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Thursday 19 November 2009

Standing Committee on Finance and Economic Affairs

Good Government Act, 2009

Chair: Pat Hoy
Clerk: William Short

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Hansard Reporting and Interpretation Services
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Thursday 19 November 2009

Jeudi 19 novembre 2009

The committee met at 0902 in room 151.

The Vice-Chair (Mrs. Laura Albanese): Good morning, everyone. The Standing Committee on Finance and Economic Affairs is meeting this morning for the purpose of public hearings to consider Bill 212, An Act to promote good government by amending or repealing certain Acts and by enacting two new Acts.

SUBCOMMITTEE REPORT

The Vice-Chair (Mrs. Laura Albanese): The first item on our agenda is the approval of the report of the subcommittee on committee business. I would ask a government member to read that into the record.

Mr. David Zimmer: Thank you, Madam Chair.

Your subcommittee met on Tuesday, November 17, 2009, to consider the method of proceeding on Bill 212, An Act to promote good government by amending or repealing certain Acts and by enacting two new Acts, and recommends the following:

(1) That the committee hold public hearings in Toronto on Thursday, November 19, 2009, pursuant to the time allocation motion.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel and the committee's website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Wednesday, November 18, 2009.

(4) That the committee clerk schedule all witnesses on a first-come, first-served basis.

(5) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members if necessary.

(6) That the deadline for written submissions be 5 p.m. on Monday, November 23, 2009.

(7) That the research officer provide a summary of the oral submissions by 5 p.m. on Monday, November 23, 2009.

(8) That amendments to the bill be filed with the clerk of the committee by 12 noon on Tuesday, November 24, 2009, pursuant to the time allocation motion.

(9) That the committee meet on Thursday, November 26, 2009, for clause-by-clause consideration of the bill, pursuant to the time allocation motion.

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

Thank you, Madam Chair.

The Vice-Chair (Mrs. Laura Albanese): Shall it carry? Carried.

GOOD GOVERNMENT ACT, 2009
LOI DE 2009 SUR LA SAINE GESTION PUBLIQUE

Consideration of Bill 212, An Act to promote good government by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 212, Loi visant à promouvoir une saine gestion publique en modifiant ou en abrogeant certaines lois et en édictant deux nouvelles lois.

COMMISSION COUNSEL AND RESEARCHERS

The Vice-Chair (Mrs. Laura Albanese): We will now call upon our first deputant, representing commission counsel and researchers.

Interjection.

The Vice-Chair (Mrs. Laura Albanese): I believe we will get to you at 9:15.

Mr. Ken Koprowski: I thought you were calling me first.

The Vice-Chair (Mrs. Laura Albanese): No problem. If you could please sit back in the audience for the time being, we would appreciate that.

Good morning. I would like to welcome you to our committee and ask you to state your name for the purposes of Hansard. You will have up to 10 minutes for your presentation. After that, the official opposition will have up to five minutes for questions.

Ms. Freya Kristjanson: Thank you, Madam Chair and members of the committee. My name is Freya Kristjanson. I'm a partner with the law firm of Cavalluzzo Hayes. With me today is Brian Gover, who is a partner with the law firm of Stockwoods LLP.

We appear before you today on behalf of a number of lawyers and legal academics who have been involved in virtually every provincial, federal and municipal public

inquiry that has affected the people of Ontario over the past decade. Significantly, our experience includes acting as commission counsel; that is, the lawyers who assist the commissioner, usually a judge, in conducting the inquiry. Our concern is that a number of the proposed amendments compromise the independence of commissioners and the usefulness of public inquiries.

We cannot and do not speak for the judiciary or individual judges. However, given our experience, we have a particular concern that sitting judges will not be able to assume the role of commissioner under the proposed terms of the new Public Inquiries Act. This, we submit, would be a significant loss for the people of Ontario.

As the committee members will be aware, public inquiries are an important part of the legal and political fabric of this province. Indeed, they take place at the intersection of law and politics. Commonly, they are established in the aftermath of a tragedy or scandal, usually with political implications, where the public's confidence or trust in political institutions or officials has been shaken. The normal institutional responses are seen as inadequate, and governments react to public pressure by creating an independent, credible inquiry to investigate and report on what happened, and to make recommendations to prevent a recurrence. They can include both fact-finding and public policy formulation mandates. Increasingly in Ontario, public inquiries like Walkerton, Ipperwash and the pediatric forensic pathology inquiry have such dual mandates.

Public inquiries play a valuable role in restoring public confidence, ensuring accountability and proposing reforms for the future. But it is the independence of the commissioners of public inquiries that creates the conditions for the restoration of public trust and confidence. Without public confidence in the commissioner's findings and the process employed in reaching them, there can be no public acceptance of the commissioner's recommendations to address the tragedy or other matter of public concern that led to the commission's creation.

