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Jeudi 22 octobre 2015

Standing Committee on Finance and Economic Affairs

Protecting Condominium Owners Act, 2015

Comité permanent des finances et des affaires économiques

Loi de 2015 sur la protection des propriétaires de condominiums

Chair: Soo Wong
Clerk: Katch Koch

Présidente : Soo Wong
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Thursday 22 October 2015

Jeudi 22 octobre 2015

The committee met at 0900 in room 151.

The Chair (Ms. Soo Wong): Good morning. I'm going to call the meeting to order to consider Bill 106.

SUBCOMMITTEE REPORT

The Chair (Ms. Soo Wong): Before we begin the public hearing on Bill 106, I believe there's a subcommittee report. Mr. Fedeli, do you want to read the report on the record, please?

Mr. Victor Fedeli: I'd be delighted, Chair.

Your subcommittee on committee business met on Thursday, October 8, to consider the method of proceeding on Bill 106, An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums, and recommends the following:

(1) That the committee meet in Toronto on Thursday, October 22 and 29, 2015, for the purpose of holding public hearings.

(2) That the Clerk of the Committee post information regarding public hearings on Bill 106 for one day in the Toronto Star, on the Ontario parliamentary channel, the Legislative Assembly's website and on Canada NewsWire.

(3) That the deadline for requests to appear be 12 noon on Monday, October 19, 2015.

(4) That the Clerk of the Committee provide a list of all interested presenters to the subcommittee following the deadline for requests.

(5) That each caucus provide their selections of witnesses based on the list of interested presenters received from the Clerk of the Committee by 12 noon on Tuesday, October 20, 2015.

(6) That all witnesses be offered 10 minutes for presentation and five minutes for questioning by committee members on a rotation by caucus.

(7) That the deadline for written submissions on Bill 106 be 6 p.m. on Thursday, October 29, 2015.

(8) That the research officer provide the following information to the committee prior to clause-by-clause consideration of the bill:

—recent changes regarding the rights of condominium owners in the province of British Columbia and Quebec;

—existing dispute resolution mechanisms in other North American jurisdictions;

—summary of oral presentations and written submissions received.

(9) That amendments to Bill 106 be filed with the Clerk of the Committee by 12 noon on Tuesday, November 3, 2015.

(10) That the committee meet for clause-by-clause consideration of Bill 106 on Thursday, November 5, 2015.

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

The Chair (Ms. Soo Wong): Thank you, Mr. Fedeli. Are there any questions, comments or debate on this subcommittee report?

Seeing none, all those in favour of the subcommittee report? All those opposed? Thank you.

PROTECTING CONDOMINIUM OWNERS ACT, 2015

LOI DE 2015 SUR LA PROTECTION DES PROPRIÉTAIRES DE CONDOMINIUMS

Consideration of the following bill:

Bill 106, An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums / Projet de loi 106, Loi modifiant la Loi de 1998 sur les condominiums, édictant la Loi de 2015 sur les services de gestion de condominiums et modifiant d'autres lois en ce qui concerne les condominiums.

The Chair (Ms. Soo Wong): Now I'm going to call the first witness to today's hearing. I just want to go through the procedure first. Each witness has 10 minutes for the presentation, followed by five minutes of questioning by rotation, starting with the official opposition party. I want to thank all the witnesses coming before us this morning.

ASSOCIATION OF CONDOMINIUM MANAGERS OF ONTARIO

The Chair (Ms. Soo Wong): The first witness coming before us is the Association of Condominium Managers of Ontario. Are they here? Good morning. Welcome. Come on down. While you're taking your seats, I'm going to ask that you identify yourself and

your position with your association for the purpose of Hansard. You may begin any time, and I will stop you at the 10-minute mark. Thank you. You may begin.

Ms. Catherine Murdock: Good morning, Madam Chair and committee members. My name is Catherine Murdock, and I am currently the president of the Association of Condominium Managers of Ontario.

Mr. Dean McCabe: My name is Dean McCabe, and I'm a past president and director of the Association of Condominium Managers of Ontario.

Ms. Catherine Murdock: It is my great pleasure to be asked to present to you here today on behalf of the Association of Condominium Managers of Ontario, known to our members and to condominium owners and board members across Ontario as ACMO. Our association strongly supports the move to license condominium managers, and to proactively recommend this move, even before the current review process began.

Since 1977, ACMO has developed the most advanced, detailed and widely recognized educational platform for training condominium managers in the country and has represented the growing condominium sector in Ontario in the process. The RCM designation is held by over 850 of the province's estimated 2,700 condominium managers, and it is on behalf of those 850 members and, indeed, the entire condominium community that we are pleased to appear before you here today.

Since the government of Ontario and the Ministry of Government and Consumer Services began the unique and inclusive process of consulting with stakeholders on potential revisions to the Condominium Act, ACMO has been an active participant in bringing thoughtful views to the process, with the aim of better protecting condominium owners and allowing the legislation to better serve condominium owners and boards.

I am joined today by Dean McCabe, the chair of ACMO's legislative review team, who participated in stakeholder round tables and working groups throughout the consultation process to provide the input of condo professionals who work with the legislation every day, and who joined Minister Orazietti in announcing to all Ontarians on May 27 that Bill 106 was being introduced to update the Condominium Act and to license condominium managers.

I'd like you to hear from Dean now.

Mr. Dean McCabe: Good morning, Madam Chair and committee members. Great work has been done in the drafting of this proposed legislation. It's work which took a great many viewpoints and concerns and weighed them against the greater good: the good of condominium owners who need to be able to rely on the legislation that governs their homes and communities to protect them and to balance their rights with the rights of other owners.

Prior to attending this morning's hearing, ACMO participated in a meeting of the joint legislative review committee with representatives of the Canadian Condominium Institute, several of the top condo lawyers in the province, engineers and auditors who service the condo sector, and condo owners and board members. From those consultations, we've combined a series of 28 forms which address a variety of issues, both minor and major. Copies of those forms have been provided for you today.

I cannot stress enough that our purpose in presenting these forms is to assist government in seeing how those who work with this legislation and interpret it in their daily workplace and communities will be affected by its contents and in preventing unintended consequences that could and will arise if Bill 106 is passed in its current form. While we recognize that much of the work remaining will be focused on the regulations—and we look forward to continuing to participate in consultations during the drafting of those regulations—we would like to draw the committee's attention to just a few of the possible issues that could be prevented with minor alterations to the bill, which we feel in no way alter the intended protections offered to unit owners.

Section 19 of the current Condominium Act states, "On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements ... at any reasonable time to perform the objects and duties of the corporation...." This protection given to the corporation allows it to carry out its duties, from the responsibility to repair and maintain the common elements to the responsibility to protect other owners by making necessary repairs if a unit owner fails to make those repairs themselves.

In addition, the definition of "reasonable notice" in the current legislation has developed to include immediate entry in the event that an emergency is causing damage to other units. The new proposed wording removes this from the act and, instead, downloads the power to the declaration or a bylaw to provide this authority. As the ministry has learned during the consultation process, this approval process of 50% to 80% of owners, in the case of a declaration change, can be difficult.

0910

We strongly believe that the majority of unit owners deserve to know that management and the board will act quickly and decisively to protect their property. That includes entering other units to stop water damage, remove mould or take action to prevent dangerous conditions from going unchecked. We would ask that the committee review issue sheet 4 in our submission, and recommend corrective wording.

Ms. Catherine Murdock: It will come as no surprise to those who have followed the consultation process that ACMO supports the licensing of managers and the creation of a designated administrative authority, or DAA, built to oversee the regulation of our profession and dedicated to ethical and disciplinary oversight to ensure consumer protection and elevate confidence in a profession filled with hard-working individuals who work with volunteer board members to provide safe communities and sound investments for condo owners.

ACMO's education program has formed the basis of the construction of the educational component of the stage 2 licensing requirements in the recommendations

from the experts' panel and the manager qualifications advisory group. ACMO looks forward to partnering with the newly formed DAA to provide reliable, knowledgeable professionals to fill the growing need of condo communities in Ontario.

Mr. Dean McCabe: The Condominium Management Services Act, presented as part of Bill 106, recognizes the need and sets the stage for the future of our profession. It's clear that condominiums have called for regulations on how condo records are turned over when a condo board chooses to change their management provider. The standards in our own ACMO 2000 program, an ISO-style best practices designation, have recently been amended to reflect the same criteria.

Section 53 of the Condominium Management Services Act states that "subject to the regulations, every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client...."

Issue sheets 26 and 27, which have been provided, detail some concerns over the possible interpretation of the words "all" and "immediate." That could create serious unintended consequences for both the management company and the condominium board. The immediate turnover of all records would effectively prevent the manager from preparing the financial statements for the final month of their management tenure and leave the board relying on financial information that will take longer to prepare and not be as accurate if provided by a company that was not responsible for managing during the transition period.

In addition, the use of the word "all" could be strictly interpreted to mean that the management companies are not entitled to retain even copies of any material produced during their tenure as the management representatives of that condo. This right to retain copies of documents created by the management company should be protected by clarifying the wording of this section in the Condominium Management Services Act.

Finally, ladies and gentlemen of the committee, our legislative review team raised concerns over a matter that we believe speaks to the very foundation of condominium ownership. The indemnification provision is a key feature of the declaration and an important part of the protection afforded to condo owners. In essence, it is part of the social contract involved in purchasing into a condominium community. Unit owners should be held responsible for their misdeeds or negligence, and other unit owners are entitled to be protected from the misdeeds or negligence of others. This indemnification provision was omitted from the drafting of the current act in 1998, but it has been recognized as being enforced in declarations that are drafted to contain the provision.

It is the belief of many in the condominium community that the act itself should contain an indemnification provision to universally protect all owners. If the government feels that the act is not the proper place to insert such a universal provision, then section 107 of Bill 106 should be amended to state that all declarations are deemed to include such a provision.

Ms. Catherine Murdock: In closing, and in advance of any questions that we can answer for the committee members, let me say, on behalf of ACMO and the 850 registered condominium managers across Ontario, that we believe the process that has unfolded to date will make for a stronger condominium sector in Ontario and stronger condo communities in every one of the 104 provincial ridings across the province.

The Chair (Ms. Soo Wong): Okay.

Mr. Dean McCabe: I have one more paragraph if we have a moment.

The Chair (Ms. Soo Wong): One more paragraph. Okay.

Mr. Dean McCabe: This is not made-in-Toronto legislation for a made-in-Toronto problem. It is legislation that has been drafted after listening to the views of stakeholders, service providers, condo owners and board members as well as professional managers. It is inclusive legislation that leaves those who have participated in its drafting obliged to work together to make it successful. Thank you very much.

The Chair (Ms. Soo Wong): I'm going to turn to Mr. Barrett to begin the questioning.

Mr. Toby Barrett: Thank you to the condominium managers' association. Your message came through clearly, with respect to the licensing of condo managers. You mentioned it's not a made-in-Toronto approach in your deputation. I'm not sure how that would apply to, say, many of the very small units that have a part-time manager or really don't have a manager. Maybe it's the builder.

By the same token, so much of our interactions oftentimes are with the condo owners and concerns about the boards. This may be more in certain buildings, maybe smaller buildings, where the people on the board perhaps don't have those kinds of skills as far as governance and chairing meetings. Maybe they didn't come up through Rotary Clubs or Lions Clubs. However, with so many small municipalities, we have excellent councils—even though they may have as many residents as some of the large condos.

As far as the boards, are we taking power away from the boards with the creation of a tribunal? Should there be more work done on bringing boards along as far as how to take minutes and look after the books?

Mr. Dean McCabe: Thank you, MPP Barrett. No. The Condominium Act, even as revised, leaves the authority for the governance of condominium communities with the elected board. I think that part of the purpose of the condominium authority, which is proposed to be set up, is to help and provide additional education, to provide resources for those boards.

But it is important to note that Bill 106 and the Condominium Management Services Act in no way makes it an obligation on a condominium to have a professional manager. What it does say is that if an individual or a condo community is to select a condominium manager, that person must be licensed, and the owners who live in that community are entitled to be protected by that.

No, we don't believe that it removes any authority, but we do believe that the setting up of a condominium authority will help provide additional resources.

Mr. Toby Barrett: Okay.

The Chair (Ms. Soo Wong): Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much for the presentation.

You talked about a wording change with respect to property entry, that chapter. Why do you think that section or that portion of the wording was changed? Was it an unintended consequence, or was there a reason why that section was altered?

Mr. Dean McCabe: Thank you, MPP Fedeli. To be quite honest with you, I'm not sure why it was changed. I can't put myself in the place of the drafters. However, I think that there have been concerns about boards and management companies—managers—who may have entered properties without giving proper notice. People feel that their home is their home, and people having the right to enter it is certainly something to be taken seriously.

Unfortunately, a home on a private street, where no one has the right to enter it and make repairs, is one issue; but when that home is beside another home, on top of another home, and underneath another home, there are times when we need to enter that property to prevent damage to other units.

Unfortunately, when we were reviewing the bill, we saw the potential for a property manager to be standing at the door of suite 404, concerned about the fact that water from that unit is running into suite 304, and not being able to enter it to either turn off the water or shut it off for repairs.

Mr. Victor Fedeli: Only seeing your proposal for the first time now—do you have the solution to that included?

Mr. Dean McCabe: We do have it. What we've tried to provide in the proposal that we've given you today are 28 issue sheets, each of which identifies the current wording, the proposed wording, details of what we think the problem with that wording is, and potential unintended consequences, and then provides a recommendation. We certainly leave it to the members of this committee, the Legislature and the ministry drafters to review those and see which are appropriate changes to be made that are still in line with the spirit of the Condominium Act.

Mr. Victor Fedeli: Which number specifically was this one, if I wanted to—

Ms. Catherine Murdock: Number 4.

Mr. Dean McCabe: That one was item number 4, sir.

Mr. Victor Fedeli: Okay. How much time?

The Chair (Ms. Soo Wong): One minute. Short answer.

Mr. Victor Fedeli: Okay. Do you have anything else, Toby?

I want to push on this one just a little bit more. My mom owns a condo in North Bay. She happens to be on the fourth floor, and somebody on the fifth floor right above her had this very instance. I just want to say that I support that approach. There was water from the neighbour above coming into her unit. I don't know what she would have done if the ability wasn't there to be able to go in and turn the water off.

0920

The Chair (Ms. Soo Wong): Mr. Fedeli, I need to stop you there.

Thank you very much for coming here.

Mr. Dean McCabe: We hope those changes will help, sir.

Mr. Victor Fedeli: So do I.

Mr. Dean McCabe: Thank you.

MR. HOLLAND MARSHALL

The Chair (Ms. Soo Wong): The next witness is Holland Marshall. The Clerk is coming around with the presentation.

Mr. Marshall, welcome. As you heard earlier, you have 10 minutes for your presentation followed by five minutes of questioning. This round of questioning will be coming from the third party.

You may begin anytime. Please identify yourself and your position—unless you're coming as an individual—for the purposes of Hansard.

Mr. Holland Marshall: I'm an individual and I have a condominium website called condomadness.info. I've been working on it for a few years.

Thank you for allowing me to speak to the committee. I wish to raise a few concerns I have with Bill 106.

Sections 134(5) and (6), recovery of full legal costs: This section is a nasty section that was introduced into the last revision of the act and needs to be repealed, not amended. When enacted, it was not envisioned that vindictive condo boards would use this section to financially cripple owners that they took a dislike to and give the majority of the board the power to drive owners from their homes and even drive them into bankruptcy. Amending the act to allow owners the right to full costs is dangerous, because both sides will need to win court orders in order to get their full legal costs paid. If you believe you can win all your costs, there is no incentive to settle. The only ones who benefit from this section are the lawyers.

The payment of legal costs is not equitable—this is section 134(7). If the condo corporation wins the award, after they get the award they've got 30 days, and then after that they start a 90-day process to lien the unit. So they get their full costs immediately. Bill 106 proposes that if the owner wins a court order, then he or she can also get full court-ordered costs, but if the condo doesn't pay within 90 days, the owner can withhold their unit's monthly expenses until the court costs are recovered.

There's very much that's wrong here. What is the rate of interest that the condo will pay on the outstanding court costs? Also, if the owner wins $20,000, it could take an owner five years or more to recover their costs. How can an owner sell their unit, even if they live in a

toxic environment, if they need to stay on title to get their costs back? There's nothing worse than living in close quarters with hostile neighbours.

The act should be changed so that if the owner wins, the condo pays within 90 days. What is good for the goose is good for the gander. But the best thing to do is get rid of section 134(5).

Non-leased director's position, section 28(3): Leave this section as it is. Changing "owner-resident" to "non-leased" means that the developer's unsold units, short-term rental units, owners who have relatives or friends living in their units, units that are used for small businesses and units that are in between leases will all be able to vote as non-leased units. The absentee owners and developers will outnumber the owner-residents in many of the new condo developments. The chances of an owner-resident being on the board go down to next to nothing in many of these new condos.

Section 7(5), declarations need not be reasonable: Bill 106 adds a phrase to the start of this subsection that says that declarations can be unreasonable. What place does the word "unreasonable" have in an act that is amended to improve consumer protection?

For example, some developers have added sections to their declarations to allow an unlimited number of short-term rentals for any duration or on any number of occasions. The website Breather connects renters with condo units that can be rented by the hour. I have that on page 6 at the back. Other unreasonable sections we will see in future declarations are whatever the developers can make money off of. "Unreasonable" does not belong in the act.

Section 46(7)(b), owner requisition meetings: If the board receives a proper requisition to call an owners' meeting and refuses to do so, until the Condominium Authority Tribunal is established, which could take a couple of years, it states that the requisitionists will have to apply to Superior Court for a resolution.

This is a big step backwards. The requisitionists should retain their existing rights to call an owners' meeting if the board refuses to do so. Not allowing the requisitionists to call a meeting is outright unethical and oppressive.

Section 59, shared facilities bylaws and rules: Section 59 has been completely repealed and the shared facilities bylaws and rules have been moved to subsection 21.1(4). Depending on what the regulations state, condo owners could lose the right to vote on the shared facilities rules and bylaws. This affects such things as parking rules, which may unfairly favour commercial owners over the residential units, and what hours the amenities will be open. This is also very important because bylaws include loan bylaws, so that a shared facilities committee, which is appointed and not elected by the owners, could have the right to sign loans worth up to millions of dollars without the owners having any say in it.

Section 118, entry by canvassers: The act allows politicians and their canvassers entry into all residential units during election campaigns, but many condos will not allow candidates to go door to door during condominium elections or to gather signatures for a petition to requisition an owners' meeting. The owners' right to canvass in their condos needs to be added to section 118.

Election fraud is missing. It's not mentioned whatsoever in sections 46 to 52. There is nothing in Bill 106, including sections 46 to 52, that prohibits employees of the property management company from collecting, storing and registering proxies and registering the owners. This is a normal practice that must be prohibited. There is far too much election fraud in condo elections and the management company employees are involved in far too much of it. Having management involved in the election process is completely inappropriate. This encourages fraud. Electronic voting just makes all of it even worse. Somebody is going to phone in to the management company and register a vote. The management companies depend on incumbent boards of directors to keep their jobs. Guess what? The incumbents always win.

Prevention of punitive interest rates: This needs to be added into the act. In a recent Superior Court judgment, Justice D.L. Corbett called $50,000, which was the claimed interest on a dispute of $70,000 for outstanding costs ,"punitive." I agree.

The new regulations need to state the maximum rate of interest that a condo corporation can charge owners. Rates of 18% are normal, but I've seen them as high as 24%. Interest rates of 18% to 24% may be fine for credit companies but not for non-profit corporations.

Short-term rentals: They've got to be prohibited by the act. Use the act to ban short-term rentals in residential condo corporations. Condos are supposed to be homes, not businesses. Short-term rentals are a tremendous burden on condo owners. Another concern is that residential condo units do not meet the hotel building and fire codes. These are residential units, not hotel units. They're not as safe.

Little protection for purchasers of resale condos: This has to be addressed. There is work being done to curb some of the worst abuses by developers but little thought seems to be directed toward helping purchasers of resale condos. Everyone from the commission-driven realtors to the existing owners has a vested interest in hiding the condo corporation's defects from potential buyers and they're very, very good at it.

In conclusion, almost no one understands that when you buy a unit in a condominium corporation, you are opening yourself up to the possibility that three of your neighbours—the majority of a five-member board—can destroy almost all the equity you've invested in your home.

Consumers need to be aware that by buying a condo, you're investing in a private corporation that is directed by unpaid amateurs who vary greatly in skills, knowledge and motivation. Some directors want to maintain the property over a long period; others just want to keep the fees low. The owners better keep a close watch over their investment. No one else will do it for them.

Furthermore, if the majority on the board takes a dislike to you—for good reasons or for bad—they can use their position to force you to pay thousands in legal fees, force you to sell your home and even drive you into bankruptcy.

On the last couple of pages I have sources. I'd like to quote, if I have time—

The Chair (Ms. Soo Wong): Mr. Marshall, your time is up. I'm going to turn to Ms. Fife to ask you some more questions. You'll have more opportunity to speak about the other items.

0930

Ms. Fife?

Ms. Catherine Fife: Thank you for coming in and providing such a comprehensive review. It was really important for this committee to hear the real, lived experiences of condo owners and not just from those who have investments in it. I think that you've made some very good points.

I think the point on sections 134(5) and (6), around there being no incentive to settle is a very strong point. The legal costs, I know, have been quite crippling for many people going forward.

The other issue that I took great interest in is the short-term rentals. Do you want to expand on that just a little bit more? I think you made a good point about these units not being up to hotel and fire code standards. Condo owners will say, "This is my unit and I would like to rent it out for a year or two years." Are you referring to weekly, monthly?

Mr. Holland Marshall: I refer, on page 6, to a declaration from a seven-year-old building in Etobicoke. The declaration says "used only for residential purposes, and for the business of providing transient residential accommodation." Why are residential units being used as business?

In section (ii), it says "for any duration and on any number of occasions."

You can rent your condo by the day, by the weekend, by the hour, and there is nothing that the corporation or the condo board can do about it because it's in the declaration. A lot of the new developers are putting these in, and they themselves are doing short-term rentals for a month, but an individual can rent as low as for a day or an hour. There is a website called Breather where you can rent a condo unit for an hour for whatever reason.

As far as how nasty things can go, in a recent case, on May 19, when the lawyer was saying that condo living is like being in a club, Justice Myers said, "One difference. With a club if the board finds someone they do not like, they make their life miserable."

Ms. Catherine Fife: That leads me to my last point around the election of board members. Governance, I know, is going to be an issue—the strength of the board, and governance as a whole. You say that there's election fraud in condo elections. You make a good point about the management company being very involved in that process. Do you want to expand on this a little bit, Mr. Marshall?

Mr. Holland Marshall: On my website I started a year and a half ago, I had one page on election fraud. Now I have two full chapters. We have everything from prime ballot positioning to refusing legitimate proxies, refusing owners' statements that they're in arrears when they're not. All kinds of tricks are being played and the property management is heavily involved in it. It doesn't matter whether they have their RCMs or they don't have their RCMs. Their jobs depend on the incumbent staying in power, and they will do what it takes to make sure they stay in power.

Ms. Catherine Fife: Thank you very much for coming in and sharing your views with us.

The Chair (Ms. Soo Wong): Thank you very much, Mr. Marshall, for being here.

MS. BARBARA CAPTIJN

The Chair (Ms. Soo Wong): The next witness is Barbara Captijn.

Good morning. Welcome. As you probably heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will begin with the government side. You may begin any time. Please identify yourself or whatever organization you represent and your position there.

Ms. Barbara Captijn: I would like to thank the members of the committee for inviting me here today, as a private citizen, to talk about things which are very important to residents of Ontario.

My name is Barbara Captijn. I'm a new homebuyer in Toronto. I live and work in the downtown core, and I am the author of a consumer blog regarding new-home-buying issues in Toronto.

First of all, I'd like to say thank you very much for bringing this bill in the first place, and all the work that's gone into it. I think there are many, many good things in this bill. Many of these improvements are long overdue, and many private citizens like myself want our thanks to go to those who have worked on this.

But I'm here today to talk about what I find is missing from the bill and what concerns me a great deal. It's very difficult for a member of society to just appear before a formidable group such as yourselves and voice some concerns that I really feel must be raised and must be raised now.

I'm making a personal appeal to you to please consider amendments to Bill 106 which have to do with the following: I'm very concerned that there are gaps in this bill which have to do with consumer protection. I feel that if these issues are not properly addressed now they will grow and fester and they will come back to haunt us. These problems will become more serious for new homebuyers in the future. There are serious amendments which have to be done for consumer protection and those include reforms to Tarion, which is the regulator of the building industry. I believe that Bill 106 does not go far enough in protecting consumers and this is an opportunity to do it. I would like you to consider

amendments which would take that very opportunity, seize it, and make this bill more important in consumer protection.

As I walked here today from my own neighbourhood I was conscious of the fact that I'm very apprehensive about walking next to tall, glass condo buildings. It's very hard to avoid these things now because if you live in the downtown core, that's really all you're seeing. We've all read the news of falling glass, unsafe balconies, unstable roof antennas and million-dollar class action lawsuits for shoddy construction. It seems that this just goes on and on and on. It concerns me a great deal. Why are buildings continually being built more quickly, more cheaply, with more inferior materials and with inadequate supervision, apparently, of the construction process?

A few weeks ago, my own street in my neighbourhood was blocked off to traffic for more falling glass. I saw ambulances on the street; two people being injured and taken away; shards of glass in the neighbourhood where I walk every day.

