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Jeudi 13 juin 2002

**Standing committee on
the Legislative Assembly**

Parliamentary reforms

**Comité permanent de
l'Assemblée législative**

Réformes parlementaires

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Thursday 13 June 2002

Jeudi 13 juin 2002

The committee met at 1608 in committee room 1.

PARLIAMENTARY REFORMS

The Chair (Mrs Margaret Marland): Good afternoon. We will start this meeting of the standing committee on the Legislative Assembly on Thursday afternoon, June 13.

GRAHAM WHITE

The Chair: I apologize to Professor Graham White, who is our visitor this afternoon, for the delayed start. As you know, the House proceedings were delayed until about 20 minutes ago, as can often happen with multiple voting and other procedures during the afternoon. If anyone knows that well, I know that you do. We welcome you warmly to the committee and appreciate you taking the time to be with us. There are presentation notes that have been handed out to everyone's desk. I invite you to proceed.

Dr Graham White: Thank you very kindly, Madam Chair. Let me say that I'm extremely pleased to be here, in part because academics always welcome the opportunity to pontificate, but much more fundamentally because I truly feel honoured being here. As you know, I spent the better part of a decade working for the assembly, many very enjoyable hours sitting where my good friend Douglas is sitting—and, I hope, contributing to the process. It feels a little strange to be on this side, but I'm very pleased to be here.

What I propose to do is quite quickly, I hope, run through some notes here. Then I'm in your hands. If you care to discuss some of the ideas I have here, that's fine. If there are other things on your mind you'd like to talk about, that's fine as well.

Let me begin by setting out with a little elaboration some of the underlying premises that I bring to the ideas I have to suggest today. First and foremost, I recognize, and indeed applaud, the fact that the Legislature is a political place. It's about political conflict. It's about setting out differences. I'm no more enthused about mindless partisanship than the next person, but we need to recognize and understand, and not shy away from, the fact this is a political place. We need to deal with that.

Second, it's important to keep a fundamental balance in mind. On the one hand, the government must have the

ability to govern effectively without undue delay or obstruction, but, on the other hand, the Legislature has a duty to hold the government to account and to maximize democratic involvement in governing processes.

The third underlying premise is that, as you've doubtless discovered in your travels and your research, there are many functions that Legislatures can and do perform, but they can't perform them all well. No Legislature performs all functions well. You need to pick your spots. You need to look where the possibilities for improvement and success lie.

My suggestion, as you'll see, is to focus on accountability, and accountability of a non-financial sort. By that, I don't suggest that the public accounts committee is not an integral part of the process. I worked for the public accounts committee; I believe it's absolutely essential. What I do mean, though, is that I was paid for some years, among other things, to think about how one makes the estimates process real and effective. I'm still thinking about it and I still have no answers. Frankly, I think it's essentially a lost cause. There are much better places to spend your time and energy than on estimates.

The final underlying premise is that it's the committee system where the most promising possibilities for significant reform and for a meaningful role for the private members can be found.

I have a number of reforms to suggest to you. Before looking at the second page of the notes, let me throw in some significant weasel words here. Some years ago, I liked to think I was extremely conversant with the standing orders; in fact, I knew them inside out. This is no longer the case. I'm not at all up on the most recent few sets of revisions. I certainly looked at them when they occurred, but by no stretch of the imagination am I sufficiently conversant with them to be able to offer any kind of extensively detailed commentary. Having said that, I have three general thoughts in the way of reforms before we get to the notion of committees.

First and foremost—and I recognize there may be, shall we say, some political reluctance on this point—I have absolutely no doubt in the world the Legislature is too small. There need to be more members. This is to some extent an issue of representation of constituents, but from my point of view far more fundamentally there are simply not enough members to adequately staff the committees. Committees are important. Functioning committees are essential. There are simply not enough private

opposition members to staff the committees. Caucuses are too small. This is a multi-billion dollar operation. When Ontario came into Confederation in 1867, there were 82 members; there are now 103. That's not enough. Let me not belabour the point further.

Second, if you look at the standing orders of this place and compare them with standing orders of virtually any other Westminster-style jurisdiction, I believe you will find that political parties are formally mentioned and institutionalized far more often here than in any other Westminster Parliament. Many Westminster Parliaments make little or no reference to parties. Parties are there in terms of allocating questions in question period, committee chairs—it goes on and on and on. My view from afar is that there's not really a whole lot of danger that political parties will lose importance in this place, but it does mean that political parties are formally put light-years ahead of private members. Private members are nowhere when it goes to allocating time, questions, various other things, and I think that needs to be addressed.

There are a number of relatively minor—well, sometimes perhaps not so minor—procedural changes that I'd commend to your attention. First, omnibus bills have a use in terms of housekeeping and non-controversial things that can be done quickly and effectively, but I think it is a disservice to legislation and the people of Ontario to bring in many substantive policies through omnibus bills. My suggestion would be that they be permitted only through all-party agreement.

