Cape Breton University

9 April 2023

Mr. John A. MacDonald, MLA
Chair
Standing Committee on Private and Local Bills
Nova Scotia House of Assembly

Dear Mr. MacDonald:

I am writing to share several concerns with Bill 274 – the *Catholic Cemetery Company Act.*

It is my respectful recommendation that the bill should be delayed and referred back to the proponents for more work.

The proponents are recommending an entirely new, detailed private bill for a longstanding Company. This is not an update to an old private bill. (The Company is currently incorporated under the *Cemetery Companies Act*.)

My concerns can be summarized as follows.

1. The bill would largely insulate the board of directors from being accountable to the membership of the Company. This sets a bad example for corporate governance.

2. The drafting of the bill is very sloppy -- to the point that it could make the Company ungovernable.

3. Despite the bill's level of detail, the bill does not assure any standing within the Company to the area parishes, which have had standing.

I am motivated to write this letter as a political scientist with a longstanding interest in the governance of organizations. I carefully read the bill after the statutory notice advertisement appeared in the *Cape Breton Post* last Wednesday (April 5). I called the

Legislative Counsel office on the morning of Thursday, April 6, to advise that I would be making a written submission.

I am concerned about the example or precedent this bill in its current form might set for other organizations. Because this is a private bill, I was also concerned that the proposed Act would not receive much attention or scrutiny.

I should disclose that I am a member of one of the area parishes – St. Mary's Polish Parish. But I have not been involved in the governance of the Company or discussions about its restructuring. The parish has not discussed this bill to date. The concerns in this letter are my own.

I will now address my concerns in turn:

CONCERN #1 – THE BILL EXCESSIVELY INSULATES THE BOARD OF DIRECTORS FROM THE MEMBERSHIP

It is common in corporate governance to create steps and candidate obligations to prevent the hostile or impulsive takeover of a board. These might include ample notice requirements of a member's intention to stand as a candidate for the board, requirements to secure multiple nominators from among the members for any candidate who has not been proposed by a Nominating Committee, and staggered terms of office for directors to prevent the wholesale turnover of a board at one meeting.

But this bill goes well beyond that.

(In the case of the Company, it would be hard to carry out a hostile takeover by signing up new members. That is because voting members are defined in the bill – s. 8(1) -- as lot-holders -- not even holders of a niche in a columbarium – in other words, people with considerable investment.)

Section 12(3) of the proposed Act would require that the incumbent board of directors approve the candidacy of any member who wishes to stand for election to the board. This is not just a matter of the incumbent board recommending a candidate to the members (which is a reasonable practice), but the incumbent board actually approving (or vetoing) that member's candidacy for the board, no matter the member's qualifications or what level of support that member might have among other members.

This bill also excludes the membership from a role in ratifying the foundational by-laws of the organization (s. 28). The board of directors would have the final say to amend the

by-laws. This contrasts with, for instance, any organization incorporated under the Societies Act. Under the Societies Act, a board must bring proposed by-law amendments to the membership of an organization (and even to the Registry of Joint Stocks).

The bill also appears to preclude the members of the Company from placing an item on the agenda of the annual meeting – or from proposing any new business at the annual meeting – not even with advance notice -- unless the board decides to place that item on the agenda. See especially sections 22(3) and 28 (i).

In any organization, there may be situations where shareholders or members need to legitimately challenge, oppose, or question a board.

CONCERN #2 – THE BILL IS VERY POORLY DRAFTED AND COULD RENDER THE COMPANY UNGOVERNABLE

The bill's puzzling, ambiguous, and perhaps unintended wording is evident in many places.

The follow are a few examples.

Section 20(2) actually states (maybe unintentionally) that a director elected to a single three-year term, now and in the future, cannot seek re-election when the term expires. Meanwhile, the preceding subsection -- 20 (1) -- is saying either that ... 1) a director elected to a shorter term can keep running indefinitely as long as it is always for a one-year term; or ... 2) it is saying that such a director is limited to a lifetime maximum of just one more year. Either scenario is very constraining.

If it is the latter interpretation (#2), the bill is setting up a situation where no board member is serving more than two or three years in a row. Is that really what the proponents intended?

And since the bill says that someone has to be a lot-holder in order to be a member and eligible for the board, there would be a tremendous burden on the lot-holders – many of whom may be external to the region – to serve stints on the board in order to satisfy this Act. Current board members would be constantly reaching their (short) term limits.

The Act is detailed to the point of requiring training for board members immediately after their election – s. 13(5) -- but it potentially forces board members out before they can gain much experience.

The poorly drafted bill is far too prescriptive in some respects. For example, it requires -- in s. 16(1)(a) -- the unpaid treasurer to "supervise administrative office staff." Would the Company not anticipate having a manager in that role, reporting to the full board? Or, if not a manager, why would the board not allow itself the discretion about whom it delegates to supervise staff? The skillsets of a treasurer might be different than those required of someone who supervises staff.

The bill actually requires that the recording secretary be a board member and no one else. It is common in many organizations to have a board secretary, but then to allow that person or the board the discretion to designate someone else to be the recording secretary. But not here, unfortunately. The board member who is "recording secretary" must specifically "record, prepare and submit to the Cemetery office the minutes of all meetings" and must do so before the next meeting. [s. 17(a) and (b)]

The section about quorum for annual meetings is puzzling. Section 22(4) states: "A majority of the members present at the annual meeting forms a quorum."

Does this mean that a majority of members must be present for there to be a quorum? It would be surprising if this is what is intended. Would quorum ever be reached under such circumstances? Again, members are defined in the bill as lot-holders. And some lot-holders may be absentee or not in a position to attend meetings.

Or is the bill saying that quorum is no particular number of members, and that motions require a majority vote of the number of members who simply happen to be present at the annual meeting, regardless of the size of attendance? It is not clear. But this is an example of ambiguous wording that could immediately cause governance problems for the Company.

CONCERN #3 – THE AREA PARISHES SHOULD STILL HAVE SOME STANDING

I concur with part of what appears to the intent here: Parishes should not have automatic seats on the board of directors, as they have had in the past. This kind of structure results in uneven and unpredictable governance.

But I am surprised that a bill with this level of detail does not mention the area parishes at all, given that they have been major stakeholders in the Catholic Cemetery Company.

It would be appropriate, for example, to give the area stakeholder Catholic parishes – and possibly also the Catholic Episcopal Corporation (diocese) -- each a vote at the annual meeting and the ability, if they choose, to exercise a right to nominate (not

appoint) qualified persons to be considered for the board. Those persons would not have to be lot-holders, but could be any suitable individuals with requisite governance experience who are committed to the dignified care and long-term planning of the entire cemetery.

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In summary, Bill 274 requires much more work and more careful examination. I would like to strongly recommend against passing it in its current form.

If it would be helpful for me to speak to the committee via Zoom, I would be willing to do so.

Thank you for your consideration of my input.

Yours sincerely,

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cc: Mr. Gordon Hebb, Chief Legislative Counsel
Members of the Standing Committee on Private and Local Bills
The Honourable Brian Comer, MLA, Cape Breton East