council would set the parameters, they would send the bureaucrat out, the bureaucrat would come back with the deal, we would discuss it. We could do that in the open, we could do it in closed if it needed to be closed. How would this change it, other than getting all of council now involved in a decision?

**Ms. MacDonald:** I think the biggest change is, you're finding far more sophisticated companies out there with competitive positions, plus financial information that they feel they need to put on the table as part of the negotiations. In order to properly convey that to council, they would like that opportunity to participate in the discussions. It's not something they want to say publicly and it's not something they necessarily want to put in a written report. They feel there's an exchange of dialogue required and right now there is no true mechanism to do that.

This would allow them to come in and have that verbal presentation as if they'd put it in a written report. So it's really no different than what other statutes protect.

**Mr. Prue:** Okay. So it's the companies that are requesting this, you're saying, more than the municipalities?

**Ms. MacDonald:** One of them is the companies, but even from a municipality point of view, from time to time we will have business interests that involve our public assets and it's inappropriate and sometimes premature to raise it in a public forum until we see if it's even worth going down to the next step without having that discussion. We don't necessarily have the capability of having that discussion in a closed session.

**Mr. Prue:** But why is it necessary for all of council to be involved? This has been the norm in the past, to send a delegation off, usually a bureaucrat, after council has made a preliminary decision. Why is it necessary to have all of council privy to this?

**Ms. MacDonald:** Typically, at least in our scenario, all of council likes to know the details of the arrangement because they feel they're responding to the taxpayers and they have the obligation to completely know the details before they vote on it. I can tell you, across Canada, if you look at the municipal freedom of information legislation and closed-meeting provisions, probably about 50% or more of the provinces have a similar provision to what I'm suggesting. It's just making sure—it's a carry-over of the municipal freedom of information and protection provision to a verbal discussion.

**Mr. Prue:** But the other aspect, if I still have time, on closed meetings is also quite controversial. You've not touched on it. This allows members of council who are not present to vote by telephone or whatever else. I've raised the scenario of sitting on a beach in Acapulco with a drink in one hand and a cellphone in the other and voting at your local council meeting. Has your council taken a position—

**Ms. MacDonald:** This is on the electronic?

**Mr. Prue:** Yes.

**Ms. MacDonald:** In fact, it is in the written submissions. We believe it should actually apply to a closed meeting as well. It doesn't include a vote but it does include participating in a closed session, and one of your perfect examples is, you can have a public meeting, an issue comes up for which they seek legal advice, you go into closed session and the council members participating in the public component electronically are now precluded from participating behind closed doors to hear the advice. So when it comes back out in public session and the meeting carries on or whatever decision is rendered, that person hasn't got the benefit of the advice that was given. So we see it as an obligation or an ability for council to participate both in closed session and public session.

**The Chair:** Thank you very much. We appreciate you being here today.

#### HAMILTON CHAMBER OF COMMERCE

**The Chair:** Our next delegation is the Hamilton Chamber of Commerce. Welcome. Please make yourself comfortable. I only have one name here, so before you

start, if you could introduce yourselves if you're both going to speak, and the group you speak for. You will have 15 minutes. Please make yourselves comfortable. After you've introduced yourselves, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions.

**Mr. Dan Rodrigues:** All right, thank you. My name is Dan Rodrigues and I am representing the Hamilton Chamber of Commerce's government affairs committee. With me, and I'll do a brief introduction later, is current chamber president Len Falco.

**Mr. Len Falco:** Good afternoon.

1650

**Mr. Rodrigues:** The Hamilton Chamber of Commerce's government affairs committee is comprised of various business representatives that carry a passion for proper governance within the city of Hamilton. When there was mention of the potential for the creation of community councils, our committee added this to our list of priorities to become involved. Consequently, a sub-committee was formed and I was elected chair. Recommendations were created on the execution of community councils within Hamilton.

Normally, when an issue is raised and we require the chamber to create a policy, a committee will author a recommendation, which you have before you today, that would be approved by the committee prior to being sent to the chamber's board of directors. Once the board of directors views and discusses the document, the chamber would then either adopt or deny the recommendation from the committee. While the recommendation that you see before you today has yet to be adopted by the Hamilton Chamber of Commerce as a policy, I'm going to ask that you note our current chamber president, Len Falco.

**Mr. Falco:** Just to follow up on what Dan has said, this recommendation that's been put forth to the board of directors of the Hamilton Chamber of Commerce is actually being presented next Tuesday at the meeting and will no doubt be endorsed at that time. I just wanted to let you know that it hasn't formally been approved yet, but the presentation and the recommendations that you see before you will undoubtedly be approved.

Just to give you a little bit of background, prior to amalgamation the Hamilton Chamber of Commerce was very instrumental in making a presentation before the provincial-municipal transition board promoting the idea of community councils. We still feel that the community council concept is very critical to improving the overall situation and helping with the total amalgamation in order to have an effective amalgamation, especially with a city as large and diverse as Hamilton. So with this presentation, we're very much in agreement with some of the items in Bill 130 that relate to community councils.

I'll turn it back to Dan.

**Mr. Rodrigues:** As mentioned, it's yet to be approved by the chamber. We just want to indicate that what we're going to present is regarding the community councils, not Bill 130 in its entirety.

Prior to leading up this, I had attended a town hall meeting that was hosted by Councillor Art Samson of ward 13, which is essentially Dundas. The guest speakers were MPP Ted McMeekin and MPP Brad Duguid. Also in attendance were Councillor Dave Mitchell of ward 11, which is Stoney Creek and Glanbrook, various representatives of current community councils or committees from Ancaster, Glanbrook and Dundas, and members from the community of Waterdown and Flamborough. It should be noted that I was the only person there from Hamilton proper at the meeting. Also, members of the current Ancaster community committee carried much of the input in regard to the recommendation review as they were actively involved in their committee.

I also spoke with Dr. Andrew Sancton—he's been referred to quite liberally—from the University of Western Ontario to gain some insight into the reasoning and executional practices of existing community councils within Canada.

I have also researched some US communities and their existing community councils, as well as Halifax, Montreal—and, I should note, Toronto—and Winnipeg. I left that out of there and I apologize. Winnipeg offered probably the closest correlation to Hamilton, and I even spoke to a resident in Winnipeg in regard to their interpretation of community councils.

I've also reviewed Bill 130 and have attempted to interpret its dialogue and intent to ensure that there are some positive gains as it relates to community councils.

A brief history: Hamilton as a community achieved city status in 1846 and holds a rare marriage of topography and human settlement, one of only a handful of urban centres in North America that is tiered and encircles a bay of significant size to serve as an international port. Belonging within the Wentworth region, the city co-existed with the neighbouring towns and communities of Dundas, Glanbrook, Ancaster, Stoney Creek and Flamborough. Each of their neighbours holds their own roots of origin and pride in their name. Typical of the mindset of smaller communities, there are reservations about being a part of a larger municipality such as Hamilton. Prior to amalgamation in 2001, there was heated discussion over Flamborough, which was split earlier in 1974, with portions to Burlington and North Dumfries township.

The new city of Hamilton is now 65% rural lands—lands that were comprised of surrounding communities that had council representation greater than one or two members, which is the current councillor representation within Hamilton city hall. This perceived imbalance of councillor representation has led those in the suburbs, the old communities, to request that their decision-making powers be returned. Understanding—or not—that de-amalgamation is not going to occur, the reasoning would be to allow the communities to engage in active discussions and decisions that affect their areas. Through the leadership of councillors in wards 11, 12, and 13—Glanbrook, Stoney Creek, Ancaster and Dundas—community councils or committees were formed to actively

engage the citizens of those communities in the progression of Hamilton through their community. Similar committees were formed in Hamilton in ward 8, which is west Hamilton Mountain, and ward 9, which is upper Stoney Creek.

