



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

Notes for Remarks by

**Thomas E. Warner, BA, FCIS, PAdm**

and

**Elizabeth Cowie, BA, LL.B, LL.M**

to the

**Standing Committee on Social Policy**

of the

**Legislative Assembly of Ontario**

August 23, 2010

**CHECK AGAINST DELIVERY**

**TOM WARNER**

Good Afternoon.

My name is Tom Warner, and I am Vice President and Registrar of the Institute of Chartered Accountants of Ontario.

**ELIZABETH COWIE**

And I'm Elizabeth Cowie, Director of Legal and Regulatory Affairs for the Institute.

**TOM WARNER**

The Institute is pleased to speak on behalf of Ontario's thirty-four thousand Chartered Accountants with respect to Bill 65, the *Not for Profit Corporations Act*. I'd like to frame our remarks around a necessary distinction between what we see as the *intent* of the bill and its likely *effect*.

Bill 65 aims to ensure that the public interest, and the interests of the members of not-for-profit corporations, are well-served in the management of organizations such as service clubs, community organizations and sports clubs.

So, of course, we support the *intent* of Bill 65.

Our concern is that Bill 65 would also apply to regulatory bodies like the Institute, that are established by other legislation to protect the public interest and be publicly accountable.

In our case, the *Chartered Accountants Act, 2010* updated our regulatory authority, including strengthening our investigative and disciplinary procedures. It permits the Institute to adopt bylaws to carry out these regulatory responsibilities.

The bylaws that our members vote to adopt would in many instances be in conflict with Bill 65. The result would be significant impairment of the Institute's ability to regulate our profession and the members who practise it.

Our public interest mandate is also governed by the *Public Accounting Act, 2004*, the *Statutory Powers Procedure Act*, the *Fair Access to Regulated Professions Act*, trade rules, external audit requirements, the Canadian Public Accountability Board and SEC requirements in the U.S.

The other area of concern is that Bill 65 would enable the Minister to make regulations governing the report to be made by auditors on the financial statements of not-for-profits, including prescribing the standards of an accounting body.

These would create confusion over the authority granted to the Public Accountants Council by the *Public Accounting Act, 2004*. Specifically, that authority enables the P.A.C. to adopt standards for the qualification and regulation of public accountants that all accounting bodies practitioners must ensure their licensees comply with.

It could also lead to a conflict between the standards that auditors of not-for-profits are directed to follow by the Minister under Bill 65, and those they are required to follow under the *Public Accounting Act*.

Both the Institute and the Public Accountants Council are very concerned about the risk of causing a conflict with *already legislated standards*, particularly in the areas of professional judgment and skepticism – both of which are essentials tools for a professional accountant.

### **ELIZABETH COWIE**

We are a regulatory body. If our members are happy with what we are doing, frankly, we aren't doing our job. There are a number of provisions in the bill that are problematic for a regulator in this respect.

Bill 65 provides for disciplining members of a not-for-profit. This assumes the corporation is *not* in the business of disciplining members. Yet disciplining members is an *essential* part of our mandate, and one for which we have sophisticated processes, including those required by the *Statutory Powers Procedure Act*.

But because the specific requirements in the Bill are not addressed in the *Chartered Accountants Act*, they would apply to our discipline process, and hamper our ability to deal effectively with professional misconduct.

For example, Bill 65 permits a member to apply to the court for a rectification of records. Expelled members could thereby regain the right to practise without meeting any of the requirements for competence and integrity.

Bill 65 would also give members the ability to apply to the court for an investigation of the corporation. The powers of an investigator are broad, and the requirements to cooperate equally sweeping. A disgruntled member could seriously impede our mandate by an intrusive investigation, including compelled production of documents, testimony under oath, public reports and court orders.

This conflicts with the confidentiality necessary to regulation. And it presupposes the member has no other recourse such as judicial review. This is not the case.

The Act also permits a member to bring, intervene in, discontinue, or defend an action in the name of the corporation. Such a power could easily be abused by a vindictive party, and is unnecessary given the objects and oversight of the Institute.

Bill 65 does state that in the event of a conflict with another Act to which the entity is subject, the other Act prevails. Yet while our own legislation is more specific than its predecessor, several critical matters were deliberately left with us to manage through bylaws. This allows us to adopt measures appropriate to our role, and to ensure that our regulatory processes reflect changes in the law and jurisprudence.

But we cannot, by the use of by-laws, over-ride Bill 65, so we would be forced into processes contrary to the intent of our *own* governing Act.

Given the legislation to which we are already subject, and our regulatory mandate, Bill 65 does nothing to protect either the public interest or the legitimate concerns of our members. Instead, it would strangle our ability to act in the public interest in a flexible, timely and effective manner.

### **TOM WARNER**

To conclude, we know the government has recognized some of the potential drawbacks of Bill 65 – notwithstanding its honourable intent – most notably by exempting the health professions.

We would therefore submit that there is an equally compelling case for explicitly exempting from Bill 65 the Institute of Chartered Accountants of Ontario, and other regulatory bodies established by general or special Act of the Legislature, as well.

In that regard, the Institute has been requested by the Public Accountants Council to advise this Committee that they share the concerns we have expressed about the potential confusion and conflicts over public accounting standards that could arise from Bill 65 in its current form.

The Public Accountants Council also requests that it be exempted from Bill 65.

Thank you, and we would be pleased to take any questions you may have.