0910

There is some debate as to whether sitting judges should serve as commissioners of public inquiries. Conducting a public inquiry is not part of the judicial role, nor does it involve judicial duties. The creation of an inquiry is an act of the executive, and a judge who carries out an inquiry is serving a function of the executive. The judge, as commissioner, does not adjudicate on criminal or civil liability; the findings or recommendations have no legal effect. The judge instead fulfills a function usually carried out by investigators or committees like this one. Yet the people of Ontario have an interest in ensuring that the Legislature does not amend the Public Inquiries Act to prevent judges from assuming the role of commissioner. Indeed, having judges as commissioners is so commonplace in Ontario that "judicial inquiry" is synonymous with "public inquiry" in common discussion.

So how, then, would the new act compromise the independence of commissioners? First, it expressly authorizes the executive, through simple order in council, to vary the inquiry's terms of reference while the inquiry is under way; when the commissioner is investigating potentially embarrassing affairs of government. That power exists now. The difference is that this Legislature is contemplating providing statutory authorization, thereby diminishing the extraordinary nature and political accountability for such action on the part of the executive, which is often the very party being investigated. There is and should remain a political price to pay for pulling the plug on a public inquiry.

Mr. Brian Gover: In our experience, when a judge is asked to act as a commissioner, he or she is given an opportunity to comment on the proposed terms of reference. This occurs at a very early stage, one at which the commissioner and commission counsel will likely have an understanding of the larger issues but have not yet begun the investigation. How the inquiry will be conducted, its scope and the process to be employed depend on the commissioner's best judgment, perhaps assisted by commission counsel. Vital decisions are made at that early stage, decisions that can impact on the public's perception of the commission's ability to get to the bottom of the matter. Mandatory reporting dates predetermine time limits on phases of the inquiry, and an unconstrained ability on the government's part to revise the inquiry's terms of reference at any time, all of which are in this new act, limit the commissioner's ability to design and conduct the inquiry as the circumstances require. The proposed act would diminish their ability to negotiate appropriate terms for the order in council creating the commission of inquiry.

Another significant limit is the ability of the Lieutenant Governor in Council to limit or indeed prohibit public hearings but call it a public inquiry anyway. False advertising aside, our point is that transparency enhances public confidence in the proceedings of a truly public inquiry. The public hearings have an educative and cathartic effect which is important in restoring public confidence. As with any transparent process, there is a concomitant increase in accountability. The fundamental presumption should be openness; confidentiality concerns can always be accommodated where appropriate in a public inquiry.

The decision to call a public inquiry entails a public process based on public hearings, and that is central—we emphasize, that is central—to the history of public inquiries in Ontario and in Canada. Without the requirement that inquiries under the act take place in public, there is no need for a public inquiry at all; the government can simply rely on internal investigations or reviews, as it stands now—and of course the government did that in the case of the SARS commission, which was constituted under section 78 of the Health Protection and Promotion Act and conducted by Justice Archie Campbell, but that was not a public inquiry nor was it called one.

An alternative is the federal model under which departmental reviews, and not public inquiries, are

provided for in a separate part of the federal Inquiries Act.

Committee members, we have detailed our concerns in the brief that is being distributed to you. Our brief includes proposed amendments that would address the judicial independence and procedural fairness concerns that we have raised. Overall, this act is highly and, we say, unnecessarily prescriptive.

The current act and successive public inquiries have served the people of Ontario well. Time has not stood still. Over the past decade, commissions of inquiry have designed and implemented significant innovations that have enhanced the ability of inquiries to inform the public and get to the bottom of an issue in a fair and expeditious way. These innovations include calling panels of witnesses; appointing fact-finders; appointing amicus curiae; requiring the parties to prepare institutional or other reports; and using commission dossiers, or overview reports, vignettes and critical episodes as a means of explaining what happened. They are set out in the process chapters of various commission reports.

These innovations also provide a defence against the two enemies of every public inquiry: cost and delay.

The Vice-Chair (Mrs. Laura Albanese): I must warn you that you have about 30 seconds to wrap up the presentation.

Mr. Brian Gover: I'm going to hit that target right on, Madam Vice-Chair.

Of course, those enemies stalk a public inquiry from the moment the ink is dry on the order in council. Importantly, these innovations to which I've referred have come about at the discretion of the commissioner and not at the discretion of the executive.

If schedule 6 to Bill 212 is enacted in its present form, it will create more problems than it solves and will likely end the long tradition of public inquiries that have served this province so well.

The Vice-Chair (Mrs. Laura Albanese): Thank you for your presentation. Now the official opposition has up to five minutes for questions.

Mr. Peter Shurman: Thank you very much, Chair. Interesting presentation, and thank you for coming forward this morning. What you have to say echoes concerns that we in the opposition have, as a matter of fact. I'm interested in you expanding on the issue of scope, because I think that's where the crux of this element of the bill lies.

If you had the choice to make, would you change anything at all about the way public inquiries are constructed at present?