In August last year I had to avoid another major downtown street where a building had been declared unsafe due to falling glass. So the very people, apparently, who gave the occupancy permit to that building in the first place and approved the construction are now declaring it unsafe. I'm not afraid of crime walking down our streets; I'm afraid of buildings attacking me. That's absurd.

We're in the year 2015. We all know, in this room, how we can take preventive measures to provide real deterrents to shoddy building. We know how to do it. I'm asking you in this bill to take up that opportunity and step up to the plate and do this part of consumer protection, which we've all been crying for for years.

I took the time, as a private citizen, to try to understand this and I'm here today to tell you that, although I don't understand everything that is in there, I believe that there are some very good things, and, as I say, thank you for that. I'm here to ask you to consider bringing in amendments which will provide real transparency and accountability to the regulator of the building industry who is supposed to protect people like me: Tarion Warranty Corp. We need proper transparency. We need proper consumer representation on Tarion's board. We need to have the confidence that this is a transparent organization. It's a monopoly and it can make its own regulations without scrutiny from you or me or members of the public.

Tarion has a huge responsibility towards us, and yet I think consumers want to have the confidence that this is a transparent organization and that we can see what they're doing with our money and we can tell whether that's the best use of this money. All of us who buy new homes and condos have to pay a mandatory fee to Tarion. Please show us what is happening with that money.

0940

I've tried to contribute to every consultation that Tarion has done. We are not even allowed to see a record of our comments from the consumer side. There's not enough consumer representation there.

I believe that Bill 106 opens the door to bring in proper transparency and accountability measures for Tarion.

This bill entirely leaves out—it says nothing about—making builders responsible for shoddy construction and making unscrupulous builders accountable to their end users. I am the end user of all of the services that we're talking about today—building condos, selling them, marketing.

The end users like myself have a very big interest in making sure that the government bodies who have been given the responsibility to oversee consumer protection are actually using our money to do that, and that we're not looking at a powerful building industry actually capturing the regulating body for its own purposes. I'm very, very concerned about that, and I am asking you to please take that into account. It's an opportunity to step up to the plate and make this bill even stronger in consumer protection.

I listened to the debates in the Legislature—I didn't listen to them, but I saw them online. I'm not the only one raising these issues of concern about a regulator of the building industry which is not subject to sufficient checks and balances on behalf of our government, to protect us.

I don't want to walk down the streets of my neighbourhood and feel fear, not because of crime but because of shoddy construction. There's just no reason to allow that.

I run a small business, and I'm accountable for the end product which I deliver to my customer. If the customer is not happy with it, I can't sell my product. But Tarion is a monopoly. We don't have a choice.

Consumers are being asked to trust, but no one can verify whether in fact Tarion is providing, as regulator, enough deterrents to shoddy building, which we can all agree brought us here in the first place. The falling-glass condo crisis and the article that appeared in Toronto Life in 2012 is the impetus behind the review of this bill. Well, I am still here talking about this same problem, so we haven't addressed it.

I speak for many consumers here today who don't have the ability to come here. I know that it's extremely important to all of us that you please consider amendments to Bill 106 to address these direct gaps in consumer protection which have to deal with the regulator of the building industry, Tarion Warranty Corp. Please add amendments which will allow cabinet to bring transparency and accountability to Tarion.

If not, the root cause of the very reason why we're in this room will not be addressed. We'll miss an opportunity, and that would be a shame, and that would be very detrimental to consumers in the most important investment of their lives.

Please, I'm asking you to bring amendments to this bill.

The Chair (Ms. Soo Wong): Thank you very much. I'm going to turn to the government side. Mr. Milczyn.

Mr. Peter Z. Milczyn: Thank you, Ms. Captijn, for your presentation this morning. Certainly, you're well known as an advocate for purchasers of homes that have issues.

I did want to focus on some of the changes that are proposed in this legislation which do impact on some of the issues that you've raised. Certainly, a big gap in the construction and sale of new homes in this province has been the renovation and retrofitting of older structures into residential condominiums. Whether it's an old church or an old factory converted into lofts, for many years, although it's been a new home and it's been marketed as a condominium and it's been sold to purchasers, those people had no protection for a new-home warranty program. That was identified as a big gap. Obviously, there is certain additional jeopardy, perhaps you could call it, when you're buying a retrofitted structure. It's not a brand new foundation; it's not necessarily brand new walls and structures. That was, I think, a big gap in this province and one that this legislation addresses by ensuring that that renovated church or renovated factory loft building, if it's sold as a condominium—that those purchasers have the protection of Tarion. You might have issues with what that protection is, but it's certainly a huge step forward. Would you agree that that is a positive step in this legislation?

Ms. Barbara Captijn: Well, thank you, MPP Milczyn. Yes, I do. As I began by saying, there are very good things in this bill, but latent and concealed defects are what kills the finances of most young families buying new homes. Defects don't become discoverable the moment that you walk in, sign the papers and the Tarion warranty expires. In the homes you've suggested, which are homes using an existing foundation or facade—I have experience with those as well—I think it is probably a good idea to afford protection of those. But that's not the reason why I'm here. That is probably a small sector of the market.

I'm talking about serious construction defects and Ontario Building Code violations, which continue to be built in that type of home, perhaps, and other homes. We're putting band-aids on this issue but we're not addressing it head on. The problem is lack of transparency at the government monopoly which is charged with regulating the building industry.

Yes, there are very good things in the act and I commend you for that. It doesn't go far enough to protect consumers. That's my view, sir.

Mr. Peter Z. Milczyn: Thank you for that. I just want to focus on the fact that the purpose of this act, though, is protection for condominium owners and, in this respect, purchasers. Issues around the Ontario Building Code and whether municipal building officials are adequately inspecting and upholding code are very serious issues, but they're out of the scope of necessarily focusing on the protection of condominium owners.

I also wanted to focus on the fact that you, over the years, have raised some good issues around transparency in a delegated administrative authority. I just wanted to point out to you that in this act the new delegated administrative authority that's being created to oversee condominium managers and condominium boards actually puts in place a lot of those transparency measures which you've identified around transparency, about salaries, who the staff are, the fees that are collected and how those fees are spent—

The Chair (Ms. Soo Wong): Mr. Milczyn, your time is up. I'm very sorry.

Thank you very much for your presentation, Ms. Captijn. Okay? Thank you.

Ms. Barbara Captijn: I'm not allowed to respond to that?

The Chair (Ms. Soo Wong): No, I'm sorry. We're very tight on time, so very sorry.

MR. CHRIS JAGLOWITZ

The Chair (Ms. Soo Wong): The next witness before us is Chris Jaglowitz. Good morning. Welcome. Come on down.

Mr. Chris Jaglowitz: Good morning.

The Chair (Ms. Soo Wong): As you heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will begin with the official opposition party. You may begin anytime. Please identify yourself for the purposes of Hansard.

Mr. Chris Jaglowitz: Thank you, Madam Chair. Good morning, everyone. My name is Chris Jaglowitz. I'm a lawyer. I'm a partner at Gardiner Miller Arnold, a Toronto law firm that represents and advises several hundred condominium corporations throughout Ontario. We also assist unit owners individually and in groups.

I'm the editor of the Ontario Condo Law Blog. I've practised condominium law almost exclusively for over 12 years. I come to you as the veteran of hundreds of condominium disputes, and from both sides of those disputes. From that perspective I'm glad to offer you my insight into a couple of aspects of Bill 106.

Before I do that, let me quickly recognize the Ministry of Consumer Services for having undertaken a very creative, very comprehensive public engagement process to review the Condominium Act. I was part of it. I sat on two of the working groups: the dispute resolution panel on the condo managers' working group, as well as the expert panel that vetted the recommendations. During that process, I was struck by the breadth and the depth of the experience, the expertise and the perspectives that came to the table from a good cross-section of the condo industry, including unit owners.

Equally impressive was the way in which the ministry staff took the recommendations from that process, as well as the public input that came along, and with that, distilled a balanced, flexible, comprehensive piece of legislation that's before this committee today. I'm really proud to have been part of that process and am quite impressed with the bill that has come from it.

0950

Let me address just a couple of features of the bill that may seem controversial to some but in my view are worth supporting. I will have a couple of constructive suggestions at the end.

First and foremost, the proposal to license and regulate condominium managers is a vitally critical consumer protection tool that is long overdue. It's noteworthy also that the group that has been advocating the longest and the hardest for that provision is the condo managers themselves, and you've heard from them this morning.

You've also heard, and you will hear from others, that many problems in condominiums will often arise from condo managers lacking sufficient knowledge, skill or incentive to do the right thing. Having properly educated, licensed, qualified and regulated condominium managers with a clear and enforceable code of conduct will, in my estimation, go a long way to addressing many of the recurring problems that have been raised and that you will continue to hear about. For that reason, in my view, the proposed Condominium Management Services Act, part of Bill 106, is arguably the largest and the most important development in condominium law since our first condo act in 1967. So I strongly support that feature of Bill 106.

The second one that I think is worth supporting is the creation of the proposed condominium authority. The big question for this committee and that the public has, though, is whether or not it will deliver value when you consider that the cost of operating that entity will be financed by the unit owners through their common expenses. Understandably, the unit owners will want to know that they're getting a bang for their buck, and, of course, this committee will be looking at that closely as well. I'm going to give you three lesser-known but important ways in ways in which I think the condominium authority will deliver that value to unit owners and the public.

First, as a source of accessible and reliable information to unit owners, purchasers, directors and managers, the authority will help avoid many disputes and will lead to quicker and more efficient resolution of many types of condo disputes. Because missing or incorrect information is typically the cause of condo disputes, the value of good information is obvious.

Second, as keeper of the condominium registry, which will be a vital tool in understanding what's out there in terms of how many condominiums, where they are, how old they are, what type they are and how many units they have, that will provide the statistical foundation that will be needed in order to reform the law and regulations, especially over time as things change and as the stock of condominiums ages. That registry will also be a valuable and quick source of information to purchasers and to unit owners.

Third, being focused on condominium issues, the new condominium authority will be uniquely positioned to monitor trends in practice, in technology, in the law and in the way we live. We'll be able to then serve the condominium public by promoting critical issues and developing trends and best practices among the condominium public.

In addition, through its obligation to report to government and to inform and advise the ministry, the condo authority will have the obligation and the unique opportunity to recommend reform and enactment of new regulations in order to fill gaps that may arise in the legal framework. In this way, the law can develop to meet the needs of Ontarians over time and without the need to come back to Queen's Park to seek amendments to the statute. I note that it has been 17 years since a lawyer from my office has been before legislators to speak to the Condominium Act, in 1998. We hope that with this bill and its ability to make regulations to roll with the punches, it will be many more years before any of us are here before you.

A fourth and perhaps larger way in which the condominium authority will be of value to unit owners is the creation of the proposed Condominium Authority Tribunal, which is intended to decide the most common condo disputes in a quick, accessible and inexpensive way. Just to illustrate how I submit that that will be useful, let me give a scenario that sometimes arises today under the current Condominium Act. Let's say 15% of the unit owners of a condominium corporation submit a requisition for a meeting, presumably to remove the board or something else that's important. The board looks at that requisition, rejects it for an unspecified reason, and declines to call and hold the meeting. The unit owners then have no option other than to call and hold the meeting themselves, which they can do under section 46. The board, in that case, from time to time might run to court seeking an injunction to restrain the holding of that meeting. Let's say the legal costs, whether the injunction is successful or not, costs the condo corporation $20,000. That must be paid by the condo corporation. As a common expense, that $20,000 cost is spread amongst all of the unit owners. In case of a 75-unit condominium corporation, the net impact is 267 bucks per unit; that's 20 grand divided by 75. For a 150-unit condo, the impact is closer to $134 per unit. For a 250-unit condo, it's $80 per unit. That's the cost of just one injunction undertaken by the board to quash unit owners' rights.

Of course, that's often the tip of the iceberg. Boards might be taking other measures or there might be larger disputes there that lead to a much costlier and more divisive dispute. Unsuccessful rule enforcement and human rights issues can lead to legal costs in that magnitude as well.

The example I just gave, the breakout of the impact per unit, is based on larger condominiums. As I think we have heard, there are several hundred condominium corporations in Ontario with fewer than 10 units and sometimes as few as two or four condominium units, and it's not unheard of for condos like that to engage in incredibly divisive, hugely destructive fights, akin to blood feuds, where legal costs might reach six figures.

Unit owners in those small condos are assessed for tens of thousands of dollars. If the condominium authority, with its included tribunal that can quickly and summarily decide most important types of condo disputes including about the propriety of meeting requisitions and rule enforcement issues, can operate on a levy of $1 per month per condominium unit, that, I submit, is fantastic value.

In fact, even at $8 per month per unit—that would be about 100 bucks per year—the total cost of the condominium authority for a unit owner would still be less than most of the legal cost scenarios I just raised. Call it legal expense insurance; call it a hedge against going to court: The levy to finance the condominium authority is a very small price to pay and is, in my respectful submission, an absolute bargain compared to the potentially catastrophic scenarios that may arise when unit owners—and condo corporations—don't have a quick and easy way to get disputes solved quickly and cheaply.

The Chair (Ms. Soo Wong): Mr. Jaglowitz, your time is up.

I'm going to turn to the opposition side to ask a question. Mr. Barrett.

Mr. Toby Barrett: Thank you, Chair, and thank you, Mr. Jaglowitz. My ears perked up when you talked about what you described as a blood feud in some of these smaller units, which is really, really unfortunate and unnecessary.

I have a bit of a case study in my mind. I think of a fairly new series of units in Delhi. It's a small street and there are maybe—I'm not sure—five on one side and five on the other; kind of like row housing. My EA actually bought a condo there, so I hear a lot about it. I guess they own the street. They have to pay to plow the street and they have to pay to get rid of the garbage and they pay municipal taxes as well. This comes up in, certainly, a number of smaller, rural areas where we have these smaller condo units. There's no condo board. I guess if you put every unit holder together you would have a board. The builder seems to look after things. The lawn gets mowed, and it seems to be fairly expensive to mow the lawn. We're talking a rural, small town—a tobacco town. Any comments on that? Is this legislation going to cover these very small units out there on their own?

Mr. Chris Jaglowitz: Incidentally, Mr. Barrett, I grew up in Delhi, Ontario, so I know exactly of what you speak. The short answer is that the condominium authority, by providing information to unit owners, will give them the tools in order to figure out, "Is our condominium corporation working as it should? What do we need to have a board? How are decisions made? What do we do if we don't like the way that things are happening? And if we have a dispute with the condo corporation"—and even if it's that, for instance, things are being run by the developer because the unit owners have not stepped up and have not stepped in and taken control of their condo corporation, the owners will have the opportunity, through the tribunal, to raise their issues, to requisition meetings and to elect a board.

1000

It is vitally important, though, and underlying all of this—unit owners need to shake off the apathy that we see too often in condominium corporations and take charge of their own destiny and take care of their finances and their condo corporation.

Mr. Toby Barrett: I fully believe that even with very, very small groups like that, with a modicum of education, they can look after a lot of this themselves, but many don't have that kind of background.

I am worried about creating a condo authority, yet another agency—I think you talked about it, a dollar a month or something like that per condo; I'm not sure. We've seen this film before and I'm very concerned—an executive director is hired and staff are hired, and the next thing you know, you've got 300 people on the sunshine list. Is that where this is going to head? Or is it going to head in the direction of Tarion, with lack of oversight? I just wanted to get your comments on the future of a condo authority.

Mr. Chris Jaglowitz: Right. One thing, of course, is, like most condo boards, the condo authority will be subject to the scrutiny of unit owners, who, in addition to watching their own condo board, will be watching the condominium authority very closely, I believe. The simple fact is, with the advent of technology—and actually, to run the Condominium Authority Tribunal, it's premised on there being technology and that disputes could be heard using electronic means so we don't have individuals coming to a traditional sort of tribunal in person. People can submit material online and through a cheaper method, and provide quicker answers to more disputes at a lower price and therefore keep the costs low. That, I think, is the most important aspect.

The other one, of course, is in dispensing information using online tools for unit owners to access on their own time that don't actually—once those tools are in place—have much of a cost to keep going. The footprint of the condo authority can actually be quite nimble and quite small, and therefore keep a lower cost.

I do agree, though, that the set-up of the condo authority—it will be very vital to make sure that it's small, that it's efficient and that unit owners get the biggest bang for their buck.

Mr. Toby Barrett: Maybe it's this term "authority," which can turn some people off. It's the "authority," and it's probably going to be located in Toronto on the top floor of a high-rise somewhere. If we had something a little more nimble, as you say, with electronic communication—something that would be dedicated—

The Chair (Ms. Soo Wong): Mr. Barrett, I need to interrupt you because time is of critical essence.

Mr. Toby Barrett: Out of time?

The Chair (Ms. Soo Wong): Yes, out of time.

Mr. Toby Barrett: Okay. Thank you.

The Chair (Ms. Soo Wong): Mr. Jaglowitz, thank you for your presentation. You have until October 29, 2015, at 6 p.m. to do any written submissions to the committee, okay?

Mr. Chris Jaglowitz: I will.

The Chair (Ms. Soo Wong): Thank you very much for your presentation.

Mr. Chris Jaglowitz: Thank you all.

MS. NANCY LEE

The Chair (Ms. Soo Wong): Our last speaker before we recess for the morning is Nancy Lee. Ms. Lee, can you come forward?

I'm not sure if you heard: You have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will begin from the third official party. You may begin any time. Please identify yourself for the purpose of Hansard. I believe the Clerk is coming around to see if there are any written submissions that you want to share with the committee.

Ms. Nancy Lee: Sure. Hello, my name is Nancy Lee. I'm a homeowner and past tenant of a few condominiums throughout the GTA. I'm a professional, self-employed with my own business, and a mother with four children.

I want to thank the committee for the opportunity to speak about Bill 106. It's come to my attention that Bill 106 needs to be amended in order to be truly part of a consumer protection bill that it was intended for. Bill 106 needs to be amended to allow for what I call the elephant in the room. I feel that we're dancing around an issue that is unaddressed. The fundamental issue here is that the construction of the condominium must be good on the outset. In other words, if the construction is done with accountability by a developer who does, at the very minimum, construct to the Ontario building code, this will be proactive in reducing issues that will materialize with poor construction practices.

The problem here is that there is no way for the developer to be made accountable. Tarion, the new home warranty provider, is supposed to regulate the developers; however, it does not provide adequate protection for consumers, for condominium owners. There have been many articles written highlighting the problems with Tarion. Please review the three articles that you have—they're all written by lawyer Alan Shanoff recently, within the last year—that publicize this issue. They're dated February 21, March 30 and September 26. Other members of the media have also publicized this issue, with Roseman, Shah, Wallace and Blatchford all writing articles within the last year.

Unfortunately, Tarion has a corporate culture of protecting the very builders it is supposed to regulate. Tarion's builder directory is incomplete and not accurate. This means there is no way for a consumer to judge a builder. Furthermore, its board of directors is loaded with developers. In contrast, the colleges, which govern, say, dentistry or medicine, have on a majority of their boards members of the public. As a result, the public is confident that there is oversight over those health professions.

It is ironic that the public has more protection and accountability when they purchase an iPhone 6 or get a $100 filling done at their dentist than a new $1-million home in the GTA.

The public is not confident in the home warranty regulator and also, correspondingly, in the government and in the ministry of consumer affairs, which is supposed to oversee Tarion. I believe Tarion's own numbers show that there are over 50,000 dissatisfied consumers. The exact numbers are unknown because it's a black box.

Secondly, recently PC Party critic Randy Pettapiece conducted a survey assessing whether there was a need for Tarion oversight. That was done and concluded in February 2015. I believe he recommended to the PC caucus that there should be reform of Tarion. Furthermore, since February, I have conducted my own personal survey of experiences of new homebuyers with the warranty provider. From hundreds upon hundreds of future and current homeowners, the main themes that I found that arose were these:

Ignorance: People feel that Tarion is already accountable, with oversight. Young people especially are shocked that it's actually a closed book. There is no freedom of information. In fact, when I spoke to one of your current sitting Liberal MPPs, he had some misunderstandings about the new home warranty provider and asked me questions about it that I said I did not have the answers to, and yet he himself, as an MPP, would not be able to obtain them, even though he could directly go to the ministry of consumer affairs. It's a secret box.

Number two: Consumers experience despair. Many people who have had new home construction problems have been frustrated and given up on Tarion as a true advocate for them. Tarion sides with builders against homeowners. Many people don't know where to turn.

Third, what results is a dismal reputation of the building industry. People have no faith in construction or building. It's a common experience that they feel they're taken advantage of by contractors and that builders are not accountable for their construction.

Now, if these reasons are not enough for you to consider the elephant in the room, also consider public safety, if you're going to consider the public good, if you're considering people other than just condominium owners. For example, there have been issues of falling glass in many of the newly built condos, which is a concern from a public safety issue. For example, in the summer of 2014 and I believe 2015, falling balcony glass in the posh Shangri-La Hotel condo forced the city of Toronto to deem this two-year-old posh building unsafe.

The developer needs to be accountable for proper construction from the beginning. This will avoid issues of special assessments and loss of use of space by condo owners, increased liability for condo owners and safety for both condo owners using the balconies and innocent passersby like you. Does someone's daughter or son need to receive a life-threatening head injury before there is a call for accountability by builders?

Number two: Not only if you want to consider the public safety perspective, the second thing is there is a systemic problem. Recently, I have been volunteering for the federal Liberals in the Don Valley West riding, of which Kathleen Wynne is a constituent. The issue of

builder accountability and warranty provider accountability is not limited to new condominiums and new subdivisions. It involves a pattern of systemic corruption, occurring right in established, high-end neighbourhoods of Toronto's establishment—in Premier Wynne's backyard. Yet, here, the lack of Tarion reform has its deleterious effects on homeowners, which could be you or your children. This is your government's current legacy.

1010

Our family has supported the Liberals for the past three generations. My grandfather came to this country, paying the $500 head tax in the late 1800s. Under Liberal policies, my family was allowed to thrive; however, as a Liberal, I am distressed to see the current social injustice that is perpetuated on the public as a whole. Young people who have saved for their down payment for a new condo find out that they're told that faulty condo construction results in a huge special assessment fee.

Now you have a chance to amend Bill 106 to include the issue that is unaddressed: the lack of builder and warranty provider accountability and transparency. If the condo is built right from the start, many issues will be minimized later. Condos can avoid initiating class action lawsuits to remediate alleged construction deficiencies. In the GTA, I'm aware that there are currently at least six class action lawsuits active against developers by condo owners.

Condos can avoid having their insurance declined and terminated due to excess liability risk, as determined by condo insurance providers. In fact, one GTA condo has had its building insurance terminated due to potential excess liability. I'm sure there are more to come.

Now, you may be wondering: "Let's just give Tarion a chance." Well, unfortunately, the legislation governing Tarion is outdated. In the 1980s, Monte Kwinter was the then minister in charge of the new home warranty program. He told new homeowners struggling with poor construction at that time—and they were struggling with an unaccountable warranty program. He said, "Builders will police themselves and self-monitor themselves." It has been over 30 years since he made those statements. The fox being in charge of the henhouse doesn't work. The current abysmal state of building in Ontario is the legacy of that.

But there is hope. In the past, in March 2014, Wynne herself proposed a sweeping accountability measure, whereby Ontarians would have a substantial increase in government transparency—a significant step to a tangible change. She stated, "We want to ensure that the people of Ontario have the open, accountable and accessible government that they deserve." Past Ontario Ombudsman André Marin commented, "Ontario is poised to rectify"—

The Chair (Ms. Soo Wong): I'm going to need to interrupt you. I'm going to turn to Ms. Fife to begin this round of questioning.

Ms. Fife.

Ms. Catherine Fife: Thank you, Nancy, for coming in. You're exactly the voice that we actually want to hear at this committee.

As you know, we've shed a light on the Tarion issue for a number of years. You referenced former MPP Rosario Marchese. I thank you for raising it as the elephant in the room, but it's bigger than an elephant, I think, because this bill does not address the oversight of Tarion. We are going to have to do that through amendments. Your voice will lend us some support when we get to the clause-by-clause of this new legislation.

You referenced the lack of accountability and transparency with Tarion. Back in 1986, former Ombudsman Daniel Hill included reform in his mandate. Do you want to talk about what value you see for the fees that you contribute to Tarion, if any?

Ms. Nancy Lee: I think that these are individual situations. Some homeowners may have a positive experience. However, the vast majority of the homeowners that I've surveyed, on hundreds of personal surveys—the consensus is that there is no value for their service. If there was a choice of, maybe, multiple warranty providers, that would give us more accountability. There would be more incentive for Tarion to actually provide customer service, as opposed to side with builders.

In my personal experience, I have felt that Tarion has put obstacles to deny your warranty in every case possible. There's always an excuse. They will change the rules to benefit themselves, and the playing field is not level.

Ms. Catherine Fife: The former Ombudsman referred to Tarion as a "puppet" of home builders. Do you share that perspective? He couldn't look into the full costing and the numbers and finances of Tarion because he doesn't have oversight over that agency.

Ms. Nancy Lee: Well, I agree with you. The only thing we know is that on the board of directors that governs Tarion—I believe there are 15—the majority are builders. Many of the others are corporate lawyers or in member businesses. In terms of true consumer protection, there is no real advocate there that I see; it's sorely lacking in that respect. How can you have eight members of a board of 15 directors being developers? There is obviously a bias there.