Our committee has recommended that the goal in establishing community councils is to be designed to hold uniform procedures that would see the successful progression of Hamilton as a city yet allow different policies as they relate to varying community needs. Bill 130 allows this.

Success in Hamilton is largely dependent on the health of the communities that make up the city of Hamilton. It is also dependent on the coordination of the communities, such as in transportation and certain planning things. Traffic issues are an example of an imbalance within the planning of living, working and playing within the communities.

We've included in the policy recommendation two concepts of a community council. The first option identifies community councils by either individual wards or by natural communities within a ward. This concept has merit through applications within the suburban boundaries, wards like Dundas and Ancaster wherein there is only one councillor representing there. However, the disadvantage of this would be the creation of too many community councils within the city. The second option of creating five community councils would meld neighbouring wards to work as one, a similar situation to most Canadian cities that hold community councils today. However, ensuring that each of the ward councillors within a specific community council appreciates the concept could create some push-back. In either option, those who participate on the community councils must be expansive thinkers regarding the city, versus focusing on the impacts on their community only. It is imperative, whichever option is adopted, that members of the community at large become actively engaged in the decision process as it would impact their community.

Our recommendation also touches on the need to review the existing ward boundaries as they reflect communities and growth within Hamilton.

As a conclusion, the Hamilton Chamber of Commerce's government affairs committee thanks the standing committee on general government for the opportunity to address you today. We understand that when creating a bill as complex as Bill 130, there are bound to be opportunities to address the finer details of its copy. We applaud the government for addressing the need to increase municipal responsibilities, as they are the front line to the taxpayers with respect to government representatives.

Just on a personal note, being born and raised in London, Ontario, we had a similar situation many years ago when London amalgamated with its neighbouring communities. Through the creation of community councils in Bill 130, I suspect that not only Hamilton will benefit but others like London and Cambridge would prosper as well.

**The Chair:** You've left about two minutes for each party to ask questions, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. Presently, as advisory bodies, community councils could be constituted in any community that presently exists by the local council. What's the suggestion of the chamber that would be different than this: that communities should be forced to have community councils, or that the upper tier, shall we say, the governance that's presently there, gets to decide where and how community councils would be set up?

**Mr. Rodrigues:** I believe, as it sits right now, we're recommending that we go with the five separate community councils, understanding that how they're comprised and what their duties are will obviously be approved by the city of Hamilton. Each particular community council would be comprised of two to three councillors. From there, they can have a citizen-appointed board within.

Our concern brought forward was that whatever we do for the suburbs must also be applicable within the city itself. So allowing a suburb the opportunity to do something should be allowed right across the city.

**Mr. Hardeman:** But presently, the intention of the act is to make it a permissive piece of legislation wherever possible.

**Mr. Rodrigues:** That's correct.

**Mr. Hardeman:** The permissive part of community councils is the fact that municipalities "may" set up community councils. Are you suggesting that this legislation should set up the community councils, the number of community councils and the services that they're going to provide and deal with, as opposed to the city making that decision?

1700

**Mr. Rodrigues:** No. We're perfectly fine with the city mandating and setting up and doing it that way. In my discussions, specifically with Dr. Sancton, he's indicated that certainly the suburbs will be the first to jump all over a community council concept and the way it is formed, and that it will take a little bit more time before the city or the inner—usually the downtown area is the last to jump on board as they're formed. Certainly, as it's written today, it's acceptable, as the city can mandate how the community councils are formed, and it allows each community council area to decide whether or not they want to have a community council.

**Mr. Prue:** In terms of the city councils, where do you see them fitting in, in terms of override? It's been suggested in some municipalities that the community councils would deal with all matters of a minor nature, and that those would not go to the city council. Do you see it the same way? They would have power to look at things like speed humps, where stop signs go, what sidewalks get repaired and that kind of stuff.

**Mr. Rodrigues:** I see a similar situation, very much. I see that as an advisory group with certain—I wouldn't call it powers, but certainly input towards the development within their community. So if we're talking about a

speed bump or whatever, it would be discussed at the community council level, and then it's just merely a rubber stamp at the city council level. Currently, if somebody in Dundas is proposing a stop sign at a particular intersection, the rest of the city councillors are going to look at the Dundas councillor and say, "What do you want?" If the councillor is on side, it's a rubber stamp, so working in that—

**Mr. Prue:** Would that were true in Toronto. I'm looking across at my colleague there. We used to get five binders about the size of this one here, and three of them would be from community councils. And people outside the area would oftentimes hold them. It was kind of bizarre.

What I want to know and what I want to be clear on is, where would the city intervene? Where would the whole council intervene? There's no sense, in my view, in setting up a community council if it's going to be second-guessed by the council downtown.

**Mr. Rodrigues:** I would expect that any recommendations the community councils bring forward to the city council would only be those that impact the city as a whole. So if a particular community council was looking at doing free parking on a particular street in a neighbourhood that had no impact whatsoever on the rest of the city, that could be dealt with at the community council level.

**Mr. Prue:** And that would be without a downtown override?

**Mr. Rodrigues:** Exactly.

**Mr. Prue:** Okay. Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I want to thank you for coming forward today and for your previous participation. I want to say that I am extremely optimistic when I see the input that we've received from residents across the city of Hamilton, the interest that residents are taking on all sides of the debate. It just shows how much the people of that region care about their community.

It's tough, because with forced amalgamation, as Mr. Prue and I experienced in Toronto, the wounds run deep. The emotions are still in place, and it's difficult to move on and do the best you can to ensure that local needs are being looked after and that local creativity can continue to be part of decision-making, yet ensuring that the city as a whole moves forward as well, both financially and in terms of quality of life.

I want to ask you, do you share my optimism that the people of Hamilton will be able to use these new powers to create a dynamic that's going to allow that to take place?

**Mr. Rodrigues:** Well, I'd have to say, being a Hamilton guy—I'm not from the suburbs—I look at this as a golden opportunity to grab this and create something that's going to just make Hamilton itself a much more successful city, from a personal standpoint. I think, through the chamber's support—certainly they see the same thing; they share the same vision. We run with 15 wards and probably 12 different visions, and through

community councils and the melding of this, we would bring the focus a little bit more into tune. That would help us only move forward.

**Mr. Duguid:** Thank you for your leadership in this. It's much appreciated.

**The Chair:** Thank you, gentlemen, for being here.

#### AIRPORT TAXICAB (PEARSON AIRPORT) ASSOCIATION

**The Chair:** Our next delegation is the Airport Taxicab (Pearson Airport) Association. Welcome, gentlemen. Make yourselves comfortable. If you're both going to speak, could you say your name for Hansard and the organization you speak for. After you've introduced yourself, you will have 15 minutes. If you leave time at the end, there will be an opportunity to ask questions of your presentation, and we do have your letter in front of us.

**Mr. Karam Punian:** My name is Karam Punian. I'm from the Pearson International Airport taxicab association. On behalf of the president of the Airport Taxicab (Pearson Airport) Association, I request your very careful attention to a matter of grave concern to the whole airport taxicab and limousine industry. The proposed Bill 130, the Municipal Statute Law Amendment Act, 2006, is intended to introduce changes that very clearly have a negative impact on the exceptional, excellent customer service being provided by the airport taxi/limo industry to the travelling public, to and from the airport.

Several years ago, because of the extreme public interest in a professional, reliable taxi/limousine service to and from the airport, the pre-arranged pickup privilege from different municipalities was entrusted to the airport taxis and limousines. Years of tremendous hard work, dedication and considerable investment by the airport taxi/limo operators has established a system of excellence, which is one of the best in the world.

From time to time, the majority of the travelling public has endorsed the exceptional professional customer service to and from the airport by the airport taxi/limo operators. Various studies, surveys and especially the 1990 Bartlett report have reported and supported that the present airport taxi/limo system that has evolved due to the provisions laid out in the Municipal Act is in fact to the benefit of the public interest.

