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**Official Report  
of Debates  
(Hansard)**

**Thursday 26 November 2009**

**Journal  
des débats  
(Hansard)**

**Jeudi 26 novembre 2009**

**Standing Committee on  
Finance and Economic Affairs**

Good Government Act, 2009

**Comité permanent des finances  
et des affaires économiques**

Loi de 2009 sur la saine  
gestion publique

Chair: Pat Hoy  
Clerk: William Short

Président : Pat Hoy  
Greffier : William Short

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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 26 November 2009

Jeudi 26 novembre 2009

*The committee met at 0902 in room 151.*

**GOOD GOVERNMENT ACT, 2009**

**LOI DE 2009 SUR LA SAINTE  
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.*

**The Vice-Chair (Mrs. Laura Albanese):** Colleagues, ladies and gentlemen, I call this meeting of the Standing Committee on Finance and Economic Affairs to order for clause-by-clause consideration of Bill 212, An Act to promote good government by amending or repealing certain Acts and by enacting two new Acts.

We have a number of amendments put forward, and we will begin their consideration. I would like to ask at this point if there are any comments of a general nature.

**Mr. Peter Shurman:** I'd like to read some general comments into the record for a minute or two. Is this the appropriate time?

**The Vice-Chair (Mrs. Laura Albanese):** Please go ahead.

**Mr. Peter Shurman:** Thank you.

**Mr. David Zimmer:** I'm wondering, Madam Chair, if I could ask the consent of the committee to have one of my assistants sit at the end of the table just to help with the paperwork flow. I've spoken to my colleagues.

**The Vice-Chair (Mrs. Laura Albanese):** Do we have unanimous consent?

**Mr. Peter Shurman:** I'd be happy to provide my consent if I can have the same generosity from the committee.

**Mr. Michael Prue:** And I would be happy to provide my consent to my two colleagues, who obviously are in need.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you very much. Mr. Shurman, please proceed.

**Mr. Peter Shurman:** Thank you, Chair. I want to say a couple of things. The government's time allocation motion for this bill has rendered consideration of the bill in committee essentially undemocratic. Dwight Duncan, in 2002, in considering Bill 198, An Act to implement Budget measures and other initiatives of the Government,

said, "Stop using time allocation the way you've used it to force closure of debate to stop the democratic process in its tracks." He said that.

Members of this committee received copies of stakeholder submissions for their review one hour before the deadline to submit any amendments. With the deadline for submissions being set an hour before the deadline for amendments, neither individual Ontarians nor stakeholder groups were given an adequate opportunity to have their submissions properly considered and reviewed by committee members. The total time expended on hearings, I believe, was approximately three hours, and this is a 400-page bill. Yet this is exactly what committee work is supposed to be about; it's why we hold hearings and invite submissions from Ontarians. It's not supposed to be an empty gesture and it's not supposed to be a gimmick.

Here's what Jim Bradley, Minister of Transportation, had to say about time allocation motions, also in 2002: "They are motions which are designed to choke off debate, to end debate, on a particular piece of legislation that would be before us." But the McGuinty government has made a mockery of the committee process with this allocation motion, in the same manner that they are now making a mockery of the entire democratic process by refusing to hold public consultations on the HST. Each and every Ontarian should be outraged at the obvious disregard for the democratic process displayed by the McGuinty Liberals.

Thank you, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments?

**Mr. Michael Prue:** Yes, if I could speak. I'd like to echo those concerns. I'm not going to quote what people have said in the past; I'm just going to talk to the members about what has obviously happened here.

Two pieces of key information have come to me within the last 24 hours on groups that have finally had a chance to look at this bill. One of them is the city of Toronto. They have asked—and I can't do it—that a portion of the bill be opened and that a new amendment be put in. We've tried in vain through the whip's office and the House leader's office to get some consent, and it has not been forthcoming.

But the more serious one is that the Ontario Nurses' Association has called, and they have discovered that, in fact, the regulations related to nurses and the status that

they have within certain jurisdictions is going to be taken away. I certainly would have wanted to put something in on that, but I can't.

This is the whole thing about these time allocations. In the rush to do it, we're doing a disservice to the people of the city of Toronto and we're doing a disservice to the nurses across this province. I, for the life of me, don't know the rush, but I also know that as I speak here, I'm eating into the time when we can actually deal with the motions we have, so I'm going to stop.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? There being none, we'll proceed.

I will ask unanimous consent to stand down sections 1, 2 and 3 so that we can deal with all of the schedules first. Unanimous consent: Agreed? Thank you.

So we'll start with schedule 1, and we have no amendments from sections 1 through 28. Is it agreed that these sections can carry, inclusively? There are no amendments. Agreed? Thank you.

Shall schedule 1 carry? Carried.

Now we move on to schedule 2, sections 1 to 10. Do I have consent to carry these inclusively? Agreed? Thank you.

We are on section 11, government motion 1. Mr. Zimmer?

**Mr. David Zimmer:** I move that section 2 of the Charities Accounting Act, as set out in subsection 11(2) of schedule 2 to the bill, be amended by adding "to whom section 1 applies" after "executor or trustee" in the portion before clause (a).

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? There being none, I call the vote on government motion 1. All those in favour? Those opposed? Carried.

We'll now consider government motion 2.

**Mr. David Zimmer:** I move that subsection 4.1(1) of the Charities Accounting Act, as set out in subsection 11(3) of schedule 2 to the bill, be amended by adding "to whom section 1 applies" after "If an executor or trustee".

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Very well; we'll call the vote. All those in favour? Opposed? Carried.

We'll move on now to government motion number 3.

0910

**Mr. David Zimmer:** I move that section 11 of schedule 2 to the bill be amended by adding the following subsection:

"(8) The act is amended by adding the following section:

"Charitable Gifts Act

"Definition

"14(1) In this section,

"interest in a business" means an interest in a business within the meaning of the Charitable Gifts Act, as it read immediately before its repeal.

"Obligation to dispose of business interest extinguished

"(2) Despite clause 51(1)(b) of the Legislation Act, 2006, the repeal of the Charitable Gifts Act extinguishes

all obligations under the Charitable Gifts Act to dispose of any interest in a business that are still in existence at the time of the repeal.

"Same

"(3) Subsection (2) applies in respect of obligations that came into existence under the Charitable Gifts Act at any time before its repeal.

"Right to application extinguished

"(4) Despite subclause 51(1)(d)(i) and subsection 51(2) of the Legislation Act, 2006, the repeal of the Charitable Gifts Act extinguishes all rights to bring an application under that act in relation to the obligations to which subsection (2) applies.

"Non-application

"(5) Subsection (4) does not apply in respect of an application relating to an order made under subsection 3(3) of the Charitable Gifts Act, as it read immediately before its repeal."

**The Vice-Chair (Mrs. Laura Albanese):** Any questions or comments?

I will call the vote on government motion number 3. All those in favour? Opposed? Carried.

I would now ask if schedule 2, section 11, as amended, carries. All those in favour? Opposed? Carried.

I will ask if schedule 2, section 12 all the way to section 46, can be carried inclusively. All those in favour? Carried.

We'll now deal with schedule 2, section 47.

*Interjection.*

**The Vice-Chair (Mrs. Laura Albanese):** Oh, I'm sorry. We're going back to 33.

Shall schedule 2, sections 12 through 32, inclusive, carry? Carried.

Now we'll deal with NDP motion 4. Mr. Prue.

**Mr. Michael Prue:** I would seek clarification from the Chair on whether or not it is in order to make this motion. I'm given to understand that—I do not intend to support it, and I know I can vote against it. Is the motion in order to strike out this section? It is in order?

**The Vice-Chair (Mrs. Laura Albanese):** Yes.

**Mr. Michael Prue:** All right. Then I move that subsection 33(3) of schedule 2 to the bill be struck out.

By way of rationale, if I can explain: There is a subsequent motion here that would retain the right of appeal—for people to go to cabinet—from OMB decisions. If I can explain that, and I realize it's on the later one, this has to be struck out in order for this to happen.

Appeals operate, I would suggest, as a safety valve. The one advantage of cabinet appeals is that they ensure accountability by the government for what are generally policy decisions by administrative tribunals. The decisions made by the OMB are essentially policy decisions in the land use context.

A good example was probably the Brickworks, for those people who are familiar with Toronto, where the decision was made on whether or not the wetland was to be paved or development proceed. It would be very difficult to judicially review these decisions in Divisional Court.

Cabinet appeals do provide a safety valve when the tribunal's decision was reached largely on the basis of facts or policy considerations which do not favour public-interest clients. Moreover, a judicial review process is very expensive and there is a risk of costs. These considerations don't apply for cabinet appeals.

There are two examples in my own beloved East York that I can talk about and show where the appeal to cabinet worked when Divisional Courts and other remedies did not.

The first was the Bayview ghost, which existed on Bayview for many years, which was partially built prior to East York becoming a borough, when we were still a township. It was started, largely completed and then ran into difficulties at the Ontario Municipal Board. It was the appeal to cabinet that resolved the land use. The ghost was eventually torn down, and today there are some lovely and stately homes there. The decision was made by cabinet and it was certainly a good one, much better than what the Ontario Municipal Board had done in that particular case.

The second one, which is much better known, is the land use of the Brickworks, where, if you're travelling on Bayview Avenue and you see the Brickworks, what was planned there was to build hundreds of homes on the flood plain. The people of East York and the people of Toronto banded together to try to stop the development. The OMB allowed the development to proceed, but it was the cabinet, upon an appeal—in this case, it was the Peterson cabinet and Lily Munro, who was the minister—which stepped in and saved the Brickworks for public use after the OMB had made a decision, which was defensible in court.

It's that kind of safeguard that I'm asking the members to look at. Don't delete this right. It is used sparingly, but when it is used, it is used to good public effect. That's why I'm asking that this section be deleted and that my subsequent motion, which is motion number 5, be allowed to keep this section in the act that allows for appeals to cabinet. I don't think it's onerous to cabinet, and I certainly think that from time to time the Ontario Municipal Board errs in what it is doing, even though the courts will back them up—because the judicial process will look at what the law is rather than what the greater public good is. That's why we have a Parliament, that's why we have a Legislature, that's why we have a cabinet, and that's why we have a process that allows for this. I think it's a very grave error if the government votes to discontinue that.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Mr. Zimmer.

**Mr. David Zimmer:** The facts of the matter are that petitions to cabinet are very, very rare.

**Mr. Michael Prue:** Yes.

**Mr. David Zimmer:** For most of the statutes that in fact do provide for petitions to cabinet, there is no record of any petition in the last 15 years. Appeals to decisions can still be dealt with through the courts, and that's the place to deal with these appeals.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments? Mr. Shurman.

**Mr. Peter Shurman:** I think that the parliamentary assistant has just made my colleague's case. If petitions are that rare, then why would we want to change anything? I support this amendment fully.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments?

**Mr. Michael Prue:** If I can, and I thank Mr. Zimmer, there hasn't been one in the last 15 years. The one that happened was 15 years ago. Travel on Bayview Avenue and tell me if you don't think it was the right decision. It was absolutely right. There would have been homes built on the flood plain. We know what happened during Hurricane Hazel: All those houses were washed away. The government of the day was smart. Lily Munro did a service to the people of this city. You want to take away that service for something that happens every 15 years. I don't understand it. It's not going to cause any great consequence to this cabinet or any subsequent cabinet if once every 15 years they have to make a decent and good decision for the people.

Please don't do this. Please don't sit there and read some note from a bureaucrat who says it's not consequential, because it is.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments? There being none—

**Mr. Michael Prue:** A recorded vote, please.

**Ayes**

Prue, Shurman.

**Nays**

Crozier, Flynn, McNeely, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

Shall schedule 2, section 33, carry? All those favour?

**Mr. Michael Prue:** Recorded vote.

**Ayes**

Crozier, Flynn, McNeely, Sousa, Zimmer.

**Nays**

Prue, Shurman.

**The Vice-Chair (Mrs. Laura Albanese):** Carried.

We'll move on to schedule 2, sections 34 to 46, and ask if those can carry inclusively. Carried.

**0920**

We shall now deal with schedule 2, section 47. We have an NDP notice. All those in favour of schedule 2, section 47?

**Mr. Michael Prue:** What is it that's going on here, Madam Chair? I'm not understanding. Is it a motion?

**The Vice-Chair (Mrs. Laura Albanese):** We're voting on the schedule.

**Mr. Michael Prue:** Okay.

**The Vice-Chair (Mrs. Laura Albanese):** All those in favour of schedule 2, section 47? Opposed? Carried.

We don't have any other motions until section 53. Shall schedule 2, sections 48 to 53 inclusive, carry? Carried.

We'll now deal with schedule 2, section 54: NDP motion number 5. Mr. Prue.

**Mr. Michael Prue:** I'm going to read it in again, but I know where the government's coming from on this. I must state that I'm absolutely disappointed with the short-sightedness of the position to not leave in something that has proven it works and that has been of great consequence to the people of this city and this province.

Having said that, I move that subsections 54(1), (3) and (4) of schedule 2 to the bill be struck out.

The rationale is the same as I gave before: the people's right and the government's right to intervene when the Ontario Municipal Board makes a decision which is not in the best interests of the province.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments? Seeing none—

**Mr. Michael Prue:** Again, on a recorded vote, please.

#### Ayes

Prue, Shurman.

#### Nays

Crozier, Flynn, McNeely, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

Shall schedule 2, section 54, carry? All those in favour? Opposed? Carried.

Now we're dealing with schedule 2, sections 55 to 58 inclusive. Shall those carry? All those in favour? Opposed? Carried.

Shall schedule 2, section 59, carry? All those in favour? Opposed? Carried.

We'll now deal with schedule 2, sections 60 to 65 inclusive. Carried? Carried.

Shall schedule 2, section 66, carry? All those in favour? Opposed? Carried.

Shall schedule 2, section 67, carry? Carried.

Shall schedule 2, sections 68 through 80 inclusive, carry? Carried.

Shall schedule 2, as amended, carry? Carried.

We'll move on now to schedule 3. We will ask for schedule 3, section 1 through section 4, inclusive, to be carried. Carried.

Shall schedule 3 carry? Carried.

We're now on schedule 4, government motion number 6.

**Mr. David Zimmer:** I move that clause (c) of the definition of "provincial offences officer" in subsection

1(1) of the Provincial Offences Act, as set out in subsection 1(1) of schedule 4 to the bill, be amended by adding "or in subsection 79(1) of the City of Toronto Act, 2006" after "Municipal Act, 2001".

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I call the vote. All those in favour of the motion? Opposed? Carried.

Government motion number 7: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 5.1(4) of the Provincial Offences Act, as set out in subsection 1(6) of schedule 4 to the bill, be amended by striking out "make one request to the clerk of the court" and substituting "deliver to the clerk of the court one written request."

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, all those in favour of the motion? Opposed? Carried.

Government motion number 8: Mr. Zimmer.

**Mr. David Zimmer:** I move that section 5.1 of the Provincial Offences Act, as set out in subsection 1(6) of schedule 4 to the bill, be amended by adding the following subsection:

"Notice of rescheduled meeting time

"(4.1) Where a meeting time is rescheduled under subsection (4), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the rescheduled time and the place of their meeting."

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, all those in favour of the motion? Opposed? Carried.

We'll move on to government motion number 9.

**Mr. David Zimmer:** I move that clause 5.1(8)(b) of the Provincial Offences Act, as set out in subsection 1(6) of schedule 4 to the bill, be amended by striking out "lesser" and substituting "other".

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Yes, Mr. Prue?