Unfortunately, having been self-centred and focusing on builders has led to the legacy of builders not having a good reputation. They've shot themselves in the foot.

Ms. Catherine Fife: Finally, I just want to thank you for bringing the public safety issue to this committee as well. I think that you're right: The smart investment and the due diligence that Tarion needs to be following through on is ensuring that the products and the quality of materials are to a standard where we don't have to close down a building or declare a building unsafe.

I myself lived in one of those buildings where the glass was falling off for almost two years. This is an issue of public safety, and I think it's very important that you brought it to this committee. Thank you for coming in today.

The Chair (Ms. Soo Wong): Ms. Lee, before you leave, if you have a written submission, please submit it to the Clerk by 6 p.m. on October 29.

I'm going to recess the committee. At 2 o'clock we're going to come back.

The committee recessed from 1015 to 1400.

The Chair (Ms. Soo Wong): I'm going to resume the committee and public hearings on Bill 106.

I have just been informed that the Clerk has put on the table for all of us the notification that there will be a report from the Financial Accountability Officer, Mr. LeClair, coming to this committee. That's for your information. Also, staff have prepared background information on Bill 106. I just wanted that brought to your attention. Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair. So it says that we're going to get an embargoed copy at 9 o'clock. Will that be electronically?

The Chair (Ms. Soo Wong): That's a good question. Mr. Clerk?

The Clerk of the Committee (Mr. Katch Koch): I can find out.

Mr. Victor Fedeli: Can you, please?

The Chair (Ms. Soo Wong): We'll find out. So look out for it electronically or something coming to us in the near future. I just wanted to bring that to everybody's attention.

MR. REGIS JOGENDRA

The Chair (Ms. Soo Wong): We are beginning our hearing, and I'm going to call the first witness forward: Regis Jogendra.

Mr. Regis Jogendra: Yes, I'm here.

The Chair (Ms. Soo Wong): Can you come forward, sir? Have a seat. Good afternoon.

Mr. Regis Jogendra: Good afternoon.

The Chair (Ms. Soo Wong): As you probably heard when you applied to be a witness today, you have 10 minutes for your presentation, followed by five minutes of questioning by rotation of the committee. This round of questioning will begin from the government side.

You may begin any time. Please identify yourself or any organization you represent for the purpose of Hansard.

Mr. Regis Jogendra: I couldn't quite follow what you said: I'll be in a position to present my matter within 10 minutes, and then questions to be asked from you all to me in that?

The Chair (Ms. Soo Wong): No. You're going to present for 10 minutes, followed by five minutes of questioning. This round of questioning will begin from the government's side. That's what I'm trying to tell you. You have 10 minutes to do your presentation.

Mr. Regis Jogendra: That's fine. I will start right away.

My name is Regis Jogendra. I do not want to overstate myself. I'll just introduce myself as a lawyer from another jurisdiction, called to the bar 47 years ago. The reason I am saying this is I'm interested in the legal aspect of Bill 106. Unfortunately, I must say, I was trying to get a copy of this so that I could study it and make a considered presentation, but unfortunately, I couldn't get it. I got it only today. To that extent, I am a little handicapped.

I also might say, in passing, that I am a retired judicial officer from the provincial court of Ontario, having been a justice of the peace, and most of my judgments are online. Why do I say this? When I make a statement, I make it very seriously, and I'm concerned about this Condominium Act.

The Condominium Act is, I should say at the outset, outdated. More often than not, the people who are victims or suffer under the provisions of the Condominium Act are the unit owners. The condominium properties are held because of the existence of unit owners. Straightaway I'll refer to section 27 of the old Condominium Act, which says that "a board of directors shall manage the affairs of the corporation." But more often than not, as I found in practice, the board of directors, though elected, surrender or subjugate their rights to the management company. In my view—I do not know whether you'll accept it—the management company is contracted as an employee of the corporation to look into the administrative affairs of the corporation, and not to make decisions and not to govern or carry on the affairs of the corporation. I have found that this surrender or abdication of the authority of the board of directors has resulted in serious consequences, adverse to the condo unit owners.

I think you are all aware that way back—I can give you proof of that—a certain condo chairman named Khan—I'm sorry I had to mention the name—swindled over $60 million by hypothecating and mortgaging the properties of several condominiums, having doctored bylaws as if they had been approved by the board of directors. He vanished from here, and he's still missing. They have not been able to recover.

The main and important things that affect the unit owners and their rights are that the board of directors is either incompetent, or they do these things perhaps with the connivance of the management company.

I have also seen that when the annual general meeting is held, the proxies are being collected by the management company and the proxies are being scrutinized by the management company. That is wrong, because, in law, I will say, the board of directors is given the authority by the unit owners, perhaps for a period of three years, to manage the affairs of the corporation. That means that delegation of the authority of the owners is vested with the board of directors for three years.

But what happens is that that authority is subdelegated to the management company, and the management company takes over. This is strictly against the principle of delegatus non potest delegare, which means that a power delegated to one authority by the enabling person should not be redelegated to somebody else. This is what is happening. In fact, in the condominium where I am—3050 Ellesmere Road—when the annual general meeting is called, the annual general meeting is controlled by the management company. They verify the

proxies, they reject the proxies and they prevent proxy holders, duly authorized by the owners, from even participating in the meeting.

These are serious matters. I have not been able to look at the various sections of Bill 106, but I would urge the authorities who are in charge of this bill, on first or second reading, that there should be teeth in the bill to prevent these specific matters from happening. One is that the management company should not in any way interfere with the affairs of the corporation. Secondly, although there is provision to say that the persons who are elected to the board of directors might exercise skill, and there should be bona fides and only mala fide acts will be subject to sanction, it's not sufficient to control them. The other alternative is that persons who are seeking positions on boards of directors should have some training or qualification to be capable of managing the affairs of the corporation, because this is trust money. Very often I have found in practice that they present a budget at the annual general meeting and more often than not the budget is exceeded by them without the covering sanction or prior approval of the unit owners. These are serious issues.

From time to time, in order to offset this kind of mismanagement or, shall I say, it is not even wrong to use the word "fraud," the board of directors, I have found—I have heard—give away contracts without proper procedure. A contract should not be given to anybody unless tenders are called. That procedure has not been followed, and they give the contract to anybody whom they choose. The monies of the corporation—the reserve fund and all these things—are spent wastefully in this sense.

1410

There should be a sufficient controlling and supervisory jurisdiction that should be imposed in the tribunal, perhaps, that's being set up to monitor the condominium corporations' board of directors. The important thing is that there should not be any conflict of interest between the board of directors and—

The Vice-Chair (Mr. Peter Z. Milczyn): Mr. Jogendra, that's your 10 minutes, but thank you. There will now be questions. Mr. Ballard has questions.

Mr. Regis Jogendra: I'm prepared to answer any questions. Ten minutes is a very short period to cover an area of 100 pages. I'm sorry to say this—

The Vice-Chair (Mr. Peter Z. Milczyn): Mr. Ballard.

Mr. Regis Jogendra: MPP Wong is not available here?

The Vice-Chair (Mr. Peter Z. Milczyn): Mr. Ballard has questions for you.

Mr. Regis Jogendra: Okay, sure.

Mr. Chris Ballard: That's me. I just wanted to—

Mr. Regis Jogendra: Your name again? Could you announce yourself?

Mr. Chris Ballard: My name is Chris Ballard. I'm an MPP.

Mr. Regis Jogendra: Okay. It's nice to hear your voice, sir.

Mr. Chris Ballard: It's nice to talk to you. Thank you very much for coming forward today and making your presentation. I understand that you only just got the proposed bill, Bill 106, today. Obviously, it's a big bill and it will take some time for you to go through it line by line, clause by clause, and understand it.

I have listened very carefully to your concerns, and I think you'll be relieved to know that we received about 2,200 submissions during this 18-month process. We talked to condominium owners, condominium managers, condominium board members—a wide range of individuals—and received about 2,200 initial submissions. Then there was some follow-up work after the bill was initially proposed. I'm confident that a lot of the things that you're putting forward as concerns are valid concerns; you're not the first condominium owner to bring them forward. I will just touch on a few and then I'll have a question for you.

I think you'll be relieved to hear that there will be greater emphasis on training for the board of directors, that there will be some mandatory training. If you're going to sit on a condominium board, you should at least have a minimum set of skills required to effectively run a board and to know what your responsibilities are as a condominium board member.

One of the things that I hope will bring some comfort is around the area of a requirement for licensing condominium managers. Again, for the managers, there will be a certain amount of education required, there will be licensing and with that will come oversight. If a condominium board is looking to hire a manager, they'll go to the licensing organization to make sure that the individual, in fact, is licensed.

I think that one of the things that makes me a lot more comfortable is a number of steps, a number of pieces, that will lead to more transparency and openness because, like you, we heard from condominium owners who felt, at times, shut out by their own board of directors, unable to participate. There are some measures that I think, as you go through the documents, you'll find address that transparency and that openness for condominium owners.

You touched on something towards the end about condominium boards or condominium managers and how they award contracts. I've heard from both condominium owners and contractors who have experienced that in the past. I think what you'll find, as you read the document, is that there are steps being put in place to make sure the tendering process, the bidding process, is more open and transparent for condominium owners, so that they know how their dollars are being spent because, at the end of the day, those are their dollars.

I just wanted to give you those assurances. I'm looking forward to you rereading the document a little more fully. I know it's a big one and you didn't have much time.

I guess the question I would have, in a very general way, is, how has the existing condominium legislation impacted you personally?

Mr. Regis Jogendra: You mean the 1998 one? The original one?

Mr. Chris Ballard: Exactly. The current one, yes.

Mr. Regis Jogendra: It's lacking teeth. It is outdated and it's not suitable to the situation in which—because we have to learn by trial and error, sir. My important submission is this: the abdication of the authority of the board of directors to the management company. I'm more concerned about that because the management company runs the annual general meeting. It excludes the unit owners and the proxy holders from attending. I know an instance I can tell you about when the manager even excluded proxy holders and unit owners from attending under the threat of calling the police, that they were trespassing on the property. This should not happen.

What I am asking you particularly is that this bill, or the authority that you are going to present—is it going to be a boon to the unit owners? Then you have to confer, impose upon and authorize supervisory and controlling jurisdiction not only over the board of directors but the management company, whom I consider—I hope you agree with me; I don't know whether you are a lawyer, sir—an employee of—

The Vice-Chair (Mr. Peter Z. Milczyn): Thank you, Mr. Jogendra. Your time is up. Thank you very much for your submission this afternoon. If you do wish to make a written submission, please forward it to the Clerk by 6 p.m. on October 29. Thank you, sir.

Mr. Regis Jogendra: If anybody has any questions?

The Vice-Chair (Mr. Peter Z. Milczyn): That's it.

MS. DONNA LACOURSE

The Vice-Chair (Mr. Peter Z. Milczyn): Our next witness is Donna Lacourse. Ms. Lacourse, please come up. You have up to 10 minutes to present and then there will be up to five minutes of questions from members of the official opposition.

Ms. Donna Lacourse: Okay. Thank you, Mr. Chair and committee members. Thank you for letting me speak today.

My name is Donna Lacourse and I am a condo owner. I've worked as a manager in our own high-rise condo complex. I have also been a director or a board officer for about 10 years at MTCC 878.

Interjection.

Ms. Donna Lacourse: I'll wait.

Ms. Catherine Fife: Excuse me, Chair. Can we please have order in the audience?

The Vice-Chair (Mr. Peter Z. Milczyn): Mr. Ballard, either sit down or go outside, please, sir.

Ms. Donna Lacourse: My name is Donna Lacourse and I've been a manager, I'm a condo owner, and I've also been a director for 10 years.

My main topics today are the need for better training for managers and for directors, and to ask for a wider range of options for condo boards to procure a variety of management and office services.

First, I need to get something off my chest. I am not happy with the innumerable organizations who have appointed themselves stakeholders in the Ontario condo landscape. The truth is, it is voting owners who are the consumers; it is the voting owners who are the stakeholders.

It is true that due to ineffective condo boards, supporting industries and associations have achieved a very firm foothold in Ontario condos. To this day, I meet directors who believe that only the management company may access corporation records. I have met directors who believe that they may only accept quotes and advice from ACMO and CCI members. I meet buildings where the managers chair the board meetings, rather than the board president. The managers even chair the AGMs. This is uncommon. I had no idea that this was going on until recently. I meet directors who are afraid to make their own decisions without management head office approval. I've even had some owners say to me—and I'm a senior director—"I'm going to complain to management about you." Here we have clear cases where the tail is wagging the dog. It is quite understandable how this happened, but it is nevertheless unacceptable.

Second, I'm not happy with the name of the act. The word "protecting" is paternalistic and, at best, uncomplimentary. This kind of language is exactly what gives the impression that we owners are like vulnerable kittens left out in the rain. I have been a condo owner for many years and I'm in no need of protection. I hope that this word is simply dropped from the new name.

I also do not like the name "condominium authority." It already sounds like the new authority doesn't want to pick up any phone calls.

1420

Now, what I'm really worried about is excessive influence and control over owners and directors by industry associations, and the industry is very effectively shutting out possible new competition. For example, I am not sure why everybody seems so hung up on using only one management company to manage a huge, complex high-rise building and office or why we uniformly accept one certificate as adequate orientation into the field. This is just not a good business practice. If we want normal business relationships and healthy competition in Ontario condos, we cannot allow a one-horse town. Consumers need choice and so far, in the CMSA, it appears that owners and boards do not have a choice in securing their own type of management. We have to like it or lump it.

I'm not sure if this committee knows that only four continuing education courses at the community college level are required to write ACMO's own RCM exam. I would estimate that a four-course community college certificate probably should not entitle someone to call her job a profession. The ACMO certificate has no prerequisites. There are no pre-qualifying English, numeracy or computer literacy tests.

I deeply regret having to say what I'm going to say now, but until very, very recently, when our building used ACMO-trained companies, we never once found a

person who could type an error-free letter or who could spell or who would ever use spell-check. We never once found a person who could prepare standardized requests for quotes or who knew how to compare and evaluate contracts or even knew how to calculate the common expenses. I am obviously not talking about the highly qualified ACMO executives who spoke in this room earlier this morning. I'm talking about the day-to-day managers who sit in condo building offices Monday to Friday.

Now some good news: A couple of years ago our building got a divorce from management company monogamy. If we could have found one qualified on-site management company, we probably would have paid more, but we could not find one company that would work on-site using our corporation resources. We ended up getting three mini-companies instead of one big company. I am very sorry to report that our building now pays less for a better system. Our managers use corporation software. Our managers apply to us, the corporation, for passwords and access to files. Our managers do not take corporation records off-site, and this is apparently very uncommon. Usually for big buildings, records are shuttled back and forth between management head office and the worksite. In our building, practices are effectively the reverse of what they are everywhere else.

The definition of management in the CMSA is vague and I will not repeat it here. There will always be a wide range of responsibilities for each manager in each building because their work depends on board and owner preferences and on the physical features of the building. In our building, our managers are not in charge of corporation finances, they have no approval or cheque-signing authority and they certainly do not have advisory, educational or fiduciary duties. Our managers will not require a licence because they are simply not in a position to do the corporation any harm and we're not going to fire them to hire a licence we don't need.

It is therefore easy to see why management companies are so very accustomed to running the show, as you've heard all day today. Single management companies have an incredible grip on condo buildings because when a condo building only uses one company, the management company is almost impossible to replace. However, the playing field evens out perfectly when more than one company is already working in the building. Why would any condo corporation make a commitment to one company when such a decision dramatically restricts their options? This would not be informed consumerism.

I've said it out loud: Current training for condo managers and for condo directors is inadequate. Licensing won't give us qualified managers, although it will check the quality of their character to some degree.

ACMO provides some of the skills that some condo managers require, but a short Internet course offered after the AGM election by the condo authority will not give us qualified directors. It is no surprise that management companies and trade associations have rushed in to fill in the knowledge and responsibility gaps left by directors. Directors often seem to walk right into submissive relationships with the management company and it appears that this situation will become even more pronounced with the CMSA. If there is just one seminar that new directors really need it is this: Learn exactly what type of professionals you need to call and you call in those engineers, lawyers and accountants yourself and don't use the management company's lawyer or consultants. Then you get a second or a third opinion. There are many qualified contractors and professionals out there who, for whatever reason, do not join the ACMO or CCI roster. It's often a good thing for boards to step outside this industry and get good advice elsewhere for best business practices.

Condo owners and directors quite accurately sense that there are a lot of industry people out there trying to sell services that they don't need or shouldn't buy, yet nobody ever stares down the sacred cow that says that condos only use one management company. In all these years, I think we're probably the only building that puts them in competitive competition. We don't use one lawyer; we don't use one GC—general contractor—or one cleaning company or one landscaper; yet we are expected or perhaps even demanded to use one management company. I can't imagine a better way to back anyone into a corner than doing that.

Here's my biggest personal beef: The condominium authority will apparently want to make the names of condo directors available to the general public. But we directors are volunteers. We are entitled to our privacy, we are frequently physically vulnerable in our own home, and our identities should not be splattered over a provincial website. There is just no legitimate need to distribute our names to unknown persons without our explicit prior consent. This proposed requirement is way over the top, and the practice would not achieve what it purports to achieve. I am very concerned about this. The only people who should know my name are my fellow owners and the buyers on a status certificate.

Here are my final points. It is proposed that new directors attend a seminar. That would be too late. Once new directors find out how much work and worry the job is, they frequently quit. They need to get an idea about the job and how condos work before they even nominate themselves. Instead, all types of owners should avail themselves of unbiased seminars in order to have some idea of what a director's job is. These seminars should not be offered through CCI. I am sorry; there are just too many peddlers in those rooms. There's plenty of time for that later.

The ACMO registered condominium manager certificate is one gesture in the right direction. However, it is only one of the products for sale, and the certificate is not enough to qualify persons who are otherwise unqualified to work as condo managers.

The Vice-Chair (Mr. Peter Z. Milczyn): Ms. Lacourse, that was your 10 minutes.

Ms. Donna Lacourse: Okay; all right.

The Vice-Chair (Mr. Peter Z. Milczyn): We have questions from Mr. Barrett for you, for up to five minutes.

Mr. Toby Barrett: Thank you, Chair. Thank you for the advice to the committee. Here, we also understand that not all members of boards have as much experience as you do, and knowledge. You've made some suggestions around extension education in various forms.

You took issue with the term "condominium authority." There is a role for government. I don't know whether that suggests a gigantic command-and-control approach over time. You have a few more minutes. Could you perhaps paint a picture of—is this condo authority, or whatever it would be called, a good idea in the first place, or do we try and bring along all the separate boards to run this whole business? Is there common ground somewhere?

Ms. Donna Lacourse: Do I think Bill 106 and the condo authority and the licensing—or just condo authority?

Mr. Toby Barrett: Should we have a condo authority?

Ms. Donna Lacourse: I've seen terrible disputes that could have been solved with a phone call to a government office, to clarify.

Mr. Toby Barrett: To which office, sorry?

Ms. Donna Lacourse: I said I've seen terrible disputes, prolonged and even physical, and they could have easily been resolved by a phone call to an impartial, outside authority. I just don't like the word "authority," okay?

Mr. Toby Barrett: How best may we better prevent so many of these disputes and mistakes and mismanagement that's occurring—if you could talk further about that.

Ms. Donna Lacourse: I'm not sure if there are all that many disputes. We all hear about the extreme cases. Somebody said today that there were 700,000 condo units in Ontario. We're still dealing with a tiny percentage, but the extremity, the outrageousness, of these disputes is what is getting in the news. I think the condo authority—I'd call it the condo central office or info centre, except that name is already taken—would be a little more accessible to the often intimidated condo owner. I think the tribunal, once it's under way in about 10 years—first, it's going to cost the condo owners a lot of money. This Bill 106 is going to cost the condos a lot of money, not just the $1 to $8 a month. There are all kinds of hidden costs and demands in Bill 106. But do I think that it's worth a good try? Yes. I like the idea of the tribunal. I think it will work.

1430

Mr. Toby Barrett: Do you see any ways we can save condo owners money?

Ms. Donna Lacourse: No, not with this, you can't. Do you want to know why? Do I have enough time to tell you why?

Mr. Toby Barrett: Yes, I do.

Ms. Donna Lacourse: Just as an example, Bill 106 sets up the tribunal, and that's great. I'm a director, and we have a bunch of different managers: If there's a dispute, we're not going to go personally to the tribunal. We're not going to prepare all the documentation for the tribunal. We're going to send a $400-an-hour lawyer, right? And that's all going to be charged back to the other unit owners, who aren't bringing the matter to the tribunal. So that's folded into the common expenses.

Another thing is the requirement to send out financial documents etc. every three months to owners. Owners don't read those. They don't do that. In 10 years, I've never had one owner ask what's going on. Not once. I guess it's because they like the building and they feel secure; they know we won't ruin the money. But mail-outs in these large condos are thousands of dollars per send-out in office time, mailing, envelope stuffing, photocopying—there are many hidden costs in this Bill 106. I'm not convinced that the owners are demanding the information that the stakeholders have submitted they want.

Mr. Toby Barrett: Thank you.

The Vice-Chair (Mr. Peter Z. Milczyn): Thank you.

ONTARIO HOME BUILDERS' ASSOCIATION

The Vice-Chair (Mr. Peter Z. Milczyn): Our next deputant or witness is the Ontario Home Builders' Association. Gentlemen, if you could identify yourselves for the record. You have up to 10 minutes to present.

Mr. Stephen Hamilton: My name is Stephen Hamilton.

Mr. Joe Vaccaro: Good afternoon. My name is Joe Vaccaro, and I serve as the CEO of the Ontario Home Builders' Association. Thank you for providing the opportunity to speak on Bill 106, the Protecting Condominium Owners Act.

Before we begin to provide comments on Bill 106, I would like to provide some background on the Ontario Home Builders' Association. The OHBA is the voice of the land development, new housing and professional renovation industries in Ontario. We represent over 4,000 member companies, which are organized in a network of 30 local associations across the province. This includes builders, developers, professional renovators, trade contractors, manufacturers, consultants and suppliers. Our members, proud and passionate about their work and their contribution to Ontario, have built over 700,000 homes in the last 10 years in over 500 communities. As an industry, we employ over 300,000 people, and we contributed over $45.6 billion to Ontario's economy in 2014.

When the government first began the consultation process on changes to the condo act, we took the approach that the condominium sector needs to continue to be part of the housing supply choice for Ontario's consumers. Therefore, it is important that the government creates a legal framework that ensures that this market can continue into the future while ensuring that condo communities are well managed, with purchasers being fully informed of their obligations under condo ownership before they sign a purchase-of-sale agreement.

From the onset of the consultation process, we stressed the need for the 10-day cooling-off period to be maintained. We view the 10-day cooling-off period as a critical component of consumer protection for purchasers of new condominiums, and we support maintaining section 73 in the proposed act. The 10-day cooling off period means that you can walk into a new condo sales office today, see a unit you like, sign a purchase-of-sale agreement with the builder, and you will have a 10-day period to seek professional advice about the contracts you have signed. This protection is critical for consumers. It provides purchasers of new condominiums the opportunity to speak to a lawyer or a financial institution, to go over the documents and to confirm their decision to purchase that unit.

During the 10-day period, a purchaser can cancel their purchase for whatever reason—whether, after seeking legal advice, they don't agree with the fine print, or they've simply changed their mind. In addition to this, buyers also have the right to cancel a sales agreement within 10 days after any material change happens to the condo project. This provides another opportunity for a condo purchaser to confirm their purchase-of-sale agreement, providing additional confidence in their decision. The 10-day cooling-off period is a significant legal protection in place that consumers can utilize so that they can be assured that they have made a good decision when they move into their condo unit.

Make no mistake; this has been a long-supported position by the industry. As we said in our original submission in February 2013, OHBA continues to believe that the best consumer is a well-informed consumer. Within that spirit, we will continue to look for new ways to educate consumers.

In addition to our support for the 10-day cooling-off period, we also support better disclosure for purchasers of new and resale condominiums. When someone lives in a condominium, they are also living with a new community of owners that have a shared responsibility for the well-being of the building. That is why it is important that they understand current and future obligations that will come from living in a condominium. It is important that consumers are armed with good information and facts when they purchase a condominium. For this reason, we support increased disclosure in this sector, so that consumers understand their contractual obligations and protections when they finally move into their units.

While the first and original purchaser of a condominium benefits from the 10-day cooling-off period, this protection is not available to condo purchasers on the resale side. While the first purchaser has had 10 days to understand the legal arrangements, such as the condominium bylaws, operating budget and reserve fund—each of these items may have financial consequences that may have an impact on their future condo fees—and get out of the agreement, the second, third and fourth purchaser of the condominium is not given the opportunity to work through those documents and may not fully understand what they have agreed to. In a high-pressure real estate transaction environment, that second purchaser is not given the same opportunity. We view the 10-day cooling-off period as an opportunity for sober second thought.

I wanted to highlight this for the benefit of the committee so that they understand the different legal protections in place that exist between a new condominium purchaser and a resale purchaser. At this moment, this act doesn't really do anything to improve upon that system.

Mr. Stephen Hamilton: Thanks, Joe. As has been noted, more than 1.3 million people live in condominiums across Ontario. This represents 700,000 condo units and 10,000 condo corporations. Due to smart growth, planning, intensification, consumer demand and changes in housing preferences, more than half of all new homes being built in Ontario today are condominiums.

