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Thursday 23 February 2017

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Jeudi 23 février 2017

Standing Committee on Justice Policy

Aggregate Resources and Mining Modernization Act, 2017

Comité permanent de la justice

Loi de 2017 sur la modernisation des secteurs des ressources en agrégats et des mines

Chair: Shafiq Qaadri
Clerk: Christopher Tyrell

Président : Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 23 February 2017

Jeudi 23 février 2017

The committee met at 0907 in committee room 1.

The Clerk of the Committee (Mr. Christopher Tyrell): Good morning, honourable members. It is my duty to call upon you to elect an Acting Chair. Are there any nominations? Mr. Colle.

Mr. Mike Colle: With the leave of the committee, I'd like to nominate the honourable Bob Delaney, MPP from Mississauga–Streetsville, for Acting Chair.

The Clerk of the Committee (Mr. Christopher Tyrell): Does the member accept the nomination?

Mr. Bob Delaney: Delighted.

The Clerk of the Committee (Mr. Christopher Tyrell): Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr. Delaney elected Acting Chair of the committee.

The Acting Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen. I'd like to inform members that Tuesday's change in committee memberships has created a vacancy on our subcommittee on committee business. We need a motion for someone to replace Mr. Hillier as the PC representative on the subcommittee. Would someone like to move that motion? Mr. MacLaren.

Mr. Jack MacLaren: I would move that Bill Walker replace Mr. Hillier on the subcommittee.

The Acting Chair (Mr. Bob Delaney): Mr. MacLaren has moved that Mr. Walker replace Mr. Hillier on the subcommittee. Are there any further nominations? Any debate on that? All those in favour? Carried. Thank you.

AGGREGATE RESOURCES AND MINING MODERNIZATION ACT, 2017

LOI DE 2017 SUR LA MODERNISATION DES SECTEURS DES RESSOURCES EN AGRÉGATS ET DES MINES

Consideration of the following bill:

Bill 39, An Act to amend the Aggregate Resources Act and the Mining Act / Projet de loi 39, Loi modifiant la Loi sur les ressources en agrégats et la Loi sur les mines.

GRAVEL WATCH ONTARIO

The Acting Chair (Mr. Bob Delaney): This morning, our first deputation will come from Gravel Watch Ontario. Would the representatives for Gravel Watch Ontario please come forward. We'll have 10 minutes for your presentation, after which there will be nine minutes for questions, split evenly among the caucuses. Please introduce yourselves for Hansard and proceed.

Mr. Graham Flint: Good morning. My name is Graham Flint. I'm with Gravel Watch Ontario.

Mr. Chair, committee members and fellow hearing attendees, as introduced, my name is Graham Flint, and I have the honour to serve as the president of Gravel Watch Ontario.

Gravel Watch Ontario acts in the interests of residents and communities to protect the health, safety and quality of life of Ontarians as well as the natural environment in matters that relate to aggregate resources.

We are a coalition of coalitions, with individual and group members from across Ontario. Collectively, we advocate on behalf of thousands of Ontarians whose lives and communities have been impacted, or will be impacted in one way or another, by an aggregate pit or quarry.

Because we are a grassroots organization, Gravel Watch Ontario has its ear to the ground when it comes to the perspectives and concerns of those living in aggregate-producing regions throughout the province.

Let me start by thanking you for allowing me to appear before you today regarding Bill 39, An Act to amend the Aggregate Resources Act and the Mining Act. It has been a very long road thus far, and we are glad to now be dealing with the first legislative deliverable from the ongoing Aggregate Resources Act, or ARA, review process.

The commitment, by the way, to do the ARA review was announced on the front lawn of a Gravel Watch Ontario member back in the fall of 2011. In 2012-13, we participated in the tri-party standing committee stakeholder hearings and the resulting report. In 2014, a government response paper was released, and we participated as a key stakeholder in those consultations. In 2015, the Blueprint for Change document was released, and we once again participated as a stakeholder in those processes. Now, in 2017, we are participating in the hearings on Bill 39, the first piece of legislative or regulatory change.

The point of that quick review was to set the stage for the theme of our comments today. It is time to get on with the long-overdue changes to Ontario's regulatory

environment as it relates to aggregates. The current regulatory environment is outdated and does not reflect current societal realities or expectations, and while we may differ on what kinds of changes we may want to see, almost all stakeholders—government, industry and the public alike—have voiced their perspective that there is both opportunity and need to improve on the status quo.

The Blueprint for Change document that I mentioned earlier provides a vision for improving how aggregates are managed in Ontario. Legislative and regulatory improvements in the theme areas covered by the document, namely stronger oversight, environmental accountability, improved information and participation, and updated and equalized fees and royalties, will go a long way to improving the status quo. As such, Gravel Watch Ontario supports the Blueprint for Change document proposals.

Bill 39 is the first step towards realizing the blueprint document. Bill 39 is an enabler. It removes barriers to implementing the proposed changes and provides for the mechanisms to implement the blueprint proposals. What it does not do, however, in any significant way is actually implement them.

We respectfully predict that this will be a common theme that you will hear from stakeholders during your hearings. Like the famous 1980s Wendy's hamburger commercial, after reading the bill, many of us were left wondering, "Where's the beef?"

We understand that the government is still committed to the blueprint proposals. We understand that supporting regulations, policies and procedures will be brought forward to implement the blueprint vision in the future. And we understand that there is a sequencing that is required, that revisions to regulations, policies and procedures cannot be implemented without first providing for an enabling and permissive legislative framework.

Our disappointment, though, is that those proposed substantive instruments have not been shared for our consideration at the same time as the bill itself. As the expression "the devil is found in the details" reminds us, only once all the words are on the page and a wide range of varied scenarios have been evaluated against them will we fully understand what any new proposals will be delivering.

Furthermore, some of the enabling provisions in Bill 39 are creating uncertainty without the existence of the supporting provisions. As an extreme example, I want you to consider section 7(1) of the existing Aggregate Resources Act. It basically states:

"7.(1) No person shall, in a part of Ontario designated under section 5, operate a pit or quarry on land that is not land under water and the surface rights of which are not the property of the crown except under the authority of and in accordance with a licence."

The Bill 39 proposed changes to section 7 include the following language as a new section 1.1:

"(1.1) Despite subsection (1), a person who meets the qualifications that may be prescribed may operate a pit or quarry that meets the prescribed criteria on land described in subsection (1) without a licence if the person does so in accordance with such terms or conditions that may be prescribed."

The original text made it very clear that no one can operate a pit or quarry without a licence, and that that licence would force the operation to be in accordance with its terms. The proposed Bill 39 language indicates that a pit or quarry may be operated by a person who meets prescribed criteria without a licence, as long as they do it in accordance with such terms and conditions that may be prescribed. Similar language exists regarding permits for pits and quarries on crown lands. So with Bill 39, we can no longer run under the assumption that all pits and quarries will have a licence or permit issued under the Aggregate Resources Act.

From discussions with the ministry, we understand that this provision is meant to deal with real-life but non-typical scenarios where, for example, major emergency road repairs are required in a remote location that calls for the timely removal of aggregate material from, for example, a wayside pit in order to get that roadway back in service. The bill's provisions provide a way to enable that work without having to go through the standard time-consuming licensing process, which would be unacceptable in this scenario.

Gravel Watch Ontario accepts such a need, and even such an approach to meeting that need, but the devil is truly in the details. Depending on what the prescribed criteria, terms and conditions actually are, our perspective on whether this bill's provisions would be acceptable or not and our opinion could change radically.

There are numerous examples of this contained within Bill 39. In several places, the language of Bill 39 is explicitly clear about the dependency on these yet-unseen regulations. Those sections typically state that something will be either prescribed, permitted or prevented by the regulations yet unseen.

In most situations, we have been led to believe through discussions, these provisions exist to provide flexibility in order to deal with the complexities of our modern, fast-paced society. Once again, our members accept that, but our message to you today is to ensure that the required supporting regulations, policies and procedures are defined as soon as possible and that, most importantly, they stay true to the commitments and the intent of the original blueprint document.

Bills and regulations are real and enforceable. The A Blueprint for Change document is directional and aspirational. Until that proposal is codified into law, we really have no impact.

That brings me back to my opening comments regarding the timelines of this review. The ARA review started in 2011. It is now 2017, and even with Bill 39, real changes required to the aggregates regulatory framework will not be manifesting themselves on the ground in the communities hosting these environmentally and socially intrusive industrial operations for some time to come. We need changes today.

Gravel Watch Ontario routinely receives calls from distraught Ontarians who feel that they're being am-

bushed by the prospect of an industrial pit being established in their communities. When they reach out to their local municipalities for support and reassurances, they are often told that aggregate sites are a provincial priority and that there is nothing their local government can do about it. While this is not technically true—the existing regulatory framework gives municipalities a significant role in determining where aggregate operations are established—it is unfortunately an accurate representation of what actually happens. Very few municipalities have the expertise, financial resources or will to take on the issue.

But the potential threats associated with aggregate operations are real. Impacts on fundamental matters such as clean air to breathe, clean water to drink and unencumbered use of local roadways are real and are important to people. In the end, many of these residents take on the issues themselves and invest precious family time and limited family resources to protect their rights to a life not unreasonably negatively impacted by an industrial neighbour next door.

We need comprehensive aggregate policy reform urgently. There is much work to be done. Outdated preferential aggregate polices exist in so many regulatory instruments in Ontario. There are provisions in the provincial policy statement that give rise to concerning land-use decisions. There are industry exemptions in several pieces of the Ministry of the Environment and Climate Change regulations. A true review of the aggregate regulatory framework in Ontario will not be completed until these and other pieces of legislation are considered as a whole. The Aggregate Resources Act—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Graham Flint: —while a major component, is only one piece of the puzzle.

We need to start thinking long-term when it comes to planning for aggregates in Ontario. Overly simplistic approaches like an emphasis on close-to-market, while rational in the short term, are unsustainable in the longer term. Eventually, there will be no more close-to-market supplies to rely on. Where will aggregate come from then? We need to start planning for that today.

Provisions that provide for "no need to show need" when it comes to the proposed aggregate sites, while implicitly acknowledging that aggregates are important to a high quality of life for Ontarians, have contributed to excessive disturbances of the natural environment to support competitive for-profit corporations rather than providing for a rationalized supply-and-demand-driven aggregate availability across the province. These are examples of the big themes that remain unaddressed and still need to be done.

In conclusion, let's get the blueprint document proposals fully implemented in a timely way, and then let's continue to work on this file together, to tackle the big challenges that we still have ahead of us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Flint. I enjoy your name, by the way: Mr. Flint representing Gravel Watch.

We'll begin our questions with the PC side: Mr. MacLaren. Three minutes.

Mr. Jack MacLaren: Mr. Flint, could you sum up what are your major concerns with this legislation, and maybe specifically with quarries—

Mr. Graham Flint: In terms of Bill 39, we're very supportive of it, because we do believe in the Blueprint for Change document that was produced by the government, and the steps that they're taking forward to improve the situation.

Our message to you today is that it's hard to evaluate Bill 39, because it's missing some of the details that really will demonstrate its impact. But more importantly, our message is that there are other issues that still need to be addressed.

A lot of the challenges that Ontarians are facing with the aggregate file come out of instruments like the provincial policy statement and like some of the exemptions that the industry enjoys under some of the MOECC regulations. Those things need to be addressed as well, before we'll have real aggregate reform in Ontario.

Mr. Jack MacLaren: Is there anything else you'd like to expand upon and tell us?

Mr. Graham Flint: The only other big message is that Gravel Watch Ontario was formed out of these grassroots organizations who were upset by the prospect of these industrial operations coming into their communities. But we've evolved the organization to one that wants to be a productive and substantive participant in the solution.

We understand the importance of aggregate. We're not anti-aggregate as an organization. We know we need it. It supports the quality of life that we all enjoy. But it needs to be done in a responsible way.