In a similar sort of vein, the standing orders are too important to give over to the political problems of the day with a change in government attitude. I therefore suggest that standing orders only be amended by virtue of a two-thirds majority. At any particular time, the government will always retain the possibility of bringing in a specific motion to deal with some specific problem, but I think the standing orders are sufficiently fundamental that they need to be changed only with a two-thirds majority.

In terms of legislative review of bills, I think that more attention—in an institutionalized way there needs to be sufficient time for members, citizens and groups to review and comment on bills, and that on major bills there need to be public hearings regularly and routinely held throughout the province.

Anticipating a little bit the significance that I attribute to committees, I think there should be written into the standing orders a provision that at least one hour a week be given over to debate on committee reports that have been produced and tabled.

Along the same lines—frankly I'm not sure if this is still a problem to the extent it has been in the past; certainly it was a problem when I was here and for some time afterwards—there is time allocated for second reading of private members' bills, but getting third reading time is much more difficult. I suggest that you consider recommending that two hours a month be given over to third reading for private members' bills.

The main points I wanted to draw to your attention were some suggestions about how to empower the committees. This would, I believe, enhance accountability and also give the private members an opportunity to become involved and exercise some influence.

First, I would suggest that there be a committee empowered, not necessarily a committee created—actually, I say that in the notes, that it wouldn't need to be a new committee but perhaps an existing committee should be empowered—to review on a regular basis the reports of the Environmental Commissioner along the lines that this committee and previous committees are empowered to review and comment on the Ombudsman's report.

If you think about how government operates in this country, there's almost nothing more fundamental and more pervasive than federalism. Canada is said to be the only country in the world where you can buy books on federalism at the airport. Federalism is a fundamental fact of life of governance in this country, and yet in Ottawa, Queen's Park and, to the best of my knowledge, most if not all other provincial assemblies, federal-provincial relations and agreements are almost entirely outside the realm of legislative scrutiny. I would therefore suggest that there be a committee created, and that this not just be tacked on to the mandate of an existing committee, but a specific, dedicated committee which would review—it wouldn't need to approve—all major federal-provincial policy agreements and all major federal-provincial financial agreements. Too much of what goes on in terms of governing in this country goes completely outside the realm of legislative scrutiny.

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The final two suggestions are very much of a piece and very parallel. I don't need to tell any member of this committee how important regulations are in the policy-making, lawmaking process. There is a committee to review them, but it's really hamstrung by a very narrow mandate. My proposal would be that a committee, the regulations committee obviously, be empowered not just to review all aspects of regulations, including their merits—the substantive policy behind them—but that they be given the authority to reject a regulation. However, following from the premise I enunciated at the outset, that governments do need the power to govern, governments would have the ability to override that rescinding by a committee within 60 days. In both instances, the committee would need to provide reasons why they thought the regulation should be rescinded and the government would need to provide reasons as to why it was reinstating the regulation.

Similarly with appointments, there is a committee which has the mandate to review appointments to government agencies. If memory serves, it does not have the mandate to review reappointments, which I think is a bit of an issue, but much more fundamentally, I think a similar process should pertain here. That is, the committee should have the ability to reject an appointee subject to, within 60 days, the government overriding that rejection. Now, with respect to both the regulations and appoint-

ments, clearly only a very small proportion of regulations and appointments would get a serious review. There's simply not time to review them all. Most of them are uncontroversial and of no great never-mind. But if committees are to have significant influence, I think this might be a useful way to empower them.

The final point here is that with the wonders of the Web, it seems to me there's no reason whatsoever why draft regulations and potential nominees to government agencies and boards—the text of the regulations with a plain-language translation, plus the resumé of potential nominees—shouldn't go up on the Web, perhaps 60 days prior to either the appointment or the regulation taking effect, so that everyone out there can review them and, if need be, feed comments to their members and to the appropriate committees.

With that, I thank you for your attention. I'm happy to discuss this or other matters.

Mr Michael Prue (Beaches-East York): Right off, I go to your suggested reforms on the first page. To much desk-thumping, the size of the House was reduced just in the last Legislature. Is this a realistic thing that one could expect, that the government would seek to say, "We were wrong," for the reasons you enunciated, and go back to it? I really hold out no hope, although I agree with you because it had ramifications not only for the size of this House, but for the size of the city of Toronto council. It had lots of ramifications down the road. Is there any chance of this?

Dr White: I trust you're not asking me to comment on whether the Premier is going to reverse any of the previous Premier's policies.

Mr Prue: He has been pretty good to date.

Dr White: There's a huge political impediment here. It's worth mentioning that by the next election it will be 108, I believe, because of changes that will happen in Ottawa, that Ontario follows on automatically.

Mr Prue: Yes, 106.