**Mr. Michael Prue:** It's not a comment; it's more of a question, and perhaps the mover of the motion can explain to me: It appears to me that what was there was that the judge could impose a lesser fine, but now he can impose an "other" fine, and I'm not sure what the difference is. I can understand why you would allow the judge in the circumstances of the case to impose a lesser fine on someone given the circumstances, but what is an "other" fine? Something that is not contained within the act or the regulation so he can impose something "other"? That is troubling because it may be much more consequential. It might be something that's off the wall, and I just need to know why you've done this. If you can explain—

**Mr. David Zimmer:** The municipal prosecutors have advised that this is the status quo across the province, and the intent is to codify the status quo in respective plea agreements.

**Mr. Michael Prue:** So it says "other" in other statutes? The word is "other." I understand the rationale for "lesser" that was in the original bill. I understand that. I don't understand the substitution of the word "other"

and what latitude that is going to give the judge, because if it's "other," it means to me that it can be anything, and I have some difficulty with "anything." I think the judge needs to have parameters. He can do less if the circumstances indicate it, but to do "other"—the reason I'm asking this is, it may call for a fine and the judge may impose jail, because that's "other."

**Mr. David Zimmer:** Would you come up and introduce yourself and your position and title? You'll get a technical explanation.

**Mr. Michael Prue:** I just need an explanation. It's not clear, and I don't want to vote to send someone to jail when the judge doesn't have that authority.

**Mr. David Zimmer:** Fair enough.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. Could you please state your name for the record.

0930

**Ms. Lisa Minuk:** Lisa Minuk. I'm counsel at court services division. It wouldn't be possible to impose jail or a fine in excess of \$500 or, if the other amendment passes, of \$1,000. What this is here for is to accommodate substituted charges. So sometimes in the province, the defendant and prosecutor will agree that the defendant will plead to a lesser charge but at a higher penalty than what the set fine would be for the substituted charge.

**Mr. Michael Prue:** It's to facilitate plea bargaining.

**Ms. Lisa Minuk:** It's to facilitate plea bargaining, and they would never be in the situation unless the defendant had agreed. So the situation is that the defendant meets with the prosecutor, they reach an agreement that both of them are okay with, and then they go in front of a justice and put that plea agreement before the justice.

**Mr. Michael Prue:** And this gives the justice latitude to—

**Ms. Lisa Minuk:** To accept the plea.

**Mr. Michael Prue:** —to accept the plea and the fine, even though the fine for the plea might be excessive, as set out in statute.

**Ms. Lisa Minuk:** The fines aren't set in the statute. The set fines are set by the Chief Justice of the Ontario Court of Justice and the set fine is sort of meant to reflect the average fine that would be imposed if the matter were to go to trial. So in an individual case, there might be circumstances that would warrant the fine being higher or lower.

**The Vice-Chair (Mrs. Laura Albanese):** Any further queries? Comments?

Seeing none, I call the vote on government motion number 9. All those in favour? Opposed? Carried.

We will now proceed to consider government motion 10.

**Mr. David Zimmer:** I move that schedule 4 to the bill be amended by adding the following subsection:

"(14.1) Section 11 of the act is amended by adding the following subsection:

"Rescheduling time of trial

"(4.1) If a notice of trial is given, the clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the

defendant and the prosecutor within 21 days of giving the original notice of trial."

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I call the vote on government motion number 10. All those in favour? Opposed? Carried.

We will now proceed to consider government motion number 11: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 11(2) of the Provincial Offences Act, as set out in subsection 1(15) of schedule 4 to the bill, be amended by adding "or for a meeting under section 5.1" after "for a hearing".

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I—oh, sorry. Mr. Prue.

**Mr. Michael Prue:** Again, I need an explanation. Does this mean in the circumstance where the defendant is unable to attend a meeting with the prosecutor? Is that what this is intended to do? I just need to know what it's intended to do and what the consequences are.

**Mr. David Zimmer:** The intent here is reopening an important constitutional safeguard. If you want more of an answer than that—

**Mr. Michael Prue:** I don't understand your answer, so please.

**The Vice-Chair (Mrs. Laura Albanese):** Please approach the table.

**Ms. Lisa Minuk:** The bill introduces this new pretrial resolution system, one aspect of which is that the defendant can schedule a meeting with a prosecutor if they want. They'll get a notice of the meeting, and if they don't attend, they can be deemed not to dispute the charge and possibly convicted in the way that other defendants who don't attend their trials are deemed not to dispute the charge and convicted. What section 11 does is, it places sort of a safeguard, so that if the defendant can show that the reason they didn't attend was due to no fault of their own, then the conviction is struck and the matter is sort of reopened as if the conviction had never happened. So that exists for trials.

**Mr. Michael Prue:** Yes, I know.

**Ms. Lisa Minuk:** So what this would do is just make sure that if they had missed that meeting with the prosecutor, they have this right to reopen the conviction.

**Mr. Michael Prue:** Okay, that's reasonable. I just needed to hear that.

**The Vice-Chair (Mrs. Laura Albanese):** Any further queries, comments? Seeing none, I call the vote on government motion 11. All those in favour? Opposed? Carried.

We'll move to government motion 12.

**Mr. David Zimmer:** I move that subsection 19(2) of the Provincial Offences Act, as set out in subsection 1(28) of schedule 4 to the bill, be amended by striking out "if satisfied by affidavit of the defendant" and substituting "if satisfied by affidavit of the defendant or otherwise".

**The Vice-Chair (Mrs. Laura Albanese):** Comments? Seeing none, I call the vote on government motion 12. All those in favour? Opposed? Carried.

We'll now move to consideration of government motion 13. Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 45(6) of the Provincial Offences Act, as set out in subsection 1(36) of schedule 4 to the bill, be amended by,

(a) striking out "under Part I or II" and

(b) striking out "the information" and substituting "the certificate of offence, the certificate of parking infraction or the information, as the case may be".

**The Vice-Chair (Mrs. Laura Albanese):** Any questions or comments? Seeing none, I call the vote on government motion 13. All those in favour? Opposed? Carried.

We'll now consider government motion 14.

**Mr. David Zimmer:** I move that subsection 45.1(1) of the Provincial Offences Act, as set out in subsection 1(37) of schedule 4 to the bill, be struck out and the following substituted:

"Judicial pre-trial conferences

"(1) On application by the prosecutor or the defendant or on his or her own motion, a justice may order that a pre-trial conference be held between the prosecutor and the defendant or a representative of the defendant."

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I call the vote on government motion 14. All those in favour? Opposed? Carried.

We shall consider now government motion 15.

**Mr. David Zimmer:** I move that paragraph 2 of subsection 48.1(2) of the Provincial Offences Act, as set out in subsection 1(39) of schedule 4 to the bill, be struck out and the following substituted:

"2. A certified statement in a certificate of parking infraction."

**The Vice-Chair (Mrs. Laura Albanese):** Any questions or comments? Seeing none, I call the vote on government motion 15. All those in favour? Opposed? Carried.

We shall proceed to consider government motion 16. Mr. Zimmer.

**Mr. David Zimmer:** If you could give me a second here.

I move that subsections 48.1(5) and (6) of the Provincial Offences Act, as set out in subsection 1(39) of schedule 4 to the bill, be struck out and the following substituted:

"No oral evidence

"(5) A provincial offences officer who provides certified evidence referred to in subsection (2) in respect of a proceeding shall not be required to attend to give evidence at trial, except as provided under subsection 49(4)."

**The Vice-Chair (Mrs. Laura Albanese):** Any further queries, comments? Mr. Prue.

**Mr. Michael Prue:** This is a little bit complex to me, and perhaps the solicitor or the mover can explain this to me. Can you outline circumstances when an officer shall be required or not required to give evidence? Secondly, I think this relates to the next motion, also about the

adjournment, where there's certified evidence. It's complex. I need to understand what I'm voting for.

**Mr. David Zimmer:** Speaking to 16—and I'll ask someone to come forward—we've heard from a lot of stakeholders on this issue that the summons process raises very significant concerns about staff workload. It's intended to deal with that. A more fulsome explanation will follow.

**The Vice-Chair (Mrs. Laura Albanese):** Please proceed.

**Ms. Lisa Minuk:** The idea here is to amend the way that we use certificate evidence. Certificate evidence is where, instead of appearing in court to testify and give evidence orally, an officer will do a certified statement, saying, "I certify that I saw this happen." Sometimes it might not be a statement, it might be a picture; for a red light camera, for instance, for the offence of crossing a red light, certificate evidence is used and the defendant is mailed a picture of their car at the red light before the intersection and then going through the intersection, and that's the evidence in the case.

**0940**

What these two sections together say is that where certificate evidence is being relied on, the officer doesn't have to also come in and testify. That certified statement can stand on its own, unless the defendant or the prosecutor can establish that trial fairness is at issue if the officer is not called in for a cross-examination. That's just a safeguard there, so that if there is some reason, some question, they can call the officer in to testify, to be cross-examined if trial fairness is at stake.

**Mr. Michael Prue:** That's primarily to do with red-light cameras?

**Ms. Lisa Minuk:** That's one way that it's used right now. The bill creates an authority to designate by regulation offences for which you could use this certificate evidence. They would have to think about, like I said, what offences would be appropriate.

**Mr. Michael Prue:** I can understand in terms of where it's a mechanical device like a red-light camera, but where an officer sees something—say, he thinks a guy went through a stop sign, and the man or the woman disputes that they stopped at the stop sign—is there any possibility that the cabinet could say that the officer could just write a certificate and that would be the end of it?

**Ms. Lisa Minuk:** It would be legally possible for that to happen, but if it did, there's still the judge there to say, "That's not appropriate." If the defendant says, "No, I didn't," then that would be an issue that goes to the element to the offence, and the officer would have to be called in. It would be important to be careful about what kinds of offences—

**Mr. Michael Prue:** That's why I'm a little nervous just to leave this up to cabinet. Has any list of those been drawn up to date? I understand the red light. I'm not going to say no. That makes sense. But where it's one person's word on what they saw versus another person's and there's no mechanical device, there are no pictures,



there's no anything else, I would be very reluctant to give this, if I thought that was going to step into that realm. I just need to know, has there been a list established?

**Ms. Lisa Minuk:** There has not been a list established.

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

**The Vice-Chair (Mrs. Laura Albanese):** Any further questions, comments? Thank you. Seeing none, I will call the vote on government motion number 16. All those in favour? Opposed? Carried.

We will now consider government motion number 17.

**Mr. David Zimmer:** I move that subsection 49(3) of the Provincial Offences Act, as set out in subsection 1(40) of schedule 4 to the bill, be struck out and the following substituted:

“Adjournment

“(3) Despite subsection (1) and subject to subsection (4), if the trial is being held in respect of a proceeding commenced under part I or II, the court shall not adjourn the trial for the purpose of having the provincial offences officer who completed the certificate of offence or the certificate of parking infraction, as the case may be, attend to give evidence unless the court is satisfied that the interests of justice require it.

“Adjournment where certified evidence

“(4) If certified evidence referred to in subsection 48.1(2) is being admitted as evidence in a trial referred to in subsection (1), the court shall not adjourn the trial for the purpose of having any of the following persons attend to give evidence unless the court is satisfied that the oral evidence of the person is necessary in order to ensure a fair trial:

“1. The provincial offences officer who completed the certificate of offence or the certificate of parking infraction, as the case may be.

“2. Any provincial offences officer who provided certified evidence in respect of the proceeding.”

**The Vice-Chair (Mrs. Laura Albanese):** Any further queries, comments? Seeing none, I will call the vote on government motion number 17. All those in favour? Opposed? Carried.

We will move to consider government motion number 18.

**Mr. David Zimmer:** I move that subsection 83.1(3) of the Provincial Offences Act, as set out in subsection 1(47) of schedule 4 to the bill, be amended by striking out “a trial under part III” and substituting “a proceeding commenced by information under part III”.

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Mr. Prue.

**Mr. Michael Prue:** Could I just ask again what this is intended to do? Is this intended to enter into the range of plea bargaining or pre-trial meetings? Is that what the intent is?

**Mr. David Zimmer:** It's consistent with the language elsewhere in the act. What it does is clarify some ambiguity, as trials are conducted under part IV.

A more fulsome explanation?

**Mr. Michael Prue:** Perhaps. I'm sorry, David, it doesn't mean anything when you tell me that.

**Mr. David Zimmer:** No, I understand.

**Mr. Michael Prue:** I'm just trying to be cautious. This bill has been rushed. Even the government has 50 changes to it, and they had it a lot longer than I did.

**Mr. David Zimmer:** Madam?

**Ms. Lisa Minuk:** I think there are sort of two things going on here. One is what's in the original bill. The section that is being amended says a witness may appear by electronic methods to give evidence in a trial under part III only with the consent of both the prosecutor of the defendant. That's what the underlying provision is: They both have to consent for a witness to give evidence.

What this motion is correcting is just the phrase “in a trial under part III,” because that's not consistent with the language in the rest of the act.

Trials are technically under part IV of the act. The correct wording is the trial “commenced by information under part III.”

**Mr. Michael Prue:** Okay, so part III is related to proceedings, not trials.

**Ms. Lisa Minuk:** That's right. Part III is how you would commence the more serious proceedings under the Provincial Offences Act.

**Mr. Michael Prue:** Okay. That makes sense. Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments?

Seeing none, I call the vote on government motion number 18.

All those in favour? Opposed? Carried.

We'll now consider government motion number 19.

**Mr. David Zimmer:** I move that subsection 111(3) of the Provincial Offences Act, as set out in subsection 1(51) of schedule 4 to the bill, be amended by striking out “and an application to extend time to pay under section 85”.

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Mr. Prue.

**Mr. Michael Prue:** Does that mean that people cannot make an application to extend time to pay under section 85; it means they have to pay on the spot?

**Mr. David Zimmer:** This was a drafting error. Section 111 is itself an application to waive payment, pending appeal.

**Mr. Michael Prue:** So it's a drafting error, and this simply changes the drafting error.

**Mr. David Zimmer:** Yes.

**Mr. Michael Prue:** It doesn't mean it takes away someone's right to ask for time.

**Mr. David Zimmer:** Yes.

**The Vice-Chair (Mrs. Laura Albanese):** Maybe we should ask for further clarification.

**Mr. Michael Prue:** Please.

**Mr. David Zimmer:** It's an important point.

**The Vice-Chair (Mrs. Laura Albanese):** Before you proceed, could you please spell your name, for Hansard purposes.

**Ms. Lisa Minuk:** Sure. It's M-I-N-U-K.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you very much. Please proceed.

**Ms. Lisa Minuk:** There wouldn't be a need to extend the time to pay because the fine would be waived, pending the appeal. That's the drafting error. Section 111, which is the section this amended, is about waiving the fine, pending the appeal. So there's no need to extend the time to pay it; it's already waived.

**Mr. Michael Prue:** All right, that's logical. But, Madam Chair, it's wasting time, her running back and forth.

**The Vice-Chair (Mrs. Laura Albanese):** Absolutely.

**Mr. David Zimmer:** Stay and enjoy the morning.

**Mr. Michael Prue:** Get a coffee.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments?

Seeing none, I call the vote on government motion 19.

All those in favour? Opposed? Carried.

We'll proceed to consider government motion number 20. Mr. Zimmer.

**Mr. David Zimmer:** I move that schedule 4 to the bill be amended by adding the following subsection:

"(53.1) Section 116 of the act is amended by adding the following subsection:

"Simultaneous application

"(4) Despite subsection (3), the notice of appeal may be filed at the same time as an application under section 85 to extend the time to give notice of appeal."

0950

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, I call the vote on government motion 20. All those in favour? Opposed? Carried.