Taking care of the customer choice, the airport pre-arranged pickup by the non-airport licensed taxis and limousines was never ever objected to by the airport taxi/limo operators. The intended changes in the proposed Bill 130 will have a significant adverse effect on the livelihood of the airport taxi/limo operators. It will have a very ruinous impact on the quality of customer service currently being enjoyed by the travelling public.

On behalf of all the airport taxi/limo operators, I humbly request you to protect the public interest and the livelihood of the airport taxi/limo operators and further request that you may kindly ensure that any proposed changes in the Municipal Act should not disturb the

existing high levels of service being provided by the airport taxi/limo operators.

We just checked today the pre-arranged pickup from the airport. On Friday, Sunday and Monday, there are over 1,000 pre-arranged pickups by the Toronto-based companies from the airport. On the other four days, they pick up 600 pre-arranged trips from the airport. The airport has over 636 cars; 82 of them have Metro-based licences. The rest of them are from the different municipalities. At the airport, there are over 10 brokerages, including the limousines and taxis, and each brokerage has over 100 charge-account customers. I mean that the charge-account customer is pre-arranged by the corporations operating in Toronto and surrounding areas.

There are big companies involved, like the Royal Bank and financial corporations. Over 2,000 individuals are working in the industry at the airport in limousines and taxis. Just recently, the airport authority issued 40 new licences; 30 of them were given to the Toronto-based companies.

**1710**

I serve my company as a secretary and director. Our bylaws and constitution forbid us to pick up any customer from Toronto and any other municipality who is not pre-arranged. Toronto has close to 5,000 taxis and the airport has close to 636. In this pattern, we have no objection—to stop or ban—to the Toronto taxis from picking up at the airport. At the same time, for the customer service we want, there should be no negative effect on the airport cars in Bill 130, so that they can pick up their pre-arranged fares in Toronto and the surrounding areas. Thank you.

**The Chair:** Thank you. You've left about three minutes for each party to ask questions, beginning with Mr. Prue.

**Mr. Prue:** This government, in a bill earlier this year that I believe your taxi industry supported, granted you a virtual monopoly at the airport. It was called the anti-scooping bill and it makes it literally impossible for Toronto cabs to pick up at the airport. Did you support that bill?

**Mr. Punian:** Well, that bill was not for Toronto taxis; that was for unlicensed taxis, as far as I know, so we supported the bill. The taxis, whoever is providing the service to the customer, should be properly licensed and insured and must meet the safety standards. Yes, we do support that bill.

**Mr. Prue:** That bill requires that they pay \$12 or \$15, I believe it is, to sit in a line in order to pick up the pre-arranged fares.

**Mr. Punian:** No, that's not in the bill. That's the Greater Toronto Airports Authority's pre-arranged policy. There's nothing in the bill like that.

**Mr. Prue:** Toronto taxicab drivers say that it's virtually impossible for them to scoop at the airport, but the airport limousines often scoop Toronto fares downtown. They tell us stories of what they call "cookies" passing between airport limousine and taxi drivers to the doormen at hotels in order to get lucrative driving. Does that ever happen?

**Mr. Punian:** No. Let me tell you, I said in the last hearing and I am telling you again today, I served as my company management team member three times. All the regulations and bylaws of all the brokerages are the same. In our constitutional bylaw, no car can pick up—they cannot even go to the hotels. In the last hearing, I provided that if you catch any of our cars, we will pay you \$5,000 as a reward if any of your drivers or yourselves catch any of our company cars picking up the fare by paying to the doorman. That's not true.

**Mr. Prue:** In terms of the bill that you got, and your association lobbied for and supported, the Toronto cabbies think this is fair. They think they're getting their own part back, that they can't scoop where you are, you won't be able to scoop where they are, and they'll be better off if we allow this section of the bill to go through. What do we say to the 5,000 cabbies who get virtually no rides to the airport—\$50 or \$60—from downtown?

**Mr. Punian:** Well, it's not in my hands. I believe it's not in your hand either. Transport Canada at one point issued certain licences to serve the public at the airport, and when the GTAA took over, they honoured the same permits under the lease. So under the airport authority, the Toronto cabbie or anybody else is free to pick up. The rule and regulation is put by the GTAA, not by us. As I mentioned in the beginning, in three days, the Toronto-based companies picked up over 1,000 pre-arranged fares from the airport. In regular days, they are picking up over 600 fares a day. So they are free to go. The airport is not in our hands. I believe that's their policy.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Thank you for your letter and for coming here today. I hear about your issues almost on a daily basis. My seatmate happens to be Vic Dhillon, and Mr. Dhillon almost non-stop talks to me about some of the issues facing your industry, so much of what you've said here I've heard from Mr. Dhillon.

The one thing I would ask, though—I'm looking at what you're saying here. This bill really isn't about scooping, cookies, illegal cabs, or limos versus taxis. What the bill does is give municipalities a general ability to license businesses or services that exist. It has to be done on a cost-recovery basis, so it's not a licence to go out and get revenues. It's a licence so that if there's a public service they'd like to somehow regulate, they could impose some form of licensing. It doesn't tell municipalities what they have to do.

When this bill passes, nothing that I'm aware of changes with regard to your industry. I guess my question is, what changes when this bill passes? Yes, municipalities will have the ability to license within their own communities. Toronto already has that ability and doesn't seem in a rush to use it at the present time. What really changes with regard to this bill?

**Mr. Punian:** We believe that before, it was the privilege, on the basis of all the municipalities, that airport cars were allowed to pick up the pre-arranged. Let

me give an example. Five years ago, there was a policeman in Toronto—I forget his name—who started giving tickets to each and every car, regardless if it was pre-arranged. Then we had to go to court and explain to the judge. None of us was ever convicted. There were no fines. We feel that it was just harassment, because we were putting in our time and our money.

We do appreciate clarity in the bill. As it was before in the Municipal Act, no municipality could pass legislation that—in the past, it meant the Transport Canada permit or the GTA permits—stopped them from picking up the pre-arranged. So that's our grave concern. We have had that experience in the past; we don't want any trouble in the future. Let's say there's a customer in the car, the flight has 45 minutes until it goes, and someone stops the car and says, "Oh, the piece of legislation says that you cannot do this."

We want clarity. We want our status as a public service. It's good for the public, it's good for you, it's good for us.

**Mr. Duguid:** The service that you provide, as you said, is a valuable public service. I've heard of no municipality—in fact, I've heard mayors like Hazel McCallion speak in favour of ensuring that limo services are provided in cities like Mississauga. Are you aware of any municipalities that have considered or are considering doing anything that would be harmful to your industry?

**Mr. Punian:** If you're opening up one special bill, our fear is, if there is no clarity, or if there are amendments or anything, it can disturb the operation, it can disturb customer service. Our concern is, if you're going to rewrite or amend something, it must be black and white. We don't want trouble for ourselves, we don't trouble for drivers and we don't want trouble for customers.

**The Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. I guess I'm the odd person out. I'm not from Toronto, and we don't have a lot of problems in my part of the country with cabs, except getting one when you need it.

You said that you have concern that this bill will be damaging to your industry. Could you explain to me the part of the bill that you are concerned will change the way you do business and that will hurt your industry?

**Mr. Punian:** Let's say this bill gives the power to municipalities to regulate business operations—let's say the taxi business industry. They could regulate that only municipal cars licensed under their bylaws are allowed to pick up the pre-arranged. Now, the airport is protected under the Municipal Act of Ontario, not the city bylaws. So our fear is that if you give the power to the city of Toronto and there is no clarity, that it's a grey area, then, to me, they can have their own bylaw, which could create trouble for us.

**Mr. Hardeman:** But if the municipality—if Toronto decides that they are going to change the way they do business, they could in fact have a bylaw that requires your industry to be licensed in Toronto.