Dr White: It will go up marginally, but it's not enough. I understand the politics of this. Nonetheless, I actually was in this room when the bill was being debated and made the same points, to the same effect, but people need to understand it's not just about saving money and it's not a case of dissing politicians. If this is to be a major league institution, it has responsibilities. There are simply not enough members to carry on those responsibilities adequately.

Mr Prue: I have a number of questions. Do you just want one and pass it or—

The Chair: Everybody wants to speak. Go ahead for a few more minutes.

Mr Prue: OK. The omnibus bill: that's an interesting one. I think all Parliaments, the federal Parliament and all the Legislatures, use omnibus bills from time to time. We actually have one before us now dealing with a whole bunch of things respecting post-secondary education. I am finding it very difficult. There's only one contentious part to the bill and everyone has seized on it, and we have places like the Ontario College of Art, which everyone

agrees should have what's in the bill, sitting there wondering whether they're going to get it. Your recommendation is kind of unique, that it be permitted only with all-party agreement. Is there any other Legislature anywhere else that does that with all-party agreement or would this be breaking new ground here in Ontario?

Dr White: I haven't the faintest idea. This is certainly something that occurred to me. It wasn't suggested by experience elsewhere, but it's entirely possible they do. I simply don't know.

Mr Prue: All your other procedural changes appear to me to make eminent sense. I don't want to take up too much time. I refer to the second-last page, the referring of "all appointments and reappointments to government agencies ... government would have 60 days to overturn a committee decision to reject a nominee." Again I ask the same question: is there any other place in Canada that has a similar provision?

Dr White: I believe not, but this was inspired by what previously was—and I'm simply not au courant enough to know whether it's still true. Perhaps Mr Sibenik could tell us; in fact, you may have learned this when you were in Britain. The British House had a procedure not unlike this with respect to regulations.

Mr Prue: So there is another example.

Dr White: There's an example of it with respect to regulations. I'm not aware of any other jurisdiction that does it with respect to appointments.

The Chair: The list I have is Mr Duncan, Ms Munro, Ms Di Cocco and Mr Tascona.

Mr Dwight Duncan (Windsor-St Clair): Some rapid-fire questions, Graham. First of all, a bill in Ontario can be passed now in roughly seven calendar days, four sitting days. What would you see as an adequate amount of time?

Dr White: I'm not sure I can give a quick answer to that. Underlying all those sorts of issues are give and take. It's an attitude. It's much the same as why I didn't say private members should be free to voice their opinions and not have the heavy hand of party discipline. You can't really write that into the standing orders. It's an attitude that one brings to governing.

Mr Duncan: On major bills, how do you define "major"?

Dr White: The same thing.

Mr Duncan: That would be agreement by the House leaders or some other—

Dr White: I'm not sure how you do it, but again it's a question of underlying attitudes and expectations, that as a matter of course if a bill turns out to be of major consequence, then it needs significant treatment.

Mr Duncan: Last question, the review of appointments: would you include deputy ministers, assistant deputy ministers and members of the bench in a scrutiny process?

Dr White: Probably not members of the bench. I'm not a constitutional expert, but I think that might tread a little bit on independence and perceptions of independence of the judiciary. I distinctly dislike the American ap-

proach to this. Deputies and assistant deputies, I'm inclined against frankly. I think that needs—

Mr Duncan: Against?

Dr White: Yes. I think that needs to be the government's prerogative. The reason for suggesting with respect to agencies is those appointments are qualitatively different, I think. Deputy ministers and assistant deputy ministers are there in the line of normal ministerial responsibility and all that other procedural paraphernalia in a way that agency people are not.

Mr Duncan: One last question. We have looked at the British committee system, and I expect we'll be looking at that very carefully. Are you familiar with that system? One of the observations I had in looking at that was the way members can develop a certain expertise on a topic through the select committee system. They do have, obviously, lots of members, and I see where you're going on that. Apart from the issue of the number of members, would you agree that it would be a wise recommendation to try to create a committee system or reform our committee system to allow an opportunity for members to gain an expertise either in a ministry or a subject matter through a continuing membership on a committee with a more meaningful set of roles, if you will?

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Dr White: It has been a long time since I was really up on the British committee system. I was part of a wonderful trip with this committee's predecessor in 1982 to Westminster, and kept up for a while, but it has been a while since I've been on top of things. In terms of the substantive question, yes, unquestionably that would be a useful sort of thing to do. However, that's again not the kind of thing you can write into the standing orders, save and except an area that I was going to touch on but I realized I was simply not familiar enough with the details of how it works.

One of the great bugaboos when I was a clerk here I suspect is still a bugaboo, and that is substitution. You simply can't run an effective committee system, you can't develop that kind of specialized expertise, if people are being substituted in and out. Now, I'm a realist enough to know why substitution happens. Partly it happens because there aren't enough people running around, but even if there were, there are legitimate reasons. It's a balance. There are costs for not allowing frequent substitution, but I think there are significant benefits. Yes, very much I would support development of members' individual expertise. The only formal way, I think, one could do that is to bring in changes to the standing orders to make substitutions less frequent.