There's this funny schism where the regulatory environment has a preferential, pro-aggregate policy to it, but yet it is a capitalistic, commercial marketplace when it's implemented. That creates imbalances into it. If we are going to create special policies, we need to have special regulatory environments as well. There's an imbalance now.

0920

Mr. Jack MacLaren: Thank you.

Le Président (M. Shafiq Qaadri): Merci beaucoup, monsieur MacLaren. Maintenant, je passe la parole à M. Bisson : trois minutes.

Mr. Gilles Bisson: Just two simple questions: Obviously, from what you're saying, you support the need for change—fair enough?

Mr. Graham Flint: That's true.

Mr. Gilles Bisson: But the need for change is not met in this legislation, as far as certainty.

Mr. Graham Flint: The legislation will not create change. It creates an enabling environment for change yet to come.

Mr. Gilles Bisson: Which bring me to my before-last question—I actually lied; I'm allowed to do that—are you worried that all of this is actually left to regulation? Who knows what a future minister may do?

Mr. Graham Flint: In my trembling moments at night, that's exactly what I'm worried about.

Mr. Gilles Bisson: If you were advising me to vote for or against this legislation—if it was not amended, would you vote for or against?

Mr. Graham Flint: We've had that tough discussion. At this point in time, we would like to move forward.

Mr. Gilles Bisson: Even with it?

Mr. Graham Flint: Even with the risk of it not being done. We believe that the issue that we're dealing with here, and the rationale of the proposals that are behind this, is policy that justifies itself.

We need to move forward. I wish there was more substance in here, but I accept the wisdom that we need a more nimble way to manage this file. As a result, doing it in regulations is acceptable.

Mr. Gilles Bisson: It bugs me that the Legislature has essentially given up its responsibility by allowing cabinet to write regulation the way it does. I think that it just makes for very bad politics and very bad legislation.

Mr. Graham Flint: It certainly is very concerning.

Mr. Gilles Bisson: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson.

To the government side: Mr. Colle.

Mr. Mike Colle: Thank you, Mr. Flint. I guess that I agree with you. It's been a long, long road since 2011. I remember that you appeared before the committee.

Mr. Graham Flint: We did.

Mr. Mike Colle: Where was it? What stop did you appear at?

Mr. Graham Flint: In Toronto, probably in this room.

Mr. Mike Colle: Oh, you did it in Toronto? As you know, we went up to Manitoulin. We went all over this beautiful province.

The question I have is—as you know, in a lot of local communities across Ontario, we found there was opposition to aggregate extraction and the impact on roads and air quality and whatever it is.

But what I find strange is, when I asked every municipality that I went to, "Why does your municipality refuse to use recycled aggregate when you're rebuilding your roads? If you want to have less aggregate impact, start using recycled materials. You have MTO using up to 30% recycled aggregates when they do their roads. So if it's good enough for the 401"—it's still a mystery to me. I've asked our staff. I've asked Ken Seiling in Waterloo to get me some information why municipal engineers refuse to use recycled aggregates, which would lessen the impact. Can you shed any light on this mystery?

Mr. Graham Flint: First of all, I want to reinforce your point. They need to be using more. It would certainly reduce the amount of virgin aggregate, if I can use that term, that we would need to dig out of the ground. It is something that we should be striving toward.

There is some rationale behind it, though. One of the reasons that the province can do what they do on the MTO 400-series highways is they segregate their recycled asphalt. They know that it was high-quality to start with. A lot of the resources that the municipalities have access to could be dug up from a tennis court. It was not high-quality road asphalt to start with. We need to do a better job on the waste stream to do that.

I also think that there might be a role to provide some incentives to get the municipalities to do it. You'll be hearing from Brian Messerschmidt, who represents the ARO, later this afternoon. It's one of the things that Brian and I are working together on to try and work on that issue.

There's another side to recycling, though. Since you've opened the door, I'm going to take an opportunity to walk through it. The industry seems to be very much trying to get a birthright, if you will, to do aggregate recycling in all of their existing operations. One of the things on which we have to be very careful, as we move forward to do more and more recycling, is that recycling is an industrial process that needs to be done in the appropriate industrial siting, which isn't necessarily in the rural community where the virgin resource is being extracted.

Brian and I are on the same page when it comes to promoting the use of the product—and I think you are as well—but on the production of the product, unfortunately I do diverge with my industry colleagues and say that we need to find a different way to do that. It doesn't go back into the original pits.

Mr. Mike Colle: The other thing that is in this legislation—

The Chair (Mr. Shafiq Qaadri): With apologies, Mr. Colle. Thanks to you, Mr. Flint, for your deputation and presentation on behalf of Gravel Watch Ontario.

ONTARIO STONE, SAND AND GRAVEL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll now invite our next presenters to please come forward on behalf of the Ontario Stone, Sand and Gravel Association. Gentlemen, your written submission is being distributed. I invite Mr. Cheesman, Mr. Bisson and Mr. Hanratty. Please be seated. Do introduce yourselves. You've seen the drill: 10 minutes off the top, and rotation questions. Please begin now.

Mr. Norman Cheesman: Good morning, everybody. Ladies and gentlemen, my name is Norman Cheesman. I am the executive director of the Ontario Stone, Sand and Gravel Association, or OSSGA. With me today is Dave Hanratty, who is director of land and resources with CBM Aggregate and also a member of OSSGA's board of directors. We appreciate the opportunity to appear before you today to present our views and recommended amendments to this bill.

OSSGA's member-producers represent roughly two thirds of the 164 million tonnes of aggregate that is extracted and produced in this province each year.

Whether we realize it or not, we are all users of aggregate in some form or another. Aggregate built the homes we woke up in this morning. It's used to build all types of vital infrastructure, like roads and bridges and sewers, as well as important components in the new homes and condos going up across the city. In fact, when you brushed your teeth this morning, you were using some aggregate, believe it or not.

The amount of aggregate that producers extract and truck each year is driven strictly by demand. This demand for high-quality aggregate is growing, as noted earlier, as governments recognize the need to both maintain existing infrastructure and replace and build new infrastructure.

Bill 39 is enabling legislation that will provide new powers to the minister and set the stage for new regulations, standards and policies which will be developed over the course of the next few months. It is crucial, therefore, that the legislation include language to forestall any unintended consequences in the future. In that respect, we have identified in these remarks this morning three key areas we'd like to address.

The first area of concern is section 62.4, which gives the minister the authority to direct existing licensed sites to conduct and submit reports.

Producers invest hundreds of thousands of dollars, and sometimes millions of dollars, to secure an aggregate licence. Years of research and consultation—it's a process that can take several years, sometimes up to 10 years, depending on the size of the site. That investment of time and money is steep, but companies are willing to do it because at the end of the day, they have a licence that secures their right to extract that resource. From a financial point of view, this investment is reflected as an asset on the balance sheet. Therefore, investor confidence regarding the future of the company is based on those assets. Our position is that 62.4 potentially threatens to undermine that confidence.

What's driving this issue, we think, is public pressure for government to reconsider an aggregate licence when a previously non-operational parcel of site goes into operation.

We recognize that over the course of time, the natural environment on a non-operational licensed site can change. For example, new woodlots grow or, in rare instances, a new wetland may even form. Allowing MNRF, the Ministry of Natural Resources and Forestry, to require studies of existing licensees over time, as land use and natural features change, is actually a disincentive to maintaining the licensed reserves in their natural state and minimizing the disturbed area.

OSSGA strongly believes that there are appropriate safeguards already in place to properly manage sites with older approvals. The reality is that before a producer can begin operations in these situations, up-to-date permits and environmental approvals must be secured. Endangered species regulations must be complied with, regardless of the status of the licence. Furthermore, the ministry already has the authority to amend site plans through a process that provides a reasonable degree of protection for licensees.

The net effect of section 62.4 is to introduce uncertainty into the value of an aggregate licence while providing little or no public benefit.

Our preferred solution, Mr. Chairman, is that 62.4 be deleted altogether. In the event that does not happen, however, if the section does remain, then at a minimum, a provision should be added to ensure that the minister makes the direction only if there is a proven scientific basis for concern, and that a provision be made that in no case shall the existing licensed reserves be reduced as a result of anything required to be done under that section.

0930

Our second concern is with respect to tonnage and recycled material. Bill 39 proposes to control the amount of aggregate leaving a site in a year by including all aggregate and recycled aggregate in the annual tonnage limit. As drafted, however, OSSGA is very concerned about the definition of "aggregate" under section 71.1. Specifically, we believe the inclusion, under the definition of aggregate, of recycled aggregates will discourage recycling. This would be contrary to the provincial policy statement and to the principles of greater environmental stewardship.

We're concerned that this part of the bill will capture other materials leaving the site that have not previously been considered in the tonnage limit. By way of example, currently, operators only include virgin aggregate in their tonnage counts leaving the site. At some sites, there is significant material that is imported for blending to create additional products, or used as input materials for asphalt and concrete plants. Operators do not currently consider this imported material as part of their annual tonnage leaving the site. If not corrected, this will result in double counting of tonnage for the purposes of tracking fees as well as the amount of aggregate that can be extracted under the terms of the licence.

I realize this is a complicated issue, Mr. Chairman, but there are several implications with the way the subsections of section 71 are worded. Here are our recommendations:

(1) Amend clause 71.1(2) to change the word "removed" to "extracted" from the site to address the issue of input product going from site to site as it is blended into a final product;

(2) Amend the definition of "aggregate" in section 71.4(4) to clearly state that it is the amount of aggregate extracted from that site that counts towards the tonnage limit. We also recommend that Bill 39 be expanded to include a separate clause to allow recycling to occur in all licensed pits and quarries.

Our third priority issue relates to section 3.1, which states that for greater certainty, the minister will consider "whether adequate consultation with aboriginal communities has been carried out."

We recommend that this section be amended to delete the term "adequate" and insert the phrase, "in accordance with the regulations where an application for a licence or

permit has the potential to adversely affect established or credibly asserted aboriginal or treaty rights." This will provide the opportunity in regulation to provide an understanding of what an adequate consultation process would entail, without enshrining in legislation a term that has not been defined.

I realize our time is short, ladies and gentlemen. We identified a number of additional recommendations in our November 2016 submission that address issues like enforcement and oversight, peer review of technical studies, enhanced environmental accountability, improved information and participation and, very important, the need for updated and equalized fees and royalties.

With respect to fees and royalties, several years ago, OSSGA, in concert with TAPMO, the Top Aggregate Producing Municipalities of Ontario, called for a substantial increase in the tonnage fees, subject to several conditions which we believe should accompany such an increase, the rationale being to support infrastructure development at the municipal level, provide more funding for these non-operational sites and also for more enforcement by the ministry itself. It's an industry we'd like to see more enforcement on, believe it or not. You don't hear that from many industry associations, but we'd like to see it.

Although we do not have time to go over all these conditions, the main one, from our perspective, is that any additional funds raised this way should not go into general revenues, but rather be collected and administered by a delegated administrative authority, a DAA. I realize that's not the subject of this bill, but we have identified that in our brief.

For the benefit of members and staff, in addition to my remarks this morning and the package I've left with you—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Norman Cheesman: —we have left a copy of our brief to the ministry in response to the consultation period last fall, which outlines a number of other additional recommendations which we would propose to you. In addition, we've also laid out some specific wording changes that we have proposed for the bill, as well as including the rationale.

I agree with the previous speaker. This has been a long time coming. We've waited a number of years for this. We welcome this opportunity. We thank you very much for the opportunity to be here and look forward to any questions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Cheesman. To Mr. Bisson.

Mr. Gilles Bisson: I guess the same question: Everything is really left to regulation; any minister in the future can do whatever they want. Is this something that troubles you or something you can live with?

Mr. Norman Cheesman: Well, I guess that is the reality of the way in which government is done today. We have ongoing and very good relationships with ministry staff. We have made already a number of recommendations to them that you've heard today.

We would have liked to have seen more substantive things in this bill, but that's what we have in front of us, so we'll deal with that as it comes—

Mr. Gilles Bisson: So you could live with it in its current form?

