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Mardi 8 septembre 2009

Standing Committee on Government Agencies

Agency review:

Ontario Municipal Board

Comité permanent des organismes gouvernementaux

Examen des organismes gouvernementaux :

Commission des affaires municipales de l'Ontario

Chair: Julia Munro
Clerk: Douglas Arnott

Présidente : Julia Munro
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Tuesday 8 September 2009

Mardi 8 septembre 2009

The committee met at 0936 in room 151, following a closed session.

AGENCY REVIEW

ONTARIO MUNICIPAL BOARD

The Chair (Mrs. Julia Munro): Good morning and welcome to the agencies committee. We're pleased that you are able to join us here today. I would ask you to introduce yourselves for the sake of Hansard. You have up to 20 minutes to make an opening statement, and then we'll have questions from the caucus members.

Ms. Marie Hubbard: Thank you, Madam Chair. To my left is Stan Floras, who is counsel to the OMB, and on my right is Ali Arlani, who is the CEO. My name is Marie Hubbard. I joined the board in 1997 and have been chair since 2003.

We have submitted our response to the questionnaire, as requested by the committee, along with the background materials noted in our response. I would like to start with a brief overview of the board, its work, its challenges and its successes.

Ontario is growing and there is increasing demand for places for people to live and work. The OMB performs a critical function in providing a fair process to hear land use disputes. The board is one of the province's longest-standing adjudicative tribunals. Its creation dates back to 1906. The board is an independent adjudicative tribunal that conducts hearings and makes decisions on matters that have been appealed to the board under a variety of legislation. The OMB is referenced in over 80 statutes.

In a court-like setting, the presiding member hears from the parties and makes a decision based on the evidence presented and the relevant provincial laws and policy. The majority of the appeals are from the Planning Act, the Municipal Act and the Ontario Heritage Act, or are appeals by claimants filed under the Expropriations Act.

The objective of the board is to secure the just, most expeditious and most cost-effective determination of every appeal, taking into account the specific requirements and objectives of the enabling legislation and the rule of law. Board decisions are required to comply with provincial legislation and any provincial policy applicable for each appeal. The Planning Act requires that board decisions must "conform with" provincial plans such as the greenbelt plan or the Places to Grow plan and be "consistent with" provincial policy statements. Consequently, the board is not merely adjudicating a private dispute between parties to the appeal, but is required to determine whether an application is consistent with provincial policy and is in the public interest.

Land use planning in Ontario involves several levels. A property owner may make an application to their municipality. The decision of the municipality may in some cases be appealed to the board. The decisions of the board may be appealed to the courts on a question of law.

The government of Ontario recognizes the importance of land use planning, has consulted on planning reforms, and in recent years has introduced a number of changes to legislation. The Planning and Conservation Land Statute Law Amendment Act came into effect on January 1, 2007. The City of Toronto Act, 2006, was proclaimed on January 1, 2007. As well, the first growth plan adopted under the Places to Grow Act, 2005, the growth plan for the greater Golden Horseshoe, was released on June 16, 2006.

The Ontario government is planning for growth in Ontario. The growth plan for the greater Golden Horseshoe forecasts growth of 3.7 million people by 2031. Growth affects housing, jobs, transportation, heritage, the environment and other areas.

When the board considers planning appeals, it is in the context of the provincial policies and legislative framework. Provincial policies call for intensification; however, often local property owners do not support changes to their neighbourhoods. Local politicians naturally may focus more on local concerns than on the provincial policies.

At times the board may be unfairly scapegoated as pro-development or undemocratic when the board is in fact exercising its mandate to independently adjudicate appeals within the provincial framework of laws and policies. Similar to the courts, the board does not enter into discussions with the media about decisions.

In some cases before the board, the municipality is divided between the position of the municipal planning staff and the local politicians. The board is required to give full weight to the planning evidence presented while at the same time having regard to a municipal decision.

Large projects may involve years of planning. Over time, municipal councils may change and their perspectives on the projects may change. In some appeals that come before the board, one elected council may have

supported a project and another elected council may be opposed to the project.

The board hears appeals in municipalities across the province. Each area may have its own perspectives and concerns. The board listens to the evidence presented, but must make its decision within the provincial framework. Each year we resolve between 1,200 and 1,300 cases. Each case may involve a number of appeals. We conduct over 1,700 hearing events per year.

In addition to adjudication, the board also strives to resolve cases through mediation. At the beginning of 2007, we hired a consultant to work with us on improving our mediation processes. We have created mediation facilities at 655 Bay Street and we have revised our rules of practice to reflect our current approach.

The board's mediation program has been successful. Where parties agree to mediation, in many instances a full settlement is reached, and lengthy and expensive hearings are avoided. The consultant interviewed our stakeholders and found a high level of satisfaction among participants and encouragement to offer more mediation. Even when a full settlement is not reached, mediation often helps to narrow the issues and streamline the process.

The board strives to provide clear and accurate information to the public. In September 2006, the board created a citizen liaison office. The citizen liaison office has been created to help the public participate effectively in the board's process by improving understanding of board policies and practice. The citizen liaison office has materials to assist the public. They have information sheets, a guide to the board and appeal forms.

In 2008, the board redesigned its website to simplify access to information, and at the same time ensured that all information was up to date. The site includes information about the board. Copies of all decisions issued since 2001 are available on the site, with the ability to search by keyword. As well, the status of all active cases before the board can be viewed through the e-status application, which provides current information from the board's case management system.

On an ongoing basis, the board seeks input and feedback from its stakeholders on broad policy matters, but not on specific cases. I meet regularly with representatives from municipalities, ministries and other stakeholder organizations. In addition, the board consults with stakeholders on changes to board rules and on any major changes to board practices.

The board has explored new ways of doing things, and technology has helped us with some new approaches. A new case management system was implemented in 2007. The board makes extensive use of technology for communication and for efficient processing of cases.

Through refinements of our processes and changes in technology, the board strives to resolve cases in a timely and efficient manner while providing fair and accessible hearings. In April 2008, we reduced the target timeline for hearings for minor variances from 150 to 120 days, and for all case types from 240 down to 180 days. Generally, the board is scheduling hearings three months out, so that in effect administration has 90 days to process, acknowledge and schedule a hearing.

The board operates within the provincial financial guidelines and directives.

We have 26 full-time order-in-council appointees, including the chair, vice-chairs and members.

Following the proclamation of the Public Service of Ontario Act, the board developed conflict-of-interest rules that have been approved by the Conflict of Interest Commissioner. The rules are posted on his website, and are included in the briefing materials.

I hope this brief summary has provided you with an overview of the board.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin our questioning with the official opposition. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks, Madam Chair. I'll be splitting my time this morning with my colleague from Newmarket–Aurora.

Welcome today to our committee. It's a pleasure for me to be able to learn a little bit more about the OMB and to have you here before us. I have a couple of quick questions that I think are probably best addressed to the CEO, Mr. Arlani.

We're wondering if it's possible for you to provide a copy of all the board expenses for all 26 order-in-council appointees for the last fiscal year and table that with the committee.

Mr. Ali Arlani: I don't have it here with me, but I'll look into it.

Ms. Lisa MacLeod: As follow-up, that would be great.

In addition to that, I'm just wondering if it's possible you could provide us with a list of external consultants for the mediation process and practices identified in your 2007-08 annual report, and if you could provide the total list of expenses for those consultants as well.

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Mr. Ali Arlani: I can provide that right now if you wish, or I can submit afterwards a copy—

Ms. Lisa MacLeod: Right. Could you circulate it to the committee? It's important that it's with the Chair.

Mr. Ali Arlani: I will do that.

Ms. Lisa MacLeod: Thank you very much. Now I have a couple of questions that are important to the community that I represent but also important, I think, overall to those who work with the OMB.

In April 2009, Minister Jim Watson, Minister of Municipal Affairs and Housing, said about the OMB: "Has the OMB been perfect? No. Can it improve? Yes, I think it can and I am quite prepared to work with the Attorney General to try and ensure that the OMB is more reflective of community values.... I've had a couple of discussions with the Attorney General going back a month and we both agree we are going to take a thorough look at the OMB and see how we can further improve it based on changes we made a couple of years ago. We want to see

if they've done what we hoped they'd do to bring greater balance to OMB decision-making."

It's interesting that you point out that you've often been the scapegoat, as unelected bureaucrats. Clearly, that's what the Minister of Municipal Affairs has suggested as well.

I'm wondering how you respond to that and if indeed the Minister of Municipal Affairs and Housing or the Attorney General himself has contacted you in this time frame from April 2009 to the present day to discuss what they would call a "greater balance to OMB decision-making" that is "more reflective of community values."

Ms. Marie Hubbard: I've had two sessions with the Deputy Minister of Municipal Affairs and Housing, Fareed Amin. I find him to be a highly intelligent, excellent communicator. He has done a great deal of work to communicate changes in the Planning Act and give me some ideas about what we might do better. It's been positive communication for me.

Further to that, we certainly have excellent communication with the Attorney General and his staff. I have met with the assistant deputy minister on occasion to outline my concerns and where we're going and what we're doing. In terms of communications, yes, I've had them with the deputy, not directly with the minister. We noted the minister's concerns.

I do believe that, notwithstanding, we do our best in a hearing to make good decisions based on the evidence. We make findings of fact and we write an analysis of that and write the order.

I don't know if that helps you, but—

Ms. Lisa MacLeod: Okay. I guess, specifically, the minister has suggested that there will be changes forthcoming to the OMB, if you look at this quote, and I'd be happy to provide it to you.

Ms. Marie Hubbard: I have not heard of changes, Ms. MacLeod.

Ms. Lisa MacLeod: Okay.

Ms. Marie Hubbard: We have Bill 51, that set out certain reforms, and the board has complied with Bill 51 in all actions that we do. I have not heard of anything—unless Mr. Arlani has something to add to that.

Ms. Lisa MacLeod: Okay. That's actually where I'd like to go next, with section 2.1 of the Planning Act. It states that the board "shall have regard to ... any decision that is made under this act by a municipal council or by an approval authority...."

The question that I have for you is, how does the OMB factor in the decisions made by municipal councils or by an approval authority?

Ms. Marie Hubbard: It's a very interesting question. We do have regard for municipal council decisions, but I would like to suggest to you, most respectfully, that municipal councils must adhere to their own policy framework, their official plans, and pay attention to that framework. If they deviate from the framework, then the matter is going to end up with us. For the most part, by and large, we uphold municipal councils quite often. I don't have an actual figure but I can say to you that we consider very seriously.

I can give you an example, if it would be of assistance. I would like to take the Port Dalhousie case. They had a positive planning report, positive public works reports, and it's quite a comprehensive report. The council of the day approved the project. The council that came in under the election set out a motion, and the motion carried, that they did not support the project, but what was interesting is, they didn't rescind the planning documents that were in place. That's significant. If they really meant business, they could have rescinded the official plan amendment and the zoning bylaw that accompanied the approvals.

Ms. Lisa MacLeod: What weight do you give municipal councils' or approval authorities' decisions when you make an OMB decision?

Ms. Marie Hubbard: Well, let me say this: Our decisions are multifaceted and complex. We have an array of competing interests. A municipal council's position would be given as much weight as any other party to the appeal. It's based on evidence, and whatever evidence comes forward from municipal council is given full consideration.

Ms. Lisa MacLeod: I'd just like to move on a little bit here. This is an important question—it's actually from one of my colleagues. How does the OMB determine where hearings will be held across the province?

Ms. Marie Hubbard: Municipalities decide. The clerks of the municipalities contact our calendar room, talk to our senior case manager and they book hearing rooms. It may be a community centre in their town hall. On that note, one of the things I would like to see improved is accessibility to various municipalities for people with disabilities. There are still many municipalities that are not complying with the accessibility issue, and it's really quite serious. But we have no control over what municipalities do. The clerks of the municipalities do the bookings.

Ms. Lisa MacLeod: Just one quick question on the process, and then I have two very quick questions on advocacy. You mentioned that in 1906 the OMB began and that it's a fair process. I guess what I would ask is, to what extent do you feel that you meet the criteria of a tribunal? And a final question here, actually, from our legislative researcher, that I thought was probably very interesting to ask: You've recently had legislation that has changed the role of your mandate, and I'm just wondering if you could explain the specific ways in which the board's roles and responsibilities have been altered throughout that process.

Ms. Marie Hubbard: So the criteria is the number one question?

Ms. Lisa MacLeod: The number one question is, how do you feel you meet the tribunal criteria as you have evolved over the last 100-plus years? Furthermore, how do you think recent legislation has impacted your mandate?

Ms. Marie Hubbard: All right. First of all, the criteria for our board is fairly expansive, and we try to be

consistent in our decision-making. One of the things that is interesting is that each adjudicator has his or her own independence, but independence doesn't mean that you do as you please. There has to be some consistency across the board in how we handle cost, for instance, that kind of thing. So that's number one. Number two, we attempt to recruit people who have a skill set and knowledge of our work, so that when we deploy panels, they at least understand the Planning Act and the matter before them.

The other thing we have achieved in the last short while is that if we continue to manage—I've taken a bit of a diversion on the court-like system that we employ. What I'm trying to do is have some flexibility in the procedure and the process in order that unrepresented parties get some assistance. We're not telling them what to do, but we're relaxing the rules in the sense that we have a little ability to have some freedom for discussion and assist parties and participants. Also, during our pre-hearing conferences we try to narrow the issues, and we try to see if there's an opportunity for mediation across this particular appeal. If there's an opportunity for mediation, then we certainly deploy mediators to assist and see what we can do to resolve the matters.

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In terms of Bill 51 and its reforms of the board, we have no difficulty complying with that. I'll just defer to board counsel. We haven't had any issues that you are aware of that have come before us?

Mr. Stan Floras: No. The board recognizes that Bill 51 introduced a number of significant amendments to the Planning Act. The chair has referred to a number of the amendments that strengthened the role of provincial planning by requiring that board decisions be consistent with the provincial policy statement and provincial plans. You also referred to section 2.1 of the Planning Act, which requires a board to have regard to decisions of municipal council as well as the information and material before the council when they make the decision.

Ms. Lisa MacLeod: I understand there's an appeal by the city of Ottawa on section 2.1.

Mr. Stan Floras: There is a matter before the courts on that section and the obligation, yes.

Ms. Lisa MacLeod: I just want to wrap up by two quick questions and then I'm going to defer to my colleague, Frank Klees. I just want to know, have you seen Environmental Defence Canada as a party in appeal proceedings before the board, and if so, how often? What advocacy role do you feel the environmental groups have, and is it appropriate for an environmental group that is a charity to use both donated funds and public grants to fund legal challenges before the OMB?

Ms. Marie Hubbard: I don't think I can answer that question, to be fair. I haven't given it any consideration. I'm not even sure that there's intervenor funding for the environmental groups; I don't know, offhand. In terms of the environmental issues, I would like to respond just briefly and say that prior to a major appeal arriving at the board, there's a fundamental understanding by the proponent for any application to have some understanding that the development is feasible. So there are a lot of environmental studies and other matters that take place, just so that you know that, prior to the appeal getting to us, there is considerable work done in municipalities, counties and otherwise.

Ms. Lisa MacLeod: And I appreciate that. The reason is, Environmental Defence Canada has received provincial grants, and I think it occurs to some that the idea is to get the OMB to record a decision in their favour, which would help them be better positioned to raise monies. So that's why I asked the question, because the case has been made, and I'm just wondering if you felt that Environmental Defence Canada should be using their charitable funds to fight these battles at the OMB.

In any event, I'll leave my questioning now as long as it's possible to receive a list of the times that Environmental Defence Canada has appeared before committee.

Ms. Marie Hubbard: Yes, we can do that.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Julia Munro): Thank you. Mr. Klees, you have a couple of minutes.

Mr. Frank Klees: Just a couple of minutes? Do we have any more rounds coming after this?

The Chair (Mrs. Julia Munro): Yes.

Mr. Frank Klees: Thank you. I want to thank my colleague for the two minutes that I have, but I'll make it up on the other rounds.

Ms. Hubbard, I want to thank you, first of all, for your service to the province since 1997. To sit on this board is a challenge for anyone. I want to thank the board for the preparation that they've provided the committee in terms of the background work.

I'd like to, with my first question, refer to the issue of the scope of the work that the board does and the cost. I'd just ask this question: Has there been an analysis of the cost of the OMB process to the parties to these hearings? When I say "the parties," I refer, obviously, to municipalities, to proponents and to the Ontario taxpayer. I know that may be a tough question in one sense because you have so many different types of cases but I think we could certainly categorize them. I would be very interested, first of all, in whether there has been a cost analysis done, and if not, I would ask if in fact the board could undertake to do that so that we have good understanding not only of the work that you do but what the cost implications are to all of the parties, and then use that as a basis to see whether or not we can work on some very specific efficiencies. That analysis should include as well where the cost is being eaten up.

Your comments?

Ms. Marie Hubbard: I could go on for quite a while. The whole issue of costs concerns us, concerns the board greatly, but you've got to remember that it isn't the board that affects the cost to a municipality. It's up to them to make a determination and make sure that before they get to us, they've gone down every avenue to resolve the dispute. So often, if I may, we are accused of running up great costs, and we don't run up the costs. If the muni-

cipal council elects not to resolve things and they come to us, or if a municipal council elects to not listen to its own planning staff and its public works staff and the reports with respect to a given application, then they go outside and hire consultants at huge money and engineers at huge money, and on it goes and on it goes. This ups the tab to the municipal taxpayer.

I'm not sure—I wouldn't know how we would undertake that analysis. It would be a fun thing to do, however, because we certainly get many motions for costs and so on. I'd like to pursue that with a number of people and try to respond to you, but there are times—

Mr. Frank Klees: I would appreciate that. I think it would be more than a fun thing to do. I think it might turn out to be very un-fun, actually, and it may well build in some accountability to decision-making both at the municipal level as well as on the part of some stakeholders who appear before you on a regular basis. I'll pursue that in the next round of questioning, Chair.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Mr. Prue.

Mr. Michael Prue: I'm going to start with, I think, a very difficult question. Every other province in Canada has either no board at all, in the case of British Columbia and Quebec, or a municipal board with extremely narrow powers. We are the last one left with a large Ontario Municipal Board. Why is that?

Ms. Marie Hubbard: It's up to the Legislature to make a determination of what they want us to do. At the present time, we respond to the legislation. We operate under the umbrella of the government in power. It doesn't matter what government it is. We have many, many statutes. With great respect to you, I think that decision would have to come from someone other than me.

Mr. Michael Prue: Of course. I was hoping you would answer it exactly that way. I think we all need to hear that.

The question I have, though, is, has the OMB done any analysis on the other provinces and what effects or changes have occurred there as a result of either truncating the authority or abolishing the authority?

Ms. Marie Hubbard: Well, I wouldn't be about abolishing the OMB. There would have to be some considerable investigation at the legislative level before that happens. Let me tell you why. We're deeply concerned about jobs in Ontario. This board has before it tens of millions of dollars of economic investment—tens of millions of dollars. Sometimes those appeals come before us because municipal councils don't want to make a decision or they simply advise that they are not going to process an application.

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I think any legislator would have to give some thought to their action if they were to get rid of the board. I'm convinced over my years there at the board—and I've enjoyed every minute. I've worked hard to do my best there. But when I see some of the major projects, like setting down a huge tower in downtown Toronto or a plan of subdivision or something that takes place in the agriculture areas—these are all serious investments, even by the average guy. Let's take the issue of a deck, Mr. Prue. If we think in terms of how he has to go to the Home Depot or somewhere else for the wood, somewhere for the nails, somewhere for the paint, there are a lot of factors that come into each and every application before us.

I think that there are areas that we could improve upon, but I cannot imagine Ontario without the OMB and I cannot imagine, if it were eliminated, what would occur in the courts.

Mr. Michael Prue: It has been proposed that the OMB—first of all, the OMB's been there since 1906. It was established because at that time, Ontario was primarily a rural municipality. Not many people lived in cities. Toronto even, in those days, was less than 100,000 people. The expertise all seemed to lie with the province. Put a little bit differently today, Ontario is a very urban scene: 80% of people live in towns and cities above 10,000 people. The majority of people live in big cities like Toronto, Ottawa, Hamilton or Mississauga; the list goes on. Some have argued that the municipalities now have the planning staff and the legal staff to make those decisions themselves. Obviously you don't agree.

Ms. Marie Hubbard: Oh, I do agree. But I want to point out to you—and you may not be pleased with my response—bigger doesn't mean better and that they can do everything that's appropriate in terms of an application. There are certain cities where each member of the council runs his or her own ward. They go outside to hire their own counsel, they go outside to hire a series of consultants to what I call, if you'll permit my words, mangle the words and the policies of the official plan and come before us. If we don't recognize that—that's what we deal with every single day. It's very important. In the large cities, sometimes their councils are too large. Rather than being elected at large, they have their own little bailiwick and they decide, "Well, I'm not going to listen to the legal counsel. I'm going to direct legal counsel to represent me and my ratepayers in a different way," outside of the official plan of their own municipality.

We're confronted with this on a daily basis. That is not to say that I don't respect that they have to represent their ratepayers. On the other hand, they're not going by way of policy sometimes or the majority decision of their own council.

Mr. Michael Prue: In your opening statement, you stated that the board must act in a manner and conform with provincial plans, such as the greenbelt plan or the Places to Grow plan, and "be 'consistent with' provincial policy statements." You go on in the next paragraph to state, " ... an application is consistent with provincial policy and is in the public interest." Then when you were asked a question by Ms. MacLeod about municipalities—and I wrote it down as fast as I could—the statement was to the effect that the municipality is equal to any participant to appeal. It's really quite different. The provincial policies need to be obeyed; the municipal

policies or plans have to be equal to that of the developer or to the citizens or to Environmental Defence or anyone else who shows up.

Ms. Marie Hubbard: We listen to the evidence that they proffer and make findings of fact and come to a decision.

Mr. Michael Prue: I am one, as you can probably tell from my questioning, who thinks the municipality should have just a little bit more say than a developer or a group of neighbours upset about a planning subdivision.

Have you ever had discussions with provincial officials about giving the municipalities maybe not total control, but allowing their decisions—that the board would be consistent with an official plan of a municipality?

Ms. Marie Hubbard: Yes, we've had those discussions and we understand that. We certainly have had those discussions.

Mr. Michael Prue: Okay, but nothing has ever been forthcoming provincially to allow that?

Ms. Marie Hubbard: Well, I think that they don't want to interfere. They understand that we would give equal weight across all evidence and make a decision based on the evidence. I didn't see any reason for anyone to interfere in that.

Mr. Michael Prue: One of the so-called reforms that came out of this Legislature a few years ago was to allow the board to adjudicate upon claims which were called strategic lawsuits against public participation. SLAPP is what they're generally known as. How many times has the board heard these applications, and how many times have people been SLAPPed?

Ms. Marie Hubbard: It's a good question. I don't have those numbers with me, but we could generate some numbers on costs.

In terms of the SLAPP legislation, my view—no doubt about it—is that my minister would be monitoring SLAPP legislation. That's not something that I would comment on as chair of the board. I haven't had any communication with respect to any thoughts of writing some legislation in that respect.

Mr. Michael Prue: I have received, over the last number of years, as the municipal affairs critic for some periods of time—we have a small party and I haven't been the municipal affairs critic all of the time for the last eight years. But I have received letters from people from homeowners' associations, ratepayers' associations and environmental groups that are terrified of this legislation and how they are drawn into it. I think one of the biggest ones was the Big Bay development, where they were asked to pay in the millions of dollars for opposing it. Does the board feel—

Ms. Marie Hubbard: Well, no costs were awarded in that.

Mr. Michael Prue: No, I know that, but the threat was there and a lot of people get very afraid and back off. Does this allow for the cause of justice, with this hanging over it, that developers with lots of money and lawyers can make these applications? Whether they're successful or not, the fear and the threat are very real to many groups.

Ms. Marie Hubbard: Well, let me answer you by saying this. I think that when parties, whatever group it may be, initiate an appeal, they must understand what they're getting into. In the case of Kimvar, there was a settlement, and yet that hearing was carried out, as you know, and the proponent, as I understand it, was put to the test in terms of bringing into play ecologists, marine construction specialists, engineers in hydrogeology, gulf management engineers. I mean, it went on and on and on, when they had a settlement. So the costs of that hearing were prohibitive, no doubt about it.

I guess my caution would be that when someone decides to appeal or take this matter to the board, they have to understand they've got to have a case and they have to present a case.

I don't know whether that answers you, but—

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Mr. Michael Prue: Well, it's quite clear that if anyone takes any matter to a quasi-judicial or judicial body, one has to be prepared to lose; one has to be prepared to pay in the event of loss.

Ms. Marie Hubbard: But let me tell you, Mr. Prue, they're not always. They think they can initiate the appeal, not bring the appropriate people forward to counter the specialists from the other side, and that's where the difficulties start to arise and where parties seek costs.

Mr. Michael Prue: I understand the parties, but is it within the balance of fairness, in your view, that large settlements can be sought against groups that seek to appeal, even if they've done a poor job? Does this not have a chilling effect on a quasi-judicial tribunal which has enormous powers—an absolutely chilling effect? In my view, I think it does, because a lot of these groups that once went to the OMB are now choosing not to do so, even though they may be opposed.

Ms. Marie Hubbard: I haven't seen a decline so far. I think that if there's going to be a change, it has to come in the legislation in terms of costs. We don't write the legislation; we take direction from the government. That's the state of affairs we find ourselves in. I wouldn't like to comment further to that because currently we have costs that come before us, and it's in our rules and so on.

Do you have anything to add to that?

Mr. Stan Floras: I would just add that "costs" awards are very rare. The board has made that clear: A proponent that's successful should not expect their costs. The board has written a number of decisions in that regard over the years that have stated over and over again that parties with legitimate points of view should be welcome to come to the board and present their case. A successful party, simply because they were successful in the end, should not expect a cost award. Costs are based on conduct, and the conduct has to be unreasonable. The board, through its Ontario Municipal Board Act, has broad discretion to award costs, but through its rules and practices has really limited that discretion for the members that are presiding at these hearings.