We'll move on to government motion 21.

**Mr. David Zimmer:** I move that schedule 4 to the bill be amended by adding the following subsection:

"(55.1) Section 135 of the act is amended by adding the following subsection:

"Simultaneous application

"(2.1) Despite subsection (2), the notice of appeal may be filed at the same time as an application under section 85 to extend the time to give notice of appeal."

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, I call the vote on government motion 21. All those in favour? Opposed? Carried.

We'll now consider government motion 22.

**Mr. David Zimmer:** I move that subsection 1(56) of schedule 4 to the bill be struck out and the following substituted:

"(56) Section 137 of the act is amended by adding the following subsections:

"Dismissal by justice

"(2) Where the clerk of the court considers that an appeal has not been proceeded with or has been abandoned, the clerk may, after giving notice to the parties to the appeal, have the matter brought before a justice sitting in open court to determine whether the appeal has been abandoned and the appeal should be dismissed.

"Motion to restore

"(3) A party to an appeal that was dismissed under subsection (2) may apply to have the appeal restored."

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I call the vote on government motion 22. All those in favour? Opposed? Carried.

We'll proceed to consider government motion 23.

**Mr. David Zimmer:** I move that subsection 165(9) of the Provincial Offences Act, as set out in subsection 1(59) of schedule 4 to the bill, be amended by adding "or section 240 of the City of Toronto Act, 2006" after "Municipal Act, 2001".

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Mr. Prue.

**Mr. Michael Prue:** Yes. If I could just get an explanation of what, in fact, this actually means?

**Mr. David Zimmer:** The City of Toronto Act, parallel to the Municipal Act provision in the existing draft. The city of Toronto has requested this. Without this amendment, Toronto alone among municipalities will need AG approval to recover the cost of collection agencies and fine defaulters.

**Mr. Michael Prue:** So I can take it, then, that every other municipality will be given this power and Toronto wants to retain this power as well? That's what I'm hearing.

**Ms. Lisa Minuk:** Wants to obtain this power as well.

**Mr. Michael Prue:** Okay, so Toronto alone doesn't have the power? They all have it, but we have to deal simultaneously with the City of Toronto Act because the city of Toronto is different?

**Ms. Lisa Minuk:** Well, the bill—that's correct. The bill would give it to all the other municipalities, as drafted right now, except for Toronto.

**Mr. Michael Prue:** Okay, so this is just to ensure Toronto gets it too?

**Ms. Lisa Minuk:** That's right.

**Mr. Michael Prue:** Thank you.

**The Chair (Mrs. Laura Albanese):** Thank you very much. Any further comments? I call the vote on government motion 23. All those in favour? Opposed? Carried.

So, shall schedule 4, section 1, as amended, carry? Carried.

We'll move on to schedule 4, section 2, and to consider government motion 24: Mr. Zimmer.

**Mr. David Zimmer:** I move that schedule 4 to the bill be amended by adding the following section:

"Highway Traffic Act

"2.1(1) Subsection 205.17(2) of the Highway Traffic Act is amended by striking out '5.2.'

"(2) Subsection 205.17(2) of the act is amended by striking out '6.'

"(3) Subsection 205.19(1) of the act is repealed and the following substituted:

"Deemed not to dispute charge

"(1) A defendant is deemed to not wish to dispute the charge where,

"(a) at least 15 days have elapsed after the defendant was served with the offence notice and the defendant did not give notice of intention to appear under section 5 of

the Provincial Offences Act, did not request a meeting with the prosecutor in accordance with section 5.1 of that act and did not plead guilty under section 7 or 8 of that act;

“(b) the defendant requested a meeting with the prosecutor in accordance with section 5.1 of the Provincial Offences Act but did not attend the scheduled meeting with the prosecutor; or

“(c) the defendant reached an agreement with the prosecutor under subsection 5.1(6) of the Provincial Offences Act but did not appear at a sentencing hearing with a justice under subsection 5.1(8) of that act.

“(4) Subsection 205.23(1) of the act is amended by adding ‘or for a meeting under section 5.1 of the Provincial Offences Act’ after ‘for a hearing.’”

**The Vice-Chair (Mrs. Laura Albanese):** Before we proceed to vote on this motion, my apologies, but we need to vote on schedule 4, section 2, as this is a new section that is being created. Therefore it requires a vote.

I’ll call the vote now on schedule 4, section 2. All those in favour? Opposed? Carried.

Now we’ll deal with government motion number 24. All those in favour? Opposed? Carried.

We’re now dealing with schedule 4, section 3. All those in favour? Opposed? Carried.

We’ll move on to section 4. Government motion number 25.

**Mr. David Zimmer:** I move that subsection 4(4) of schedule 4 to the bill be struck out and the following substituted:

“(4) Subsections 1(5), (6), (8), (9), (11), (13), (15), (19), (21), (24), (25), (28), (30), (39), (40), (44), (45), (46) and (48) and subsections 2.1(1), (3) and (4) come into force on a day to be named by proclamation of the Lieutenant Governor.”

**The Vice-Chair (Mrs. Laura Albanese):** Any questions or comments? Seeing none, I call the vote on government motion number 25. All those in favour? Opposed? Carried.

Shall schedule 4, section 4, as amended, carry? Carried.

Shall schedule 4, as amended, carry? Carried.

We’ll move on now to schedule 5, and on schedule 5, we will ask for section 1 all the way through to section 25 to be carried inclusively.

**Mr. Peter Shurman:** I’d like to make a comment, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Absolutely. Please, Mr. Shurman.

**Mr. Peter Shurman:** This goes into two sections—sections 5 and 6, but we’re referring to 5 now—that deal with accountability. The problem with this act is we don’t know the scope of the accountability of the act. We don’t know because the affected administrative tribunals are all a matter of regulation, so it’s hidden to us. I think it’s somewhat ironic that a Liberal government that arguably has been beset with more scandals than any government in recent history—bad governance, lack of transparency and poor accountability most of all—is imposing standards on administrative tribunals that they

themselves, even as we speak, are evading. I want that on the record.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. Any further comments? Seeing none, we’ll confirm that sections 1 to 25, inclusive, carry. All those in favour? Opposed? Carried.

Shall schedule 5 carry? All those in favour? Opposed? Carried.

We’ll move on now to schedule 6. We’ll ask for sections 1 and 2 to be carried inclusively. Carried.

**Mr. Peter Shurman:** I have comments on schedule 6 as well, and I’d like a recorded vote on schedule 6.

**The Vice-Chair (Mrs. Laura Albanese):** Which section?

**Mr. Peter Shurman:** All of them.

This was the subject of one of the very few deputations that we heard in this room last week. Very particularly, listening to the deputants who represented Commission counsel and Rresearchers, I asked for the characterization of the changes in one word, and the word that they provided was “objectionable.” They said it was a very negative change. The schedule shouldn’t even have been introduced in this bill.

The bill was called “housekeeping,” and I believe I’m quoting accurately from the Attorney General. If you’re going to make changes of this scope to the public inquiries area of our legislative body of work, this should have been done as a separate bill. There is no independent mechanism to interpret the phrase “public interest.” So the question has to be asked: How can the people of Ontario be assured that the Liberals, or any future government for that matter, will not use this change to avoid investigations, and very particularly now on things like the eHealth scandal?

Now what we have is phraseology that talks about good government and public concern. If we pass this as it stands, we go to “public interest” as the operative phrase. So “public interest” becomes entirely subjective and interpretive on the part of the highest level of government, right up to the Premier, and we can’t, under any circumstances, support that. That’s why I want the recorded votes.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? I would like to clarify if you would like it on each section.

**Mr. Peter Shurman:** Yes, I do.

**The Vice-Chair (Mrs. Laura Albanese):** So we’ll go back to schedule 6, section 1, on a recorded vote.

### Ayes

Crozier, Flynn, McNeely, Sousa, Zimmer.

### Nays

Prue, Shurman.

**The Vice-Chair (Mrs. Laura Albanese):** Carried.

We’ll move on to section 2. Shall schedule 6, section 2, carry? On a recorded vote.

**Ayes**

Crozier, Flynn, McNeely, Sousa, Zimmer.

**Nays**

Prue, Shurman.

**The Vice-Chair (Mrs. Laura Albanese):** Carried.

We'll move on to schedule 6, section 3: NDP motion number 26.

**Mr. David Zimmer:** Madam Chair?

**The Vice-Chair (Mrs. Laura Albanese):** Yes?

**Mr. David Zimmer:** May I have the indulgence of the committee for a two- or three-minute pause or break?

**The Vice-Chair (Mrs. Laura Albanese):** Is it agreed?

**Mr. Michael Prue:** Why not?

**Mr. Peter Shurman:** Fine, if you want.

**Mr. David Zimmer:** Thank you. I'll be back in a minute.

**The Vice-Chair (Mrs. Laura Albanese):** Agreed. We'll recess for three minutes.

*The committee recessed from 1001 to 1006.*

**The Vice-Chair (Mrs. Laura Albanese):** We're reconvening to consider schedule 6, section 3, NDP motion 26. Mr. Prue?

**Mr. Michael Prue:** I move that section 3 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding the following subsections:

"Mandatory establishment

"(1.1) A commission is established to conduct a public inquiry into a matter in the public interest if the leaders of a majority of the recognized parties in the assembly consent to a motion in the assembly establishing the commission.

"Same

"(1.2) If a commission is established under subsection (1.1),

"(a) subsections (2) to (6) apply to the commission, reading references in those subsections to the Lieutenant Governor in Council as references to the leaders of a majority of the recognized parties in the assembly, except that the terms of reference for the inquiry shall be those on which the leaders of all recognized parties in the assembly agree; and

"(b) references in this act to the order establishing the commission are deemed to be references to the motion mentioned in subsection (1.1)."

This, we believe, is necessary because, currently, opposition parties call on a minister who either has been involved in the alleged wrongdoing himself or herself or whose department or agency, board or commission has been involved in suspected wrongdoing. The minister and the rest of the cabinet, usually, are clearly in a conflict of interest when deciding whether to initiate an inquiry.

**1010**

The amendment set out above would remove the conflicted minister from the decision-making process concerning initiating an inquiry and would in fact leave it up to the House.

I know that this may be problematic to the current government, and I know it may be problematic to future governments, no matter who is in government, even potentially someday a New Democratic Party government. But the reality is that when it gets heated in the House, and when an inquiry needs to be held, governments of all stripes in the past have tended to stonewall. We believe that this would give great latitude to the House. It would free up the members of the House in order to try to get to the bottom of alleged serious wrongdoings.

Although it may seem to be somewhat of a radical step, I believe it would give the Legislature the greatest possible authority to do what is right for the people of Ontario and to take away simply from the cabinet that right of determining when—or when not—they will be investigated.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments? Mr. Shurman.

**Mr. Peter Shurman:** With respect to Mr. Prue and the NDP on this or any other amendment, because my party basically rejects out of hand section 6, we won't be supporting any amendments and we'll be calling for a recorded vote on all of the amendments and all sections of section 6.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none—

**Mr. Michael Prue:** If I could—

**The Vice-Chair (Mrs. Laura Albanese):** Yes, Mr. Prue.

**Mr. Michael Prue:** I've listened to Mr. Shurman. I understand his frustration and I understand that he thinks that this is irreparable. We have already seen that the government is not going to back down on this. The reason that we are putting these forward is to take away the most onerous of the provisions and to try to salvage something of this.

I share his frustration but, always the optimist, I am going to try to make a silk purse out of a sow's ear, if I can, because I think that if you are willing to take just these couple of little steps, we can assuage most of the concerns that were expressed by the judiciary and by the defence counsels when they came here.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, I call the vote on NDP motion number 26.

**Mr. Peter Shurman:** Recorded, please.

**The Vice-Chair (Mrs. Laura Albanese):** Recorded vote.

**Ayes**

Prue, Shurman.

**Nays**

Crozier, Flynn, McNeely, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

We now move to consider NDP motion number 27.

**Mr. Michael Prue:** Yes, thank you very much. I move that clause 3(3)(d) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

By way of explanation, if I can explain this—and I must state at the outset, I believe that this is similar to government motion 28. I think it would have the same purported effect.

The reason we are moving this is to delete the establishment of time limits for phases of an inquiry and the termination provision.

The provision for time limits with respect to phases of a public inquiry is inappropriate and undesirable. It is vital discretion of the commissioner to control the sequencing and method of the calling of evidence. Issues and information may arise in the course of the pre-hearing investigation or during the hearings themselves that require discrete but important choices on the part of the commissioner on how to organize the inquiry and its hearings.

In addition, there is the prospect that the order in council setting time limits for phases at the outset would call for the delineation of the phases of the inquiry and, as such, a potential infringement by the Lieutenant Governor in Council on the discretion of the commissioner to conceptualize and implement the inquiry as demanded by the circumstances of investigation.

What we're trying to do is unfetter the commissioner and not put any roadblocks that are set up in advance by the cabinet.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Yes, Mr. Zimmer?

**Mr. David Zimmer:** We will not be supporting this. I mean, the whole rationale and direction that we want to move in is that the government believes that in fact inquiries should have delivery dates in their reports so that the subject matter of the inquiry can be brought forward and recommendations and other things contained in that report be dealt with. It is good practice to set out a timetable for when an inquiry should report.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments? Seeing none, I will move to the vote on NDP motion number 27.

**Mr. Peter Shurman:** Recorded vote

#### Ayes

Prue.

#### Nays

Crozier, Flynn, McNeely, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

We shall move on to government motion number 28.

**Mr. David Zimmer:** I move that clause 3(3)(d) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“(d) fix the date for the delivery of the commission’s report;”

**The Vice-Chair (Mrs. Laura Albanese):** Any comments, questions? Mr. Prue.

**Mr. Michael Prue:** He just spoke against my motion, which did almost exactly the same thing, other than fixing the date. Why is this so significantly different that you now want to support this one? I’m just curious.

**Mr. David Zimmer:** We are responding to stakeholder input on this issue.

**Mr. Michael Prue:** And I did not? I don’t know what that wink was, Madam Chair.

If I could just speak to this, I think that, other than setting the time frame, this does exactly the same thing: It strikes out the same section; it takes the same actions. The only thing that appears to have occurred in this is fixing the date for the delivery, which is the final instalment of the date. I understand that, but what it does not do is what the member argued against my motion: the setting up of time frames and parameters for the commission. It does not do that. It simply sets a final date and allows free latitude. I think it’s not quite as expansive as the motion that I attempted to make, but I fail to see, in spite of the wink, how this is any different than the motion that was made before or how the rationale that was given for voting against the one before cannot be possibly apply here, because it does.

**Mr. David Zimmer:** First of all, that was not a wink. I have an eye problem in one eye—

**Mr. Michael Prue:** Oh, you have an astigmatism? Okay, all right.

**Mr. David Zimmer:** No, I have glaucoma, and it bothers me sometimes.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, a recorded vote.

#### Ayes

Crozier, Flynn, McNeely, Sousa, Zimmer.

#### Nays

Prue, Shurman.

**The Vice-Chair (Mrs. Laura Albanese):** Carried.

I will move on now to the consideration of NDP motion number 29. Mr. Prue.

**Mr. Michael Prue:** I move that section 3 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding the following subsection:

“Same, time for report

“(3.1) In the order establishing a commission, the Lieutenant Governor in Council may fix a date for the commission’s report.”

I think I just, in a nutshell, have done exactly what Mr. Zimmer was suggesting in his last motion.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, I call the vote on NDP motion number 29. It will be a recorded vote.

**Ayes**

Prue.