Mr. Norman Cheesman: Yes, we can—with the amendments we've proposed.

Mr. Gilles Bisson: Having dealt with a number of people on both sides of the issue of quarries, like all members—we deal with that on a semi-regular basis—the thing that I always hear from the operators is that we need certainty. This doesn't provide certainty, so I'm a little bit surprised by your position.

Mr. David Hanratty: With respect to what we have before us, with the amendments that we've proposed, it will provide the industry with enough certainty that the follow-up regulations will get to the bones of what needs to be done for the industry.

Mr. Gilles Bisson: Be careful of what you ask for.

That's it. I'm done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. To Madame Vernile.

Ms. Daiene Vernile: Good morning, gentlemen. Thank you very much for coming and appearing before this committee and sharing your views with us.

Early on in your presentation, you expressed some concerns about the minister's power to direct existing sites. The new provisions are not going to change use on existing rules; they're going to ensure that the right information is going to be available to inform decisions. This is also going to apply to new applications as well as operations that want to expand. Can you tell us why you believe it is that such additional information wouldn't be helpful in decision-making?

Mr. David Hanratty: I think that the main issue that we have is with respect to existing sites that have a licence and opening up those sites to further study when costs have already been incurred, largely by the companies, to get those licences in place. As Mr. Cheesman spoke about earlier, for us, as a company that has other stakeholders that rely on specific balance sheets, to then say, "Oh, we're going to have to potentially do additional studies on the existing licences that may restrict resources that we currently are relying on in our business," creates a huge amount of uncertainty for our stakeholders. So that's, I think, our main concern about what is being proposed under the bill.

Ms. Daiene Vernile: My colleague Arthur Potts would like to ask a question.

The Chair (Mr. Shafiq Qaadri): Mr. Potts.

Mr. Arthur Potts: Thank you very much. Mr. Cheesman, welcome. It's great to see you here, and congratulations on your appointment there. As you know, I was involved in the formation of Aggregate Recycling Ontario, and OSSGA was a client in the earlier days.

I'm interested mostly at the moment in your comments around "recycled" and particularly the notion of as-of-right recycling in all pits and quarries that exist. Is it really your view that every pit and quarry would be an

appropriate site for recycled, or would you want to have some kind of criteria that would establish where you could do recycling legitimately in an existing quarry and not extend that as a right to everybody?

Mr. David Hanratty: Would you like Mr. Cheesman to respond?

Mr. Arthur Potts: Well, whoever—

Mr. David Hanratty: Maybe Mr. Cheesman can speak towards the industry perspective if he has some additional thoughts.

From a company perspective, recycling is our way of extending the life of existing resources on a site, and also, from an environmental standpoint, it's a responsible thing to do for the industry. An individual company doesn't necessarily want recycling in every one of their sites—only where it makes business sense to augment, maybe, resources that are dwindling or that are in close proximity to other parts of the business that they have—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Potts. Now to the PC side: Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. I must admit I was a little surprised to see an industry association lobbying for increased fees and royalties on your business. That is a unique position to be taking.

I have one other question that I hope I get time for. Is that as much to support municipalities and damage to roads and that kind of thing—the logic behind that? Perhaps you can—

Mr. Norman Cheesman: Well, that's part of it. The formula we've worked out would be that roughly 40% of the increased revenue would go towards upper- and lower-tier municipalities and some of it to rehabbing these old sites that are lying dormant. There are hundreds and hundreds of these. There is an inventory of hundreds of these things. With more resources, we could develop them.

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The other thing is ministry enforcement. That's an important aspect of demonstrating our responsibility in the communities we deal with. To have that documented enforcement that we're complying with our licence is important, and frankly, the ministry is under-resourced in that regard. That's where we were coming from with those recommendations, and the municipalities that we've worked with fully support this.

Mr. Norm Miller: The other point that I wanted to ask about was your recommendation with regard to indigenous consultation. I know that in the mining sector—I'm here for more the mining part of the bill, but getting more certainty is certainly something that the mining industry is looking for—just clearer rules on what is involved with the consultation and when it's done. Is that what this recommendation is about: having clearer rules for what you need to do in terms of consultation?

Mr. David Hanratty: Yes. I think that to put "adequate" at this stage without having it defined is a situation that is only going to cause—

Mr. Joe Dickson: Point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Dickson?

Mr. Joe Dickson: Sorry to interrupt. I welcome cameras in most places. I know that in the Legislature they are totally banned.

The Chair (Mr. Shafiq Qaadri): Mr. Dickson, I think it's the protocol that we're quite happy to have cameras, and actually, we prefer if we're in the photos too.

Please go ahead. You have another minute.

Mr. David Hanratty: With respect to having "adequate" at this stage without the proper definition, I think that's where we're having an issue with it. It's not that we don't want to consult or have some proper direction in that. That's what we're looking for.

Mr. Norm Miller: Are you also looking for some sort of defined framework or protocol for—

Mr. David Hanratty: Absolutely. We're more than happy to work towards something that's properly defined as an industry.

Mr. Norm Miller: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller, and thanks to Mr. Cheesman and Mr. Hanratty of the Ontario Stone, Sand and Gravel Association.

MILLER PAVING LTD.

The Chair (Mr. Shafiq Qaadri): I now invite our final presenter for the morning, Madame Anne Guiot of Miller Paving Ltd. Bienvenue. Welcome. Please do introduce your colleague. You're most welcome to begin now, please.

Ms. Anne Guiot: Thank you very much. My name is Anne Guiot. I'm a senior planner with Skelton Brumwell and Associates Inc., a planning and engineering consulting firm out of Barrie. I'm here today to make a presentation on behalf of Miller Paving Ltd. With me, I have Tom Jones, property manager for Miller.

Since its formation in 1917, Miller's reputation has been based on road building. The over 3,500 employees of Miller build and support urban and rural infrastructure. They are proud to be one of Canada's best-managed companies and the GTA's top employers for the last eight years in a row.

Within Ontario, Miller has 130 licensed and 28 permitted pits and quarries. The Aggregate Resources Act is fundamental to the continued operation and rehabilitation of their pits and quarries, as well as their hot mix asphalt and ready mix concrete plants operated throughout the province.

Miller supports the position of the Ontario Stone, Sand and Gravel Association, and this presentation should be considered in addition to OSSGA's comments. Miller's purpose today is to provide their perspective on three main areas of concern with the hope that this will aid the committee in understanding the need for changes to Bill 39.

The first issue is the minister's ability to direct licensees and permittees to conduct studies and submit reports. Bill 39 introduces the ability for the minister to require studies to be carried out on existing licensed and

permitted pits and quarries. Miller does not believe this is necessary, as it has been their experience that MNRF and MOECC have very capable legislation to require specific information about a pit or quarry. The following four situations that Miller is currently dealing with are examples.

The Miller Braeside quarry has a permit to take water and an environmental compliance approval. Miller has received requests from MOECC to update both permits, which included additional research, analysis and reporting. The results were provided to MOECC for their information and copied to the MNRF.

The Miller Jamieson pit has just gone through a new application process for a site ECA. This has required additional emissions and noise reports, as well as noise testing on site. MOECC has issued the site ECA, and Miller updated their site plan to reflect the changes.

The Miller Turcotte Pit had a new permanent asphalt plant installed, which also required a new site ECA. Studies were undertaken, permits issued and an update to the site plan is in the works.

Finally, Miller undertook a comprehensive review of all its pits and quarries for species at risk in 2009. Miller entered into nine agreements for protection of species at risk with the Ministry of Natural Resources and Forestry. They continue to monitor their sites for species at risk as new species are listed.

Aside from not agreeing that there is any further need to be able to require studies of licensees and permittees, Miller is very concerned that this legislative ability could be used or abused to ultimately reduce approved reserves.

The only way to secure aggregate for future extraction is through a licence or permit under the Aggregate Resources Act. Miller works hard to ensure future reserves are secured through the application process, which is high risk, costly and lengthy. To even consider that what was once permitted to be extracted could be reduced is unacceptable and puts their business model and future operations at risk.

Unfortunately, they know of this experience first-hand. This past year, the MNRF required Miller to immediately cease operations in a licensed pit and rehabilitate the area they were extracting in, even though they had a site plan permitting extraction dating back to the late 1990s. MNRF's interpretation of contradictions on the site plan resulted in a 30% reduction of extractable area in the licensed pit of very high-quality material.

Although Miller continues to dispute MNRF's interpretation on this particular site, this is yet another example justifying that the current legislation provides the necessary tools for MNRF to control licensed pits and quarries. Miller recommends deleting the ability for the minister to be able to require studies of existing licensees and permittees.

The second issue is standardized annual tonnage limits. Currently, the ARA annual tonnage limit applies to materials extracted and removed from a licensed pit or quarry. Bill 39 proposes to change the meaning of aggregate to also include recycled asphalt and concrete and any imported aggregate to the site to be used for resale, blending, processing or plant feed. This is a drastic change in interpretation, and it does not appear the full implications of the change have been adequately considered.

Currently, Miller moves aggregate throughout their pits and quarries for the following reasons:

(1) Blending: As specifications continue to be increasingly stringent, it is less likely that all aggregate required to meet specifications can be found on one site; therefore, imported aggregate is required for blending;

(2) Processing: Processing operations do not occur on every site and, where appropriate, processing operations service multiple pits or quarries; and

(3) Plant feed: All asphalt and concrete plants, in addition to using on-site material, require material to be imported for mixes.

All this tonnage entering a pit or quarry has already been tracked and paid for as it left its virgin site. The most significant result of this proposed change, however, is that it could very likely be a disincentive to recycling asphalt and concrete. Recycled asphalt pavement, or RAP, is recycled and sold to the public and used in a variety of contracts within roughly 30% of Miller's licences and permits. Using RAP locally reduces trucks on the road and material in landfills. Miller even recycles asphalt shingles, eliminating a significant landfill issue. The provincial policy statement states that aggregate recycling facilities should occur within operations, wherever feasible. Miller believes recycling of asphalt and concrete should be a right on every pit and quarry.

Miller is not against tracking tonnage of recycled asphalt and concrete. However, it should be a separate recordkeeping process, not combined with the annual tonnage of aggregate extracted from a pit or quarry. Miller recommends deleting the inclusion of recycled and imported material in annual tonnage limits, adding the ability for recycling of asphalt and concrete on all licensed and permitted pits and quarries, and adding a requirement to track importation of recycled asphalt and concrete.

The third issue deals with First Nations consultation. Miller takes the responsibility of consultation with First Nations seriously, and works diligently to develop early and ongoing consultation in all areas where they operate. Based on long-standing relationships, they firmly believe that any consultation with aboriginal communities must be specifically tailored to individual areas, as each community has different interests and needs. It has been made clear by aboriginal communities through years of consultation that the province has the duty to consult and this cannot be downloaded to applicants.

Bill 39 introduces the requirement for the minister to consider whether "adequate consultation" with aboriginal communities has been carried out before exercising any power under the ARA.

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There is a significant problem right now with MNRF not making decisions with respect to consultation. Bill 39

only adds to the problem in that it does not define "adequate consultation" and entrenches in law the ability for MNRF to take no action in processing applications if they are not satisfied with the First Nations consultation that has been carried out.

Not only has Bill 39 not resolved the current problem, but it in fact has made it worse. Bill 39 does nothing but add to the confusion of what consultation is required and by whom. Furthermore, Bill 39 appears to download the responsibility of the duty to consult to the applicant under the ARA.

Miller recommends deleting the term "adequate" from the requirement for First Nations consultations, and also within regulations, once they're developed, to establish requirements for applicants to undertake First Nations consultation parallel to the public and agencies consultation now required; and establish requirements for MNRF to undertake their own duty-to-consult process in such a fashion that does not extend the length of time of an application or allow the process to stall. Ensuring there is a beginning and an end to the process is a critical component to proponent-driven applications, and necessary to ensure applications can move through an identified process to appropriate completion.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Anne Guiot: In conclusion, it is critical that the ministry deal with these issues and correct them before Bill 39 is approved. Bill 39 not only impacts the security of aggregate reserves for the continuation of Miller's business, but also the provision of aggregates for the people of Ontario into the future.