Mr. Michael Prue: I am even aware of some municipalities that have taken their own citizens or have threatened their own citizens with costs when the citizen disagrees with the municipal—are you aware of any of those being awarded? Because that, to me, is very chilling.

Ms. Marie Hubbard: I can't think of any at the moment.

Mr. Stan Floras: I cannot think of any, no.

Mr. Michael Prue: I do remember one letter—

The Chair (Mrs. Julia Munro): Thank you very much. We've exceeded—thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Ms. Hubbard, for being here today, and thanks for the good work you folks do, although sometimes unpleasant, coming from a municipal background. I've seen some of the struggles that, as a municipal councillor and mayor, we've put you through sometimes, which is probably not fair, but it happens. I agree with some of your statements that you've made in the past. Madam Chair, my colleagues will be also asking some questions, so they'll have some questions as we move forward.

My question is based on what Mr. Prue finished off on. The decision-making, especially in the text of the filings to consider a decision made by council—I'm going to use the word "frivolous"; I shouldn't, but I will—whether to stall the project, whether it's a personal—whatever the case may be. Based on that context, can you—and I know this is in your briefing that you provided us with, which was very, very informative, in your opening comments this morning. Can you elaborate a little bit more on the decision-making piece and explain the different or equal weight that you use by law—for example, provincial policy statements, the planning documents that you might be provided with or the municipality might have—and are there good principles? Can you just expand on that a little bit to, I guess, give a sense from an appeal process to a decision-making process?

Ms. Marie Hubbard: First of all, I would like to say that municipal councils generally do a lot of research before the appeals arrive with us. Usually decisions are accompanied by planning reports, public works reports, environmental reports, all kinds of studies that may have been enacted because of the official plan process, and those studies sometimes are upgraded and circulated to the various agencies. Before the appeal gets to us, the various agencies sign off on those, and that helps the planning staff and the public works staff to craft their decisions once they sign off. So there are several phases before the appeal arrives at the board. Usually municipalities are represented by council and they bring their own experts. We listen and give full weight to what they have to say.

I don't know that that answers you. Do you have something to add to that, Stan?

Mr. Stan Floras: As the chair alluded to in her opening submissions, the board has a mediation process and parties can avail themselves of that. So, after that background work is done by the municipalities, if there's still a dispute and there's an appeal to the board and it's a valid appeal, then there's a pre-hearing process that's set in motion and there's a mediation that the parties can avail themselves of. Hopefully, there may be a possible resolution of the issue so it doesn't have to go to a full hearing.

Then you've heard in the submission as well the requirements of the board to have regard to the position of municipal council and carefully consider the position of municipal staff as well as consistency requirements in section 3 of the Planning Act.

Mr. Lou Rinaldi: So tell me, would there be an application coming before you, after you do your due diligence prior to setting up a board hearing and all the process, where you would see there something that you'll send back to the municipality for their reconsideration and suggest that maybe this is not going to go anywhere, or whatever the reason may be? Have there been times that that might have happened?

Ms. Marie Hubbard: On occasion, we do send matters back to a municipality. If there's new evidence, something new that arrives at the hearing that had not been before the municipal council, we refer it back to the municipal council for reconsideration—

Mr. Lou Rinaldi: So you would.

Ms. Marie Hubbard: —and no decision will issue, and we'll await what the municipal council decision is.

Mr. Lou Rinaldi: Great. Thank you. I think Ms. Mangat will have a question.

The Chair (Mrs. Julia Munro): Yes. Ms. Mangat?

Mrs. Amrit Mangat: Thank you, ma'am, for being here today and working very hard to protect the interests of the public.

My question is also with regard to the process. In your opening statement, you said that the OMB resolves "between 1,200 and 1,300 cases. Each case may involve a number of appeals."

Ms. Marie Hubbard: Yes.

Mrs. Amrit Mangat: Since the OMB is an arm's-length agency, can you please tell me if the minister of the crown plays any role and if he can overturn the decision of the OMB?

Ms. Marie Hubbard: Would you repeat the last portion of that for me? I'm quite old and I'm not hearing—

Mrs. Amrit Mangat: Since the OMB is an arm's-length agency from the provincial government, my question is if the minister of the crown can play any role in overturning a decision of the OMB.

Ms. Marie Hubbard: If the minister—

Mrs. Amrit Mangat: Yes, can play any role in overturning a decision of the OMB.

Ms. Marie Hubbard: My understanding is this. With respect to minister's zoning orders, I would refer you to section 47 of the Planning Act and the provincial policy statement, section 3.1. In 1982 or 1983, the power to the minister was deleted from the act, and it was reinstated in—is it in Bill 51? If there's a matter of provincial

interest, then the minister of course can initiate a minister's zoning order.

Mrs. Amrit Mangat: He can if it's in the interest of the province?

Ms. Marie Hubbard: It's a matter of provincial interest.

1030

Mrs. Amrit Mangat: Thank you. I'll ask my colleague to—

The Chair (Mrs. Julia Munro): Okay. Mr. Johnson.

Mr. Rick Johnson: Generally speaking, do you believe that the OMB has had sufficient regard to the decisions made by municipal councils, and how would this be demonstrated?

Ms. Marie Hubbard: It's interesting that you mention it. Yes, I do; I certainly do. There's case after case where that has happened. We've examined the matters before the city of Ottawa and the city of Toronto. I won't get into all the details, if I may, but I can say this: Out of 51 cases, 28 were resolved through mediation, pre-hearing conferences. The municipalities were upheld in a good number of those, or there were some modifications in the decision-making. But by and large, the municipalities were upheld.

Mr. Rick Johnson: Is the mediation process becoming more the norm?

Ms. Marie Hubbard: Not exactly. I don't have sufficient mediators who are fully trained, but I do have a team of mediators who are very effective. Mediation takes with it a high degree of ethics. Mediation takes with it consent of the parties—some parties may not want to mediate. In some instances, we have a decision where the municipality's upheld or the municipality comes to an agreement with the applicant but the ratepayers don't like the agreement, so we still have to hear the appeal.

But I do believe that we should be, and we are, streaming our complex hearings—we have more complex hearings than we've had in the past. There's quite a difference—we're seeing the complexities, the multi-faceted hearings, where I think that mediation has an absolute role to help to resolve and lessen the impacts and the issues. I'm all for mediation. One of the things that I think we could improve on in the future is to have more mediators trained and put them out there to see what we could do. I think that would respond to Mr. Klees's question. I think that mediation would lessen the expense of the hearing to the municipalities and the parties, but as I say, mediating these issues, because there's multi levels of planning documents and it's complex, is not simple. But I have a handful of mediators.

Mr. Rick Johnson: Just as one more follow-up on that, in a mediation situation is it common that all parties would agree that the decision of the mediator would be final in that—

Ms. Marie Hubbard: No, it's not common. Very often you don't have consent, and if you don't have consent, you can't mediate. You can't mediate with people who don't want to mediate—it's that simple.

Mr. Rick Johnson: Thank you.

The Chair (Mrs. Julia Munro): Any further questions?

Mr. Michael A. Brown: Thank you, and welcome to Queen's Park.

I come to this with a bit of a background in rural northern Ontario. I represent a constituency of 86,000 square kilometres, and in a previous life which seems many years ago, I sat on something called the Manitoulin Planning Board, which is a joint planning board that a number of municipalities are involved in—and strangely or interestingly enough, there's a couple of unorganized or unincorporated townships there.

My question is that it seems to me that there is a relationship between the size of the communities and the development pressure as to how many representations are made to the Ontario Municipal Board for some kind of adjudication. Is there that correlation? Because I don't recall having many OMB challenges mounted in the constituency of Algoma–Manitoulin, although I'm aware that one recently was adjudicated. Is that the case, and could you explain to me—someone on the other side, one of my colleagues, said that there's a high degree of planning expertise in the municipalities—

Mr. Michael Prue: In big ones.

Mr. Michael A. Brown: In big ones—that's correct. I have only two municipalities that have more than 5,000 people, so their resources to hire the best municipal planning staff are rather limited. So what do you do to kind of accommodate that situation where the municipality does not have the resources to make their case in the way they might want to?

Ms. Marie Hubbard: There certainly is a correlation; let's be fair. We don't have many hearings in Pickle Lake and Wawa. We are starting to see a few in Temagami, which is interesting to me. But what we do see from a board's perspective is a degree of—Toronto, Ottawa—highly sophisticated official plans, highly sophisticated planning departments, public works departments and so on. The northern municipalities are not blessed with having sufficient funds to put in place the people that they may require. But there are some interesting cases that we're now starting to see in Cochrane, Sudbury, Sault Ste. Marie, all over the place, so that the north, in my view, if you'd permit me, is sort of waking up to the new reality that development is coming one way or another. It's not anywhere near what we handle in the GTA, for instance, or in Ottawa or in London, but there are certainly some challenging cases, from Fort Frances right through Pickle Lake, that we're starting to see. So there is a correlation—you're right. They don't have the sophistication. In some instances, they don't have official plan documents and they don't have comprehensive zoning bylaws. So there are some serious challenges to the people in the north. There's no question about it.

How much can we help them? Well, we can perhaps soften the process, make it less court-like, more user-friendly and assist that way, but we cannot say to the municipality, "This is what you should be doing. This is what you can write in your OP," and those kinds of

things. We're very cautious about butting in. That's not what we do. We don't butt in, but we do try to be assistive as much as we can.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Ms. MacLeod.

Ms. Lisa MacLeod: Mr. Klees will be taking this round of questioning. I did have one more request for a list to be tabled—two actually. You indicate in your questionnaire, on page 2, "The board follows the central agency directives and guidelines. Example: Management Board of Cabinet's travel, meal and hospitality expenses directives and the government appointees directive." Could you table with the committee at noon or this afternoon those two guidelines and directives?

Mr. Ali Arlani: Sure.

Ms. Lisa MacLeod: Thanks.

The Chair (Mrs. Julia Munro): Mr. Klees?

Mr. Frank Klees: Ms. Hubbard, I'd like to just continue where we left off in a discussion about costs to the various parties. I realize full well that it's not the board that's responsible for incurring those costs. You're reacting to requests, whether it be from a proponent or a municipality, but I don't want this request of mine to go away. I'm very serious about wanting something tabled with this committee.

Ms. Marie Hubbard: We will.

Mr. Frank Klees: Perhaps you could comment, in terms of having had some time to think about it, how you might go about it in terms of what I'm requesting. I want to be specific again here: depending on the category of the hearing, the estimated cost to the Ontario taxpayer which is incurred as a result of the board responding and facilitating the hearing, the cost to the municipal taxpayers as a result of the decision being taken to the board, the cost to the proponent of the development, and if there's anything else that we're missing here, if you could add to it. I just think that would be a very important piece of information for us to have.

1040

Ms. Marie Hubbard: You're not missing anything. All the points that you've set on the table just now are all realistic. I think an approach may be—and I have people wiser than I who know how to do all these analyses—

Mr. Frank Klees: You brought them both with you, obviously, but I'm not so sure that they're wiser than you. They'll pretend that they are—

Ms. Marie Hubbard: But I'll tell you: We could extrapolate from our computers the number of cases where cost motions in fact were brought for awards. We could look at those and then we could stream them in terms of complex hearings, length of hearings—that's significant. Sometimes the more complex hearings go on for some considerable time. I would have several thoughts along that line. We could respond to that; I think I'd find it quite interesting. The submissions of counsel across the board on costs could be extracted. We have all of those exhibits; we keep them; we know exactly. I think we could do something that would be quite interesting.

Mr. Frank Klees: Very helpful. Included in that, if you could also reference the number of times that a municipality has appealed and the decision has gone against the municipality. If you could also include in that summary the number of times that—how can I put this?—advocacy groups, and I'll use Environmental Defence as an example, have initiated an appeal, and the number of times decisions have gone against the appeal. What I'm trying to get at here is the whole issue of frivolous appeals, appeals that are costing a great deal of money along the way, and time. Is there not something along the way that can be done to head these things off or to identify them at an earlier stage so that we can do away, without compromising the objectiveness and access, with these frivolous appeals that, from what I understand, are costing us all a great deal of money?

Ms. Marie Hubbard: I want you to know, Mr. Klees, that I wake up every morning with that very matter on my mind. When I deploy panels to municipalities on the complex hearings, I am totally tuned in, on a day-to-day basis. I want you to know that as chair of the board, I take my work extremely seriously. I have a lot of concerns.

I did learn something in my chemistry class in grade 9: that oil and water are immiscible, and advocates and adjudicators don't mix. That's two different worlds. You can't put them together and make something work. A lot of costs are incurred on occasion that don't need to be. It's one of the things we grapple with on a constant basis. Sometimes I wish that I could speak out loud and say what I really think about matters, but I try to constrain myself on these issues. It's quite serious, and what you've pointed out here is quite right. It gives us a lot of concerns. I don't know how that could be effected, but we do our best, on a daily basis, to try to resolve issues at a pre-hearing conference level. We do our best to deploy mediators where we think they make take a specific issue and resolve it. But it is a constant, for any chair.

My executive vice-chair and I—S. W. Lee is the executive vice-chair. We work closely together. This is a perennial issue that we talk about. We have yet to resolve it entirely, but I think that we have made some inroads, over the last five years, to try to do something about it.

Mr. Frank Klees: One of the reasons I wanted to participate in this committee discussion is because this has been an issue top of mind for me for a number of years. I've always wrestled with this issue of, as an elected member, obviously advocating on behalf of my constituents, and so numerous times, when development applications come forward, of course, we have representation from the proponent, often, from stakeholders, and from municipalities. So there's the constant tug-of-war that takes place between, do we want something happening next door to us for whatever the reason? Do we want it in the municipality? And then there is the broader public interest.

You've set out very clearly what the responsibility of the board is in your presentation, and I thank you for it. I just wish we could get this information into the minds of

the public so that they can understand what the role of your board is. And that is not to respond to public pressure; it's to do the right thing consistent with provincial policy. I think, if there's something that we as legislators can do to make clearer that public policy so that there isn't all of that time wasted on the shoulder of the discussion, that we could more clearly focus the discussion so that the decisions can be made in a more concise and precise way, we would like to get some guidance from you with regard to what that might look like, because this is a perpetual issue.

With that, I'd like to get back to the very brief discussion we had about minister's zoning orders, and I think my colleague Ms. Mangat raised that. There was a time—I believe it was in 1983—when the ability to appeal an OMB decision to cabinet was withdrawn.

Ms. Marie Hubbard: That's correct.

Mr. Frank Klees: If I recall correctly, the rationale and the reason for that was that we did not want these decisions to be partisan or political, that we did not want a major issue all of a sudden to be made because someone had political strength. We wanted to ensure that all of these decisions were based on good, sound planning principles, that they were based on a legislative framework, and that the board could make that decision in its quasi-judicial responsibility.

Ms. Marie Hubbard: Yes.

Mr. Frank Klees: So the partisanship or the politics was taken out of planning decisions in Ontario, which is the way it should be, in my opinion, because then you have proponents who can come forward and make their application. If the application doesn't fit within the framework, they'll go away, and so they should. But if it fits, then they'll do what they need to do to comply. If someone opposes, then they also know what that framework is within which they can raise the objection. But there isn't an appeal to a higher power, and that's why I strongly disagree with my colleague Mr. Prue, who somehow thinks that because you are a municipality, you have a veto over planning principles and over jurisdiction, or that your view of that Planning Act somehow trumps the view of a developer or a proponent. I would think that in this province, once we have legislation, we all are considered equal under the law. You make your representation and then you make your decision.

So here's my question to you: With regard to the minister's zoning order, under what circumstances does that minister's zoning order come into play? How can it be triggered? What is it about an application that can in fact trigger a minister's stepping into the process?

1050

Ms. Marie Hubbard: My view—and the legislation is clear; I defer to my best friend here at my left—is that there has to be a provincial interest. I may be going out on a limb here, Mr. Klees, but ministers have to be very careful that they don't become the court of appeal. I have a lot of concerns with respect to that. I think the provincial policy statement is our guiding document, and we stick to it. We want to hear that evidence in the hearings, and to my knowledge, in my five years and 10 months as chair I can only think of one minister's zoning order. Can you think of any others?

Mr. Stan Floras: Not off the top of my head.

Ms. Marie Hubbard: One in, I believe, the Oro-Medonte area, but I have not dealt with any other minister's zoning orders.

On the other hand, I just want to add that one of the things that we do here, one of the matters that we do here is that ratepayers are sometimes told, "The minister will invoke a minister's zoning order and wipe this whole appeal away. It's gone. The board can't do this; it's over with." That's not the case. That isn't how business is done.

Mr. Frank Klees: With regard to your comment—and it was also referenced in the backgrounder as a challenge for the board—that when there is a change of council and you have one municipal council approving a particular application, we have a municipal election and now we have a different set of municipal councillors, and all of a sudden they're opposed—we know why they got elected. They got elected because in the run-up to the election they were opposing the development that everybody didn't like, or at least that a lot of people didn't like. So now they're trying to deliver. This goes right back to the issue of political interference. I want you to comment, if you could, please, on this very issue in terms of when it's so crassly obvious that there is political interference in what should be a very objective process. How do you as a board deal now with that new set of circumstances, and what is it that you can do to head that off, to avoid another four years of hearings, and if you can't, what is it that you need to give you the authority to do that?

Ms. Marie Hubbard: Let me answer from a chair's perspective: We're tough as nails. If a newly elected council determines that the council previous has for whatever reason done the wrong thing with respect to an application, the one thing that is always significant to me is that they don't do anything to overturn the official plan amendment and the bylaws, which is straight-out politics. I think it's quite interesting. And we deal with that quite frequently. I think there should be some consideration in some piece of legislation whereby we stick to that position, because the new council coming in no doubt is lobbied by a series of ratepayers and others, so they get elected based on, "Oh yeah, we'll overturn that," but in actual fact, when they get there they often don't do it. So those policies and those decisions still stand, and we end up seeing very expensive hearings. We see good projects going by the wayside sometimes because they just run out of money to keep putting up with this ebb and flow of political interference. It's a very serious matter in my opinion. It's a very serious matter as it relates to investment in Ontario. Their own official plans must guide them. The provincial policy statement must guide them. I'm not a legislator and I'm not a lawyer, but there's no question in my mind that it would relieve the board a great deal if something emanated in legislation that would give some assistance in that regard. We've

seen this happen in St. Catharines, and that has been the worst—I've never seen anything like it. I read the press and I can barely believe what I'm reading.

At any rate, any help that the board can get through legislation we'd be very happy to see.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have. Mr. Prue?

Mr. Michael Prue: Surely. A couple of housekeeping questions. Just so I understand, how many people are presently hired in the adjudicative role at the OMB?

Ms. Marie Hubbard: Twenty-six.

Mr. Michael Prue: Twenty-six. And what kind of training have these people received?

Ms. Marie Hubbard: I'm glad you asked the question. Some people come to us with a very narrow skill set and we, during the last five years and 10 months, have initiated an extensive education program. We do education on a day-to-day basis. In our interaction we do teaching, we talk about the Planning Act, the provincial policy statement, the legislation that guides them. We assist them in many ways in terms of the process of the board hearing and we keep in touch with PIR and MMAH, who come and talk to us about the latest legislation. PIR has been exceptional in their communications with us, the deputy and his staff, in terms of teaching us about the demographics, about the settlement areas, about their general plans on Places to Grow. The MMAH is the same. The MMAH in the last while has given municipalities all of the tools they need to design healthy communities, to have urban design people decide how municipalities are going to configure a building or so on.

So we talk about that with our members. We have one session every month at a board meeting where we review case law. We elaborate on policies. We write a decision and elaborate on case law, like Places to Grow. That becomes our case law that we follow and we teach our members to read the cases. Then we've got the OMB reports that are reviewed by distinguished counsel. OMB reports report on a number of our decisions and they are published—are they out every month or two months? Every month we get those.

We encourage our members—on top of that I circulate decisions internally, where I think a member has grasped a particular piece of legislation, so that everybody knows, "We want to be consistent. Here is a good case. Just read this and understand it."

I have a lot of dialogue—I'm very close to my members, very close to them. I know their strengths, their weaknesses, and we try to assist and build upon that. We have an extensive education program internally.

Mr. Michael Prue: Most quasi-judicial tribunals are not bound by their own precedents or their own jurisprudence.

Ms. Marie Hubbard: We're not either.

Mr. Michael Prue: No. Okay. I just wanted to make sure.

Ms. Marie Hubbard: We're not either. I thank you for raising that. I'm not trying to imply that, but certainly we're doing the best we can to get consistency across the board. It's very important.

Mr. Michael Prue: From the 26, how many are legally trained?

Ms. Marie Hubbard: Are what?

Mr. Michael Prue: Legally trained lawyers.

Ms. Marie Hubbard: How many lawyers have I got, Ali? I can't remember. Give us one second and we'll tell you. A good number of them.

Mr. Michael Prue: A good number?

Ms. Marie Hubbard: A good number.

Mr. David Ramsay: Is that a good thing?

Mr. Michael Prue: That was my next question. Oftentimes we find that these boards are stacked with people from the legal profession and I just wonder, in this particular board, how many.

Ms. Marie Hubbard: I think about 10—10 or 12.

1100

Mr. Ali Arlani: Less than half.

Mr. Michael Prue: About half?

Ms. Marie Hubbard: Less than half are lawyers.

Mr. Michael Prue: Less than half. Okay, then my next question: Is this too many?

Ms. Marie Hubbard: Too many lawyers?

Mr. Michael Prue: Yes. We often have that question asked, that ordinary people, business people, heritage people, community people, former councillors and mayors would maybe make a better fit.

Ms. Marie Hubbard: Well, I have to say that—

Mr. Michael Prue: Or you just don't have any say, because the Legislature sends them.

Ms. Marie Hubbard: We really like lawyers, but we like other folks as well. Do you understand me?

At any rate, some of the people with municipal backgrounds, and I'm one of them—I accessed public office. In my earlier life, I was a nurse. What interested me in planning was that I wanted to see how decisions are made in how we house people. In those days, affordable housing was just coming on the horizon, and I was a director of affordable housing. I decided to run for public office and I accessed and chaired planning for eight municipalities, for a large region. I thoroughly enjoyed myself.

I see people today who—the people in municipal life, they get it. They understand the process of municipalities. Not all lawyers do, but that's not to depreciate them. Lawyers bring a special background to the process. They understand the law. But sometimes you have to be a little more flexible. So the people on our board who have had municipal experience have done very well, in my opinion.

Mr. Michael Prue: The reason I'm asking that question is that the Legislature has called upon this committee from time to time to appoint new people. Should the review process look outside the legal confines more than we've done in the past?

Ms. Marie Hubbard: Well, I find that it's an interesting thing, in the recruitment phase, to talk to people and see what they bring to the particular—you know,

what skill set they've got. I've been remarkably surprised that people with no legal background sometimes do very well at the board. They really do.

I would look at a broad spectrum, if you were about to approve people. A broad spectrum of members is very important, in my mind.

Mr. Michael Prue: We have received a number of letters in advance of today's hearings, and we will have some deputants later this afternoon. The letters that have been most critical of the board come from groups that identify with the heritage aspect. There are a number of them. I've got a whole bunch of them here. They cite cases that they are unhappy with, and I know some of them you've already talked about. The ones most often cited are the Lake Superior—

Ms. Marie Hubbard: Michipicoten?

Mr. Michael Prue: Yes. I'm trying to get the right word here. Is it a gravel pit or something?

Interjection.

Ms. Marie Hubbard: Well, it's more than that. There's a—

Mr. Michael Prue: Okay, it's more than that. Grimsby, Alma College, the Bronte triangle, Port Dalhousie: Those are the ones that come up over and over again. Is there enough expertise on the board at this time dealing with heritage matters?

Ms. Marie Hubbard: There is. And the Conservation Review Board is an interesting board all by itself. It's another group of advocates.

We have on our board Marc Denhez, who is known across Canada and the United States. He's a heritage buff. He knows the business; he knows the act.

Our members understand heritage. They do. We have a good team of people who are quite capable of going out and looking after heritage conservation areas. We get it. The provincial policy statements require that we do that. We of course have the jurisdiction to deal with demolitions. Any alteration would go to the Conservation Review Board.

But once again, I think a good deal of the conflict, if you will, or the upset of these groups is unfounded—absolutely unfounded.

Mr. Michael Prue: We have a letter here as well, dated August 20, 2009, from George Carlson, councillor of ward 11, city of Mississauga. It is his opinion that to properly address matters related to cultural heritage conservation, the OMB have within its membership at least one member who has an area of expertise related to cultural heritage conservation and that the member must confer with the review board before making a decision. Would that—

Ms. Marie Hubbard: Why would we have to go outside to another tribunal to confer? They didn't hear the evidence. I think that is not appropriate and I don't support that comment at all.

Mr. Michael Prue: He also goes on to say in his letter that this is a very cumbersome process because oftentimes—and he quotes, "The Ontario Heritage Act, section 25.1, states, 'Despite section 5 of the Ontario Municipal Board Act, the board may appoint a member of the review board to sit on a panel of the board conducting an appeal under this act for the duration of the appeal.'" Then he writes, "This would appear to be acceptable in theory, but in practice it is not proven to work." His reason, which he cites, is that most of the people on the review board are not full time and cannot attend long hearings.

Ms. Marie Hubbard: The Conservation Review Board is a part-time board. The Conservation Review Board are advocates; they're not adjudicators. My experience in assigning them to a hearing at the OMB—it becomes very complex. Alma College is one of the examples where we put a Conservation Review Board member sitting with an OMB member, and there were a series of rather unpleasant events that occurred there. As far as I'm concerned, I will be very discreet and careful during my chairmanship, which will end soon—and I'm sure some people will be happy to see the end of me at the CRB—but at any rate, I'm very careful about what I do in terms of assigning a Conservation Review Board member.

Mr. Michael Prue: How much time do I have left?

The Chair (Mrs. Julia Munro): About three minutes.

Mr. Michael Prue: About three. I'd better not get into too many other major areas, but we've also received a letter here from a group called FoNTRA. This is the Federation of North Toronto Residents' Associations. They go on in great detail, and perhaps if you could comment on some of the suggestions they are making, just so I have an understanding of whether their suggestions are totally in keeping with what you think.

