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Wednesday 16 October 2002

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des débats
(Hansard)**

Mercredi 16 octobre 2002

**Standing committee on
government agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Chair: James J. Bradley
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 16 October 2002

Mercredi 16 octobre 2002

The committee met at 1000 in room 151.

The Chair (Mr James J. Bradley): I'm going to call the meeting to order this morning. There are a couple of housekeeping items. First, I have to ask unanimous consent of the committee to extend the deadline for consideration of Peter Zakarow, intended appointee to the Ontario Rental Housing Tribunal, until October 23, 2002, because he was unable to be here when he was scheduled.

Mr Bob Wood (London West): So moved.

The Chair: It is moved by Mr Wood. All in favour? Opposed? Carried.

The second one: I ask for unanimous consent of the committee to extend the deadline for consideration of Watson Slomke, intended appointee to the council of Dental Technologists of Ontario until October 30, 2002. Again, Mr Slomke was unable to make it at the scheduled time.

Mr Wood: So moved.

The Chair: Mr Wood has moved the motion. All in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

PHILIP CLAY

Review of intended appointment, selected by official opposition party: Philip Clay, intended appointee as member, Consent and Capacity Board.

The Chair: The first intended appointee is Philip J. Clay, as member, Consent and Capacity Board. Mr Clay, you may come forward. As you know, you have an opportunity, if you choose to do so, to make an initial statement, and then there will be questioning from each of the parties represented on the committee. Welcome, sir.

Mr Philip Clay: Thank you, and good morning. Yes, I would like to make an opening statement.

Thank you for the opportunity to appear before you to review my background and qualifications and to address any questions you may have concerning my intended appointment to the Consent and Capacity Board.

I was raised in the Sudbury area. I received my BA from the University of Toronto. I then moved west and took my law degree at the University of Saskatchewan. At that time I was most interested in practising criminal law and I did my major paper in law and psychiatry. It

was in that class that I first had the opportunity to attend psychiatric hospitals and even detention centres for the criminally insane. It was an eye-opening experience.

I moved back to Ontario and was called to the bar in 1983. I began practice as a sole practitioner, joining a firm in Hamilton in 1984. My practice was a mix of litigation work, including criminal law, family law and general litigation as well as some wills and estates work. In the mid-1980s, I took courses in mental health law and was added to the legal aid panel of lawyers who were prepared to represent psychiatric patients before what was then the review board. I argued a number of cases over many years.

In 1988, I was appointed as a panel lawyer to what is now the Office of the Children's Lawyer. I continue to represent children in custody and access cases and child protection cases.

In 1993, I received training in family mediation and added mediation to my practice. I took advanced training and am now recognized as an accredited family mediator by the Ontario Association for Family Mediation. Over time, I was asked by my colleagues to act as a facilitator at private settlement meetings. I am also a settlement conference facilitator for the Ontario legal aid plan. I have conducted private arbitrations in family law matters. I have received sworn evidence from witnesses, made rulings and rendered written decisions. I developed an interest in applying mediation in child protection cases and made a proposal to do that back in 1996. Finally, in 2001, a project began in the Hamilton area and I have now completed successful mediations with the children's aid societies, parents and other potential caregivers as equal parties at the table.

I have been active in my professional associations. I am now a trustee of the Hamilton Law Association, having chaired the family law subsection and presented at various seminars. I am a member of the liaison committee of the Superior Court, Family Court at Hamilton, and I have taught family mediation at McMaster University since January 2000.

My volunteer work is set out on my CV. I feel very fortunate to have had the opportunity to chair our local Big Brothers Association in Hamilton, as Hamilton pioneered in school mentoring, a program that has been very successful and is now available across the country. I had the opportunity myself to mentor two young children in the school system. I am involved in a leadership role in

activities with children and youth in my home community.

While I very much enjoy my private practice, I have always looked for new challenges. I have had an interest in mental health law since law school 22 years ago. In my family law practice, mental health issues often present themselves and are the subject of custody-access assessments and parenting capacity assessments.

The Consent and Capacity Board is asked to adjudicate in a very difficult and critically important area. It must balance the competing interests of the safety of the patient and the community, and the right of an individual to make his or her own decisions and to enjoy the freedoms that are the hallmark of our society.

I was most impressed with the process that is required of all lawyer applicants to the board. I was required to render a decision based upon a set of facts that were sent to me. I was then required to attend a lengthy interview that had as its focus a critical analysis of the decision I wrote. In my case, the interview was conducted by the chair of the board, Michael Bay, and board members John McNair and Catherine McNamara. I understand the interview results are submitted to the ministry before any decision is made concerning an appointment.

I think it is important that those serving on the board have the requisite skill sets to be able to listen effectively, act impartially, think critically and judge fairly. I believe, if appointed, my background and experience will equip me to do this. I look forward to your questions.