Mrs Julia Munro (York North): I must say that when I look at the pages you've presented to us, your last point on the first page about the committees offering the most promising possibilities I think is something, in looking back on what we have learned through our meetings with others in other jurisdictions—that is the area that we've agreed has that potential. So I found it interesting that that was something you identified as well.

On the second page, where you talk about procedural changes, the third bullet refers to sufficient time for people to review and comment. I wonder whether or not you are prepared to comment on a practice that we have done—to a certain extent, I would qualify—of engaging in public hearings before second reading, and whether that is the kind of thing you would see satisfying this concern that you've raised.

Dr White: I think it's a good idea. I would support it being done on a regular basis, particularly if you're talking about major controversial bills, because of course once second reading has happened, technically arguments about the whole being a bad idea are out of order. But more fundamentally, I think it involves people earlier in the process.

Having said that, there is still the issue—and I didn't particularly give Mr Duncan a good answer and I can't give you a good answer—about what's a major bill and how much time. But I think there has to be an acceptance and understanding that, yes, the government has to be able to count on getting its legislation through in some reasonable time, but that doesn't mean immediately. Sometimes the price of having a Legislature and a democratic system is lots of people need to have their say. It's slow and it takes time.

Mrs Munro: I appreciate that. One of the things we heard at Westminster is a process that I think is referred to as programming, where I guess the House leaders would make the decision in looking at the government's agenda and picking those items which they felt would require extra time, and the matters they either fundamentally agree with or don't have a huge issue with would receive less time. I think that would perhaps speak to the issue you've raised in terms of how you define those, because I think they're probably less defined politically. What's a major bill doesn't have to be the length, obviously; it's more accurately the issue around policy and the comfort, if you like, of the policy.

The next point: you refer to the public hearings throughout Ontario. Certainly as a member I have travelled throughout Ontario on this process, but one of the things that I would ask you to comment on is the fact that we seem always to be going to the same places. Even with bills that sometimes are germane to a specific area—not geographic area, because my experience there has been that we have then gone to those geographic areas, but rather sectoral area, I guess would be the more accurate way of putting it—those hearings have not been sensitive, in my view, always to those sectoral issues. In terms of something to do with agriculture, it's obviously better to go to Kemptville than to London or wherever. So it has occurred to me that perhaps the notion of public hearings should be more expanded in the area of the technology. To me, the ultimate should be that anyone who wishes to has that kind of access. Obviously, with a province this size, it would seem to me more efficient, and frankly equitable, to have greater acceptance.

There are obviously two sides to that argument, and so I guess my question to you is, do you think that is a

realistic direction that we should be looking at in certain cases?

Dr White: Let me briefly address the first question about the major political decision. I agree entirely: these are political decisions. I also very clearly recall being struck on that trip to Westminster that I mentioned of the level of maturity that the parties and the whips, who do more of what we would call a House leader role here, exercise. In particular, the assistant to the chief government whip spoke with us. This was at the height of Margaret Thatcher's government. There was major confrontation about something or other, and he told us about how the Labour whip had come in and said, "Oh, Murdo, we're going to have a fearful row over this bill. It's absolutely unacceptable. It's destroying British society as we know it." "Sure. OK. How long is the row going to be?" "Oh, two days should do it." "And what do you want at the end?" "Well, we want this and this and this," and it was done. There was an understanding that, yes, the government has to get on with it and, yes, the opposition has to do its thing.

All I would say in addition is that I guess implicit in "major bills require time and attention" is that if it's uncontroversial, if it's not a big deal, get it out of the way in half an hour, 20 minutes. So, yes, I agree with that.

On the public hearings, again I agree. I suspect that the same usual circuit of where committees go to hasn't changed since I was setting up the meetings and I suspect that members probably stay at the same hotels that we used to stay at for our public meetings and so on. While on the one hand you want to hit the population centres where there's going to be a concentration of interest and groups and so on, it means that certain people are systematically excluded from the process. I think one needs to be a little more inventive and a little less reflexive when indeed it is time for public hearings and where you are going to go.

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As for the other suggestion on effectively using the wonders of communications technology, there are certainly enormous possibilities and I think they should be explored, should be used. They do raise questions. I think you used the word "efficient." In some senses, obviously yes. On the other hand, the number of people who might care to take advantage of it might be infinite and unmanageable. So political decisions would be needed on that.