The first planning reform recommendation: They believe that the Ontario Municipal Board currently functions solely as an appellate body and that it should not be conducting de novo hearings with respect to Toronto planning matters. They think that it should be an appellate body that hears on the basis of the information that's already been prepared. Any comment on the holding of de novo hearings, whether or not this is—it's a strange appeal board that goes completely de novo. I mean, it is; it's a very strange phenomenon. Why is it that it's happened here in the OMB, and should it continue?

Ms. Marie Hubbard: You answer that, and then I'll come in, okay?

Mr. Stan Floras: Bill 51 did change the board's mandate to be that of more of an appeal board as opposed to a de novo hearing by restricting the right of certain people to bring appeals. As well, they restricted the type of evidence that can be presented at a board hearing to that that was considered by a municipal council. If not, as the chair alluded to in an earlier answer, the board will give the opportunity to the municipality to consider the new evidence that was considered before making any decision.

In response to that question, I think this group should carefully review some of the provisions in Bill 51 to see how the province has responded to that concern. The board's mandate has changed considerably through these amendments.

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Mr. Michael Prue: You said you wanted to comment as well?

Ms. Marie Hubbard: No, I think he's covered that.

Mr. Michael Prue: Okay. I know my colleagues from the Conservative Party may not agree with this, but they are recommending assistive intervenor funding for residents' associations so that they can appear on an equal financial footing with developers. This was done away with by the Harris government about 10 years ago or so now. That intervenor funding which did exist was taken away. Would intervenor funding harm in any way the workings of the Ontario Municipal Board if groups were given monies?

Ms. Marie Hubbard: No. It doesn't affect us. If somebody had intervenor funding, that has nothing—

Mr. Michael Prue: I mean if they were given monies they would then, I assume, hire legal experts, planning experts and people who could assist the process as opposed to opposing it.

Ms. Marie Hubbard: Yes. It has nothing to do with us, how they're funded. That isn't someplace where we would go.

Mr. Michael Prue: With the taking away of the intervenor funding, it didn't hurt the board at all, it didn't help the board at all; it had no effect?

Ms. Marie Hubbard: I don't think I can comment on that.

The Chair (Mrs. Julia Munro): I'm sorry, we must move on.

Mr. Michael Prue: Okay. If you think about it, I'll ask it in the next round, if I can.

Ms. Marie Hubbard: Yes. Let me think about it, please.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: I'm just going to refer to a written submission from the Ontario Professional Planners Institute that was addressed to the Chair for this committee, and we all have a copy. As we know, "The OPPI is the recognized voice of the province's planning profession." Their scope is very wide, with members from government, private practice, universities and non-profit agencies to look after field work for urban and rural development. They make a comment in their submission and I'd just like you maybe to expand on that, on how we achieve that. I'll just quote here:

"OPPI commends the OMB's public outreach initiatives as it demonstrates that the board continues to be mindful of the role of the public and community at large and their right to have access to, an understanding of and the ability to fully participate in the hearing process."

Can you elaborate on that, please? How do we make sure that various groups have access to OMB hearings in a fair—

Ms. Marie Hubbard: They have full access. There's no impediment. If they arrive at a hearing and decide that they want to present a paper or make a position, there is no impediment. They are fully recognized by the panels and they have their day in court, so to speak. There's no problem.

Mr. Lou Rinaldi: No impediment. Just to follow up on that, though, you made a comment before, and I think it was referring to my colleague Mr. Brown from the north. I know that it referred to the municipal portion of it where they don't have the professional staff. In many cases, groups might not have professionally advanced support. Would you have some kind of leniency to make sure that they came across and that they got their thoughts across to the board?

Ms. Marie Hubbard: Yes. We ask them for witness statements and to articulate their concerns. We have patience with that. We assist, and sometimes they do get assistance from other parties to the proceedings. We try to narrow the issues with them and make sure they understand what those issues are.

Mr. Lou Rinaldi: I guess the point I'm trying to make is that they understand that they do a good job of that. I just want to make sure that that was filtered with that. So thank you.

The Chair (Mrs. Julia Munro): Ms. Hubbard, could I ask you just to make sure you're speaking into the microphone?

Ms. Marie Hubbard: I apologize.

The Chair (Mrs. Julia Munro): It's just harder for other people.

Ms. Marie Hubbard: I will do that.

The Chair (Mrs. Julia Munro): Thank you.

Mr. Ramsay?

Mr. David Ramsay: Marie, welcome to the committee. Like my Conservative colleague, I want to thank you very much for the work you've done on behalf of the province of Ontario over these years. When you said how you've served as chair for five years and 10 months, that means to me that this time is coming to an end, I take it?

Ms. Marie Hubbard: It is.

Mr. David Ramsay: So I don't know what's going to happen in your future, but again I want to thank you very much for what you've done.

I had to be absent for a little bit, so I apologize to all my colleagues and yourself if I might be a bit redundant, but we've all touched upon this a little bit, about really what your role is as a board here. I think there is a lot of misunderstanding when you go against what has been seen as a municipal council decision: "How can you do that? You're not listening to the local people." I think the idea from way back in the early 1900s of the OMB was to have this consistency that you talk about for planning, that you don't just move to the flavour of the day or the week in development planning but that there are consistent rules.

I think people also have to appreciate that the municipalities are creatures of the province, and as we've given more and more power over the years to municipalities, and rightfully so, it is the province that has supreme control of how the province develops. We certainly work with our municipal partners to do that on the micro level, but as we've all said around here, they have

to be consistent with the policies of the province. I don't know if maybe we need to do a better job in educating people as to what's going on here, and that when the public works people or the planning people in the municipality bring up their recommendations, they and their great professional work are being consistent with what they understand is the provincial law and, obviously, the official plans and the zoning bylaws of that municipality. But then, of course, a council, because of maybe the flavour of that day, just wants to have no regard for that, and they just can't do that. I think that's the problem there, and I guess maybe all of us need to educate—and that's probably more the government's role—as to what your role is and what you're trying to do, that you're trying to make sure decisions are consistent with the law.

Ms. Marie Hubbard: Yes, that's exactly what we do.

Mr. David Ramsay: I have a question before I pass it on. I don't know if you are in a position, with two more months to go, but you have a lot of experience and you would have great advice for us as a government. I don't know if you're in a position to do that right now, but if we were to do one thing to make the board even better or to make the whole system better, what would it be? What would you advise us to do to improve the development of this province?

Ms. Marie Hubbard: One thing that could be done is that PIR put out the growth plan—let's use this example—and municipalities were to incorporate in their official plans by June of this year the various policies of the growth plan. Many municipalities have not done that, and there needs to be a follow-through by MMAH to make sure that the official plans of the various municipalities are brought up to date and that the tools that MMAH has given them with respect to site plan approvals, with respect to designing their communities, with respect to urban design, and with respect to site plan are initiated in their official plan policies. We can't go into a municipality and say, "Look, you haven't included these demographics. You haven't included in your official plan that certain studies need to be undertaken. You have no urban design situations. Where are you coming from here?" Believe it or not, we have no authority or jurisdiction to walk into a hearing and make statements like that, but very often we note that the directions given by the various ministries in terms of the growth plan and other documents are not adhered to in a given and respectable amount of time. So what would be helpful is if there is some means of follow-up from the various ministries—MMAH and certainly PIR—on what their expectations are, and see that they're fulfilled. That would make a big change for the municipalities as well and the quality of the evidence that they would bring forward. That's one thing, and it's not small. It doesn't sound like much, but it is. I believe that extensions were given to municipalities—am I right on this, Ali?—

Mr. Ali Arlani: Yes.

Ms. Marie Hubbard: —to include in their documents the directions from the growth plan. So that would be one thing I would like to see followed up on by the ministries.

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Mr. David Ramsay: Might this be a lack of marshalling of resources at the local level, or lack of expertise, to bring—

Ms. Marie Hubbard: Well, I can tell you, without mentioning any names, there are certain municipalities that don't agree with the demographics in the growth plan. They don't agree with the employment numbers, those kinds of things. Sometimes the board gets caught in the middle. They haven't considered or come upon some numbers, so to speak, that they want to incorporate, so they just let it go. They're not in agreement with a particular piece of legislation and that becomes a problem for us.

I think that would be one area that would help a lot. It would help the municipalities themselves when they come before us with an appeal, or someone else appeals their decisions.

Mr. David Ramsay: Yes, it makes sense. They'd be in compliance.

Ms. Marie Hubbard: Yes.

Mr. David Ramsay: Again, thank you very much and good luck with your future endeavours.

Ms. Marie Hubbard: Well, I'm now 74, so it's time for me to move on, and I would think in the next three or four weeks I'll be doing that.

Mr. David Ramsay: Well, good luck to you. Thank you.

The Chair (Mrs. Julia Munro): Mrs. Mangat?

Mrs. Amrit Mangat: Thank you, Madam Chair.

The Ontario government is planning for growth in Ontario, and the growth plan for the greater Golden Horseshoe forecasts growth of 3.7 million people by 2031 in this area.

Ms. Marie Hubbard: Yes.

Mrs. Amrit Mangat: As you know, that growth affects jobs, housing, transportation, heritage, environment and other areas. Are there ways in which the OMB could enhance the participation of citizens and community groups in the hearing process? This is my question.

Ms. Marie Hubbard: Just give me a minute. I want to think.

Mrs. Amrit Mangat: Sure, take your time.

Ms. Marie Hubbard: Because that's a loaded question and I want to be careful that I don't get into difficulties with it.

The Planning Act allows for a lot of public participation, so there's a lot of opportunity for people to come forward and give their views on their community and so on.

I was going to mention the intensification. Should that come in here or not? I don't know.

Mr. Stan Floras: It's part of our answer, I suppose.

Ms. Marie Hubbard: Yes, it's part. I want to get going on intensification issues because that is central to the legislation now. We're trying to do something with respect to smart growth and efficient use of land, efficient use of transit, pipes, you name it—infrastructure.

Of course, not everybody can own a house, so to speak. We're creating these huge communities by way of

condominiums and I'm finding some very interesting things coming out of that. The condominium then becomes the neighbourhood. The condominium and how it's situated—we have to consider parks. We've got to have a bit of green space. We have to think in terms of how people live: Where do they go for a quart of milk? These are significant issues. A lot more work needs to be done on how we incorporate a sense of neighbourhood into these very high towers, but also how we incorporate in this intensification an opportunity for all levels of income and people to congregate together. It's an issue that now is starting to emerge and we're saying the affordable housing projects are getting marginalized over here, because people want to argue with us over affordable housing.

We mustn't lose sight of what we're doing when we get into the intensification issue and we have to make that community as environmentally friendly as possible. The tools are available to do that, and municipalities have to be smarter in how they do it.

I don't know if that answers your question.

Mrs. Amrit Mangat: In what way has the new citizen liaison office helped in this process?

Ms. Marie Hubbard: Oh, it's been an amazing experience. It certainly helps me as chair, because my phone rings less. The citizen liaison officer is a planner, so he understands the process; he understands the appeal process as well. It's taken a lot of time for him to set standards of communication and that sort of thing, but it's an amazing post and we're most happy that we have it.

Mrs. Amrit Mangat: And what impact does the updated website have?

Ms. Marie Hubbard: A huge impact. At the moment, we're redesigning our website. We need to embellish it somewhat, and we have ideas. We have a communications expert, who is sitting behind me somewhere, in the name of Joe Whitehead, and he's done a very good job with all of the IT work. It means a lot to the board. It's one of the things that I'm very happy about, one of the matters I'm happy about.

Mrs. Amrit Mangat: Do you think that these reforms result in a more effective, transparent, accountable and user-friendly OMB in 2009?

Ms. Marie Hubbard: Absolutely. We're much more transparent than we ever were before. And on top of that, I've opened, let me say, the bridge to the moat in terms of opening up the board. The board in the past has not communicated with outside people. I now talk to stakeholders on an annual basis, not about the merits of a hearing, but rather about our role in terms of relating to professional planners and their moves to have healthy communities and designs of subdivisions, all of these kinds of things. I meet with the Ontario Bar Association on an annual basis, and they've been extremely helpful in helping the board and teaching the board and assisting us in so many ways.

The other thing is that I've had nothing but positive communication in terms of meeting with deputy ministers and having them come and tell us what they need to tell us about any current legislation that they're thinking of drafting or speaking to us about a bill that they've tabled and had approved.

So we're rethinking our role. It's not the sort of blinders-on kind of board any more.

Mrs. Amrit Mangat: It's an ongoing process.

Ms. Marie Hubbard: Yes, it's an ongoing process.

Mrs. Amrit Mangat: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. This will be the final round. Mr. Klees?

Mr. Frank Klees: Thank you, Chair.

You're holding up very well.

Ms. Marie Hubbard: I've got my water, so I'm fine.

Mr. Frank Klees: For a while there I thought Mr. Ramsay was making a pre-emptive announcement about your retirement, when he said that you wouldn't be with us much longer. But then I hear from you that it apparently is not a forced retirement, that you intend on moving on.

Ms. Marie Hubbard: I don't know what day this is going to happen yet, but it's time for me to go into the sunset. I've had a marvellous opportunity at the board. It's been very exciting, and I hope that I've left it a better place, Mr. Klees. I understand the work of the board. We've made many changes, and it's been a marvellous time and a marvellous experience for me.

Mr. Frank Klees: You've served us well.

Ms. Marie Hubbard: I've done my best.

Mr. Frank Klees: I just hope that you will at least stay around and provide some input into that report that I've requested.

Ms. Marie Hubbard: I'll work on it right away.

Mr. Frank Klees: Okay.

Ms. Marie Hubbard: We'll get the basis of that as soon as I go back.

Mr. Frank Klees: I would just like to take a couple of minutes, on that note, to talk about the qualification requirements for appointees to the board. I know Mr. Prue touched on it briefly. But particularly given many of the changes now that the government has brought forward—and there was a time when the board was required to limit its decisions to the framework of legislation; now, with legislation such as the Green Energy Act and others, you really are mandated to think beyond that Planning Act as well and take into consideration all of these other pieces of legislation. So these hearings become more and more complex.

I'd like your thoughts in terms of perhaps what set of qualifications the government should be considering when making appointments in terms of experience with the law, with planning, engineering, various disciplines that have to do with these very complex issues, and if not specifically within individual appointees, do you feel that at least on a panel there should be certain qualifications represented by the adjudicators?

Ms. Marie Hubbard: Yes, I do. If I may start out with some very serious fundamentals: One needs to know how to read and write. I know that you would be amused at

that, but sometimes we meet up with people who can't write, and the decision is the hearing. The second thing is that our hearings are conducted all over Ontario, so they have to drive a car. Don't send me somebody who can't drive a car.

The skill set, in my mind, involves a number of things: Can they read comprehensively? Can they listen to evidence comprehensively and make findings? I believe that lawyers serve us well on the boards in the complex hearings; I'm all about having some lawyers, without question. I'm also all about having people with municipal backgrounds. But I'm not talking about a one-termer; I'm talking about people who have accessed the necessary planning committees and so on and have an understanding of what it is we deal with, because the planning instruments are very complex and these are not simple matters. If I leave nothing else with you today, it's that.

Now, the whole issue of recruitment is not totally simple, but we do our best. I have been asked to submit documents on the skill sets that I would require. So I would implore the standing committee to do an in-depth interview whenever they have a candidate for the OMB before them, because it's very serious business. There's a lot of money involved in these hearings, both for municipalities and participants. I'm of the view that sometimes a cross-section of people is very good.

I'll give you one caution, and some people will not be pleased that I'm going to say this: One has to be very careful about putting on the board commissioners of planning from various municipalities, because they cannot receive evidence and filter it and distill it and come up with—you know, that can be a difficulty because they're still the planners; they still want to plan, and that's not what they are there to do. So I would suggest to the committee and to Madam Chair, with respect, that when those candidates come before you, they're the people you should give second thoughts to.

We need engineers on the board as well. We've had engineers from time to time and they do very well in terms of the aggregate hearings; they understand the hydrogeology and that sort of thing, and the water table and all of the complex matters that arise from that. But I would implore you for the future, Madam Chair, that anyone who comes here is closely scrutinized. I do like to see a good cross-section of people; I wouldn't want to see all lawyers on the board. I think we could mix and match panels that do the complex hearings and they could do them well. So your point's well taken, and much rests with this committee to examine who's going to be appointed. I think it's very important.

Mr. Frank Klees: Thank you for that very practical advice. I would ask, if you have the time before you leave, that perhaps if a document such as this is not already available, your staff prepare, in consultation with you, an interview outline and a qualifications outline—

Ms. Marie Hubbard: Yes, we have that. I don't have it with me, but I—

Mr. Frank Klees: If that could be presented to the committee.

Ms. Marie Hubbard: Yes.

Mr. Frank Klees: It's interesting, though. If that's available, why in the initial recruiting process that the government is responsible for—because before an applicant comes here, they have already been recommended by the minister to be a member. Any advice that you might have in terms of how that document perhaps should be used much more practically at the outset when members are being recruited for proposal to this committee, so that we're not embarrassing people when they come before the committee, that someone has already done that screening—and particularly, as you say, with the multi millions and billions of dollars that are at stake in terms of the work that's being done by members of the board, that we be much more prudent in terms of who we bring onto that important appointment.

Ms. Marie Hubbard: There's no question about it. Some of the grief—listen, we're not perfect. There are some members who are challenged, there's no question in my mind. But we make the best of that by pairing them up with other people. We do the best we can, but I think that this committee should seriously scrutinize any recommendation that comes before it and make sure that the skill set is there and that before you put somebody on the OMB, it's got to be a high-level interrogation. That's what I've attempted to do, and I've stuck by that.

You also have to remember that there are not a lot of people that make applications to the board, believe it or not. It is not that easy to just pluck out several applications and find people right away. And we don't have a lot of openings from time to time; we just have one or two at a time. I don't know how involved this committee is, of course, but it is essential that recruitment is well done. I think it's important that this committee understands it.

Mr. Frank Klees: Thank you.

Madam Chair, how much time do I have?

The Chair (Mrs. Julia Munro): You have a minute. We're running short. We're down on the third round here.

Mr. Frank Klees: In that case, I'll rest my case. Thank you again very much.

The Chair (Mrs. Julia Munro): Mr. Prue.

Mr. Michael Prue: To go back, I know you've been answering questions and probably haven't had a big chance, but I thought I'd ask: Since the assistive or intervenor funding was abolished 10 or more years ago, has this improved or not improved the service? Any chance to think about it? You've probably been occupied.

Ms. Marie Hubbard: I've had a chance to think about it, and I don't think—I'm not trying to dodge your question, because I don't dodge anything usually, but as chair of the board I don't think it's up to me to get into some discussion on intervenor funding; I really don't. I have to leave it to wiser folks like yourself.

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Mr. Michael Prue: All right. In Mr. Klees' questions, you talked about how some of the members are challenged. Often—and I have worked with many organizations over my life, and I'm sure this one is no differ-

ent—people who come on board simply aren't up to the task; they're challenged. Should there be a mechanism designed by the Legislature that would allow a report from you, as the chair, or some other person to say that maybe this person ought not to be here and a new recruit should be taken on board?

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: So that's something we could look at and we should look at.

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: Because obviously, having someone who's not up to snuff on the job is not going to, in the long term, help the board, its members or the process. Okay.

A couple of other questions that have been raised by other groups—just if you could comment on them, because they've sent them in. Again, going back to the Federation of North Toronto Residents' Associations, they have suggested a couple of strategies, one of which is that official plans should be required to provide population densities and land-use intensities in order to offer intelligent guidance for site-specific rezonings to the board and, I guess, to councils as well. Do you think that those would be of assistance?

Ms. Marie Hubbard: They already do it, Mr. Prue.

Mr. Michael Prue: Okay. I'm just reading what they wrote.

Ms. Marie Hubbard: That's just a clear misunderstanding. It's already there.

Mr. Michael Prue: They also are suggesting the site-specific amendments to the official plan by individuals and developers should be eliminated in order to maintain the validity of public policy in between the mandatory comprehensive official plan updates every five years.

Ms. Marie Hubbard: No, I don't agree.

Mr. Michael Prue: You don't agree with that.

Ms. Marie Hubbard: It's ridiculous—no. Different applications come, different designs. Not at all. I don't see that.

Mr. Michael Prue: I just wanted to float it, because this is what's being suggested to us. I need to give you equal time.

Ms. Marie Hubbard: No, no, I understand.

Mr. Michael Prue: Some other questions: How will the board address future planning challenges and, again, intensification and demographic shifts? Is there something that the Legislature can do to assist the board in looking at this? Because obviously we know there is some depopulation taking place in northern Ontario and rural Ontario. We also know the explosive growth around the GTA and many places in urban Ontario.

Ms. Marie Hubbard: Right. Let me answer you this way: I am satisfied as the chair that I've been properly informed by the deputy of municipal affairs and housing and by the deputy of PIR. Both of those people have kept us on top of the legislation, kept us on top of their policies—can we say that? Is there something else you want to add there?

Listen, it's like going to university every day. These chaps teach us everything, and I have to run, run, run to keep up with them. It's been an amazing experience. I've learned a great deal and I'm quite satisfied that they communicate with the board in a very excellent way.

Mr. Michael Prue: You did make a statement earlier, and I hope I caught it right, about the mediation program, that some of the staff in the mediation program have not received enough training or adequate training or—

Ms. Marie Hubbard: No. No staff mediate; only the adjudicators mediate. To train mediators is quite an expensive undertaking. To the extent that our budget permits that, we train them, but I have, really, five mediators out of 26. Sometimes, if they're tied up in a complex hearing, I can't assign them readily. So my view is that in the future, we need to train more mediators, because I see a very prominent role for mediation; not that the appeal is going to go away, necessarily, but mediation helps to narrow the issues and sometimes inform the appellant.

Mr. Michael Prue: Now, would it be advisable for the Legislature, in considering future appointments, to look at people who would be mediators and who would primarily be responsible not for hearing appeals but for mediating?

Ms. Marie Hubbard: Well, at the moment I couldn't afford not to have somebody who not only adjudicates but mediates. We need both. Unless there was a specific group of mediators, it may be something that could be considered, but I think we'd need a substantial budget for that, to appoint them. But I'm all about mediation. I'm very happy with our results. The ratepayers appreciated the mediation in some instances.

But training them is the issue. It can't be somebody who is untrained. There are various mediation courses that are high-level, one with the Osgoode group, you know—

Interjection.

Ms. Marie Hubbard: And others. York has a program. But these are university-level sessions. Harvard does; they have an excellent one at Harvard.

So this isn't just somebody who hops into a little sideline down the road and goes in and does one course on getting a certificate. I'm talking about serious mediators who understand the model of mediation, and that is not simple. It's a very complex matter, understanding what model one is going to use before they go into the mediation. So certainly the standing committee could look for that talent. I think it would be good.

Mr. Michael Prue: In terms of—I still have time?

The Chair (Mrs. Julia Munro): Yes.

Mr. Michael Prue: Okay. In terms of the backlogs—I don't even know if there is a backlog. Certainly there is a waiting time, I understand, of about three months from the time when an appeal is launched until the time that it's heard. Is it advisable to leave it at that length of time in order to allow the parties to get prepared? Can it be speeded up, or is it—

Ms. Marie Hubbard: Listen, I take great pride in calendar. I'm involved in it and by statute I have control

of it. I am very proud to say that I have parties, and particularly the bar sometimes, who say, "You've booked this too fast. We're not ready to go."

We do not have a large backlog. The variances and consents are put on right away, as soon as we receive them. Motions—and we receive a lot of motions—are booked immediately by me. So there are no delays. We co-operate through the planner/case worker with the various parties, and we expedite because we understand people want building permits.

The consents and the variances usually involve an addition to a house, a deck, putting on another storey or something of that nature. So people save their money; they want to embellish their properties. They need building permits. We understand that, and we need to get the decisions out fast and turn around, so everybody benefits.

Mr. Michael Prue: The City of Toronto Act gives the authority to the city of Toronto to set up its own appellant procedures.

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: I understand they haven't done it to date.

Ms. Marie Hubbard: No.

Mr. Michael Prue: If and when they do it, and when and if other municipalities might follow suit, would that take some of the pressure off the board?

Ms. Marie Hubbard: No. The complex hearings will still end up with us. And I don't see that happening, frankly. I have very good communications across the province with major players in the cities, and I don't think they want to get into that business.

Mr. Michael Prue: Well, I have to assume the city of Toronto asked for that. I can't think that the province just dangled that out there.

Ms. Marie Hubbard: No.

Mr. Michael Prue: But are they having second thoughts? Is that what it is?

Ms. Marie Hubbard: My intelligence says yes, they are, and they're not going to do it.

But this is a great city. Toronto is a great city, and it's quite impressive. I think the board understands the city. We understand it from many perspectives. It's complicated, complex. We certainly know that in some of the districts or wards in the city, there are interesting players. Everybody has their own view. But overall, at the end of the day, I think things work out pretty well for the city.

Mr. Michael Prue: Those would be my questions. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Johnson.

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Mr. Rick Johnson: As someone who's lived just northeast of the GTA for over 30 years, I just want to thank you for the years of community work that you've put in both to your local community and to the province. I know that your experience and wisdom are greatly appreciated and will be missed. I just want to say thank you for all of the work that you do and have done for us, and I hope that you will, as Mr. Klees said, impart that wisdom to the government so that we can take great value in it.

I read somewhere that the majority of fertile farmland in this province and likely in the country can be seen from the top of the CN Tower. That of course would be on a Monday after a rainstorm with a northwest wind. But the provincial government's new vision to strengthen Ontario's communities seeks to make them more sustainable by reducing urban sprawl, preserving green space, protecting natural resources and building improved communities. How does the OMB's decision-making process reflect that and how does it weigh these objectives in considering specific cases?

As I drive from here home, I drive over what used to be great farmland which is now housing and shopping malls. What is the OMB's role in—

Ms. Marie Hubbard: We follow the growth plan. I think the growth plan has many pluses because it directs development to settlement areas, directs development where the infrastructure is already placed. I think it's a good piece of legislation. I may not agree with all of its demographic data, but on the other hand I'm sure that that will be reviewed by the necessary people. We pay attention to that.