While Ontario already has a strong foundation for condominium purchasers, we recognize that times have changed since the legislation was brought in in 1998. In particular, condo buildings have become increasingly complex. In order to deal with new energy efficiency requirements, developers are building sophisticated homes that utilize cutting-edge technologies such as geothermal energy and solar panels.

With added technology, size and sophistication, additional expertise is required. For this reason, OHBA supports licensing property managers, as established in this legislation. While the developer is responsible for marketing, constructing and meeting the significant building code, engineering and lengthy approvals requirements, after the building is turned over to unit owners, it relies on proper ongoing maintenance so that it will remain in a state of good repair well after the first purchaser took possession of their new home. Property managers have long said that there needs to be a standard in place.

OHBA would remind and emphasize that this is a provincial act and condominiums come in all shapes and sizes across the province, from big cities to small communities. OHBA has been active, working with other stakeholders and the ministry to inform the consultation process. We had a number of our members that participated in many of the working groups to provide their expertise. One of our objectives in this process was to show the ministry that there are important regional considerations when consulting on the act. While most people think of tall towers in Toronto when thinking of the condo sector, condominium units are built in all areas of the province and may include attached townhouses or single detached houses where the road is the only common element. Therefore, this legislation needs to work for all of Ontario, not just Toronto.

While a high-rise condominium corporation may benefit from property management licensing, we do not believe that this would be beneficial or practical for small condo corporations with limited common elements. For instance, in a non-urban context, where only a handful of units share a road or private garbage pickup—in these instances, where snow removal and garbage pickup need

to be arranged, this new licensing requirement may add a new cost without adding any value.

It is unfortunate that the government did not include regional and project-size considerations in the legislation, such as a threshold or recognition of the diversity of the condo housing supply. Condo projects in North Bay are much different than projects you see in Kitchener or Toronto or Barrie. Those considerations should be in the act—they're not in the act—and this will need to be addressed in future regulation.

Mr. Joe Vaccaro: It is important to state that this act is part of the overall regulatory framework that governs new condominiums: starting with the Planning Act; Places to Grow; official plans; zoning bylaws; site plan requirements; the involvement of professional designers, architects and engineers; provincial and municipal regulations for building inspections, including 24 building code-related inspections from foundations to life safety systems; and ultimately ending with an occupancy permit and ongoing warranty obligations. You can see that the new Condominium Act served as part of the larger legislative framework.

1440

The Chair (Ms. Soo Wong): Okay, I'm going to stop you right there. I'm going to turn to Ms. Fife to begin this round of questioning.

Ms. Catherine Fife: Thank you very much for coming in. It's good to see the attention that this bill is actually getting across the province, I think. I know the focus of your presentation didn't necessarily target the issue of Tarion, but I think it's an important piece for home builders to weigh in on.

Obviously, Tarion has been actually in existence now for almost 40 years. You must acknowledge that there is a lack of accountability and transparency with that association. I wondered if you might go on the record and express some of your positions with regards to support and/or criticism of that institution, because ultimately home builders, the home builders' association, rely on issues of consumer protection. From that perspective I'd like to give you the opportunity to weigh in on Tarion.

Mr. Joe Vaccaro: Well, in our submission we did talk about the ongoing warranty obligations that builders do hold. Under the Tarion act, there is a responsibility for builders, a warranty coverage that runs from year one to year seven and, depending on the type of warranty obligation, is captured within that.

I would say this: As we stated in our presentation, consumer protection is an important part of the marketplace. It gives people confidence when they purchase a new home. Tarion is part of that framework. It's part of what gives consumers that kind of confidence. The legislation is 40 years old. It is a corporation that administers an act of the government. Our role in terms of understanding and our involvement in that discussion around warranty is to provide the industry perspective on what is warrantable and how it should be warrantable, no different than any other regulatory body that finds industry members on their boards; I think of the Ontario Medical Association and such. Those boards do have the regulated as part of their structure.

Having said that, with a warranty perspective on the issue, it is really part of that ongoing discussion about the appropriate level of consumer protection. How does it work? I would say this: Consumers expect the best service possible. They also expect answers to their questions. You know, the best way to frame this is that Tarion does serve in many ways as a complaints department, so individuals who have concerns go to Tarion and need to work through that process.

Ms. Catherine Fife: I'm really happy that you mentioned that part about the complaints because that's sort of after the fact, right? I mean, the issue with Tarion is that they are supposed to be an agency which protects consumers. There are amazing, ethical, quality-driven home builders in the province of Ontario who really understand the value of building a strong home and what it means to the economy and what it means to families.

Yet, condos are homes for people in Toronto and Waterloo and Kitchener and North Bay, and we have seen example after example of shoddy, poor-quality construction in these condo units. I mean, I lived in a unit myself just here at Bay and Charles, where the glass fell off the building for almost two full years. That compromises the confidence that Ontarians have in home builders, because Tarion is clearly not doing its due diligence.

So this is your opportunity to say—this bill is an opportunity to make sure that there are significant reforms in a 40-year-old piece of legislation which has not kept pace with, I think, a changing economy in the province of Ontario.

Mr. Joe Vaccaro: So what I would respond back: In talking about the Condominium Act itself and in capturing the issues within this act, we've provided our thoughts and input to that piece. In regards to the Ontario warranty program act, if and when that piece of legislation comes up for review, we will be engaged in that discussion. In regard to your comment about the falling glass in Toronto, I would say, again, those buildings don't happen by accident. There is a long list of regulatory pieces that come together, from designers to architects to engineers to building officials. When there is a breakdown in the system, Tarion is one of the actors involved in ensuring that there is regained confidence in the system, the process by which things get resolved. Whether it's Tarion, the Toronto building officials who are also actively involved in those—

Ms. Catherine Fife: But were you not surprised to see a significant—this is the opportunity. I mean, when the government has the opportunity to bring forward a piece of legislation, shouldn't that legislation capture 40 years of concern? Home builders in this province are subject to the regulations and legislations of this government, and we acknowledge that as the opposition parties. But Tarion has an obligation to protect consumers, who are the end-use consumers—

The Chair (Ms. Soo Wong): Ms. Fife, your time is up. I'm going to let the gentleman answer. Very short—one sentence.

Ms. Catherine Fife: Thank you. I'd appreciate that.

Mr. Joe Vaccaro: My answer to the question is that our work was to focus on the pieces of the Condominium Act that the government put forward for review. We took that as a very serious opportunity to provide that sort of input. If an opportunity comes forward on other pieces of legislation, we will be back in front of this committee to discuss it again.

Ms. Catherine Fife: Thank you very much.

Mr. Joe Vaccaro: Thank you for your question.

The Chair (Ms. Soo Wong): Thank you, gentlemen. Thank you for being here.

MILLER THOMSON LLP

The Chair (Ms. Soo Wong): The next group coming forward is Miller Thomson. I believe there are three people coming forward. All right. Good afternoon. As you probably heard, the Clerk is going to come around to pick up copies for the committee members. You have 10 minutes for your presentation, followed by five minutes of questioning. This round of questions will be from the government side.

Please identify yourself and your position with Miller Thomson for the purposes of Hansard. You may begin any time.

Mr. Patrick Greco: Certainly. Thank you, Madam Chair, and thank you, ladies and gentlemen of the committee. My name is Patrick Greco. With me are my colleagues Warren Kleiner and Megan Mackey. We are all partners in Miller Thomson LLP's condominium law practice.

Thank you for the opportunity to speak to you today. We will launch into it. If we speak a bit quickly, we apologize. We have handed out our submissions in summary.

The first matter is insurance deductibles. Section 105(2) of the current act permits a corporation to pass a bylaw to extend the circumstances under which a unit holder will be liable to pay a deductible for an insurance claim made by the corporation in any circumstances other than where the corporation caused the incident. Many corporations have such bylaws in place.

Section 105(4) of the act then in turn provides that this liability of the owner is an insurable interest. That is, they can get coverage for it under their unit owner insurance policies. This is no different in principle than what a house owner faces. They're going to pay a deductible whether the damage was caused by their own error or omission, or just by bad luck.

On that topic and for the protection of all owners, it should be made mandatory that people who want to own in these joined communities must carry unit owner insurance, or risk penalties. However, under Bill 106, the ability to shift the liability to owners for those incidents where no one is to blame is compromised. A declarant cannot put such wording in a declaration and corporations cannot pass a bylaw. Instead, an amendment to the declaration requiring the consent of 90% of owners is needed. This will never happen. Corporations are then left to either pay claims out of pocket or put them through insurance and risk ever-rising deductibles. Some buildings now have flood deductibles of up to $100,000. Had they allocated that risk among owners and, importantly, among owners' insurance, claims could have been limited, deductibles minimized and the risk of not being able to find insurance eliminated.

Where does this leave the large number of condos who have chosen to manage their risk through pre-existing insurance deductible bylaws? Do they now all have to go back to the drawing board and try to amend their declarations which, again, is a near-impossible task?

Next is repair and maintenance obligations. Bill 106 permits a declaration to obligate a corporation to pay for the costs to remove or restore parts of a unit or personal property of an owner in order to carry out the corporation's maintenance and repair obligations. This leads to at least two troubling examples: A declarant intending to lease commercial units can force the residential owners to shoulder the cost of moving or replacing expensive commercial equipment in the unit; or all owners might have to subsidize an owner who chooses to have gold wallpaper in her unit to the same extent as an owner who chooses to have only standard white paint in her unit. This is patently unfair and, again, can be lodged in a declaration that's near-impossible to change. Instead, it should just be made mandatory that the corporation shall be obliged to restore the unit to the level of the standard unit, and anything above rests with the owner. That is indeed the standard practice in most condos already.

Voting and proxies: Section 52 has been revised to permit voting by "recorded vote" by ballot or proxy. This is simply the wrong wording. A recorded vote is what is done in Parliament where the roll is read and the member says yea or nay. A vote by ballot or proxy is called a secret ballot. This is the standard in all condos and the language of the act should reflect that. To continue to call it a recorded vote is to court confusion.

In our opinion, section 52(4) and any regulations should put more thought into the form of proxies. Right now there's a huge tension between owners who wish to inspect proxies from an election, and owners who rightfully don't want others to see how they voted on that proxy. A proxy should simply have an upper portion appointing the proxy holder as dated and signed by the owner, and a lower portion that's detached at the registration table and deposited into the ballot box, showing the vote.

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Finally, with regard to the proceeds of expropriation, a small bit of drafting could fix section 126. Currently the owners shall share in the proceeds in the same proportions as their common interests. This is confusing and has led to litigation that we have been representative on. It is unclear if that means that the share of proceeds gets paid out directly to owners or the proceeds can simply be deposited into the general operating account or reserve fund, at which point they are notionally shared in

the same balance as common expenses. Why not add some language to the effect of shared by "direct payment to unit owners or by depositing such funds in the corporation's operating or reserve fund accounts, at the discretion of the board"?

Mr. Warren Kleiner: There must be an obligation for shared facilities agreements to be fair and equitable. Developers often prefer themselves when they're drafted. Some good changes have been proposed, but those aren't enough. Too often, the residential components subsidize the commercial. We have situations with commercial garages where the slab is a common element, so the residential corporation pays for its replacement. We have situations with residential corporations subsidizing hotel services and amenities, and the residential condominiums have absolutely no say. Sometimes, it's one residential corporation subsidizing another through unfair cost contributions.

The threshold to meet to apply to the courts to amend or terminate an agreement under section 112 is simply too high, and the timeline to do it is too short.

The disclosure requirements are meaningless because even if it's disclosed, it's not like anyone can really understand what the impact of the agreement will be until the parties are operating under it.

To have to bring the application within 12 months of a turnover meeting is not long enough. You will not know how unfair the agreement is until a development has been in full operation for years. At a minimum, there should be a 24-month period to bring the application.

More importantly, mediation and arbitration pursuant to the act should always be open whenever a shared facilities agreement produces a result that is not fair and equitable. If we're going to have different entities sharing facilities and services, the basis upon which they are shared and paid for should be fair and equitable. I don't think anybody can reasonably argue against that.

The Condominium Act is supposed to be consumer protection legislation, and there has been little done to increase consumer protection. Sophisticated buyers of franchises get better protection under the franchises act than unsophisticated buyers of condominiums do. The fact that there are disclosure requirements is irrelevant. The disclosure statements are sometimes over 100 pages with attachments, and lawyers can barely understand them, let alone purchasers. Our firm quoted $10,000 to a commercial buyer to review this disclosure statement on a mixed-use development project in Toronto.

For many reasons—mostly cost—homebuyers in Toronto especially are forced to buy a condo. It's unreasonable to expect them to be able to understand the disclosure documents, and if they do, it is not like they're in a position to negotiate them. They need protection. There must be an obligation of good-faith disclosure.

Certain practices should not be allowed. Although we have provided that units and facilities, like guest suites, can no longer be sold or leased back to the corporation, what about what's included in the units, such as the HVAC equipment? Where's the fairness in including a sentence buried in 100 pages of disclosure stating that the HVAC may not be included in the unit but may be leased to the purchaser? And there's no abatement in the purchase price. The developer saves money while the purchaser is forced to make lease payments for 10 years—with high interest—on the ensuite equipment, which typically comes with a one-year warranty. The leasing company may or may not be a developer-controlled company, but when the HVAC breaks down and the purchaser has to replace it after three years, he or she is still making seven more years' worth of lease payments on equipment they no longer have. Where's the consumer protection? Can you imagine buying a car and at the last minute you are told that you have to pay extra to rent your steering wheel? It's really almost the same thing.

Let's be clear: With these changes, shared facilities agreements being fair and equitable, good-faith disclosure requirements and banning the leaseback of ensuite equipment, developers will still build, sell units and make money, but purchasers in Ontario would at least have some measure of protection.

Ms. Megan Mackey: I'm a litigator and I'd like to take you to three specific subsections of the act which, I think, create a problem from a litigation perspective. The first one is the proposed addition to section 84(5). What this permits is, when there is a dispute about additions to common expenses, it's going to permit a unit owner to pay that money to his lawyer in escrow instead of to the condominium corporation. All the owner is going to have to do to be able to do that is to transfer title to his unit in a non-arm's-length transaction.

Currently, when there are disputes about additions to common expenses, and there is a sale, the seller and the purchaser deal with it on closing. In our opinion, section 84(5), the escrow provision, should be removed entirely. It is not necessary, and it's going to cause financial hardship for the rest of the owners in the condominium corporation, who are not involved in the dispute.

I'd also like to talk about amendments to a declaration through a court order. Currently, when we want to amend a declaration, we serve notice on all of the owners who are listed on the corporation's record. But Bill 106 changes this by adding a requirement that not only do we have to serve everyone on the list, but we have to serve everyone who should be on the list but doesn't appear there.

That raises two problems for us. First, what does it mean? Does it mean that we need to serve people who didn't notify the corporation that they're now owners, which is in breach of the act, or does that mean we need to just notify those people who did notify the corporation but somehow got left off the list? So the definition itself is problematic. But also, how am I ever going to be able to certify to a judge that I have served everyone who is entitled to notice when there's some provision that I need to serve people who I don't even know about? In some cases, we're amending on behalf of the corporation, but in other cases, we're acting on behalf of unit owners,

who are entitled to rely on the corporation's list of owners.

I have one final point, if there's time.

The Chair (Ms. Soo Wong): Just one sentence.

Ms. Megan Mackey: When a condominium corporation is terminating itself—currently, there is no direction in the act for how owners are to be notified. That means they may need to serve people personally overseas through the Hague Convention. I think that section 128 needs some additions to the service direction.

The Chair (Ms. Soo Wong): I'm going to turn to the government side for questions. Is it Ms. Hoggarth?

Ms. Ann Hoggarth: Thank you very much for your input. It's very important, and I listened intently. I didn't understand it all, but I listened intently.

An important component of this bill is its efforts to improve the management of common elements in condominiums. Do you have any recommendations for how this process could be improved?

Ms. Megan Mackey: Do you mean like the property managers?

Ms. Ann Hoggarth: All areas of the common elements in the condo.

Mr. Patrick Greco: Not particularly, beyond those that we've touched on, which, of course, do go to the administration and the balance between unit and common elements—insurance, of course, being a big one.

Ms. Ann Hoggarth: Okay. I understand that Audrey Loeb, who is a member of your firm, was a member of the deputy minister's advisory group on this bill. With your insight into this process, how do you think public consultations were able to help this bill?

Mr. Warren Kleiner: The only thing that I think I can personally comment on in terms of public consultation is that what we've noticed is that there hasn't really been enough input from purchasers. We find that there has been very little done to really protect purchasers when it comes to things that I've spoken about, such as disclosure and how agreements work down the road that purchasers end up paying for. The groups that were invited just left out this very important segment of the population.

Ms. Megan Mackey: Can I add something? We have clients that come to us that say, "We bought a condo. It's supposed to be a high-end, green building with recycled rain water and a lap pool." The developer builds none of that and gets the corporation registered. What are the repercussions for those purchasers who paid extra for this high-end, green building but, instead, got something that barely meets code?

We think there need to be far more protections at the front end for purchasers. There need to be some repercussions for developers who don't build what they advertised in their marketing materials, which may or may not be listed in the agreements of purchase and sale, which nobody reads until the problems start.

Ms. Ann Hoggarth: I understand how that would be very disturbing to purchasers, and quite expensive as well. Thank you very much for your input.

The Chair (Ms. Soo Wong): All right, I think that's it. Thank you very much for your written submission.

Ms. Megan Mackey: Thank you very much.

EAGLE AUDIT ADVANTAGE INC.

The Chair (Ms. Soo Wong): I believe that the next group coming forward is Eagle Audit Advantage Inc. I believe we have William Stratas—

Interjection.

The Chair (Ms. Soo Wong): Oh, perfect. Okay. As you heard, you have 10 minutes for your presentation, followed by five minutes of questioning. In this turn, questioning will be coming from the official opposition party. You may begin at any time. Please identify yourself for the purpose of Hansard.

Mr. William Stratas: Yes, thank you. William Stratas, managing director at Eagle Audit Advantage Inc.; and Judy Sue, certified fraud examiner, Eagle Audit Advantage Inc.

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At the outset, I'd like to acknowledge the presence of our own personal MPP, the great member from Trinity–Spadina, Han Dong. Thank you for joining. I think you're a guest to the committee.

Mr. Han Dong: Thank you.

Mr. William Stratas: Thank you, sir.

We have a question for the committee. It's a very important question. Which is easier: to steal candy from a baby in a crib or to steal $150,000 in one year from a condominium corporation? This is not a trick question. I'll answer it for you. The answer is—

The Chair (Ms. Soo Wong): Sir, excuse me, you are to speak directly to the bill.

Mr. William Stratas: It's rhetorical.

The Chair (Ms. Soo Wong): Please stick to the bill.

Mr. William Stratas: We are. The answer is the condo, because a baby has a built-in alarm system. A baby will immediately scream and cry. In condominiums, by contrast, financial crimes are typically silent crimes with vast potential for victimization of the owners. Contractors and property managers can take advantage of the lack of sophistication of typical volunteer directors who sit on condo boards. These persons are easy to dupe and manipulate.

Matters become even more dire if one or more directors is tempted to disregard their fiduciary duties and participate in frauds themselves. The lack of sophistication of volunteer directors and failures of governance oversight are the core vulnerabilities of condominiums to fraud.

Obviously, you cannot legislate higher diligence of volunteer directors. So at the root of the consumer protection theme of the new act, our ministry officials have proposed a very strong licensing and enforcement regime on the management industry. Judy and I are among the strongest supporters of these measures proposed by the ministry, in their entirety and without dilution. We cannot emphasize that enough: without dilution. I will

speak and expand a little more on those matters in a moment.

But first, a little bit of history: Judy and I have perhaps the most unique background story of any persons appearing before you. Seven years ago, we were ordinary condo owners in a downtown building, she with her suite and mine with mine, both of us being original buyers in what is now a 25-year-old building.

Suddenly, by unique circumstance in the spring of 2008, we came together as a team to run for election to our condo's board of directors. Judy will pick up the story from there.

Ms. Judy Sue: Yes. We learned that the board had lost $142,000 by signing a cheque for a 100% upfront payment to a contractor for delivery of water-efficient toilets. It turned out that the contractor certified the cheque, took the money, delivered nothing and could never be found again.

Our condo board directors were completely in the dark about what happened and seemed incapable of any remedial action. We believed that something deeper was improper, so we decided to take action. We ran as candidates for the board of directors. We were elected by an enormous margin: eight to one, far bigger than Justin Trudeau's victory.

With that mandate, as two new directors on a five-person board, William and I undertook an extremely detailed examination of every single expense transaction from the previous three years. We discovered tens of thousands of dollars of improper expenses beyond the missing $142,000. Shortly thereafter, we terminated the management company and the following day we launched a lawsuit for $306,000 in damages for negligence, theft and fraud, as alleged.

The litigation ended in a settlement with full recovery and much more. We served on our board for a total of four years. During that time, we networked our success to other condo buildings. We learned that all condominium corporations are equally vulnerable to financial exploitation and victimization by trusted persons of authority, including managers and sometimes the directors themselves.

In 2013, we applied the success of our own condo's recovery and the skills we had developed during our past services as directors and founded Eagle Audit Advantage. We are Canada's first and only professional consultancy focused on prevention, detection and investigation of frauds in condominiums.

Let me summarize for you the typical kinds of frauds we find in our engagements: phony invoices, phony payroll, duplicate billings, false tendering, cash skimming, embezzlement for personal-use purchases of wide scope, forged documents and kickback payments from contractors.

How is it possible that such a wide scope of financial misconduct could occur in condominiums? Well, number one, complete absence of internal controls in some management companies and two, lack of supervision of managers at the buildings.

In their marketing materials, all management companies claim to have best practices in place. We have found that in some companies, there appear to be absolutely none. This problem appears in all sizes of management companies, including some of the largest ones. When there is an absence of internal controls at a management company, it can permit an astonishing scale of losses by fraud. As you know, the ultimate losers are condominium owners, ultimately putting up to one million condo owners in Ontario at risk.

Mr. William Stratas: Judging by Judy's comments, I am sure you can understand why some persons in this industry despise us and wish that Eagle Audit would simply disappear. Judy and I have the audacity to seek the truth, to ask the hard questions, to look behind doors that no one wants to open and to confront the underbelly of fraud and corruption that permeates some segments of this industry—not all, but some.

We believe that a large swath of the condominium industry, including some boards and even professionals, appears to suffer from a culture of complacency and possibly a willingness to be blind regarding the frauds that occur in condominiums.

Now briefly, if I may, I wanted to add some words of praise regarding the ministry officials. By contrast to that attack we sometimes sustain in the industry, one group that has very much appreciated our efforts with wide-open eyes is the ministry officials who have been managing this condo act reform process since 2012. We have worked closely with them through this time and they have welcomed our contributions with high enthusiasm. Judy and I have nothing but great praise for these ministry officials, some of whom are here today, too numerous to mention by name, of course. We believe they have executed to the highest ideals of the professional public service of our fine province.

Mr. Clerk, if I may ask that you could circulate this to some of the members; thank you, sir, for the interruption.

Now I would like to briefly address some of the points raised in ACMO's legislative brief. I'm going to go through this very quickly. Obviously, we'll give you some backup in writing, okay? But I want to touch on some of the issue sheets they've raised. If you want to skip to your booklet, you may.

Issue 21, page 26: As I said, we advocate that this committee not dilute the provisions for enforcement and inspection proposed in the Condominium Management Services Act. We strenuously urge you to avoid dilution and we respectfully say that some of the proposed ACMO amendments are a strong dilution, for whatever motives; for example, issue 21. There is a need for that background information to come forward from ACMO files, and we would certainly expect that it do so.

Again, I'll skip through quickly.

Issue 22—turn the page: "Notice to the registrar." The notice period of five days is just fine. You know why? A lot of damage can be done in 30 days. Timeliness is important; it's simple; it can be done electronically. No one should complain. Reasons for termination of man-

agers absolutely must be disclosed. The industry recycles its duds. This is a huge problem. The licensing regime needs to know the real story about what's happening in terminations or, shall we say, voluntary departures. Whatever the case, put it on paper, put it in writing, disclose fully and transparently. Transparency was supposed to be one of ACMO's themes.

Issue 23, page 29: Proactive disclosure of these ownership changes at the corporate level are very important to prevent shell games. This was part of the discussions we had with the ministry officials. Shell games in ownership and, most of all, directors, who have fiduciary responsibilities higher than just management—these games cannot be allowed to avoid and evade the accountability that happens when management companies know they're doing the wrong thing.

Issue sheet 24: again, ownership shell games. That's the reason the ministry needs that provision. It would put the ministry in control immediately if a bad situation developed. Otherwise, with some of these dilutions, the ministry will be in catch-up mode. That's not the place you need to be when you need to act quickly to defend owners' interests.

Turn the page, 25, as we close: vital disclosures. These are very vital. And I want to say, trust funds: They mention trust funds twice. A quick example in closing, Madam Chair: They claim, "The real estate industry handles trusts funds, but we don't." You know what they handle? They handle millions and millions of dollars of operating funds on a day-to-day and hour-to-hour basis. They need a high level of oversight because it's even greater exposure. They're handling millions of dollars of operating money. Thank you.

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The Chair (Ms. Soo Wong): I'm going to turn to Mr. Barrett: Do you want to begin the questions?