Thank you for your time and attention today. Tom and I would now be pleased to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Guiot.

Before I pass it to the government side, just a mention: Cameras are welcome, as long as it's done respectfully and unobtrusively. The only time I've really had to intervene is when we've had overflow media and they start bumping into us and each other; and also when they actually start filming the paperwork on the desks. Otherwise, they're welcome.

To the government side, to Mr. Potts.

Mr. Arthur Potts: Thank you, Ms. Guiot, for coming down here and making your presentation. Let me at the outset start by commending—I know Miller does incredible work, particularly at protecting species at risk. You're to be commended for that work.

I wanted to focus in on the recycling comments you were making. I think you made a very strong argument for why we shouldn't be double-counting, particularly in the context that the legislation is trying to frame a nimble approach which will, through regulations, bring more clarity—and I'm hoping we'll see some of that clarity in the course of the regulations. It's what the industry has been looking for, so that we don't have to keep going back into a long, extended review of this legislation and make legislative changes every time we need the flexibility to reflect.

I'm interested in your comments on that, particularly when you think about our Bill 151, the circular economy act, in which it's very clear that we're looking towards a more sustainable world in which resources will be recycled back into products as much as possible.

I would make this caution: I thought we were going to try to get away from the concept of "virgin" aggregate—the new term in ARA should be "primary" aggregate—and I hope that word doesn't show up anywhere in this legislation. I plan to check, because I think it's inappropriate.

Maybe you could comment. It is important to recycle aggregate back in, in a way that meets quality standards. I know that has been the issue with some municipalities. How has Miller been responding to the quality of its recycled aggregate, and would it be improved if you were doing more work in close proximity to the pits and quarries that you operate?

Mr. Tom Jones: Thank you. With the recycled—

The Chair (Mr. Shafiq Qaadri): Please introduce yourself.

Mr. Tom Jones: My name is Tom Jones. I'm property manager for the Miller Group. In my capacity, I process, with our consultants, our various applications for licence, and monitor them and provide the CAR reports.

To the point on recycled aggregate, the first point is that most of the recycled aggregate comes off of projects. That is why it's critical that recycled aggregate be allowed in any pit or quarry which is licensed and in close proximity to the projects. Otherwise, if we limit ourselves to only certain sites, we're saving RAP for processing for future use, either back into asphalt or back into granular base work. It adds to extra haulage and extra emissions, so that's one reason—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle—sorry, Mr. Jones. To Mr. MacLaren.

Mr. Jack MacLaren: Your report was excellent and clear. I have no question on that. It's interesting that the three points of concern that you have articulated so well, so clearly, are pretty much exactly the same as what the Ontario Stone, Sand and Gravel Association people mentioned.

You mentioned at the end of your report about a supply, a secure supply, of high-quality aggregates for the people of Ontario for the future. Could you speak to that, in the context of the three problems you have identified, as have the stone, sand and gravel people, that you feel strongly need to be fixed in this legislation? If they were not fixed, how would this affect the supply of the quality aggregates Ontario needs in the future to grow and be prosperous?

Ms. Anne Guiot: That's a big question, so if I can just frame it down and, keeping in the topic of recycled aggregates, Tom spoke to the grassroots on the ground that need to have places to store and recycle materials close to market and close to where they're receiving it, but on the other end of things we are experiencing a problem in the policy framework in that the PPS provides for recycling to occur wherever possible, wherever ap-

propriate. When we get to the Aggregate Resources Act and interpretation of that, there is no similar provision that allows it to occur. We are finding in situations with sites that if the site plans do not have express permission to allow recycled material to be brought onto a property, it cannot occur. There has to be a site plan amendment to enable that activity to occur, so currently there is no carte blanche approval of it.

What we would like to see is legislative approval that is parallel to the PPS so that where it is appropriate it should occur, and then the regulations will develop the appropriate rules and considerations under whether or not it's appropriate on any individual site, similar to every other aspect of site design on individual sites. So enabling more recycling closer to market, closer to where the feed is for getting those sources so that there's less travel, lower cost and better use of recycling is all going to benefit the people of Ontario. What we want to see is just an equal ability to match the PPS of Bill 39 and of the new ARA to enable that.

Mr. Jack MacLaren: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. MacLaren. To Mr. Bisson.

Mr. Gilles Bisson: I agree with you on the duty to consult being downloaded to industry. I think it is problematic. It's not just a problem for your industry but others as well. I think we as a province have to take our responsibility seriously when it comes to the courts and what they have said about that duty, and I totally agree with you.

Much of this is left to regulation. You have heard my previous question. I am one that is not comfortable delegating the authority of the assembly to regulation. I've seen far too often in my years here where good intent in legislation is developed, regulatory authority is given to cabinet to do whatever, and either that cabinet or future cabinets end up changing the legislation to where it no longer does what it is that we wanted it to do in the first place and we've delegated that authority off to regulation. That being the case, can you live with this legislation the way that it is?

Ms. Anne Guiot: I would also say subject to changes that have been requested. Since the 1990s, when the ARA first came in, the legislative framework has been very much thick in the middle, if you will, with the standards and the regulations. But it's also had a very, very strong supporting base of policy, probably one of the most advanced ministry policy manuals that exist. So this is the norm for us, to have the enabling in the legislation, greater strength and direction in the regulations, and then a tremendous amount of details in the policy.

Through this proposal we are seeing some of the policies moving up into regulations, which is positive because it's entrenching them more, and we are seeing some movement further up into regulations. It's not foreign to us. It works. We want to get the right things in the right places. But providing that these changes are made, I do believe that we can—

Mr. Gilles Bisson: But without the changes—that's my question. If it was to stay—

Ms. Anne Guiot: Without the changes that we've suggested?

Mr. Gilles Bisson: Yes.

Ms. Anne Guiot: It's really tough, because I would agree with the previous two speakers; we want to see change. We're ready for change. We need change. Many times, we get together with stakeholders in meetings and we agree on many things. We're down to just a few very significant issues, but we've got a lot of work done. The ministry has done a good job.

Mr. Gilles Bisson: Okay.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Madame Guiot and Mr. Jones, for your deputation on behalf of Miller Paving Ltd.

The committee is in recess till this afternoon. I'll take it as the will of the committee to direct research to prepare a summary.

The committee recessed from 1001 to 1400.

The Acting Chair (Mr. Bob Delaney): Good afternoon everybody and welcome back, as we resume our consideration of Bill 39, An Act to amend the Aggregate Resources Act and the Mining Act.

SIX NATIONS OF THE GRAND RIVER

The Acting Chair (Mr. Bob Delaney): We have four presentations this afternoon, beginning with Six Nations of the Grand River. Would you please come forward? Please sit down; make yourselves comfortable. You'll have 10 minutes for your presentation. Please begin by introducing yourselves for Hansard, and then continue.

Chief Ava Hill: *Remarks in Mohawk.*

My name is Ava Hill and I am a Mohawk, Wolf Clan. I am the elected chief of the Six Nations of the Grand River.

Mr. Lonny Bomberry: I'm Lonny Bomberry. I'm the director of lands and resources for the Six Nations elected council.

Chief Ava Hill: I'll get right to it. Recently, with the release of the Truth and Reconciliation Commission, there have been many instances that have entailed discussion towards reconciliation between First Nations people and the crowns—I say "the crowns" because we look at both crowns.

The result of these discussions, however, is that the provincial and the federal governments are still failing the process of true reconciliation. We keep hearing that the crowns in the right of Ontario and the crown in the right of Canada are calling for positive change by strengthening the relationships with First Nations communities, but we on the ground have seen little action that this has occurred to reflect this point of view.

Upon the release of the Truth and Reconciliation Commission report, there were commitments that both the Prime Minister of Canada and the Premier of Ontario would undertake to help mend the broken relationships between First Nations and the crown.

In August of 2015, Premier Kathleen Wynne signed a political accord with the Ontario First Nations to establish a new relationship with the First Nations in Ontario. Additionally, I sat in the gallery at Queen's Park on May 30 when she stood and apologized to residential schools survivors, declared the Ontario government's commitment to fulfill the calls to action outlined in the Truth and Reconciliation Commission report, and announced the journey together.

Prime Minister Justin Trudeau was quoted as saying that, "This is a time of real ... change." This is a time for "nation-to-nation," and at this point, there is no relationship that's more important to them than the relationship between Canada and the First Nations people in this country.

In September 2014, the Premier of Ontario responded by sending letters to her ministers outlining priorities for each ministry, which included aboriginal priorities. One priority was that the Ministry of Aboriginal Affairs, which is now the Ministry of Indigenous Relations and Reconciliation, would work across the government to ensure that First Nations communities are engaged in resource-related economic development and will benefit from the natural resource industry.

The Premier made a promise to engage with indigenous partners on approaches to enhance participation in the resource sector by improving the way resource benefits are shared, and to work with the federal government to address the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. She was quoted as saying that Ontario will consider "how to advance resource benefit-sharing opportunities, including resource revenue-sharing in the forestry and mining sectors."

However, the language of the Aggregate Resources Act does not reflect the Premier's commitment to the First Nations in this province. Instead, First Nations communities, who have rightful claims to resources on their treaty land, will be excluded from any revenue-sharing, as developers and the crown advance their own agendas to the peril of First Nations interests.

Six Nations fully supports the principles of the United Nations Declaration on the Rights of Indigenous Peoples, so we felt very hopeful when the Premier made the commitment to move forward, guided by the UN declaration. This hope has diminished, as the implementation of the UN declaration has truly not been adopted by the modernization of the Aggregate Resources Act.

I point to section 32, subsections 1 and 2, of the UN declaration, which states, "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."

Section 32(2) of the UN declaration says, "States shall consult and co-operate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

This section directly deals with indigenous people having the right to determine how their treaty territory will be developed, meaning the crown needs free, prior and informed consent from Six Nations before any such development takes place on our traditional territory. This principle relates to the modernization of the Aggregate Resources Act, as any aggregate development within Six Nations treaty territory needs our consent. The principles of the UN declaration were not followed in regard to the implementation of amending this act, as we did not give our consent to how this act is being read.

In February 2016, we met with the Ministry of Natural Resources representatives regarding policy change within the aggregate department. We issued our concerns that there has to be free, prior and informed consent before any aggregate development occurs on Six Nations treaty land. We also expressed that there must be revenue-sharing for the resource that is taken from Mother Earth. We felt that it was finally a productive meeting towards an understanding of how aggregate resources taken from Six Nations treaty land will be dealt with.

We have now learned that all our suggestions were not to be considered or implemented in the Aggregate Resources Act, as our discussion was on policy only and not the legislation within the act itself. We were deceived into thinking we had a meeting to provide meaningful input on what the policy should entail, but our input was never intended to be included in the revisions to the act.

The implementation of this act directly affects us as there are many aggregate projects located within our treaty land. Once again, the crown has failed in its legal duty to consult with Six Nations of the Grand River. Furthermore, we did not receive notification of amendments to the act until the process was at third reading. Despite our "in good faith" discussions with representatives of the Ministry of Natural Resources officials, Six Nations have once again not been included in the discussion through the first two readings to express our views of what should be included in this act. This is completely unacceptable as this does not reflect the positive action towards reconciliation we talked about in the beginning. We have to ask if this was an oversight or if it was a deliberate action.

Through the parameters of our own consultation and accommodation policy, we have met with aggregate companies regarding their projects. When the topic of revenue-sharing is tabled they state that they are willing to participate in revenue-sharing with Six Nations if they are legislated to do so.

We can no longer stand by and watch proponents reap all the benefits from Six Nations territory. These are lands which are subject to validated breaches by the crown, lands that are subject to litigation, including the handling of our natural resources thereon and therein. What we see being proposed in the legislation so far deems to overt the promises made by the Premier of

Ontario to correct these past injustices to the First Nations within this province.