At the same time, while I think there are huge possibilities for using that route and public input—and let's not forget that it's not just about public input in terms of ideas. In fact, frankly, much of it is about legitimizing the process and combating the cynicism that the public has about politics, the Legislature and the process. It's important, but at the same time there is nothing like having the politicians there in person, in the flesh. A combination I think would be useful, but I would very much think it's still critically important that after the meeting, before the meeting, individual citizens, group representatives, be able to come and talk informally, to

witness the process at work. I would regret very much if that aspect of it were lost.

Mrs Munro: Certainly I'm not in any way suggesting that it's an either/or situation. I do agree with you.

The final point I wanted to ask you to comment on, because I think Dwight talked a bit about the notion of developing an expertise within a specific legislative area or areas, is your third point about the regulations. I wondered if that would work at cross purposes from any kind of committee that was designed to develop an expertise in a cluster of ministries, say, or topics or whatever. It just seemed to me that it might work at cross purposes from the suggestion that he made. I wondered if you have any comment.

Dr White: I don't think it would need to. The model perhaps might be the public accounts committee. The current regulations committee, unless things have changed dramatically in the past few years, does noble and important work, but—Mr Tascona will forgive me—it's lawyers' work. It's very detailed; it's very technical. It doesn't get at the policy substance. That's what politicians, members, are mostly interested in. In the same way with the public accounts committee, I think that one can be a member, and an active member, of the public accounts committee and contribute one's particular expertise, be it in social policy or agricultural, to issues of that nature before the committee, and I think you could do the same thing with the regulations process that I propose.

Mrs Munro: Can I have one more?

The Chair: Fine. Well, Mr Tascona is groaning.

Mrs Munro: I just wanted to comment on your idea about reviewing the federal-provincial because we heard it elsewhere, that there were concerns about the fact that those seemed to be done, whether you're at the federal level or the provincial level, in complete isolation. That would certainly strike a sympathetic chord, I think, in other jurisdictions as well as ours.

The Chair: I have Ms Di Cocco, Mr Tascona and Mr Arnott.

Ms Caroline Di Cocco (Sarnia-Lambton): I have a couple of questions for you, or statements that hopefully you can comment on. I'm sorry I missed your introduction. I was here just biting at the bit to hear it, but then I was called out. I do apologize.

Something that's always been really important to me is this whole notion—you say a focus on accountability. What top areas do you think we need—let's put it this way—to make our accountability measures in this Legislature better? What areas do you think, in your observation?

Dr White: I would say unquestionably federal-provincial agreements, and regulations.

Ms Di Cocco: There are two areas of the omnibus bill that you spoke about, and you think this is something that maybe we should use with some discretion.

The other area I found was the Henry VIII clauses. I've only been here since 1999, but it seems to be an expedient way to give regulatory powers in a way that

would not be seen as democratic, because it changes the intent of the legislation. Can you make some comment about it? The bit of research I've done on it shows that it's been done more over the last number of years than—I think it started in the early 1990s to some extent, but it's really been used a lot. Can you comment on Henry VIII clauses? That's what concerns me more about the whole notion of accountability as well.

Dr White: I'm afraid I really can't. I'm certainly familiar with the idea and I've heard some of the criticisms, but I simply don't have the legal expertise or the familiarity with the particular cases to be able to comment intelligently.

Mr Joseph N. Tascona (Barrie-Simcoe-Bradford): Thank you, Professor White, for your presentation. I have a couple of questions, starting with suggested reforms.

The increase in the number of members in the House: is that, in your view, necessary to do committee work, or would it be directed at a member being able to better represent their constituents at that level?

Dr White: I think there are benefits to the ability of a member to represent his or her constituents, but there are other ways to deal with that. The fundamental reason for doing it, in my view—sorry; let me backtrack. There's the special northern Ontario situation. Northern Ontario was a region that had its representation particularly cut back. But while I would prefer to see more members to give better representation, fundamentally my suggestion is that you simply need more members not just for committees, but to have adequate-sized caucuses, both opposition and government.

If we're talking about developing expertise as individual private members, if an opposition caucus doesn't even have enough members to cover off all the main ministries, they're hamstrung. Obviously that's partially in the voters' hands, but it's also partially in the hands of the people who devise the electoral map and the number of members. If there are 130 or 150 members, the proportion of seats the third party or the second party will get will be more and you'll have larger opposition caucuses. You'll also have a larger government backbench and reduce some of the pressure on government backbenchers to fill in all over the place and to spread themselves too thinly.

Mr Tascona: But I think the system would be proportional representation if you wanted to accomplish that.

Dr White: I favour proportional representation, but I think that's a totally separate argument you can have either with a small House or a large House. I'm suggesting that whatever the electoral system is—and I don't see that as your mandate here—you simply need more members, however you end up with them.

Mr Tascona: Certainly I've found there's an issue with respect to the matching of the federal boundaries. As a member, that has proved beneficial, because you can work together with the federal member in areas that affect you directly and you have the same constituents. But I guess your argument would also apply to the

federal level, that there are not enough members at their level?