Ms. Freya Kristjanson: Our position is no, that the very short, six-page Public Inquiries Act has provided the ability for commissioners to properly inquire into all issues thoroughly and fairly. They have developed modern techniques and have been able to deliver on that expeditiously. Judges, when they sit as commissioners, require that discretion to pursue that which is entrusted to them. The problem is that this act attempts to set it out as a legislative direction and invests too much power in the executive. Our collective recommendation is that the existing Public Inquiries Act is sufficient.

Mr. Peter Shurman: Thank you for that. Let's delve a little bit into scope before I pass to my colleague.

If you take a look at a current-day example, we in the opposition are pressing for a public inquiry into eHealth, to expand on what the Auditor General has had to say. At the risk of sounding like I'm politicizing this beyond the scope of what we normally do, I think it's fair to say all oppositions are always demanding public inquiries of one sort or another, so I'll put that on the record. But having said that, we'd like to have that. Under this act, if I'm interpreting it correctly—I'd be interested in your comments on this as well—the setting of the scope, because of the more restrictive elements of this act, would make it possible, for example, for the Premier to say, "There will be a public inquiry into eHealth; it will last two hours; it will be in this room; there will be two deputations; they will be from these two deputants," and that's the end of it. Am I interpreting this correctly?

Ms. Freya Kristjanson: That's correct. More importantly, during the course of that two hours, if the Minister of Health was next called to testify, an order in council could simply terminate it at that point, immediately before, for example, the minister was called.

Mr. Peter Shurman: Then if I characterize this as highly objectionable, from your perspective, that would be a good synopsis?

Ms. Freya Kristjanson: That is a fair synopsis.

Mr. Brian Gover: Yes.

Mr. Peter Shurman: Thank you.

The Vice-Chair (Mrs. Laura Albanese): You have up to five minutes.

Mr. Peter Shurman: I realize that, but I have all I need.

The Vice-Chair (Mrs. Laura Albanese): Okay, thank you very much. Thank you for your presentation.

Ms. Freya Kristjanson: Thank you.

0920

ONTARIO DEPUTY JUDGES ASSOCIATION

The Vice-Chair (Mrs. Laura Albanese): We now call up our next deputant, from the Ontario Deputy Judges Association.

Mr. Ken Koprowski: Thank you, Madam Vice-Chair.

The Vice-Chair (Mrs. Laura Albanese): Again, you have up to 10 minutes for your presentation. After that, the third party will have up to five minutes for questions, if they so wish. We ask you to state your full name into the record for the purposes of Hansard.

Mr. Ken Koprowski: Thank you, Madam Vice-Chair, and members of this committee. My name is Ken Koprowski, and I appreciate very much the opportunity to make these submissions to you.

Just by way of introduction, in case you're wondering who this short, plump, bald headed fellow in front of you is and why you should be listening to him, I have been a

deputy judge since 1994. I was appointed first in the northwestern judicial district of Ontario—there are eight of those in Ontario—and I was sitting in Fort Frances, Dryden, Kenora and Thunder Bay. I moved back down to southern Ontario and I was appointed to the southwest region as a deputy judge in 1996.

I've been a member of the board of directors of the Ontario Deputy Judges Association since June 2008. We represent approximately 408 deputy judges throughout all eight judicial regions of the province.

What is this association? The association has represented its members—deputy judges—in Superior Court proceedings in the past, and those proceedings, you may know, resulted in greater recognition of the work of deputy judges, a significant increase in their per diems and the establishment of a commission to review the per diems every three years.

What we are seeking in this presentation is that the implementation of the proposed amendment in Bill 212 to section 32 of the Courts of Justice Act—and you have that in front of you, or you should have that in front of you; the amendments we're focusing on are the ones in bold on pages 3 and 4 of that handout—be delayed because it relates to the age provisions and the appointment and reappointment of deputy judges, and we ask that it be deferred until there is meaningful and serious consultation with the Ontario Deputy Judges Association and the Attorney General's office. There has been none so far with the Ontario Deputy Judges Association on those amendments.

In the records of Hansard for November 4 of this year, the Honourable Jim Watson, Minister of Municipal Affairs and Housing, stated: "This is a government that takes consultation very seriously." We just ask you that you give legitimacy to that statement, presumably made on behalf of the entire governing party.

To the effect of the amendment, you have to know what the current law is, and it's very simple: Subsection 32(1) of the Courts of Justice Act states that the senior regional judge can appoint a lawyer as a deputy judge for three years—easy; simple. Subsection (2) says that the senior regional judge can reappoint a deputy judge for three years—easy; simple; nothing more, nothing less. Note the significance of that. There is no reference in the current section to a deputy judge's age, either for appointment or for reappointment. That is to be contrasted with the provision in Bill 212 that proposes to amend section 32. In effect—and you have section 32 in front of you, and I've put it in bold—shortly stated, there can be an appointment for three years, but the initial three-year appointment and reappointments are subject to a deputy judge's age, or a lawyer's age when they're applying for appointment.