Urban sprawl is a problem, but it depends what you think urban sprawl is. If you talk to 10 people, you'll get 10 different definitions. The growth that you see isn't necessarily endorsed by us. I'm not sure what you're thinking of specifically, but planning and development of communities is a very serious matter, and municipal councils have to pay attention to that and decide where they're going and what they're doing. I have a lot of concerns in some areas.

Mr. Rick Johnson: Thank you.

Mr. Michael A. Brown: I too want to congratulate you. I was particularly impressed when I asked you about the northern municipalities, that there seemed to be a good understanding of some of the issues that we face daily, and often it is seen in places where growth is not a big pressure; we wish it was in many cases, but we do not—the planning process, not just the OMB but the planning process in general is seen to be an impediment to moving because we don't see the growth pressures that may cause dislocations in the community etc.

Ms. Marie Hubbard: Right.

Mr. Michael A. Brown: My question is not really a question so much as a statement about how the Planning Act in general may take into account the difference in communities as far as making the process much more accessible. As I pointed out before, we don't have a lot of planners or sophistication at that level in our communities. I, as a member, and I'm sure Mr. Ramsay and other northern members would tell you that the frustration with moving projects forward is intense. In our area, we get a lot more of that as politicians than we ever get about somebody who wants to put something here that's inappropriate etc.

Do you have any thoughts about what suggestions we might make to the Planning Act to be able to move

forward some of what in urban areas may seem big deals but in smaller places may seem common sense, so let's get this going?

Ms. Marie Hubbard: Well, you know what? It's an interesting question. I pay a lot of attention to the north because I have three members who live in the north. They've educated me immensely about the lack of jobs, the issues of forestry and the lack of employment in the forestry areas, lack of money—many decisions impact. So planning is centralized with the province, and I would encourage you to speak with Deputy Minister Fareed Amin, who's got a good handle on the province. I think those kinds of communications have benefited me, and maybe he can help you and assist you in that area. But we could have quite a long chat about the north. It's very unique—unique things are happening there.

Mr. Prue mentioned Michipicoten. Michipicoten has a huge harbour and they trek aggregates across Lake Superior, the only jobs in that area—there are 40 jobs. Of course, the OPA was approved by our board based on good evidence. But sometimes what happens in the north, and I say this with respect, is that people move into the north on the little lakes etc., but they don't want anybody else in. Do you understand me? The north suffers from this. You can take Muskoka. They got fed up with Lake Muskoka, so some of the appellants went over to Lake Superior and built very wonderful mansions on the lake. So they want to shut down the only industry in Michipicoten. You know what I mean?

Mr. Michael A. Brown: I happen to represent Wawa and Michipicoten—

Ms. Marie Hubbard: Well, there you go. So you know exactly what I'm talking about. You have to be mindful as their representative of what the needs of that community are, in my opinion, and always be wise.

Mr. Michael A. Brown: Thank you.

The Chair (Mrs. Julia Munro): Mr. Rinaldi?

Mr. Lou Rinaldi: Yes, just a question. In 2004, the Ministry of the Attorney General did a financial audit to assess the operation and management processes. Can you give some outline of what the outcome of that was and what changed?

Ms. Marie Hubbard: We can certainly do it, but I do want to tell you, and then I'll turn it over to Mr. Arlani—listen, I have my first five cents in a tin can. Do you hear me? So when I'm dealing with public money, I make very sure that we are all under the tent and following the guidelines of the government, and that's what we are doing. Every morning at 7:30 a.m., I approve expenses. I see them myself. I know exactly and I can reconcile those expenses with my calendar. In other words, I know where the member's been and I know exactly what's going on. In terms of the audit, we stood in good position, and I'll let Mr. Arlani answer you.

Mr. Ali Arlani: I joined the board in 2004, just after that audit, and the main focus of the audit was on controllership. We have put in place a very rigorous and strong controllership unit. Everything related to financial aspects of the board, whether they're expenses or consulting contracts or anything, has to go through that controllership unit before it can go to the chair or myself for approvals. That has been the main area.

The other area which was recommended as part of the audit report was the whole issue of benchmarking: How do we measure the performance of the board? That was an area where we also worked during the 2005-06 time frame to make sure that if somebody is looking from outside, they can see exactly how the board performed, what kind of timelines we are following and how we are expending our resources at the board.

Mr. Lou Rinaldi: Thank you very much. If I can just follow up with another quick question, if I may: I know in our office we experience that somebody sends an e-mail with a question and within five minutes if you haven't replied, it's taking too long. That's today's technology, I guess. The question is, back in my municipal days, more so than maybe now, I heard comments like, "We filed for an appeal, and it's taking so long"—you know, you've got to do your due diligence. In your wisdom, from the years you've been on the board and as chair, how far off are we on the appropriate time frame? I know from application to application it varies, but in general, have we met targets or have we—

Ms. Marie Hubbard: Yes, we do have targets, and we're meeting all of our targets. We exceed our targets in terms of getting bookings in. We're looking very good. I have very few hearings that are needing to be booked on my computer at the moment. Is that correct?

Interjection.

Ms. Marie Hubbard: I'm on top of that every minute of the day, I guarantee you. Any chair has to be. That's what we do. We process appeals; that's what our job is. It's very critical that it's very hands-on.

Mr. Lou Rinaldi: Thank you. Madam Chair, I don't have any more questions. I just want to take the opportunity to thank you for, as MPP Johnson said, your hard work, and not just you, but staff as well, because it's not an easy task to be an adjudicator because there's always a winner and a loser. So thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much. This concludes this morning's session. I want to thank you very much, Chair Hubbard, for being here today. I appreciate the expertise that you demonstrated and certainly that of your associates.

Thank you very much. This committee stands recessed until 1 p.m.

The committee recessed from 1200 to 1302.

GLENN BROOKS

The Chair (Mrs. Julia Munro): Good afternoon, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. This afternoon we are going to hear from a number of presenters and each will have a total of 30 minutes.

I'd like to have Mr. Glenn Brooks come forward. Good afternoon, Mr. Brooks, and welcome to the standing committee. Please make yourself comfortable there.

As you may know, you have 30 minutes and you may wish to take some or all of that time, but any remaining time will allow for questions from the members of the committee. So, begin when you're ready.

Mr. Glenn Brooks: Madam Chair and committee members, I thank you for this opportunity to speak to the Standing Committee on Government Agencies on the topic of the OMB.

As committee members are well aware, the Ontario Municipal Board can play a major role in the municipal decision-making process in planning matters. Almost every municipal decision under the Planning Act is subject to review by the board. In fact, the only decision not subject to appeal is the lifting of part lot control.

While changes to the Planning Act have been made over the years, and welcome recent revisions have been made to the Planning Act to strengthen the role of municipal governments, the reality appears that too often it is the board and not the democratically elected councils that are making major decisions as to the future planning for Ontario's municipalities.

In my comments to the committee, I would like to focus on three themes: accountability, transparency, and the question of weight, a legal term, given to directions for the Legislature.

Accountability: Every four years, you and I have to answer to the electorate for decisions we have made, the votes we have cast. If we have not served our constituents well, come the day for being sworn in we will find ourselves on the outside looking in.

The democratic process makes you and me accountable for what we do. Example: I am a firm believer in private property rights. I would not suggest for a moment that the funds and time that everyone has invested in their property should be taken away simply as a result of the outcome of an election. Similarly, I as a property owner should not have any kind of expectation or feeling of entitlement that the value of my property will increase as a result of municipal action. Nor would I suggest that you or I have the right to go to a body that is not accountable for municipal taxes or provincial or federal budgets and have a municipal decision restricting growth overturned if that decision allowing growth turns on a public expenditure in infrastructure of any significance at all.

Here, I am not talking about whether to permit a triplex living unit in place of a single or, indeed, whether the best use for a parcel of land is several houses or a retail store, although these matters are of importance to those who live in the area. Rather, it seems to me to be fundamentally inappropriate that an unelected and unaccountable politically appointed person or persons can render decisions permitting growth to occur when the inevitable result of that decision will be to require a municipality to spend money on infrastructure that council has stated it does not wish to spend.

Growth-related revenues do not completely pay for required growth-related infrastructure.

The government and the Legislature have been of great assistance to municipalities by limiting the right of applicants to appeal decisions by refusing the expansion of settlement areas, be they urban or rural. However, if municipalities are to be masters of their own capital budgets, it is my opinion that further strengthening the role of municipalities in the Planning Act is necessary.

Transparency: There are those who refer to the OMB as protecting the ability of the average citizen to intervene in planning decisions. It is true that having made submissions to council, and with a cheque for $125, anyone can appeal any decision to the Ontario Municipal Board. But what are the real chances of success for the average person if on the other side of the issue there is a corporation or indeed a municipality fully backed by lawyers and professional witnesses? Let us be frank with one another: not much. If average ratepayers are concerned about a development application, they have only one hope, and that is to convince their council that their concerns are well founded. Absent those municipal resources, their chances of success are slim to nil, and slim left the building decades ago.

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Particularly in smaller municipalities, even the ability of a municipality to contest an application is not going to be solely dependent upon the merits of the case. The costs to the city of Ottawa to contest a recent development application to permit 1,400 dwelling units are approaching $1 million. We all acknowledge that the funds needed to contest development applications have to compete with other municipal needs such as fire services, roads, parks, recreation and social services. Even with a complete certainty of success, and very rarely is there a complete certainty, how many small municipalities are going to spend that kind of money to oppose a development application? The truth, if we want to be transparent, is that in most cases the municipality is going to try to get from the development what it can, and not expend scarce resources in fighting the developer before the board.

If the public is going to have a more meaningful role in hearings, it seems to me that direction needs to be given with respect to where the hearings will be held. Prior to the amalgamation process that Ontario went through in the latter 1990s and the early part of this decade, municipalities were smaller and there was a reasonable prospect that hearings, other than those perhaps in the former Metropolitan Toronto, would be held in relatively close proximity to those who would be most affected by the outcome. With the creation of larger municipalities, hearings are now, in most cases, taking place far removed from the affected communities, thus limiting the general public's ability for greater participation. It ought to be incumbent upon the board to hold at least one public evening meeting within the affected community to allow for the public voice to be heard. Surely, if hearings are to be transparent, more accountable and more accessible, they should be held close to those most affected by them.

Weight: The issue of weight to be given to evidence is an abstract legal concept, yet it is at the same time one of the most crucial concepts in understanding board

decisions. Whether one side or the other side is successful in a hearing so often depends on the weight given to the evidence. When it comes to a board member deciding between the evidence of two professionals, or even two lay persons, that may be the way it has to be. It is the board member who has heard the witness speak and observed how the witness responded under cross-examination when his or her evidence was tested.

But where the Legislature of Ontario has said that the municipal board "shall have regard to" any decision under the Planning Act, I would suggest that one line in a board decision that the board has considered council's decision is not sufficient, is not transparent or informative, nor is it a fair assessment of the weight to be given to that legislative direction now within the Planning Act. Surely, for example, a council vote of 19 to 5 cannot be weighted equally with John Doe's generalizations. Therefore, it is absolutely imperative that a more demonstrative and consistent weight-assignment accounting system be implemented in arriving at a conclusion regarding "shall have regard to." To lend credence to that point, it is interesting to note Justice Joan Lax's comment re OMB's Toronto decision in the Queen West Triangle area: "The board provides no rationale or analysis to support its conclusion that the projects were in the public's interest."

However, there are times when the board hits the target when enunciating what needs to be done with respect to weighing policy direction. In the decision to permit the construction of what is now known as Scotiabank Place, home of the Ottawa Senators, the board considered the obligation to have regard to policy, in that case the Foodland Guidelines. The board said—I have quoted this and I'm not going to read it to the members of this committee. This passage provides for a detailed process for the board to go through where it is required to have regard to a policy. It is followed in that decision by some 30 paragraphs where the board goes through the test.

That, I would suggest, is an example of proper weighting of government policy. It is, in my opinion, a transparent and a more proper application of the "have regard to" test than that provided in the OMB's Minto decision. A one-line comment is not acceptable.

What, then, can be done to ensure section 2.1, requiring OMB members to have regard to municipal planning decisions in order to give proper weight to council and community decisions? In amendments to the Planning Act, the government has now required that where a zoning or official plan amendment application is refused, council must now provide reasons. It ought to be a requirement in the Planning Act that the board, where it does not follow a municipal council's decision, provide reasons why it has not done so. This would emphasize the heightened role of municipalities in the revisions to the Planning Act.

Conclusion: Madam Chair and committee members, it is you and I and my municipal colleagues across the province who are responsible for the planning for Ontario and our respective municipalities. The province, through legislation such as the Planning Act and through the provincial policy statement, provides its planning vision for Ontario. It then falls to the municipalities to implement that vision in light of the particular local circumstances. Municipal planning decisions must be consistent with provincial policy. Municipalities simply cannot say, "Thanks for your policy. We have read it, but we are going to choose not to follow it."

The planning decisions of municipal councils deserve a similar degree of respect. While the province has made attempts to strengthen the role of councils in the Planning Act, it still seems that all too often the decisions of council are treated as way stations on the way to the Ontario Municipal Board.

For reasons of accountability, transparency and giving proper weight to both municipal and community roles, I leave with you the recommendation that there is more work to be done. In short, government ought to rescind Bill 51 or clarify its intent relative to the empowerment of municipal councils and community decisions related to planning matters. Thank you, Madam Chair.

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The Chair (Mrs. Julia Munro): Thank you very much. We have about five minutes each, and I'd ask Mr. Prue.

Mr. Michael Prue: Thank you. As a former mayor, a former municipal councillor with the megacity of Toronto, I want to assure you that in Metropolitan Toronto, the hearings were always held in close proximity to those who would be most affected. Sadly, like smaller-town Ontario, that's no longer the case.

Mr. Glenn Brooks: That's right.

Mr. Michael Prue: Every single one that we did in East York was held in East York, mostly at the civic centre, but we did, from time to time, even go abroad from there. That does not happen anymore.

Anyway, in terms of what you stated, I think it's a fairly good suggestion. You write, and you said, "It ought to be a requirement in the Planning Act that the board, where it does not follow a municipal council's decision, provide reasons why it has not done so. This would emphasize the heightened role of municipalities in the revisions to the Planning Act." I agree that that's probably a very sensible solution. It wouldn't cost any money.

The board, from time to time, though, does have cases where the council has not followed the direction of its own planner. Would that be sufficient, just to say that they did not follow the advice of the planner, that the town or city's planner was correct and the town council erred in not so following it?

Mr. Glenn Brooks: In the particular case that we're talking about in the city of Ottawa, unfortunately, the planning department did not take in a very important component of the plans submitted to it, and that was dealing with traffic, transportation. That whole component was left out. Had that component been brought back in, immediately everyone would have said, "You know what? This plan won't work because the planners

and engineers say it won't work." But, unfortunately, that did not occur.

Mr. Michael Prue: I take it, then, in this particular case, and I'm not totally familiar with it, the Ontario Municipal Board sided with the municipality's plan, not with the elected officials.

Mr. Glenn Brooks: That's right.

Mr. Michael Prue: Now, that's a little bit of a conundrum that I have, then. Where the council chooses not to follow its own planning advice, would you still expect the OMB to detail why council was wrong, or simply to state that they felt the municipality's planners were correct?

Mr. Glenn Brooks: I think that's a good comment, and that comes right to the crux of the problem, that you have a planning department made up of planners, and they give their interpretation of what the plan actually says. It's open to interpretation. They write their comments, and it is then up to the elected people whether to agree or disagree with those. In this particular case, those elected said, "No, that's not our interpretation."

Mr. Michael Prue: You are speaking, I take it, as an elected member of council, but not on behalf of your council.

Mr. Glenn Brooks: I'm speaking as an elected member of council, yes.

Mr. Michael Prue: Okay. Other elected councillors, even some cities and towns, have called for the outright abolition of the board, that the final decision should be made by the duly elected council, because they are responsible to the electors, and if they make a bone-headed decision, I guess they can be turfed in the next election. You don't go that far. Can you tell me why not?

Mr. Glenn Brooks: I don't go that far because I think there is an important role to be played by a third party, and I think the OMB has, in many instances—and I quoted you one example here with Scotiabank—been right on. But they've been right on because they went through a process, a test, and everyone could see that, yes, we have looked at all the evidence and we have weighted this evidence, and there's our conclusion. If the board is not going to give its rationale or reasons for its conclusion, then I would abandon that board. I think it's incumbent upon the board. It's incumbent upon me, as an elected official, to stand up in front of my constituents and say, "This is why I made this decision. It's based on this, this, this and this."

Mr. Michael Prue: Thank you very much.

The Chair (Mrs. Julia Munro): Thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Councillor Brooks, for coming to the committee. Having spent 12 years in the municipal sector, I understand somewhat your position. A couple of questions, one based on your submission: On the second page, you talked about the location of hearings.

Mr. Glenn Brooks: Yes.

Mr. Lou Rinaldi: If my memory serves me right—and I spent 12 years, although it's a much smaller municipality than Ottawa—and the chair of the board confirmed it here this morning, the municipal clerks or municipal staff, along with board folks, make the decision on the locations where they have the hearings. Yet here you mention that it's far removed. Can you elaborate on that a little bit?

Mr. Glenn Brooks: Well, I'll speak about my municipality, for example. As we all know, the city of Ottawa is about four and a half times the area of the greater Toronto area and about half the size of Prince Edward Island. That is a large geographical area.

In this particular case that I asked for leave to appeal an OMB decision, it was the fact that the community had requested from the chair that they have at least one meeting in the village of Manotick, which is about 20 or 25 kilometres from where the meeting was held, and that the meeting be held in the evening so that the community—because mostly everyone works—would have an opportunity to be there. That's my point: If the OMB is going to make a decision based on how this community is going to grow, how it's going to be managed, then I think at least one meeting should be there.

Mr. Lou Rinaldi: My point, though: The municipality via staff, clerk, or whoever makes those decisions, had no role in the decision-making?

Mr. Glenn Brooks: In fact, we did ask. We did ask that one meeting be held out in the community, because we had done this before.

Mr. Lou Rinaldi: I don't want to belabour it, it's just that this morning the chair—

Mr. Glenn Brooks: Yes. We'd asked.

Mr. Lou Rinaldi: From your submission, and correct me if I'm wrong here, I believe you accept the role of the municipal board, although to what level—you accept that they need to be there to resolve some of those disputes, correct? Do I get that sense?

Mr. Glenn Brooks: The board has a role to play, providing the board is prepared to, as Justice Joan Lax says, provide the rationale, the reasons for.

Mr. Lou Rinaldi: Okay, that's fair. That's what I got; I just wanted to be sure.

Having said that, being in a semi-judicial process, there's normally a winner and a loser, to put it in plain words. How do we adjudicate that? I mean, obviously, depending on what decision—and I'm not referring to any specific decision—normally that's why it gets there. Do you have any suggestions for the board, at the end of the day? I understand that you want to give the rationale, but sometimes if I put in $125 and I don't win, I'm not happy. I mean, that's the bottom line. Is there a process that the board could do better? Or maybe legislation needs to change—I have no idea—because there is going to be a winner and a loser. Any suggestions?

Mr. Glenn Brooks: Well, my suggestion is, and it's in the last paragraph, that the government has got to clarify what it really means when it says, "shall have regard to." What does that mean? What does it mean to empower municipalities to make decisions? You're right: There will be winners and losers. But who's making that

decision? Is it going to be the elected people or somebody who drops in to your community and does the best he or she can do?

Mr. Lou Rinaldi: Then are you suggesting that all the powers should be reverted to the elected council?

Mr. Glenn Brooks: Yes.

Mr. Lou Rinaldi: So we don't need the municipal board, then?

Mr. Glenn Brooks: As I said—

Mr. Lou Rinaldi: I'm just trying to get some sense of how—you know, as legislators here, we look at ways of how we can improve things. I'm not arguing any specific case. I guess all I'm saying is that if we're going to leave all the decision-making to municipal council—I'm not arguing one way or the other—then why do we need a municipal board?

Mr. Glenn Brooks: That's exactly right. If the government of the day says, "Councils in the province of Ontario, you shall be making all the planning decisions," end of quote, that's it.

Mr. Lou Rinaldi: So if legislation was to change to that, then you suggest that we do away with the Ontario Municipal Board.

Mr. Glenn Brooks: Yes, and if you lived in my ward or any other riding, then you have an opportunity every four years to voice your concern.

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Mr. Lou Rinaldi: Do I have more time?

The Chair (Mrs. Julia Munro): We're out of time. Thank you very much.

Mr. Lou Rinaldi: Thank you very much.

The Chair (Mrs. Julia Munro): Ms. MacLeod.

Ms. Lisa MacLeod: Thanks, Madam Chair. Following up on my colleague for Northumberland's point of view, I want to talk a little bit about accountability. As a city councillor for my riding, I understand why you're here. Obviously I invited you because I think it's important to talk about accountability for unelected bureaucrats. I think that if anybody read the news in Ontario in the last three weeks, we would read about accountability of government agencies, whether it's OLG, MPAC or eHealth. Right now we're discussing how we can hold government agencies and their decisions accountable to the public. You've made some very important points, I think, in terms of needing to explain their rationale with respect to how they weigh municipal decisions. My colleague Mr. Prue earlier today asked the chair of the Ontario Municipal Board if municipalities' weight should perhaps be increased compared to the other parties, to which she said no. But you do make a very important point, that it's "inappropriate that an unelected and unaccountable politically appointed person can render decisions permitting growth to occur when the inevitable result of that decision will be to require a municipality to spend money on infrastructure that council has stated it does not wish to spend." That's your quote, for Hansard.

You've indicated, of course, that Bill 51 needs to either be amended or scrapped. You've also stated that there is a role for the Ontario Municipal Board so long as there is an ability for them to be accountable to the public. I'm wondering if you have any direct views on how we make this agency, or any other, for that matter, more accountable to the taxpayers of this province.

Mr. Glenn Brooks: I think this committee has a major role to play, not just with the Ontario Municipal Board but other agencies as well. The accountability, the skepticism out there in the general public—and I don't need to tell you people this. They're very skeptical of politicians and what they say. Legislation is brought forward and the next thing you know, people think this is what the legislation is but this is how it's implemented. At some point in time—and I tell you, I've been in this business now for 32 years, as a regional councillor, councillor, mayor and CEO, and the skepticism out there is, "What are you people?"—what are we—"doing?" We say one thing and we're doing something else. Then all of a sudden, you get this in the newspaper. You've got the fox in the chicken coop, guarding the chicken coop. This committee, hopefully, will start to put the finger on it and say, "Look, we want accountability here. We want to understand where the taxpayer dollars are going and why they're going there." That's accountability.

Ms. Lisa MacLeod: Councillor, would it be safe to say, then, that the key recommendation from this committee going to the minister is to put in place accountability and accessibility recommendations moving forward so that members of the public are able to attend meetings a little bit more easily? You cited some examples. My colleague opposite suggested that it's a little bit more cut and dried than that; quite frankly, I'm not sure. It seems to me, just by the sheer number of folks who have contacted this committee over the Ontario Municipal Board, that we could be doing a little bit better job. I think even the municipal affairs minister himself in a local newspaper in Ottawa had suggested that it could be a little bit better.

Do you have any closing comments, Councillor?

Mr. Glenn Brooks: Yes. I would just like to say this to the Premier of the province of Ontario: In opposition, he made certain comments about the OMB and the need to reform the OMB. This piece of legislation, Bill 51, is a step in the right direction, but it's got to be clarified, it's got to be tightened up if it's going to be meaningful at all. Otherwise, you're going to have municipalities and groups within municipalities before the OMB because the interpretation is so loose. "Shall have regard to": What does that really mean?

The Chair (Mrs. Julia Munro): Thank you very much. That concludes our time available. We appreciate you coming here today and giving your opinions.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like to ask Theresa McClenaghan from the Canadian Environmental Law Association to come forward. Good afternoon, and welcome to the committee.

Ms. Theresa McClenaghan: Thank you, Madam Chair. It's my pleasure to be here and I appreciate the invitation to attend and appear before you and have some discussion, time permitting.

Very briefly, many of you are familiar with the Canadian Environmental Law Association. We were incorporated in 1970 and became an Ontario legal aid specialty clinic in 1978. Accordingly, we provide direct representation and legal services to low-income and vulnerable Ontario communities in environmental law matters where they would be otherwise unable to afford or obtain legal representation. We also undertake law reform, public legal education and community development that advances protection of the environment, with a particular view to the interests of low-income and vulnerable communities.

CELA has had a long-standing interest and involvement with the Ontario Municipal Board and its governing legislation and with the legislation that it administers. One of our priority areas of focus is to ensure public access to environmental decision-making, and the OMB plays, in our view, a critical role in that respect, especially, of course, with respect to land use decisions. Our involvement includes occasional appearances before the board as counsel and, over the years, various appearances on hearings held together with other tribunals, for example, under the Consolidated Hearings Act.

Much more frequently, we provide summary advice to members of the public who are unrepresented and who are involved in proceedings before the board. In that respect, we assist them to find expert witnesses, we review the information and concerns that they have, and give them summary advice as to how the process works and how to be effectively involved within the resources that they have available. Members of the public contact us with a broad range of concerns, which could range from natural heritage protection, such as wetlands, woodlands, the Niagara Escarpment and Oak Ridges, to transportation, land use density concerns, impacts of aggregate development and general land use conflicts. Our involvement has also included very extensive input into various versions of the Planning Act, the provincial policy statement, the Municipal Act and other pieces of legislation over the years.

I will take a few moments to speak specifically to some of the changes the province made relatively recently in the 2005 amendments and the impact on the OMB matters since then. We've also been very involved over the years in other specific initiatives, such as source water protection and water and energy conservation, and have assisted members of the public with advocacy to ensure integration of municipal decision-making with other environmental protection goals. We are also often involved in specific initiatives of local government to advise and assist members of the public or litigate in the courts to uphold the right of municipal governments to enact bylaws that are protective of the environment and public health.

