



ORHMA'S Presentation to Standing Committee on General Government

November

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**Bill 110: Good Government Act, Schedule 1
Proposed changes to the Liquor Licence Act
and the Licence Appeal Tribunal Act**

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Good afternoon,

My name is Tony Elenis, and I'm the President and CEO of the Ontario Restaurant Hotel & Motel Association (ORHMA). I'm joined today by my colleague Michelle Saunders.

The Ontario Restaurant Hotel & Motel Association (ORHMA), is a not-for-profit industry association that represents the foodservice and accommodation industries in Ontario. The ORHMA is the largest provincial hospitality industry association in Canada, representing more than 11,000 business units throughout the hotel and restaurant industry. Our membership is representative of Ontario's hospitality and tourism industry which is comprised of more than 3,000 accommodation properties, and 22,000 foodservice establishments, 17,000 of which are licensed to serve alcohol.

It is my pleasure to have the opportunity to speak with you this afternoon regarding Bill 110, the Good Government Act. Specifically, I would like to address Schedule 1 of the Bill, and even more specifically the proposed changes to the Liquor Licence Act and the Licence Appeal Tribunal Act.

These provisions collectively remove the adjudicative function of the Alcohol and Gaming Commission of Ontario's Board of Directors, and transfers the responsibility for hearings related to Liquor Licence Act infractions and appeals of monetary penalties to the Licence Appeal Tribunal.

First let me say that the ORHMA has long called for this move and we applaud it. The separation of roles is a starting point to creating confidence in the accountability and fairness of hearings for Ontario's bar and restaurant owners, and removing an inherent bias and conflict in the AGCO Board.

For as long as the AGCO has existed Ontario's liquor licensees have raised alarm bells about the current multi-function structure of the Alcohol and Gaming Commission of Ontario, which ultimately plays judge, jury and executioner from a licensee perspective. Not only does the AGCO have say into what public policy should be, but they interpret it, enforce it, and then rule on it. On one hand a Board ruling in favour of a licensee ultimately can be seen as a decision against the Board's own staff and ultimately the Registrar, on the other hand most licensees would tell you a ruling in their favour is at best a rarity.

A governance review of the AGCO undertaken in 2009 for the Ministry of Consumer Services stated "in its adjudication role, the board often makes decisions that are in conflict with the Registrar, but in its governance role the board is also responsible for the impartial oversight of the CEO".

The transfer of hearings from the AGCO to the Licence Appeal Tribunal is a positive step to addressing this conflict and bias. However, the government must not overestimate this measure as one that will resolve licensee concerns.

While the issue of Board governance bias and partiality is addressed by the measures proposed in Bill 110, we must work together to ensure that this step is a step forward and not merely a step sideways. Bill 110 proposes transferring hearings to the Licence Appeal Tribunal but does not address the underlying concerns with the hearings process such as burden of proof, and entry of evidence.

Furthermore, licensees are deeply concerned with the transparency and accountability of AGCO inspections on two levels, one being the very nature and consistency of inspections. The ORHMA recommends this be addressed through a standardized training program for all AGCO inspectors as well as making all interpretive or inspection guidance documents developed to assist inspectors in their work be made public. This ensures all sides are playing on an equal field. The other concern is related to the very rules that are being upheld. As a prime example ORHMA members are deeply concerned with a provision of the Liquor Licence Act that prohibits a licensee from permitting drunkenness. There is however no definition of drunkenness, and the government and courts have all struggled with this point. Although we have a firm blood alcohol content level that determines when one can operate a vehicle we do not have a BAC that determines when one is drunk. Even with training to assist employees in identifying signs of intoxication, bar and restaurant owners have no control over the actions of patrons prior to entering their establishment and even if one can determine a point of drunkenness, can you identify it prior to it occurring? This is a very complex discussion, one that the courts have struggled to address. It is outside the mandate of this committee to consider or to address, but is an example of the struggles and challenges the industry faces, and should help you understand why the changes proposed are but a starting point.

As for the composition of the Licence Appeal Tribunal the ORHMA would call on the government to ensure that there are persons appointed to the tribunal who have had management and/or ownership experience in the bar and restaurant industry. Operators need assurance that there is expertise on the tribunal that understands the realities of their operations. We had long called for this measure at the AGCO Board and will extend this ask to the LAT.

The transfer of licensing hearings from the AGCO to the LAT is a positive step, but only one step to improving accountability throughout the entire beverage alcohol and liquor licensing system. Lastly, the ORHMA calls on the government to recognize Ontario's hard working bar and restaurant owners as a valued partner in the system, and to ensure that the industry is consulted throughout the entire transition process.

Thank you for your time.