The Chair: We begin our questions with the official opposition.

Mr Michael Gravelle (Thunder Bay-Superior North): Could you give us some more details in terms of how the appointment came about, in terms of your contacts? You're right, I think this probably is increasingly one of the more challenging boards to be sitting on in terms of the decisions that are being made. There have been some real changes, obviously, related to mental health, particularly Brian's Law. Could you begin by simply telling us about the process that led to the appointment? Did you ask for the appointment?

Mr Clay: What really happened was that I've become known in the Hamilton area for mediation and for becoming interested in mediation in what is sometimes described as dependency situations, or situations where vulnerable people are mediating with agencies or groups that are seen as having a more dominant position; that's the child protection mediation I began doing.

In the course of this, I had discussions with a colleague, John Harper, vice-chair of the board. He was interested in the work I was doing in the child protection field. I also knew a mediator, Trish Muldowney-Brooks, who also sits on the board and whom I had sat on the board of Big Brothers with. We had connected over the years with respect to mediation work and things we were doing.

It was mentioned to me that the board was looking at mediation and alternative dispute resolution as a way of addressing some of the types of cases that might come

before them. It was suggested to me I should put my name forward to sit on the board and that with this project, which as I understand is coming about, having potential board members with mediation experience might be useful in that endeavour.

Mr Gravelle: Who did you hear from? Who finally contacted you related to the position being available, or who asked you to sit on it?

Mr Clay: It was John Harper, whom I spoke to some time ago regarding this. I told him I would be interested. I submitted a CV to start the process.

Mr Gravelle: Your experience would obviously appear to be very useful and apt for the position. We've had other people who have appeared before us related to the Consent and Capacity Board, and I think everybody recognizes how difficult it is.

How familiar are you with Brian's Law? There have been some real changes, which leads us into the whole issue of community treatment orders. It was certainly one of the more difficult decisions all of us made in the Legislature, related to the passage of that particular legislation. So I'm curious how familiar you are with it, if indeed you are—I'm actually presuming you probably have some familiarity with it, based on your own background—and whether you think it has been effective or a useful piece of legislation and whether it's working.

Mr Clay: I'm familiar with the legislation. I'm familiar with the debate that went on at the time of the legislation coming forward. As you note from my background, I have not been involved directly in the implementation of mental health decisions recently, so it's difficult for me to comment as to how effective it has been relative to the situation prior to Brian's Law being passed. But in general terms I see it as a measured and careful response to very serious situations. The opportunity to have people receive treatment in the community and be mandated to do so and to have steps taken if the treatment is not taken I think is a good balance.

1010

Generally, mental health law has changed dramatically over the decades from the point where, historically, people with mental disorders were put away, if I can put it that way, and we've moved in a measured way to balancing interests and balancing safety against civil liberties. I think that Brian's Law achieves a sensitive balance between those two competing interests.

Mr Gravelle: The people who are going to challenge decisions that are made are people who in essence are saying that their right to make decisions for themselves or right to make choices about their own lives is being obviously challenged, and that's why they would want to fight those decisions. I know it's probably difficult to answer unless you're talking about a specific case, but how do you find a way to balance the information received from the psychiatrist, from the professionals or from the family? Perhaps, again, with your skill set you might be able to discuss it. How do you find that balance in making that decision? Do you lean more strongly based on what you think the psychiatrist perhaps in this

case might say? Can you give us some insight into how you work and try to render a fair judgment?

Mr Clay: I think you're right, sir, in that before you begin any case, you've already had, in the case of a review of involuntary status, for example, a psychiatrist determine that the patient should stay in a mental institution. It's already beginning from that viewpoint. However, the Legislature, in passing the mental health laws we have and in creating the Consent and Capacity Review Board, now the Consent and Capacity Board, recognizes that the types of decisions that are made are judgments. Any psychiatrist would admit that it is impossible to predict future behaviour. What you do is you base things on the best diagnosis you can. Past behaviour is predictive. But it's impossible.

The psychiatrist making determinations is making a judgment. They're making a judgment based on the facts available to them. Our law permits the patient, quite properly, to have that judgment reviewed. In reviewing the judgment, you may have additional facts that aren't available to the psychiatrist who may sign that certificate of involuntary status, and you must weigh all of the evidence. I think all of the evidence is to be accorded weight. I think you need to listen to all of the facts in terms of what the plan for that patient is.

It's important that the boards include a psychiatrist as well so you have somebody sitting with you who has the expertise to understand the psychiatric diagnosis and the possibilities. But the community member, the lawyer member and the psychiatrist also have to weigh all of the other facts that the family members and others would put forward. So it is a judgment; it is a weighing; it is a balancing.

I think that it was important, as I indicated in my opening remarks, that I had the opportunity to do that in a complicated and difficult set of facts that I had to write a decision on for the board.