**Nays**

Crozier, Flynn, McNeely, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

We'll now consider—

**Mr. Bruce Crozier:** Chair, is my hearing going or did you call Mr. Shurman's name when he had his hand up?

**Mr. Peter Shurman:** He's done that twice.

**Mr. Bruce Crozier:** Yes, and on the vote before.

**The Clerk of the Committee (Mr. William Short):** Sorry did I miss you?

**Mr. Peter Shurman:** Yes.

**The Clerk of the Committee (Mr. William Short):** I apologize—

**Mr. Bruce Crozier:** On the previous vote as well.

**Mr. Peter Shurman:** You'll have to make your head look left, even though I appear right.

**Mr. Bruce Crozier:** I just thought maybe it was my hearing the first time.

**The Clerk of the Committee (Mr. William Short):** I'm sorry.

**Mr. Peter Shurman:** Thank you, Bruce.

**The Vice-Chair (Mrs. Laura Albanese):** We'll now move to consider NDP motion number 30. Mr. Prue.

**Mr. Michael Prue:** I move that subsection 3(5) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

"Amendment of order

"(5) The Lieutenant Governor in Council may amend an order establishing a commission to appoint a substitute commissioner if the commissioner is unable to continue to perform his or her duties."

The rationale for this, if I may, is that the breadth of proposed amendments compromises the degree of independence legally required for a commissioner of a public inquiry. A commissioner, once appointed, must be assured—and so must the public, based on the statutory language—that the government will not take steps to replace him or her or to dilute his or her authority through a simple order in council amendment with legislative pre-approval, as set out in subsection 3(5). This is of particular concern for sitting judges.

It is an encroachment on the independence of the commissioner to grant express authority to the Lieutenant Governor in Council, in its sole discretion, to vary the terms of reference of an inquiry while the inquiry is under way and after the commission has entered into an investigation into potentially difficult and embarrassing affairs of government. The provision for this power in the

act undermines the extraordinary character of, and indeed may make routine, any consideration of a decision by the Lieutenant Governor in Council to exercise this controversial power in the course of an inquiry. As such, it poses a significant threat to the independence of any inquiry under this act as drafted.

Therefore, we would ask that you support motion 30 to make sure that doesn't happen.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Seeing none, we will proceed to a recorded vote on NDP motion 30.

**Ayes**

Prue.

**Nays**

Crozier, Flynn, McNeely, Shurman, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

We'll proceed now to consider NDP motion 31. Mr. Prue.

**Mr. Michael Prue:** I move that subsection 3(6) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

By reason of rationale, the provision is unnecessary in light of the existing authority of the Lieutenant Governor in Council to terminate an inquiry by passing another order in council or by revoking the original order establishing the inquiry.

**The Vice-Chair (Mrs. Laura Albanese):** Any comments? Seeing none, I'll call the vote on NDP motion 31.

**Mr. Peter Shurman:** Recorded vote.

**Ayes**

Prue.

**Nays**

Crozier, Flynn, McNeely, Shurman, Sousa, Zimmer.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion lost.

We'll now consider government motion 32. Mr. Zimmer.

**Mr. David Zimmer:** I move that subsections 3(5) and (6) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

**The Vice-Chair (Mrs. Laura Albanese):** Any questions or comments? Seeing none—

**Mr. Michael Prue:** Can I ask for an explanation how this is any different from what I was attempting to do?

**Mr. David Zimmer:** We are responding to stakeholder input on this.

**Mr. Michael Prue:** And was I not? Can you explain how it is any different? Because maybe I'll support you if it is.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments?

**Mr. Michael Prue:** Is there no comment? How is it different?

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Any further questions?

**Mr. Michael Prue:** This is bizarre, Madam Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Seeing none, we will proceed to the vote on government motion 32.

**Mr. Peter Shurman:** Recorded vote.

### Ayes

Crozier, Flynn, McNeely, Sousa, Zimmer.

### Nays

Prue.

**The Vice-Chair (Mrs. Laura Albanese):** I declare the motion carried.

Shall schedule 6, section 3, as amended, carry? Carried.

We will now take a recess and we shall reconvene at 2 this afternoon.

*The committee recessed from 1025 to 1403.*

**The Clerk of the Committee (Mr. William Short):** Good afternoon, honourable members. It is my duty to call upon you to elect an Acting Chair. Are there any nominations?

**Mr. Wayne Arthurs:** I move the name of Mr. Flynn.

**The Clerk of the Committee (Mr. William Short):** Mr. Flynn, do you accept the nomination?

**Mr. Kevin Daniel Flynn:** I do.

**The Clerk of the Committee (Mr. William Short):** Seeing no further nominations, I declare the nominations closed and Mr. Flynn Acting Chair of the committee.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Members will refer to what is, in their package, 71.1 and 71.2. They are being distributed to you. This was passed by the House just recently, so they've been added to the amendment package, which allowed for their introduction after the deadline.

**Mr. Michael Prue:** Where are those?

**The Acting Chair (Mr. Kevin Daniel Flynn):** They should be in order, Michael, 71.1 and 71.2.

**Mr. Michael Prue:** Thank you.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Let's get started, then, where we left off this morning.

Schedule 6, section 4: Shall schedule 6, section 4, carry?

**Mr. Peter Shurman:** Recorded vote.

### Ayes

Arthurs, McNeely, Sousa, Zimmer.

### Nays

Prue, Shurman.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion is carried.

Moving on to schedule 6, section 5, a Liberal motion on page 33.

**Mr. David Zimmer:** I move that clause 5(b) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“(b) ensure that its public inquiry is conducted effectively, expeditiously, and in accordance with the principle of proportionality; and”.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall schedule 6, section 5, as amended, carry?

**Mr. Peter Shurman:** Recorded vote.

### Ayes

Arthurs, McNeely, Prue, Sousa, Zimmer.

### Nays

Shurman.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion is carried.

Schedule 6, section 6: Shall schedule 6, section 6, carry? Those in favour? Those opposed? Carried.

Schedule 6, section 7: Shall schedule 6, section 7, carry? Those in favour? Those opposed? That is also carried.

Moving on to schedule 6, section 8: Shall schedule 6, section 8, carry? Those in favour? Those opposed? That is carried.

Schedule 6, section 9: We have some amendments, starting with number 34, the NDP.

**Mr. Michael Prue:** I move that subsection 9(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding “and” at the end of clause (d) and by striking out clause (e).

If I can, by way of explanation, we believe there is a possibility of judicial review if a commission fails to exercise a duty to take into account factual summaries prepared by a participant. This, in turn, opens up the possibility of increased litigation against inquiries and can be counterproductive. It is open to a commissioner in his or her discretion to accept summaries, but this provision does more harm than good. Hence, we are asking to amend by adding “and” at the end of clause (d) and by striking out clause (e).

**The Acting Chair (Mr. Kevin Daniel Flynn):** Speakers?

**Mr. David Zimmer:** We're happy to support this.

**Mr. Michael Prue:** Whoa. My goodness.

**The Acting Chair (Mr. Kevin Daniel Flynn):** We have a winner.

**Mr. Michael Prue:** My heart. Can it take it?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Well, let's have the vote quickly. Any further comments? All those in favour? All those opposed? That is carried.

Moving on, then, to the amendment on page 35 of your package.

1410

**Mr. David Zimmer:** I move that subsection 9(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out "and" at the end of clause (e), by adding "and" at the end of clause (f) and by adding the following clause:

"(g) any other document or information, if referral to and reliance on the document or information would promote the efficient and expeditious conduct of the public inquiry."

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comment? Any other speakers? Those in favour? Those opposed? That motion is carried.

Moving on to 36: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 9(2) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out "an existing record" and substituting "a record."

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, those in favour? Those opposed? That is carried.

Shall schedule 6, section 9, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to schedule 6, section 10, we have amendment 37. Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 10(3) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

"Confidential information

"(3) Subject to the order establishing it and despite any other act, a commission may require the provision or production of information that is considered confidential or inadmissible under another act or a regulation and that information shall be disclosed to the commission for the purposes of the public inquiry."

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Comment? Seeing none, those in favour? Those opposed? That is carried.

Shall schedule 6, section 10, as amended, carry? Those in favour? Those opposed? That's carried.

Moving on to schedule 6, section 11: Shall schedule 6, section 11, carry? Those opposed? That's carried.

Schedule 6, section 12: Shall schedule 6, section 12, carry? Those opposed? That's carried.

Schedule 6, section 13: Shall schedule 6, section 13, carry? Those opposed? That's carried.

Schedule 6, section 14: Michael, amendment number 38.

**Mr. Michael Prue:** I move that subsection 14(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

"Holding a hearing

"(1) A commission shall hold a hearing during the public inquiry."

By way of explanation, we think that all inquiries should, by definition, have some public hearings. To do otherwise is to blur the distinction between public inquiries and private investigations or reviews. Further, we believe it unduly binds the commissioner, not having this in here, when he or she may not be in a position to see the utility of public hearings in the investigative circumstances, whether in terms of the evidence itself or the manner in which the government responds to the inquiry. If it's a public inquiry, the public should be invited.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments? Seeing none, all those in favour? Those opposed?

**Mr. Michael Prue:** I think it was two to one.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay, let's do that again. All those in favour? All those opposed? That's lost.

**Mr. Michael Prue:** Phil, you let me down.

**The Acting Chair (Mr. Kevin Daniel Flynn):** You almost got one through there. You did get one through.

**Mr. Michael Prue:** I did get one.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay, moving on to number 39, subsection 14(3) and (d): Mr. Zimmer.

**Mr. David Zimmer:** I move that clause 14(3)(d) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

"(d) a person's privacy, security or financial interest".

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments? Seeing none, all those in favour? Those opposed? That is carried.

Shall schedule 6, section 14, as amended, carry? Those opposed? That's carried.

Schedule 6, section 15: Michael, number 40.

**Mr. Michael Prue:** One minute. That's number 40?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Yes. Subsection 15.

**Mr. Michael Prue:** I move that section 15 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding the following subsection:

"Right to participate

"(0.1) A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject matter of the public inquiry an opportunity to participate in the inquiry."

By way of explanation, clause 15(2)(a) removes the right of standing by persons with a substantial and direct interest, subsection 5(1) of the existing Public Inquiries Act, and replaces it with a discretionary grant. This suggests a significant encroachment on the long-standing right of a person whose interest is affected by an inquiry



to participate in the inquiry process. The present language of subsection 5(1) in the act, which has a reasonable degree of clarity and certainty based on extensive jurisprudence, should be retained.

What we are trying to do here is retain the right of people to make public deputations, to come before the inquiry and to be heard.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Michael. Any further comments?

Seeing none, all those in favour? Those opposed? That motion loses.

Moving on to number 41. Michael?

**Mr. Michael Prue:** My goodness. Okay, number 41: I move that clause 15(1)(a) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“(a) whether a person, other than a person described in subsection (0.1), can participate in the public inquiry;”

If I may, that pretty much follows from above, which the government has already thought not important, to allow people to appear or to give them the same rights as currently exist.

**The Acting Chair (Mr. Kevin Daniel Flynn):** I wanted to give you the opportunity to explain yourself, but you’re right: Had 40 passed, this would have been in order. Seeing as 40 has not passed, it is actually out of order.

**Mr. Michael Prue:** Okay. Why didn’t you rule that? If you had, I wouldn’t have even read it.

**The Acting Chair (Mr. Kevin Daniel Flynn):** But you were doing so well, and you were doing such an eloquent job.

**Mr. David Zimmer:** I’m sorry, Chair. I missed part of what you—

**The Acting Chair (Mr. Kevin Daniel Flynn):** In order for the amendment that Mr. Prue just put forward to be in order—number 41—number 40 would have had to have previously carried.

**Mr. David Zimmer:** All right. Forty-one is out of order, then.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That’s right.

Does the same apply to 42 or not? No? Michael, 42 is yours.

**Mr. Michael Prue:** It does not apply to 42? My goodness, I would have thought it did, but thank you for that ruling.

I move that clause 15(2)(a) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

Again, that is in order to allow full public participation and for those who have meaningful things to say, to say them.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Further speakers? Seeing none, those in favour? Those opposed? That motion is lost.

Moving on to number 43: Mr. Zimmer.

**Mr. David Zimmer:** I move that clause 15(2)(b) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out “of alleged mis-

conduct” and substituting “of a possible finding of misconduct”.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comment? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall Schedule 6, section 15, as amended, carry? Carried.

Shall Schedule 6, section 16 carry? That’s carried.

Schedule 6, section 17: Michael, you’ve got 44.

**Mr. Michael Prue:** I move that subsection 17(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Finding of misconduct

“(1) A commission shall not find misconduct by a person, unless,

“(a) reasonable notice of the finding and a summary of the evidence supporting the finding have been given to that person; and

“(b) the person has been given a reasonable opportunity to respond.”

By way of explanation, and I think this is an important one, a commissioner makes findings and recommendations, not allegations. There is significant jurisprudence on this point under the current or extant subsection 5(2) of the existing Public Inquiries Act that should be preserved.

For example, the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440—you all remember that one—says, “its analysis applies also to the Ontario legislation—conveys that a higher level of procedural fairness is owed at the time of a commissioner’s final report—when his or her findings and conclusions are delivered to the government and to the public—and not when a notice of possible findings of misconduct is delivered to a person. The purpose of such a notice ... of possible misconduct is to permit the person to respond in the course of the inquiry process. It is therefore circular to require an opportunity to reply prior to a notice (or allegation) of misconduct that itself permits the reply. More broadly, it may be necessary at various stages of an inquiry for a commissioner to ‘allege’ misconduct (usually privately to the person in question and his or her counsel) without ‘finding’ same, and it is not consistent with the fair and expeditious conduct of an inquiry to require the commissioner to provide a specific opportunity for reply at each distinct stage. To avoid unnecessary uncertainty, then, ‘allege’ should be replaced with ‘find.’”

**1420**

I think once we’re treading on this, it is better to exercise caution. We have put this in to make sure that we do not find ourselves in violation of some of the Supreme Court of Canada’s decisions.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further comments?

**Mr. Michael Prue:** Recorded vote, please.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion is lost.

Moving on to number 45. Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 17(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Rights of persons before misconduct found

“(1) A commission shall not find misconduct by a person unless,

“(a) reasonable notice of the possible finding and a summary of the evidence supporting the possible finding have been given to that person; and

“(b) the person has been given a reasonable opportunity to respond.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments? All those in favour? Those opposed? That motion is carried.

Shall schedule 6, section 17, as amended, carry? That motion is carried.

Shall schedule 6, section 18, carry? Those in favour? Those opposed? Carried.

Shall schedule 6, section 19, carry? Those in favour? Those opposed? That is carried.

Moving on to schedule 6, section 20, number 46. Michael?

**Mr. Michael Prue:** I move that subsection 20(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Commission’s report

“(1) A commission shall deliver its report in writing to the minister and if the order establishing the commission fixes a date for the delivery of the report, the commission shall do so on or before that date.”

By way of explanation, we believe that the provision to terminate a commission is unnecessary in light of the existing authority of the Lieutenant Governor in Council to terminate an inquiry by passing another order in council, or by revoking the original order establishing the inquiry.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Are there further speakers? Seeing none, all those in favour? Those opposed? That motion is lost.

Moving on to number 47. Mr. Zimmer?

**Mr. David Zimmer:** I move that subsection 20(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out “for its termination and the delivery of its report” at the end and substituting “for the delivery of its report”.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments? Seeing none, all those in favour? Those opposed? That motion is carried.

Michael, you’ve got 48?

**Mr. Michael Prue:** I do indeed. I move that subsection 20(4) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Publication

“(4) The minister shall publish the report or an interim report of the commission within a reasonable time after receiving it.”