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**Mr. Punian:** It's not only the licence issued; it is the individual plate issued too. To get the licence as a company is a different thing. As I mentioned in the beginning, there are 636 cars working out of the airport; 82 of them are from Toronto and some are from Mississauga and Brampton. They're from all the municipalities. So we feel that if, in the same way, it goes to Toronto council, they can put it so that the pre-arranged can only be picked up by Toronto cars and the rest of the 500-plus cars, we believe, will be in trouble.

**Mr. Hardeman:** So today, your airport service doesn't need to be licensed anywhere?

**Mr. Punian:** No. We need to be licensed by Transport Canada, under the GTAA, and we need to be licensed by the municipality, whether it's Toronto or Mississauga or Markham. We have to have two licences: one from the municipality and one from the airport authority. But the only privilege is that we are allowed to pick up pre-arranged fares as long as they're going back to the airport. So we feel that after this bill, that privilege is in danger.

**Mr. Hardeman:** So your concern is that Toronto would just eliminate your ability to pick up fares in Toronto and take them back to the airport.

**Mr. Punian:** Exactly.

**Mr. Hardeman:** Is there any reason why they would do that?

**Mr. Punian:** We don't know. Mostly we're hearing from the industry, we're hearing from the media. If you look at the taxi industry—we've been hearing this for years and years—it can go any way. If you're opening the legislation, it can go any way as long as things are not clear there. The only request we're making is that things must be black and white and clear. It's good for the city of Toronto and it's good for us.

**Mr. Hardeman:** Thank you.

**The Chair:** Thank you very much, gentlemen, for being here today on such short notice.

#### ONTARIO MUNICIPAL ADMINISTRATORS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Municipal Administrators' Association. Welcome. Thank you for being here today. I know you've been here before, so you know the drill. If you can identify yourselves and the organization you speak for, you will have 15 minutes. If you leave time at the end, we'll be able to ask you questions about your delegation. We have your presentation in front of us.

**Mr. Steve Robinson:** Good afternoon. My name is Steve Robinson. I am the chief administrative officer of the town of Cobourg and a member of the board of directors of the Ontario Municipal Administrators' Association. With me is Nigel Bellchamber, the part-time general manager of our association. He's also a former CAO.

Our organization represents nearly 200 chief administrative officers and city or town managers from across

the province, from Cornwall to Toronto to Sioux Lookout.

We've had the opportunity to participate in the consultations on the Municipal Act leading up to Bill 130, and we certainly appreciate the co-operation of the Ministry of Municipal Affairs and Housing staff in that regard. Many of the recommendations that came from us and others during that process have been incorporated into this bill. We congratulate the government for moving ahead towards a more trusting relationship with municipal government. But as you may expect, we have several concerns—five or six topics, actually—and we would like to present those to you today, along with some suggestions for improvements in the bill.

One of the first ones has to do with the head of council. While many of our members would prefer to see the term "chief executive officer" in reference to the head of council eliminated from the act because it has been a source of confusion and sometimes conflict for councils, we are pleased to see that, in retaining it, the bill clarifies that it signifies a political leadership role rather than an administrative one.

But the bill then places in subsection 98(2) an unusual obligation on the head of council. This is an obligation to advise and make recommendations to council with respect to ensuring that administrative and controllership practices, policies and procedures are in place, along with procedures to guarantee the accountability and transparency of the municipality's operations. Our first reaction was that there must be an error in the drafting and that this responsibility was intended to be placed on the CAO in section 229, since provision of managerial and technical advice to council is a staff role. Of course, if council does not like his or her advice, it can seek outside professional and technical advice; and if it still doesn't like the advice, they can seek a new CAO.

Heads of council are not typically trained nor resourced for this role, and we suggest that the bill be amended to transfer this responsibility to the CAO, if one is appointed, or to delete this section entirely and leave the responsibility with council as a whole, where it now is, rather than impose this obligation on the head. This was not an issue raised during consultations, and it has the potential to once again muddy the relationship between senior management, council and the head of council.

In the bill there are a number of policy requirements imposed upon municipalities that in themselves are not unreasonable. However, as the bill is currently drafted, it does not permit councils any time after passage of the bill for their consideration, development and implementation. That is neither practical nor reasonable. Across the province new councils will just be having their first full meetings in January. There needs to be a period of time in which councils can learn about their organizations and consider policy parameters and recommendations from staff. We encourage that at least a year be built in for this element, similar to what happened in the Municipal Act, 2001, transition.

Accountability issues are next, and there are also several other accountability provisions in the bill that we would like to comment upon. These include the optional requirement for a municipal ombudsman and the mandatory requirement for an investigator into allegations of inappropriate closed meetings.

As the bill is drafted, if a complaint is received and the council has not appointed an investigator, the provincial Ombudsman automatically becomes that investigator. As mentioned here, we're dealing in many cases with brand new councils, and on top of that now a brand new concept. It is only appropriate to give councils time to consider the option presented to them and how they might implement it before requiring it to be in place.

With respect to the appointment of a municipal ombudsman, we agree that the way it's drafted now, being optional is certainly appropriate. We understand that it has been suggested that the provincial Ombudsman be granted jurisdiction generally over municipal affairs, and we would counter that there is no evidence to support the need for a mandatory ombudsman for every municipality in the province.

The office serves a very useful function at the provincial level. Given the complexity of administration and the distance that most Ontarians find themselves from the workings of Queen's Park, it is only appropriate that there be provision for citizens who have exhausted every other opportunity for redress regarding maladministration to be able to request the services of the provincial Ombudsman.

But as was recognized when the provincial office was first established, municipal government is much closer to the citizens that it serves. In most communities, not only do citizens know exactly where municipal administration is located and where services are delivered, they likely will be personally familiar with at least one and maybe more of their municipal councillors. In fact, as you know, in a town the size of Cobourg—20,000 people—they know where we live, where we shop, where we get our hair cut. We have all kinds of people talking to us all kinds of times about what happens. There is a great relationship.

I submit that the ability to file an informal or formal complaint is much greater and the layers of red tape much fewer at the local level. We don't see any justification that would warrant a one-size-fits-all approach to ombudsman services in the local government in Ontario.

One of the new elements in this bill is the requirement in section 270 related to the protection of property and civil rights affected by municipal bylaws. It's not clear from conversations we have had as to exactly what that might mean. Consequently, we do not understand what the benefit is to the ratepayers in our communities. We would suggest that that section be deleted, or at the least deferring proclamation of the bill until such clarification can be achieved.

Another concern is about the new ability of the provincial government to declare a provincial interest and suspend a bylaw for a period of 18 months. We believe

that this is an authority that would be difficult for the province to use. From a practical political point of view, it would be difficult to actually step over those bounds. From a philosophical point of view, it certainly seems to fly in the face of the new, more mature relationships that we're trying to establish. In terms of business arrangements with the private sector, it would surely result in the other party being less willing to make an arrangement without being appropriately protected against the risk of a program suffering a surprise provincial veto, hence increasing the cost of doing business and stifling innovation, or both of those. It would not harm Ontarians if this authority were removed.

I know you've heard before on the subject of open and closed meetings, and our organization is certainly supportive of conducting municipal business in public. We note that you have had many suggestions from others with respect to mechanisms that would allow for in camera, technical and other briefings for councillors, which would include the ability to ask what some might perceive as dumb questions in a forum that would not subject the person asking the question to potential public embarrassment, particularly an issue for those new in their political careers. This is a high-profile issue right now because we have new councils that we need to do orientation with. I'm sure you can all understand what it would be like, for instance, if you're newly elected to the Legislature, to have your briefings done in public. It certainly changes the kinds of questions that are asked.

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In some circumstances, the current provisions regarding closed meetings would enable these discussions to take place, but we would agree with the drafters of Bill 130 that there is a need for a general provision for briefings on an unrestricted basis that we would expect councils to use sparingly but appropriately. Otherwise, as I've said, municipal councils will continue to be the only levels of government whose confidential briefings cannot be provided, as a general rule, to allow for free interchange of information between politicians and their staff.