Mr Gravelle: Let me ask you, if I may also, for your thoughts related to the way that people with mental health problems are treated in general in the province. We know that there has been a cutback in the number of beds available across the province and obviously in acute care, mental health care and everything else. We also know, certainly based on speaking with police officers across this province, that one of the concerns they have is that a lot of people who have mental health problems end up in the correctional system, as opposed to getting the kind of help they need. I would like to know your thoughts on that. It certainly strikes me as an indication that we're not putting our priorities where we should be, that still somehow mental illness is not considered as important an illness perhaps or a priority as other illnesses are. I think there are some real tragedies as a result, and we've heard them. So I'm curious as to your thoughts on that one, whether you are conscious of that reality and whether you think that there should be some shift in priorities in order to change that. Certainly it seems to me that having people with mental health problems going to the justice system is wrong.

Mr Clay: I would certainly agree from my experience in criminal law that many of the people who do come before the criminal courts have mental illness and emotional disturbance. Sometimes it's difficult to distinguish whether somebody really is mentally ill or what the presenting problem is.

I don't think I'm in a position to comment generally on the allocation of resources that the government should make to mental illness but I would say that I think it's a given that treating the most vulnerable members of society has to be a priority for any society. Patients with mental illnesses are vulnerable, and we know that many, if not most, of the homeless people in our society suffer from mental illness.

I have in my practice in dealing with young offenders, with youth in the children's law system and with the parents of children who come into the child protection system, addressed on many occasions people with mental illness and their challenge to find resources. I think it's a balancing between what you can do in the psychiatric hospitals and what you can do in the community. I think that more work in the community allowing people the dignity to be able to live in their own homes—because as much as a society we try to eliminate the stigma that comes with mental illness, I think it's probably fair to say that more than other illnesses, people with mental illness are stigmatized. I think we have to be conscious of that and do what we can to have these vulnerable people in our society live with dignity.

Mr Tony Martin (Sault Ste Marie): I'm just fascinated by your last few comments. I couldn't agree with you more. I don't think government has any greater responsibility than to look after those who are most vulnerable and at risk in this jurisdiction. In this instance, we have people who are mentally not well counting on us to make the right decision on their behalf. So it behooves us in any way that we can to make sure that those who are put in positions like the one you're applying for here this morning understand the gravity and the seriousness of the appointment. Some of us here like to know what a person's basic approach to this is, where you come from, what your position is on a wider scale, a more global scale, toward this kind of thing. I've been listening and I'm certainly happy with the responses that you've been giving and your obvious understanding of what it is we're trying to do here. As you've indicated, the discussion around Brian's Law was very difficult for many of us and at the end of the day it was a gut-wrenching decision whether to stand for or against. Our caucus split on it, it was that difficult.

I'd be interested in your view of where we've come as a government, not just the present government but as governments over the last 10 or 15 or 20 years, with respect to people with mental illness and what we've done wrong and what we've done right.

1020

Mr Clay: I think that what we've done right as a society—let me put it that way because over the last 10 or 20 years all three parties have had the opportunity to

govern—is allow people with mental illnesses to live in the community. If you go back to the 1960s and the period before that, mental hospitals were where people who were diagnosed with mental illnesses went to live. Family members would visit with them, but they wouldn't be part of the community. In having people released from psychiatric hospitals into the community, the challenge is to provide the resources and the follow-up for those people. As the previous questioner indicated, many of those people do fall between the cracks in terms of appearing in the criminal courts. So I think it's struggling with that balance, between allowing people the dignity to live in their own homes, to be able to lead their own lives.

The reality is that the difference between somebody who is potentially a violent criminal and somebody who is a productive member of society holding down a job can be whether they're taking their medication or not. It's a line. The development in terms of the types of medication and treatment should allow people more of an opportunity to live their own lives, not confined to hospitals. But I think for the protection of society, we have to have some measures in place to ensure that people take their medication and are managing their illness. So it's a question of follow-up. Ideally, fewer people confined involuntarily and more people in the community followed up properly and leading productive lives is the goal that everybody's striving for. It's a question of how you get there.

Mr Martin: What responsibility do you think government has in terms of that community support that is obviously required in many instances to make sure that somebody lives in a safe and comfortable environment regardless of their condition?

Yesterday an inquest started in Sudbury where a young woman died while under house arrest because she abused the welfare system, according to the rules that were implemented some three, four or five years ago. She collected welfare and also applied for and was successful in getting some loans through the OSAP program. It turns out, in the evidence that was given yesterday, that she had some mental health difficulties and probably overdosed because of that. What could we have done? Who is responsible there to put her in that kind of circumstance with her condition such that everything coming together the way it did—I don't know if you've followed it or not.