I believe that this is an important provision.

“Recent experience in the United Kingdom has emphasized the need for a statutory obligation to publish the commissioner’s report. We speak in particular of the UK government’s failure in 2004 to publish in a timely manner a report by former Supreme Court of Canada Justice Peter Cory into alleged state collusion in four killings in Ireland in 1989. The absence of any statutory duty to publish in that context prompted former Justice Cory to release independently portions of his report, unleashing an unfortunate and very much avoidable political controversy.”

First, the Ontario Law Reform Commission Report on Public Inquiries, 1992, recognizes the need to ensure that reports are published to maintain the independence of public inquiries. The minister should not have a discretion whether to publish that report.

Therefore, what we’re saying is, if the report is written, if the report is commissioned to be written, then it has to be published.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Michael. Any further comments?

**Mr. Michael Prue:** On a recorded vote, please.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion is lost.

Moving on to number 49, Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 20(4) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Unfinished report

“(4) If a commission does not for any reason deliver its report, the minister may publish any unfinished work of the commission, and that work shall be treated as if it had been published by the commission.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any comments? Michael? Mr. Prue?

**Mr. Michael Prue:** I have to say how bizarre this is. The commissioner finishes the report, but the govern-

ment doesn't have to release it; the commissioner doesn't finish the report and the government can release it, even though it may not constitute what the person who was writing is fully trying to say. They can release a half report; they can release a section of the report; they can take those sections that are favourable to the government versus those that are unfavourable to the government. It does not constitute the report of the commissioner. It should be treated as unfinished work. If it's unfinished, and if you can't and won't release the full report, then you ought not to be able to release part of it when it suits the minister's political ambition or political goals. Absolutely not. This is bizarre.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Any further speakers? Seeing none—

**Mr. Michael Prue:** A recorded vote, please.

### Ayes

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

### Nays

Prue.

**Mr. Michael Prue:** I feel like I'm in a UNESCO play.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That's carried.

Shall schedule 6, section 20, as amended, carry? Carried.

Shall schedule 6, section 21, carry? Carried.

Schedule 6, section 22, NDP amendment number 50: Mr. Prue.

**Mr. Michael Prue:** I move that subsection 22(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out "other than a proceeding under the Criminal Code (Canada)" at the end.

By way of explanation, the express subjection of a commissioner to compellability in a criminal proceeding raises unnecessarily the concern that the commissioner may be confronted with pressure via threats of a criminal investigation, whether against him or her directly or against a member of his or her staff, during an inquiry. Commission counsel are concerned that compellability of commission counsel and staff would result in a failure of participants to co-operate with commission counsel, and significantly undermine the effectiveness of the public inquiries.

Hence, we are putting this forward in order to make sure that the public inquiry acts in a way that is beneficial to the purpose for which it had been set up.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any further speakers?

Seeing none, those in favour? Those opposed? That motion is lost.

Number 51, Michael?

**Mr. Michael Prue:** I move that subsection 22(2) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

By way of explanation, and this is a long one: "The significant issues regarding confidentiality are covered by the deemed undertaking. The prohibition is likely to have uncertain consequences and is unnecessarily broad. For example, as drafted, it precludes commissioners from answering an allegation, after the inquiry, that the commissioner failed to make public information that was allegedly relevant to the inquiry and that this undermines the commissioner's findings and conclusions. In this circumstance and others, a commissioner or member of his or her staff may have sound reason to disclose innocuous information that was obtained by the inquiry and not made public, particularly in matters of government decision-making, where it relates to the purposes of the inquiry. At the least, this provision should be limited to the disclosure of information about an individual that is of a private and confidential nature. Otherwise, the provision warrants the inappropriate muzzling of all those associated with an inquiry, including the commissioner."

That's why we're asking that it be struck out.

1430

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers?

**Mr. David Zimmer:** Our position is that an explicit confidentiality provision does contribute to the integrity of the public inquiry process. I should point out that similar confidentiality obligations exist in the Auditor General Act, the Ombudsman Act and under the Freedom of Information and Protection of Privacy Act.

We are not able to support this.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? All those in favour? Those opposed? The motion loses.

Moving on to 52, Mr. Zimmer.

**Mr. David Zimmer:** I move that clause 22(2)(b) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

"(b) disclose to any person after the delivery of the commission's report any information obtained in the public inquiry, except information otherwise available to the public."

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That carries.

Moving on to 53, Mr. Zimmer.

**Mr. David Zimmer:** I move that section 22 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding the following subsection:

"Exception

"(3) Subsection (2) does not apply if the disclosure is in relation to any action, application or other legal proceeding to which the commission is a party."

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall schedule 6, section 22, as amended, carry? Those opposed? That's carried.

Shall schedule 6, section 23, carry? Those opposed? That's carried.

Shall schedule 6, section 24, carry? Those opposed? That is carried.

Moving on to schedule 6, section 25, Mr. Zimmer: number 54.

**Mr. David Zimmer:** I move that the heading immediately before section 25 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Financial and administrative matters.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? All those in favour? Those opposed? That motion is carried.

Moving on to the NDP motion, 55. Michael?

**Mr. Michael Prue:** I move that subsection 25(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Commission budget

“(1) The commission shall prepare a budget for the conduct of a public inquiry and submit it to the minister.”

The rationale for doing this: It should be the commission and not the minister who sets the budget. The minister will retain the right by way of this motion to look at the budget and to approve or disapprove of the budgetary request. The importance of the commission establishing its own budget is that the commission would then have the necessary monies and the necessary authorities to conduct the commission in a way that they deem appropriate or the commissioner deems appropriate. This will, in turn, stop the minister from participating in or supervising directly the planning and conduct of the inquiry because oftentimes it is to do with the minister or the minister’s staff themselves.

To avoid undermining a commissioner’s independence in this fundamental way, section 25 should be modified, as we have suggested. It leaves the authority with the commissioner to establish the budget. It leaves the safety valve of the minister having to approve or disapprove it, and it makes sure that the conduct is not within the minister’s purview but is in fact with the commissioner.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none—

**Mr. Michael Prue:** Recorded vote, please.

#### Ayes

Prue.

#### Nays

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Moving on to 56, Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 25(1) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out “prepare” and substituting “set.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, those in favour? Those opposed? That motion is carried.

Moving on to number 57: Michael.

**Mr. Michael Prue:** I move that subsections 25(3) and (4) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Revised budget

“(3) The commission shall revise the budget for the commission if it is necessary to do so to accommodate any change in circumstances.”

If I can, that’s what we were trying to say before: leaving that option available to the commission as it undertakes the study rather than returning it to the minister, who could say, “No, this is getting too hot, and we’re going to shut it down by not providing the necessary funds.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none, all those in favour? Those opposed? That loses.

Moving on to number 58: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 25(3) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by striking out “including a revision of the order establishing the commission” at the end.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Mr. Prue.

**Mr. Michael Prue:** I cannot support this. It’s problematic in that it still continues to allow the minister to revise the budget. As per the comments that I’ve made on the last couple, I do not believe the minister should be in a position to revise the budget, because the revision of the budget can circumscribe the ability of the commission or the commissioner to do what is necessary to get to the bottom of a matter.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none, all those in favour? Those opposed? That motion carries.

Moving on to number 59: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsections 25(4) and (5) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Future financial commitments

“(4) A commission has no capacity to make any financial commitments for expenditures in respect of activities after the date for the delivery of the commission’s report.

“Exception, legal proceedings

“(5) Subsection (4) does not apply to expenditures arising from any action, application or other legal proceeding to which the commission is a party.

“Funding information not privileged, confidential

“(6) No privilege or confidentiality applies to information on any funding provided to a participant by the government of Ontario, including the existence of any funding and its nature, rate and amount.

“Funding information not personal information

“(7) Despite the Freedom of Information and Protection of Privacy Act, the information described in subsection (6) is not personal information within the meaning of that act.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall schedule 6, section 25, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to schedule 6, section 26: Michael, NDP amendment 60.

**Mr. Michael Prue:** I move that subsection 26(3) of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out.

By way of explanation, persons employed by the commissioner should not operate with the expectation or aspiration of continuing their work after the inquiry at the minister’s discretion.

Although this possibility always exists, posing always the danger that inquiry staff may report effectively to two paymasters, the inclusion of an express ministerial authority on this point invites inquiry staff to pursue further employment by the minister, especially in the later or latter stages of an inquiry.

Given that these are the stages at which key decisions about the content of the commissioner’s report will be made, a risk is created of an unfortunate perception that the commissioner, especially a sitting judge who is himself or herself protected by secure tenure and other institutional safeguards of judicial independence, may be swayed or otherwise served inappropriately by his or her staff.

It is a matter of perception here. This motion, we believe, by striking this out, will safeguard the public perception that people have of commissioners, particularly those who exercise normally a judicial role.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Further speakers?

**Mr. David Zimmer:** Mr. Prue, you’ve persuaded us on this. We’re happy to support it.

**Mr. Michael Prue:** There’s two.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Some sort of record.

All those in favour? All those opposed? Hey, there we go. That carries.

Moving on to number 61: Mr. Zimmer.

**Mr. David Zimmer:** Chair, in view of the decision on motion 60, I’m asking that this government motion 61 be withdrawn.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. That’s withdrawn.

Shall schedule 6, section 26, as amended, carry? Those opposed? That’s carried.

Section 26.1: Mr. Zimmer.

**Mr. David Zimmer:** I move that the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be amended by adding the following section:

“Administrative information

“26.1(1) A commission and the minister may at any time, or shall on the request of either, share with each other administrative information relating to the commission and the public inquiry, including information respecting,

“(a) the budget for the commission;

“(b) the commission’s actual and projected expenditures;

“(c) the timing and progress of the public inquiry; and

“(d) the production and delivery of the commission’s report.

“Excluded information

“(2) Nothing in subsection (1) authorizes the provision of information respecting the substance of the deliberations of the commission in the public inquiry or the contents of the commission’s report.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any speakers? Seeing none, those in favour? Those opposed? That is carried.

Moving on, then, to schedule 6, section 27. We have no amendments right through to schedule 6, section 90. Will we carry those inclusively? Those in favour? Those opposed? They’re carried.

We’re on to schedule 6, section 91. We’ve got a Liberal motion, number 63.

**Mr. David Zimmer:** I move that section 91 of the Public Inquiries Act, 2009, as set out in schedule 6 to the bill, be struck out and the following substituted:

“Commencement

“91. The Act set out in this schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.”

**The Chair (Mr. Kevin Daniel Flynn):** Thank you. Any speakers? Seeing none, all those in favour? Those opposed? That is carried.

Shall schedule 6, section 91, as amended, carry? Those opposed? That is carried.

Shall schedule 6, section 92, carry? Those in favour? Those opposed? That is carried.

Shall schedule 6, as amended, carry? Those opposed? That is carried.

Moving now on to schedule 7: Sections 1 through 4 have no motions or amendments. We’ll deal with them all at once. All those in favour? Those opposed? They are carried.

Shall schedule 7 carry? Those in favour? Those opposed? That is carried.

Moving on to schedule 8: Schedule 8, sections 1 to 19, there are no amendments. Can we deal with them inclusively? Those in favour? Those opposed? They are carried.

Moving on to schedule 8, section 20: amendment number 64, Mr. Zimmer.

**Mr. David Zimmer:** I move that clause 35.1(3)(a) of the Social Work and Social Service Work Act, 1998, as set out in subsection 20(10) of schedule 8 to the bill, be struck out and the following substituted:

“(a) require the member to submit to a physical or mental examination, or to both, which shall be conducted

or ordered by a qualified professional specified by the committee; and”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any speakers? Seeing none, those in favour? Those opposed? That is carried.

Shall schedule 8, section 20, as amended, carry? Those in favour? Those opposed? That is carried.

Schedule 8, section 21, is the last one in schedule 8. Shall schedule 8, section 21, carry? Those in favour? Those opposed? That’s carried.

Shall schedule 8, as amended, carry? Those in favour? Those opposed? That’s carried.

Moving on to schedule 9: sections 1 to 12, inclusive. Those in favour? Those opposed? They are carried.

Shall schedule 9 carry? Those opposed? That is carried.

Moving on to schedule 10: no amendments from section 1 right through 16, inclusive. Those in favour? Those opposed? That is carried.

Shall schedule 10 carry? Those opposed? That is carried.

Schedule 11, 1 through 11: We’ll deal with those inclusively. Those in favour? Those opposed? That is carried.

Shall schedule 11 carry? Those in favour? Those opposed? That’s carried.

Schedule 12 now: section 1, number 65, Mr. Zimmer.

**Mr. David Zimmer:** I move that section 5 of the Development Corporations Act, as set out in subsection 1(2) of schedule 12 to the bill, be amended by adding the following subsection:

“Limitation re constituting non-development corporations

“(6) The Lieutenant Governor in Council shall not, after June 30, 2011, constitute a new corporation that is not a development corporation by a regulation made under subsection (1).”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Shurman and then Mr. Prue.

**Mr. Peter Shurman:** I would like to know if there is someone with us who could provide clarification as to the practical impact of this amendment.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay, thank you. Let’s hear from Michael first and see if he’s got the same question.

**Mr. Michael Prue:** I want to know, if this is a good regulation, why we have to wait until June 30, 2011. Why is it that the Lieutenant Governor in Council will have the right to do so up until that point and thereafter be forbidden to do so? If it’s obviously not the right thing to do, why are they waiting that long?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Perhaps we can get both questions answered at the same time. Mr. Zimmer, do you have anyone to assist you or are you prepared to answer them?

**Mr. David Zimmer:** In the current fiscal climate, the government faces increasingly tough decisions and challenges. In order to effectively respond to these challenges it’s necessary for the government to have con-

tinued flexibility to do its job. We have time-limited the provision with respect to new non-development corporations to June 30, 2011, to ensure that the government can respond effectively to current challenges but without enabling governments to constitute non-development corporations by regulation indefinitely into the future. The sunset date—that is, June 30, 2011—allows for a full fiscal cycle within which to consider whether there is any need to constitute new non-development corporations in the current environment.

If you’d like a more fulsome explanation—

*Interjection.*

**The Acting Chair (Mr. Kevin Daniel Flynn):** Did you have someone to bring forward on this, David?

**Mr. David Zimmer:** Do you want something—

**Mr. Michael Prue:** I think that my colleague has already asked for someone to do that. Quite frankly, I’m not sure of the date.

**The Acting Chair (Mr. Kevin Daniel Flynn):** All right. Maybe we’ll give—

**Mr. David Zimmer:** Have a seat, and if you would introduce yourselves by name and title.

**The Acting Chair (Mr. Kevin Daniel Flynn):** I think, just as you were coming in, Mr. Shurman asked what the practical implications of this amendment are and Mr. Prue was asking more specifically about the date.

**Mr. Paul Korn:** I’m Paul Korn, senior counsel.

**Mr. Tim Hadwen:** And I’m Tim Hadwen. I’m a legal director. We’re both with the Ministry of the Attorney General.

**Mr. Peter Shurman:** Would you like me to repeat my question? I’ve asked it and Mr. Flynn has asked it. I just want to know, what is the practical implication or impact of this change?

**Mr. Tim Hadwen:** By “this change,” are we talking about the amendment dealing with the time limit?

**Mr. Peter Shurman:** That’s a question that Mr. Prue has asked. I want to know what we’re doing here overall. What is it we’re contemplating with the change in the act to begin with? Then you can go ahead and answer the other question.