Municipal government already conducts a significantly greater deal of its decision-making in public session than does either of the provincial and federal levels of government. To recognize that there's a need for free exchange in briefing and training sessions would not significantly alter the very high degree of public accessibility that currently exists.

As I said in the beginning of this presentation, we very much support the broader approach to powers and the greater recognition that municipalities are responsible and accountable governments. Our recommendations have been made in that light.

Municipalities may make a few mistakes in exercising their broader powers. With the hundreds of thousands of individual decisions that 445 municipal governments across Ontario make every year, there will inevitably be decisions that, in hindsight, give cause for concern. There always have been and always will be. However, we will learn from one another, as we currently do, and encour-

age the province to give our municipal governments the ability to learn, to experiment and to excel. Our members—the Ontario Municipal Administrators' Association—are keen to be part of this evolutionary phase of local government in Ontario.

**The Chair:** Thank you. You've left about a minute and a half for each party to ask questions, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you for your presentation today and your ongoing input with the ministry. I guess I'll start off with what I see as sound advice coming from your part when it comes to some of the decisions you'll have to make when, assuming passage through the Legislature, this act comes into force, and that includes decisions like the appointment of an investigator on public meetings. We've heard from others with respect to that as well and we're very seriously considering the advice in terms of the timing. I can let you know we're having a good look at that. I can't say anything further at this stage because we're still looking at it, but I'm very optimistic that we'll be able to address some of the concerns with respect to timing.

I guess the other question I had for you is with regard to the provincial interest aspect. The province obviously needs to ensure that it protects the provincial interest as we move forward, in particular with a new act that municipalities may interpret in different ways in terms of what their jurisdiction is and is not. Without some form of—you called it a veto. I wouldn't say it's a veto; I would say, though, it is an opportunity, when a provincial interest is at stake, for the province to be able to put a hold on what's going on and, if necessary, 18 months down the road or whenever, pass legislation. Do you have another mechanism in mind that would allow the province to account for the provincial interest?

**Mr. Robinson:** Historically, one of the mechanisms, of course, is the fact that this is a duly elected form of government. When they make decisions that are not in the public interest, those politicians normally bear the brunt of that in the next election.

I don't know; do you have anything else to add in—

**Mr. Duguid:** I'm sorry. If I said "public," I meant "provincial interest." I may have misspoken.

**Mr. Nigel Bellchamber:** I think there are some other examples where the provincial interest is stated up front, and I think the way to deal with this effectively would be if the provincial interests were stated up front rather than parties entering into negotiations, discussions and perhaps a business arrangement, contractual relations, not knowing what that provincial interest might be. I think stating it up front, as it's done in some of the planning legislation, rather than having it—

**Mr. Duguid:** We've entered into an interesting discussion, but my time is up, so I can't continue.

**The Chair:** Your time is up. Maybe Mr. Hardeman will leap on that opportunity.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, I noticed you spoke to the timing of the bill. A lot of things could not be completed in time

for its implementation. There seems to be a supposition there that we know when it's going to be implemented and when it's going to be passed. I know it has been suggested that the government would like to have it passed before the end of the year, but with all the discussion we've had and all the presentations we've had, and there are so many things that the parliamentary assistant has suggested that they're still looking at, I expect it could take until the first part of next year before they get to the point where it's ready for final presentation to the Legislature.

I just wanted to ask about the part where you speak to the ombudsman. I'm reading the line "and we would counter that there is no evidence to support the need for a mandatory ombudsman for every municipality in the province." In fact, the way the bill is presently written, there is a mandatory ombudsman for every one in the province because, in fact, if you want to appoint one, you may; if you don't, the provincial Ombudsman automatically becomes the ombudsman for that municipality. If a citizen has a complaint and you don't have an ombudsman in the municipality, that citizen can ask the Ontario Ombudsman to look into it, according to this legislation, and deal with it. I'm just wondering if I have a different view than you do on that and if you could explain that to me.

**Mr. Bellchamber:** I think our understanding of the bill as it's drafted is that if the municipality doesn't appoint an investigator around the closed meeting issue, a complaint about closed meetings automatically defaults to the provincial Ombudsman. But the ombudsman for local government services for Bill 130 is an optional provision, so that's the only time that the Ombudsman automatically, by default, comes into play. We know that you've had recommendations or submissions that say there should be an ombudsman automatically for all of Ontario. We would suggest that we don't see the evidence to support that.

**The Chair:** Mr. Prue?

**Mr. Prue:** Yes, just the assertion here—this is more technical than anything—where you say that, "Municipal government already conducts a significantly greater deal of its decision-making in public than does either of the provincial or federal levels of government." Surely that has to do with the responsibilities for cabinet secrecy and responsible government more than anything. Apart from a caucus meeting, I don't think I've ever been to a private meeting in my five years here. I've never even participated in one.

**Mr. Robinson:** Yes. You're right: There are cabinet meetings and so on, which are not available to municipal government, which is why we end up doing some of our business in an in camera session. In our organization, we're not talking about people who want to do a lot of business in closed session, and we don't do a lot of business—if you ask me, "How many in the course of a year?" I would say it depends on what the issues are that year. For instance, in our town, we have had a significant brownfield problem with an old tannery and we've had to

get a lot of legal advice and so on on that. That has meant a lot of times we've had to go into a closed session and get that kind of legal advice, because if you don't get it in closed session, you're then telegraphing your next move to the person who has let this place become—who has walked away from it, it's contaminated and so on. I think everybody can appreciate that. But the whole idea of an orientation session I think is not an unreasonable request—to orient councillors new to the process. Many of them have been to very few council meetings. In order that they can really get an understanding of that and ask the kind of questions they need to ask and so on, I don't think that it is unreasonable to have an orientation session.

**The Chair:** Thank you very much for being here today. We appreciate your time.

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#### ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Home Builders' Association: Mr. Johnston. Welcome. Thank you for being here today. We have your documentation in front of us. You have 15 minutes to speak. If you could identify yourself and the organization you speak for. If you leave time at the end, there'll be an opportunity for us to ask questions. After you begin speaking, I'll begin my timer.

**Mr. Brian Johnston:** Ms. Chair, members of the committee, good afternoon. My name is Brian Johnston and I am president of the Ontario Home Builders' Association. I am also president of Monarch Corp. Our company has built more than 30,000 new homes and condos across the province since the company started building in the province in the 1930s.

Monarch is a member of the Greater Toronto Home Builders' Association, the Home Builders' Association of Durham, the Hamilton Halton Home Builders' Association, the Ottawa Carleton Home Builders' Association and the Waterloo Region Home Builders' Association. I also serve on the board of directors at the Taron Warranty Corp.

I am a volunteer member of the association and appreciate the opportunity to speak to you today. Joining me on my right is Mike Collins-Williams, who is the manager of government relations at OHBA.

The Ontario Home Builders' Association is the voice of the residential construction industry in Ontario. It includes 4,000 member companies organized into 31 local associations across the province. Our industry represents 5.6% of the provincial GDP and contributed approximately \$25 billion to the province's economy last year.

OHBA is currently working with the Ministry of Government Services, the Consumers Council of Canada and the Taron Warranty Corp. to resolve the issue of delayed closings. I have had the pleasure of sitting on the delayed closings committee and, as we work towards a

solution, it is our objective to structure a new regime that will address purchaser concerns in a way that is not unfair to builders.

I want to sound one note of caution, however. During the deliberations, it became apparent that many of the delays imposed upon purchasers are not a result of builder delays; they are caused by municipal and provincial procedures that seem to operate in a vacuum. There almost seems to be a belief by some agencies that delays are okay because it's only an inconvenience to a builder or a developer, which of course is untrue in situations where homes are pre-sold to buyers. These concerns have been relayed to the Ministry of Government Services and the Minister of Municipal Affairs and Housing.

It is our new home purchasers who truly drive this industry, and we must always place them first and foremost in all of our industry and public policy discussions.