Proponents must be legislated to pay $1 per tonne of aggregate extracted from within our treaty lands. This principle was shared with the former Minister of Natural Resources, Bill Mauro, and we have not yet received a response. We are still waiting to begin to build the relationship that the Premier of Ontario has committed everyone in this room to do.

Currently the act reads, in section 3.1:

"Aboriginal consultation

"3.1 For greater certainty, the minister will consider whether adequate consultation with aboriginal communities has been carried out before exercising any power under this act relating to licences or permits that has the potential to adversely affect established or credibly asserted aboriginal or treaty rights."

This wording is unacceptable to Six Nations as it does not encompass the view that we have, which is revenue-sharing for our aggregate resources, which is the very principle committed to us by the Premier regarding resources within our treaty territory. The way the act should read, in the view of Six Nations, is as follows:

"3.1 Consultation with First Nations communities shall be governed by the principle of free, prior and informed consent in the extraction of aggregate resources from any area within Ontario. If it is found that the extraction will be from the treaty area of a First Nation, then that First Nation should be entitled to a royalty payment based upon the amount of aggregate extracted."

The Acting Chair (Mr. Bob Delaney): If I may interrupt, you have about a minute to go.

Chief Ava Hill: Okay, thank you.

"3.2 If two or more First Nations have overlapping treaty interests to an area of extraction, then the crown in right of Ontario and the concerned First Nations shall mutually establish an effective mechanism for a just and fair determination as to which First Nation will have priority to the royalty from the aggregate resources that are extracted."

These are the positive comments and recommendations from Six Nations of the Grand River on how to proceed in amending the Aggregate Resources Act, in the spirit of true truth and reconciliation, in a just and forthright manner, in upholding the honour of the crown in right of Ontario, and in fulfilling promises made by the leadership of the province of Ontario to the First Nations within the boundaries of Ontario.

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My last comment is, there should be nothing about us without us. Nia:wen.

The Acting Chair (Mr. Bob Delaney): Thank you. Our first rotation will be with the PCs. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation and for the concerns that you have raised. You started out by saying that there has been little action on reconciliation, despite what the Premier has talked about. You've made it fairly clear what you'd like to see: free, prior consent and also revenue-sharing.

There have been some other groups interested that have talked about the consultation question and what's proposed in this legislation. I know that some of the companies have said that they've felt that the government shouldn't be able to download the duty to consult to individual companies and that the crown or the government of Ontario should be assuming that responsibility. Do you have any thoughts on that perspective?

There was also some consideration from some other people who have come before the committee about "adequate consultation"—saying that's vague wording, as well.

What are your thoughts on that—both the delegation of duty to consult and the wording that currently is in the legislation?

Chief Ava Hill: Our position is that the crown has the duty to consult. That is what's stated in the Supreme Court of Canada cases. The duty to consult and accommodate lies with the crown. We know that the crown has, at instances, delegated it to proponents and to municipalities, but it's still our position that it is the duty of the crown.

With respect to consultation, Six Nations has developed its own consultation policy, which we follow. We have a consultation and accommodation team which will go out and do the work that we need to be done. I don't know that the Ontario government has a consultation policy that they can use as a measurement tool or an evaluation to ensure that proper consultation is being done. We have one, and we expect that our consultation policy will be followed whenever we deal with any proponents.

Do you have anything to add?

Mr. Lonny Bomberry: With respect to consultation, we feel, as Chief Hill said, that that duty really lies with the crown. We don't like the manner in which it was done in the past, when it's delegated to municipalities or to proponents. We think that duty should be with the crown. The first step in doing that is by putting that commitment right in the legislation itself. It is important that it be in the legislation and not in some lesser degree of rules. We'd prefer to see it in legislation, so that our rights are enshrined in legislation. We know how difficult it is to change legislation. For instance, the Indian Act has been there since 1876 and hasn't had any substantial changes, but it still governs us in our everyday activities.

The Acting Chair (Mr. Bob Delaney): We'll now move our rotation to the NDP.

Mr. Gilles Bisson: It would appear that colonialism is well. I would just—

Interjection.

Mr. Gilles Bisson: Exactly. I represent the James Bay and understand well what you're talking about.

Let me ask you this very pointed question. The right words are being used by both federal and provincial governments when it comes to the duty to consult and what that really means. What's missing? Why is there not the next step, in your view?

Chief Ava Hill: The federal government and the provincial government are going to have to answer why they're not taking the next step. The words are there to say that proper consultation has to take place. We on the ground know that's not happening, just by the fact that even on this case, we weren't even informed about this until third reading came about.

That's what I say: Nothing about us without us. If we're going to have true consultation, we need to be involved from the very beginning. When you guys sit here and still figure, "We're going to amend this legislation. Let's go and ask the First Nations people right off the hop how they want to get involved"—we know best how we want to get involved. I think the days of us being told, "This is what we're going to do for you; this is how it's going to be done for you," are over. We have the capacity, we have the knowledge, we have the expertise and we have the ability to make significant contributions to how legislation is going to affect us. I think that can only be done if it's done from the very beginning, not halfway through and not at the end—and then say, "Okay, this is what we've done. Now, here, you have to follow it."

Mr. Gilles Bisson: I think I know the answer to my question, but I'm going to ask it anyway: If you were in my shoes and this legislation was not amended, would you vote for or against it at third reading?

Chief Ava Hill: I would vote against it.

Mr. Gilles Bisson: Thank you.

The Acting Chair (Mr. Bob Delaney): Ms. Vernile.

Ms. Daiene Vernile: Thank you very much, Ava and Lonny, for coming here today and for sharing your comments on Bill 39.

I had the opportunity to see you in my home riding of Kitchener Centre back in October. You were there for an event called Resetting the Relationship. It was a conference being held at the Highland Baptist Church. I want to tell you, Ava, that I found your words very inspiring, and the event itself, I think, was very meaningful. I wanted to say hello to you then, but now I get to say hello to you here.

I want to properly understand your thoughts on consultation. Please set us in the right direction on this. You have said that you had not been informed about the bill when it was introduced back in October. Yet the information I have in front of me tells me that all indigenous groups in Ontario were consulted and informed about this last October. Help me understand why it is you're telling me that you didn't know about this.

Chief Ava Hill: Okay, I'm going to go to my staff. We did have a meeting with Ministry of Natural Resources officials, talking about policy. Then we turned it over to our staff, and we get these notifications.

Lonny, can you address that?

Mr. Lonny Bomberry: We had met with the ministry people on revisions to the policy back in December of 2015. We had been led to understand that it was just the policy provisions of the act that were going to be changed. They didn't tell us that the legislation was being contemplated as being changed as well. So we didn't receive any notification that this was even in the works, that the legislation was going to be changed, until about mid-October of last year, 2016, when we found out about it. We didn't get any notice before, that proposed legislative changes were going to be made to the act, or asked about how we felt about those changes. So we didn't have that prior knowledge.

Ms. Daiene Vernile: Okay. This commentary about consultation concerns me. I asked our policy people to look back in the record and to tell me how often they have consulted. Since 2014, I'm told, there has been an extensive review and input from indigenous communities—seven regional sessions, to get early input. Then there were letters sent to every indigenous community and organization in Ontario, to get more input. Then another three regional sessions: Thunder Bay, Orillia, Sault Ste. Marie. Hundreds of people came out to those sessions. When the act was introduced, notified every indigenous community and organization in Ontario; let them know that this was happening.

What more could we have done to reach out to you?

Chief Ava Hill: Well, before I let him answer, let me just say—let's talk about what is the definition of "consultation." I can sit and talk. Somebody can come and talk to me and say, "Oh, we're going to do this," and I'm going to say to them, "You cannot construe this as consultation."

We have our own definition of what consultation is. We have our own policy. When we start implementing what is outlined in our policy with respect to consultation and accommodation, that's when we feel the consultation starts. It's not going and having a regional meeting and handing out papers and saying, "This is what we're going to do"—

The Acting Chair (Mr. Bob Delaney): Thank you very much. Thank you for coming in. That concludes your time.

AGGREGATE RECYCLING ONTARIO

The Acting Chair (Mr. Bob Delaney): Our next presentation will be Aggregate Recycling Ontario: Mr. Brian Messerschmidt. Please be seated. Make yourself comfortable. You will have 10 minutes for your presentation, followed by three minutes of questioning from each party. Please begin by stating your name for Hansard, and continue.

Mr. Brian Messerschmidt: My name is Brian Messerschmidt. I'm executive director of Aggregate Recycling Ontario.

Good afternoon. Thank you for the opportunity to provide a perspective from Aggregate Recycling Ontario, or ARO, an organization comprised of five industry associations and 13 individual companies.

Having reviewed the nine and a half hours of Bill 39 second reading debates from October and November of 2016, if there was consensus on anything, it was that

there is all-party support for increased use of recycled aggregate.

That support was also evident back in October 2013 in the Standing Committee on General Government's report on the review of the Aggregate Resources Act, in which nine of the 38 recommendations pertained to recycling.

ARO was created for the purpose of breaking down the barriers to the use of recycled aggregate resources. Member companies are producers of both primary aggregate from pits and quarries and also recycled aggregates, with recycling sometimes occurring in pits and quarries but also in stand-alone aggregate recycling facilities, normally in urban industrial zones, and frequently on-site recycling at construction sites.

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While a number of materials can substitute for primary aggregate in varying percentages, ARO's focus is on two materials—reclaimed concrete and reclaimed asphalt—which are abundant in significant volumes, especially in urban and near-urban areas. With unprecedented capital expenditures to address the infrastructure deficit in Ontario, there will be a continued, unrelenting pressure on declining aggregate reserves in pits and quarries. It's a simple principle: For every tonne of recycled aggregate used, one less tonne of primary aggregate is required from pits and quarries.

Here's the challenge: The 2013 standing committee recognized that many issues surrounding the management of aggregate resources may go beyond the mandate of the Aggregate Resources Act. To date, the government has responded with the introduction of Bill 39. But policies to encourage or require greater use of recycled aggregate is one of those subjects that goes well beyond the ARA and MNRF and requires a collaborative effort between a number of ministries, agencies and other organizations.

Bill 39 does touch on recycled aggregates in two respects: a new requirement to annually report volumes produced, and a requirement to include those production figures within site-specific annual tonnage limits. ARO concurs with the concerns of the Ontario Stone, Sand and Gravel Association regarding the inclusion of these production figures within the annual tonnage limits. A number of sites may be faced with a disincentive to conduct recycling by being included in these tonnage limits.

The rest of this presentation focuses on a recommended multi-ministry and -agency action plan that the government of Ontario can and should take as a complement to Bill 39 and address the recommendations of the 2013 review. The coordinated efforts of the following key ministries and agencies are required: MNRF; MTO and its agency Metrolinx; the Ministry of Infrastructure and Infrastructure Ontario; the Ministry of Municipal Affairs and Waterfront Toronto; the Ministry of the Environment and Climate Change and what has now replaced Waste Diversion Ontario, the Resource Productivity and Recovery Authority. ARO offers 10 recommendations grouped under three themes. The first theme is the Ontario government as an aggregate consumer.

Recommendation 1: Ensure consistent support for the use of recycled aggregate across all ministries and agencies. MTO is seen as a leader—other parts of government, not so much. Infrastructure Ontario and Metrolinx should be committed to facilitating the use of recycled aggregate in all building and infrastructure projects. On a positive note, recently Metrolinx adopted a sustainability framework to guide their activities going forward. Hopefully, this will lead to greater use of recycled aggregate.

Recommendation 2: Green sustainable procurement policies should proactively encourage the use of recycled aggregate. The Ontario public service procurement directive is currently under review by the Ministry of Government and Consumer Services. The existing document is seen as an important driver in achieving government and environmental objectives. It allows for the promotion of optional environmental considerations known as non-price attributes. However, use of these incentives is at the option of individual ministries and agencies. The result has been limited adoption of those principles.