1450

**Mr. Paul Korn:** Okay. Generally speaking, the amendments are intended to clarify the government’s existing power to constitute corporations by regulation. The current section hasn’t been amended since it was first enacted in 1973, and these amendments are intended to clarify the existing power in a manner consistent with how the act has been used by various governments since 1973.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Prue, you wanted some information specifically on the date.

**Mr. Michael Prue:** Yes. I’ve heard the explanation, but I don’t really understand. If that is the government’s intent, why is it that it’s going to take until June 2011 to have the government get out of that kind of business? Why is the government going to continue doing what it’s

doing at the present time if they've already acknowledged they ought not to be doing it?

**Mr. Paul Korn:** The government requires continued flexibility in the current fiscal environment, but past that point in time, it doesn't anticipate needing that same degree of flexibility.

**Ms. Catherine Brown:** I can also add to that. I'm Catherine Brown, the assistant deputy minister for corporate policy with MGS. The sunset date also allows a full fiscal cycle for these provisions to be utilized and to determine the application and utilization of them. That's why that particular time frame has been suggested, rather than leaving it there in perpetuity to determine the application of those provisions.

**Mr. Michael Prue:** Is the fiscal cycle not over in March?

**Ms. Catherine Brown:** It is, but it allows for the beginning of that fiscal cycle to be completed; the end of a fiscal cycle is always March 31, but it often takes the first quarter of the next cycle to make any final determinations coming out of that period. It was chosen for that reason.

**Mr. Michael Prue:** I don't understand why the government needs flexibility. You keep saying that, but what's the flexibility that's required?

**Ms. Catherine Brown:** In order to utilize the legislation to the extent that it's being utilized currently and ensure that the provisions are consistent with its utilization since its inception in 1973.

**Mr. Michael Prue:** Okay, I'm not sure I understand what that means, either.

**Mr. Peter Shurman:** I can pass you the eye-glaze if you need it.

**Mr. Michael Prue:** Yes, you can pass me the eye-glaze. I'm glazed.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay, we've had questions. We've had answers. We may not have agreement. Are there any more speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

Shall schedule 12, section 1, as amended, carry? Those in favour? Those opposed? That is carried.

Shall schedule 12, section 2, carry? Those in favour? Those opposed? That's carried.

Shall Schedule 12, as amended, carry? Those in favour? Those opposed? That is carried.

Moving on to 13, there are no amendments. Schedule 13, sections 1 through 9: Shall they carry inclusively? Those in favour? Those opposed? That's carried.

Shall Schedule 13 carry? Those in favour? Those opposed? That's carried.

Moving on to 14: There are no amendments. Shall schedule 14, sections 1 through 4, carry inclusively?

Those opposed? That's carried.

Shall schedule 14 carry? Those opposed? Carried.

Shall schedule 15, section 1, carry? Carried.

Moving on to schedule 15, section 2: The first amendment is yours, Michael: number 66.

**Mr. Michael Prue:** I move that subsection 2(2) of schedule 15 to the bill be struck out.

I note that this is identical wording to a government motion. We are doing this in part because of the request made by Conservation Ontario to maintain the highly dependent relationship they have between local stakeholders.

**Mr. David Zimmer:** We see the wisdom in this and are prepared to support this.

**The Acting Chair (Mr. Kevin Daniel Flynn):** You're starting to think alike.

**Mr. Michael Prue:** I'm not sure, if the wording hadn't been identical.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That's three now, Michael. You're on a roll. You'll be getting in the hall of fame in a minute.

Schedule 15, section 2, number 66: Shall that carry? Those opposed? That's carried.

Are you going to withdraw 67, Mr. Zimmer?

**Mr. David Zimmer:** In view of our decision on 66, I withdraw 67.

**The Acting Chair (Mr. Kevin Daniel Flynn):** It would be out of order in any event.

We move back to you, Michael: number 68.

**Mr. Michael Prue:** I move that subsection 2(3) of schedule 15 to the bill be struck out.

Same rationale.

**Mr. David Zimmer:** I can support the wisdom behind Mr. Prue's motion.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Those in favour? Those opposed? That is carried.

Does that mean you're taking 69—it's now out of order.

**Mr. David Zimmer:** I'd ask that 69 be withdrawn.

**The Acting Chair (Mr. Kevin Daniel Flynn):** We're going to rename this the "Michael Prue Act."

**Mr. Michael Prue:** I'm not sure.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Number 70: Michael.

**Mr. Michael Prue:** I move that subsection 2(5) of schedule 15 to the bill be struck out.

I note that government motion number 71 says the same thing.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Zimmer.

**Mr. David Zimmer:** I'm happy to support Mr. Prue's wisdom on this.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Those in favour? Those opposed? That's carried.

That makes 71 out of order.

Shall schedule 15, section 2, as amended, carry? Those in favour? Those opposed? That's carried.

Shall schedule 15, sections 3 to 11, inclusive, carry? Those in favour? Those opposed? They're carried.

Schedule 15—

**Mr. David Zimmer:** Sorry, Chair, just a second. I just want to make sure—

**The Acting Chair (Mr. Kevin Daniel Flynn):** Yeah, we're getting to the new ones now.

**Mr. David Zimmer:** Hold on.

**The Acting Chair (Mr. Kevin Daniel Flynn):** And these apply to—

**Mr. David Zimmer:** Which motion are you about to call?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Right now, we're on schedule 15, section 12. I'm just going to call it without amendments.

All those in favour? Those opposed? That is carried.

Shall schedule 15, as amended, carry? Those opposed? That is carried.

We're dealing with schedule 16 now: sections 1 through 13, inclusively. Those in favour? Those opposed? That is carried.

Shall schedule 16 carry? Those opposed? That is carried.

Moving on to schedule 17, 1 through 14, inclusively: We're dealing with them all at once. Those in favour? Those opposed? They're carried.

Shall schedule 17 carry? Those opposed? That is carried.

Now we're dealing with the insertions—

**The Clerk of the Committee (Mr. William Short):** We're going to go 1 to 11.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay. Schedule 18, sections 1 through 11, inclusively: Those in favour? Those opposed? That is carried.

Now we're going to government motion number 71.1: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 12(6) of schedule 18 to the bill be struck out.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any comments?

**Mr. Michael Prue:** Go ahead. If not, I would like some comments. I do believe this has something to do with the statement I made this morning about the nurses, does it not?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Somebody is going to come forward and answer that.

**Mr. David Zimmer:** Yes, just a second. I'm providing you with the best possible answers.

**Mr. Michael Prue:** That's the one I want.

1500

**Mr. David Zimmer:** If you would identify yourself and your position.

**Mr. Liam Scott:** Liam Scott, legal counsel, the Ministry of Health and Long-Term Care.

This provision would have purported to repeal subsection 71(3) of the Health Protection and Promotion Act, which would move certain qualifications for public health nurses from the statute to the regulations. So this motion would propose to repeal the repeal of subsection 71(3) of the act.

**Mr. Michael Prue:** And if this motion doesn't succeed and we go with the act, what happens then?

**Mr. Liam Scott:** If the motion is not approved and the section is passed, then the provision actually comes into force on a date by proclamation of the Lieutenant Governor in Council. There is another motion, I believe,

that would also deal with the repeal of the provision that indicates that this provision would come into force at that time.

**Mr. Michael Prue:** But what would happen to the nurses and their qualifications?

**Mr. Liam Scott:** The intent behind this provision is simply to—many of the qualifications of staff of boards of health are listed in the regulations, such as the requirements for medical officers of health, associate medical officers of health, public health dentists and public health nutritionists. This provision would move the current qualifications, which are stated in the statute, to the regulations. Obviously, a subsequent regulation amendment would be required to add them to the regulations.

**Mr. Michael Prue:** And until that took place, they'd have no requirements?

**Mr. Liam Scott:** No, that would not be the case, because subsection 71(2) states that unless qualifications are met that are specified, boards of health cannot hire people. Also, the provision only comes into force on the date that it is proclaimed by the Lieutenant Governor in Council. So until that proclamation takes place, the section is still in force and effect. Therefore, the statutory requirement for nurses to be part of the College of Nurses of Ontario would still be in force and effect until proclaimed.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further questions? Any further statements?

**Mr. Michael Prue:** There was a flurry of activities over the last day or so, trying to get this motion on, and my discussions with the ONA were that they were very desirous of getting it on. The difficulty that we were not able to move such a motion before this committee, given what had transpired in the House—I think this is a good lesson here, that the House was forced to go back—I believe there was all-party approval; there would have had to be—to seek unanimous consent to allow this motion to come forward. I'm glad it did, but be that and the same, I note that we have a gentleman here from the city of Toronto. He was not nearly so successful in getting the minister's ear, and the city of Toronto has an equally pressing matter which will not get before us today.

I think that too much speed was put into this bill. I congratulate the nurses for getting to the parliamentarians and for cooler heads having prevailed so that there was all-party agreement to allow this to come forward. I'm pleased to support it, but it is problematic to me how fast this bill has gone and the unnecessary speed, which might have caused us to make a very serious and glaring error.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Any further comments? Dealing with government motion 71.1: Those in favour? Those opposed? That is carried.

Shall schedule 18, section 12, as amended, carry? Those opposed? That is carried.

Schedule 18, dealing inclusively with sections 13 through 34: Those in favour? Those opposed? They are carried.



The new one you have is 71.2: schedule 18, section 35. Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 35(2) of schedule 18 to the bill be struck out.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That is carried.

We have a comment.

**Mr. Michael Wood:** Michael Wood, legislative counsel. I just wanted to make a comment about subsection 35(1) of the bill. I realize that because of the time allocation motion we cannot bring a further motion before this committee, but I'd just point out that there is a reference to subsection 35(2) in subsection 35(1), and ideally that should be taken out. I wanted to put this comment on the record and perhaps members of committee could indicate whether or not they agree that this is a good thing to do, recognizing that we don't have a motion that can actually do this.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Based on that comment, why don't we take five minutes.

*The committee recessed from 1505 to 1510.*

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay, we can call back to order again. We've had a chance to have some consultation.

During the recess, as a result of the consultations that have taken place—obviously a change needs to take place; legislative counsel advises it. They will make that change editorially and that's within their powers to do that. Any comments? None?

Shall schedule 18, section 35, as amended, carry? Those in favour? That's carried.

Shall schedule 18, as amended, carry? That's carried.

Moving on to schedule 19, sections 1 and 2, shall they carry? Those opposed? That's carried.

Shall schedule 19 carry? Those in favour? Those opposed? That is carried.

Moving on to schedule 20: no amendments on 1 through 6, inclusive. Those in favour? Those opposed? That is carried.

Shall schedule 20 carry? Those opposed? That is also carried.

Schedule 21, sections 1 through 7: We'll deal with them inclusively. All those in favour? Those opposed? That's carried.

Moving on to section 8, the first one. Mr. Shurman, number 72.

**Mr. Peter Shurman:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(14.1) Clause 33(4)(a) of the act is amended by adding ‘on or after June 1’ after ‘on any day’”.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Shurman. Speaking to it?

**Mr. Peter Shurman:** Yes. Shortening the election period by having the start date on June 1 of an election year as opposed to the beginning of January was recommended by the Association of Municipal Managers, Clerks and Treasurers of Ontario, AMCTO, and sup-

ported by AMO. AMCTO feels that this would still be ample time for the formal period to secure funds and it would reduce the drawn-out nomination process, because, as we all know, it is drawn out for a very long time as it is. That's the purpose.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Shurman. Further speakers?

**Mr. David Zimmer:** We're opposing this. Our view is that shortening the campaign period would reduce the time available to non-incumbents to get their names out and become known, and it will place the non-incumbents at a disadvantage relative to incumbent candidates.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Zimmer. Further speakers?

**Mr. Michael Prue:** What effect—either the mover or the government, which is opposed to it—would it have on incumbents being able to use that period beforehand to put out glossy brochures, if they have the money and stuff, particularly money that's left over from the previous campaign? I'm just wondering here—I know the city of Toronto will allow incumbents to send out householders up until August. That's a considerable advantage, which I think they're trying to do away with as we speak here today. How is this provision going to assist or not assist the provision that gives the incumbents the advantage up to June 1?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Zimmer, would you like to answer that or would you like somebody to come forward?

**Mr. David Zimmer:** I think it's—

**Mr. Peter Shurman:** I can respond from my perspective.

**The Acting Chair (Mr. Kevin Daniel Flynn):** I'm sorry, David. Yes.

**Mr. Peter Shurman:** To coin a phrase, incumbency has its privileges. We've got to draw a line somewhere, and we've stated clearly where we think that line should be.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none, let's vote on it. All those in favour? Those opposed? That motion loses.

Mr. Shurman, number 73.

**Mr. Peter Shurman:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(22.1) Section 45 of the act is amended by adding the following subsection:

“Professional development days in schools

“(1.1) Despite subsection (1), the clerk shall not establish a voting place in a school as defined in the Education Act unless the board as defined in that act having jurisdiction over the school has designated voting day as a professional activity day for the school under that act.”

It is understandable that schools are used as voting locations. They're often the centre points of neighbourhoods. They also have the facilities to allow for voting stations to be set up, mainly in the auditoriums. However, I can also appreciate the concern of parents that outsiders are coming into their children's school while their

children are there. I believe that school security has really increased over the years, and we've all heard some of the very disturbing stories. We really need to ensure that we do everything in our power to protect the safety of our children. It is for this reason that I suggest that we try to coordinate that a PD day, or personal development day, occur on the day of a municipal election. This would allow for municipalities to use the school as a voting location but also put the many concerned parents at ease that their children are not put in any potentially dangerous situations.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Speakers?

**Mr. David Zimmer:** We're not able to support this. We've heard from school boards. They've indicated that there are great difficulties in instituting a province-wide common professional activity day.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Prue?

**Mr. Michael Prue:** I have some difficulty with this as well, because it is very often difficult to find polling stations in locations. The average riding has 80 or 90 or 100 polling stations. It has to be accessible, it has to be visible, it has to be more or less in the centre of where the polls have been drawn, if at all possible, and to remove schools, which are the primary public places, makes it difficult because even if there is a church in the location, most of them wouldn't be accessible; or a Legion hall, which may not be appropriate either.

I do understand the safety aspect; I'm not going to deny that there is one. But, by and large, temporary barriers and security should be enough and have been enough in the past to provide security. Therefore, reluctantly, I cannot support this because I just think the logistics are far too difficult.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Are there any further speakers to this?

Seeing none, all those in favour? Those opposed? That motion loses.

Moving on to number 74, Mr. Prue.

1520

**Mr. Michael Prue:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(27.1) The act is amended by adding the following section:

“Prohibition: gifts and other advantages

“66.1(1) No candidate shall accept any gift or other advantage that might reasonably be seen to have been given to influence him or her in the performance of his or her duties and functions as an elected official, were the candidate to be elected, during the period that

“(a) begins on the day on which he or she becomes a candidate: and

“(b) ends on the day on which he or she is elected or on polling day in any other case.

“Exception

“(2) A candidate may accept a gift or other advantage that is given by a relative or as a normal expression of courtesy or protocol.”

If I could, by way of explanation, gifts of money including loans, property or services that are not used for a campaign, but that could influence a candidate if he/she is elected, must be prohibited as in the federal Canada Elections Act; they have the same provision. We think that the Ontario act should have a similar provision to make sure that no one can cast aspersions following the election.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Further speakers? Mr. Zimmer.

**Mr. David Zimmer:** We're unable to support this. Our position is that the wording is just far too vague. The standard, and I'm quoting from the standard, Mr. Prue's motion, “might reasonably be seen to have been given to influence him or her.” That's going to be difficult for candidates to interpret; it's going to be confusing to candidates and electors of candidates receiving campaign contributions of goods and the like. In effect, it's just vague and confusing.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Further speakers? Mr. Prue.