Mr. Toby Barrett: Thank you to Eagle Audit Advantage. There has been certainly much discussion over the last several years on the impact of fraud on people's insurance premiums. For example, car insurance and auto fraud. Certain measures have been taken to combat that. Part of that did involve this particular ministry, for a while anyway, on tow truck fraud and what was going on here. This is a ministry that does deal with scams and other fraudulent activity like that.

Do you feel the expertise of this ministry is represented in the legislation itself? Are there amendments that should be made to crack down on this somehow? Because we are creating a law here.

Mr. William Stratas: Absolutely, but I do not believe, personally nor professionally, that you need some higher level than what's represented in this act. Ultimately, sir, as you know, many parts of our economy are in a sense self-regulating, self-reporting. You can only have so many condo cops running around.

However, our point is, Member Barrett, that where there are anomalies occurring, where there are questions and suspicions, we would strongly say that the ministry needs to act swiftly, and I mean very quickly. So these proactive disclosures—none of which are onerous to the industry, contrary to their brief—are necessary to keep the eye of the ministry able to open that file instantly, and not to be in reactionary but proactive mode, if there is a problem detected in any way, from either a whistleblower or a question regarding a complaint or anything that's raised in the industry.

We think the mechanisms are absolutely fine as outlined in this act. It is heavy enforcement, it is potential and it's also, by the way, deterrence, as you can well understand. This is a strong message to these providers that they need to clean up their act now.

Mr. Toby Barrett: When I think of the insurance industry, many of the companies are very large and they have the resources to deal with fraud. They don't seem to do a particularly good job of it in many cases. I just wonder, how can a condo board—where are they going to have the expertise to prevent these kinds of scams and things going on?

Mr. William Stratas: Having sat on our own board, and assisting many corporations right now, let me explain it. Most corporations have blanket directors and officers liability coverage. Many also have fidelity coverage regarding their employees or their contractors. Fidelity insurance is a known product out there.

Most importantly, management companies themselves have fidelity coverage, but you would be shocked at how completely unwilling management companies are to invoke their insurance. Even though it's in their contracts that they provide that fidelity coverage for any loss, they are so reluctant to pull it and to simply indemnify their victimized clients. It's quite an interesting dynamic. They all are fully insured; they just don't want to invoke it for some unimaginable reason. That's their business, but you cannot, in my opinion, put a super level on top of that of some kind of insurance on top of insurance.

Everybody here is fully insured. The question is invoking it; they have to be willing and able to. Do they even get the right advice from their professional advisers? As I mentioned in my comments, the apparent willful blindness of even some professional advisers in this industry: "Oh, you know, don't make that claim. You'll never get your"—what do you mean? You make the claim. It's in your policy; you've paid for it. It is really astonishing how reluctant some of these players are even to invoke that insurance. They're all fully covered, sir. There is no deficiency in the insurance model in this industry from that perspective, as you mentioned.

Mr. Toby Barrett: And beyond insurance or mitigating risk, are these people being caught? Do our enforcement or police have the expertise to deal with this kind of white-collar crime or whatever you want to call it?

Mr. William Stratas: Member Barrett, you have civil recovery and you have criminal. We've been involved in and we are presently involved in cases involving both. However, I underline to the member and to his colleagues: You don't get recovery through the criminal process.

However, this is an interesting question. The criminal process has an importance for public deterrence and public denunciation. It is really interesting when you compare the record of prosecution and pursuit of management company and manager misconduct in the United States, in major jurisdictions like Florida and other places—I follow all this on the blogs, on the Web. They are always prosecuting and charging major crimes. In Canada, nothing. It's very silent about that. People seem somehow not wanting to make the call.

The Chair (Ms. Soo Wong): Mr. Stratas and Ms. Sue, thank you so much for your presentation and for your written submission.

MALVERN CONDOMINIUM PROPERTY MANAGEMENT

The Chair (Ms. Soo Wong): All right, we need to go on to the next witness. The group coming forward is the condominium property management division, Malvern Investment Inc. Good afternoon. Welcome. As you probably heard, you have 10 minutes, Mr. Smith, to come before the committee and speak. This round of questions will begin with the official third party. You may begin any time. Please identify yourself and your position with your management.

Mr. Van Smith: Great, thank you. Good afternoon, members. My name is Van Smith. I am a condominium property management manager. I work currently for Malvern property management. I've been doing so for the past decade, working in this profession, so I have, I guess, kind of a feet-to-the-ground exposure with condominium owners and boards of directors. The lawyers and the accountants that I've seen before me here have also been in discussions with our management companies.

The function and responsibilities of property managers have developed over several years and are shaped by many factors, including the Condominium Act and the proposed bill. Boards of directors' expectations, market competition and municipal regulations also shape that. The overall responsibility in managing building assets require multifaceted knowledge, from condominium law and building construction to accounting, which we've heard. Managing does come with a fiduciary responsibility—even though I have heard that's not correct—and an extremely diverse workload for the managers, even if it's a seasoned manager, because of the complexity of some of these properties.

I'm here today to highlight some common challenges facing our industry when it comes to obtaining goods and services, and provide some solutions or recommendations with the Bill 106 regulations. I'll refer to that shortly. The common challenges include secret profit, fraud, lawsuits against corporations, consumer doubt—which is why many people are here—poor workmanship, and bid-rigging. But that being said, I'd like to share with the standing committee recommendations to enhance and improve the condominium industry as a whole. I do see that the present bill—there are a lot of wonderful features that we were looking forward to using, but there are some things that we would like to see in the regulations coming forward.

The current act does not speak to the procurement process, and I'm happy to see that the new legislation, Bill 106, does speak to the procurement process for condominiums. The framework for this new requirement can be seen in subsection 39(1), which states, "A corporation shall not enter into a prescribed contract or transaction unless the procurement process and other contracts or arrangements that the corporation entered into in relation to the contract or transaction meet the prescribed requirements."

This is a good step forward. The details for procurement are not yet known at this time. That's what I'd like to address at this period. I would hope to see that the requirements will include categories of contracts that must go through the procurement process, minimum dollar values that will require a bid, termination provisions, and retention of documents. A lot of times we take over corporations, and minutes and contracts and things seem to disappear once we've taken over.

I'll set a bit of the stage for common practices right now for management companies. A standard for bidding for the contract is not currently in place amongst the industry. Each management company will set its own standards for who prepares the scope of work, who is invited to bid, who approves the bid, who prepares the contract itself, and, finally, who actually signs the contract. One very large management firm has a procurement employee, and they are responsible for obtaining quotations and contracts. What's unique about that company is that they actually also bid against themselves, so they bring in bids from outside janitorial companies and they will also bid for those services. That's not common within the industry.

Some other larger companies have created specifications and contract terms to assist the managers in the bidding process, which makes it a fair and equitable bidding system. Those companies, along with several ACMO 2000-certified companies, have created specific policies and guidelines when it comes to procurement. Management companies always differ, as some prepare and sign contracts on behalf of the corporation, where others may not; they will have the corporation sign their contracts directly.

1520

I'll go back to the industry problems and the abuse. We've heard some of that earlier today. Tendering is only part of the process to obtain goods or services at fair market value. After the tender is completed, the parties will enter into an agreement, the service will be performed and the service provider will be paid in accordance with the agreement. All of these steps may involve a property manager such as myself, a lawyer, the board of directors, the service providers themselves and, sometimes, engineers and/or other consultants.

When the steps are completed properly, everyone should be satisfied. Well, in the real world, that's not

always the case. The following are some examples of problems within our industry from the perspective of property management, service providers, the board of directors that give us feedback, condominium owners, lawyers and auditors.

Fraud: We've heard of that. The definition: "Everyone who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service."

There are several ways by which property managers or boards of directors receive services or money fraudulently. The types of fraud are typically false invoicing, inflated invoicing, duplicate invoicing, kickbacks or even bid-rigging. Some of the examples that I've run across through case law and through the media and in our own practice's experiences are:

—a property manager obtains an inflated invoice for work at a condominium, and once the condo pays the contractor, the contractor in turn gives the manager the inflated amount of money;

—another example: A director informs a contractor that they will be awarded a bid to install new tiles in the lobby if they install new tiles in the director's personal unit at no cost;

—another example: A property manager issues false work to a contractor for condominium work; however, the work is never completed and the manager shares the money with the contractor;

—the contractor tells the property manager that they will compensate them if they win a bid. When the bid is actually won, the contractor pays the manager in cash. That is also the same for directors, who may have compensation as well; and

—a director starts a landscaping company and invoices the corporation for work at a higher rate than usual. The director subcontracts the work to another company and keeps the profit.

These are some examples of fraud.

Another problem within the industry, as a result of that, is consumer confidence. Building gossip and accusations have been made about the managers and the directors receiving kickbacks, whether or not the accusations are true. Consumer confidence is influenced by activities at their building and by news in the media. There have been a number of news releases related to fraudulent management of condominiums reducing consumer confidence. We had the gentleman who was here that was part of a news story.

Lack of records: All too often, a problem at the buildings that I see is new directors replacing old directors. When the new directors start reviewing the documents to understand what agreements are in place and where the money was spent, often they find a lack of records. Quotations, specifications and other documents are often not retained by the corporation or turned over.

Another problem that we have is that a director of a corporation who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party shall disclose in writing to the corporation the nature and extent of the interest. Most directors do state this; however, there are lots of examples where a director has had a family member or an interest in a contract and has never disclosed it to the other directors.

Unknown vendors: This is a new one with Google. Quite often, board members go outside of the proper tendering process and obtain quotations and enter into contracts with vendors that the management company is not even aware of. They find these people on Google searches and do their own investigation and hiring. The contracts that the board enters into are not even reviewed by a solicitor and they're often problematic once they get in our hands.

Another problem is lawsuits. Law firms advise that a main problem is their clients—being the condominium corporations—turn to them after a tender has already been issued or a contract has been signed and then they're asked to work out the problems. Failure to have the solicitor look at the agreement puts the corporation in an unfavourable position.

Just a couple of examples that I pulled up just recently, doing searches with cases:

"Condo Property Manager Charged in Fraud Case....

"Police say 13 condominium corporations in Hamilton and Burlington were defrauded of $4.1 million"—this is from CHML Hamilton News in 2015.

"Toronto Condo Fraud: Embezzlement, Kickbacks and Bid-Rigging"—there was a four-piece story from Metro News in 2013.

One of the most famous cases was in 2011: "Victims claim condo fraud 'destroyed lives,'" the CBC reported.

The Toronto Star reported that Manzoor Khan—

The Chair (Ms. Soo Wong): Can you wrap up—

Mr. Van Smith: Sorry?

The Chair (Ms. Soo Wong): Can you wrap up, Mr. Smith?

Mr. Van Smith: Yes.

The Chair (Ms. Soo Wong): Time is coming up.

Mr. Van Smith: So basically moving forward—I've highlighted some of the issues—we have some recommendations.

With regard to procurement, the standards should include something like this—

The Chair (Ms. Soo Wong): No, no, no. When you wrap up, it's one sentence.

Mr. Van Smith: Okay. I have included in the handout here some purchasing—

The Chair (Ms. Soo Wong): I'm going to stop you here. I'm going to turn to Ms. Fife. Can you ask the question, please?

Ms. Catherine Fife: Thank you very much, Mr. Smith. Because you ran out of time, I actually do want to hear your recommendations, especially around procurement. But then I do have a question.

Mr. Van Smith: Absolutely. There are only a few points here.

Item 1: Goods or services in excess of $15,000 require competitive bids, unless the goods or services are required due to an emergency, an emergency being an incident or condition that will adversely affect property or personal safety if immediate action is not taken.

Item 2: Agreements that exceed one year or contain an auto-renewal clause require competitive bids.

Item 3: Purchasing documents shall be retained by the corporation for a period of not less than three years. Purchasing documents include calls for bids, bids, tenders, requests for quotations and requests for proposal.

Ms. Catherine Fife: I'm going to stop you there. What I want to know, because you're representing a condo property management firm, I want to—you've raised a lot of issues around procurement and tendering. Bill 106 does attempt to actually address the educational component of board members. Do you think that some of those conditions will actually address some of the issues that you have raised?

Mr. Van Smith: Absolutely. An educated board is very helpful and assists in the direction the lawyers and the professional management companies want to have them follow.

Ms. Catherine Fife: Okay, so that's good. That's the good part, right?

Mr. Van Smith: Yes. They're not the cheap ones; they're the ones that actually follow the procurement process.

Ms. Catherine Fife: The other side, though, is around the aggressive and criminal, if you will, activities of some agents who are looking to break into the condo industry, right? They're the ones who embezzle, they're the ones who are duplicate invoicing, and they're the ones who participate in the kickbacks. Does Bill 106 address those issues?

Mr. Van Smith: I think that more so the bill doesn't address those particular issues because those are internal controls through those persons or people or management firms that handle and pay for those items. There's nothing in there that states that the person who is approving that invoice is separate from the person who is creating the cheque, separate from the person who is signing that cheque. There is nothing—

Ms. Catherine Fife: So you're concerned about the—

Mr. Van Smith: The control is not there in the end.

Ms. Catherine Fife: Yes. So the conflict of interest is there and it's present, right?

A lot of interest has been focused on this bill, which is really good. It's been a long time coming. But in particular, the issue of Tarion, which you didn't get a chance to address in your presentation—the feedback that I got from people in the Kitchener-Waterloo area, where condos are now popping up everywhere, is that Tarion is the only delegated authority established by the government with the power to create its own regulations without government approval. Bill 106 does not address that. Is that a concern for you?

Mr. Van Smith: We come in after the fact, after the property is built, so we do—

Ms. Catherine Fife: But you deal with the problems, though.

Mr. Van Smith: We do inherit the problems with the development and we do find that there—I call it a false sense of security for Tarion: People are under the impression when they purchase a new property that it will be worry-free, and we have to educate them that that is not the case. We have to educate them to the limits of the warranties that are available.

Ms. Catherine Fife: Do you think you should have to educate consumers that they're not really protected by an agency that is created by the government to protect them?

Mr. Van Smith: As a property manager?

Ms. Catherine Fife: Yes.

Mr. Van Smith: It was spoken to before. The people who are here are the people—the five per centers—who are interested in the education and the information. We do provide a lot of information and there are websites from Tarion. We do have information sessions with new owners. On site, we'll have an office and we'll advise them how to handle their situations. But again, it's only that percentage of the people who are open to listening.

Ms. Catherine Fife: So on the whole, though—I mean, you've raised some issues around the procurement and the tendering process, and the much-needed education of condo board members, but this is only a half measure if you're not going to address the fact that the building and construction of those condo units, which you then inherit as a property manager, becomes an issue for the end-user. This bill ultimately should be about consumer protection. Do you agree?

1530

Mr. Van Smith: I understand where you're coming from with that aspect. Yes, absolutely. We're there to help assist with the condo, and taking over those repair costs afterwards can actually be to the corporation's detriment. Financially, the impact goes on for a number of years.

If you're lobbying against Tarion, absolutely, the management industry would be in your corner—

The Chair (Ms. Soo Wong): Mr. Smith, thank you very much for your presentation.

Ms. Catherine Fife: Thank you very much, Mr. Smith.

ADVOCACY CENTRE FOR TENANTS ONTARIO

The Chair (Ms. Soo Wong): The next group coming before the committee is the Advocacy Centre for Tenants Ontario. The Clerk is coming around with the presentation.

Mr. Hale, welcome. As you heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will be coming from the government side. Can you please begin by

identifying yourself and your position with the advocacy centre?

Mr. Kenneth Hale: Thank you, Madam Chair and members of the committee. My name is Kenneth Hale. I'm the director of advocacy and legal services with the Advocacy Centre for Tenants Ontario. Our organization is known as ACTO. We're a community legal clinic that works for the advancement of human rights and justice in housing for low-income Ontarians through legal advice and representation, law reform, community organizing, training and education.

We really appreciate the opportunity to address your committee on this important legislation. Fortunately, we don't have to address all of the legislation, all the complexities. We have a very specific focus that we think it is important that the committee consider.

Residential condominiums have been the primary source of new rental housing for the last 30 years in Ontario. In the Toronto and Ottawa CMAs alone almost 100,000 condominium units are occupied by tenants—that's about 30% of all the condominium units in those two large urban areas. People from many stages of life and many ranges of income make up this tenant population. How the Condominium Act addresses these tenancies is a vital question. It's a question that's vital not only for the tenants of the units but for the tens of thousands of owners and the condominium corporations that depend on the monthly rent payments of these tenants to keep them financially solvent.

Generally, condominium tenancies are not addressed by the bill. This may be a reflection of a lack of input into the consultation process by all those tenants who live in those condominium communities, but we don't necessarily feel that leaving tenants out of the Condominium Act is entirely bad. The Legislature has entrusted the resolution of disputes between condominium landlord-owners and their tenants to the Landlord and Tenant Board under the authority of the Residential Tenancies Act. The government, working with tenants and landlords, has made significant efforts to make that body and that legislation work together to provide protection and fairness in what is sometimes a difficult environment: the rental housing market, which is under a lot of pressure these days.

The primacy of the Residential Tenancies Act in addressing tenant issues is recognized by the drafters of this bill because they prohibit tenants—tenants are included in the class of people called "occupiers" in this bill—from applying to the new Condominium Authority Tribunal when they have problems with their homes.

However, the bill doesn't completely leave tenants out of the picture. Tenants can still be sued in Superior Court by their landlords, by the condominium corporation and possibly by owner-neighbours, possibly by other people. The court can apply a range of sanctions against these tenants including evicting them from their homes. This brings the Condominium Act into direct conflict with section 37(1) of the Residential Tenancies Act which says, "A tenancy may be terminated only in accordance with this act"—that is, Residential Tenancies Act. Section 3 of the Residential Tenancies Act says, "If a provision of this act conflicts with a provision of another act, other than the Human Rights Code, the provision of this act applies."

We have a real conflict here, and that may account for the fact that nobody has actually attempted to use this section to evict tenants since the enactment of the Residential Tenancies Act or its predecessor, the Tenant Protection Act, which was proclaimed in 1998. At least, there are no reported cases where we have the court evicting tenants under this power.

The bill proposes to do some tinkering with how this eviction sanction gets applied by the Superior Court—that's section 113(4) of the bill—but it doesn't resolve the fundamental conflict.

Of even greater concern to condominium tenants is the range of powers that the Condominium Authority Tribunal may be given to make orders against them if their owners or the condominium corporations apply to the tribunal. This is in that part of section 2 of the bill which proposes a new section 1.44. There are a number of financial sanctions—mandatory orders that could be issued by the tribunal—and there's a general power under paragraph 7 of 1.44(1) which authorizes "an order directing whatever ... relief the tribunal considers fair in the circumstances."

Given the statutory mandate of the tribunal to protect condominium owners and the proposed appointment process, which we don't find to be completely up to the kind of standards that we would expect of a statutory tribunal, we would expect that an order evicting a tenant from a unit might seem to a member of this tribunal to be fair when they're exercising a power under that section.

We also note that the eviction sanction, which the court is explicitly permitted to exercise, arises from section 117 of the act, which prohibits damaging property or causing injury or illness. The same section prohibits the causing of unreasonable noise and other nuisance, annoyance or disruption yet to be prescribed in regulations. These matters don't go to court, but they go to the tribunal. So, in dealing with cases that involve tenants, the tribunal may well feel justified in granting the same eviction remedy that the court can use under that section, even though the issues addressed by the court would be much more serious.

We think the bill must be amended to ensure that such evictions do not take place. The Condominium Act should ensure that tenants do not face eviction in Superior Court for matters that should be dealt with by the Landlord and Tenant Board, and are not brought before a tribunal that they don't have the right to access, which is not set up to look after their interests. So we ask you to amend the bill, and recommend to the Legislature the following changes:

(1) Repeal section 34(4) of the Condominium Act that permits the Superior Court to terminate a residential lease.

(2) Prohibit condominium owners from applying to the Condominium Authority Tribunal for any orders

against their tenants since the Landlord and Tenant Board provides remedies for any claims these landlords might have through a process which is reasonably accessible to tenants.

(3) Prohibit the tribunal or an arbitrator appointed under the Condominium Act from making any order which would result in the eviction of a tenant. This is the exclusive jurisdiction that the Legislature has granted to the Landlord and Tenant Board.

(4) Require that landlord-owners be notified of any issues which could be the subject of an application to the Superior Court or the tribunal concerning a residential tenant before any such application is made. In our view, these applications should only be for remedies other than eviction.

We think that these changes would preserve the intent of the Legislature as expressed in the Residential Tenancies Act, and that has been supported by the courts: that eviction of residential tenants should only be granted by the Landlord and Tenant Board. This would avoid confusion of jurisdiction, which could result in inconsistent decision-making and unfair evictions. It would still permit condominium corporations to take remedial action against tenants in situations where the landlord-owner refuses to get involved, but it would not allow them to take those tenants' homes away.

We really would like to protect everybody from years of uncertainty and litigation about what are the limits of the tribunal's jurisdiction, where does the Landlord and Tenant Board start, and where does the tribunal stop. We would really like you to send a clear signal to the Landlord and Tenant Board that it's their duty to fairly resolve any disputes between landlords and tenants, including those who own and rent in condominiums.

Those are our concerns, and I appreciate the opportunity to be able to express them to you.

The Chair (Ms. Soo Wong): All right. I'm going to turn to the government side. Mr. Dong?

Mr. Han Dong: I want to thank Mr. Hale for coming to this committee and presenting your point of view. My name is Han Dong. I represent the riding of Trinity–Spadina. As you know, in my riding there are many condominium owners, and a fair amount of tenants, as well—perhaps higher than the provincial average.

Mr. Kenneth Hale: Our office is located in your riding, and condominiums are springing up all around our office, so that I can barely see the sun anymore.

1540

Mr. Han Dong: I have very little to do with that, but I am elected to represent the views of constituents in my riding. The points that you brought forward are very interesting, and I'm sure the ministry staff who are here will be looking into it.

When I first heard about the consultation on this act and the draft, I was quite excited about the tribunal because for many years, we've talked about having an authority looking after all of these disputes amongst the condo boards and owners. Finally, the government is doing something about it.

I want to refocus on the quality of information. Have you heard any concerns from tenants talking about the quality of information that they've received and gathered from the board or the management?

Mr. Kenneth Hale: I wouldn't say that that is a primary concern of tenants. Tenants often get very little information from their landlords. There's a statutory requirement that they be given notice of some of the basic provisions of what their rights are. It's very rare that even that ever happens, let alone any details about any kind of operations in the building.

I think that the tenants are concerned with knowing what they're getting for their money and making sure that they're actually getting what they're supposed to be getting for their money.

Mr. Han Dong: Do you see that an ineffective board management can indirectly impact the tenants?

Mr. Kenneth Hale: Certainly, yes. But, unfortunately, the tenants don't really have any input into who gets onto that board.

Mr. Han Dong: Well, they can let their landlord know.

Mr. Kenneth Hale: Yes.

Mr. Han Dong: Do you have any suggestions on what might help to strengthen the management of the condos?

Mr. Kenneth Hale: I must say, it isn't something that I've given a lot of thought to. I think that there are some sincere efforts here to strengthen the management of condominiums. Will they work? Will the licensing provisions work? Will the oversight? I don't know. I hope they do, because the problems that owners suffer when there is bad management and unfair relations with the builders filter down to the relations that the tenants have within their community, and that's not good.

Mr. Han Dong: That's great. Thank you very much.

The Chair (Ms. Soo Wong): Thank you, Mr. Hale. Thank you for your written submission as well.

MR. CHARLES SMEDMOR

MR. RONALD SMITH

The Chair (Ms. Soo Wong): The next group coming before us is Ronald Smith and Charles Smedmor. Good afternoon, gentlemen. Welcome. As you've probably heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will be coming from the official opposition party. You may begin at any time. When you begin, please identify yourself and any organization that you're representing for the purpose of Hansard.

Mr. Charles Smedmor: Thank you, Madam Chair. My name is Charles Smedmor. My colleague on my right is Mr. Ron Smith. We're both chartered professional accountants. We are specialists in forensic and investigative accounting. We are here independently; we do not represent any client or any organization.

The title of our presentation is Bill 106: From a Fraud Prevention Best Practices Perspective.

The Chair (Ms. Soo Wong): The Clerk is coming around with the copies.

Mr. Charles Smedmor: I'm going to speak to it, but I'm also going to speak to some of the underlying points. Effectively, we are in a position where we have three recommendations that we would like to suggest to this committee.

The first one concerns reserve funds. Reserve funds: We suggest there may be an opportunity to use a model that's already being used by the Housing Services Corp., so that the funds can be with a higher level of protection for compliance with the legislation and a higher level of protection for ensuring that all withdrawals are, indeed, fully authorized by the condominium corporation.

The second point we're going to speak about is enhanced auditor management reporting. The auditors of a condominium corporation provide financial statements that present fairly. However, a bigger issue is whether the operations and management of the condominium corporation are being run smoothly and professionally. We believe there's an opportunity for the condominium authority to introduce procedures that would have enhanced reporting by the auditors.

The third thing we want to speak about is the directors and officers of the condominium corporations, because they are effectively the directing minds of these organizations that are, in a way, a fourth level of government. What we're proposing is that there should be a code of ethics for the directors and officers of condominium corporations in the same way that Bill 106 speaks to the condominium managers and the principal condominium managers having to complete a code of ethics.