If a judge is 65 years of age or older or less than 75, the appointment is for one year. There's no limit on the number of reappointments, but there's no guarantee that the deputy judge will be reappointed. If the deputy judge is 74 years of age or older, his or her appointment will be only until that person reaches age 75. Similarly, if a judge is 63 to 65 years of age, the appointment expires when she or he reaches 65 years of age. Then, once a person is 75, they can't be appointed at all. There's a problem there that you might not be aware of.

Among other things, no reasons have to be given by the senior regional judge for refusing to appoint or reappoint a deputy judge. Also, there is no mechanism for that person to challenge or contest that decision of the senior regional judge. When I think of what went on with Justice Paul Cosgrove, this is the total antithesis of that procedure. There is no mechanism to contest it.

Here's the position of the Ontario Deputy Judges Association: On the proposed age limitations for the appointment or reappointment of deputy judges, the association believes that it is simply wrong to mandate that a person be retired without cause for age reasons alone, without due regard for the capacity of that person. This is clearly discrimination based on age. It is fundamentally wrong. It ignores individual abilities and is unacceptable. We do not believe that, simply because of a person's age, he or she should be forced to retire. If he or she is mentally and physically fit, a deputy judge should be able to continue to work. The administration of justice, I submit to you, does better in a system that has experienced judges who are willing and able to serve.

The enactment of this amendment will result in the loss of experienced and committed deputy judges at a time when we need them the most. Why do we need them the most now? Come January 1, 2010, this government has decided that the monetary jurisdiction of Small Claims Court will be increased to $25,000 from $10,000. That's okay. We don't have a problem with that. We can handle that. We're good. We're very good. We can do this. But we anticipate, among other things, that the increase in jurisdiction will result in more cases being commenced in our court, which already handles 70% to 80% of the civil actions in this province.

The increase in jurisdiction will inevitably result in more complex issues; increased representation of the parties, either by paralegals or by lawyers; and, therefore, longer trials—and this is significant—and the real likelihood of multiple-day trials. It is the senior, more experienced retired or semi-retired persons who will have the time to do this, because you have to understand the makeup of Small Claims Court. We are not like ordinary courts. We don't have full-time judges as the Superior Court does or as the provincial court does or the Family Court. We don't have that. The Small Claims Court judiciary is unique because it is made up of per diem, part-time judges drawn from the volunteer ranks of senior lawyers, along with some—and this is critical—retired Superior Court justices who have been reinstated as lawyers.

On the other hand, when you think of a lawyer who's appointed and has a busy practice, many lawyers—certainly speaking for the southwest region in London—in London will not do out-of-town trials. They will not do multiple-day trials because they have a busy practice, and they're going to make more at that than the $528 per diem that they get as a deputy judge.

On the other hand, the semi-retired lawyers or former judges who fall into the 65- to 75-year-old range do have the time to preside at multiple-day trials, yet it is precisely those deputy judges who are at risk of losing their appointments if this amendment goes through. Not only do they have the time, members of this committee, but they have the experience to handle cases of that magnitude. They've been there. They've done that. It takes a long time to train a less-experienced deputy judge in all the areas of the law that our court deals with, and it deals in all areas of the law, except criminal matters, and certainly it takes more than one year to train them.

The Vice-Chair (Mrs. Laura Albanese): I just would like to let you know that you have less than two minutes to conclude.

Mr. Ken Koprowski: All right. What we're saying is, we need those experienced deputy judges, yet there's a risk of losing them. In the southwest region alone, we would lose, if this enactment went through, seven deputy judges right off the bat, two of whom are retired Superior Court justices. We would lose them and the possibility of 10 others who are in the 65-to-75 range. That is 30% of the 55 deputy judges in the southwest region, but those are the experienced people that we need.

All we're asking, Madam Vice-Chair, is this—it's simple; the request is simple: Delay the implementation of the amendment to section 32 in Bill 212 until there is a serious and meaningful dialogue with our association. No one has spoken to us about that, yet we're the ones most directly affected by this amendment. Something is wrong with this picture. That's all we're asking for. We're not contesting any of the other amendments to the Courts of Justice Act in Bill 212—just that. But dialogue with us, because there are real problems in it.

We have made recommendations to the deputy judges committee on what factors should be considered in reappointments. We have had no feedback, but we've got a lot to suggest.

0930

Madam Vice-Chair, just delay the implementation and give us the consultation that the Honourable Jim Watson said this government will give.

The Vice-Chair (Mrs. Laura Albanese): Thank you very much for your presentation. The third party now has up to five minutes for questions.

Mr. Michael Prue: I think you think far too much of some politicians. This bill is being rushed through—rushed; closure was invoked; we're having truncated hearings; we're being forced to decide on it next week. It's going to be pushed before the Parliament and the Legislature before the recess and enacted in January. That's the whole scenario here. Would it not be better, given the rush that this government is in to pass Bill 212, to simply delete the sections related to age and not have the consultations?