Recommendation 3: Go beyond LEED building certification. Many of you have probably heard of LEED certification. It's a green certification system coming out of the States. It has been adopted in Canada. It is a very important tool in promoting a range of green building practices. Both the province and a number of municipalities now pursue LEED certification.

Points can be achieved by using recycled aggregate. However, my sense is that beyond energy efficiency and water efficiency, when it comes to materials efficiency, the points derived for those LEED certifications are rarely achieved from using recycled aggregate. My point is that we need to go beyond LEED certification and connect the dots of the need for the use of recycled aggregates.

Recommendation 4: Increase the use of emerging sustainable infrastructure construction certification systems. In parallel to LEED, what we're seeing for infrastructure are certification systems, and there are three of them. MTO has developed their own as an internal guide; it's called Green Pave. Out of the University of Washington, in Washington state, is a system called Greenroads. And out of the Institute for Sustainable Infrastructure in Washington, D.C., is a certification system called Envision. All of these parallel LEED certification and give recognition to green building practices in infrastructure construction. That encourages the use of recycled aggregate. There have been a couple of projects in Ontario under Envision and Greenroads, and we need a higher commitment from the province to enter into those, at least as pilot projects, to see how they work.

The second theme is the circular economy and the low-carbon economy. Recommendation 5 relates to collecting information. The 2013 report recommended

the establishment of recycling reporting systems to understand just how much is being recycled and how much more could be recycled. Excellent data is available, because of the Aggregate Resources Act, on primary aggregate production, but we don't really have a good handle on the volumes out there that are being recycled.

With the Waste-Free Ontario Act and the Climate Change Mitigation and Low-carbon Economy Act, we are being steered in the direction of an emerging circular economy and a low-carbon economy. The current efforts at MOECC, as I see it, are geared towards materials that still need to be diverted from landfill. Recycled aggregate isn't one of those. I don't think there are big tonnages going into landfills, strictly on the basis that no one wants to pay $90 to $100 per tonne for that material to go into landfills. So it ends up in recycling facilities in our members' yards, and others'. The challenge is getting uptake on the consumption side. It is recommended that maybe MOECC is the more appropriate authority to have that broader look at collecting data on those tonnages out there.

Recommendation 6: Consider recognizing the use of recycled aggregate as a tradable credit. In a cap-and-trade world, we don't have good science behind us yet, but my assumption is that there are carbon savings by using recycled aggregate. That's something that we should have a discussion on.

The Acting Chair (Mr. Bob Delaney): You have a little less than a minute.

Mr. Brian Messerschmidt: Recommendation 7: Discontinue land filling and lake filling of concrete rubble. We see down at the Leslie Street Spit a lovely formation, but really, should we have used concrete rubble to build that? It could have been other materials, and those tons of concrete rubble could have supplanted primary aggregate.

The third theme is direction and assistance to Ontario municipalities. Recommendation 8: Require municipalities to plan for aggregate recycling facilities. The PPS—the 2014 version—could have done that but hasn't, so in the next version going forward, I hope so.

Recommendation 9: Amend the Infrastructure for Jobs and Prosperity Act as an ancillary amendment to—

The Acting Chair (Mr. Bob Delaney): I thank you for that. We'll begin our questioning with Mr. Bisson.

Mr. Gilles Bisson: Just a couple of questions—one of them is to collect aggregate recycling data. I thought that was actually done.

Mr. Brian Messerschmidt: No. There is a legislated requirement under the Aggregate Resources Act to provide, annually, tonnages of production. An amendment is being proposed to collect information on recycled aggregate coming out of licensed pits and quarries.

Mr. Gilles Bisson: So it would detail it.

Mr. Brian Messerschmidt: You would get that information, but a lot of recycling happens outside of pits and quarries and has nothing to do with the Aggregate Resources Act.

Mr. Gilles Bisson: Just so I properly understand: We collect the data but it's not specific; it's total amounts.

Mr. Brian Messerschmidt: We currently collect data only on primary aggregate production. It has been proposed to collect it for recycling out of pits and quarries, but not from stand-alone recycling facilities that you see—

Mr. Gilles Bisson: But you're proposing that that be included in the bill.

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Mr. Brian Messerschmidt: No, I'm suggesting that someone should collect that information on a regular basis, and maybe MOECC is the appropriate authority to do that.

Mr. Gilles Bisson: And when you say "ensure consistent support for the use of recycled aggregates across ministries": It's not the case?

Mr. Brian Messerschmidt: The Ministry of Transportation is very good. Infrastructure Ontario says they're carrying out the wishes of the agencies that they are doing P3 projects for. I would argue that they have a sustainability objective and should be promoting the use of recycled aggregate as well. Metrolinx has had some examples; they could do a lot more.

Mr. Gilles Bisson: I had another question written down here. Sorry, I wrote it down and I just need to—no, I'm fine. That's good. I've already asked the question.

The Acting Chair (Mr. Bob Delaney): To the government side: Mr. Colle.

Mr. Mike Colle: Thank you, Mr. Messerschmidt, for the very thoughtful, very comprehensive presentation. I think you've put forth a number of very solid recommendations that I hope the various ministries will look at, because I think you're so right. It's not just MNR that should be holding the bag on this; it's for Infrastructure Ontario, municipal affairs and the Ministry of the Environment to have this transformation and the acceptance of recycled aggregates to be used. As you said, the Ministry of Transportation, I think, uses about 30%—in that range; 20% to 30%—for their construction.

This is the question I've asked for 10 years on this. I've asked municipal engineers and municipal councils. I have said, "If you're so concerned about the damage that aggregate extraction and aggregate transportation is doing to your municipalities, why in the heck aren't you using recycled aggregates? Why do you, basically, refuse to do it?"

Do you have an answer to why they refuse to use recycled aggregates?

Mr. Brian Messerschmidt: I have some opinions, yes. This is our biggest challenge. Municipalities are, collectively, the largest consumer of aggregates in the province—probably 60 million to 70 million tonnes. There is a wide variety of uptake by municipalities. The city of Toronto, York region and a number of municipalities are very good at accepting recycled aggregate.

One of the challenges I hear is that there are different specifications between the province and the municipalities. At the provincial level, they do considerable what's

called quality assurance testing. So the producer does their own quality control testing, but the owner, MTO, upon receiving that material, does considerable quality assurance testing to verify that they're getting what they have paid for.

At the municipal level, there's quite a range of affordability, and many municipalities say, "We have better assurance of consistency from primary aggregate. We've been getting it for years from pits and quarries. When we receive recycled, we're not as sure about the consistency, and we can't afford to do the quality assurance testing that MTO does." That is part of the challenge there, so one of our efforts is to try to build that confidence in consumer municipalities.

Mr. Mike Colle: But don't you find that this is just, basically, an entrenched old attitude by municipal engineers? They use the cost example. They say, "No, we want nothing but the finest." I've asked them. I've said, "Why are recycled aggregates good enough for the 401 but it's not good for your back concession road? Answer me"—

The Acting Chair (Mr. Bob Delaney): That may remain a rhetorical question unless you take it outside.

Thank you very much for your presentation, sir.

Mr. Norm Miller: Wait, wait—

The Acting Chair (Mr. Bob Delaney): I'm sorry. I beg your pardon. Our final rotation will be the PC side. My apologies.

Mr. Jack MacLaren: If I could ask: What would be your main request for an amendment to Bill 39, or one or two or three? What are the main things you're looking for in Bill 39?

Mr. Brian Messerschmidt: Yes. This is the thrust of my presentation. The Aggregate Resources Act has a couple of provisions there. One is to collect the tonnage figures, which is a help. The other is the concern that it runs up against annual tonnage limits on some sites and may be a disincentive.

It's unsexy stuff, but it's small-p policy that needs to be coordinated by the province to get every ministry onside thinking about these issues and doing it without legislative or regulatory authority. It's just getting on with it and pushing to get those results.

Mr. Jack MacLaren: Just getting more buy-in—

Mr. Brian Messerschmidt: Absolutely.

I am making one recommendation in there: that an ancillary amendment be made, through Bill 39, to the Infrastructure for Jobs and Prosperity Act that gives regulation-making authority. Currently, the consideration of recycled aggregate is one principle of 13 in that act, in doing an asset-management plan—and that's largely municipalities—that you have to consider recycled aggregate. But unless you have the details in regulation, I don't see that being a successful provision.

Mr. Jack MacLaren: Thank you.

The Acting Chair (Mr. Bob Delaney): Thank you very much for presenting to us, Mr. Messerschmidt.

CEMENT ASSOCIATION OF CANADA

The Acting Chair (Mr. Bob Delaney): Our next presentation will be the Cement Association of Canada. I'd like to call Steve Morrissey to the table. Please make yourself comfortable. Introduce yourself for Hansard. You have 10 minutes for your presentation.

Mr. Steve Morrissey: My name is Steve Morrissey. I'm the executive vice-president of the Cement Association of Canada.

Thank you for taking the time today. I know it's the first week back and you've got a million and one things to do. I can see, from behind your backs, that it's a beautiful day too, so I'll be as brief as I can.

I've had the benefit of appearing after some of the stakeholders who have a lot of skin in the game—perhaps more so than cement—but we have our own unique perspective from the cement industry. We view this act as critical to safeguarding the resources and building blocks for sustainable construction in Ontario going forward.

As many of you know, the Cement Association of Canada represents all of Ontario's cement manufacturers—five companies with clinker and cement manufacturing facilities across the province. We strive to maintain a sustainable industry and promote and advance the economic, environmental and societal benefits of cement and concrete. Our industry contributes $6 billion in direct and indirect economic impact, and supports Ontario's $37-billion construction industry. Our direct and indirect employment is over 45,000 Ontarians.

One of the things I wanted to start with today is—I'm relatively new to this file in our industry, but it took me a great deal of time to go through all the years of effort that have gone through in this review. A lot of back and forth and a lot of dedicated work has gone on—changes in both staffers and ministers and stakeholders. It would be a real shame, as long as this process has gone on, if it didn't produce something very productive for everyone involved.

The other thing I'd like to start with, sort of piggybacking on Brian's comments, is, climate change is really something that has been a transformational issue, certainly for our industry, which is extremely energy-intensive. But now we find ourselves, in Ontario, where all of the three parties have agreed that there should be a price on carbon, although there isn't an agreement on what that price should be. That's fine, but we've, to borrow an expression, turned the corner. One of the things the federal government has done—governments across the country are talking about mandating building residential and commercial net-zero or near-net-zero buildings sometime in the next decade. So how are we going to get—

Mr. Mike Colle: Zero cost?

Mr. Steve Morrissey: No, not zero cost—that they are off or nearly off the grid.

In the context of aggregates, it's not so much a question of whether we should use aggregates; in fact,

we're going to need aggregates to be able to meet those climate change objectives.

Some of the things I'd like to talk about today, just very briefly:

The relevance and importance of close-to-market aggregates: We believe that aggregate production is part of the 100-km construction diet. The majority of the raw materials and production capacity to make concrete is typically located within two hours of any given project in Ontario. As you know, local products mean local jobs. Bill 39 should explicitly consider greenhouse gas considerations in aggregate production and distribution.

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Secondly, just to repeat on recycled aggregates, we feel it must be encouraged in publicly funded construction projects. We believe fulfilling this requirement requires legislative action as opposed to regulation or policy. I've had the opportunity to see the submission from Aggregate Recycling Ontario, and I believe they have a thoughtful approach, which we support, and a number of action-oriented solutions to help increase recycled aggregates.

While the ARA does not have the specific authorities to promote recycled aggregates, one matter that does fall within the act is permission to recycle the aggregates in licensed pits and quarries. MNRF should remove the barrier to processing recycled aggregates in existing pits, subject to a standardized set of appropriate controls to ensure the size, the scale and the environmental controls are in accordance with best practices. This would help take the pressure off primary aggregate extraction, while still ensuring Ontario has a sufficient supply to meet the demand now and in the future.