With that overview, let me begin by stating that, on the whole, the OMB fills a very important and critical function. There are many, many specific conflicts of land use and its other areas of jurisdiction, and of course the board was created in order to move these conflicts out of the court system and into a specialized tribunal.

The board was also created with the aim of allowing persons to appear before it without necessarily having to retain legal counsel. We would not advocate returning to a system where the courts are obliged to deal with all of these conflicts or obliged to review all of the municipal decision-making that is challenged by applicants or members of the public.

However, there have been significant issues over the years with the ability of members of the public to attend and present matters before the board in an equitable manner, and these have been of concern to CELA. Some of these issues were the subject of the 2005 amendments, which I mentioned earlier. For example, among other things, a new rule was introduced requiring land use amendment applicants to have filed a complete application before any time for decision-making by the relevant municipal council would begin to run. Other issues were mentioned this morning by the board chair, such as the citizen liaison office.

The complete-application change was a major improvement, since before that, often applications were filed with very scanty information and parties waited until the matter went before the board to file their "real" evidence and studies. This presented significant issues of access and transparency, to echo the theme of the previous witness; for example, a lack of public access to the information before a municipal council made its decision, and the lack of information for councils themselves on which to base their decisions. You may all recall various situations where there was outcry over the years because the OMB was perceived in those situations as usurping the function of local elected councils.

With the new system, as intended, the public can see the information, councillors can have the relevant information and can make well-reasoned decisions—or are intended to make well-reasoned decisions—taking into account all of the factors they wish to consider, and the board should now be able to exercise its function more properly as an administrative tribunal and reviewing body instead of being essentially the first decision-maker, which was the case before, when much of the evidence was being tabled before them for the first time rather than having been tabled before anyone else.

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However, an ongoing area of difficulty that CELA remains concerned about is the unevenness of resources. Applicants filing land use change applications generally have a financial imperative and can justify spending significant sums of money on expert consultants and witnesses to support their applications. The public, on the other hand, can hardly afford to do so, and when the public is raising legitimate concerns but lacks financial resources, the board often feels obliged to accept the evidence of the experts.

CELA has long advocated a renewal and expansion of the intervenor funding system that Ontario utilized many

years ago, which provided members of the public with access to appropriate expert advice and representation in certain environmental disputes. This resulted in much better decision-making by all concerned and much better public acceptance of the final decisions. I would add that that was true even when the public didn't win, at the end of the day. The fact that they were sure their point had been heard was extremely important to their acceptance of the final decision. Such a system does require strict control to ensure funds are granted in legitimate cases and for valid issues and are supervised, but the tribunals which were administering the Intervenor Funding Project Act at that time had developed a very strict and credible process to provide that supervision.

Related to that issue, CELA also advocates that the OMB should relax its tests as to how it receives evidence and who is an "expert." The OMB practically from the outset has been, compared to most tribunals, a highly formalized board, and the aim of allowing for easy access by unrepresented members of the public has never truly been realized, in our view. Although the board members are very good at recognizing members of the public who have an interest, in granting them standing before the board and in providing various means to present information, nevertheless, the overwhelming weighting of evidence is toward "expert" witnesses, analogous to the evidentiary rules in a contested litigated court proceeding.

CELA repeatedly sees clients who decide not to proceed before the board either on their own or with representation because of the inability to afford to spend the many thousands of dollars it would typically cost them to retain expert witnesses whose evidence would be accepted by the board.

There may well have to be a combination of statute reform and board procedural reform to make the board's proceedings as accessible to the public as we would wish and to ensure that all kinds of valid knowledge are recognized and given appropriate weight by the board.

By way of comparison, at least since the 1970s Berger inquiry, which you may remember, into a proposed Mackenzie Valley pipeline, and in many examples and the academic literature published since then, it has been repeatedly recognized in theory that the knowledge and expertise of local people in any development proposal is a valid, worthwhile and often unique contribution to decision-making proceedings. But in our view, it's given inadequate weight.

Another issue that has been raised in the past is the familiarity of the board's members with environmental issues and some of the specific technical issues that are raised. CELA has seen an overall improvement in this area, as we understand this has been taken into account in appointments as well as in the board's own internal training programs. Continuous improvement in this respect is important since, almost by definition, so many of the board's decisions have impact on the environment, even when the case is not framed that way. For example, issues of density, boundaries, form of development, energy utilization, transportation, infrastructure, water etc. all contribute to use of resources and greenhouse gas emissions and much else.

Finally, one area in which CELA has been focusing our advocacy is the question of environmental equity in decision-making, and this is an across-the-board issue. Many of the approval systems in Ontario, including land use planning, do not directly require the decision-makers to take account of environmental equity considerations. For example, is a low-income community being asked to take the brunt of industrial development in the region and therefore more directly exposed to air emissions, with negative health consequences? Are barriers to full community involvement fully recognized when transportation corridors to service land use cut access that communities previously had to services and amenities? These are just some of the examples that arise.

We will be continuing to pursue this area of advocacy with all of Ontario's decision-makers and raise it now as one example in which the board, even within its own existing rule-making and legislation and its ability to ask for additional information from parties, could be making a significant difference to vulnerable communities.

Again we thank you for the opportunity to provide these comments, and I would be pleased to discuss these thoughts and any other questions you may have.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin then with Mr. Rinaldi.

Mr. Lou Rinaldi: How much time do we have?

The Chair (Mrs. Julia Munro): You have about five minutes each.

Mr. Lou Rinaldi: Thank you very much for your presentation. It's always good to have you folks present to us. A couple of questions, and my first question is more in general: Can you tell us what your organization's feeling or experience has been when dealing with the board on an ongoing basis with different issues?

Ms. Theresa McClenaghan: On an ongoing basis?

Mr. Lou Rinaldi: Yes.

Ms. Theresa McClenaghan: First of all I have to say the board members, now and in the past, have always been very professional and, as I said, very good at recognizing the interests of clients, giving them standing, that kind of thing. So we have no issues like that. Our issues are much more systemic and have to do with, as I mentioned, the formality of the board and the way it operates very much like a court. So although parties may appear before the board without legal counsel, on the other hand the board does weigh evidence much like the rules of a court. It uses evidentiary rules similar to a court. It takes into account whether people are qualified to be experts in the same way that a court does. Those issues are problematic for our clients.

Often when we as counsel are appearing before the board, we have clients who have been able to afford to fundraise and seek expert evidence, and then we're on a kind of a level playing field. But many, many times clients we're advising on a summary advice basis, where we don't go on the record and the board would never see us, don't have those kinds of resources. They may not

feel that they're able to present their case as ably as they would if they had more funds, and that is an issue.

Mr. Lou Rinaldi: If I could follow up: Back in 2004, during the planning, we formed a public consultation process. Documents were submitted by the Canadian Environmental Law Association. Some of the comments were "that there should be appeals to the Ontario Municipal Board from municipal council decisions," and that it's "important that municipal decisions be made in accordance with provincial policy." Can you share some of your thoughts about the function of the MB, from those statements that you made?

Ms. Theresa McClenaghan: Yes, and I was involved in preparing those statements at the time. We were very involved at the time in making representations to the then-minister and his staff and so on with respect to some of those issues that had previously been problematic. As I mentioned, things like the complete application, the citizen liaison position that the board chair mentioned this morning: A number of the suggestions that we made were taken up and put into the new legislation, and we were very appreciative of that. We think that's very important and very helpful. So we have seen that, legislatively and systemically, those things are improving. And the need to act in accordance with provincial policy we agree is quite important.

As I mentioned, we do see a very valid role for the board. So even though we're raising issues of access around resources and weighting of evidence, that does not mean we don't support the function of the board. We definitely do support it, because we wouldn't like things to go back to the really old days, where there was no board and these kinds of things, by default, would go to courts for judicial review. Of course, that would not be good at all for public access.

On the other hand, decision-making does need to be framed in a policy context, and we do see the role of the province, in terms of setting that policy context, to be extremely critical. At that time the provincial government, as provincial governments before had done, was also in the process of revising the provincial policy statement. That was very important too. And we constantly make comment about improving the provincial policy statement every time it's under review.

Mr. Lou Rinaldi: How's my time?

The Chair (Mrs. Julia Munro): One more.

Mr. Lou Rinaldi: One quick one. In 2006, you folks and the Environmental Defence, Sierra Legal Defence Fund and Ontario Nature and the Pembina Institute issued a joint media release about Bill 51, highlighting what they felt were improvements to the Planning Act, including increased consistency with provincial policy and enhancing public consultation on official plans and promoting the sustainable design of buildings and neighbourhoods. Can you give us your thoughts, after three years since that took place, based on those suggestions? Do you see any improvements or changes?

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Ms. Theresa McClenaghan: I would say there's some slight improvement at this point, but I have to put it in the context that the reason, in part, would be that many of the decisions, by the time they've been getting to the board for resolution within these last three years, would have been applications which were submitted under the old rules, prior to those changes.

The point about the councils and the public having the actual information on which decisions will really be made, to our minds, was very critical. We felt that that was a very major problem that had been happening before. What was happening before was that a timeline started to run, and the applicant didn't even have to really have all their evidence before the council, and the councils would say, "Well, I can't make a decision; I don't know enough about this application." The timeline would run and it would end up before the board. Then people would say, "Okay, there's actually an appeal; we'll get serious and we'll get our evidence compiled." They can't do that now, and that's a very substantial improvement.

We're starting to see some of the payoff now from that, but it's only just lately. It will be important for all of those groups and it is one of the things we're discussing: to do an evaluation after probably another year or two, once most of the applications are under the new rules, to see how it's going.

Mr. Lou Rinaldi: Thank you very much.

The Chair (Mrs. Julia Munro): Mr. Klees?

Mr. Frank Klees: Thank you for your submission. First of all, with regard to access, the chair, when she made her presentation to the committee this morning, made reference to the citizen liaison office, which is a new initiative of the board intended to make access more available. Can you just comment, based on your practical experience, on how effectively that office is working and what you're seeing by way of changes to access as a result of that initiative?

Ms. Theresa McClenaghan: Firstly, I would say we were very pleased that that happened. As I mentioned, we had been advocating for something like that to assist, because our clinic and the couple of other places where people can go can't possibly help all the people who need that kind of information. In fairness, I think more work needs to be done in terms of outreach and making that facility known to people. I think, in fairness, most of the people who come to us are not aware unless they have called the board, and it's amazing: You'd think, "Well, wouldn't everybody call the board?" Many people don't know they can just pick up the phone and get help from an agency like that—so that kind of proactive outreach.

I can't comment whether the practice has gone so far as to make sure that it's standard information that's available to people who are involved in a contested matter at a municipal level. That might assist, if it was a standard blurb that they could contact that information for understanding what they can appeal and on what grounds, and what that would mean for them in terms of process.

Mr. Frank Klees: So are you making use of that office yourselves?

Ms. Theresa McClenaghan: Just in terms of referring clients to it, if we can't; yes.

Mr. Frank Klees: Okay. You state very clearly that there's a role for the board, that it performs an important function and an effective function, but you use terms such as "unevenness of resources" and "weighting of evidence." I'm interested in how you balance the need for what is clearly a quasi-judicial body that has a framework within which it must make its decision—provincial legislation, policy statements. How do you move from that to the concept of the weighting of evidence, in terms of being able to actually then give justification to rendering a decision? Does this not become, then, so subjective that at the end of the day you lose the very basis on which this board concept is based?

Ms. Theresa McClenaghan: First of all, I wouldn't say the board should make decisions without evidence and valid, tested information in front of it. That isn't the problem. The problem is that usually, if a member of a citizens' group who happens to know a lot about bird watching, say, were to give evidence and a biologist for a developer were to give contradictory evidence, it would be very hard for the citizen's evidence to be accepted, even though they may actually be much more expert for that particular forest and what is found year-round, seasonally and so on. The board really should be looking at what is valid evidence. If I have learned that this person actually does know his stuff, is recognized by the field naturalists in the area, has given talks and knows about this area, that's valid. So that's the concern there, because, as I say, that really is all too often a disincentive.

The crux of the problem is that this is not, as in private litigation, a dispute between two contracting parties, for example, over a monetary issue. There may be monetary issues underlying it—the right to develop versus not—but the board's role is to make a decision in the public interest, and the public community that is most interested in that community, most interested in the shape of the community, what the impact will be, really is entitled to have a voice before the board and then the public policy taken into account. So in that way, the board, as is the case in many other tribunals, does need to broaden what it will consider.

It's interesting in our litigation system that the higher we go in the appellate system, the broader the courts will look at relevant information. That's true, for instance, with our appellate courts and especially our Supreme Court. It's because they're looking more at the public interest, and they're not as interested in the private dispute. It's the broader interest, and the broader the interest, the broader the type of material that should validly be considered. Weighting is important, but they have to not be too restrictive in what they consider to be valid.

Mr. Frank Klees: Would you agree, then, that given what we know of how the board is constituted today, there would have to be a very specific mandate legislated by government to provide the board that latitude? Because they don't have that latitude today. Would you agree with that?

Ms. Theresa McClenaghan: Yes. As I said, I think it would be a combination of board policy and statutory amendment.

Mr. Frank Klees: Okay. Thank you.

The Chair (Mrs. Julia Munro): Mr. Prue.

Mr. Michael Prue: You've skirted around the issue but not directly head on. Do you receive intervenor status for any of the appeals that you attend? I know you don't attend many. Do you receive intervenor status?

Ms. Theresa McClenaghan: Or our clients—that's one board where usually we would attend for a client rather than CELA as the organization. Yes, we have done. When you say "intervenor," the way the board works, it would either be a party or a participant and we've helped people with both.

Mr. Michael Prue: Now, when you attend, do you get paid?

Ms. Theresa McClenaghan: We're a legal aid clinic, so we're paid by an MOU with Legal Aid Ontario. We don't otherwise get payment for attending. We're staff lawyers.

Mr. Michael Prue: Okay. Now, is it often the case that individuals have a tough time attending the board because it can be costly—

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: —in terms of a lawyer, in terms of planning expertise, environmental expertise, heritage expertise, the kinds of things that an ordinary individual wouldn't have at his or her fingertips?

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: Where do the monies come from to bring these people, or does it come at all?

Ms. Theresa McClenaghan: For our organization, it's legal aid, and then the community needs to raise the money for their experts. They don't need to raise the money for CELA, but keep in mind we have four lawyers and then we've got not only this board but the environmental tribunal, the courts, people who are injured by some kind of spill—you know, all kinds of things. So capacity is definitely an issue. So then we have to refer people to the private bar on the whole, and again affordability is a major issue. They then might need the legal fees as well as the expert fees, and it's a considerable barrier.

As I mentioned, there was experience a number of years ago with the Intervenor Funding Project Act, which did not extend to the municipal board, but it did extend to the environmental tribunals in the province and to the consolidated hearings, which did include the board then in those joint board matters. That did work very well because people could get that kind of expertise. As I say, and I was personally involved in many such cases, they accepted the decisions even if they didn't always win because they felt like it was a fair hearing.

Mr. Michael Prue: Because they'd been heard.

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: Is it a retrograde step that happened a number of years ago to take away that funding, and should it be brought back?

Ms. Theresa McClenaghan: Yes, we think it should be brought back. We've advocated for that continuously ever since and to expand it to additional tribunals. We could enumerate many, many situations where the decision-making was far better because people had access to proper expertise and the issues were narrowed. I have to say at that time that the boards in general were all very good at narrowing the issues so that the time was spent on the things that were really in contention.

Mr. Michael Prue: I asked the chair this morning about intervenor funding and whether things worked better or not, and in the end she took a very—I don't know how to describe it. She opted not to answer the question. You have pretty well point blank, though, said that the system would work better.

1400

Ms. Theresa McClenaghan: Oh, yes, absolutely. The one example we have today that's analogous still is the Ontario Energy Board. Parties may be granted standing there, and if they are representing matters in the public interest as opposed to private interest, then their expert and legal fees are covered. That provides for very ample and fulsome participation in that process and it works very well. It's very well controlled in terms of those cost awards.

Mr. Michael Prue: Now, there are some who might argue that this costs the public a lot of money and that the public ought not to be paying.

Ms. Theresa McClenaghan: It's a question of where you would put the payment. Under the Intervenor Funding Project Act, payment was actually required by the proponent of the project, so if it was a transmission line or a waste facility. Of course, that means it was internalized as part of the cost of developing the project and the general community that benefited indirectly through their rates would have supported that. Very fair, because the community that is intervening is generally the most directly impacted community in the immediate vicinity. Otherwise, we're asking those communities to take the brunt of the negative impacts of these projects without an opportunity to properly participate in how the decision is being made and whether their actual valid concerns are being taken into account technically.

Mr. Michael Prue: Thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much for coming here today. That concludes the time we have.

BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

ONTARIO HOME BUILDERS' ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to ask Leith Moore, the chair of the Building Industry and Land Development Association, as well as Frank Giannone of the Ontario Home Builders' Association, to please come forward and make yourselves comfortable. I'd ask, for the purposes of Hansard, that you introduce yourselves. You may begin.

Mr. James Bazely: Thank you. Ms. Chair, members of the committee, good afternoon. My name is James Bazely. I'm sitting in for Frank Giannone. I am the incoming president of the Ontario Home Builders' Association. I have also served as president of the Greater Barrie Home Builders Association and I've been involved in the residential construction industry for more than two decades.

Joining me is my colleague Paul Golini, first vice-chair of the Building Industry and Land Development Association and the executive vice-president of Empire Communities, which has built thousands of homes and condos across the GTA. Paul and I are both volunteer members of our association. To support us in today's presentation, we are joined by Michael Collins-Williams, director of policy at the Ontario Home Builders' Association, and Joe Vaccaro, who was sitting beside me here a minute ago, vice-president of policy and government relations at BILD. We will all be participating in this presentation.

Let me begin by thanking you for today's opportunity and by telling you a little bit about our associations. The Ontario Home Builders' Association, OHBA, is the voice of the residential construction industry and includes 4,200 member companies organized into 29 local associations across the province. The largest local association is the Building Industry and Land Development Association, BILD, representing home builders and developers across the GTA. Our industry contributed approximately $37.8 billion to the province's economy last year and generated 365,000 person years of employment.

We would appreciate your consideration to our views on the operation of the Ontario Municipal Board.

At this point, I would ask Paul Golini to say a few words. Paul.

Mr. Paul Golini: Thank you, James.

What I would like to do is simply provide the context for why the OMB is an essential piece of a larger planning regime in the development approvals process.

As a developer/builder looking to make a significant investment in capital and time to bring a project forward, it is important for the committee members to appreciate the extensive due diligence we work through before moving an application forward to any municipality for consideration.

Beyond reviewing the existing and historical zoning, and considering recent development approvals, as a developer/builder we must consider the proposed application in the context of the municipal official plans, transportation investment plans, water and waste water capacity, the provincial policy statement, the Places to Grow Act and all locally applicable federal, provincial and municipal legislation, regulations, bylaws and additional master plans or study requirements that govern the potential development, as well as the principles of good planning. Essentially, before I make an investment to bring a development to market, I do my homework.

Now again I speak to the committee from my business experience and from what I have observed as an industry standard among my peers. Simply put, we cannot afford to move applications forward for municipal approval if we have not done our homework and checked off the application against the extensive and robust planning regime that exists in Ontario.

I present this information to the committee so as to provide a more complete understanding of the process that the applicant must undertake before any consideration to appeal to the OMB can be considered. The OMB is part of the planning process, but it is not where any development applicant starts. It is, unfortunately, where it sometimes ends.

With that, I'd like to turn it over to James.

Mr. James Bazely: I would like to echo Paul's comments and add my experience.

An issue related to the role of the OMB in the planning process that is near and dear to my heart is Simcoe county and Lake Simcoe. As the past president of the Greater Barrie Home Builders' Association, a member of the Lake Simcoe Stakeholder Advisory Committee and a resident of Barrie, I can certainly attest to the fact that there has been a tremendous amount of planning work conducted in this area of the province over the past few years.

Our association was generally supportive of the scientifically based approach and strategy to reduce phosphorus levels in the Lake Simcoe watershed through the Lake Simcoe protection plan, and we are also supportive of the role the province has played in the Barrie-Innisfil boundary issue.

The province rightfully sought local solutions to growth management and political disputes between municipalities. But after years of local infighting—enough is enough—the province had to step in to protect the health of the watershed and to ensure that growth could occur in an ecologically sustainable manner over the next few decades.

The OMB has played and likely will continue to play a role to ensure that provincial planning policies in this region of the province are adhered to. If municipalities are unable to make planning decisions that are in conformity with provincial statutes, or in some cases refuse to make any decisions at all, it is incumbent on the province to have a mechanism, such as the OMB, in place to resolve these disputes to ensure that the long-term health and welfare of the province is respected.

I believe that Mike Collins-Williams will present the next portion.

Mr. Michael Collins-Williams: Thank you, James. What Paul and James will both explain, through their extensive experience working through the planning approvals process, is the reality of moving projects forward and the extensive work that needs to be completed prior to filing an application to a municipality. What James also alludes to is the need for the OMB as an independent tribunal to ensure that long-term provincial policies and visions are executed at the local planning level.

It is for these reasons that BILD and OHBA support the principle of a strong role for the OMB to uphold the provincial interests in the planning and development review process in Ontario. The development industry, and for that matter any applicant, including non-profit agencies and social housing providers, need an OMB that is independent and impartial. It must be prepared to make decisions based on the provincial policy statement, provincially approved growth plans, the Planning Act and the merits of the development application itself.

Without a strong and independent OMB, provincial policies and objectives outlined in the new provincial policy statement and the Places to Grow plan for the greater Golden Horseshoe could be compromised and in some cases undermined.

The right of appeal of a municipal council decision, or where no decision has been provided to the OMB, is an important counterbalance to the political sentiments of local councils. It is also important that this venue is available to proponents, neighbours, community associations and interest groups who have all participated in the planning process to ensure that they have an opportunity to raise legitimate concerns with respect to planning issues.

The OMB provides a venue for sober second thought on planning decisions. The benefit of a highly experienced group of experts and expert testimony where relevant will continue to ensure that provincial policy is adhered to within the planning process across Ontario.

The current government has been very active in reviewing and improving, and in some cases consolidating, the provincial planning regime. The greenbelt, Places to Grow, planning reforms, an updated provincial policy statement, the Lake Simcoe Protection Act, the creation of Metrolinx and many more reforms have changed the way that development applications are prepared and the process by which they are approved.

Through these changes, the development industry acknowledges the government's desire to manage growth and preserve what is important to all Ontarians—clean air, clean water and preserved green spaces—while at the same time having to work to accommodate the anticipated growth over the next 25 years.

OHBA has been consistent in our position that while many of these changes serve to manage and accommodate future growth, it is imperative that the provincial government have a mechanism such as the OMB in place to ensure strong provincial oversight of municipal decisions and to ensure that they conform with the legislative framework that has been enhanced over the past few years.

My colleague Joe Vaccaro will say a few words now.

1410

Mr. Joe Vaccaro: Thank you, Michael, James and Paul. I think that both James and Paul, as volunteer members, and more importantly as developer-builders, have provided the committee with the background and the context of how applications are prepared and the extent of work done prior to submitting an application to a municipality for consideration. What is important to

understand is that once the application is submitted, it goes from being an extensively researched and prepared planning document to a political document, and it is at this point in the process that the local political aspects and concerns potentially begin to undermine the planning and research that support that application.

As a BILD member from Peterborough once told me, every application, regardless of the level of research, consultation with the municipal staff and elected representatives, number of public meetings and the planning merits of the project, comes down to a political vote at council. This is why the OMB is so critical in providing the necessary administrative justice function in the development and approvals process. Ultimately, it serves to depoliticize the application, bringing it back to the provincial policies, municipal documents, required studies, research and the principles of good planning that the proponent has prepared the application to be judged against.

The OMB offers the opportunity to hear third party evidence to ensure that a fair, unbiased, impartial decision is made. Planners, architects, engineers and economists are all part of the brain trust that must be maintained as an integral component of the planning process via the OMB. Hearings allow for debate and comprehensive review of the planning merits of the case that cannot occur at municipal council meetings. This provides considerable value to the public good. The OMB makes planning decisions without the political undertones that are ever present when municipal councils make planning decisions. The reality of municipal planning decisions is that there are occasions when a vocal minority rules or where political deals are made. These situations often lead to planning decisions that deserve reconsideration by an independent third party. This is the role of the OMB.

We recognize that there is the public perception that developers win more often than they lose at the OMB. I think, based on the presentation so far, the reason is self-evident: The developer has done his homework to prepare an application that, at least in their mind, meets the test of good planning. Most developers will only proceed to advance their case and make an appeal to the OMB based on their ability to win the case. Our members typically utilize the advice of legal teams and planning staff to determine the likelihood that the merits of their planning application justify an appeal. Our members aren't known to waste time and money, so if the advice they receive is that their appeal is a long shot, the developer is likely to go back to the drawing board and scrap the plans rather than take a losing case before the OMB.

Unfortunately, the opposite is often true of appeals made by ratepayer associations or individuals that in some cases could be referred to as not-in-my-backyard opposition. They typically base the need for an appeal on a development application on a motion. Their desire to prevent projects from proceeding is in many circumstances at odds with what may be considered good planning policy or at odds with the current provincial legislative framework and municipal approved official plans. For better or for worse, either these groups don't listen to the careful, good planning advice they're given or they don't gather the proper resources or evidence to launch a credible, sustainable appeal that is based on good public policy. In some circumstances, these groups plunge themselves into an OMB case with little hope of winning.

Just to be clear, there have been a number of high-profile cases where the OMB has ruled against the development applicant. I'm sure many on the committee are aware of the Eastern Avenue employment district decision, where the OMB sided with the city of Toronto in maintaining the city's employment designation. In a case in Mississauga, the OMB supported the city's decision to maintain the zoning as residential low density, while the applicant had requested a change to residential high density based on planning research that they had compiled.