Dr White: No, I'm not sure I'd make that argument. The argument is the number of members available to sit on committees and to serve caucus functions like being critics, parliamentary assistants or what have you. In Ottawa, when you have over 300 members, that's probably enough. There are separate issues about representation, but in terms of having enough people—if you think about it, the budgets don't provide a useful comparison. If you think about what the Ontario government does in comparison with what the government of Canada does, the Ontario government has at least as wide a range of activities, and because so much of the federal budget is transfer payments anyway, its budgets are roughly comparable. Yet there are three times as many federal MPs as Ontario MPPs to be on committees, serve as critics and do other things members need to do, quite separate from the representation issue.

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Mr Tascona: I understand. I like your comments with respect to debate of committee reports and debate on third reading of private members' bills. I think that would enhance the role of private members. Certainly all of us look forward to every Thursday. We get two hours to debate when we're in session to deal with that. You were here for what period, 1974-84?

Dr White: I worked in the Clerk's office from 1978 to 1984.

Mr Tascona: Was private members' the same as it is now?

Dr White: Essentially. There were some minor changes, but the problem of bills passing second reading, even going out to committee and perhaps coming back and then languishing or dying for lack of an institutional mechanism for third reading was a problem then.

Mr Tascona: To give private members a greater role, we're allowing two hours per week, and this is two hours per month.

Dr White: Excuse me, it wouldn't necessarily need to be an additional; you might simply allocate one of your Thursday mornings to third readings rather than second readings. It wouldn't need to be additional time. It could be, but it wouldn't need to be.

Mr Tascona: I understand what you're saying. One other area, then, is in the accountability end. This committee does deal with the Ombudsman. I think we have a pretty good relationship with the Ombudsman, and the methods we have in place to deal with him. You're recommending the Environmental Commissioner. Why did you pick on the Environmental Commissioner? There are lots of other commissioners out there.

Dr White: Not who are officers of the assembly, who don't have an independent mechanism. The auditor has the public accounts committee. The Ombudsman has this committee. I thought about putting in the Information and Privacy Commissioner, but that's a rather different kettle of fish. In terms of policy substance, the Environmental Commissioner is the outlier here.

Mr Tascona: Just from a policy point of view.

Dr White: Yes.

Mr Ted Arnott (Waterloo-Wellington): It's a pleasure to see you here, Graham, and to hear your views. I want to get back to your suggestion of increasing the size of the House. As we all know, there were 130 members of the Legislature and we went down to 103. I spoke to the chief elections officer, Warren Bailie, before we did this and he indicated to me that we were due for a redistribution anyway. Under the old formula that he would normally have employed, we would have gone up to 151. That's what he told me. So I look at it as an even more substantial downsizing than 130 down to 103, if under the old way of doing things we'd have 151. That would create a totally different dynamic in the Legislature. What do you think would be the optimum number of MPPs? Do you have a number in your head that you can—

Dr White: I was afraid someone was going to ask that. I would think something in the neighbourhood of 150 would be reasonable. You have to step back and—I know what the optics are politically, and I understand that, but in terms of cost, it's peanuts. It really has no great never-mind. There's a threshold. I don't really know what it is, but it seems to me there's a threshold when you have enough private members on the government side and on the opposition side that they can start to make some influence felt, independent of the party leadership. I'm not talking about huge revolts but just exercising a little bit of independent influence.

This is one of the great things about the British system. They are way over 600, and they also have a huge number of safe seats, which makes life rather more interesting and livable for private members. Nonetheless it's clear that the dynamic there to a great extent turns on their interest in committees. Due to the fact that there are so many of them, committee spots are valued and expertise is valued. Whether that would happen with 150 seats here, I don't know, but certainly it has to be significantly more than the present number.

Mr Arnott: My riding is about 100,000 people; my riding used to be about 60,000. I've noticed a substantial increase in the workload, yet I would never admit that I couldn't handle it. None of us would want to do that, I don't think, on the record or otherwise privately. Certainly the workload is substantial for all of us. I haven't got the largest riding in the province by any means, but I have Clifford in the north and Punkeydoodles Corners in the south and I can't be in two ends of the riding on the same afternoon. It's impossible. So you are stretched, to some degree, in terms of your physical presence at various locations in the riding where people want you to be. But certainly there have been improvements in transportation and communications over the years, which have enabled us to represent a larger riding, perhaps, than those members who were privileged to be here 100 years ago.

Dr White: I agree entirely. Having said that, though, the increase in the number of constituents that you and all

the other members have had to deal with is taking away time from your legislative duties.

Mr Arnott: Oh, no kidding.

Dr White: I am very much of the view that constituency work is absolutely critical, not just to serve people and to help them out, but to give members a sense of what the policy issues are and all the rest of it. But it takes time away from being a legislator.