Mr. Ken Koprowski: That would be the ideal situation, but we like to appear as being reasonable, Madam Vice-Chair, and we like to at least—when I say "we," I mean the Ontario Deputy Judges Association—we'd like to appear to be reasonable and say, "Look, okay, there may be cause for this, but maybe not exactly in this way." We can make recommendations; we can even suggest that after 75 there be one-year appointments with consideration of the abilities. But the ideal, of course, is that we get rid of that section altogether. I wasn't authorized to promote that as opposed to the consultation process. We still want that. We're ignored. The Holloway report—I don't know if you're familiar with the Holloway report—states that this court does not get the respect that it's due, and all we want is someone to talk to us because we're the ones directly affected. So, sir, that's a long-winded answer for saying, "Yes, you're right. We'd like it out of there," but if it's not out of there, delay its implementation or make it a separate amendment to the Courts of Justice Act and not included in this omnibus bill.

Mr. Michael Prue: I'm in total agreement. I just want to ask you a question on the constitutionality of forcing people out of office. There was a whole debate in the Legislature some time ago about allowing people to work beyond 65, and I remember every single Liberal voting in favour of that.

Interjection: We did?

Mr. Michael Prue: Absolutely, and yet we have this, that although it allows for it, it certainly limits the ability of people to work beyond 65. Is there a constitutional argument? I certainly think it runs contrary to what was said in the Legislature.

Mr. Ken Koprowski: Certainly there is an incongruity there; there's no question about it. Now, to answer your question about the constitutionality: We were made aware of this bill only two weeks ago. In fact, we didn't even know of these hearings until 10 days ago. We immediately contacted our council to do research on that very issue, sir, and in the time that we've had, we don't have a response yet. I tend to think there is, but I'm not going to go beyond that because I don't want to say something that's incorrect and might be considered misleading this committee. I think there is, but we have to wait for our own council to provide us with their opinion.

Mr. Michael Prue: Thank you very much.

The Vice-Chair (Mrs. Laura Albanese): And thank you for your presentation and for your answers.

Mr. Ken Koprowski: Thank you for listening.

ONTARIO NONPROFIT NETWORK

The Vice-Chair (Mrs. Laura Albanese): We now call Ontario Nonprofit Network. Good morning.

Ms. Lynn Eakin: Thank you very much for hearing us today. I'm Lynn Eakin. I'm here representing the steering committee of the Ontario Nonprofit Network. I'm pretty sure you probably haven't heard of us. We've been organized now for 18 months, and we have a network going now across the whole of the non-profit sector. So we're talking a sector of over 45,000 organizations representing $47 billion in revenues every

year and employing about 15% of the Ontario workforce. You've never heard of us before because we've always been dealt with in silos. There have been hospitals, sports and recreation, the arts community or the social services community, and those groups are still working and you'll still hear from them as we go forward, but the reason we've come together is because there's been no attention to the infrastructure that covers us all. For example, we're very pleased that this government has been looking at that. We're waiting for the Ontario non-profit corporations act to be tabled, hopefully in the near future. We were involved in contributing to the design of that.

We're here today to thank you very much for doing two things for us. In this omnibus bill, you have repealed the Charitable Gifts Act which allows charities to own businesses. Previous to that, they could only own 10% of businesses, and we were the only province in Canada that had this provision. I'll tell you a little complication: Nobody understands the constraints and limitations under which our charities act. We expect them to be there to support people and to make our communities liveable, but there are a number of very antiquated and out-of-date regulatory problems that we have in the sector. By removing the Charitable Gifts Act, you have allowed charities to own businesses. We're hoping that eventually Canada will move to a system like in the United Kingdom, where not only can charities own businesses, but if the profits from those businesses go to serve the charitable purposes of the charity, then those profits are not taxable. This has provided tremendous resilience and sustainability in Britain, where a number of charities operate successful businesses serving the public and use the proceeds to further their charitable missions.

We're very pleased with this. It at least puts us on the table with the rest of the country, because what we've had is, for example, developmental service agencies serving people with developmental handicaps. One of the parents had been operating a pallet business, which made money and employed a number of people with developmental handicaps in the business, but it didn't employ 70%. If you don't have 70%, under CRA the charity can't operate a business as a community development business. The pallet business was too dangerous to have 70% of the individuals with developmental handicaps, but it made money, and the money every year went to support the day program. But it was not a related business, which is the other reason that a charity can run a business within its charity. It has to be a related business, and of course pallets have nothing to do with people with developmental handicaps, except to provide employment. So it couldn't be operated that way.

The other option under CRA regulation is to allow for businesses to be operated if they're operated 90% by volunteers. Well, this dates back to the thrift shops of the 1930s, but it's really very difficult to be run 90% by volunteers in this day and age. So that developmental service agency, with this new legislation, will be able to run its pallet business as a business owned by the charity, because the father who's been running it all these years and just handing over the profits to the agency is nearing retirement. So they will be very appreciative of that.