In addition, we believe section 71.1 of the bill would control the amount of aggregates leaving a site by including all aggregate and recycled aggregates in the annual tonnage limit. This section would include recycled aggregates in the annual tonnage, which may have the unintended consequence of discouraging recycling, since operators who are near their annual limits could suddenly feel constrained by the addition of recycled aggregates.

Very importantly, I think, with respect to fees, the CAC conditionally supports the fee increases—we think it's moving in the right direction—if they are directed back into improving the aggregates system. We believe the revenues from the increased levy should be directed to infrastructure development and community projects that support aggregates and aggregate extraction, and assist in reducing the impacts on local roads. These funds should not be pooled into the general revenue base. We support the joint OSSGA/TAPMO recommendation to establish a delegated administrative authority and the indexing of the fees to the CPI, after allowing an implementation period.

One other issue that's very specific to cement and concrete: As you know, limestone is what cement is. It's quarried near to the cement manufacturing facilities. All of our members use this aggregate on-site. Part of the reason for the increase in the fee was to deal with the use and transportation of aggregates on provincial and municipal roads. We feel that it would provide a competitive disadvantage if that additional fee were placed on the feedstock limestone, which is quarried on the premises of our members and sent directly into the kilns.

Additionally, the new cap-and-trade system places a price on the carbon of the limestone that's broken down for that process. In a sense, we would also have an argument of being doubly taxed.

I know that this is a very specific issue with respect to the fee, but we feel that it's important for our industry that we remain competitive because, as we all know, we need to be looking at what's happening around Ontario these days.

Finally, I'd like to say, very briefly, that we think the bill should have a legislative requirement for the ministry to report back to the Legislature on the establishment of a one-window process for approvals, similar to the approach that municipal affairs and housing uses for municipal official plan amendments. The one-window process should integrate the requirements and approvals amongst all the relevant Ontario ministries and agencies, including conservation authorities, into a single decision-making framework.

Separate from the approvals issues, we have great concerns with respect to Bill 39's treatment of existing licences. Section 62.4 proposes to allow the minister to direct existing sites to conduct studies and submit reports. The imposition of these new requirements—which, in fairness, could not have been anticipated when the aggregate assets were acquired—may impose costs that risk stranding assets.

In conclusion, we're not asking the province to denigrate environmental standards or reduce technical thresholds, for those to be compromised. We are asking for the removal of duplicate reviews and approvals, and a clear, reasonable, consistent and predictable process for licensing and permitting of Ontario's much-needed aggregate resources.

I thank you for your time.

The Acting Chair (Mr. Bob Delaney): Thank you. Our first rotation will begin with the government side: Mr. Colle.

Mr. Mike Colle: I'll give it over to my colleague from Ajax here in a second. I just want to say, being an Italian, I love cement and I love concrete. The more that you guys can supply—I just love the smell of it.

Laughter.

Mr. Mike Colle: I'm serious.

Mr. Steve Morrissey: Grazie.

Mr. Mike Colle: I'll pass it on to Joe—Mr. Dickson.

Keep the concrete and cement coming, and keep those jobs. We're building the whole—you know, I used to tell people—they had signs up on their lawns, "Stop the quarries," and I would say, "Well, listen, you've got a stone house. You've got a swimming pool in the back-

yard built with aggregate." I said, "You can't have it both ways."

Mr. Steve Morrissey: As you know, there is some wonderful work being done in Ontario about how to, at the end of life, recycle quarries into beautiful living spaces and protect the environment and the species at risk and whatnot.

The other thing that I like to tell people about quarries is if we look at how cities are built, the actual square footage of quarries required to build what we do in Toronto and elsewhere is very small compared to the profile for other building materials. Whole forests have to be felled to build residential construction. That's a considerable environmental footprint compared to the number of quarries that we have in Ontario.

Mr. Mike Colle: Yes, I look at all the people fortunate enough—rich enough—to live in these condos. I say, "Listen, where do you think the material comes to build your condos? It has to come from somewhere." You're all living as a result of the quarries. If there weren't any quarries, if there weren't any cement or concrete, you'd have no place to live.

Mr. Gilles Bisson: You could use wood.

Mr. Mike Colle: Well, to a certain level, but the fire marshal might—Italians don't like wood as much.

Mr. Steve Morrissey: No. There are seismic issues in Italy as well, yes.

Laughter.

Mr. Mike Colle: Sorry to digress. Sorry, Mr. Dickson.

Mr. Joe Dickson: Not a problem. It's good to hear from a paisan.

I could add that my colleague immediately to my left already offered me a 20-inch-high set of rubber boots. Now that you've got the cement, she'll look after me.

Congratulations on what you've done. You've progressed rapidly. I'm quite impressed by the number of $6 billion as part of a $37-billion annual building process, and that you are responsible for that and the industry is responsible for that.

Do you think a more streamlined approach for aggregate approvals is required? We know that the government has listened to industry with respect to faster approvals in this regard and will benefit from changes proposed in the bill that will help make processes clearer and more consistent, like the changes to the application and amendment processes. In addition, new provisions to provide self-filing of minor site plan amendments will provide opportunities to reduce burdens on industry throughout the development of regulations in the next phase.

The Acting Chair (Mr. Bob Delaney): I'm sorry; you have run out of time, even with a little bit of generosity by the Chair.

Mr. Miller.

Mr. Steve Morrissey: Yes, the arrow is moving in the right direction, but we're not there yet.

Mr. Norm Miller: Thank you for your presentation. You talked about the importance of having aggregates close to market, I'm sure because the cost of transportation is so huge. We've heard from different presentations today about whether all licensed pits and quarries should be allowed for recycling and processing recycled materials, or not. I gather you're in favour of all licensed sites being able to be used for recycling. Is that correct?

Mr. Steve Morrissey: Number one, I would say yes. There may be some instances where it's not appropriate, but generally, yes. How we're going to meet demand is an important consideration. But I would also say there are reasonable issues that are being presented by municipalities about road noises and dust and whatnot.

Part of the fee increase should be going to municipalities to help address some of those issues. We don't live in a perfect world; these things have to be produced, and there is dust and there is sand and there is wear and tear. If we're going to increase the fees, let's make sure we help municipalities with some of those considerations.

Mr. Norm Miller: You support recycled materials, and you point out that counting recycled materials in the licence could actually be a disincentive to recycling, so you'd like to see that changed. You also talked about asking for an exemption for limestone as part of the cement-making process. Could you further expand on that, please?

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Mr. Steve Morrissey: Yes. Cement manufacturing facilities were built beside the quarries because the quarries are the number one input. So whether it's St. Marys or Holcim, some of our facilities are within the fence line. Quarrying the limestone, the demolition and transportation to the cement facility, happens within the boundaries of the company's ownership and uses its own transportation and roads.

The intent of the fees was to talk about rehabilitation for public roads, whether they be provincial, municipal or federal. That's one of the reasons that, if it's all happening within the fence line, we don't think the fee structure should apply, because really, that limestone is not an aggregate per se; it's a feedstock to making cement, which aggregates later get added to. So there's kind of a double taxation issue.

The other thing that I mentioned is that the carbon tax does apply. Limestone, when it's broken down to make cement, releases CO_2 as a chemical necessity. That's taken in consideration in the carbon tax, so we don't feel that we should be taxed twice.

Mr. Norm Miller: Do I have any time left?

The Acting Chair (Mr. Bob Delaney): Well, in consideration—if you have a quick one, you can squeeze it in.

Mr. Norm Miller: Okay. The one-window process that you were talking about: Would that be led by MNR, then?

Mr. Steve Morrissey: I think it could be, yes.

Mr. Norm Miller: And it's just to simplify things?

Mr. Steve Morrissey: You've all heard many times about some of the projects which have taken up to a

decade and millions of dollars to develop, and then some of them don't get approved. The—

The Acting Chair (Mr. Bob Delaney): That concludes our time—with, again, a little bit of generosity. Mr. Bisson?

Mr. Gilles Bisson: Whoa, where are you going? Hang on a second.

I just want to advocate for the forest industry, coming from northern Ontario. You made a comment, and I just want to understand.

You're saying you support the increase in fees. Fine; I understand. A few other people have said that. But you then went on to say that it be directed towards projects that support aggregate usage. That's really not the case, so where are you at?

Mr. Steve Morrissey: Well, there are lots of things where the money could go to.

Mr. Gilles Bisson: Yes.

Mr. Steve Morrissey: It's for municipalities to look at improvements on—

Mr. Gilles Bisson: But that's not mandated in this legislation.

Mr. Steve Morrissey: No, it's not, no.

Mr. Gilles Bisson: So are you looking for an amendment? Is that what you were getting at?

Mr. Steve Morrissey: I think so. I think that work has to be done—well, it should be in the legislative framework in terms of having a delegated authority to deal with the fees. There needs to be more specificity, I think, and the mandate to provide what that money is going to go for.

For example, Brian mentioned the accounting for the use of aggregates and calculating the GHG reductions that you can get from that. There are all sorts of things that that money can be useful to go towards, but there should be a body that administers that.

Mr. Gilles Bisson: I might be wrong here, but the way I read the legislation, I thought the money goes to general revenue, doesn't it? The fees go to general revenue, which means to say that they're used for anything.

Mr. Steve Morrissey: And we are opposed to them going to general use.

Mr. Gilles Bisson: So you want an amendment that restricts that in some way?

Mr. Steve Morrissey: Yes.

Mr. Gilles Bisson: Okay. All right.

The Acting Chair (Mr. Bob Delaney): All right. Thank you very much for your presentation here today.

Mr. Steve Morrissey: Thank you.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

ONTARIO NATURE

ENVIRONMENTAL DEFENCE CANADA

The Acting Chair (Mr. Bob Delaney): Our final presentation of the afternoon will be the Canadian Environmental Law Association. Please be seated. Make yourself comfortable. You'll have 10 minutes to make your presentation, followed by three rounds of questions at three minutes each. This time, we will begin with the PC side. When you're ready, just introduce yourselves for Hansard and start.

Ms. Barbora Grochalova: My name is Barbora Grochalova. I'm counsel with the Canadian Environmental Law Association. I'm joined here today by Dr. Anne Bell, who's the director of conservation and education at Ontario Nature, and Keith Brooks, program director at Environmental Defence Canada. We're making a joint submission today.

All three of our organizations have been advocating for stronger safeguards against the negative environmental and social impacts of aggregates for many years, and we've been involved in the ARA review since the beginning, in 2012.

The reason the ARA process began—and, really, the reason we're here—is because of the broad understanding that the current system wasn't functioning well. We have now engaged in almost five years of public consultations and provided numerous recommendations. We are frustrated and disappointed with the proposed schedule 1 of Bill 39.

The ARA review process carried the hope that many of our concerns with the existing aggregate regime would be addressed. Our main concern with Bill 39 is that many of the key issues do not appear in the bill at all, and those that are touched on are largely left to be developed in the regulations.

Among those provisions left to the regulations are some of the key aspects of the aggregate regime, including requirements with regard to oversight, environmental accountability, public participation, and fees and royalties. These key issues will now be at the discretion of the minister, with the legislation providing no conditions and none of the hoped-for clarity or commitment to improve environmental protection.

I think you have our written submissions. They contain two parts, and I'd like to just draw your attention to the second part for now. That's appendix 1, which starts on page 11. This is a copy of our general comments regarding Bill 39, which we submitted to the Environmental Registry back in December 2016. In those submissions, we list 17 priority changes that our organizations, collectively, had hoped to see in the amended legislation. None of those, as far as we can ascertain, have been addressed. These priority desired changes ranged, for example, from:

—a requirement to file site plans, rehabilitation plans and annual compliance reports online, to ensure public access and accountability; to

—a requirement for a full environmental assessment of potential impacts on the hydrological system for applications to extract below the water table; to

—a clear prohibition of extraction that necessitates pumping of water in perpetuity; to

—the establishment of a maximum disturbed area at all new sites, to encourage progressive rehabilitation—among others.

These are all reasonable changes that would have served the public interest. Unfortunately, they do not figure in the government's proposed amendments.