Mr Arnott: Your comment on omnibus bills: from time to time, all governments have introduced omnibus bills if there is a compelling reason or they feel a necessity to do so. I don't think you'd ever get all-party agreement on the need. Sometimes the government identifies a need and feels it's required. But I think your suggestion would mean there would be no more omnibus bills, most likely, unless in times of absolute provincial emergency or peril, I suppose.

Dr White: Let me say two things. One is that I was expecting someone to ask me how one defines an omnibus bill, and I'm not sure there's an easy answer to that. I can't speak for the time after I left here, but certainly when I was here—and I actually looked into this as part of my responsibilities—the only omnibus bills that I remember coming through were literally housekeeping bills. They were sometimes very substantial in size and length, but they were all very minor changes that excited no interest or attention whatsoever.

The fundamental issue here, I think, goes back to one of the points I made at the outset. Yes, it's very convenient for a government to be able to deal with a lot of problems—I know how precious legislative time is—but if there are substantial changes going on, then there needs to be adequate opportunity for the Legislature to address them, and there is a countermanning requirement on the part of the opposition to identify things that aren't important and just let them slide by and concentrate on the important issues.

Unquestionably, there would be operational questions about how exactly you define omnibus bills and the politics of, "You say it's an omnibus bill, I say it's not." Nonetheless, it's the underlying principle and attitude that there needs to be adequate time for the Legislature and its members to review substantive policy questions that can become very difficult with an omnibus bill.

Let's not beat about the bush here. The omnibus bill that was introduced early in your term in office had enormous implications, and it's not a case of whether it was a good or bad policy. There were huge chunks of it that made major changes that, because they weren't quite as evident or as obvious or as controversial as some other parts, simply didn't get the attention they deserved. I just don't think that's appropriate.

Mr Arnott: I would agree with you that Bill 26 was a substantial bill. I would also say that the government was wrong to initially refuse to allow public hearings—absolutely wrong. It was only after a series of extraordinary circumstances—we sat all night long in the House—that finally the government agreed to public hearings.

But I would say in response that there were weeks of public hearings and I think most of the contentious issues were extensively debated during the course of those public hearings. So when I see an omnibus bill, I'd say there may be a compelling need for an omnibus bill from time to time. But if it's a contentious issue, yes, there should be public hearings, and extensive public hearings, if need be.

Changes to the standing orders: if we said that no more changes to the standing orders would be made unless there is a two-thirds majority, my concern is you'd be freezing the standing orders for all time, unless there was an overwhelming majority in the House where one party won two thirds of the seats.

Dr White: My position would be that these are standing orders of the entire assembly, and unless there's agreement on them, they shouldn't be changed. Again, my apologies for losing things in the mists of time, but certainly I was involved in a number of major changes to the standing orders during a minority government as well as a majority government and the entirely accepted principle was you did it with all-party agreement and there were trade-offs between the government and the opposition. There were things that either side didn't like or would have liked to put in, but unless there could be agreement on it, you don't change the fundamental rules unless there is significant—I didn't say unanimity. Two thirds is picked out of the air, clearly, but I think you need to accept that you don't change the standing orders unless there is underlying agreement. As I said, if the government wants to override a single standing order, it can always bring in a government motion and have it overridden for a particular instance.

Mr Arnott: Last, private members' bills: as a private member, I get a chance to have a private member's bill debated approximately once every 18 months or two years. To me, that isn't enough. I'd like to see more opportunities for debate on private members' bills. One simple way would be to perhaps have three items dealt with on Thursday morning; so we would start at 9 o'clock.

You've pointed out that quite often the third reading time isn't sufficient, but typically we deal with third reading of private members' bills the last night the House sits. It's based on some sort of a negotiated agreement amongst all three parties. Sometimes there are a couple of government bills and one from each of the opposition or whatever. Would you agree there should be more opportunities for members to bring forward private—we can introduce them in unlimited number now, but in terms of having one debated for one hour, you get a chance every 18 months or so. To me, that's not good enough.

Dr White: Were it personally up to me, I'd say yes. The question then arises: time is not infinitely expandable. What do you do? Frankly, a huge proportion of the time in the House debate is set pieces. Nobody's really listening. They're time fillers. Not much would be lost by reducing that kind of time, not through draconian

changes to standing orders but, again, an understanding that if the private members are to get more time to do their business, then they're going to have to exercise more self-discipline in debates in the House.

I'm pleased you didn't raise the issue that if there were 150 members, you'd have even less time to—or your 18 months would probably expand to 24 months between opportunities to debate your bills.

Mr Duncan: I just wanted to comment that the last and most significant changes to the rules happened in 1999. That was achieved by consensus. As a matter of fact, we signed off on it. The only observation I would make about that is that it was tied into allocation of funding for political parties and caucuses. There was an anomaly created because of the election result that saw the governing party's caucus allocation, under the old formula, would have been less than the third party's. Because in effect, the old formula funded you as though you had 30 members. It wound up with the unusual anomaly that the party that got hurt the most was the governing party, because of all the changes that had happened. But we did achieve consensus, and there was give and take.