The other thing you've done is you've made some changes to the Charities Accounting Act. Some of that is to provide provisions for the public trustee to be able to get the kind of information that they need about the business and about the charities to make sure that businesses are being operated in the best interests of the charity. We're very supportive of that. We're always, in the sector, very supportive of regulation that keeps people from misusing the privileges. We know that we have privileges as charitable organizations, so we're supportive of that. The most important piece from our—well, the regulation is important, but the other piece you've done there is that you've allowed organizations, charities, to own property beyond a seven-year limit. Previous to this, if a charity had property that they weren't actually occupying, then they had to get rid of it. I know an organization that has a group home that it doesn't need anymore because its programming has moved into more condo complexes, but it rents its group home out to another organization that does need a group home. Group homes: As you know, the zoning problems are problematic. This group home had lifts, it had all the safety requirements that are required for group homes—it's very expensive to have an operating, set-up group home—but the regulations wouldn't allow that. With this bill and the changes you've made, you've now allowed that charity to continue owning that group home and renting it out to another charity, which can use it for group home purposes. So it hasn't had to be put back on the open market, where undoubtedly it would have gone to a private interest and we would have lost that asset in the public domain.

0940

I'm here to say that we're very pleased. It has been 33 years that we've been trying to get the Charitable Gifts Act repealed, but it's never too late. In fact, it's just in time because the world is changing out there for charities. What we're seeing is government revenues are declining. Government support for the kinds of services that charities need to provide has been diminishing over time. The GDP of government has been falling, which means that they have less revenue to put out to these services.

Charitable dollars have been holding constant, but we're having fewer and fewer people giving charitable donations—and those donations tend to be large, and large donations tend to go to the bigger charities, who can manage the large donations. The smaller charities in all the little communities around the countryside really do need these abilities to earn some money and try to use the three sources of revenue to cobble together the service provisions that their communities need.

I'm here to say thank you very much. It's never too late. We hope this is the beginning of a real look at how to modernize the regulation and legislation that surround our charities and non-profits, because they're an enormous resource to this province and we're very lucky that we have such a strong sector.

The Vice-Chair (Mrs. Laura Albanese): Thank you, Ms. Eakin. We now have five minutes to ask questions.

Mr. David Zimmer: Thank you very much for taking the time to appear today and for having your organization, the Ontario Nonprofit Network, take a very serious look at this piece of the legislation as it affects the non-profit sector.

I note from page 5 of your written presentation—and I think this is important to put on to the record: "The Ontario non-profit sector generates revenues of $47.7 billion ... comprises 15% of Ontario's workforce, and includes 45,360 organizations—60% registered charities and 40% incorporated" charities. Six million volunteers contribute about 400,000 jobs, and it represents sports, recreation, arts, culture, education, health services, social services, environment, health—and the list goes on and on.

Further, at page 6, I see you've set out the structure of the Ontario Nonprofit Network's steering committee. It has nine members on the steering committee, and their names and job descriptions are there. It obviously covers the non-profit world from A to Z, so to speak.

Then I see you've got an advisory council, which you've described as "key thought leaders throughout the province." On your advisory council there are some 29 members, again representing organizations throughout Ontario from A to Z.

I'm very pleased that an organization as influential as yours has taken a close look at the amendments as they affect you, is supportive of those amendments and sees the good that those amendments can bring to the very important work that your sector does to make this the province that it is. Thank you.

Ms. Lynn Eakin: Thank you.

The Vice-Chair (Mrs. Laura Albanese): Thank you very much again.

We will now recess until 10 o'clock, approximately. Our next deputant is not here yet. We will reconvene at 10.

The committee recessed from 0945 to 0952.

BERNARD NAYMAN

The Vice-Chair (Mrs. Laura Albanese): I call the meeting back to order. Our next deputant is Mr. Bernard Nayman, chartered accountant. Thank you very much and welcome to our committee. You will have up to 10 minutes for your presentation. After that, the official opposition will have up to five minutes to ask questions if they so wish. I would ask that you state your full name for the purposes of Hansard, and you may now begin.

Mr. Bernard Nayman: Thank you, Madam Chairman. My name is Bernard Nayman. To my left, I have my assistant, Andrew Rodie.

Madam Chairman, ladies and gentlemen, I'm a chartered accountant and a licensed public accountant in Ontario, and I've been auditing municipal, provincial and federal election entities for close to 30 years. I'm a member of a committee of the Canadian Institute of Chartered Accountants which provides audit guidelines for auditors of federal campaigns and riding associations. I also contributed to the election finances legislation framework of the Municipal Elections Act, back in 1985, when this act came up.

I'm here today to propose the inclusion of an important additional reform to the Municipal Elections Act. As well, I would like to present reasoning why your currently proposed reform of the act should not occur.

My first proposal concerns the functions of the auditors in a municipal campaign. Currently, the auditor of a municipal candidate is appointed by the candidate at some undefined time after the polling date and, in many cases, after the campaign period has come to an end. The problem with this is that there is no real way for an auditor to confirm the amount of assets that are there because, when he's appointed after polling day, everything disappears, as we all well know. The auditor of provincial and federal election campaigns is appointed at the beginning of the campaign, so the auditor knows that he has to audit these records.