But appreciating that the OMB serves to depoliticize an application and get back to the testing of the development proposal against the planning regime, it is clearly why political or emotional arguments against an application do not serve to deny an application. As one vocal critic of the OMB has written: " ... over and over, people have complained that the OMB is 'undemocratic' and its members unelected. That, of course, is exactly the point. That's why it can make the decisions it does. In theory, at least, it is above the fray and apolitical. It deals with facts, not emotions." Christopher Hume, Toronto Star.

I would note that as the province and cities begin to work through the affordable housing strategy and move social housing and assisted housing projects forward, the OMB will serve to depoliticize these applications, as local opposition to a social or assisted housing project, or even non-profit housing projects, will likely end up at the OMB. And that's even with municipal and provincial support of the projects.

Some of the committee members may be aware of the Habitat for Humanity project in Scarborough. Generally, those working to move these types of housing projects put forward the view that the OMB is a friend of these sorts of applications.

As Paul Dowling of the HomeComing Community Choice Coalition states, "The OMB usually makes the right decision" when these types of projects are opposed by local interests.

This point does speak to the operational aspect of the OMB in its function to provide administrative justice. When an applicant has already worked through the local planning process, provided the necessary background studies and reports, made the arguments and presented to staff and local representatives the rationale for the application, held public information and community meetings, and in many cases made adjustments and modifications to the original plans and designs to improve the application, only to have the application denied on the basis of a perceived political decision, this is when the applicant needs an independent tribunal like the OMB but also

needs administrative justice to be served in a timely manner, as the applicant has already invested considerable time in the process. It is for this reason that BILD and OHBA support the current powers granted to the OMB, including the power to award costs, even when it works against the industry.

James?

Mr. James Bazely: An example of an appeal that was turned down by the OMB that was brought forward by the development industry was when one of the OHBA's 29 local associations, the Waterloo Region Home Builders' Association, appealed the development charges bylaw enacted by the city of Kitchener. The association, representing home builders in the region of Waterloo, felt strongly, and received legal advice, that certain aspects of the development charges bylaw were calculated improperly and were not in conformity with the Development Charges Act.

The OMB, however, ruled in favour of the city of Kitchener and upheld the bylaw, despite the evidence provided by the Waterloo Region Home Builders' Association. Furthermore, the city of Kitchener was awarded a portion of its costs for the hearing itself, on a partial indemnity basis, due to the failure of the association to call such expert witnesses with expertise in the specific development charges issues under discussion and for unduly and unnecessarily prolonging the hearing. This is but one of many examples across Ontario where the development industry—in this case, one of OHBA's local associations—lost an appeal at the OMB.

The decision by the OMB serves notice to all parties to be prepared for the process or be prepared to pay for the process. This should serve to motivate all those looking to appeal to the OMB to prepare the best case, with the appropriate professional support and research necessary.

Again, the OMB serves to depoliticize the application and, in doing so, forces the participants to do their homework. In this way, the administrative justice function should be delivered in a timely way.

Michael?

Mr. Michael Collins-Williams: In terms of additional operational improvements that could be considered by the OMB, we suggest that the OMB should facilitate improved information exchange between all parties and enhance the pre-hearing process to fully scope the issues.

The most significant problem, in our view, with the OMB process is frivolous appeals that are not based on substantive evidence or planning rationale and that only serve to delay projects. For a mere $125, one can stall the planning and construction cycle by up to three months, just to get to the pre-hearing process. Planning policies are a reflection of the public interest, yet it is the applicant who often stands to defend public policy through the implementation of their development.

Unfortunately, our industry is often the target of NIMBYism that attempts to undermine public policy at the expense of the greater good. We certainly want the OMB to remain open, transparent and democratic, but steps must be taken to discourage frivolous appeals.

We suggest that the process can be improved to provide greater direction to the front end and pre-hearing process that would adequately scope the issues and, furthermore, encourage a filtering of issues to determine what should and should not be dealt with by the board.

We also suggest that some rationale or information regarding the appeal should be included on the OMB appellant form, with a higher appeal fee to ensure that the appeal is rooted in issues of substance that can be debated and discussed at the board.

We recognize the improvements to the OMB's Web presence as a means to improve information exchange with the public, and the industry supports the establishment of a citizen liaison office.

Again, measures that help the public understand the role of the OMB and the expectations of the OMB if an appeal is filed will serve to improve the process.

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OHBA and BILD also recommend that the method in which costs are assigned could be improved upon. The current system requires one party to make the case and go after the other party for costs. We believe that the board member hearing the case should be given jurisdiction to award costs or a portion of the cost to avoid the perception of the winning party bullying the losing party.

If the appellant is not adequately prepared, does not have expert witnesses or has no evidence and the appeal was clearly made with the intent to delay, then the board member should have jurisdiction to assign costs. We believe this would reduce the overall number of frivolous appeals and encourage all parties to be adequately prepared in advance of the hearing.

In terms of further improvements, it is important that the committee, the provincial government, municipalities and the public understand that the changes implemented through the Planning and Conservation Land Statute Law Amendment Act, Bill 51, have improved the regulatory process and the role of the OMB in that process, but these improvements are going to take time to work their way through the system.

A pre-submission consultation process in combination with new complete application provisions has assisted to streamline the approval process. This puts a greater onus on the front end of the planning process, including requirements for public open houses and meetings to enhance the public consultation process. By getting things right at the beginning of the process, we're going to reduce the need for OMB appeals at the back end of the process.

BILD and OHBA are in support of recent provincial efforts to ensure municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with provincial growth plans and the provincial policy statement. These steps, backed by a strong OMB, continue to be crucial to achieving provincial intensification and sustainable development objectives.

We also applaud the government in efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members. The province must continue to enhance the OMB by attracting only the highest-quality persons with experience in land use planning to sit as board members. These measures will improve the stature of the OMB and result in better planning decisions across Ontario.

Another growing industry concern is the provincial government's willingness to have municipalities participate in areas that are of clear provincial jurisdiction. We're seeing this growing trend of municipal empowerment and are concerned that, if left unchecked, it will actually undermine the role of the OMB to test applications against provincial planning policy and possibly work against the government's Places to Grow Act and plan.

All stakeholders should give these changes that have recently been implemented time so that they can be accurately reviewed before any new ideas are considered.

Mr. James Bazely: In closing, I would 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. OHBA and BILD members wish to continue building a clean, green and prosperous Ontario.

To maintain a high quality of life and economic prosperity, BILD and the OHBA support a strong role for the Ontario Municipal Board to depoliticize the development application and uphold the good planning principles set out in the provincial policy statement, the Places to Grow Act and such.

It is therefore critical that the OMB continue to act as an appellate body to protect against decisions that may not be following provincial or municipal planning policies. Ensuring certainty in the process and creating a regulatory framework that will continue to allow the home building and development industry the opportunity to assist in serving the provincial goals and interests of affordable housing, increased levels of intensification and the creation of dynamic communities should be the objective of the provincial government.

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

The Chair (Mrs. Julia Munro): Thank you very much. You've left, I think, each member one question, and we'll begin with Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Bazely. I appreciate you folks coming in today for a very important issue that affects your business community.

Very quickly, you mentioned that it should be a sober second thought. Every time I think of sober second thought, I think of the Senate, and in no way, shape or form have I ever seen the unelected senators overturn anything in the House of Commons. So I would caution you when you're using that for what it says to people.

I do have a quick question for you about red tape and all sorts of things. With all these layers of legislation, whether it's the green belt, the Places to Grow Act, the Lake Simcoe protection plan or the Planning Act, is development significantly more complex? And when you're looking at that legislation, it's important for the people I represent, as well as the municipalities I represent, to understand and for you to know which one trumps the others. Is there a lot of overlap or duplication? What piece of legislation that you would come up against trumps the other? I think that is a significant challenge for our municipalities, but also for the ratepayers' groups and the community associations.

Mr. Joe Vaccaro: I would say, speaking on behalf of the association and speaking to our members, that complexity has truly, truly taken over in the industry in terms of red tape and working their way through the process. I think in our presentation, we did identify a number of pieces of legislation and acts that every application needs to work its way through. Part of that process, we have come to realize, is that, from the development perspective, the industry spends a lot of time meeting and educating ratepayers and planning officials in terms of how all these things cross over.

It's important that local municipalities have priorities, but it's also important that local municipalities take on the responsibility of moving forward and modernizing some of their own pieces of legislation and their bylaws. We are facing some municipalities with zoning decisions and bylaw decisions that were made 30 or 40 years ago. In the current environment, it's incumbent on them to move that process forward and to, in this case, consolidate those decisions to match the current provincial framework.

Ms. Lisa MacLeod: Will the HST make your work that much more complex?

Mr. Joe Vaccaro: The HST essentially is going to create—it's a sales environment that we have to concern ourselves with now. The government did make a significant improvement on the HST for this industry, but having said that, it's still going to be a new tax and it's still something that our members are going to have to deal with. They're going to deal with that, in a way, in terms of how they prepare their performance for their projects, because ultimately, it has to be financially viable to move forward.

Ms. Lisa MacLeod: Will there be white boxes, as has been suggested in the newspapers?

Mr. Joe Vaccaro: There are multiple options that builders will consider, depending on how the market responds.

Ms. Lisa MacLeod: My colleague would like to ask a quick question.

Mr. Frank Klees: Just very quickly.

Mr. Michael Prue: This is four.

The Chair (Mrs. Julia Munro): I know, I know. I'll cut them off the next time around.

Yes?

Mr. Frank Klees: With all of this process, the approvals process, could you just give me a sense of what percentage of the final product—the cost of the average

family's living unit in this province—is attributable to the approvals process?

Mr. Joe Vaccaro: CMHC did a recent study and they determined that in the greater Toronto area, anywhere between $80,000 and $100,000 of every unit can be applied to either government levies, taxes, charges or red tape, if you will. In some cases, you're looking at almost 25% of the purchase of that new unit, whether it be condo, single-family home or what have you, is going to be related back to some sort of government-imposed charge, levy or process that our members have to work their way through.

Mr. Frank Klees: So the next time someone suggests that we don't have affordable housing in this province, all five fingers point to where?

Mr. Joe Vaccaro: Well, I think the reality is that all levels of government have to recognize that they are a significant piece of that price. They have to recognize that process and time in process is part of that price. That's why the OMB, as an administrative tribunal, if you will, providing administrative justice, is so important. Because once our members have invested that much time and energy in the process, they need a resolution to move forward on. That's why they turn to the OMB, in some cases.

The Chair (Mrs. Julia Munro): Thank you. Mr. Prue.

Mr. Michael Prue: You used a word to describe the OMB; you described it as "democratic." In my nearly 22 years in government, I've never heard them described as democratic. This is a non-elected body that overturns the decisions of elected bodies and is accountable to no one. Can you tell me why you called it "democratic"?

Mr. Michael Collins-Williams: They are a part of the process. The local councils, which are democratically elected, are also bound by provincial statutes, provincial legislation, from this level, Queen's Park, which is also democratically elected. The important part of the OMB in the process is to ensure that local decisions are following official plans, secondary plans, be it the greenbelt or the growth plan. There's a level of policy that's set by the decision-makers, which are democratically elected. It's important that those policies are adhered to, and that's the role that the OMB plays in this.

Mr. Michael Prue: So they enforce democracy.

Mr. Michael Collins-Williams: They enforce—

Mr. Michael Prue: Okay. You talked—and I'm not surprised. The development industry tends to like the OMB; this is not a surprise to anyone in this room. But every other province has either done away with their municipal board or has reduced it significantly. It has almost no significance in six provinces, and it's been abolished in Quebec and British Columbia. We're the last one. Why do you think it's so important for Ontario to keep this vestige of the past?

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Mr. Joe Vaccaro: I would respond in this way: Considering where government has gone—not just this government but previous governments—on the issues of smart growth, Places to Grow, intensification, massive transportation investment, there's going to be a greater role for the OMB to play in terms of making sure that development communities that are developed around those investments are consistent with those larger public planning principles. So I think that the role of the OMB in this province, compared to other provinces where maybe they haven't taken those steps, they haven't moved the Places to Grow piece of legislation and really managed growth the way this province has, is going to be even more important as we move forward.

It's going to be interesting to see, as we move forward with things like Transit City and Metrolinx, as those communities and transportation corridors are created, whether or not the sorts of intensity and density will be supported by local ratepayers and local council. We're making massive investments in this province, and now we need the development around those investments to be consistent with the larger plan.

What I would say is that other provinces are not taking on this responsibility the way Ontario has, specifically with this government. The reality is that the OMB will have a greater role, I think, moving forward as they try to link those pieces together, optimize the investment made by the taxpayer in those transportation systems and really try to manage growth in a way that can take full advantage of the things we're trying to preserve, like the greenbelt and green spaces.

I think that the role of the OMB in this province is going to become much more important as we move on, and other provinces, I would say from a planning perspective—a provincial oversight perspective—are probably behind us.

Mr. Michael Prue: But municipalities are all further ahead elsewhere. Thank you.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Madam Chair. I will adhere to your orders of one question. Thank you very much for being here today. I have I guess a comment more than a question: In general you tend to agree with the OMB process, although you made some recommendations, and thank you for that. There's always room for improvement. Nothing's perfect. Having said that, though, as developers or builders, OMB is the last thing you'd want to be faced with, I'm sure, from both sides. Can you give me some sense, in a very short time as the Chair told us, of what things you try to do before you actually try to hit that OMB button?

Mr. Joe Vaccaro: I'm going to have Paul speak to that.

Mr. Paul Golini: Basically, going back to some of the points I made, we go through a very rigorous due diligence process. Even before we purchase a property, we need to make sure that financially it makes sense. We run our pro forma to the point where we're not about to risk millions of dollars if it doesn't make sense from a development and planning process point of view. The due diligence can take upwards of months, and we're working with engineers, consultants and planners, obviously,

not to mention the fact that as developers we engage the community with respect to what we're planning to build and develop. We're talking to ratepayers early on. This is not an afterthought. Despite some of the perceptions out there with respect to the development industry, we're not out there to shove anything down a ratepayer's throat. We're there to work with the ratepayers and with the communities we develop in, and so we're sitting down early on in the process to make sure that what we're proposing makes sense, not only from a planning perspective but from a community perspective.

When we go through that arduous, costly process of bringing together the physical as well as the community and financial, I guess, push and pull and constraints of making a new development and a new community work, we're not going into it looking forward to ending up at the OMB at the end of the process. But we're glad that that democratic process still exists because—not to cite an example, but we go into an area where we're proposing maybe 400 or 500 units. It's an area in one of the municipalities, obviously, where we're proposing two or three high-rise buildings. It's an area desperately in need of revitalization. GO Transit is a block away. We come back, we have a deal, we work with the community, we work with the planners, everybody's on board, and then we go to council and they come back to us with 12 units. Then we end up having to go to the OMB, only to get the 300 units that we could have easily negotiated and that made perfect sense for the community from the outset. Sometimes, obviously, it's our last resort, but we don't plan to go to the OMB. We plan to propose intelligent and smart communities.

Mr. Lou Rinaldi: Thank you.

Mr. Joe Vaccaro: If I can just add to that: Under the new legislation there is a requirement for preconsultation before applications even go to city council. Most builders and developers understand they don't want to end up at the OMB. They will be proactive, meet with local council and speak to local council. Local council will identify those ratepayers who should be met with for discussion. There is a preconsultation requirement as part of the new provincial legislation. The reality is that builders want to work their way through the process as quickly and painlessly as possible, so they're going to go out and engage the community and get a sense of what is acceptable and what is not acceptable. But at the same time they are going to apply good planning principles to the project that's coming forward. That, ultimately, is where you get into conflict and then unfortunately, ultimately where our members face the reality of a planning document becoming a political document as it moves to council.

The Chair (Mrs. Julia Munro): Thank you very much, gentlemen. We appreciate your being here today.

WEST MANOTICK COMMUNITY ASSOCIATION

The Chair (Mrs. Julia Munro): I'd now like to call on Brian Tansley, the president of West Manotick Community Association. Good afternoon and welcome to the committee, Mr. Tansley. You will have observed you have 30 minutes, and any time remaining from your remarks will be divided amongst the committee members here.

Mr. Brian Tansley: Thank you. Madam Chair, ladies and gentlemen of the standing committee, my name is Brian Tansley, and I'm president of the West Manotick Community Association. On behalf of its members, I thank you for the invitation to speak to you regarding the OMB. My comments are mainly informed by my recent experience with an OMB hearing in our village. Later, I'll use this hearing as a case study to illuminate some of the points I wish to make to you today.

Ladies and gentlemen, if you speak with those concerned with development or read around the topic in the print media, the community association blogs and the many websites of municipal politicians across this province, you will soon be led to conclude that there is something amiss in Ontario's land use planning process.

What's wrong is that a small government agency of 26 unelected and unaccountable appointees circumvent the will of the citizens of the province through their elected municipal councils by acting as the primary decision-makers in Ontario's land use planning matters, and this is the Ontario Municipal Board.

The OMB is an old story in Ontario. It's been at this in one form or another for over a century. While it has never been easier to become informed on planning principles, never easier to communicate with and participate in the activities of community planning, the frustration and cynicism that falls from dealings with the OMB creates a disengagement in Ontario's public. People feel as though they have been taken out of the planning process due to the intervention of the board. Calls for the abolition of the OMB are found in the op-ed pieces of local community newspapers and large city dailies. You can hear the call in municipal council chambers across our province, from the smallest settlement areas to the largest, only a few blocks from where we are now.

I accepted the invitation to speak to you today not to argue for the abolition of the OMB but to call for changes to its mandate and other aspects of the province's planning process that I believe will go a long way to elevating meaningful public input and decision-making to its rightful place in Ontario land use planning.

OMB reform was contemplated by the present government before it became the present government. The wording of section 2.1 of Bill 51, introduced over the authorship of the then Minister of Municipal Affairs and Housing, the Honourable John Gerretsen, appears to have fallen short of what is needed to set things right in the world of Ontario land use planning.

Recent OMB rulings suggest that the phrase "shall have regard to" needs legal interpretation and stiffening. This is the basis, in fact, of a judicial decision to grant leave to the city of Ottawa to appeal the Manotick OMB ruling before the Divisional Court of Ontario.

However, my experiences convince me that there is more to this problem. I'll try to articulate its breadth

using as a case study our community association's recent participation in an OMB hearing affecting our village. Finally, I'll offer some positive recommendations intended to correct the shortcomings that I identify.

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The OMB mediates and rules on planning disputes. Critics have the perception that the OMB has a pro-developer bias. This perception is bolstered by a large number of well-publicized rulings that overrode the decisions of elected municipal officials and councils in favour of large-scale developments. Cynics view the OMB's purpose as to provide the development industry a portage at the whitewater of public concern.

This perception of bias has an important consequence for our democratic way of life, one that is at the heart of my concerns here today. It infects the public with a cynicism that results in the attenuation of public participation in the affairs of planning. Should this extend to its logical conclusion, the role of the public and its elected officials will disappear from the planning process altogether, save for the ongoing requirement to bear its costs through municipal taxation.

There are those who argue that this might be a good thing. I've heard both developers and city planners offer the opinion that municipal councils, not knowing much about planning, are inefficient arbiters in the process and should have no say in it. Efficiencies aside, I'm troubled by such talk, as it disenfranchises those who want to participate in the process by disconnecting their elected representatives from the ability to make planning decisions.

I'll now briefly describe the experience of our community association as a party to an OMB hearing. This is a case study that underscores the points I want to make to you today. I know that each of you can find similar examples in your own constituencies. Indeed, I've read accounts of examples so similar to ours that the wording could have been pasted from our own community association website.

Our community had a recent battle, culminating in an OMB hearing, to oppose a large local developer who proposed a 1,400-unit suburban-style subdivision within the village boundary. In order to accomplish this, the developer submitted an application to the city of Ottawa to amend Manotick's secondary plan, which in its present form does not permit development of the type and at the scale and pace that they seek.

To say that the developer's plan required an amendment to Manotick's secondary plan is inaccurate. They required such a wholesale rewriting of the plan that those who read the two documents wouldn't recognize one as an amendment of the other. All of the work the community put into creating the plan was overwritten with wording that the community clearly understood shifted the focus of this plan away from the public good to the developer's business interests.

Wanting to air issues in a public forum, our village community associations organized a town hall meeting to discuss the implications of the proposal. Nearly 1,800 people packed themselves into the village arena. All showed up as an expression of concern and to hear the issues discussed by invited speakers. Many asked questions and weighed in with their concerns regarding the defence of Manotick's secondary plan in the question and answer session that followed.

Once the details of the proposal and the issues that surrounded them found their way into the village's collective consciousness, the community was galvanized in opposition. Not opposition to developers or development, but opposition to the process that allowed such a radical modification of Manotick's secondary plan, a principled plan that charts the way that our historic rural village should grow into the future; a plan that was created by its citizenry for its citizenry; a plan that the residents of the village feel belongs to them. In two separate surveys of village residents, over 95% supported the community association in its efforts to represent their concerns before city council.

Our community association worked to convince Ottawa's city council that Manotick's secondary plan represented good planning, both from the perspective of our village and from the perspective of the provincial policy statement of 2005. Time after time, we detailed before council and committee how the developer's proposal would create stresses in the character and quality of life of the village, out of keeping with the primary objectives of the Manotick secondary plan. We lobbied each of the city's 23 councillors, as well as the new mayor, with personal delegations attending at their offices. We publicized our concerns at meeting after meeting of city council committees, through countless flyers, brochures and presentations to the members of our village and our city. Our efforts succeeded. Ottawa city council vetoed the developer's amendment proposal by an unequivocal vote of 19 to 5.

Within a week following the council's refusal, the developer announced its intention to appeal the city's decision to the Ontario Municipal Board. We all wondered how the board could contemplate allowing such radical changes to our secondary plan.

If you read Manotick's secondary plan, you'll be impressed with its wording. Written and adopted by majority votes of three separate municipal councils—the Rideau township in 2000, the regional municipality of Ottawa-Carleton in 2001 and the amalgamated city of Ottawa in 2000—it predated the provincial policy statement of 2005, and yet many of its precepts read as if they were taken from the PPS:

—Continue developing in areas where existing development is already located or where public services already exist rather that developing in new areas.

—Discourage growth in natural areas like wetlands and flood plains.

—Capitalize on, but do not harm, natural amenities like rivers and forests.

—Provide for source water protection.

—Plan for multifamily developments in parts of the village where streets and sidewalks can handle the increased traffic.

—Design neighbourhoods within walking distance of civic spaces and commercial uses and jobs.

—Avoid development in areas that cannot easily be serviced with utilities.

—Promote efficient use of existing infrastructure through the revitalization and intensification of the village core before venturing into greenfields.

—Control the rate of growth so as to allow both physical and social infrastructure to keep pace with the addition of new residents etc.

We thought, "How could such a plan, one that conforms so well to the new provincial policy, be subjected to an amendment that would alter it so completely?" Allowing the amendment would result in more than a doubling of the village's population within the next decade, at an annual growth rate five times that of the village's growth rate over the past 30 years.

Manotick's residents would face the prospect of clogged streets, snarling traffic and lost opportunities for intensification and revitalization of the village's residential and commercial core. The expected increases in the demands on the social, recreational and commercial infrastructure would overwhelm the character and quality of life of a village, ironically, celebrating its 150th anniversary. Big-box developers started sniffing around at the edges of the village, worrying its merchants.

All of this not because Manotick's secondary plan failed to conform with provincial policy, but because a developer had different ideas from those of the village's citizenry as to how the village would grow into the future. All of this in spite of the fact that the present residential land inventory in Ottawa is sufficient to supply the projected housing needs of the rural areas of the entire city for the next 30 years. All of this, though the development would necessitate the extension of city-centred services, increasing sprawl and with it the city's financial burden, stressing its ability to provide and maintain infrastructure, such as roads and emergency services.

After much discussion and consultation with the community, the WMCA board decided to seek party status before the OMB hearing on the developer's appeal.

Information from community associations right across the province confirmed my suspicions: Our community association would be in for an expensive and time-consuming fall and winter of 2008-09.

We learned a lot about the process in a short time. For example, to our naive surprise, we learned how difficult it is to convince local planners and engineers to serve as expert witnesses on our behalf before the OMB. Many were candid, simply stating that they received a significant amount of income from the development industry, including the appellant in this case, and that although they were very sympathetic to our cause, the financial penalty imposed by the developer for supporting us in terms of lost work would be too much for them to bear.

We learned how to navigate through the bureaucracy of Ottawa city hall. It was daunting that the developer's staff knew everybody at city hall, from the janitor to the mayor, by their first name. What I would have given for the directory in one of their BlackBerrys. It took us months to accumulate a list of the useful phone numbers and even longer to connect the dots so that we knew who to call and for what purpose.

To our dismay, we learned that, in Ontario, the business of modifying official plans is tax deductible, whereas the business of providing public input to creating and defending them is not. For those in our community who supported the cause financially and to those who attended the seven-week-long hearing, many taking unpaid days off work to do so, it was galling to find yourself beside the developer's lawyers, employees and expert witnesses, all fully paid to be there by the developer and all fully deductible as pre-tax business expenses, right down to the cost of their parking, while all of ours were being paid for in after-tax dollars.

We also learned how few resources the OMB actually provided to deal with a case of this size. For example, there was no court reporter, no video or audio recording apparatus, no independent method of verifying testimony. The lone board member presiding over the hearing had to keep his own notes in addition to following the testimony and the ebb and flow of the proceedings, the hours of sworn testimony, opinion, flipcharts, posters, photographs, calculations and documentation sets that would take down a small forest to print. He seemed overwhelmed at times, showing more interest in the more concrete aspects of the appeal than in the many good but more abstract planning principles that the amendment offended.

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We reminded ourselves that the community association was a party to the hearing to argue for the defence of our secondary plan. Professional planning consultants, economists, engineers and lawyers had been involved in its creation, as had many of the community's residents, and we were convinced that the MSP remained as the best prescription for the village's future and fully consistent with provincial policy. Surely the board would find a middle ground to serve all concerned. We retained our resolve to resist amending it solely for the purposes of the developer's business plan.

In the end, ladies and gentlemen, our exercise in planning arbitration, Ontario style, cost the community association nearly $180,000 in after-tax money, not counting the uncountable and priceless after-tax volunteer labour hours. In the process, we'd participated in nearly 70 meetings relating to the issues before the board. We engaged not one, but three lawyers with municipal expertise, along with consultants and experts in rural planning matters and in traffic engineering.