**Mr. Michael Prue:** If it is vague and confusing, it was taken, I think, almost word for word out of the Canada Elections Act; so I don't know. We tried to mirror it. It seems to be working there. It doesn't appear that the government is interested in stopping gifts of money, including loans, property or services.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Peter?

**Mr. Peter Shurman:** You can appreciate how hard it is, Chair, for me to get these words out, but I agree with the government's position on this.

**The Acting Chair (Mr. Kevin Daniel Flynn):** You get used to it after a while.

Any further speakers to this? Seeing none, all those in favour? Those opposed? That motion loses.

Number 75: Michael.

**Mr. Michael Prue:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(34.1) The act is amended by adding the following section:

“Restriction: age of contributor

“70.0.1 An individual is prohibited from making a contribution to or for a candidate unless the individual is at least 18 years old.”

The rationale for this: I think we all remember during the leadership contest for the federal Liberals that there was a certain candidate, Mr. Joe Volpe, whose contributions came largely from four- and five-year-olds.

That's true, because what happens is a parent gives thousands of dollars to four- and five- and six- and seven- and eight-year-olds, and says, “Give this money to Mr. Volpe,” or to any other candidate, because, quite literally, it could be anyone, and then that money, which is really from the parent and not from the child, ends up in the coffers of the campaign.

What this is intended to do is to say that a person must be of voting age. Now, we didn't say they have to be an

elector, because there are many people who cannot be electors. They could be prohibited from electing. They could be an immigrant who has not yet become a citizen. They could be literally anyone, and we want to open up that process and allow people who might not be allowed to vote, but we do think that they need to be adults. We do think that they have to have an age of reason, if they have that kind of money, that they would reasonably want to give it to a candidate, not be instructed to give it by his or her parent.

We want to make sure that what happened to Mr. Volpe, and in turn, what happened to the Canadian electoral process, is not something that happens here in Ontario in the future. We think this is a very important provision. It may seem rather funny, and indeed it was. I don't think it was that funny to Mr. Volpe—

**Mr. Peter Shurman:** Not that funny.

**Mr. Michael Prue:** Not to Mr. Volpe when he got discovered, but the public expects that loopholes such as this will be closed and that money won't be funnelled through children.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Further speakers?

**Mr. Michael Prue:** A recorded vote, please.

#### Ayes

Prue.

#### Nays

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Moving on to 76: Michael.

**Mr. Michael Prue:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(34.2) The act is amended by adding the following section:

“Prohibition: contributions from corporations, etc.

“70.0.2(1) The following persons and entities are prohibited from making a contribution to or for any candidate:

“1. A corporation that carries on business in Ontario.

“2. A trade union that holds bargaining rights for employees in Ontario.

“3. Any other organization that engages in activities in Ontario.”

“Same

“(2) Subsection (1) prevails over paragraphs 2 and 3 of subsection 70(3).”

By way of explanation, if I could, the federal government already has an identical provision, as do the provinces of Quebec and Manitoba. I'm not sure; there may be others as well. They have this provision in order to make sure that the electoral process is run and contributions are made by ordinary people, not people who

are seeking influence for their union or for their corporation. It is much easier to enforce than the \$5,000 limits that have been proposed in this bill, and much more effective.

The problem of developer domination of municipal councils has been well documented. There's a professor at York University, Professor MacDermid, who every year after election points out the amount of developer funding: a high, I believe, in Pickering, where Mr. Arthurs was once the mayor; followed very closely by the city of Vaughan; and then reaching its nadir in Toronto, where it's only some 17%. At least 50% of the 2006 municipal election donations in Pickering, Vaughan, Richmond Hill, Brampton, Oshawa, Whitby and Mississauga came from corporations and developers. A lot of people have problems with this. Candidates with developer backing are much more likely to win the elections, and we can see that that happened in literally every single location.

All of Ontarians have the right to fair and unbiased municipal election results that serve the interests of their communities, not private interests. Developer-beholden city councils are unlikely to ban corporate donations. We can see that's happening right across the province and even the difficulty a municipality like Toronto is having with its debate, which is going on as we speak, on this very issue.

Election financing laws in Manitoba and Quebec already ban union and corporate donations, while providing political parties with modest financial compensation based on the number of votes cast for party candidates.

The only rationale we have heard to date for the government party not going along with this came from Minister Watson, who stated that it would be hypocritical to ban corporate donations because they are allowed at the provincial level. With the greatest respect, I want them banned at the provincial level, too, but we have to start somewhere. If that's the only rationale for doing this, then it's not a good rationale.

The city of Toronto, the largest city in the province and the largest city in the country, as I've said, is trying to do exactly that, ban them so they can fall in line with what is happening federally and provincially in at least two other jurisdictions on our borders. In other words, because corporations are able to exert undue influence at the provincial level, they should be allowed to do so at the municipal level. Those who understand this do not believe that this is a good rationale.

We believe very strongly that the municipalities and later, in very fast course, the province also should ban them to put elections on a level playing field for all candidates. Otherwise, we might as well just sit here and rubber-stamp that people will be elected time after time after time and that incumbency, as my colleague Mr. Shurman said, has its privilege. The privilege is it's almost impossible for you to be beaten in an election.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers?

**Mr. David Zimmer:** Briefly, the proposed definition in this amendment includes “any other organization that

engages in activities in Ontario.” That’s too vague; that’s too drastic. The fact is, we’ve strengthened the transparency and accountability provisions here. Again, it is inconsistent with the provincial election finances, which do permit contributions by those groups. Thank you.

1530

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Zimmer.

**Mr. Michael Prue:** On a recorded vote.

**Ayes**

Prue.

**Nays**

Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. That motion loses.

Moving on to number 77: Michael.

**Mr. Michael Prue:** I move that subsection 71(2.1) of the Municipal Elections Act, 1996, as set out in subsection 8(35) of schedule 21 to the bill, be amended by striking out “\$5,000” and substituting “\$1,500”.

The rationale would be very simple: \$5,000 is too high, especially in small municipalities. We believe a \$5,000 combined total limit must be lowered to \$1,500 because in a small municipality—some of which only have five councillors or seven councillors plus a mayor or reeve—you can literally make the maximum donation to an entire council. We think that ought not to be allowed to happen, because it will ensure that the entire council is beholden to the person who has \$5,000 by financing large portions of literally everybody’s campaign.

The Canada Elections Act limits donations in any calendar year to a candidate for a particular election to \$1,000 in total: “in any calendar year to the registered associations, nomination contestants and candidates of a particular registered party.” Why should it be \$5,000 in a municipal election? I mean, it boggles my mind. So we are asking that the limit be reduced from \$5,000 to \$1,500, which is still well in excess of what is allowed nationally.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Mr. Zimmer?

**Mr. David Zimmer:** We’re unable to support this. Look, what this does is shackle a single contributor who could then only make a maximum contribution to two candidates. Another result here is that it would make it very difficult for non-incumbent candidates to raise money.

**Mr. Michael Prue:** On the contrary, I think that’s not the case. The contributor could still make it to whomever he or she wanted. I mean, that’s the reality. Five thousand dollars will literally, in most of the municipalities in Ontario, allow them to give money to the maximum—

which is \$750—to everyone. That’s the entire council looked after.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Any further speakers?

**Mr. Michael Prue:** On a recorded vote, please.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Moving on to number 78. Mr. Prue?

**Mr. Michael Prue:** Thank you very much. I can see that election reform is something that I’m going to have to work a lot harder on to actually ever see.

I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(36.1) The act is amended by adding the following section:

“Compliance with contribution limits

“71.1(1) This section applies for the purpose of ensuring compliance with the limits imposed by this act on contributions made to or for a candidate.

“Information

“(2) A candidate shall ensure that, for every contributor who is an individual, the following information is recorded and the record is kept:

“1. The name and business address of the contributor’s employer, if any.

“2. The name and business address of a trade union, if any, that holds bargaining rights for the contributor.

“3. The name and business address of any organization in Ontario with whom the contributor is affiliated.”

The rationale for this: Disclosure of the identity of each individual donor’s employer must be required. This is a requirement in US law, so that large corporations can’t hand out money to their employees and tell the employee, in turn, to donate the money to the party or candidate that the corporation is backing. It is to make sure that the money is not laundered down. So we are asking for the same thing.

The disclosure of each donor’s direct organizational affiliations must also be required to help ensure that corporations, unions and other organizations are not funneling donations through their employees, board members or members to fund candidates as a way of getting around the provisions that the government is attempting to somehow slightly modify.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Zimmer?

**Mr. David Zimmer:** We’re not able to support this. Clause 69(1)(f) requires a candidate to maintain all sorts of records relating to contributions. The requirement to

disclose an affiliation with any organization with whom the contributor is affiliated is too broad and too vague and in fact will raise various privacy concerns. It's just too vague and fuzzy here.

**The Chair (Mr. Kevin Daniel Flynn):** Any further speakers?

**Mr. Michael Prue:** A recorded vote.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Michael: number 79.

**Mr. Michael Prue:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(36.2) The act is amended by adding the following section:

“Prohibition: loans from corporations etc.

“75.1(1) The following persons and entities are prohibited from making a loan to or for any candidate:

“1. A corporation that carries on business in Ontario.

“2. A trade union that holds bargaining rights for employees in Ontario.

“3. Any other organization that engages in activities in Ontario.

“Exception

“(2) Subsection (1) does not prevent a bank or other recognized lending institution in Ontario from making a loan to a candidate or his or her spouse in accordance with section 75.”

The rationale for this is that loans to candidates from corporations, unions and all other types of organizations and loans from individuals must be limited to the same limits as donations, so that loans cannot be used to influence candidates.

This measure has not yet become federal law, but federal Bill S-6, section 6, proposes that the Canada Elections Act be amended to prohibit persons or entities from making a loan to a registered party or a registered association or from making a loan to a candidate, a leadership contestant or a nomination contestant in relation to the candidate or contestant's campaign or guaranteeing a loan. It will also prohibit official agents of candidates from borrowing money for the purpose of the candidate's campaign.

We are trying here to make this transparent so that people can donate and candidates can get money, but they have to get it from registered banks or other recognized lending institutions and not from individuals to whom they will subsequently be beholden. What is to stop somebody from giving a \$100,000 loan and then afterwards saying, “You don't have to pay me back”?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers?

**Mr. Michael Prue:** On a recorded vote, please.

**The Acting Chair (Mr. Kevin Daniel Flynn):** A recorded vote has been called for.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Chair (Mr. Kevin Daniel Flynn):** That loses.

Moving on to number 80: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 8(38) of schedule 21 to the bill be struck out and the following substituted:

“(38) Subsection 76(5) of the act is amended by striking out ‘paragraphs 3 to 9’ and substituting ‘paragraphs 3 and 5 to 8.2.’”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Mr. Prue?

**Mr. Michael Prue:** Yes. Can you tell me why the change? Is this a change of intent or a change of omission, something that was forgotten?

**Mr. David Zimmer:** I shall get you the best possible answer, Mr. Prue.

**Mr. Michael Prue:** Thank you.

**Mr. David Zimmer:** Identify yourself and your position.

**Ms. Sarah Hoffmann:** My name is Sarah Hoffman. I'm a senior policy adviser with the Ministry of Municipal Affairs and Housing.

This was actually a change in intent. Prior to this motion, audit and accounting fees would have been added to the list of excluded expenses. This would keep them from being expenses that don't count towards a candidate's spending limit.

**Mr. Michael Prue:** And how is it that you became aware that this was a problem for it to be added later?

**Ms. Sarah Hoffmann:** I believe that—was it a Mr. Nayman appeared before committee—

**Mr. Michael Prue:** Yes, he did.

**Ms. Sarah Hoffmann:** —he raised this issue.

**1540**

**Mr. Michael Prue:** Is the city of Toronto covered by this government motion? It says they have a different act.

**Ms. Sarah Hoffmann:** The city of Toronto elections are administered under the Municipal Elections Act. They don't have separate election legislation.

**Mr. Michael Prue:** The city of Toronto, as recently as a day or two ago, was trying to—it had to do with a compliance audit committee; I guess it wasn't exactly on point here, but wasn't able to get it in. That's okay. It's probably a slightly different matter—

**Ms. Sarah Hoffmann:** I can't speak to that. I'm sorry.

**Mr. Michael Prue:** So it was left out. Mr. Nayman brought this to our attention, and you saw fit to make the change.

**Ms. Sarah Hoffmann:** Yes.

**Mr. Michael Prue:** Okay, thank you.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none, all those in favour? Those opposed? That is carried.

Moving on to number 81: Mr. Zimmer.

**Mr. David Zimmer:** I move that clause 77(b) of the Municipal Elections Act, 1996, as set out in subsection 8(40) of schedule 21 to the bill, be struck out and the following substituted:

“(b) the supplementary filing date is the last Friday in September; and”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Mr. Prue?

**Mr. Michael Prue:** Again, the act also changes the election date to the last Monday in October—no, not the last; the fourth. What’s the rationale?

**Mr. David Zimmer:** It prevents the supplementary filing date from falling on a weekend. It’s consistent with the word of the original filing date: the last Friday in March.

**Mr. Michael Prue:** The last Friday in March?

**Mr. David Zimmer:** That’s what it was originally.

**Mr. Michael Prue:** Okay, but now it’s in September. I’m just trying to understand it, because it’s—

**Mr. David Zimmer:** All right. I can do the first part. It prevents the supplementary filing date from falling on a weekend.

**Mr. Michael Prue:** Okay, but is it perilously close to election day, or am I reading this wrong? Or is it the following year?

*Interjection.*

**Mr. Michael Prue:** It’s the following year. Okay, thank you.

**The Acting Chair (Mr. Kevin Daniel Flynn):** We’re all on the same page. All those in favour? Those opposed? That is carried.

Okay, 82: That’s yours, Michael.

**Mr. Michael Prue:** I move that subsection 79(9) of the Municipal Elections Act, 1996, as set out in subsection 8(44) of schedule 21 to the bill, be amended by striking out “with respect to the 2010 regular election and”

This has to do with the surplus funds. The government, in the bill, is quite adamant and correct that the surplus funds ought not to be carried over to the subsequent election, but they are making a differentiation to those funds that are currently in municipal accounts for the next election. Therefore, it will be wrong and illegal for candidates in the 2014 municipal elections to carry these funds over and have the advantage, but it will be okay for candidates in the 2010 municipal election to do precisely the same thing.

I also have difficulty because, up until this point, candidates can carry over funds from any subsequent elections. There are people in this province who ran as candidates and had a surplus and who either chose not to run or were defeated in the next election who carried on the

surplus again and again and again. And we have some very real and pronounced instances, including a member of this Parliament in the last Legislature, who registered as a candidate and immediately withdrew in order to protect those funds. He was not a candidate in the last municipal election and conceivably may be a candidate in this election and is carrying over funds from two elections ago—quite sizable funds—and I’m not sure that that is in the best interests of democracy.

I fail to understand why, if the government acknowledges that it’s a thing that has to be stopped, it can’t be stopped in this particular election and why we have to wait four years in order to have what I consider this odious practice stopped.

**Mr. David Zimmer:** We’re not able to support this. It’s not reasonable to have the rules on the utilization of campaign surplus funds—make a rule today and have the rule apply retroactively.

The fact of the matter is, the expectation of the candidate and the contributor at the time the money was contributed—say, in 2006—was that money not spent could be carried forward in 2010. So we can’t, in fairness, make the rules retroactive, but on a going-forward basis we’ve addressed the problem.