I'm going to go from that overview to some comments with respect to the idea of reserve fund centralization. First of all, I want to say: It would be optional. If a condominium corporation wants to continue using its current processes and procedures, that's wonderful. But if they're risk-averse or if they feel that it may be helpful to them, then in the same way that the Housing Services Corp. does it for public housing providers, I believe the condominium authority should offer this option to condominium corporations, the process being that the funds are received, are invested through a reputable company—in the case of housing services, it's an operation of the Royal Bank. Then, when there's a withdrawal, the withdrawal is vetted that (a) it complies with the applicable regulations, and (b) withdrawal is fully approved by the board, because right now, for many boards, the only thing that holds funds from being moved out of the reserve fund are two signatures on a cheque. How many times might there be one cheque already with one signature on it because someone is out of town on vacation? So what you want to do is protect this asset, which is a very important asset.

I'm going to move on from that—because I can answer any questions—to the second topic, which is, effectively, enhanced auditor reporting. I'm a chartered accountant. I've been a chartered accountant since 1986. My colleague Ron Smith has been a chartered accountant since 1977. We know that the really important information is not always in the financial statements; the devil is in the details as to how well a corporation is run. We believe that while auditors often provide an optional management letter commenting on the operations, it can be helpful for the condominium authority to develop a format that will then be very clear to the users of the financial statements, both the directors and the unit holders, for understanding the operations as they have been. Is cash management strong or weak? Does it need to be improved? How so? And so on. The bottom line: Again, this would be optional. It's not going to be mandated, but if the condominium authority develops the format and encourages condominium corporations and auditors to consider it, then it can be assessed as to how well it's doing.

The next topic I want to speak about is the code of ethics and education for condominium directors and officers. First of all, I'm very glad to see that the condominium authority will be licensing and using a code of ethics for the principal condominium managers and for the condominium managers. However, I was surprised, when I read through the proposed legislation, the bill, to see that condominium directors and officers were not going to be similarly asked to sign a code of ethics and to comply with one. It might be implicit and it might be something that the Canadian Condominium Institute—and both Ron and I are members of the CCI—have in their recommendations, but I believe that to provide protection, it should be in the legislation that condominium directors and officers are required to sign a condominium code of ethics.

The other thing is that if you have them signing a document like that, it can also say what the consequences of not complying are. You can have the process clearly spelled out as to how a condominium director or officer who had not followed the rules can be dealt with.

The other factor to consider here is that the condominium director has a lot of responsibility. I, as a chartered accountant, am amazed at how many people—I find, and Ron is of the same opinion—do not understand what exactly is a crime in terms of white-collar crime in Canada. A secret commission is in section 426 of the Criminal Code, but most people think that if someone gives you two airline tickets to Florida in return for getting them the gardening contract, that's just a gift. No, it isn't. To even seek or to receive it is a crime.

1550

I believe that we should have, in the education for the condominium directors, a fair dose of explaining the crimes that they have to watch for, the white-collar crimes that can create problems for their condominium corporation and for them personally.

I realize that I have limited time. I'd like to be able to just summarize that we have three points to consider, and they are, first of all, that with respect to the reserve funds, I believe that there should be an opportunity to have them centralized, to have them carefully invested, and to have withdrawals carefully vetted for (a) compliance with the

applicable regulations, and (b) that the documentation supporting the withdrawal is full and complete. The last thing we want to do is have a headline in a local newspaper saying "$10 Million Gone from Condominium Corporation 123's Reserve Fund." All that holds it back right now in many is basically two signatures.

Second thing: enhanced auditor communication, because if you have improved communication from the auditors on the issues of operations, then the operations can be improved.

The final point is that for the officers and directors, I believe that they should be completing a code of ethics which also holds them responsible for their actions and also encourages them to become fully educated and understanding of the fraud and malfeasance that can occur in this world if you're not looking for it.

We want to thank you, and we're glad to answer any questions now.

The Chair (Ms. Soo Wong): I'm going to turn to Mr. Fedeli to begin the questioning.

Mr. Victor Fedeli: Thank you for your presentation. Your final three points—your first one talked about reserve funds and broke it into three points. I missed the middle one. You talked about centralizing it; you talked about the last one being withdrawals being monitored. What was the middle one?

Mr. Charles Smedmor: The middle one, Mr. Fedeli, is that the funds would be wisely invested. In fact, I have an excerpt from the housing services' statements at the end of this presentation that shows on page 15, note 7, that $480 million in this case is being invested by Royal Bank Global Asset Management. So it's not civil servants who are investing it; it's basically Bay Street professionals.

Mr. Victor Fedeli: As you know, we're having deputations today and next week, and then we begin to do amendments. Are there specific amendments that you would look to have brought forward?

Mr. Charles Smedmor: We have drafted them but we haven't provided them yet. I would be pleased to send the specific amendments to Madam Chair, Ms. Wong, for consideration. Actually, I would send them to Mr. Koch, I believe.

The Chair (Ms. Soo Wong): And you have until October 29, 6 p.m., to submit it to the Clerk.

Mr. Charles Smedmor: All right. We will provide those in more complete detail.

Mr. Victor Fedeli: We've only got a couple of minutes, and I know Mr. Barrett wants to have one question as well. I want to just ask you—I live up in North Bay.

Mr. Charles Smedmor: Yes, indeed.

Mr. Victor Fedeli: We've heard from a lot of deputants and we've heard from people in the Legislature talking about the regional differences or a project's size. Should all of the guidelines in Bill 106 apply to all, or should there be consideration due to the regionality or the size of the project, if you have a quick answer on that before Mr. Barrett's question?

Mr. Charles Smedmor: Ron?

Mr. Ronald Smith: With some aspects, it should be size-sensitive. For example, when we talk about the reserve funds, it might be that the central authority kicks in for any disbursements over $100,000 for a certain-sized condominium corporation. For one where there are only 10 units, the cut-off point might be $5,000. So the size will make a difference. I don't know if regionality will make a difference.

I just wanted to add one point of reinforcement. I lived in a house for 36 years. I moved into a condo two years ago. For the first year, I saw what happened; I wasn't happy. Baptism by fire: I'm on the board. I'm the treasurer.

Mr. Victor Fedeli: You and my mother.

Mr. Ronald Smith: And to me, if the board was strong—and how do you get a strong board, because they're inheriting things from the board before them, and if they're not trained and if they don't have the business acumen, they're just repeating the same sins of the past? Property managers can just run roughshod over a board, and a board is left with being a rubberstamp. So the board, being the gatekeepers, if they knew what really is expected of them, then I think they would rise to the task, because the board members are good people who are volunteering their time—

The Chair (Ms. Soo Wong): Two minutes: Mr. Barrett.

Mr. Toby Barrett: You introduced the concept of reserve fund centralization to, I assume, mitigate risk and provide centralized services advice on investment or management. Is this done anywhere else? Would this follow, say, the principles of—I think of insurance companies. The insurance companies have an insurance company to insure the insurance companies: the principle of reinsurance. Would that principle apply here or are we talking something different?

Mr. Charles Smedmor: It's not quite the same thing. Reinsurance, which of course keeps places like Bermuda very busy, is where the risk is transferred, where basically if I've insured your car and insured everyone's car in this room, I will take perhaps half of the third-party liability risk and insure it with an offshore insurer in Bermuda. What we're looking at here is basically—as I have on pages 14 and 15—a pooling of reserve funds.

Those condominium corporations that want to do it—I wouldn't want to see it as a mandatory item. Let's do it just if a condominium corporation has had a problem in the past, they might be risk-averse, they can put the funds in there, they will be invested wisely by an organization like the Royal Bank, Dominion Securities or whoever's selected, and they'll look to get the best yield. There would be a cost for getting withdrawals processed, because if you've got someone vetting the documentation, there's going to be a fee, but that fee can be small. Some people remember that old saying of "Some people know the cost of everything and the value of nothing." I'd rather have a fee paid for someone making sure that that withdrawal for my condominium corporation is fully vetted, approved for compliance with the regulations, and also for the signatures and so on.

The Chair (Ms. Soo Wong): Gentlemen, thank you so much for your presentation. I look forward to additional submissions. Your time is up. Thank you for your presentation and submission today.

Mr. Charles Smedmor: Thank you.

The Chair (Ms. Soo Wong): Just a reminder: You have until October 29 at 6 p.m.

CONDO INFORMATION CENTRE

The Chair (Ms. Soo Wong): The next group coming before our committee is the Condo Information Centre: Anne-Marie Ambert. Welcome. Good afternoon. Ms. Ambert, as you heard, you have 10 minutes for your presentation followed by five minutes of questioning. This round of questioning will begin with Ms. Fife from the third party.

Ms. Anne-Marie Ambert: Thank you very much, Madam Chair. My name is Anne-Marie Ambert. I am a condo owner, a former president of the condo board, and I was also the only owner on the government's expert panel.

In the past six years, since my website, which is meant to help condo owners, was launched, I have received over 3,700 letters, largely from desperate condo owners, which reflect some of the realities in about 40% of all the condos in Ontario.

The contents of these letters have guided the suggestions that I will have today. I have decided to focus on a few key articles in the new bill that will result in further oppression of owners. I should say that, overall, I am very much in favour of the act. I also worked very closely with the very competent staff that you have.

First, one should point out there are many articles in this act that are wide open, and their contents will be obvious only long after legislation is passed; that is, when the regulations are written. Personally, I find that a bit of a problem because there's not enough that is upfront for some of the articles.

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Article 46 on requisitioned meetings has taken away from owners the right they had to carry out requisitioned meetings when a board refuses to do so for no good reason. Instead, the only recourse owners have is to go to court now. This is unfair because few owners can afford this and the condo lawyer will likely stand with the board, at owners' added expenses. Until the condo tribunal is in effect, which may take up to three years, owners therefore have no easy and inexpensive recourse. The removal of this current right is rather oppressive, in my opinion, to owners, and it goes against the title of this act, which, by the way, I do like. I suggest that the board's non-compliance section that was taken out—it's just about one line—should be reinstated until the condo tribunal comes into action.

The issue of a vote by a show of hands that we see in articles such as 52(1)(a) and 56(1)(c.l) should be restricted by the regulations. Important issues, such as voting for directors, removal of directors, and by-laws and rules should be voted only by secret ballot. Otherwise, owners who vote against a board's wishes run the risk of being maltreated and oppressed. Vindictiveness is unfortunately very common among condo directors and managers.

I want to return to the issue of shared facilities that is now discussed in a short article 21.1, which has replaced article 59. I just want to point out, because I'm not a legal expert, that this new article makes no mention of the rights of owners to vote. This should be retained when the regs are written. As this article 21.1 is written, there is no mention of condo owners' rights. All we have here is faith that this will occur in the regulations.

Regarding the status certificate, the new bill should improve the situation but, instead, it left the status quo in this respect. Article 76(5) gives no penalty for managers who refuse to issue a status certificate, for which, by the way, owners have to pay over $100 plus HST. I have had dozens of letters from desperate owners who lost a sale because a manager refused to give a status certificate or did not respond. Some of these owners ended up selling the following season, the next year, while others got another offer and had to accept but at a lower price.

Also, status certificates should let a potential purchaser know the percentage of owner-occupied units compared to units that are rented out. I want to say here that the term "owner-occupied," which is in the current act, is a fairer concept, in my opinion, as an owner than the new concept of non-leased suites which is in this act and has been introduced, because non-leased suites could mean that they are owned by a builder who could have a block in a condo and vote, for instance, or by an investor who never lives there.

I want to point out that financial matters in condos account for over half of all the letters that I have received. This is, in other words, the number one problem. There is a great abuse of surplus monies. Article 84(2) is regularly abused in the sense that many condos have, in effect, a third budget. In addition to the yearly common expenses and also a budget for the reserve fund, they have what they call an "emergency" fund or a fund by any other name. This is often where the surplus goes, and this third budget is not regulated by the act. As a result, boards use it as a slush fund for their pet projects that may run into the tens of thousands of dollars without having to ask owners' permission. A suggestion: In addition to what is already in the act and is very good about the surplus would be to allow only very small surpluses to remain at the end of the year of maybe $25,000 to $45,000, depending on the size, that remain with the common expenses budget.

A very big issue is the lack of approval by owners of substantial modification—which is article 97(6)(a)(i)—which will not so much change with this act. As currently written, it states that any modification that a board wants to make does not need owners' approval if the planned expenditure is lower than 10% of the annual common expenses budget. When condos have annual budgets over $2 million—as more and more will have, and do have—

this means that a board can, in effect, spend up to $199,000 of owners' monies without these owners' approval. This is a lot of money, and this is being spent on modifications—what I call frills; I'm not sure if it's English or French. Hence, these are not even necessary replacements or repairs, just luxuries.

My suggestion: The expenditures for modification should be lower than 10% or lower than $75,000, whichever is the lesser amount, without owners' approval; although, frankly, they should be informed. Any board who wishes to spend more than that for modifications should seek owners' permission with the required 66% vote in a duly called meeting or at the AGM.

This lack of oversight on the part of Bill 106 will simply keep the door open for owner exploitation at the financial level, for boards and managers to feel flush with money, which is not theirs, by the way, and for fraud and bid-rigging—we have heard a lot about that, and I've received many letters about that; I have heard from contractors who do it, by the way, and others who don't—which are rampant in the contracting industries. Indeed, contractors are attracted to condos that can spend a great deal of money without having to ask owners' permission. When we were talking about what to do about that—just don't flash the money about. The bar is way too high. My question is: Will Bill 106 protect owners against financial manipulation or will it protect contractors?

While committee members may not agree with the proposed numbers, I do hope that they will still find a way to better regulate this situation. Condo owners, Statistics Canada has shown, have a lower income, on average, than other types of homeowners, yet they have less control over their monies than other owners in detached or semi-detached homes. In fact, we just don't have any control over our money.

While I am asking that Bill 106 better protect condo owners against abuse by their boards, managers and even condo—

The Chair (Ms. Soo Wong): Ms. Ambert, could you please wrap it up?

Ms. Anne-Marie Ambert: I would like that good, diligent boards also be protected by the act, that is, those boards that are trying to raise fees in order to have a reserve fund. I will leave it there. Maybe I can answer that in a question.

The Chair (Ms. Soo Wong): Thank you. Ms. Fife, do you want to begin the questioning?

Ms. Catherine Fife: Thank you very much, Anne-Marie. The amount of money in reserve funds is, actually, quite shocking.

Ms. Anne-Marie Ambert: Yes, the amount of money in the reserve fund—it is needed. I was not talking about reserve funds necessarily, but any money that exists which is used to simply embellish the condo—

Ms. Catherine Fife: The slush funds that you're talking about.

Ms. Anne-Marie Ambert: Yes, it's money that is there. It's a surplus.

Ms. Catherine Fife: What do boards—

Ms. Anne-Marie Ambert: The reserve fund, as you know, depends on a study made every three years—a small one, and the next three years, a bigger one. They have to be adequate. Nowadays, a good condo that has over 100 suites should have at least $1 million in reserve funds, unless they have made more expenditures. For things that are simply modifications which don't fit into the reserve fund, still, boards have very big leeway because the bar is too high in terms of the money that is allowed. This 10% keeps increasing.

Ms. Catherine Fife: I think you made the point that a board could spend up to almost $200,000 without owners' approval. That's a huge amount of money.

Ms. Anne-Marie Ambert: Yes, it's a huge amount of money.

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Ms. Catherine Fife: So this is a modification that would need to be put in place to protect—

Ms. Anne-Marie Ambert: Yes, there is a place where it is, actually, and it's—

Ms. Catherine Fife: I just want to talk about this vote by a show of hands, because some of us have never been in one of these meetings with condo owners. You're describing a culture of fear here.

Ms. Anne-Marie Ambert: You would be surprised. There is a culture of fear in condos. A good condo, for the situations that I explained, will generally ask for a secret ballot. One owner can require that there be a secret ballot, and then they have to do it, but owners don't know that this is in the condo act.

Basically, if they ask for a show of hands after a motion to terminate the meeting, a show of hands is fine for these things. When it's the end of nominations, that's fine; you can have a show of hands. But when it comes to other issues, it happens in some condos, and then after that, even people who requisition meetings are sometimes punished, there are a few services—and they receive threatening letters from the condo lawyers.

Ms. Catherine Fife: It's interesting, though, Anne-Marie, that you've raised this issue, because in prior delegations, the issue of proxy voting has also come up.

Ms. Anne-Marie Ambert: Yes, it's a big issue.

Ms. Catherine Fife: Do you want to say something about proxy voting?

Ms. Anne-Marie Ambert: What they said is quite true. When I was a president, I often collected proxies, not for votes but for a quorum, because it's very expensive to mount an AGM meeting, and nobody shows up. So I collected proxies for a quorum, but not for a vote.

It is true that boards in general, and managers, do collect proxies and see that, as I did, as our duty. But there is a difference between that and putting your name and filling out those proxies for owners. I know that in some condos you have a president, for instance, who has been their president for about 20 years and he aged as gracefully as possible with the rest of his poor elderly owners; he goes to each one of these and he threatens them. He tells them, "If you don't vote for me on your proxy, you won't have the services that I've been giving

to you. You know how good we are." And they're terrified. I have sons and daughters of seniors who write to me.

Ms. Catherine Fife: I know that time is short, but I just want to say that in your seventh point you do describe another culture, or a tension between condo boards and contractors who see them as very vulnerable, if you will. Bill 106 is meant to actually educate some of those boards, but do you think that this will address some of the fraud, the manipulation, the financial—

Ms. Anne-Marie Ambert: I think that some of the suggestions that were made were quite good, but I think one point that we need to emphasize in the education of board members is ethics. If they have ethics and they realize that they are not there for their little clique, but they are there for other owners—if you can sink that into their heads, then they will become conscientious and more knowledgeable.

Ms. Catherine Fife: I think that this came through previously, where a board owner should not be accepting two flights to Florida for a gardening contract.

Ms. Anne-Marie Ambert: Oh, no, no.

Ms. Catherine Fife: And this happens?

Ms. Anne-Marie Ambert: Yes; worse happens. But fraud is more often the purview of managers and other persons—and bid-rigging, yes.

Ms. Catherine Fife: That's an important point. Thank you.

The Chair (Ms. Soo Wong): I'm going to stop you. Thank you very much, Dr. Ambert. Thank you for being here and for your written submission.

Ms. Anne-Marie Ambert: Thank you very much.

MR. CALVIN TARR

The Chair (Ms. Soo Wong): The next witness before us is Calvin Tarr. While the witness is coming forward, I just want to remind members that there might be a vote upstairs, so I'm watching. I just wanted everybody to know that.

All right, Mr. Tarr, you have 10 minutes for your presentation, followed by five minutes of questioning, and this round of questioning is coming from the government side. When you begin, can you please identify yourself and whatever organization you represent? Thank you.

Mr. Calvin Tarr: My name is Calvin Tarr. I'm here as an independent condominium owner. The good work that Anne-Marie does with Condo Information Centre and also the good work that is done by Holland Marshall with condomadness.info—up until I had read their websites, I really was living on an island, thinking I was the only person who had experienced some of the problems that I have in a condominium. They have been since 2009. My wife and I bought a condominium, one that, up until five months ago, we regularly paid maintenance payments on, taxes and such, but we weren't able to live in it, to rent it or to sell it because of the control that the condominium had over us.

My problems started when I spoke up for a contract worker in the condominium who expressed to me they were not being paid. What I did is I saw where they were having—they presented an invoice to the condominium corporation, and what they would get back was a cheque for near half the amount, but it would give all of the invoice numbers that, in fact, added up to near double the amount. So you would look at the pay stub and you would see that this is a cheque to pay invoice 1 and invoice 2; the amount should be, let's say, $1,900, but the cheque would be in the amount of $1,000. I thought I should bring this to the attention of the management. I did, and when I didn't get any service there, I took it to the auditor, and I didn't get any satisfaction there.

That's been my experience in condominiums. It went from getting involved with the condominium auditor and recognizing that he wasn't there to serve the interests of myself as a condominium owner, or a contractor. Next, I brought concerns around building code violations to the property management and also to the board, to find out that there was no one there, either, to take interest in making sure that the things that were concerning me would be addressed. So I'm finding out that there were no enforcement mechanisms in the condominium that I was living in that had also to do with fire department violations. I was unable to get any servicing around that.

So that caused the condominium to instruct management to go ahead and tell security forces that I should not be walking in any other building other than the one I occupied, which had me getting a trespass notice that later went to court. Of course, it did not stand up in court, but it did cause me the inconvenience of not being able to travel to the United States in 2010 when it was reviewed that I did have that stopping me. It came up in just a routine check as I was crossing the border, but it did affect my travel.

Access to common elements in the condominium—the amenities—is provided by a recreation centre card, something that the property management refused to give me, which created conflict with the security forces who, in fact, went ahead and contacted police and had me charged with theft, criminally. They did not provide any of the disclosures that they said they had—videotape and everything that had me being charged by the police.

I did go to court and I paid a $25,000 cost for an application that had been made by the condominium corporation against me, one that, line by line, 500 pages, including photographs—all disputable. I can call it what it is: It's lies. My avenue to proceed against the corporation in defending that would have been in excess of $75,000, so I paid the $25,000 fee and was told by the judge I did have the right to go around common elements in the condominium.

I have also gone to the property management around matters like electricity being shut off, not just in my unit but in seniors' units, people who did not speak English, and it wasn't of interest at all to the condominium management that practices like that took place.

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I also was asked by the condominium corporation to provide access to my unit so that they could do an inspection, that had their corporation engineer stating that the

type of piping that I was using was totally appropriate—PEX piping, it's called. To have the condominium corporation turn around and refuse their own engineer's report and ask me to restore the condominium to the standard unit condition, which is copper pipe—it just seems the condominium board can't continue to oppress an individual.

It's also a concern to me that over 300 unit owners in the condominium were not advised of a committee of adjustment application for a condominium that was going up next door that had a reduction to the parking standard request of 50 parking spots. Three hundred people were not notified, yet the management did not proceed to take this matter to the Ontario Municipal Board. It's something that I had to do. I had to take it to the Ontario Municipal Board myself, which, in fact, ruled that even though it did make it through the committee of adjustment without complying with the notification requirements, that was not of interest to them. They just went ahead and routinely approved the application for the reduction of the parking standard.

I have concerns around proxies, in that just last year there was a need for two AGMs that had to be held in the building within a one-week period. Given that proxies were written up, there were four positions available. Three board members' names that were running for the board had their names put in the first three spots, leaving just one blank line. That would have someone thinking that you're only allowed to vote for one person, when in fact you're allowed to vote for four.

In that same election, the property management went ahead and instructed to just leave on doors campaign literature that was from the president. Three candidates who were running for the board had their campaign literature taken off of doors by security.

Like I say, it was only after reading the websites condomadness.info and Anne-Marie's site that I recognized that a lot of the things that I had encountered are really patterns. They are problems that are taking place in the condo industry. I'd really like you all to take the time to look at that.

I know you're aware—I think you might have already been told—there was a study done back in 1977. It made a lot of recommendations. Had they been put in place, I really feel I wouldn't have had to have put up with a lot of the problems that I did in the condominium. Thank you for your time.

The Chair (Ms. Soo Wong): Thank you, Mr. Tarr. I'm going to turn to the government side. Ms. Vernile?

Ms. Daiene Vernile: Thank you very much, Mr. Tarr. My name is Daiene Vernile; I'm the MPP for Kitchener Centre. Like you, I, too, live in a condominium. I'm very sorry to hear about some of the very unfortunate experiences that you have had as a condo owner. I want to thank you, though, for appearing before this committee and sharing some of your experiences and insights with us. It helps to inform us as we do our work.

I just want to find out more about your experience. You said that you bought a condo in 2009?

Mr. Calvin Tarr: Correct.

Ms. Daiene Vernile: And you couldn't live in it or rent in it. Why is that?

Mr. Calvin Tarr: I started to renovate it. I provided all the materials, the scope of work and everything that had to be done, to the property management. At the same time, I got involved in the dispute defending the employee who was getting paid with the voodoo bookkeeping that was taking place, that I described, where invoice amounts were being written on cheque stubs and they didn't add up to the amount of the cheque. What happened at that time is I really feel that they used the construction that I was doing as a way to oppress. So they made entry to unit—they wanted to come in and see, even though they had piles of documentation, including an application that I had made to the city of Toronto for a building permit that only required their signature, as the condominium management office.

Then, when the condominium engineer provided the letter stating that the material that I was using was in fact correct, it took 50 weeks for me to get a complete copy of that report. Meanwhile, I paid my maintenance fees all the time. I repeatedly requested the corporation's solicitor, the property management, that I get a copy of the report, and it wasn't forthcoming. It took 50 weeks, and then right after that they turned around and they stated that I had to return the unit back to the original condition of doing it in copper.

It just seems to me that when you replace property management companies and you replace boards and you replace security companies the way they go through, you effectively just erase the history.

Ms. Daiene Vernile: So with this legislation that we're proposing, Bill 106, you're going to be seeing condo owners and those who are purchasing condos having greater authority. You're going to see required condo managers who are licensed. We're creating new governance requirements for condo boards, and we're creating a very cost-effective and quicker way of resolving disputes. What are your thoughts on those points?

Mr. Calvin Tarr: Anything that can be done to keep matters out of the courts, absolutely. There's no way to play catch-up, especially with a statute of limitations and everything. There were things going wrong weekly and monthly just coming up that were new issues with the condo to go ahead and exhaust what resources we had and go to court. It wasn't feasible because they were always in a position to withhold, withhold. I say things like the engineer's report, not getting co-operation from other officers of the corporation, like the auditor.

Ms. Daiene Vernile: I understand that you appeared before a round table in Toronto and you shared some of your experiences. Do you have any specific recommendations for our committee?