To emphasize, our organizations are not seeking additional ministerial and cabinet discretion. Rather, we are looking for well-defined, enforceable provisions in the act that address the environmental and social issues arising from aggregates extraction in Ontario.

Regulations are intended for detailed implementation matters, not for substantive requirements which should be spelled out in the legislation. The changes in Bill 39 have the opposite effect. The bill consists largely of broad, enabling provisions that dismantle many of the existing legislative safeguards in the existing ARA. Without knowing the details of the regulations, we are not able to support the bill as drafted.

Nevertheless, we ask that you consider the following specific amendments to the bill to address some of our many concerns. This is the first part of our written submissions that were distributed, which contains the relevant statutory provisions and some draft language.

First, we ask that you remove parts of Bill 39 that unduly weaken governmental oversight of aggregate operations. The existing requirement to file annual compliance reports is a basic level of accountability, and this should not be repealed. Compliance reports should be filed annually. Similarly, there should be no exemption in the ARA allowing persons to operate a pit or a quarry without a licence. These changes undermine the ability of the ministry to ensure a level of oversight that's necessary to diligently enforce the act.

Secondly, we ask that you remove changes that curtail the opportunities for meaningful public participation. As mentioned earlier, there were several changes we were hoping to see in the bill that would make it easier for communities affected by aggregate extraction to participate in the decision-making. These are the homeowners who live next to an aggregate extraction site, or the local conservation volunteers who may have the knowledge of endangered species at risk, or the farmers who may be at risk of contamination by the chemicals used in the aggregate processing upstream. These communities and their environments matter, so we asked for a longer and more robust consultation period, and notice requirements that would reach more members of the affected communities. Instead, Bill 39 would relegate the consultation requirements to yet-unwritten regulations. We ask that you remove these provisions and replace them with strict minimum requirements for thorough and meaningful consultation.

Thirdly, we ask for legislative changes that would result in more rigorous environmental standards. We welcome the amendments that would include effects on municipal water as one of the factors to be considered by the minister when issuing licences on permits, for example. We also welcome the amendments that will allow the minister to add conditions to existing sites, without tribunal hearings, to implement a source water protection plan under the Clean Water Act.

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However, we remain disappointed by the lack of further substantive changes in the bill that would address the social and environmental issues arising from aggregate extraction. We suggest the following two small steps to start.

The act lacks a clear prohibition of extraction below the water table that necessitates pumping of water in perpetuity. These types of aggregate operations cause undue strain on groundwater and increase the risk of contamination of drinking water. As noted in the Crombie report, for example, pumping in perpetuity "has long-term implications for water supplies and ecosystem integrity."

We urge you to adopt our amendment to Bill 39 that would add subsection 11(1.1), which reads, "12(1.1) Despite subsection (1), no licence shall be issued for an operation that requires the pumping of water in perpetuity." The text is in our written submissions.

We further ask that Bill 39 be amended to require licences to be issued for a fixed term. In the provincial policy statement, aggregate resource extraction is referred to as an "interim land use," a term which underplays the negative impacts of extraction and misleadingly implies that land will be returned to its former use. In fact, pits are seldom returned to their former state and quarries result in permanent, significant changes to hydrological and natural systems.

Under the existing act, an operator can keep a site open indefinitely before moving to final rehabilitation and closure of the operation. Communities, municipalities and other stakeholders want greater clarity and certainty about the length of time a particular operation may be in existence in order to plan for its use once the licence is surrendered, for example, when a site that's destined to be an important future element of a municipality's natural heritage system or may be tied to future economic development in a community is held up with licences that are granted indefinitely. Licences held indefinitely also cause conflict when aggregate extraction may begin decades after a licence was first issued, but the surrounding properties are now part of a subdivision. The current open-ended nature of licences is unacceptable.

Bill 39 should be amended to provide for fixed-term licences, and we urge you to adopt our amendment to the bill that would add subsection 12(2), which is also in our written submissions, and which reads, "12.3(1) A licence shall include a date on which the licence expires.

"12.3(2) A licensee must surrender a licence pursuant to section 19 no later than the date described in subsection (1)."

Thank you for your attention. We know that the aggregate regime in Ontario can function better, and we hope that you adopt the changes suggested in order to take a step towards mitigating at least some of the environmental and social impacts of aggregate operations.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Grochalova. Now to the PC side: Mr. MacLaren.

Mr. Norm Miller: Actually, it's me—

The Chair (Mr. Shafiq Qaadri): Sorry. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation and for your detailed information.

Going back to point 9 on your page 12, "A clear prohibition of extraction that necessitates pumping of water in perpetuity," I believe that the bill does create an exemption where you can remove water to mine aggregate. We heard this morning from one group that said they recognize that might be needed in a case where there's, say, a washout of a road and you have to fix it and you have to do it in a timely fashion.

I'm just wondering how you would, if you were the government—I'm not the government—do that emergency repair if you followed your point 9, where you just have a prohibition period on extraction that necessitates pumping of water.

Ms. Barbora Grochalova: I think we can agree that there's a difference between emergency pumping and pumping that continuously has to be in place in order for the licence to make sense. I don't know if my colleagues want to add anything on this point.

Dr. Anne Bell: Sure. Our point here is about approving something, giving government approval for an activity that has to be managed forever. In my view, what we're talking about there is just a debt for future generations that are going to have to deal with some problem that was created today. It's not acceptable. We all know people die; companies go bankrupt or they close; governments change. Who is responsible, in perpetuity, for dealing with an approach to management that requires ongoing care? That's why we don't think it's an appropriate thing to approve that kind of activity where you're just assuming somebody else down the road is going to deal with it, because people here today won't be here tomorrow.

Mr. Norm Miller: Okay. There has been a fair amount of talk about recycled materials and changes in the bill that count recycled materials as part of a licence of an operation. Some of the operators think that might actually be a negative towards trying to use recycled materials. Do you have a position on the use of recycled materials and any of the specifics in this legislation?

Ms. Barbora Grochalova: We think recycling aggregates should be encouraged more strongly than it is in the current bill, as proposed. We don't have any draft provisions to support that just because there was just simply too much for us to be able to address everything that we would have liked to see in the bill that wasn't there, but we definitely encourage aggregate extraction. I think there were a number of things said here today about accounting and being aware of how much recycled aggregate was being used as a first step. But just, in general—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. To Monsieur Bisson.

Mr. Gilles Bisson: I'm just writing that last point down.

Two questions: One is, I take it that you're saying what I feel, which is that I have great difficulty, as a legislator, drafting legislation that allows policy to be set by regulation. I think you explained it quite well, in the sense that, yes, when it comes to sort of the nuts and bolts of how you make things work—but the set policy needs to be clearly defined in the bill. I have the view that it's not; there's too much left to regulation. I take it you share that view.

Ms. Barbora Grochalova: Yes, absolutely.

Mr. Gilles Bisson: So if the bill was changed so that it would be more clearly defined in the bill what the outcomes should be and then leave the regulatory stuff to deal with the nuts and bolts, you still have a problem with this bill, from what I can see, in its current form.

Ms. Barbora Grochalova: You mean, if what is currently in the bill would just be done more precisely, then we would actually get to evaluate what the intention was and we would give an answer based on that wording? Yes.

Mr. Gilles Bisson: Okay, so I kind of answered my own question. The next part was—there was another thing. Oh, this was not part of your presentation.

One of the things that frustrates me as a local member is a municipality could say no to an application for a quarry to be developed in a particular place, but the MNR still approves it, and, because the municipality refuses it, the proponent ends up going to the OMB. Should there be a change in this bill to make clear that municipalities, at the end of the day, should kind of have the final say on what happens in their boundary, or is that overstepping, in your view? That's a tough question.

Mr. Keith Brooks: Yes, that's a tough question. I think more clarity on how municipalities can get involved would be important, but I think we would respect that the province has policies that municipalities need to implement. It's a complex question, right?

Mr. Gilles Bisson: Yes, I know. It just frustrates me because I've had it happen a couple times where the municipality said, "This is bad planning. We don't want a quarry in this particular area"—go ahead; you were going to answer?

Ms. Barbora Grochalova: I was just going to add to that. We also have issues with the provincial policy statement, which doesn't allow for consideration of need, for example. There are a number of provincial policies that could be amended to make this regime function better.

Mr. Gilles Bisson: I'm not clear in my own mind on that this is where you need to put it, but I just wanted to ask the question.

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson. To Madame Vernile.

Ms. Daiene Vernile: Thank you to all three of you for coming and appearing before this committee and sharing your views with us. I don't know if you had the opportunity to be here all day. We've been here all day listening to various people. Have you had a chance to hear some of the other stakeholders?

Ms. Barbora Grochalova: Yes, we heard the ones this afternoon.

Ms. Daiene Vernile: Okay. So you are well aware of the fact that there are many points of view on this particular issue, and they're very varied and sometimes at polar opposites. But I appreciate that you have come here. You've shared your points of view on the environment. I want to ask you how you might suggest that we would balance your environmental concerns without placing a greater burden on the aggregate industry.

Dr. Anne Bell: Is that really a question of balance? The way you've framed it—without any further burden on the industry—doesn't sound like balance to me. Sorry.

Ms. Daiene Vernile: Elaborate on that. What do you mean by that?

Dr. Anne Bell: Well, a balance is when you take into account various interests and you come up with a solution that takes all of those interests into account, not where you start with, "Well, we're not going to move the yardstick with this other stakeholder."

Ms. Barbora Grochalova: We also have, like we mentioned, five years' worth of submissions from all three of these organizations. Each submission may be 12 pages long with different recommendations on exactly how we think this can be done.

Mr. Keith Brooks: On the points made earlier: We all recognize the need for aggregates. Nobody here is saying that we should stop aggregate mining and quarrying. We understand that there is a need for it. But we think that there's a need to better balance the needs for the product with the environment and the needs of communities.

Environmental Defence and Ontario Nature have engaged in many, many conversations with the cement association, with their member companies, trying to figure out environmentally and socially responsible ways. We made a lot of progress toward that.

I just want to make that clear: that we are actually looking for solutions in this. We think a better balance can be struck, but we don't think this bill does it.

Ms. Daiene Vernile: There is an amendment within the bill that asks for a customized approach when there are unique applications. You mentioned extraction below the water table—that's one of them. Perhaps mega-quarries—that's another one. Do you support that particular amendment?

Ms. Barbora Grochalova: Sorry, which amendment do you mean?

Ms. Daiene Vernile: This one refers to unique applications where, depending on the circumstances, various regulations could be applied to that.

Ms. Barbora Grochalova: I'm not sure which section you're referring to. Do you know which section of the bill you're referring to?

Ms. Daiene Vernile: I can dig down for it. It's on customized approaches.

Mr. Keith Brooks: In principle, maybe that's okay, but we don't have enough details to evaluate whether it's a good idea or not, because we don't understand in what instances it will be applied, and whether that customization will lead to some of the things that we're talking about—better oversight, stronger environmental commitments—or whether it leads to things going the other direction. We can't say, right?

The Chair (Mr. Shafiq Qaadri): Thank you, Madam Vernile, and thanks to our presenters, Grochalova, Bell and Brooks, on behalf of the Canadian Environmental Law Association.

If there is no further business before the committee—yes, Mr. Colle?

Mr. Mike Colle: Can I just make a comment?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Mike Colle: Can I make just a—

The Chair (Mr. Shafiq Qaadri): Go ahead. The floor is yours.

Mr. Mike Colle: Just to put this into context, Mr. Chairman: I've been at this for 11 years now. When we started this process of modernizing this outdated legislation—11 years. We've been to Ottawa, Manitoulin Island—

The Chair (Mr. Shafiq Qaadri): Mr. Colle, I respect what you're attempting to do. The witnesses' time is expired—

Mr. Mike Colle: Let's get something done. I'm tired of 11 years of talking about it. Let's do something.

The Chair (Mr. Shafiq Qaadri): Absolutely, let's do it—the first thing on orders. The committee is adjourned until Thursday, March 2, 9 a.m.

The committee adjourned at 1512.

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