One of the reasons we have reluctance in entering into this committee to study this issue is because the government does have a majority on a committee and that standing orders, in our view, ought to be done and changes ought to be achieved through consensus.

The Chair: Well, just to clarify your last point, when you're suggesting that this committee couldn't make recommendations for changes—

Mr Duncan: No, not at all.

The Chair: What are you saying?

Mr Duncan: We on good faith agreed to participate.

The Chair: Yes.

Mr Duncan: Listen, we caucused it, whether or not a committee—

The Chair: Oh, I see, because you don't have a majority.

Mr Duncan: No, because the government does have a majority and historically, notionally, the idea that changes to the standing orders or changes to the way this place functions have been achieved by consensus. That was broken I think in a first major way in 1992 by the government of the day. I wasn't here before then so I can't comment, but arguably, some of the changes in the late 1980s, where there was give and take, were still imposed by governments, but then the 1997 changes were imposed. But in 1999—and I said this publicly and I signed the document—I thought the government of the day, your government, negotiated in good faith. We didn't get everything we wanted and they didn't get everything they wanted, and we managed, I thought—including going to committee after first reading. My hope is that will continue to be the modus operandi.

The Chair: Thank you for clarifying that.

Mrs Munro: Do we have time for any more questions?

The Chair: Well, yes. We do have other business that we will be moving to as soon as you finish, but go ahead.

Mrs Munro: Because the conversation was most recently on the issue of private members, I just wanted to get your opinion on that function, because I've been in the position of being able to introduce both a resolution and a private member's bill, but I've also been on the other side of the fence, so to speak, on the issue of actually accepting the private member's bill from a ministry point of view. It seems to me that as individual members, we're not often in a position to be able to have a private member's bill that is really workable. That's the only way I can explain it. So I think it's important to have this function. I would argue that it would be nice to be able to do it oftener. I say "nice" guardedly, because that's, I'm afraid, as far as it'll be.

But I'm also conscious of the fact that, as an individual member, we just don't have the kind of resources and stakeholder management and all those things that a ministry has. So you can, as an individual, respond to a situation that you think is an appropriate way to deal with this and, of course, when a ministry then tries to become the lead ministry in terms of the bill—whoa. There are all kinds of problems that emerge.

I'm wondering whether or not private members' bills should be viewed not so much—and this goes to your point about third reading, where they do happen to click and do happen to be something that, yes, you can bring forward and so forth, that that opportunity would be made available. But where, quite frankly, in the minds of the original author, they create some really serious unforeseen legal or logistical problems, it seems to me that the individual member should be seen to have brought attention to a specific issue and perhaps then prod government to be looking at ways to address that kind of issue, but not be seen as being defeated in that context. As I say, I've been on the other side where there's been a genuine effort on the part of the ministry and the government to look at a particular piece of private legislation to see, "Is it workable?" So I think perhaps that has to be part of the conversation when we talk about private members' bills.

Dr White: I agree. Essentially what you're saying is that with power comes responsibility. Part of my answer would be that one would need to recognize that there are different reasons for private members' bills. There are

some private members' bills that are brought in because members have a genuine policy interest and are trying to affect the law of the land; there are other instances where it's purely political, perhaps for local constituency reasons, perhaps for party reasons, all kinds of reasons; and there are other reasons why one does private members' bills as well. So yes, that would need to be taken into account.

I might also add that although I didn't want to get into too many details—I've spent too much of my life in amateur attempts to rewrite standing orders that I don't want to do this—my notion here of dedicated time to third reading for private members' bills would not imply an automatic right to a third reading for a private member. Like it or not, one of the fundamental principles of our system of government is that the government retains control over the order paper and the government calls—or not—government bills for third reading. I would be very leery of a system whereby a private member could, in a minority government situation, force through a bill. There are political pressures one can apply and hope the ministry takes it seriously and so on, but my hope would be that this time for third reading would be done in consultation among the parties, the House leaders, but that ultimately the government would retain the power to decide whether or not to call a bill, for exactly those sorts of reasons.

The Chair: It's very interesting. Professor White, I would like to thank you very much for being here with us this afternoon. It's certainly been a privilege for our committee to be able to spend this time with you. We very much appreciate your willingness to answer the questions and listen to our members in the gracious way in which you have and we thank you again for your time and effort to be with us.

Dr White: You're most welcome. I am truly honoured to have been here and taken part in the process. Good luck in your deliberations.

The Chair: Thank you again.

We will now resume our closed session, so we will complete this part of the open meeting. We need to revert to giving some direction to our researcher and there are two other business matters that I would like to talk to the members about.

The committee continued in closed session at 1714.

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