Mr. Calvin Tarr: Don't let the wolves watch the henhouse. Okay? That's—

Ms. Daiene Vernile: We've got lots of good points in this legislation, and I believe it's going to go a long way in helping to protect the 1.3 million people in this

province, like you and I, who own condominiums. Thank you very much for coming and talking to our committee today.

Mr. Calvin Tarr: Thank you.

The Chair (Ms. Soo Wong): Thank you, Mr. Tarr, for being here.

MS. REVA LANDAU

The Chair (Ms. Soo Wong): The next witness is Reva Landau.

Ms. Reva Landau: I brought 25 copies of a summary of my points. Where should I put them?

The Chair (Ms. Soo Wong): The Clerk will come pick them up.

Good afternoon, Ms. Landau. As you heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questions will be coming from the official opposition party. I may stop you because I think there may be a vote coming. So if it does require us to go upstairs, I will let you know. All right?

You may begin any time. Please identify yourself for the purposes of Hansard.

Ms. Reva Landau: My name is Reva Landau. I've been a condominium unit owner and resident in a 200-unit condo in central Toronto since 1993. I've also been a member of the board on several occasions, for a total of about nine years.

I think Bill 106 has some points that will be definite improvements, especially the Condominium Authority Tribunal, though until we see the actual regulations for the Condominium Authority Tribunal, it's hard to judge. But I think there are two important points that have not been dealt with and that would be significant improvements to the act. These have to do with records and expenditures from the reserve fund.

In regard to records, the points are: What records can a unit owner see and how soon can they see them after they request them? The current Condominium Act, section 55—and, as far as I can tell, Bill 106 still—speaks about the records of the condominium. There are some judges who have interpreted that to mean all records of the condominium, provided proper procedures are followed and they're not specifically excluded. Some board members and property managers say it's just the records listed in the Condominium Act; that if they're not listed in the Condominium Act, then the unit owner doesn't have a right to see them. So I think if the intention is to, as one judge said, make the condominium an open book to unit owners, then it should say very clearly all the condominium records except those specifically excluded and provided proper procedures are followed.

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The second issue relates to receiving documents in a timely fashion. I have waited four months on several occasions to see approved board minutes and financial statements. It was after significant, constant emails, telephone calls and letters to the board that I finally received them.

Section 55 does refer to regulations being passed, but until or if such regulations are passed, I think the Condominium Act should state clear time limits for at least some documents. For example, minutes of board meetings should be available within five business days after the request. Similarly, recent financial documents should be available within five to 10 business days of the request. Referring to a "reasonable" time is not helpful because unit owners, property managers and boards don't necessarily agree on what is reasonable. I, for example, don't think four months to see approved board minutes is reasonable.

The third very important point is the names and mailing addresses of unit owners. The Condominium Act must state specifically that unit owners are entitled to speedy access to a list of owners' names and their mailing addresses. A number of the rights given unit owners, such as the right, under sections 58 and 46, for the owners of at least 15% of the units to submit a requisition that will force a vote on rules passed by the condominium board, mean nothing unless unit owners have a way of contacting other unit owners.

Most condominiums have at least some non-resident owners. In Toronto, a number of condominiums have 50% to 60% non-resident owners. Unless an owner can get a hold of the names and mailing addresses of other unit owners, they can't contact them to force a vote on the rules, to force a vote on questions of changes and modifications that do fall under section 97, and for a number of other issues.

Now, judges have ruled that unit owners do have the right to the names and mailing addresses of other unit owners, but some condominium boards and property managers say, "That's just the opinion of a couple of judges. We don't have to release the names and mailing addresses." They claim privacy concerns, or that subsection 55(4) forbids them from releasing records relating to specific units or owners. Now unit owners may, under the new legislation, be able to appeal to the proposed Condominium Authority Tribunal, but without a clear statement in the act, this authority will not have guidance.

It's also crucial to understand that the release of names and mailing addresses is very time-sensitive. For example, unit owners have only 30 days to obtain a requisition of a meeting to stop rules going through or to stop certain changes to the common elements going through. It's therefore important that condominium owners not only be given the right to receive the names and mailing addresses of other unit owners for reasons related to the purposes of the Condominium Act, but they should have a right to receive them within three business days of the request if it's for time-sensitive purposes such as the requisition of a meeting.

My second point has to do with the use of the reserve fund. When you look at the Condominium Act, it looks very good. It describes in detail the notification requirements for expenditures from the operating fund—emphasis on operating fund—for changes, alterations and improvements. But expenditures can be made from the

reserve fund without any need for owners to be informed, or given an opportunity to force a meeting for approval. There has been very little discussion of this major discrepancy.

In theory, the reserve fund is supposed to be used only for major repair and replacement. What's that got to do with changes? But there are two big loopholes. The first is the claim that the improvement or alteration is not a modification because it's following common construction standards, as outlined in subsection 97(3), or the change is attached to a straight replacement. The auditor will approve funding the expenditure from the reserve fund, even though it is a change, because it is attached to a replacement.

In regard to current construction standards, what does this mean? All condominiums? Condominiums in a similar price range? Is it referring only to health and safety standards or to any type of standard? For example, our condominium had to replace certain components of our HVAC, which I'm sure you all know by now is the heating, ventilation and air conditioning system.

As part of the project, the board decided to air condition the corridors, which were previously not air conditioned in the summer, though they were heated in the winter. The supervisory engineer said recently built condominiums generally have air conditioned corridors, so the property management and the condominium board said that therefore, this change followed current construction standards and did not count as a modification. This important change could be made with funds from the reserve fund without having to even inform unit owners, much less get their approval.

Now whether new condominiums generally have air conditioned corridors, I don't know, but even if it's true, this is a significant change in functionality, which costs more than had been allocated in the reserve fund and which would increase future operating costs. Sometimes, unit owners deliberately buy into a condominium without the latest bells and whistles because they don't want to spend money on the latest trend. They should have the right to be informed at least about such an improvement and, if enough unit owners object, to call a meeting. By the way, even if it had not been a current construction standard, the auditor probably would have approved the change being funded from the reserve fund because it was attached to a required replacement.

The stage 2 finance working group report noted on page 66 that courts have been generous, as they put it, in allowing boards extensive updating without owner approval, and the Condominium Act should not go against these decisions. That's precisely the problem. What is the point of all the requirements for notice and owner approval if expenditures come from the operating fund when the boards can do an end run around these requirements by making expenditures from the reserve fund?

There is an additional problem in that the current act and the courts have been concerned generally only with costs, which are certainly important, but not with appearance. If a condominium repainted its corridors in bright orange instead of the current light brown using the same quality paint, that would count as using materials "as reasonably close in quality to the original as is appropriate"—subsection 97(3). The expenditure could be made from the reserve fund—

The Chair (Ms. Soo Wong): Ms. Landau, can you please wrap up?

Ms. Reva Landau: I have in my handout several suggestions as to changes that could be made in the act to make sure unit owners were informed of changes, whether they were funded from the reserve fund or the operating fund, and whether they follow current construction standards or whatever, and whether there was a change in functionality or appearance. If it was a change, unit owners should be informed.

The Chair (Ms. Soo Wong): Okay, I'm going to stop you right there. Mr. Fedeli.

Mr. Victor Fedeli: I know you're halfway through point 6, and you've got 14 points. Will you take our five minutes and just carry on? I'm finding this quite fascinating.

Ms. Reva Landau: Okay. I hope everybody has the handout. What I'm saying—first of all, the point is that if a change is coming from the reserve fund or the operating fund, whether it's current construction standards or not, whether it's attached to a repair or replacement or not, unit owners should be informed. I think that's a minimum. It doesn't matter whether it's a change in appearance or functionality, let them know.

Similarly, they should be given similar notice of all proposed expenditures over a total given amount, again, whether it comes from the operating fund or the reserve fund. Again, at least this would force the board to let unit owners know. If the expenditure involves an amount over a certain amount—say $50,000—and involves a change in functionality or service, whether an improvement or a diminishment, or a noticeable change in appearance, then unit owners should have a right within 35 days to requisition a meeting.

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Obtaining the signatures of at least 15% of unit owners is not easily done. I've done it; it takes a lot of work. It's not something that you can do if the change is trivial or beneficial. This wouldn't apply to changes required by law. It wouldn't apply to expenditures that must be done for reasons of health or safety, but if you're using the law, health or safety card, then you can't attach other changes to it. If that's what you're doing, then you have to do the same quality, the same appearance and the same functionality. If you want to make those other changes at the same time, then you have to do the same notice requirements.

The Chair (Ms. Soo Wong): You have two minutes, Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. I think it's fascinating to hear from an actual condo owner and board member. You know that next week we have some more deputants, and the following week we begin to study our

amendments. Is there anything specific in amendments that you would want to see brought forward, other than the 14 points that you've listed here?

Ms. Reva Landau: There are other amendments I'd be interested in, but as I only had 10 minutes, I concentrated on the two that I thought were most important.

Mr. Victor Fedeli: The Chair will tell you when the date is that you can submit them by.

Ms. Reva Landau: Thank you very much.

The Chair (Ms. Soo Wong): You have until October 29 at 6 p.m. to submit any written submission to the Clerk.

Ms. Reva Landau: Do I have to do 25 copies, or can I do it by email?

The Chair (Ms. Soo Wong): No, just one copy, electronically.

Ms. Reva Landau: And do I submit it to Mr. Koch?

The Chair (Ms. Soo Wong): Yes.

Anything else, Mr. Fedeli?

Mr. Victor Fedeli: No. I really appreciate you being here; thank you.

Ms. Reva Landau: I appreciated having the time to talk to everybody.

The Chair (Ms. Soo Wong): We anticipate your submission later on. Thank you for this written submission to us today.

MR. CRAIG ROBSON

The Chair (Ms. Soo Wong): All right. The next group coming before us is the Waterloo Region Home Builders' Association. I believe it's Mr. Robson. Welcome, Mr. Robson.

Mr. Craig Robson: Good afternoon.

The Chair (Ms. Soo Wong): Good afternoon. You probably heard that you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questioning will be coming from Ms. Fife. You may begin at any time. Please begin by identifying yourself for the purposes of Hansard.

Mr. Craig Robson: My name is Craig Robson. I'm the representative of the Waterloo Region Home Builders' Association, which is a member of the Ontario Home Builders' Association.

My practice is primarily in the Waterloo region, practising in condominium development and subdivision work, but also acting for condominium corporations—which is not necessarily totally unique, but it's somewhat unusual to have one firm that actually acts on both sides of what I refer to in my materials as sometimes a rather high fence. Some of my submissions may not quite be as pro-builder as they should be, and some of them will definitely be labelled as personal submissions so I don't get murdered upon my return to Waterloo region.

My next submission is really something which is clearly a personal submission. I want to be very clear on that: It's not an official submission of the home builders. With some regret, I say that I think the industry has brought some of this on themselves. As a condo developer's lawyer, I see a lot of stuff going on that I kind of wonder about sometimes, but when I see some of the terms of HVAC leaseback arrangements and other things that happen—adjustments scattered all over the statements of adjustment so you can't figure out what the total is—I don't blame some consumers for being upset about it, regardless of what I have to do in my day-to-day practice to put documentation in place.

But that, as I said, is a personal view. Although it's probably not at all relevant, the six points I heard discussed by the prior speaker—while I might feel that there are some modifications and massaging that might come forward, I think that there's nothing illegitimate about those comments, and I don't disagree with what she was saying in a general sense. There are a lot of procedural issues.

I'm not trying to follow my submission. I'm one of those people who would say that if you want to read my submission, read my submission. I'm going to pretty much freestyle a little bit—just some other comments in passing.

I'd like to touch on the tribunal, although that doesn't have a lot to do with home builders. I was just explaining to one of the gentlemen that I was sitting with that I have been doing this for 35 years, and I get phone calls about, "My pipe just burst; whose responsibility is it? The condo corp is telling me blah, blah, blah." It takes me an hour to an hour and a half to figure out that question. I've got to check the declaration. I've got to look at the description plans. I have to read the standard unit definition. I have to read the maintenance and repair obligations in the declaration. I have to check to make sure that the guy that drafted them didn't go outside the law at that time. I am just very concerned—although I think the tribunal is a good idea—who is going to answer those phone calls? Who is going to be making these decisions? Harry Herskowitz is busy. I don't know who else is left.

You can't train someone to do this stuff. It takes me five years to train a junior to be able to do basic condominium corporation work, to be able to answer the day-to-day questions that come up. I don't know much, but I do know condos, and I'm pushing them hard to learn this stuff. I don't know where you're going to find the people to answer the phone. The people that would have that skill set probably already have some really good jobs at condominium corporation law firms. I just question that. It's something which I think hasn't necessarily been at least brought to our attention as having been considered, and I think it really needs to be.

I know this legislation is largely consumer oriented. I have no issue with that; as I stated earlier, I think it's necessary. But while we're amending the legislation, let's not forget the dull stuff in the second half of the act, which deals with the different kinds of condos and what we have to do on a day-to-day basis to register a condominium. Some of the time and money we spend in producing documents when we do phased condominiums that are totally—well, it's of very little value to hand out an envelope this thick to every unit purchaser in a phased

condo every time I register a phase. I have a printing company where I live near Ayr that I keep in business with these things. And nobody reads them; they're not required, but the act says we've got to get them out. So I have juniors running around preparing these documents that nobody reads. We need to talk about some of that.

One of the things that I think is really important from a developer's standpoint is that the Condominium Act applies not just to Toronto and its high-rises; the Condominium Act also applies to townhomes. When you get outside of Toronto, we tend to go horizontal far more than we go vertical. Now, we're doing more and more mid-rises and high-rises as the price of dirt goes up, but we don't do nearly as many high-rises as in Toronto, and Toronto doesn't do nearly as many townhouses, again because of the price of dirt.

We've been doing phased condos ever since the act came out. I've probably done 200 or 300 phased condominium projects. Toronto lawyers and developers don't do nearly as many because they're dealing with high-rises, which don't phase nearly as conveniently. It doesn't work nearly as conveniently. There are a lot of issues with phased condos, just in the paperwork and understanding it. There are things that could be done to streamline that. There is one thing, which I don't know if it's appropriate to raise but it's not going to be something that comes to your attention from Toronto developers and builders: We have projects of 200 units, which, in Toronto, would be sold possibly before lunch on a warm, sunny afternoon. They're gone—poof. You put them on; they're gone. I have five projects that we're acting for in very, very small communities, typically on the lake somewhere, the small community—a couple hundred units, phased condos. They've been registering and selling very steadily for the last eight to nine years. They still have 30 to 40 units to go. They do 10, 15, 20 units a year.

There's a little wrinkle in the legislation that says you can only register a phase if within a 10-year—you have 10 years to get your condo finished. It doesn't really say what happens after that. I know what happens after that because I set my documents up properly. I'm going to have to register a second condo for these 30 units that I don't have in the condo. Well, that's great, to have two condo corps now on a project that was set up to be one condo corp. It seems silly, a 200-unit condo: How could it take you 10 years to sell it? It does in the smaller communities. You go to somewhere like Meaford; it takes a while. It takes a while to get people to even understand that a condo is not a bad thing. So they don't go 50 or 60 a weekend; they go seven, eight, nine, 10 or 12 a year. This is something which, if we wait for the act to come in in its full glory, which isn't going to be next week, there is going to be a number of projects throughout the province, outside of Toronto, where the phasing is going to have to stop because its 10 years have come up. Then you're going to have to do a separate condominium corporation and plan in the same development and hope to heck they get along, and hope to heck that whoever drafted the documents put up the proper easements and cost-sharing provisions. It's not going to be a good thing. It would really be easy to deal with: Just change the 10 to 15, if you want to give yourself a little time to think about it. That may be beyond the scope of what we're trying to deal with.

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In my materials, I highlight the fact of vacant land condos and townhomes being a very, very good thing for the industry and for the consumers. There are a few things which could be tidied up there which haven't been touched in the new legislation. The legislation doesn't allow the condominium corporation to insure the units on a vacant land condo; neither does it let the condo corp do maintenance or repair on the vacant land condo, which I read as snow removal and grass-cutting. That is a significant issue when clients are doing vacant land condos, when you say to them, "You realize that your purchasers are going to have to take care of their own snow and grass?" And they say, "Well, that's not who we're marketing to." I say, "I can get around it—there are ways—but it's not easy to do."

It really isn't a good thing to not have the condo corp insuring structures in a condo, because if you take a block of six townhomes, three of them aren't going to have insurance and one of them lied about what the heck it's made of. So if that thing blows, it's not a good thing. It's better to just let the condo corp insure the structures of any condo unit, or at least have the option to. It shouldn't be prohibited. That's something which we work around. We put provisions in our declaration requiring you to prove that it's insured so that we can protect the purchaser, but it's not as clean as the standard condo, where the condo corp simply takes care of the standard unit and that's covered in the insurance. That's a good thing.

We have to keep in mind when we're drafting—and I must compliment the people we've been working with from the government standpoint. They are listening to us, so I don't want to be seen today that I'm complaining that they're not listening to us. We've had some very good dialogue with them, and they're way ahead of me on most everything. But we just have to keep this in front of us: that there's a lot of province out there that doesn't do high-rises; they do 10- and 20-unit condos. Try to get a property manager for a 20-unit condo: There's no money in it for the property manager. If you're only going to charge 30 bucks a door, they're not going to do it.

We have to be very, very careful about these property management requirements and licensing. I think it's a good thing to license property managers generally, but if you've got a small condo in Fenelon Falls with 20 units in it and the nearest property manager is a guy who spends most of his time in the men's room at the Queens, you would probably not necessarily want to hire that person—he probably isn't licensed—but they may well want to hire someone to help them with bookkeeping, someone to help them—

The Chair (Ms. Soo Wong): Can you wrap up please?

Mr. Craig Robson: Absolutely—with management. I think that we just have to be careful that we don't impose things on people that can't be accomplished.

And I'm done.

The Chair (Ms. Soo Wong): I'm going to turn to Ms. Fife to ask you some questions.

Ms. Catherine Fife: Thank you very much, Mr. Robson, for coming in today. I think it's really important that someone from outside Toronto, with your expertise and experience, actually weighs in on this piece of legislation.

It's interesting, because you didn't get a chance to go through your package, but I did notice that you do have recommendation around project-specific websites, which sort of lends itself to greater transparency and accountability. We do have this agency around called Tarion, who is supposed to be protecting consumers in the province of Ontario, who is supposed to be keeping accurate records, who is supposed to be documenting homebuilders who don't have the reputation of some of the homebuilders that you've been working with. It compromises the condo experience and, also, it definitely compromises consumer protection. Did you want to weigh in on the issue of Tarion and the lack of accountability on that front?

Mr. Craig Robson: It's not something that I thought we would be discussing today.

Ms. Catherine Fife: That's because it's not in the bill, which is a missing piece.

Mr. Craig Robson: I can't comment. I find that Tarion is effective. Certainly, anything can be done better—of course it can be done better.

On the question of websites: My point in that submission is that not everyone is sophisticated enough to set up a website. I have some clients from places that are probably 300 miles outside of Kitchener who do a four-unit vacant land condo because it's a good development to fit a piece of dirt that can't otherwise be developed. They don't necessarily have salespeople running around with glossy brochures, and trying to get them to phone me back is usually an exercise, much less talk to them about the website that they don't have. I think if a builder-developer is going to have a website, no problem. Regulate it; make sure the stuff is there; make sure it's up to date; make sure it's accurate; allow it to be interactive so you can get updated disclosure off of it, perhaps, if you're doing it properly, just, again, being careful that you don't force the smaller builders who don't really have websites and will not keep them up to date, no matter what you tell them in the legislation.

What I tell them in my letters about, "You will go to hell and be sued till the cows come home if you don't do this"—they don't even read that. I'm just saying, if you do it, great—do it right. But don't impose the obligation on guys who don't otherwise do it.

Tarion, to me, is—

Ms. Catherine Fife: Did you say Tarion is efficient? You think that Tarion, as an agency, is efficient?

Mr. Craig Robson: I think it accomplishes its purpose, at least from the sense of making sure that people who are in the business of selling new condominiums have to establish that they have some skill set, some financial background. It's a very major thing to get into Tarion. I have a client I spoke to this morning who's doing a 250-unit development on King Street in Waterloo, like everyone else in the world is. I said, "Do the math: $20,000 times 250 is $5 million." That's a daunting thing to raise, but I'm not objecting to it because if he disappears with the deposits, somebody has to be there to make sure that those deposits are protected.

I find—

Ms. Catherine Fife: I guess I would ask you, Mr. Robson, on the issue of Tarion, which I think is the other half of this bill—there are definitely good things in this bill. It's been a long time coming around governance, around accountability and transparency, but the issue of proper oversight and accountability of Tarion—nobody knows where that money is because we don't have oversight of it. We don't have access to that information, and consumers, if they're not calling you and they're not asking you about the pipe that burst in their condo, are looking to us, from this Legislature, to find out who ultimately is accountable for the building of this building and the quality of the products that went into that building, and that falls squarely on the side of Tarion.

Mr. Craig Robson: I don't think there's any issue about that. That part of it is very, very clear. The builder is responsible. The Tarion legislation implies some very specific warranties, and if those warranties are not followed, then the Tarion corporation is on the hook for it. I think that is already covered. I wasn't anticipating that the condo act should be concentrating on Tarion because Tarion deals with a lot of things other than condos. It deals with single family homes—

Ms. Catherine Fife: Home builders, period.

Mr. Craig Robson: Yes. It's a builders legislation, and I have no issue—obviously, review Tarion, but I think it's a separate deal.

The Chair (Ms. Soo Wong): Thank you, Mr. Robson, for being here and thank you for your written submission.

REAL ESTATE INSTITUTE OF CANADA

The Chair (Ms. Soo Wong): All right. The next group coming before the committee is the Real Estate Institute of Canada. I believe there are two individuals before us. We have Mr. Fischer and Mr. Roberts. If there's a handout, the Clerk is coming around to help you. Come and have a seat, sir, and welcome.

As you heard, you have 10 minutes for your presentation, followed by five minutes of questioning. This round of questions will be coming from the government side. You may begin any time. Please identify yourself and your position with the institute for the purposes of Hansard.

Mr. Johnmark Roberts: Good afternoon, everyone. My name is Johnmark Roberts. I'm a realtor by profes-

sion, and I'm here this afternoon representing the Real Estate Institute of Canada, REIC, and its members. I'm a fellow of the Real Estate Institute, an FRI, and a member of our REIC, and I currently sit as a director on the national board of REIC.

With me today is Scott Fischer, an REIC member and a senior volunteer at the institute. Scott is also a reserve fund planning expert.

REIC is a professional educational institute with over 2,000 designated members across the country whose designations span all aspects of the real estate industry: property management, real estate sales, leasing, development, finance and reserve fund planning. Promoting high ethical business standards is the cornerstone of all designation programs at REIC. A significant portion of our membership actively works in the many different aspects of the condominium industry across the country.

I would like to quickly highlight a couple of facts about REIC. We were a major contributor to the Condominium Act, 1998, with regard to the reserve fund studies. REIC members brought their knowledge and professional expertise to two of the stage 2 work groups and the most recent condo review and were involved in further discussions with the ministry. REIC's property management designations align well with the expertise and accreditation requirements for condominium property managers, as they relate to a broad assortment of condominium types. REIC's sales and leasing designations have realtor, builder and development members who also are actively working in the condominium industry across the country. REIC has a 60-year history of elevating professionalism in the real estate industry. It is on this basis that we comment on Bill 106.

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REIC supports and applauds the effort of this government to ensure Bill 106 protects affordable ownership, protects the public and reflects current and future needs of the diverse group of condominium owners, residents and other stakeholders here in Ontario. In particular, we are supportive of:

—clearer, more comprehensive rules to prevent owners from being surprised by unexpected costs after buying a newly built condo;

—a new condominium authority to provide fair, fast and affordable dispute resolution mechanisms and help prevent common disputes;

—improved financial transparency for condo corporations to help prevent financial and organizational mismanagement;

—better governance requirements for condo boards, including training and education resources for condo boards;

—the simplification of language, standardization and the new condo guide, which will lead to greater transparency, public education and knowledge;

—elevating the education and professional standards for the condominium industry;

—the creation of mechanisms to build stronger, more resilient communities within condo corporations;

—making boards more accountable and transparent; and

—addressing the need for standardization of the reserve fund studies, due to the complexity and the need to balance engineering, financial and other aspects.

REIC already has a recognized standard in place across Canada with our certified reserve planner, CRP, designation. This credential is recognized in legislation in Ontario, Saskatchewan and New Brunswick, and is recognized in Alberta, British Columbia and Manitoba. We would be happy to work with the ministry in developing an Ontario standard in reserve funds.

Given that condominiums are a growing sector that now house about 10% of Ontario residents and some 1.3 million people, oversight and proper management of condominiums is of utmost importance to protect the increasing number of diverse owners, the public, and to build a safe and secure Ontario.

We would like to bring the following concerns to your attention for your consideration:

First, REIC supports the establishment of the two new condominium authorities to provide increased transparency, dispute resolution and the licensing of condominium property managers; however, we are greatly concerned about the costs associated with these self-funded bodies. We fear that, without proper oversight, the condominium authorities could needlessly make condominium ownership more unaffordable by unilaterally raising fees. We recommend that Bill 106, section 129 and section 130, be amended so that any fees and levies should be set by the minister and Lieutenant Governor in Council for better oversight and transparency.