OHBA would appreciate your consideration with respect to a number of concerns with the proposed Municipal Statute Law Amendment Act.

Over the past couple of years, the development industry has been drastically impacted by this government. The greenbelt, Places to Grow, building code changes, OMB reforms, the Clean Water Act and other reforms have changed the way that we in the development industry do business.

I think it says a lot about our industry that we've been consistent in our position that we are in favour in principle of many of the legislative changes. We live here, and quality of life is important to everyone in our industry.

We've been equally vocal that while these changes are needed in order to manage and accommodate future growth, it is imperative that we offer Ontarians a broad choice in housing forms and allow them to make a choice based on their individual lifestyles.

OHBA initially became involved during the consultation period for Bill 53, the City of Toronto Act, which essentially served as a blueprint for Bill 130. Our primary concern with the City of Toronto Act was the additional taxation powers that were granted to the city. OHBA was concerned that the province had not addressed the fiscal imbalance between Toronto and Ontario and that the city would have no choice but to raise taxes on the business community and threaten the future economic prosperity of the city. While we have some sympathy for the city of Toronto, we don't believe their cause is helped by the fact that there has been no concerted effort to examine where spending is wasteful or duplicative. Has any one of us heard about city of Toronto cutbacks? Has any one of us heard of actual disposition of surplus assets, such as land, by the city or by agencies such as the TTC?

With that in mind, let me thank the government for listening to our concerns when Bill 130 was drafted. Citizens from across the province can be assured that municipalities will not have the power to levy additional taxes on the business community. Specifically, the residential construction industry is opposed to a municipal

land transfer tax being levied on top of the existing provincial land transfer tax.

OHBA is, however, troubled that, in the months following the introduction of Bill 130, the government has proposed a municipal business corporation regulation that would enable municipalities to potentially charge a backdoor tax on businesses through municipal corporation levies. We are concerned about the accountability of municipal business corporations and the potential political interference that may occur if politicians can sit on the boards of municipal business corporations.

OHBA questions the intent of the government in providing municipalities with the broad authority to establish business corporations for any service and/or facility that the municipality itself could provide and subsequently give those corporations the authority to use a levy for economic development services with a definition that includes transit, housing, land redevelopment, parking, BIA-type services and facilities for arts and heritage.

This rather open-ended proposal will create uncertainty for the business community and may reduce housing affordability across Ontario. OHBA recommends that municipalities not be granted the broad authority to create municipal business corporations with the power to charge levies of any kind.

It was our understanding that after over a year of consultations on Bill 53 and Bill 130, the government had clearly understood the grave concerns of the business community regarding broad municipal powers to levy additional taxes. We strongly believe that there is enough money in the existing system; it is a question of how the three levels of government distribute revenues and responsibilities. The government must never lose sight of the fact that there is only one taxpayer.

OHBA is concerned that the schedule in Bill 130 regarding business licences is too broad in the authority it will grant to municipalities. For the business community and for the residential construction industry in particular, business licensing is at best a tax grab and at the very worst an additional level of bureaucracy.

OHBA recommends that home builders be exempted from business licensing by regulation in Bill 130 because we are already licensed through the Tarion Warranty Corp. To frame this recommendation, I will provide you with a brief background on the Tarion Warranty Corp. and its involvement with the licensing and regulation of the home building industry in Ontario.

In 1976, the Ontario Ministry of Consumer and Commercial Relations established the Housing and Urban Development Association of Canada warranty program, which evolved into the Tarion Warranty Corp. Tarion is the licensing and regulatory body mandated to administer the residential construction industry in Ontario. Tarion guarantees the statutory warranty rights of new homebuyers and regulates new home builders under the Ontario New Home Warranties Plan Act. As the regulator of Ontario's home building industry, Tarion registers home builders, enrolls new homes for warranty coverage, investigates illegal building practices, resolves

warranty disputes between builders and homeowners, and establishes customer service standards and construction performance guidelines for the industry.

Tarion is not dependent on government funding, as it is financed entirely by builder registration renewals and home enrolment fees. Tarion is an unparalleled success, as confirmed by the 1.3 million homes enrolled in the program to date. By law, every builder working in Ontario must register and enrol all the homes that they build. In situations where a builder does not meet the established standards, Tarion has the authority to step in and resolve the issue and to deregister or take legal action against the offending company. Tarion is in the best position to provide the necessary protection to both consumers and builders and set the standards by which the home building industry must abide. Furthermore, it is our submission that as Tarion is successfully discharging its mandated functions, further duplication of licensing for home builders by a municipality is redundant and unwarranted. As the Tarion Warranty Corp. currently governs and licenses home builders in the province, we recommend that the province pass a regulation to exempt home builders from being subject to business licensing.

Here's our prediction: If the government doesn't do this, municipalities will establish licences as a means of raising revenue. Then suddenly someone will decide that a bureaucracy is required to monitor compliance with these licences, net revenues will decline, and we'll be faced with another level of bureaucracy that duplicates what Tarion is doing already.

OHBA remains concerned about the fiscal imbalance between municipalities and senior levels of government. Municipalities are faced with responsibilities that extend beyond their ability to raise revenue. OHBA believes that social programs are a provincial responsibility and should not be funded through property taxes. We are a strong supporter of infrastructure investment, and with few financial resources available, municipalities are not making adequate investments in this sector. Let us say this: Given a choice between user-pay infrastructure such as toll roads or none at all, we will always support user-pay infrastructure. Despite its critics, Highway 407 has been successful in delivering the goods. Furthermore, as local politicians are reluctant to face voters following property tax increases, they are always knocking on our door for funding by increasing development charges, building permit fees, planning fees and section 37 agreements. Is it just me, or is it not true that the nicest city halls are located in the fastest-growing communities?

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OHBA strongly supports the provincial-municipal fiscal and service delivery review aimed at improving the delivery and funding of municipal services. It is our hope that the review will assist to correct the fiscal imbalance and assist to reduce municipal taxation pressure on the business community. The voting public and all political parties should have full disclosure of the various options presented by the review.

Finally, let me touch upon something that plagues our industry and we're having trouble finding anyone to

oppose us on; that is, the act of illegal building. In this province, any new residential building must be done by builders registered with Tarion. Through various means, either legally or illegally, there are approximately 8,000 houses each year that fall outside the purview of Tarion. Accompanying some of these starts are unreported taxable income, unremitted GST and PST, unpaid WSIB premiums and unsafe building practices.

We have approached the Minister of Municipal Affairs and Housing to suggest that a task force be set up to study this problem and propose solutions. We are pleased by the positive response we received and hope to have this task force up and running in the new year.

In closing, I'd like to reiterate that, as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. It is in the best interests of all Ontarians that the provincial government work with us to ensure that the new housing and renovation industries continue to thrive.

Ms. Chair, members of the committee, I would like to thank you for your attention and interest in our presentation. We look forward to hearing any comments or questions you may have.

**The Chair:** You've left just over a minute for everybody to ask you a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. First of all, I wanted to commend you for your position on the provincial-municipal realignment study as I agree with that totally.

I wanted to ask a question quickly on page 3 of your presentation: "We are concerned about the accountability of municipal business corporations and the potential political interference that may occur if politicians can sit on the boards of municipal business corporations."

**Mr. Johnston:** This issue just kind of popped up—

**Mr. Hardeman:** That's the first time I've heard that in all the committee hearings we've had so far. I'm just wondering what—

**Mr. Johnston:** I think it's what we don't know that's concerning us, as opposed to what we do know. It appears, based upon our reading of it—and maybe, Michael, you can comment further. As we went through the regulation, it appeared that there was this sort of hidden ability for municipalities' subsidiary corporations to impose levies on the development industry. Is that a fair statement, Michael?