As an auditor, I visit the campaign headquarters and I make note of everything that is in the headquarters. Then, when the paperwork comes to me after the election is over and after polling day, I compare all of the bills that are being paid with what I've seen when I made my rounds in campaign headquarters.

This is not available to me at the municipal level because I have no idea who my clients are until after polling day. So I have no opportunity, or very few opportunities, to go to the campaign headquarters and find out exactly what is there, and then, subsequently, when I get the paperwork, to compare the bills with what I've seen.

So I ask you, members, to consider a reform to the Municipal Elections Act which would include the requirement of appointing an auditor when the candidate files his nomination papers. This is a requirement both of the Election Finances Act in Ontario and the Canada Elections Act federally. That is one part of my submission.

The other part of my submission deals with the item of accounting and audit fees, which are being shifted from an election expense not subject to the limit to an election expense subject to the limit. The audit occurs after the campaign period has come to an end. Therefore, as per subsection 76(2) of the act, campaign expenses can only occur during the campaign period, and recognizing audit expenses as expenses subject to the limit would create a contradiction in the act.

Additionally, I find that it simply doesn't make sense to force a campaign to incur an expense subject to the act in order to comply with the requirements of the act. The audit expense is not a campaign expense in order to elect the candidate; it is an expense in order to comply with what the requirements of the act are. Therefore, it should be an expense not subject to the limit. This is the way it has been since the act was enacted and it is also the way it is under provincial and federal law.

Similarly, accounting, while it is done throughout the campaign, again, is not done in order to elect a candidate

but in order to comply with the provisions of the act, and therefore, in my humble opinion, it should be an expense that is not subject to the limits.

That completes my remarks.

The Vice-Chair (Mrs. Laura Albanese): Thank you very much for your presentation. We now have up to five minutes for questions.

Mr. Peter Shurman: I have very little to ask you, Mr. Nayman. I want to thank you very much for appearing. It sounds like you've given some reasoned thought to the act and presented some good opportunities for consideration of changes.

I do have one quick question. One of the elements of the act bars candidates from carrying over campaign surplus funds, something that has been fairly contentious and that you know a lot about. Do you have any comments on that?

Mr. Bernard Nayman: Campaign surplus funds have to go somewhere. This is what I brought up back in 1985 when this act was first enacted. It should go to the municipality, and the municipality should make those funds available to that person if that person is a candidate in the next election for the same position.

I notice that the city of Toronto has been doing something about that by not allowing the surplus to be brought forward—and as far as I'm concerned, doing quite a number of audits of candidates, especially in the city of Toronto, of that same opinion. The incumbent has a great political advantage over all the other candidates, and by bringing the surplus forward—and in some cases the surpluses were $20,000, $30,000 and $50,000—this also creates a huge financial advantage, when the incumbent can have $50,000 in his bank account immediately while all the other candidates who are running against him have nothing and they have to raise money from the first dollar. Therefore, I would say, do away with that particular idea, and the surplus of the candidate should go to the municipality and become the property of the municipality.

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The Vice-Chair (Mrs. Laura Albanese): Thank you very much for appearing in front of our committee this morning. That concludes your presentation.

CONSERVATION ONTARIO

GRAND RIVER CONSERVATION AUTHORITY

The Vice-Chair (Mrs. Laura Albanese): Our next deputant has arrived, representing Conservation Ontario, the Grand River Conservation Authority. So we would call Mr. Alan Dale.

Welcome to our committee. I would ask that you state your full name for the purposes of Hansard. You have up to 10 minutes for your presentation. After that, the third party will have up to five minutes to ask questions, if they so wish.

Mr. Alan Dale: Thank you for the opportunity to speak to you regarding Bill 212, the proposed Good Government Act. My name is Alan Dale, and this is Don Pearson, the general manager of Conservation Ontario. I am speaking to you as both the chair of the Grand River Conservation Authority and the vice-chair of Conservation Ontario.

Conservation Ontario is the umbrella organization that represents Ontario's 36 conservation authorities, and the Grand River is one of those conservation authorities. Conservation authorities are also designated as source protection authorities under the Clean Water Act, and it is the proposed amendments to the Clean Water Act contained within Bill 212 that we want to speak to you about today.

Some of the amendments proposed in schedule 15, section 2, if passed, will compromise the ability of conservation authorities to fulfill their legislative responsibilities under the Clean Water Act. Conservation Ontario and the Grand River Conservation Authority respectfully request that subsections 2, 3 and 5 of schedule 15, section 2, be deleted from the bill.

During the period from the release of the part two report on the Walkerton inquiry in 2002 to the passing of the Clean Water Act in 2006, the protection of drinking water sources was actively debated by many stakeholders. One of the most contentious issues was the governance of the source protection plan development process. The final distribution of responsibilities established in the Clean Water Act was accepted by all parties.