**Mr. Michael Prue:** There are candidates, if I could—at least one that I am aware of in the city of Toronto already has more money in the city account than he is legally entitled to raise in this election. Is that fair to anyone else who wants to take him on? You cannot agree it’s fair. Are you saying you don’t want to do anything about it because those were the expectations?

**Mr. David Zimmer:** There’s a general principle that you do not make laws retroactive. Otherwise, Mr. Prue, we could pass a law tomorrow saying that today it was illegal for male members of the Legislature to wear black suits. That wouldn’t be fair to you, would it? That’s the principle of laws not applying retroactively, because people have no way to, in hindsight, govern their relationship. So on a going-forward basis, we have addressed the problem. We’ve preserved the principle that laws ought not to apply retroactively.

**Mr. Michael Prue:** So what you’re suggesting is, we can have one last unfair election campaign? Is that what you’re suggesting?

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay. Any further speakers?

**Mr. Michael Prue:** On a recorded vote, please.

**The Acting Chair (Mr. Kevin Daniel Flynn):** A recorded vote has been called for.

**Ayes**

Prue.

**Nays**

Arthurs, Balkissoon, McNeely, Shurman, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Moving on to a Liberal amendment, number 83.

**Mr. David Zimmer:** I move that paragraph 2 of subsection 79.1(1) of the Municipal Elections Act, 1996, as set out in subsection 8(44) of schedule 21 to the bill, be amended by striking out “rule 1, 2, 3” and substituting “rule 2, 3”.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Speaking to the motion? No speakers. All those in favour? Those opposed? That is carried.

Moving on to number 84: David?

**Mr. David Zimmer:** I move that section 80 of the Municipal Elections Act, 1996, as set out in subsection 8(44) of schedule 21 to the bill, be amended by adding the following subsection:

“Notice of default

“(2.1) In the case of a default described in subsection (1), the clerk shall notify the candidate and the council or board in writing that the default has occurred.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers to this? Seeing none, all those in favour? Those opposed? That motion is carried.

Number 85: David?

**Mr. David Zimmer:** I move that section 80 of the Municipal Elections Act, 1996, as set out in subsection 8(44) of schedule 21 to the bill, be amended by adding the following subsection:

“Notice to clerk

“(3.1) If a candidate makes an application under subsection (3), the candidate shall notify the clerk in writing before 2 p.m. on the last day for filing a document under section 78 or 79.1 that the application has been made.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That is carried.

Number 86: David?

**Mr. David Zimmer:** I move that clause 81(12)(b) of the Municipal Elections Act, 1996, as set out in subsection 8(44) of schedule 21 to the bill, be struck out and the following substituted:

“(b) has the powers of a commission under part II of the Public Inquiries Act, which part applies to the audit as if it were an inquiry under that act.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That carries.

The final amendment to this section: David?

**Mr. David Zimmer:** I move that section 8 of schedule 21 to the bill be amended by adding the following subsection:

“(44.1) Clause 81(12)(b) of the act is repealed and the following substituted:

“(b) has the powers set out in section 33 of the Public Inquiries Act, 2009 and section 33 applies to the audit.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Mr. Prue?

**Mr. Michael Prue:** If I could ask the question again: Was this something that was in error or something that came out as a result of deputations or oversight?

**Mr. David Zimmer:** At the time the proposed new Public Inquiries Act, 2009, is proclaimed, this motion will also be proclaimed to update the cross-reference. It’s a very technical explanation. Do you want to hear anything else?

1550

**Mr. Michael Prue:** No. It was nothing to do per se with the Elections Act; it’s in order to make it in compliance with what we dealt with before on the Public Inquiries Act? Okay, thank you. That’s good enough.

**The Acting Chair (Mr. Kevin Daniel Flynn):** All those in favour? Those opposed? That’s carried.

Shall schedule 21, section 8, as amended, carry? Opposed? That’s carried.

Shall schedule 21, sections 9 through 13 inclusive, carry? Those opposed? They’re carried.

Shall schedule 21, as amended, carry? Those opposed? That is carried.

Moving on to schedule 22, section 1, shall schedule 22, section 1 carry? Those opposed? That’s carried.

Schedule 22, section 2: Mr. Shurman, number 88.

**Mr. Peter Shurman:** I move that clauses 31(3)(a), (b) and (c) of the Fish and Wildlife Conservation Act, 1997, as set out in subsection 2(15) of schedule 22 to the bill, be struck out and the following substituted:

“(a) a moose, woodland caribou or American elk; or

“(b) a white-tailed deer or other wildlife prescribed by the regulations, unless the person harasses, captures or kills the wildlife in accordance with the authorization of the minister.”

The reason for this is that we strongly oppose the minister’s authorization to issue kill permits for elk. We appreciate allowing landowners and farmers the ability to protect their property and livestock from nuisance animals using harassment techniques, but we are opposed to the issuance of kill permits for a recently reintroduced species of animal. It is especially alarming, considering that the MNR has not finished developing an elk management strategy for the province of Ontario. Future management options should first consider a controlled hunt for elk as a means to assist farmers and landowners, provide hunting opportunities for residents and to help stimulate revenues and local economies.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers to this? Mr. Zimmer.

**Mr. David Zimmer:** We’re opposed to this.

**Mr. Peter Shurman:** Really?

**Mr. David Zimmer:** The reintroduction of elk in Ontario has been a very successful program. In fact, there are now circumstances in which there is no need to control elk to protect property from damage. Landowners would be required to obtain a permit that would specify appropriate control. MNR believes that this is a reasonable measure to take at this time and yet does not preclude an elk hunting season being introduced at some point in the future.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Mr. Prue.

**Mr. Michael Prue:** I understand that this regulation also reinstates the prohibition on night hunting of American elk. Is that true?

**Mr. David Zimmer:** I need a technical answer on that.

**Mr. Michael Prue:** I know.

**Mr. Peter Shurman:** Well, I can't answer that question.

**Mr. David Zimmer:** Would you like me to? All right. We don't want to steal your thunder.

**Mr. Peter Shurman:** There are no elk in Vaughan and Thornhill.

**Mr. Michael Prue:** Although there are deer in downtown Toronto.

**The Acting Chair (Mr. Kevin Daniel Flynn):** If you'd identify yourself and your position.

**Mr. Chris Badenoch:** My name is Chris Badenoch. I'm counsel to the legal services branch of the Ministry of Natural Resources. What was the question?

**Mr. Michael Prue:** Is part of what is being put in this schedule the prohibition of night hunting of elk?

**The Acting Chair (Mr. Kevin Daniel Flynn):** That may not refer to this amendment, but it's a question that's going to be put, obviously, at some point during the discussion, if you want to answer it outside the frame of this amendment.

**Mr. Chris Badenoch:** No, the amendment actually ensures that the authorization that is possible under 31(3) is also possible at nighttime.

**Mr. Michael Prue:** You'd better explain that to me.

**Mr. Chris Badenoch:** Sorry.

**Mr. Michael Prue:** It is possible to hunt at nighttime, and therefore you can hunt for American elk at nighttime?

**Mr. Chris Badenoch:** The amendment to section 20 simply reflects the amendment to subsection 31(3), so that if a person receives an authorization in a case where they're anticipating damage to their property, the authorization could cover a person and allow them to harm, harass or kill an elk at night.

**Mr. Michael Prue:** So a person could get a permit to harm, harass or kill an elk at night?

**Mr. Chris Badenoch:** Right. The authorizations possible under 31(3) can extend into the evening, into nighttime.

**Mr. Michael Prue:** And the Ministry of Natural Resources or the minister can give that authorization?

**Mr. Chris Badenoch:** Yes.

**Mr. Michael Prue:** Okay.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay? The answer is yes. So, getting back to the amendment, are you speaking to the amendment?

**Mr. Michael Prue:** No, no. This is now to the member from Thornhill. The motion that you put—you put in the authorization to continue to allow a person, with authorization, to harass, capture or kill wildlife in accordance with this authorization. I guess you agree with that.

**Mr. Peter Shurman:** Yes.

**Mr. Michael Prue:** Okay. Killing animals at night—I don't know. I'm just worried more about the safety factor than anything else, but okay.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Okay? Any other speakers to amendment number 88?

**Mr. Michael Prue:** I do have to say I'm a little bit surprised that the American elk has rebounded so well. My parents had a house for many years, and I spent a lot of time around the Bancroft area, where the elk were reintroduced. I don't think they're all that plentiful, to date, that we can afford to take what was an endangered or extirpated species, in just a couple of years, and authorize their being shot at night, or any other time, at the behest of the minister. I do acknowledge that they would occasionally, from time to time, cause damage on farms or to crops, but I must say I'm really surprised they are existing in such numbers that we can start to get rid of them.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you, Mr. Prue. Any further speakers? All those in favour of the motion?

**Mr. Peter Shurman:** Recorded, please.

**Ayes**

Shurman.

**Nays**

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Amendment 88 loses.

Mr. Shurman, number 89.

**Mr. Peter Shurman:** I move that subsection 31(7) of the Fish and Wildlife Conservation Act, 1997, as set out in subsection 2(15) of schedule 22 to the bill, be amended by striking out "American elk."

**Mr. David Zimmer:** And it's the same affected—

**Mr. Peter Shurman:** It's the same.

**The Acting Chair (Mr. Kevin Daniel Flynn):** It appears to be. Any further speakers? It's the same. All those in favour?

**Mr. Peter Shurman:** Recorded.

**Ayes**

Shurman.

**Nays**

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That loses.

Moving on to number 90, Mr. Shurman.

**Mr. Peter Shurman:** I move that subsection 2(17) of schedule 22 to the bill be struck out.



**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any speakers to it?

**Mr. Peter Shurman:** Yes. This speaks to the same as what we mentioned before.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. A recorded vote?

**Mr. Peter Shurman:** Yes.

### Ayes

Shurman.

### Nays

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. That loses.

Moving on to number 91: Mr. Shurman.

**Mr. Peter Shurman:** I move that subsection 2(30) of schedule 22 to the bill be struck out.

I will just briefly mention that Bill 212 adds an enabling paragraph to the Fish and Wildlife Conservation Act for a minister's regulation relating to the feeding of wildlife. Our motion for schedule 22 amends Bill 212 by removing the paragraph, because we are opposed to any future regulation that obstructs hunting or limits hunting opportunities while serving no beneficial conservation purpose.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Any further speakers?

**Mr. Michael Prue:** Perhaps the government or someone can explain this to me. It seems to me logical that a minister or the MNR would be able to prohibit the feeding, as an example, of bears in a particular location, because bears start to lose their fear of people and start wandering into towns like Sudbury and Timmins. When you travel with the finance committee, you often get people who come out and say something has to be done about that. Is that the intent, that the minister would continue to be able to prohibit the feeding of wildlife where that will cause the wildlife to come into proximity with human habitation and invariably end up getting killed? Is that what this is about?

1600

**Mr. David Zimmer:** Let me have a go and then you might want to expand on it.

We're opposed to this. Here is some reasoning: The amendment, as originally proposed in Bill 212, provides a regulatory authority to control the feeding of wildlife in circumstances where the health or sustainability of wildlife is compromised or where there is a public safety issue. Feeding of wildlife can lead to the congregation of animals and could consequently result in the spread of contagious wildlife diseases. This amendment, as originally proposed in Bill 212, is necessary to provide a tool to limit and control the feeding of wildlife in unique circumstances where animal health or public safety is at risk.

**Mr. Michael Prue:** But could include bears?

**Mr. David Zimmer:** Expert?

**Mr. Chris Badenoch:** Yes.

**Mr. Michael Prue:** Okay, thank you.

**Mr. David Zimmer:** It sounds reasonable.

**Mr. Michael Prue:** Then I understand what it's for. Okay.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Are there any further comments on number 91? All those in favour?

**Mr. Peter Shurman:** Recorded voted.

### Ayes

Shurman.

### Nays

Arthurs, Balkissoon, McNeely, Prue, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That loses.

Shall schedule 22, section 2, carry? Those opposed? That's carried.

Moving on to schedule 22, section 3 through—

*Interjection.*

**The Acting Chair (Mr. Kevin Daniel Flynn):** Schedule 22, section 3, amendment 92: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 5(1) of the Forest Fires Prevention Act, as set out in subsection 3(5) of schedule 22 to the bill, be struck out and the following substituted:

“Officer's right of entry

“(1) Subject to subsection (2), an officer may enter into and upon any lands and premises for the purposes of this act or for the purpose of inspecting the site of a fire to determine its cause and circumstances.”

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That is carried.

Shall schedule 22, section 3, as amended, carry? Those opposed? That's carried.

Shall schedule 22, sections 4 through 10 inclusive, carry? Those opposed? That is carried.

Schedule 22, section 11, amendment number 93: Mr. Zimmer.

**Mr. David Zimmer:** I move that subsection 27(5) of the Surveyors Act, as set out in subsection 11(43) of schedule 22 to the bill, be amended by striking out “subsection (2)” and substituting “subsection (6).”

This corrects a drafting error.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any speakers? Seeing none, all those in favour? Those opposed? That is carried.

Shall schedule 22, section 11, as amended, carry? Those in favour? Those opposed? That is carried.

Shall schedule 22, section 12, carry? Those opposed? That's carried.

Shall schedule 22, as amended, carry? Carried.

Moving on now to schedule 23, we can do 1 through 9. All those in favour? That's carried.

Shall schedule 23 carry? Those opposed? That is carried.

Shall all of schedule 24, sections 1 through 7 inclusive, carry? Carried.

Shall schedule 24 carry? Those opposed? That's carried.

Schedule 25, 1 through 6 inclusive? Those opposed? Carried.

Shall schedule 25 carry? Those opposed? That's carried.

Shall schedule 26, sections 1 and 2 inclusive, carry? Those opposed? That's carried.

PC motion number 94 on schedule 26, section 3: Mr. Shurman.

**Mr. Peter Shurman:** I move that subsection 3(14) of schedule 26 to the bill be struck out.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Thank you. Speaking?

**Mr. Peter Shurman:** Yes. The intent of section 215 of the Highway Traffic Act is to allow judges the option to suspend a fine in whole or in part on the condition that the person completes a driver improvement program. There is no reason to repeal this section, thereby removing that option for judges. Section 215 is intended to produce better drivers by allowing judges the option to impose a penalty of completing a driver education course instead of a fine or part of a fine for specific driver infractions. To repeal it is to take away the judge's option and the judge's discretion in seeking to improve driver skills.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers?

**Mr. David Zimmer:** We're unable to support this amendment. The bill deletes section 215 of the Highway

Traffic Act, which sets up an alternative disposition of some traffic offences through driver improvement programs. The PC motion would retain that potential program. But here are the facts of the matter: The driver improvement program is no longer in use. Including it within the Highway Traffic Act is no longer needed. Further, the provision was only authorized for use in the city of Toronto and, in fact, is no longer in use there.

**The Acting Chair (Mr. Kevin Daniel Flynn):** Any further speakers? Seeing none, all those in favour?

**Mr. Peter Shurman:** Recorded, please.

#### Ayes

Prue, Shurman.

#### Nays

Arthurs, Balkissoon, McNeely, Sousa, Zimmer.

**The Acting Chair (Mr. Kevin Daniel Flynn):** That motion loses.

Shall schedule 26, section 3, carry? It's carried.

Schedule 26, sections 4 through 9, inclusive: Shall they carry? Carried.

Shall schedule 26 carry? Carried.

Okay. At the start, we set aside sections 1, 2 and 3. Shall sections 1, 2 and 3, inclusive, carry? That's carried.

Shall the title of the bill carry? Carried.

Shall Bill 212, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? That's carried.

Thank you. We are adjourned.

*The committee adjourned at 1605.*



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