**Mr. Michael Collins-Williams:** Yes. Essentially we're concerned that if politicians are on municipal business corporations, there could be some interference. Anything that we've seen on the regulation is fairly preliminary, so we just wanted to raise the flag here that there would be concerns of political interference, especially if there are going to be levies attached on to some of the activities that they're doing.

**Mr. Hardeman:** I wonder, Madam Chair, if I could ask the committee, not the delegation, if we could get some information on that. This is the first time I've heard

that and I find it concerning, so I wonder if we can get an explanation from legislative research as to what this section actually does.

**The Chair:** Thank you. Mr. Prue.

**Mr. Prue:** I'm curious. On page 4, you don't want municipalities to set up corporations, or you question them setting up corporations, and you include a whole bunch. I think the city of Toronto has a corporation already for all of these. Transit: They have TTC. Housing: They have the housing authorities. Land redevelopment: They have Tedco. Parking: They have the Toronto Parking Authority. BIA-type services: They're partners in all of the BIAs already. Facilities for arts and heritage: They already have those as well. I'm curious why you wouldn't want them to set those up, when they already have them.

**Mr. Johnston:** No, we're not advocating the dissolution of all those organizations. Our concern is the ability of these corporations to levy—and let's call it a development charge. Just to be clear, it's not 100% crystal clear that those are the implications of the regulations, but we're raising red flags because our read of it was, this doesn't look like something we want. For example, we don't want municipal corporations, whether they're constituted today or going to be constituted, levying development charges or some other type of levy on the development industry because they've been given the power to do so. It's not the corporations themselves we have a problem with.

**Mr. Prue:** Okay. Thank you.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** I think a lot of the concerns being raised by a variety of sectors are probably based more on fear of the unknown, as you said earlier, than fear of the known. There are some unknown entities to this. We're taking a permissive rather than a prescriptive approach with municipalities, which does give them the ability to reach out and do certain things in their community. But one thing I can assure you of, and I think it's a very important point, is that the licensing ability being given to municipalities is contingent on cost recovery, so the concerns expressed in your presentation about tax grabs and that kind of thing—it really should not take place. Municipalities may have an opportunity to look at certain elements of businesses and say, "Well, there's a public interest to our regulating it in one way or another," but I've heard no municipality talk about the building industry in that respect. I guess my question would be, have you heard any speculation about that?

**Mr. Johnston:** The issue came up, and we caught wind of this, obviously, probably six or eight months ago, and we actually had addressed the minister about this. He told us, "Go talk to the mayor"—the mayor of Toronto specifically—"and ask him what his position is on this issue. If he wants us to withdraw it, we'd love to hear about that." Well, he did not agree to our request to make a request to withdraw it.

Let's be honest. I suspect our concern is the city of Toronto, which has obviously got a very large fiscal

deficit. They're going to be looking for ways to raise money. Why not license the home builders? We're saying, "We're already licensed; we're already being regulated by Tarion. Leave us out of it, thank you very much."

**Mr. Duguid:** Well, just again the assurance: Even in the City of Toronto Act, they don't have the ability to go out and get revenues by licensing home builders. It would have to be something that would be a service to be provided that would have to be cost recovery, but—

**Mr. Johnston:** But I guess we would bear the cost.

**Mr. Duguid:** —the city of Toronto does have the ability to tax in a variety of different areas which aren't in this particular bill.

**Mr. Johnston:** Right.

**The Chair:** Thank you very much for being here today.

### CITY OF WOODSTOCK

**The Chair:** Our last delegation today is the city of Woodstock. Welcome. Make yourself comfortable, and as you settle yourself down, before you begin, if you could announce who you are and the city you speak for, for Hansard. Once you begin you'll have 15 minutes, and if you leave time at the end, there'll be an opportunity for us to ask you questions. We have your handout in front of us.

**Mr. Michael Harding:** Thank you, Madam Chair. I'm Michael Harding, the mayor of the city of Woodstock. To my immediate right is Paul Bryan-Pulham, who is our chief administrative officer for the city of Woodstock, and to his immediate right, our city engineer, David Creery.

What you have in front of you is a rather large document. Before I begin, if I can just go through what is in here, there are four appendices identified in the table of contents, A, B, C and D, which are supporting documents to the position we're going to be presenting today.

It's great to be before the standing committee on general government. I want to thank you for the opportunity given to us to present several items for your consideration during the deliberation of amendments to the Municipal Act.

We want to also take this opportunity to applaud the government for its commitment to seek improvements and changes through the review of the Municipal Act, because the government, like us, recognizes that this act is in fact a living document that needs to be reviewed to enable municipalities to adequately respond to an ever-changing environment. Certainly in the city of Woodstock and the county of Oxford that has been the case in the last little while. But we think that there are certain matters that require your attention.

In the page marked "Introduction" are the issues we're asking specifically about. Those are the four items that are before you related to the sphere of jurisdiction. Our submission involves four areas of interest to our city and

our city council. One is of a technical nature, which can be addressed briefly, and three are related to section 11 and governance. Three of the four issues we're going to be talking about have the support from the county of Oxford in the form of resolutions, which you will find contained in the document.

Our presentation today actually focuses on issues related to government as a lower-tier municipality, and one technical item, as I've said. Firstly, the technical matter: In the appendices we'll call B1(a), there's a resolution from Oxford county, originally proposed by the city of Woodstock, for clarification of the definition of waste management. This item is important for clarification within the existing framework of the act that you're currently reviewing and for an understanding, certainly, of our request before you today.

### 1800

Our governance issues all lie within section 11 of the Municipal Act, which you'll find under "Spheres of Influence" in our appendix A and, in our mind, reflect provisions of the former County of Oxford Act, which were simply transferred to the new act. In all cases, we submit to you that we are requesting consideration of amendments which reflect practices that were in place for approximately 25 years after the county was restructured and were later altered, primarily as a result of provincial initiatives, in 1999.

The county and the lower-tier municipalities responded to what they saw as an implied threat of provincial direction by the government of the day to move to a single-tier system. It resulted in a review of the existing two-tier system and generated changes that were not likely to have happened otherwise. Until that pressure, the lower tiers were in control of their needs. While in hindsight one might argue that the changes were a rush to judgment about resulting efficiencies, no one could have predicted or anticipated the future marketplace forces that are today creating unnecessary barriers, limiting our city's ability to respond. That is why we are here before you today.

In the matter of waste collection, the County of Oxford Act, enacted in the mid-1970s, assigned responsibility for waste disposal to the county of Oxford, with waste collection the responsibility of the lower tier.

As previously noted, in 1999 that implied threat of a provincial direction to create a single-tier solution in Oxford county resulted in a service review. By the triple majority process, waste collection was moved to the county. The county of Oxford did not support this change; however, the city managed to retain, by agreement, the ability to continue to be the service provider, but under a new threat from the county of full assumption of service. Council strongly believes that local authority is important in this area of service that is highly valued by our residents. In the city services survey, for instance, in 2002, waste collection ranked number two in the most important services category and achieved a 92.7% "satisfactory and excellent" rating from our respondents, the highest of all services rated.

The city of Woodstock strongly holds the position that the authority was not properly transferred and has a strong legal opinion—and that legal opinion is in the appendix—that we have retained the right to locally operate waste collection services. City council passed a resolution to assume the operation by July 1, 2007, based on the opinion, which is, of course, appended to this brief.

We are not asking the committee or the government in any way to adjudicate this legal issue, but the fact that there are conflicting opinions on the sections of the new act that carry forward bylaws, resolutions and sections of repealed authorities suggests to us that the committee should carefully review the applicable sections and make recommendations to clarify the intent to minimize as much as possible costs to the municipalities in terms of legal challenges. We are requesting an alternative to the present wording of the assignment of responsibility to clarify what constitutes disposal, collection and recycling.

Other lower tiers support the local authority option and, in recognition, the county sought a compromise by offering to negotiate agreements that are acceptable to it and the lower tiers who so requested this option.

While encouraged, we believe the best option is to return to the original premise of the restructured Oxford county and amend section 11, table item 3.