It beggars the imagination as to how much more any community could have done in defence of its own secondary plan. Even people on the developer's own staff grudgingly admitted that they had never encountered anything like the level of effort that was expended by the WMCA over a local planning issue. My guess is that they're right. If things don't change to make it possible

for meaningful public input without the level of effort that we expended, my guess is that they never will again. Not many communities have the resources of Manotick, human or financial, but even so, the sheer weight of the thing can be borne by any community volunteer only about once in a lifetime.

Some months later, the OMB ruling appeared. It favoured the developer's position over the city's and the community association's on every point. Incredulous, I pored over the pages of the ruling to try to understand where we had gone wrong. What I read offered no reference to precedent or law or planning principles. The development's amendment details were simply asserted to be good planning, and that was that. If the board was sending us a message, I heard it loud and clear: Leave the public out of the planning process and leave it up to the developers and the planning professionals, who know best.

Throughout the Manotick hearing, issues were addressed in the context of the developer's amendment application, comparing it to the village's existing secondary plan. In the ruling, however, the OMB seemed to have viewed the developer's amendment to Manotick's secondary plan as an original planning document unto itself, as if it hadn't been deliberated upon by municipal council in the context of our existing secondary plan. In effect, the OMB member had no regard to the decision-making activity of the elected representatives of our city and our community. The OMB acted as the primary decision-maker in this matter and not as an appeal board at all.

As it's currently constituted, the OMB has the authority to overturn decisions of city council as long as it claims to have had regard to their decision. In the Manotick OMB ruling, it states in a sentence near the very end of the document that the board did have regard to council's decision. The OMB's regard, however, did not extend to giving it serious weight.

In this case, it's not only a lesson to the taxpayer, but a cautionary tale that every elected public official in this province should heed. If this situation is allowed to continue, I suspect that the taxpayer will react first by vacating the process of contributing public input to planning, followed by a more general vacation from involvement in the governance of our province altogether.

I think it's appropriate to ask of you at this place today, in this case, what more could have been done to defend an official plan? If this level of effort cannot provide an adequate defence, what can? What is the value of public input into the planning process if there's no deference to the community's wishes and careful planning work and no regard to the decisions of its elected officials? And finally, why should the public spend time involving itself in a planning exercise, only to be subjected to such treatment? Would you? We need your help to right this situation.

In conclusion, I believe land use planning belongs firmly in the public domain as a public process controlled by accountable, elected officials. Meaningful public input into the planning process is only possible where the elected representatives of the people are the primary decision-makers in planning. This is not the case in Ontario today.

In Ottawa, a big-box developer has recently bypassed the public consultation process altogether and appealed directly to the Ontario Municipal Board in advance of a vote of council or municipal committee. If the board decides to, it can apparently rule on the appeal de novo, without a prior decision by council. Neither the developer nor the OMB should be allowed to do an end run around the public consultation process in this way.

Manotick's case is a microcosm of what the OMB has visited upon communities all across Ontario who face off against development pressures. The OMB has now elevated itself to the role of primary decision-maker and has assumed the power to override decisions made by municipal councils. This does not serve the public good, and it is, in my view, antithetic to the fundamental purpose of government. It should be changed.

I believe that correction can be achieved by limiting the board to the role of an appeal body, with the power to overturn council decisions only if they are illegal; that is to say, if they do not conform to the provincial policy. This limit to power needn't be seen as a reduction in the importance of their role in Ontario planning. To the extent that the OMB is able to determine whether or not a given piece of planning conforms to the PPS, its expertise could be valuable as part of the creation and review of municipal official plans. OPs created in public and shown to conform to the PPS through a review by the OMB would be stronger planning documents and less subject to costly amendment reviews.

I would further recommend that serious consideration be given to the role that the community associations play in planning matters. In my view, they're a valuable but underutilized resource in matters of local planning. Communities often find themselves placed in an adversarial position against either their municipal council or the developer as a result of Ontario's present land use planning process. It needn't be that way.

Co-operative models must be found that will also elevate the opinions brought forward by communities through their community associations. Finding ways to finance their participation in planning deliberations would also be worthwhile. A form of community association legal aid for planning might be considered, along with an ombudsperson to assist community associations in their dealings with planning matters.

An amendment to the Planning Act effecting changes to the mandate of the OMB may not require the creation of new law and might well be implemented retroactively so as to apply to the point in time when Mr. Gerretsen's bill received royal assent; I don't know. Whatever way such a change is effected, the primary purpose and goal must be to return the power and responsibility for land use planning back to where it rightly belongs in our democratic society—with the people and their accountable, elected representatives.

Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. I think we have time for one question each. We'll start with Mr. Prue.

Mr. Michael Prue: I just have one question. It cost you $180,000. Are there still outstanding monies? And where is the town going to go from here?

Mr. Brian Tansley: The answer to your first question is no. It's paid for. Thank the Lord.

The village's role in carrying this issue forward at this point is over. The city of Ottawa sought leave to appeal and received it before the Divisional Court, and that's pending at the moment.

The Chair (Mrs. Julia Munro): Thank you. Mr. Rinaldi?

Mr. Lou Rinaldi: Thank you very much, Madam Chair. I just ask for the indulgence of a very short question, but then I do have a real question.

Thank you very much, Mr. Tansley, for being here today. The question is: You were involved in a Minto development case on a hearing. If that's the case, were you involved in the other previous board hearings with other groups?

Mr. Brian Tansley: This is the hearing I'm referring to.

Mr. Lou Rinaldi: I realize that, but were you involved in the other hearings with the OMB in the past?

Mr. Brian Tansley: No.

Mr. Lou Rinaldi: No. Thank you.

My other question is, briefly: OMB are frequently asked to bring forward different—to adjudicate. Depending on what side you're on—and this is a question I had before—there's a winner and a loser. The important part of that during the adjudication is making sure people get fair access to representation. Was your group access to fair representation—how would you characterize that? I guess my point is, did you have access to the board?

Mr. Brian Tansley: I don't understand what you mean by access to the board.

Mr. Lou Rinaldi: I mean, were—

Mr. Brian Tansley: They responded to our e-mails, yes.

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Mr. Lou Rinaldi: Were you able to make a presentation to the board, to the hearings?

Mr. Brian Tansley: No. The board refused to even visit the village.

Mr. Lou Rinaldi: But you were able to give input, correct?

Mr. Brian Tansley: We sought party status and received it at the hearing. That's why we spent $180,000.

Mr. Lou Rinaldi: Okay, so you did have status then.

Mr. Brian Tansley: We had three lawyers. We had two expert witnesses. We had 25 participants and residents from the village speak.

Mr. Lou Rinaldi: So you did have status? I guess that's the point I'm trying to make.

Mr. Brian Tansley: Yes. That's our legal right.

Mr. Lou Rinaldi: Thank you.

The Chair (Mrs. Julia Munro): Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Tansley, for making it all the way up here from Ottawa today. I just wanted to reiterate: In your deputation, you were very clear that you were not opposed to developers or development, but you did oppose the process. I guess I take exception to Mr. Rinaldi's line of questioning. What difference does it make if it's your first or your 15th time before the OMB, if the process isn't easily accessible to citizens? I guess we have a job to do here.

I want to just thank you very much for that. Again, I know it's been an interesting time in Manotick, especially on our 150th birthday. I just wanted you to have an opportunity to provide us with any parting comments on this, in particular your view on the weighting of municipalities at the OMB.

Mr. Brian Tansley: I appreciate the opportunity and I thank you very much for it.

Ms. Lisa MacLeod: Okay, so that's—

The Chair (Mrs. Julia Munro): Thank you very much, Mr. Tansley. That completes our time. We appreciate you coming.

ENVIRONMENTAL DEFENCE CANADA
ONTARIO GREENBELT ALLIANCE

The Chair (Mrs. Julia Munro): I would now like to call on Rick Smith, the executive director, and David Donnelly, the legal counsel for Environmental Defence Canada/Ontario Greenbelt Alliance. Welcome, gentlemen, to the standing committee this afternoon.

Dr. Rick Smith: Thank you, Madam Chair.

The Chair (Mrs. Julia Munro): As you know, you have 30 minutes in which to make a presentation. Any time remaining, we will entertain questions from the committee members. For the purposes of Hansard, I need you to introduce yourselves.

Dr. Rick Smith: My name is Rick Smith. I'm executive director of Environmental Defence.

Mr. David Donnelly: David Donnelly, counsel to Environmental Defence.

Dr. Rick Smith: We very much appreciate the chance to chat with the committee today. We're very grateful that you're undertaking this important discussion and we understand that your committee is empowered to make recommendations with a view to reducing possible redundancy and overlapping, improving the accountability of agencies, rationalizing the functions of agencies, identifying those agencies or parts of agencies which could be subject to sunset provisions, and revising the mandates of roles of agencies.

We're here today to recommend to you in light of this important mandate that the government of Ontario either needs to radically alter the rules and operations of the Ontario Municipal Board or to abolish it entirely.

We make these recommendations for significant change or abolition out of our very significant personal experience trying to work at the OMB, trying to represent citizens at the OMB, trying to do right by Ontario's environment at the OMB.

Since our inception in 1984—this is our 25th anniversary year—Environmental Defence has intervened in or assisted over a dozen citizens' groups appealing development approvals to the OMB. Our organization provided funding and legal counsel to some of the largest environmental appeals in Ontario history, including the very well-known Oak Ridges moraine hearing in Richmond Hill, the North Leslie appeal, the Bradford West Gwillimbury employment area hearing, the OP 198 hearing in Oakville, the Moon Point hearing on Lake Simcoe, and I could go on. Suffice it to say that no other citizens' group in Ontario that we know of has had this length of experience, this depth of experience, trying to work at the OMB.

We have a number of points that we'd like to make today in what we hope is a constructive presentation and useful from your point of view. The first point I'd really like to make is that the cost of bringing a case before the OMB is just simply prohibitive. It is well outside of the means of most citizens' groups at this point in time. It has been growing over the years, and I'll give you a few examples. In the Bayview East landowners appeal, which is also known as the north Leslie hearing, Glenn De Baeremaeker, who is now a city of Toronto councillor, swore an affidavit claiming $1 million had been expended by taxpayers before the hearing on the merits had been commenced. He estimated that his organization at the time, the Save the Rouge Valley System organization, would require $250,000 for legal and expert witness fees to attend the hearing. He believed legal and expert fees for the developers ran from $25,000 to $50,000 per day of hearings, including preparation time, depending on the witnesses. The hearing was suspended after nearly a year while the north Leslie hearing lasted for months, costing taxpayers millions of dollars.

We concur with his assessment that these costs and the cost of virtually every other public-interest-based OMB proceeding that we know of are outside the scope and the capacity of virtually every Ontarian. The implication of this is quite simple: The advantage goes to well-funded developers in this process, the advantage goes to the self-interested proponent, and this advantage is extreme, it's prejudicial and it's obvious. Our conclusion is that either the OMB needs to introduce intervenor funding or its process must be dramatically streamlined or eliminated.

Related to this first point is a second point I'd like to make before I turn it over to my colleague Mr. Donnelly. The OMB rules on costs, rules 96 through 104, must be reformed, as they allow developers to use the threat of costs or just the threat of being dragged through a costs motion to intimidate the public. Again, this isn't just my imagination; this is something that we've experienced. Environmental Defence and its community partner the Innisfil District Association, a very good, very sincere volunteer ratepayer group in Innisfil, Ontario, opposed the Big Bay Point mega-marina and the resort in Simcoe county, a case that achieved some notoriety, you may recall, a few months ago. This is a big proposal; this is not just a small addition to a garage in somebody's backyard. The resort proposal consists of 2,000 hotel and condominium units, a 300-person theatre, 86,000 square feet of commercial space, a 54,000-square-foot conference facility, a 32,000-square-foot recreation centre and a 1,000-slip mega-marina. In fact, I think the only thing this proposal doesn't include is an Elvis chapel where you can go and get married instead of taking a flight to Vegas. This is a big proposal.

Not surprisingly, the neighbourhood group felt inclined to get involved in shaping it and providing their input as it moved forward, as is their right and as they are encouraged to do by the OMB's website, which talks at great length about how the OMB is open to Ontarians. "You don't even need a lawyer to appear at the OMB," so says the OMB website. So this ratepayer group proceeded.

Despite the Innisfil District Association's evidence, the OMB panellists called the loss of 100 acres of forest extremely small and said that digging a 30-acre hole in the shoreline would have "little if any impact either on water quality or fisheries." I think it's worth noting without a doubt that if this proposal were proposed as if new today, there is no way that under the new Lake Simcoe Protection Act, supported by all parties, this thing would go forward. This was essentially a grandfathered proposal. There is no way it would go forward in its current form today.

Coming out of that hearing, because of its sincere engagement at the OMB, the Innisfil District Association was slapped with a $3.2-million cost application by the developer. The Innisfil District Association's lawyers were personally gone after by the developer's lawyers. After 13 months of proceedings, motions, cross-examinations and a record 17 and a half days of hearings on the cost application alone—almost as long as the original OMB hearing itself—the claim was dismissed in its entirety. Again, you may remember this from the press at the time.

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The cost to the IDA is really, frankly, incalculable. I mean, the monetary cost is substantial, certainly over $1 million. We intervened in the hearing; Clayton Ruby represented us. We sought leave to intervene in the hearing—we were granted leave by the OMB—because we thought this case was so important in terms of establishing the ability of citizens to operate at the OMB. Our costs were substantial, just as an intervenor, again, because this cost hearing went so long.

The cost to the IDA as a personal toll I think is more important. I mean, this is a group of volunteers, members of the community, moms, dads, grandfathers. These people have better things to do than to be going to a 17-and-a-half-day OMB hearing to make sure that they're not held liable for $3 million just simply for engaging in the process that the OMB itself encourages Ontarians to engage in. The toll in terms of angst in that community is significant. It continues. As my colleague Mr. Donnelly will outline, there remain a variety of outstanding civil suits by the developer levelled against members of the Innisfil District Association.

Why is this relevant to this current proceeding, why do I bring this up now? Well, because we asked the OMB to please refrain from proceeding with the hearing until such time as this chill from these outstanding civil claims was lifted, so that they felt able to operate at the OMB hearing and felt able to engage with this process. The OMB said, "No, we're going to proceed." So this whole thing proceeded with people, in some cases, being sued, having more than one outstanding lawsuit hanging over their heads, levelled at them by the developer, who then also went after them for $3.2 million.

This OMB process for costs is Byzantine, it is unfair, it is punitive, and it is having a chilling effect right across the province right now in terms of citizens asking themselves, quite rationally, whether they should engage with this tribunal at all or whether holding onto their house is more important to them than making a point about proper planning or environmental protection in their community.

Maybe I'll turn it over to my colleague to make a few further points.

Mr. David Donnelly: Thank you, Rick.

Just picking up on that last point, this is not an academic matter about whether the chilling effect from Big Bay Point is real or not. The Concerned Residents of Hillsdale were opposed as a party at the OMB to a subdivision from the same corporation, the Geranium Corp., the developer in Big Bay Point. Upon learning in the Globe and Mail about the $3.2-million cost against the IDA and its lawyers, including me personally, Ms. Tanya Mullings, the president of CROH, appeared before the board on the first day of the hearings to withdraw CROH's party status. In doing so, she told the board explicitly that the reason for doing so was a matter of intimidation and a fear of costs. A fear of costs is not an academic matter and must be addressed by this board if the OMB is to continue its claim that it is an open, fair and democratic process.

I'd like to turn the board's attention to several technical matters that affect practising before the Ontario Municipal Board or participating as a citizen group.

It appears that developers and their lawyers are becoming more inventive in finding ways to intimidate or chill participation at the Ontario Municipal Board. Tomorrow, September 9, a citizens' group in Prince Edward county opposing one of the largest development proposals in the county's history will be defending a motion to dismiss based on a developer's claim that the citizens' group, the Friends of East Lake, had not presented their full case to council. Even a plain reading of the Planning Act will tell you that that is not a condition for launching an appeal, but the time and the cost to defend this motion will be substantial and could possibly exhaust the group's resources before a hearing on the merits. The group, the Friends of East Lake, is not unsophisticated: They've hired a Bay Street law firm, planners and biologists who have already begun preparing their case.

The first recommendation that we have is that before developers begin to use this motion-to-dismiss technique, the Ontario Municipal Board should reform its rules to require a leave of the chair of the board before these motions can be heard.

With respect to rules 94 and 95 with respect to transcripts of proceedings, Councillor De Baeremaeker estimated the costs of transcripts in the North Leslie hearing alone could be as high as $30,000. At the Bradford West Gwillimbury hearing just conducted, it was our estimate that it would cost over $1,000 to obtain the transcripts of just a very short, simple matter. The fact of the matter is that transcripts are ordered by developers to provide a very real advantage to them in the case. Otherwise they wouldn't order the transcripts in the first place. But the costs of these transcripts, particularly in lengthy hearings, are simply beyond the means of participants. The rules should state that it's fair for all. If a developer orders the transcript, then the citizens' group should have access to the transcript, should be given the transcript if requested. Otherwise, the playing field is simply not level.

The government of Ontario has on two recent occasions set up citizen groups by conducting secret negotiations while in opposition to development proposals that have in effect stranded citizen groups without proper representation or experts at hearings. I'm referring to both the memorandum of understanding signed in the case of the Big Bay Point mega-marina and in the Bradford West Gwillimbury employment land area. In both those cases, the provincial development facilitator convened meetings behind closed doors and concluded agreements with the developers and with the municipalities in absence of the citizens' groups opposing the developments. But when those deals were revealed and the citizens' group in the case of Big Bay Point asked for an adjournment so that they could then reorganize their case, this adjournment request was denied.

What makes these two cases more troubling is that the province did not call evidence in these cases to justify its reversal of position. Furthermore, staff reports prepared by professional bureaucrats and planners at the Ministry of Municipal Affairs were either not made available or simply were not prepared. This is a very troubling turn of events when developers stand to make hundreds of millions of dollars in these development applications and there is no technical review of the planning merits of that reversal, in one case contravening Places to Grow. In the case of the Bradford West Gwillimbury employment area, three minster's zoning orders are required to make the development application fit with Places to Grow. I'm old enough to recall in 2003 candidate McGuinty running against secret land deals and ministers' zoning orders to perfect these sorts of land exchanges or land development deals with developers.

With respect to rule 92—that's the rule that prohibits the recording of proceedings by the media—the vast majority of hearings take place during the day, when people are at work. Particularly in cases of great public interest or interest to the community, it is unfair that citizens should be deprived of the right of viewing these

proceedings. The Supreme Court of Canada, the Federal Court of Appeal and most other courts and tribunals in our country allow the televising of proceedings if requested by media. I have personally attended when media have attended and asked to film proceedings and been denied by the board. This archaic rule should be overturned.

Hearings must be shortened to be fair. The evidence led by proponents can often last weeks or even months, exhausting even the best-financed groups. I have been with experienced litigators who have sat through this lengthy process. It has boggled their minds that when confronted with a hearing on a development application, these hearings can last weeks, months or even years to complete. Complex billion-dollar litigation is resolved in Canada that routinely requires a matter of days or, in the outside cases, weeks. Yet in hearings that we have participated in—Richmond Hill-OMB, the Big Bay Point marina, the North Leslie hearings—these cases have dragged on for months.

The Supreme Court of Canada and the United States Supreme Court both require time limits on lawyers. In the case of the United States Supreme Court, oral argument is restricted to 30 minutes.

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It bears repeating that the motion for costs, after the hearing on the merits, dragged for 17 and a half days, with the developer's lawyers doing most of the talking at Big Bay Point.

There are rules that can be applied, like they have in civil court across the common law jurisdictions, to prevent evidence dragging on for days and weeks. In the British justice system, you don't lead evidence; the evidence is submitted with witness statements and then it's up to the lawyers to do the cross-examination. This would significantly cut down the time of hearings.

Matters relating to environmental protection should be diverted to the Environmental Review Tribunal to be put before members who have environmental expertise. There is no good reason to deprive that tribunal of its right to hear evidence with respect to groundwater, hydrogeology, species protection—all the things they are familiar with and handle routinely. These matters should not be before the Ontario Municipal Board or they should be combined as consolidated hearings.

Finally, I would be remiss if I did not bring to this committee's attention the awful tragedy of Ontario's treatment of aboriginal cultural heritage resources. It is the law in the province of Ontario that when a development application is submitted to local council, a host of interests are notified of that development application, including school boards, conservation authorities, local ratepayers' groups, even utilities like Rogers Cable and Canada Post. But even in cases where sacred sites or significant cultural heritage sites are located nearby, First Nations are not, or ever, notified of these development decisions.

I'll just quote to you from a letter from the grand chief of the Huron-Wendat Nation. "The Huron-Wendat Nation was not informed of a single [planning] application to scrape and pave our cultural heritage sites or to take our ancestors and artifacts. Our history of occupation of the north shore of Lake Ontario has been virtually wiped out by development. Almost every day this process is repeated in Ontario, a process that still does not even provide basic notice to us."

The Planning Act as presently constituted is a racist document. It is a horrible artifact and it must be reformed. Our recommendation is that you convene a special session of First Nations' interests so that the scraping and paving of Huron-Wendat and other First Nations sites in Ontario ceases. The first step in stopping this destruction is giving First Nations people the same notice that ratepayers and utilities like Rogers Cable are entitled to under the law.

With that, I'll turn it back over to my friend for a conclusion.

Dr. Rick Smith: Thank you very much. Let me just say again that we appreciate the opportunity to present to you today. As you can tell, we believe there are significant problems with how the OMB operates at present. This is an old institution that needs retooling in a very dramatic way. Ontarians need you to lead that charge. And in the absence of that significant modernization of its rules of procedure, of its ways of operation, our belief is that the OMB should be abolished in its entirety because it's just not serving the best interests of Ontarians at present.

We look forward to any questions you might have.

The Chair (Mrs. Julia Munro): Thank you very much, and again, we're very tight on time but we do have about two minutes per caucus.

Interjection.

The Chair (Mrs. Julia Munro): Sorry for the interruption. We'll turn to the government. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you very much, gentlemen, for being here today. It's always appreciated to receive your good advice.

Question: One of the overtures that you made over and over in your presentation, without going into a lot of detail, is that we need major reform of the OMB or we should ultimately scrap it.

Dr. Rick Smith: Yes.

Mr. Lou Rinaldi: I'd like your opinion. If we scrap it, if we put it through a regular justice system to deal with the issues—because those issues are going to arise. They're not going to go away.

Dr. Rick Smith: Sure.

Mr. Lou Rinaldi: If we scrap the OMB, we're still going to have a for-and-against. How is that going to solve the problem? It's fine to say, "Scrap it," you know? But tell me—

Dr. Rick Smith: Maybe I'll just make a larger point and then turn it over to my colleague. I'm a zoologist, I'm not a lawyer, so I'm going to turn it over to my colleague for some legal points.

In terms of the larger point, this is a 100-year-old institution that was really conceived at a time when

municipalities across this province lacked virtually any capacity to oversee the most rudimentary aspects of their own affairs, right? That is the larger point that needs addressing: Do we still need a quasi-governmental body to do that at a time when even the smallest municipalities across this province in many cases have acquired the capacity to take on a lot of this stuff?

That's what we mean by modernization. We don't think that the sort of guts of this entity that date back to the late 19th century have been looked at adequately in quite a while.

Mr. David Donnelly: Virtually every sophisticated planning jurisdiction in the world does without the OMB just fine. What are the disputes before the Ontario Municipal Board? A developer wants to buy a farm field in the agricultural rate, flip it, work through the $80,000, $100,000 a unit in approval process and come out at the end with a serviced acre that's worth 10 times the value for which he bought it. I would estimate that if this committee did a careful review of the cases that go before the board, 90% of them could be solved either with common sense or abiding by the decision of the democratically elected municipal council before which the matter went.

So, are there a small percentage of cases that need to be resolved through adjudication? Yes. The vast majority of them are simply developers working the process to their advantage. There is no coincidence that citizens' groups are opposed to the OMB, don't like it and want it abolished. Developers love it. They think it's a great thing. Most municipalities who have been through the process think it's unnecessary.

Mr. Lou Rinaldi: If I may, just to follow up, Chair. I tend to disagree. I represent a riding with eight municipalities. Four of them have planning fully functioning and none of them have legal departments within their jurisdiction. We heard this morning that it's okay for Toronto, Ottawa and some of the major centres, that they do have that expertise. I'd just leave that with you because you're the expert.

Mr. David Donnelly: But if they don't have a legal department, how can they defend their constituents' interests at the Ontario Municipal Board?

Mr. Lou Rinaldi: I guess what I meant to say is that they don't have planning with legal backup. They'd have to hire somebody, like they could do now.

Mr. David Donnelly: But they have to hire at the Ontario Municipal Board.

Mr. Lou Rinaldi: But they don't have a proper planning department to do this type of expertise. Thank you.

The Chair (Mrs. Julia Munro): We'll move on. Mr. Klees.

Mr. Frank Klees: Thank you, gentlemen. You both have extensive experience. Before the Ontario Municipal Board you worked together in tandem quite often. How many times have you been on the winning side of a decision?

Dr. Rick Smith: That's a good question.

Mr. David Donnelly: I know the answer. It depends on how you define victory. In north Weston, for example—

Mr. Frank Klees: I don't have a lot of time. Not very often, right?

Mr. David Donnelly: No.

Dr. Rick Smith: Not very often.

Mr. Frank Klees: Not very often. I find your response to Mr. Rinaldi very interesting, and that is that you believe the OMB should be scrapped because municipalities have matured to the point where they can handle their own affairs. That's what you said.

Dr. Rick Smith: I think that's a—

Mr. Frank Klees: In light of that, why is it that the very case to which you referred and brought before this committee as an example—this was the Big Bay Point project that was supported by councils in the town of Innisfil, the county of Simcoe, the province of Ontario and the Ontario Municipal Board. Why would it be, then, that you would come forward and force an extensive hearing on that if you really, truly believe that local governments are at the point of maturity where they can in fact make their own decision?