The proposed amendments to the Clean Water Act contained in Bill 212 alter the relationships and responsibilities of a source protection authority and a source protection committee in a way that may damage that relationship. Specifically, subsections 2, 3 and 5 alter the reporting relationship between the minister, the source protection authority and the source protection committee.

Under the existing legislation, the source protection committee submits their documents to the source protection authority who, in turn, submits it to the minister. If the minister requests amendments to the submitted documents, direction is provided from the minister to the source protection authority, who consults with their source protection committee. The proposed changes alter the process such that the minister's direction will now go directly to the source protection committee and revisions forwarded directly from the source protection committee to the minister.

Under section 7 of the existing Clean Water Act, the source protection authority establishes the source protection committee and appoints its members. Under section 33 of the Clean Water Act, the source protection authority is legally responsible and financially liable for the submission of the terms of reference, the assessment report and the source protection plan that are prepared by a source protection committee. This alteration in the reporting relationship between the minister and the source protection committee has the result that the protection authority, which appointed the source protection committee and is financially responsible for the work of the source protection committee, will no longer have the

legal authority to be involved in directing the source protection committee or be receiving the work of the source protection committee.

Bill 212 erodes the source protection authority's ability to undertake its legal responsibilities under the Clean Water Act and reduces the source protection authority's means of managing its financial liability. Successful implementation of the Clean Water Act is highly dependent upon the relationships between the local stakeholders involved. The development of local source protection authority plans is making good progress, due largely to the positive relationships that have been developed. The proposed changes to the Clean Water Act risk damaging those relationships in return for a minor improvement in the administrative process.

In order to ensure successful and timely completion of source protection plans, we respectfully request that Bill 212, schedule 15, section 2, subsections (2), (3) and (5) be deleted. We do support the remainder of the proposed amendments to the Clean Water Act.

The Vice-Chair (Mrs. Laura Albanese): Now the third party would have up to five minutes for questions. Mr. Prue.

Mr. Michael Prue: Thank you. I have that copy of the act. I turned to the schedule as soon as you started to read to see what you were saying. I just want to make sure that I got the last couple of sentences right: You're happy with the rest of the act, save and except for those three subsections; and those three subsections, in turn, you're unhappy with because you think that they're going to reduce the authority of the Clean Water Act and those who administer it?

Mr. Alan Dale: Precisely—

Mr. Michael Prue: And this says it's for minor administrative purposes. I don't see how this is even going to give the government any more administrative flexibility. Can you tell me what the rationale—or have they given you any rationale as to how this is going to improve administration?

Mr. Alan Dale: I'm not aware of that, but—

Mr. Don Pearson: I can speak to that. I believe that the rationale that the Ministry of the Environment considered—

The Vice-Chair (Mrs. Laura Albanese): Excuse me. I would just like you to state your name before you start answering.

Mr. Don Pearson: My name is Don Pearson and I'm general manager, Conservation Ontario. My apologies.

The ministry believed that the role of the source protection authority in the exchange of information between the minister and the source protection committee was purely—you might call it an optical or really a meaningless, just pass the document through. Our view is that the source protection committee does have the responsibility to ensure that the committee has fulfilled its responsibilities, given, again, that the source protection authority is responsible financially for the work that was actually prepared. So by, in effect, bypassing the source protection authority and making a direct conduit between the minister and the source protection committee, we believe that the authority of the source protection authority is undermined.

Mr. Michael Prue: Has this caused any grief to the minister in the last while that they would want to do this? I'm not aware of any problems ever originating out of the source protection authority.

Mr. Don Pearson: The process to this point has worked fairly well, and what we're asking for is that the change not be made so that the process continues to operate as it has been operating.

Mr. Michael Prue: Has the minister or any ministry official ever given cause as to why this is being put in place in this legislation and why it's necessary to limit the authority?

Mr. Don Pearson: We believe that they viewed it as streamlining. We have had discussion with ministry officials; the minister's office—of course, we have not spoken directly to Minister Gerretsen about it. But I think it's a question of, from their point of view, that they thought that the change would in fact streamline the process, that it was really a non-material or non-substantive change, and our point of view is that it actually is a significant change to the governance.

Mr. Michael Prue: And is this an attempt to—when you say streamline—make the process move faster, or is it to streamline in order to take out one of the participants? Or is it both?

Mr. Don Pearson: I certainly can't speak to motives. I don't believe that there's any sinister intent in making this change. I believe that, in good faith, their belief was that this put into the legislation the way the process actually worked. But, in fairness, each source protection authority has developed a relationship with its committee, and we feel that that relationship ought to be respected and is best respected by maintaining the status quo as far as those three sections are concerned.

Mr. Michael Prue: Thank you very much.

The Vice-Chair (Mrs. Laura Albanese): Thank you for your presentation.

Mr. Alan Dale: Thank you.

The Vice-Chair (Mrs. Laura Albanese): Before we recess, I would like to remind all the members that we will back here at 2 p.m. to continue public hearings. Thank you very much.

The committee adjourned at 1010.

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