The amendment suggested is to divide the item waste management and expand the definitions, as earlier noted, for Oxford county to retain an exclusive assignment for disposal sites and disposal facilities, including transfer sites, and that waste and recycling collection and recycling processing are a non-exclusive assignment. The current sphere only references waste collection in the context of an exception to the exclusive assignment but with no definitions of waste collection.

This recommendation was supported by county council and forwarded to the ministry on August 15, 2006, and may have been presented to this committee in an earlier presentation by the county. A certified copy of that resolution is enclosed.

The third area is on economic development services. The County of Oxford Act, enacted in the mid-1970s, gave responsibility to the county for all matters related to economic development. In reality, the county of Oxford never played a role in the area, save and except a small financial contribution to urban lower tiers engaged in this activity. The city of Woodstock maintained and paid exclusively for all facets of economic development, including the promotion of the municipality, business retention activities and the purchase and development of industrial lands for sales purposes. The county did not exercise any authority, save and except to pass bylaws permitting the city and the lower tiers to continue the activity.

We respectfully request consideration of an amendment of section 11, table item 10, to change economic development services from an exclusive assignment of the county to a non-exclusive assignment in its entirety

for both sub-spheres. County council again supported this change, as they may have presented to you in an earlier presentation. Again, copies of those resolutions are contained in the appendices.

Item number 4 has to do with water distribution and waste water collection. By far, we believe that this is perhaps the most contentious of our recommendations to this committee, and that is a request to amend section 11, table item 4, to provide for water distribution and waste water collection on a non-exclusive basis. We wish to emphasize that we are not requesting any amendment to the exclusive right of the county for water supply and waste water treatment services, including ancillary works directly related to the supply of potable water and the treatment of waste water.

The County of Oxford Act, enacted in the mid-1970s, assigned ownership of all the water supply and distribution assets to the county, along with all the waste water treatment and collection assets. We estimate the value of those assets transferred, in today's terms, to be in excess of \$50 million, paid for solely by the taxpayers of the city of Woodstock.

The County of Oxford Act was a local solution derived at the time to avoid a forced regional government system. The county immediately transferred all responsibility for water supply and treatment and waste water collection and treatment back to the lower tier by agreement. What that meant was that for approximately 25 years the city operated, maintained and constructed all such facilities, payment for the same being made exclusively off the city tax base and, in the case of water, the connected water user in the city. In other words, while we looked like a region to the government of the day, the status quo in terms of responsibility for construction, maintenance, financing and all the facets of waste water collection and treatment and water supply remained local.

The deregulation of the electricity sector caused the elimination of the public utilities commission which had operated the water supply and distribution system for the city of Woodstock, essentially subcontracted by the city. Once again, water supply operations were assumed by the county in its broad mandate for seeking out water supplies and protection of groundwater. Staff and maintenance responsibilities for the distribution system were integrated into our city's public works operations, a responsibility that continues to this day.

Both the water distribution system and the waste collection system impact not only the local connected population but are a significant component in the planning for residential, commercial and industrial development, all of which are a local responsibility in conformance with the official plan policies. Increasingly, from our perspective, other county priorities are restricting the ability of the city to respond to new development opportunities on a timely basis and our ability to coordinate infrastructure renewal projects.

We understand the substantial challenges presented to the county with the new regulations, post Walkerton, and

believe this has stretched the limits of their ability to respond and prioritize to meet the needs of an urban community in a strong growth situation. We have the technical abilities to manage the system as we in fact are doing much of what is required now. In addition, we have a strong reputation for timeliness of development approvals, improving our competitive edge. City council also believes that we should be able to determine locally and within proper planning practices where to direct and prioritize our efforts. We have continually demonstrated that we can respond quickly to opportunity and are more willing to invest in our future than we believe the county is, given their other challenges.

**1810**

In summary, we request your due consideration of our proposed amendments to the act. You will find that our proposals are not inconsistent with upper- and lower-tier relationships in other two-tier systems in this province. We strongly believe that our requests will enable the city, with its technical and professional resources, to deliver service to our residents and to the industrial and commercial sectors in a timely manner consistent with the existing official plan and provincial planning policy.

Various appendices, as I've noted before, have been attached that will expand our position from both a current and historical perspective. We also suggest that the staff of the Ministry of Municipal Affairs and Housing and the Ministry of Economic Development and Trade could offer valuable additional commentary as to the city's progressive yet responsible response to growth and economic development opportunities, which can be locally, provincially and nationally significant.

Failure to address this matter can impact our ability to respond to marketing opportunities in a timely manner, which affects not only the health and vitality of our city but also the county, as our assessment base now contributes one third of the county's tax revenue.

Thank you very much for the opportunity to come before you.

**The Chair:** You've left a minute and 30 seconds, so if there's a really quick question from each party. I will begin with Mr. Prue. You've got 30 seconds.

**Mr. Prue:** I'm going to pass.

**The Chair:** Okay. Mr. Duguid.

**Mr. Duguid:** Just a really quick question: You've accomplished some things in terms of service migration through the triple majority. I guess that's what you're talking about: service migration in some of these areas. Considering that you have the county onside for three out of the four, is there a barrier that I'm not aware of? I know it's always a pain to have to go through that triple majority, but it looks like for three out of the four areas, you would probably have it anyway. Is there something that I'm not aware of that would make that too challenging for you?

**Mr. Harding:** Apart from the culture, why don't I turn that question over to Paul Bryan-Pulham.

**Mr. Paul Bryan-Pulham:** Thank you for the opportunity to respond. I'll just expand a little bit, and very briefly, on Mayor Harding's comment. The challenges faced by the county in other areas have directed its priorities elsewhere, and, post-Walkerton, I understand that fully. In terms of the thinking of the group at county council—I can't, of course, speak for county council; Mayor Harding is a member of county council—in our estimate, it impacts how that kind of a sphere is looked at. It's changed from a time when the city managed and paid for, and were fully responsible for, priorities in the city to the county council looking beyond, and we do have concerns that that will impact the triple majority process. In their thinking, that perhaps would affect their ability to respond elsewhere to the challenges that they face in the smaller communities surrounding Woodstock.

**The Chair:** Thank you. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much, Mr. Mayor and other members from Oxford. It's quite a pleasure. I'm in my 12th year here, and in the matter of a week, we've had two delegations from Oxford, the first two since I've been here. So thank you very much for coming in.

It's very important that on three of the four issues, the local solution, which I think was mentioned, seems to be working. What you're really looking for is not to necessarily mandate the solution you've found for the future, but in fact that you want to keep it open so that it could be changed as you go along, that Woodstock can keep doing the garbage collection and recycling without the county saying, "It's our jurisdiction. We're going to do it a totally different way." Is that true?

**Mr. Harding:** Yes. What we're asking for is recognition. We're not asking to devolve the relationship. Each and every one of these is asking for non-exclusive. It doesn't presume one or the other. It's just putting something into our tool kit, levelling the playing field a little bit to allow a local tier to determine what structure it needs in place. MPP Hardeman, you will know that things are happening quickly in one centre and less quickly elsewhere, but there's this great desire to keep everything the same. What we're saying is that it's not really possible. In fact, in each of these four recommendations, there is a change to non-exclusive. So the county recognizes some; I guess we might be a little ahead of the curve as a result of who we are, as opposed to a rural jurisdiction.

**The Chair:** Thank you, Mayor Harding. We appreciate your thorough and detailed presentation today.

**Mr. Harding:** Thank you very much.

**The Chair:** Committee, this brings our hearings to a close for the day. Our researcher, Mr. Richmond, will be attempting to provide our committee with as much of an up-to-date summary as he can provide by Wednesday.

This committee now stands adjourned until 4 p.m. on Wednesday, November 29. A reminder that we're changing rooms: We'll be in committee room 1. We're adjourned.

*The committee adjourned at 1815.*







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