Dr. Rick Smith: I would say a couple of things, Mr. Klees. First of all, the reason we intervened in that case was because we saw a citizens' group being crushed, frankly, by multiple civil suits by this gigantic OMB process, and so that case and the plight that the citizens' group found itself in was part of a larger picture, we think, of intimidation by the developer.

Mr. Frank Klees: So in that particular case, local government was not mature enough to handle the situation or make the appropriate planning decisions regarding this.

I have another couple of questions. I'll just wrap up with this. Mr. Smith, you are the executive director of Environmental Defence Canada; is that right?

Dr. Rick Smith: Correct, yes.

Mr. Frank Klees: You're also the secretary, are you, of the Friends of the Greenbelt Foundation?

Dr. Rick Smith: No, I'm not. I've—

Mr. Frank Klees: Were you at one time?

Dr. Rick Smith: I was. It's been a while since I've been on that board.

Mr. Frank Klees: And while you were on that board, did the Friends of the Greenbelt Foundation contribute some $600,000 to Environmental Defence?

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Dr. Rick Smith: I'd have to check the dates, but certainly the Friends of the Greenbelt Foundation has granted to Environmental Defence, yes.

Mr. Frank Klees: And Environmental Defence also receives funding from the Ontario Trillium Foundation?

Dr. Rick Smith: Yes, and many other foundations.

Mr. Frank Klees: Some $537,000, I believe.

Dr. Rick Smith: Again, you have me at a disadvantage.

Mr. Frank Klees: The reason I ask these questions is that it's very interesting to hear the arguments that you're

making against the functioning of the Ontario Municipal Board. You're right: We have the mandate here to make recommendations about the functioning and the accountability of that board, and we will. One of the things that we will be investigating is who appears before that board and how they are funded. I ask you this question: Do you believe that it is appropriate for charitable organizations that receive a tax benefit, and foundations such as Friends of the Greenbelt Foundation and the Ontario Trillium Foundation, to be funding Environmental Defence, of which you are a part—and I'm assuming you get paid by them—and that they should be funding through tax dollars advocacy against decisions that have actually been made by various levels of government? Do you think that's appropriate?

Dr. Rick Smith: Sir, to be honest with you, I'm a little bit shocked at that question and I would have thought better of the Progressive Conservative Party. The implication of your question is that, somehow, charitable organizations at the OMB are the Goliath to the developers' David?

Mr. Frank Klees: No, I'm dealing with the issue of the source of the—

Dr. Rick Smith: That's just quite bizarre, sir.

Mr. Frank Klees: I'm simply talking about the appropriateness of taxpayer dollars funding advocacy groups before the OMB.

Dr. Rick Smith: No taxpayer dollars have funded this advocacy group at the OMB. Let's be clear about that.

Mr. Frank Klees: Are you paid by Environmental Defence?

Dr. Rick Smith: Yes, I am.

Mr. Frank Klees: Does Environmental Defence receive funding from the greenbelt foundation and the Ontario Trillium Foundation?

Dr. Rick Smith: Yes, and—

Mr. Frank Klees: And if someone makes a contribution to Environmental Defence, do they get a tax receipt?

Dr. Rick Smith: Yes, and my organization—

Mr. Frank Klees: That would be tax dollars, sir.

Dr. Rick Smith: Excuse me, it's important to be clear about this: My organization does a great many things. One of them is working with your party on occasion and appearing at press conferences with your former leader on occasion.

Mr. Frank Klees: And what does that have to do with the issue?

Dr. Rick Smith: I'm just saying that my organization does a great many things, as many charities do, and receives a great amount of—we receive money from everyone, from my aunt Pat—

Mr. Frank Klees: But that does not—

Dr. Rick Smith: —to the Ontario Trillium Foundation. Appearing at the OMB is only one of the things that we do.

Mr. Frank Klees: Sir, my point is simply this: This committee has a responsibility to determine whether the function of the OMB and who appears before it is appropriate.

Dr. Rick Smith: Absolutely.

Mr. Frank Klees: And I believe that we've touched on something here that we need to pursue.

Dr. Rick Smith: So are you—

The Chair (Mrs. Julia Munro): Thank you. I'd like to move on. Mr. Prue.

Mr. Michael Prue: Well—and I don't even want you to answer this—I think that if your members want you to assist a community group, you should be allowed to do it. Just so you know, this is not unanimous around this table.

I don't know when you walked into the room, but there have been a number of community groups and others who have come forward and questioned the OMB and the ability of citizens' groups and the high costs involved. However, when the developers were here, they called it a democratic organization and they insisted that although we were the last province in Canada that still had a fully functioning municipal board, that Ontario should be unique. Could you pass comment on whether or not you believe it is a democratic organization—because I found that rather bizarre; I wouldn't use the word Byzantine, but bizarre at least—and whether or not the other provinces, like British Columbia and Quebec, that have done away with the board and the other provinces that have all truncated it a great deal are suffering any as a result of this?

Mr. David Donnelly: Thank you for your question. I think part of the answer lies in how other jurisdictions deal with planning matters that come before them. In those other jurisdictions you mentioned, and in the United States to a lesser degree, there are fixed state or provincial rules around where you can and cannot grow, so you don't need an adjudicative body. The rules are the rules and you follow them. The Ontario Municipal Board builds in such a degree of flexibility that it works towards the developers' advantage.

On planning, site-specific infill or architectural matters, they have architectural boards, which are far less informal, and they do a good job of dealing with things like density and heights—things that often trouble neighbourhoods, but aren't the wider planning questions.

I would say this, though, in terms of the democracy of the process: If we're going to go through an exercise looking at the tax advantage to environmental groups and charities, let's make sure that we also look at the tax benefit to developers who write off their costs at the Ontario Municipal Board and are, in effect, using taxpayers' dollars or not paying taxes based on their representation, their payment of experts. Let's just see the mountain of cash that goes in that side of the equation when we do the analysis of what the citizens' groups have to spend as well.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have available. Thank you for appearing here today.

ONTARIO BAR ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to call on David Potts, Leo Longo and Colin Grant from the

Ontario Bar Association. Good afternoon, gentlemen. Welcome to the standing committee. As you know from observation, you have 30 minutes in which to make a presentation to us, after which we will split the time remaining amongst members of the committee. For the purposes of Hansard, I'd ask that each of you introduce yourselves.

Mr. David Potts: Thank you, Madam Chair. My name is David Potts. I'm the chair of the Ontario Bar Association municipal law section. To my left is Colin Grant. Colin is a vice-chair of the OBA municipal law section. I and Mr. Grant are city solicitors, I for Oshawa, Mr. Grant for Brampton. To my right is Leo Longo. Leo is an active member of the OBA municipal law section and is a senior partner of Aird and Berlis LLP. Mr. Longo has chaired the Law Society of Upper Canada's municipal law specialty committee, and is himself a certified specialist in municipal law in both local government and land use planning and development, representing both public and private sector clients.

The Ontario Bar Association is an autonomous provincial branch of the Canadian Bar Association. It is voluntary, non-partisan and professional, representing over 16,000 lawyers, judges and law students across the province.

The OBA municipal law section is comprised of approximately 400 private sector and public sector lawyers who, in turn, represent the various stakeholders in municipal planning and development law matters in the province of Ontario. Its members regularly practise before the Ontario Municipal Board and appear before other provincial tribunals and municipal councils. The OBA municipal law section executive is elected by the members of the section to act as advocates on behalf of the section. Mr. Grant and I appear in that capacity.

The OBA is grateful for the opportunity to address the standing committee. The OBA's written submission has been filed with the committee clerk. The OBA municipal law section is grateful for many past opportunities we have been given to comment on provincial proposals for municipal and planning law reform, including Ontario Municipal Board reform.

OBA municipal section comments generally do not address policy, but focus on the mechanics necessary to assist the Legislature in achieving its goals. For example, the OBA municipal law section has made several relatively recent submissions relating to the province's goals of supporting local decision-making, while at the same time protecting the broader provincial public interest and providing clear rules for the OMB. There's a list of eight sets of submissions between the years 2004 and 2007 that are listed in the written submission.

The necessity for, and the utility, effectiveness and worth of, the role and function of administrative and quasi-judicial agencies, boards and commissions in general, and the Ontario Municipal Board in particular, have been well documented. Simply put, it is the best means we have of balancing competing interests while maintaining government efficiency and the rule of law.

The Ontario Bar Association supports the continued role of the Ontario Municipal Board as an independent, quasi-judicial administrative tribunal. It is the OBA's position that the province should ensure that the board is well-funded and resourced with qualified members and a professional staff, each appropriately compensated for their duties.

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I'm going to turn to Mr. Longo, who will deal specifically with recent legislative changes, including the Planning Act, section 2.1, and what it means to have regard to municipal decisions and supporting information and material related to those decisions; and secondly, the province's continuing role in land use planning. Mr. Grant will follow by summarizing the Ontario Bar Association's three recommendations that are set out in the submission. Thank you.

Mr. Leo Longo: Thank you very much, Madam Chair and committee members. Time obviously doesn't permit us to get through all the things we've addressed in our report.

Let me, on the topic of "have regard" for a municipal council decision, make a few points for committee's consideration. The first thing is, the Planning Act has for 25 years had the term "have regard" for. There have been court decisions and board decisions as to what that term means. You'll see in your submission how the courts have said the board's responsibility is in exercising and discharging its function under that section.

What's equally important for this committee to remember—I've not heard anyone from the committee mention it—is section 2.1, which says "have regard" for council's decision and "have regard to" the information and submissions that were before council when it made its decision. That encourages—in fact, not only encourages, it obligates the board to look behind the municipal decision to see what information council had. Did they make the decision because it was two months before a municipal election and the room was filled with 300 ratepayers? Did they have staff reports that supported it or did not support it?

So recognize that when this Legislature asked in 2007 for OMB to have regard to municipalities' decisions, it was to also have regard for the basis upon which that decision was made. You'll find in our submission decisions where the OMB talks about the legitimacy of planning purpose, the necessity of transparency and why it does go behind council decisions as obligated under section 2.1. So please remember that.

The next thing I'd like to say on section 2.1 is this: The aspect of having an unelected board overrule the decision of an elected council is not a new one. You'll see in our submission that there have been 13 past studies of the OMB over the last 40 years, and many of the matters you've heard today have been raised in previous standing committees and special committees and studies the province has done. I urge this committee to review that previous body of work. For example, 30 years ago, the predecessor of this committee, when asked to get rid of

the OMB, said, "We believe the right of a citizen to appeal a decision of a municipal council is too important to simply wipe away." So recognize that there is a lot of history of analysis of the OMB and time and time again the government recognizes the importance of the board.

A final comment on history: McRuer, 40 years ago, under the Royal Commission Inquiry into Civil Rights, made this comment about the OMB: Successive Legislatures often look for a jurisdiction to cope with a problem that has arisen and they invariably give it to the OMB to resolve.

My experience in 30 years has been that the board doesn't stick its nose in other people's business. It fulfills the mandate that the province has asked the board to fulfill. It abides by the Legislature. This talk about the board being unaccountable—let me indicate two reasons why that's not right. This board is accountable to the public that appears in front of it and the parties that appear in front of it to act fairly in accordance with the rules of natural justice or else it's accountable to the courts for not obeying the rules of natural justice. It's also accountable through its minister, the AG, to this Legislature. Why are we here today? This is accountability. You're elected officials. So the talk about the board being unaccountable—I ask that it be rejected.

Finally, that the board is a vestige of the past: With the greatest of respect, Mr. Prue, you used that term. We list 40 pieces of legislation where the board has been given jurisdiction, right up to the Clean Water Act. It seems that rather than being a vestige of the past, the board is a proper administrative law implement through which this province delivers policy to its citizens.

The second thing I've been asked to speak on is the provincial role. There was a comment made. Mr. Klees was quite right that in 1983 they got rid of cabinet petitions, so now the province is maybe out of it. Let me tell you five reasons why the province is still stirring the pot:

(1) The Planning Act says that a purpose of the Planning Act is—if you'll give me one moment—"to provide for a land use planning system led by provincial policy." That is a stated purpose of the Planning Act. Provincial policy is the lead for land use planning in Ontario.

(2) You've heard about the growth plan, the greenbelt plan, the Lake Simcoe plan: These are all examples of provincial planning.

(3) Section 3(5) of the Planning Act says that the OMB must, in making its decisions, "be consistent" with the provincial policy and all of those plans. It's not "have regard" for, but "be consistent." Remember, when an act says "be consistent" for one thing and "have regard" for something else, lawyers aren't making this up, but when a different term is used for different things, it means different things. Member Prue knows this, because when Bill 51 went forward, you were most critical about why we were using "have regard" for, that that was the weakest language in the bill. But that's the language that you've given the board to follow, so recognize the board is doing the job you've given it. It doesn't do this stuff itself. It doesn't make it up. It's following what you've done.

(4) On provincial policy: minister's zoning orders. Don't get these confused with provincial plans. Section 47 allows the Minister of Municipal Affairs and Housing to impose a zoning order—no notice. It overrides zoning.

The city of Toronto didn't want casinos. Woodbine went to court, saying, "We want casinos." The court said, "No. The city can prohibit casinos." Right afterwards, what does the province do? A minister's zoning order, and there are 1,800 slot machines at Woodbine. That power still exists, and the province can exercise it from time to time.

Finally: (5) Even though there are no more cabinet petitions, as of right, the province, 30 days before a hearing, is able to advise the OMB that a matter of provincial interest may be affected. Then the OMB can't make a final decision and it's cabinet that makes the final decision. It's not a power that's used often, but it's there.

So there are five ways that the province still stirs the pot and basically controls land use planning.

My five minutes are up. The final comment is, I know that you received a submission from the Ontario Professional Planners Institute. They're a very significant and important player at the OMB. I just commend their submission to you and ask that you do peruse it, because it does have some very useful information that I think this committee would benefit from.

I now turn it over to Mr. Grant, who will deal with future recommendations we'd like to see this committee consider.

Mr. Colin Grant: Thank you, Mr. Longo, and thank you, Madam Chair. I'd like to focus on recommendations for positive change within the existing administrative system. In particular, the need for maintenance of expertise has been critical to administrative tribunals like the OMB.

In addition to the many legislative changes that have been mentioned, the OBA has taken great interest in the Ministry of Government Services' agency cluster project. What is the agency cluster project? It's the Ministry of Government Services' administrative review of five tribunals, including the Ontario Municipal Board, that have shared stakeholders and related mandates. The Minister of Government Services appointed Mr. Kevin Whitaker, who is chair of the Ontario Labour Relations Board, to head up the agency cluster project as facilitator, and in August 2007, Mr. Whitaker submitted to the Minister of Government Services the final report of the agency cluster facilitator for the municipal, environmental and land planning tribunals. Many of the recommendations in that report have been implemented, or are in the process of being implemented, subject to any legislative changes that may be necessary.

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I want to highlight that in the final report the facilitator recognized the critical importance of expertise to administrative tribunals. I'll quote: "Perhaps the most

fundamental assumption about the appropriate delivery of administrative justice dispute resolution deals with the central concept of expertise." The Ontario Bar Association has supported and continues to support the agency cluster project, in particular that the maintenance of expertise is of critical importance to any review of the Ontario Municipal Board.

Enhancement of necessary expertise to be a qualified Ontario Municipal Board member is of primary concern to the Ontario Bar Association. It's important to ensure that qualified individuals will be hearing appeals and rendering timely decisions on important matters that have direct impact on the quality of life for citizens in Ontario.

The stated goal of the agency cluster project was to create options "so that dispute resolution services can be delivered in an improved way with existing resources." Again, the OBA supports that worthy goal, but there is no point in the provincial government making changes to service delivery models if the OMB will lack modern resources necessary to effectively perform its functions and attract and retain qualified members. This morning, Chair Hubbard made a point of highlighting the need to attract and retain excellent candidates to the career of public administrative adjudication. To ensure that the Ontario Municipal Board succeeds in fulfilling its important public role, expertise is paramount.

The OBA makes three recommendations to the standing committee:

First, the Ontario Municipal Board should have the resources to implement technological improvements to its administrative and hearing processes, likely in conjunction with the other tribunals subject to the cluster. I would note that in direct contrast to the OMB, the self-funded Ontario Energy Board has significant staff resources at its disposal and has the ability to disseminate hearing transcripts and other information to members of the public throughout the hearing process. The OMB has no such tools, as you've heard about today, even though OMB hearings often generate significant public interest and impact on Ontario residents. So the highlight there is that there is a disparity in resources between publicly funded provincial tribunals and privately funded provincial tribunals.

Second, the level of compensation and benefits to OMB members should be increased. I won't go into detailed submissions. In August 2005, the OBA submitted detailed submissions to the Ministry of Municipal Affairs, and those recommendations remain relevant to this day.

Lastly, it's fundamental that OMB members are free to make independent decisions on all matters that come before them. For this reason, the length of tenure of appointments to the board should be allowed to be increased and the renewal process should allow for some appointments to exceed 10 years. Reforming tenure of appointments would assist the board in attracting and retaining excellence and experience. The point is, what can be done to attract qualified people to a career in provincial adjudication?

In conclusion, the oldest administrative tribunal in Ontario, the OMB, has a demonstrated tradition of excellence. The OMB plays a vital role in ensuring that the broad public interest is protected in a variety of decisions impacting Ontarians in urban, rural and northern communities. The right of appeal to the OMB is one of fundamental importance to our existing system in Ontario.

The Ontario Bar Association has previously made several recommendations to the various provincial ministries and to the agency cluster facilitator that have been reiterated today and that we respectfully submit would enhance the board's expertise to make fair and independent decisions on all matters that come before it.

So once again, on behalf of the Ontario Municipal Board, I'd like to thank the standing committee for the privilege of attending before this committee today. We hope that our comments are helpful, and we have left some time for questions.

The Chair (Mrs. Julia Munro): Yes, you have. Thank you very much. We'll begin here with Ms. MacLeod.

Ms. Lisa MacLeod: Welcome to the committee. It was a really interesting deputation. Mr. Longo, I just want to single you out for waking us all up at 4 o'clock in the afternoon, after a long day. I really enjoyed your presentation. I can't say I agree 100% with everything you said—

Mr. Frank Klees: Aw, come on.

Ms. Lisa MacLeod: —but these guys know what that feels like. In any event, I appreciated your comments.

Out of curiosity: Has there ever been an OMB decision that you disagreed with?

Mr. Leo Longo: Yes.

Ms. Lisa MacLeod: So you're objective?

Mr. Leo Longo: I'm objective. Usually they're the ones I lose, but—

Ms. Lisa MacLeod: Touché.

Mr. Leo Longo: Like the courts, the board is staffed with humans, and they come with their backgrounds and their expertise, and sometimes they have their decisions that they make. That's why we have the courts and an allowance to appeal board matters to the court on questions of law.

Ms. Lisa MacLeod: That's a valid point.

Let's talk a second, in the time that I have left, about the criteria for people we would be appointing to this committee, because those committee appointments do come through this committee.

I guess for the benefit of all of us here and those at home who are watching the review of the OMB—I know that's what I'd be doing today if I weren't here—what are the criteria? Should it be planners? Should it be former municipal politicians? Should it be lawyers? What kinds of criteria? Or should we look at a vast skill set of people who include those who are conservationists and historians as well?

Mr. Leo Longo: I would echo many of the things the board chair said, but I would say, rather than looking for

an occupation, that you're looking for a skill set; you're looking for someone who can adjudicate a quasi-judicial matter and make a decision in a legal and policy framework. So that person would need to understand, or have a basic understanding of, both the legal framework as well as the policy framework within which planning is done in Ontario. Many mayors, commissioners of municipalities, professional planners, engineers, lawyers have that skill set. I think the difficulty is not finding those persons; it's attracting them to public service and making it worthwhile for them to serve. I hate to be blunt about this, but many of the most qualified people simply could not afford to give up their practices, give up their jobs in order to serve on the board, because of the way that the salary structure has been, if you will, stifled over the years. We can get into reasons why, but it's just very difficult. At one time, when I first started, board members were close to judges in salary. That's lost now, and it's just difficult to get people. So what you do tend to find is that you get people not in the middle of their career or the height of their career but people at the end of their careers, maybe retiring from their first job and now taking this on as their final job. You may find some. But I think the key thing is to find a qualified candidate who understands the legal and planning process and, as the board member said, is able to write—to be able to express yourself and make a decision.

Ms. Lisa MacLeod: What about the length of tenure? By the way, I agree with you in terms of the writing and making sure it's concise and to the point and not open to—

Mr. Leo Longo: Tenure: The longer the tenure, the more secure the members are to make an independent decision. Up until 1988, I think, when Mr. Scott took away the "at pleasure" and then replaced it with this—just think of this example: OMB is facing an expropriation matter where the issue is whether the value of the land is $3 million, as the province contends, or $18 million, as the landowner contends. That board member is up for reappointment in six months. Even if it doesn't have the effect—that's a true example of Torvalley, the Brickworks in the Don Valley Parkway. Without the ability of knowing that I can make an independent decision and be secure in my job, even if you try your best there is the appearance in the public that, gee, you may be making a decision wanting to hold on to your job.

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So the longer the tenure can be, I think, the greater guarantee of the independence of approach that the board member will bring to a problem, and that serves the public interest best. Because, you know, sometimes even the province is wrong. They appear in front of the OMB on many occasions—

Ms. Lisa MacLeod: Well, they have been for the past five years, right?

Mr. Leo Longo: —and they're wrong on occasion. Sometimes you need the board to point that out.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Prue.

Mr. Michael Prue: Just on the same tenure argument, I would have no difficulty, if the board is to continue, with extending the tenure, but the chair today did speak about the ability, which does not now exist, to remove members who are not living up to the potential that is expected. If we are to increase the tenure, as a committee, should we also look at granting the authority to the chair to remove those people who are not up to the job?

Mr. Leo Longo: That's an interesting question. I'm not sure if it would be solely on the review of the chair itself. I have to confess some lack of knowledge as to how it was done when positions were held at pleasure, but I believe there was a mechanism by which the province, through the AG's office, would hear investigations or complaints about the competency of the member. If it was determined that it reached a point through either medical problems or dependencies or something that may have developed that that member was no longer able to serve, there was a way of reviewing it internally while ensuring that the rights of the individual were being respected, because you obviously can't railroad someone and say, "You're going off the board now." There must be a process involved. I'm sorry I can't help you as to what all the steps would be for that.

Mr. Michael Prue: All right.

Some of the people who came before us were concerned about the board's lack of knowledge on heritage matters. We got a whole list of heritage matters that they did not feel were dealt with appropriately, everything from Alma College to incidents in St. Catharines, Thunder Bay and Lake Superior. Are you satisfied that the board has the kind of heritage knowledge that's necessary?

Mr. Leo Longo: I believe the board has the ability to weigh evidence on a number of matters of expertise. As a lawyer, I don't have expertise in hydrology or engineering, but I'm able to call evidence about that, and the board every day is weighing expert testimony and judging it.

If I may say, if there is a failure in the heritage aspect of matters, I don't think it's in the board's appreciation of heritage matters. I believe it's in perhaps some inherent weaknesses in the Ontario Heritage Act that perhaps don't put heritage matters on the plane that some of these individuals would like to have them. I think the board is working properly within the milieu of what the Ontario Heritage Act says. I think those complaining may want that act actually toughened.

Mr. Michael Prue: Another complaint, and the one I take most seriously from the complainants, is the whole issue of SLAPP, about the intimidation of ordinary citizens and groups being taken to task and threatened with and proceeded with millions of dollars for having the temerity, the unmitigated gall of going before the board. Should that be abolished? I remember speaking about that in the Legislature too, how this was going to be problematic.

Mr. Leo Longo: First of all, a lot of that stuff happens outside of the board's process and the board's control. Let me make that clear. You heard that some of the

threats made of litigation were civil litigation. The board has nothing to do with that. The board can only control its own process. Its rules say, number one, that costs don't follow the event; that costs are only awarded in the rarest of circumstances; and, number three, it's wrong to intimidate somebody with a threat of cost to get them not to appeal a matter. The board has made that all clear right now. So I'm not sure how much more the board, in its own processes, can control that kind of behaviour.

Mr. Michael Prue: I'm asking what we can do so that the board is not stuck with that.

Mr. Leo Longo: I understand that in some jurisdictions, I think in California and other places, they actually have anti-SLAPP legislation. I've never had the time to review that information so I'm not sure what the nature of that legislation is. But that could be employed.

Interjection.

Mr. Michael Prue: I guess my time is up.

The Chair (Mrs. Julia Munro): Yes.

Mr. Michael Prue: Okay, there you go.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: Thanks, gentlemen, for a very interesting presentation this afternoon, and fairly knowledgeable.

I cannot resist, having three lawyers in front of me, because I could not afford this information otherwise, asking you a question: "Have regard to" the decisions of municipal councils—what does that really mean?

Mr. Leo Longo: It's responded to in our materials, but—

Mr. Lou Rinaldi: And I know I'm going to get three different answers.

Mr. Leo Longo: The judges have said the range of "have regard to" goes the spectrum from to "recite ... then ignore" to "slavishly and rigidly adhere." Do you give it extra weight? Do you simply consider that it's there and move on? There is a whole grey area.

What the courts have said, and it's in our materials, is that you aren't bound by it but you're supposed to look at the policy in light of all the circumstances and make a determination as to whether in this case that policy comes into play or does not come into play. So it's one of being respectful of the policy but recognizing the independence of the decision-maker to decide whether, under all the facts of the case, that policy should trump something else.

There has been clear guidance. I don't think the board misunderstands the test. I think a lot of people misunderstand what the Legislature has asked the board to do.

Mr. Lou Rinaldi: Thank you very much, Madam Chair.

The Chair (Mrs. Julia Munro): Thank you very much for coming today. We certainly appreciate your insights; very helpful.

This committee stands adjourned until 9 o'clock tomorrow morning, at which time we will conduct a review of Ontario Power Generation.

I would like to ask members of the committee if they would just stay here for three or four minutes. We need to have a conversation with our researcher.

The committee continued in closed session at 1605.

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