Second, as an educational organization with a strong professional code of ethics, REIC supports raising the standards for a condominium board of directors. Compulsory education for new board members is a good idea but could easily increase costs and discourage owner participation. The training of directors should be a best practice that should be encouraged through incentives and education but left to the discretion of each corporation. REIC suggests that, while there is some merit in standardized training for directors, this might be better promoted as a best practice with incentives, rather than being mandatory for all directors on boards, whether or not they are new or experienced. Further, we recommend that the educational training programs should be expanded to include leadership, governance, asset management as well as responsibilities and liabilities.

Third, REIC supports the licensing of condo property managers and applauds the inclusion of codes of ethics. However, there is a steady decline in the educational scope and quality in the current marketplace. There's danger in setting minimal standards and creating low thresholds in achieving condo property manager licensing. REIC would like assurance that the education curriculum will be robust and of high quality, with a focus on ethics and responsibility to owners. Otherwise, we will suffer from inadequate training and poor management standards. REIC recommends that the education

curriculum be developed using multiple partners in the industry to maximize quality content and standards. Further, REIC recommends that the Ontario standards reflect national standards for consistency in standards, as large companies or corporations and workers own and manage properties and work in properties across the country.

Promoting high ethical standards is the cornerstone for REIC designations. As a national provider of advanced credentials in property management, we would like the opportunity to participate in building the educational requirements for condominium property managers and to help set industry standards and best practices.

Fourth, REIC believes the cost of education should be the responsibility of the individual condominium property manager in order to be cost-neutral to the condominium owners and the government.

Fifth, REIC recommends that, moving forward, the licensing legislation described in schedule 2, part III, include a defined role for unregistered assistants working for the property management providers. This will increase professionalism in the industry and lead to better-managed condo buildings. REIC recommends that the licensing regulations to be developed consider the role of the unregistered assistant, outlined in schedule 2, part III of the act. Defining these duties and responsibilities should provide clarity and make a property manager provider more effective in the delivering of services.

Sixth, regarding schedule 2, part IV, under "Regulation of Licensees," section 45(3): REIC agrees that a licensed condominium management provider that is a corporation should, in a timely manner, notify the registrar of any changes to its officers or directors. However, we do not agree that there is a need for the registrar to give consent before a business changes its officers and directors. The registrar already has control over the condominium aspects of the business through the regulation and licensing of the condo property managers. The corporation is a separate business entity and can often span provinces and countries, dealing with a wide variety of legislation; sometimes, condo property management is a small portion of its business. We recommend that schedule 2, part IV, section 45(3), be amended to not include prior consent from the registrar before making changes to the officers and directors of a corporation.

The seventh and final recommendation in this short time frame: REIC recommends that all existing professional designations in the current Condominium Act and regulations need to be incorporated in the regulations of the new condominium act to ensure continuity with condominium boards and planners, and provide a competitive selection of professional service providers.

In conclusion, we applaud the government for the extensive stakeholder consultation and process employed in developing this important piece of legislation. We look forward to our continued engagement in assisting and developing practical and meaningful legislation that will reflect the current and future needs of all condominium owners, residents and other stakeholders in Ontario.

On behalf of the Real Estate Institute of Canada, I would like to thank the members of this committee for providing us with the opportunity to comment on Bill 106.

The Chair (Ms. Soo Wong): Thank you very much. I'm turning to Mr. Potts to ask you some questions.

Mr. Arthur Potts: Thank you very much, Mr. Roberts and Mr. Fischer, for your presentation and for coming down, and thank you for your support of the bill in its general terms. The consultation work that your organization has done is, obviously, reflected in good parts of this act. We appreciate very much that you've had a chance to come.

I want to focus on your role as reserve specialists, just for a second, if you wouldn't mind. Maybe you could talk a little bit—we've heard discussion today about what level of condo expenditure should be a board decision, whether $200,000 is too high or $75,000 is too low. Maybe you could comment a little bit about where you think—and maybe it changes from the size of condos. Give me a sense of your input on that.

Mr. Johnmark Roberts: I'll refer this discussion to Scott.

Mr. Scott Fischer: Hi. So, with reference to the threshold at which the condo board should go back to the ownership and have to provide explanation on those expenses, you're absolutely right: It varies on the size of the condominium project. As some of the previous speakers were talking about with respect to townhomes, some of them are very simple and—vacant land condos—some of them get very complex, when you look in downtown Toronto, for example, and some of those new ones going in. I was at a property yesterday where they had basketball court, which is a little bit unusual. So, again, that threshold will vary depending on the size of the condominium project, and it would be inappropriate for me to say that there is a threshold, that one size fits all.

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Mr. Arthur Potts: Okay. Fair enough. The comments you were making about board training: I agree very much that they're very important, specifically ethical training, but whether it should be mandatory or not—I think you comment a bit about that. It's a bit ironic. There's no school that I had to go to before I came here and became a member of this Legislative Assembly, but once we get here, we rely on the resources of our staff behind us. Also, we go out and seek the kinds of information we need to train ourselves to better understand. I wasn't an expert in condo legislation; I don't think I am yet, but I know a lot more about it now than I did before.

Maybe you could comment a little more about how you would see, in a voluntary way, educating board members as they come on so they can do their fiduciary duty without being scared off of participating. I would think that if I had to go to school for four years before I could run for political office, it probably wouldn't have happened.

Mr. Johnmark Roberts: I'll comment on that. There are all sorts of different ways that you can provide

training and education. For example, the Ontario Real Estate Association offers leadership training and different levels of that all over the Internet. It's very simple and straightforward. Anyone joining a committee or moving up in organized real estate in one of the executive positions can get further online training very quickly, very easily, in their own time frames.

With your new condo office and other things, there are ways that these modules and programs can be put together to provide this type of training as needed. Experienced board members don't really need to repeat all of the education and training every time you have the new board.

Mandatory training, to me, is the ultimate. I believe strongly in education, and the more education we have is the best. The downside is that there are still a lot of condos that struggle to find members who are willing to volunteer to be on the board. You don't want to scare away someone who could be good and very active on the board by giving them this overhead of education. You'll want to find other ways. And possibly there may be ways or incentives that could be given to boards by the government for whatever reasons, or in some manner that can assist in encouraging them to proceed along educational lines, because the bottom line is, without this education, as you know, it's a steep, uphill battle. Once you've got the education, running is quite easy.

Mr. Arthur Potts: Fair enough. You also talked about unregistered assistants. In the context of some other comments we've had here, in rural communities, the smaller communities, smaller developments, having a registered, certified condo manager becomes a bit of a challenge. Do you see a role where unregistered assistants, under the guidance of someone, maybe in a central location, could go out and service those condos on a contractual kind of basis? Would that be useful?

Mr. Johnmark Roberts: I think you have to be careful here between who is doing and who has the responsibility. There are some things that should reside within the licensed condo property manager, but there are duties and responsibilities—you see, if you sit down and define everything that a licensed condo manager should do, it's everything, and you automatically eliminate, based on the way the existing act reads, everything that an unregistered person could do. So it's easier to define what a registered person could do, and then make the condo's licensed manager responsible for everything that that person is doing on top of the other things. That gives you a better production. It would be nice to be able to have some of the duties off-loaded, because they don't necessary require the amount of education that a licensed condo property manager would, so this is why it would be a lot easier, especially for the providers, if they had some definition.

The Chair (Ms. Soo Wong): Mr. Roberts, I need to stop you there. Thank you for your presentation. Thank you for your submission, and to both of you for being here today.

Mr. Arthur Potts: I've got two more seconds.

The Chair (Ms. Soo Wong): No, you have five minutes. That's it. Thank you, gentlemen.

ADR INSTITUTE OF ONTARIO, INC.

The Chair (Ms. Soo Wong): Our last witness for today is the ADR Institute of Ontario, Inc. and, I believe, Susette Clunis. Good afternoon. Welcome. It looks like you have some handouts for us. I will get the Clerk to come and pick them up from you.

Ms. Susette Clunis: Okay, yes.

The Chair (Ms. Soo Wong): You have 10 minutes for your presentation, followed by five minutes of questioning, and this round of questioning will begin with the official opposition party. Mr. Clerk, the witness has some handouts.

All right, you can begin any time. You have 10 minutes. Please identify yourself when you begin for the purposes of Hansard.

Ms. Susette Clunis: Thank you. My name is Susette Clunis and I'm the executive director for the ADR Institute of Ontario. I'm here to represent our condominium advocacy subcommittee, a group of people who are made up of owners and ADR professionals within Ontario.

As a leader in dispute resolution in Ontario, the ADR Institute is a public service, non-profit organization with no government or political affiliations. It's a member association of dispute resolution professionals whose function is to provide the public, through its members, the means to resolve disputes of all kinds through arbitration, mediation and other conflict resolution methods. ADRIO is a provincial affiliate of the national organization, the ADR Institute of Canada, that provides information, education and research on arbitration, mediation and conflict management and prevention.

Our primary objectives:

—develop competent ADR professionals, including accreditation practices and approval of training programs;

—provide ADR professionals who are members of our institute with accreditation, certification, a code of ethics, rules of procedure, complaint and discipline procedures;

—assist the public, government, private and public sector organizations and associations to understand the potential of ADR as well as assist the public, government, public and private sector organizations to find competent professionals; and

—provide a united voice for ADR professionals in matters relating to the practice of ADR in Ontario. We also provide training and resources that many organizations can have access to.

ADRIO members have a long history in supporting the resolution of condominium disputes, and ADRIO has demonstrated significant leadership in the current and previous legislative review processes. We wish to comment on Bill 106 as follows:

ADRIO supports the establishment of the condominium authority to resolve condominium disputes in a timely and cost-effective fashion. Condominiums are

communities and those in dispute are often neighbours who will continue to interact and live in a common environment. Relationships are central to this type of community, and are best served by conflict prevention and timely resolution of disputes.

ADRIO supports the retention of mediation as a means of resolving condominium disputes. Mediation has the potential to resolve issues that are not merely monetary. Mediation is a valuable process that allows for the preservation of relationships between individuals in conflict, and has the potential to improve communication on a going-forward basis to prevent future disputes.

ADRIO believes that arbitration is an appropriate process for determining certain condominium disputes. Arbitration provides flexibility of process tailored to the needs of the parties. Arbitration decisions can be court-enforced. There is a community of arbitrators with specialized knowledge in condominium law who have an understanding of the unique implications of condominium investments. To the extent that some disputes are not governed by the condominium authority, arbitration might be a viable alternative to court. ADRIO believes that disputants should have an option to arbitrate if all parties consent to the process.

ADRIO members who have expertise in the condominium industry are recognizing that disputes increasingly involve older condominium corporations that may not have the infrastructure and financial resources contemplated by the current or new condominium legislation, including reserve fund studies and special assessments and common expenses. These disputes will probably increase with time.

ADRIO supports the inclusion of dispute resolution training for condominium managers. Condominium managers represent the board of directors and are in a unique position to bridge difficulties between the board and individual unit owners. The development of standardized criteria to assess training offered in the private sector ensures that condominium managers across the province have the opportunity to meet the same benchmarks.

ADRIO supports the development of information and educational tools, including online material by the condominium authority and other providers for the use of owners and condominium boards. Often, those in dispute are not aware of the relevance of the declaration, rules, bylaws and legislation governing condominiums in general and their own community specifically. Better access to such information in plain language will assist parties to assess their rights and obligations.

ADRIO supports the use of regulation to create the dispute resolution scheme. ADRIO members are process experts and support the development of a system that includes safeguards against abuse. It is important to instill public confidence in the condominium authority by setting out a process that is transparent, predictable, efficient and reliable.

ADRIO hopes that the regulations will provide guidelines and clarity of process for the increasing number of disputes involving condominium units that are tenanted. Often, there is tension between non-resident unit owners and their tenants. Condominium boards and management have little control over a tenant's compliance with the rules and regulations. Clarity is required with regard to jurisdiction in these cases, and in regard to the Residential Tenancies Act. For example, sometimes one act will say you can't have pets; something else says you can. So oftentimes, our professionals are having to deal with these things.

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ADRIO supports the inclusion of an online dispute resolution platform that will provide condominium owners with access to dispute resolution throughout the province. It should combine information sharing and communications technology. An online dispute resolution platform can be applied to condominium disputes, especially conflicts over people, pets and parking, and can augment existing dispute resolution systems. In some situations such as geographic distance, this online resolution platform may be the only economically feasible and accessible way for resolving disputes. This may provide access to justice and is in keeping with the concept of proportionality, tying the cost of resolution to the complexity of the matters in dispute. ODR has been successfully utilized in other jurisdictions, including British Columbia, Europe and elsewhere.

ADRIO supports the recommendations of the Association of Condominium Managers of Ontario and the Canadian Condominium Institute in respect of the amendment to section 1.42(1) of Bill 106 to permit parties who mutually agree to opt out of proceeding to the condominium authority to mediate or arbitrate their issue privately. Parties may desire a private and confidential process. Furthermore, parties may benefit from other ADR services to improve and preserve the relationships among individuals and the greater condominium community.

External ADR practitioners have the expertise to provide these options. ADRIO, on behalf of both its membership and those directly impacted by condominium conflict, encourage the new legislation to provide flexibility to permit parties to resolve their disputes outside of the condominium authority if they so mutually desire.

ADRIO, being the largest group of dispute resolution professionals in Ontario, appreciates the opportunity to make this submission and looks forward to continuing to work actively with the ministry and the Legislature to develop and strengthen the condominium dispute resolution scheme for the people of Ontario.

The Chair (Ms. Soo Wong): Thank you very much. I'm going to look to Mr. Barrett to begin this round of questioning.

Mr. Toby Barrett: Thank you for your presentation. One of the last points that you made, recommending that this legislation provide flexibility to permit resolution of disputes outside of the condominium authority—which, right now, I guess 100% of them are being done that way, aren't they?

Ms. Susette Clunis: Yes.

Mr. Toby Barrett: And the way it's going right now is not the best. If we created a condominium authority—we have the tribunal—what do you see, going forward, as the approach, or how do you envision this happening as far as resolving disputes without going to the authority, without going to the tribunal, without going to court?

Ms. Susette Clunis: So you're asking—I'm trying to understand your question—how do we see the tribunal working or how do we see the opting out working?

Mr. Toby Barrett: No, just how do you see it working to resolve disputes without going through the proposed creation of a condominium authority?

Ms. Susette Clunis: The way we are thinking—first of all, ADRIO would like to strengthen the tribunal in terms of their processes, but what we're saying is that people should have that choice. An organization like the ADR Institute has a group of professionals across Ontario that people can access, through our website, to find help and support in terms of their issues; the way it is right now, some people can do that. We just want to make sure that people have that option to choose however they want to resolve their issues.

Mr. Toby Barrett: Okay. I don't know whether you had a chance to talk in any detail—you make mention of disputes around people, pets and parking in your brief. You describe briefly ODR, the online dispute resolution platform.

Ms. Susette Clunis: Yes.

Mr. Toby Barrett: Could you tell us a bit more about that?

Ms. Susette Clunis: As we are looking at disputes, especially at the ADR Institute, where we're responsible for all of Ontario, we're recognizing that people in disputes cannot always come together, face to face. So when you have an online through, say, a webinar, you're able to have the mediator, the arbitrator, present and have the individuals, wherever they are, be able to see each other but being facilitated by a mediator and have the issues discussed that way. Another way is through telephone use, as well.

We're recognizing more and more that we have to use technology to help people come together. So we are wanting to recommend that we look more into this online dispute resolution platform to help people—especially where you have areas where the owner is not living in that particular community and may be living further away—with the issues between the owner and the tenant, or whatever the situation is. We want to embrace that.

Right now, we presently do that. We have some of our professionals who are doing that, through technology, to help parties come together on an issue.

Mr. Toby Barrett: So it's being used in other areas, then?

Ms. Susette Clunis: Yes, it is.

Mr. Toby Barrett: I think of the Far North. I think of the use of technology—this goes back a number of years now—with Telehealth, for example, and the trust that has been placed in that by people who, oftentimes—it sure saves them from flying down to Toronto, for one thing. So yes, I find that really interesting.

Do you envision a newly created condominium authority adopting that process? Or is this going to be kind of a system where people do have to go to Toronto and sit through—

Ms. Susette Clunis: It would be great if the process was adopted. Regardless of if it's adopted or not, I think ADR professionals are increasingly getting involved in that platform, because of the distance and just how much easier it is when you're able to bridge the geography with people, using technology.

We would love to see that being embraced as well, because we are very much into relationships and mending those and preventing conflicts. So we're wanting to use technology to advance that.

Mr. Toby Barrett: Is there any evidence of other government agencies already doing this, like WSIB or other groups like that?

Ms. Susette Clunis: I'm not aware. I will look into that. I'm just aware of our own professionals and members doing that.

Mr. Toby Barrett: Thank you very much.

Ms. Susette Clunis: You're welcome.

The Chair (Ms. Soo Wong): Thank you very much for your presentation. If you have any additional submissions, you have until October 29 at 6 p.m. to submit them to the Clerk electronically.

Ms. Susette Clunis: Thank you.

The Chair (Ms. Soo Wong): All right, thank you very much.

Members of the committee, that's the last witness for today, but we have four more next Thursday, October 29, at 9 a.m.

Now, all of you received a letter at the beginning of this afternoon's session from the Financial Accountability Office of Ontario. The officer wrote to us. I believe Mr. Fedeli raised it to my attention, as well as the Clerk, with respect to the timing of the briefing, because we are having hearings here next Thursday, starting at 9.

There is a suggestion, so I want to hear from the committee. The Financial Accountability Office has offered to do a briefing at 8 a.m. next Thursday, to accommodate the member or a designate, if the member cannot be there at 9 a.m. I want to hear from the committee what the desire of the committee is.

Mr. Ballard?

Mr. Chris Ballard: Sorry, Madam Chair. What was the second time—8 a.m. or—

The Chair (Ms. Soo Wong): So 8 a.m. in the morning, or a designate from each of the caucuses to go to the briefing, because we have hearings starting here at 9.

As you probably understand, in the letter, in the second paragraph, he discussed this issue with the Clerk of the Legislature, not the Clerk of the Committee. So this is where the confusion is. There is a conflict here because we have already advertised that, starting next Thursday, we have the second hearing day on Bill 106.

But the Financial Accountability Officer is also asking that if any members from each of the caucuses want to hear the briefing before he goes to the media studio for the presentation of his report at 10 o'clock, there is an opportunity. He's offering either 8 a.m. on Thursday, October 29, or if not 8 a.m., each caucus can have a designated person go to the briefing before 9 o'clock.

Mr. Barrett?

Mr. Toby Barrett: As far as the second option—I mean, there's clearly a miscommunication. They've invited members of this committee for the briefing at 9 a.m., but we're here at 9 a.m. That's fairly simple.

The Chair (Ms. Soo Wong): Yes. They're suggesting—there are two things: either 8 a.m. here in this committee room, or each caucus has a designate and somebody sits here, because we're having a hearing starting at 9. So what is the will of the committee? Mr. Ballard?

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Mr. Chris Ballard: There are two issues that I can see. An 8 a.m. briefing is a little difficult for those of us who come from an hour and a half to two hours outside of town. Personally, I don't know who we would appoint from each of the caucuses, but I know that most of us would probably want to be there. This is going to be an important briefing to be at, so I would ask the Clerk—I know we have four people testifying next Thursday at 9. I'd perhaps like to see them move to the afternoon, if we can. Is that something we could ask the Clerk to do, to reschedule them for the afternoon?

The Clerk of the Committee (Mr. Katch Koch): If it is the will of the committee, I could attempt to do that. I don't know if those people are available. Right now, they've been scheduled for next Thursday from 9 until 10.

Mr. Chris Ballard: I would like to see that be the will of the committee, if possible.

The Chair (Ms. Soo Wong): Or can we start at 10 o'clock instead of 9 o'clock?

The Clerk of the Committee (Mr. Katch Koch): No. You have to recess for—

The Chair (Ms. Soo Wong): We have to recess it. Okay. Ms. Fife?

Ms. Catherine Fife: I think that's a good suggestion, if it's possible to move them to 1 o'clock. If not, then—

The Chair (Ms. Soo Wong): Two o'clock.

Ms. Catherine Fife: I'm sorry; 2 o'clock, yes. If not, then we on this side of the House could probably get a designate, because I intend to be at that briefing for 9 o'clock. I agree: 8 o'clock is too early for travelling in. It means a 4:30 leave from Waterloo.

The Chair (Ms. Soo Wong): Okay.

Mr. Toby Barrett: My point was, we didn't double-book. This committee did not double-book. Our deputants coming in did not double-book. I don't know whether there's any flexibility on the part of this organization that double-booked.

The Chair (Ms. Soo Wong): Mr. Clerk?

The Clerk of the Committee (Mr. Katch Koch): If I hear you correctly, I can go ahead and try to reschedule the four presentations next Thursday for the afternoon, and the committee would invite the Financial Accountability Officer to come here to do the briefing.

The Chair (Ms. Soo Wong): Nine o'clock.

Mr. Chris Ballard: For 9 o'clock.

The Clerk of the Committee (Mr. Katch Koch): Is that agreed?

Interjections.

The Chair (Ms. Soo Wong): Yes, yes. Right? Nine o'clock to be here—

Mr. Chris Ballard: Do you need a motion to that effect, Chair?

The Chair (Ms. Soo Wong): No. I think we have agreement. So if that plan is not going through, what is the committee's will?

Mr. Chris Ballard: If we can't get all four, or—

The Chair (Ms. Soo Wong): Yes, all four witnesses—

Mr. Chris Ballard: I'm going to guess that one of the four probably can't come in the afternoon. My sense is that it's important to hear from the Financial Accountability Officer at 9 a.m. for a briefing before he moves on. Regardless, I think we need to have the briefing at 9 o'clock and move as many of those four to the afternoon as possible. They can always give us their written submission.

The Chair (Ms. Soo Wong): Ms. Fife?

Ms. Catherine Fife: As I see it, if we can't move them to 2 o'clock, then we have to see them—this committee does need to sit from 9 until 10 to honour the commitment to the delegations because, as Mr. Barrett has made a point, this isn't the committee's fault. But members of this committee need to get that briefing, so it becomes incumbent on us to get designated people to come to this committee. It's obviously easier for me to do that because I only have one person. But I do think that if the delegations can't come at 2 o'clock, then we have to maintain the fact that we made a commitment and we advertised. So those delegations need to be heard from 9 until 10 in the morning by somebody on Thursday.

The Chair (Ms. Soo Wong): Okay. So what I'm hearing is that the Clerk will contact all four of the witnesses for October 29 and see if there's a possibility to move them to 2 o'clock, and if that's not successful, we will continue to have our 9 o'clock witnesses, and each of the caucuses will send a designate to the briefing.

Mr. Chris Ballard: If I might, Madam Chair, there may be a hybrid solution, which is, we have four people, and maybe two of them or three of them can move to the afternoon and one of them can't, so we could push them off to 9:45 or—depending on when our briefing would end. I imagine it's going to be a half hour or 45 minutes. There may be a hybrid.

The Chair (Ms. Soo Wong): Mr. Barrett, then Ms. Hoggarth.

Mr. Toby Barrett: Just to follow up on Ms. Fife's statement about getting a delegate or a sub or something like that, I just feel that the work of this committee takes precedence. The fact that, I assume, it was advertised in newspapers and deputants have made arrangements—they didn't come today; they're coming this other day. I just feel that this committee takes precedence.

To accommodate that, the other option—if the FAO can't change their time—is that we get delegates to represent us if we have to be here.

The Chair (Ms. Soo Wong): Ms. Hoggarth?

Ms. Ann Hoggarth: I was just going to suggest that we try to move them to the afternoon, to 2 o'clock. If there is, perhaps, one that can't be here, could we not have a phone presentation?

The Chair (Ms. Soo Wong): I'm going to push the envelope a little further and let the Clerk do his magic on this particular request. You have until next week.

The other thing here is, I think what we just witnessed today from this particular letter is that there need to be better communications. There has got to be messaging back to all officers of the Legislature that they need to check with the Clerk of the Committee to make sure—they did check, but not with the committee—that there's no conflict with the time. All three caucuses are interested in attending the briefing and, furthermore, in hearing this report before it goes out to the public. But to be very, very clear: There is a glitch in terms of communication.

Mr. Ballard?

Mr. Chris Ballard: To conclude, Chair: If we can't move the four, we'll have our briefing at 8 o'clock and then move to witnesses at 9 o'clock?

Interjections.

The Chair (Ms. Soo Wong): No, no, no. He can only do one briefing, okay? So the option is to either do the briefing at 8 o'clock, or stay at 9 o'clock and then get the Clerk to reschedule the witnesses to the afternoon on October 29.

Mr. Chris Ballard: He's offering to do the briefing at 8 or 9?

The Chair (Ms. Soo Wong): No, the 9 o'clock is already scheduled. That's what I'm saying.

Mr. Chris Ballard: The committee is scheduled for 9. We're trying to get him to move from 8 to 9, and our witnesses to move from 9 to—

Interjections.

The Chair (Ms. Soo Wong): No, no. He's already scheduled for 9.

Mr. Chris Ballard: Got it.

The Chair (Ms. Soo Wong): Let's be very clear: The Clerk will do his magic to see if we can move all the witnesses to Thursday afternoon, October 29. Failing that, we will have hearings here at 9 o'clock, October 29, and each of the caucuses will have designates go to the briefing with the Financial Accountability Officer.

Any questions? Any comments? Thank you very much. I'm going to adjourn the committee till next week.

The committee adjourned at 1738.

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