Mr Clay: I'm generally familiar. I recall at the time the tragic for somebody with a mental illness, death of this woman in my hometown of Sudbury. I haven't followed the specific testimony.

Again, not knowing the specific evidence from yesterday but just speaking generally, it's always very difficult to know whether somebody is suffering from a mental illness. Some people are followed up by their physician and there are diagnoses and histories and things. In other cases, often you find out about whether somebody has a mental illness from what they've done or not done, as the case may be. That's a challenge. In one sense, the ability

to have house arrest rather than incarceration could be viewed as a positive thing for somebody with a mental illness—it's not necessary for the state to incarcerate someone—but, then, where's the follow-up?

I can't speak specifically to this particular case, as to whether it was known and follow-up was not provided, but certainly there's no shortage of tragic events that can happen to people with untreated mental illness.

Mr Martin: Do you think it's appropriate to throw people who are in need both physically and mentally into the criminal justice system?

Mr Clay: I think the criminal justice system has to respond to criminal acts, so if a crime is committed, that's a matter for the criminal justice system. Once the person is in the criminal justice system, one of the things is to determine their capacity to stand trial. One defence that is available to someone in the criminal justice system involves a defence that is based upon their mental state at the time.

In terms of the police making the arrest or dealing with the safety of the public, they can't make the determination on the scene as to, "We won't proceed with criminal charges here because clearly this person has a mental illness." They could have an emotional disturbance or be doing something crazy that is not related to a mental disorder but may be related more to anger management or emotional disturbance. So it's not at that point, when they're put into the criminal justice system, that the decisions are made. But the system itself, through the use of remands to obtain psychiatric reports, through defence counsel bringing forward the situation that the accused is facing, has to respond to the offender who is before them, as an offender found guilty of the offence.

I think it's inevitable that people with mental illnesses are going to come into the criminal justice system. It's a challenge to the criminal justice system as to how they are dealt with.

The Chair: We now move to the government caucus.

Mr Bert Johnson (Perth-Middlesex): I just had a short statement. I was impressed with your list of contributions, not only to your professional bodies in Hamilton but to your community. I don't have a lot of experience in what you are undertaking by applying for this particular position but it's a very important one to our community, to our province, to all of us. I trust you will contemplate that occasionally the kindest, the most humane, the most compassionate thing you can do is to take away somebody's rights and have them looked after by an institution. Certainly if that were the only or even the most common solution, we wouldn't need you, but we trust your judgment and, until I learn different, I will be very pleased to support your appointment.

Mr Clay: Thank you very much.

Mr Frank Mazzilli (London-Fanshawe): I just want to say, sir, I think you will do an excellent job.

We keep hearing from the opposition of people with mental illness ending up in the criminal justice system. Obviously you know that in the Consent and Capacity Board, in the cases that come before you, the criterion is

that they are a danger to themselves or others. Often you will get cases where someone has shoplifted and perhaps there is a mental illness, but that doesn't fit the criteria to take it out of the criminal justice system. As politicians we can change that, but you know the debate when you are taking someone's liberty away with fewer criteria. That would be seen by the public as too harsh perhaps. So I think we have to stop complaining that some people end up in that system when we've made this criterion that you must be a danger to yourself or others, and then you have shoplifters who end up in the criminal justice system.

Mr Clay: Yes. Your comment is in line with what I was saying earlier that there are inevitably people with mental illnesses who end up in the criminal justice system. The challenge to the Consent and Capacity Board is to apply the criteria under the legislation before us. From Mr Johnson's question, certainly, public safety and what's best for the patient must be balanced with civil liberties. That's the challenge for the board.

1030

Mr Wood: How would you assess the effectiveness of the criminal justice system in facilitating mental health treatment for those who need it in respect of those who are found guilty?

Mr Clay: I'm not sure that I'm personally in a position to comment on the effectiveness of the criminal justice system in that respect. I know of the facilities in Ontario and I know of the—

Mr Wood: Sorry to interrupt—I'm focusing more on the courts. Do you think they are good at facilitating mental health treatment for those they find guilty who need it, or do you think they need more work in that area? That's really focusing on what the courts themselves did as opposed to what happens after the courts have dealt with it. Sorry to interrupt; I just wanted to clarify.

Mr Clay: I think most situations like this depend upon the resources available in a particular community to be able to access assistance for people with mental health disorders.

The judges, in my experience, are acutely aware of the fact that the many people before them require mental health assistance. When I was practising before the criminal courts I represented many people in fact who did require assistance, and routinely orders were made for psychiatric evaluations and those came before the courts. The sentencing, in my experience, always took into consideration the needs of that individual and the need for protection of the public in terms of the mental health issues that the person is facing.

So I think that the legislation there in the Criminal Code and elsewhere—for the courts to address situations—any given situation in any given community depends on the resources and the abilities of the people in that community to meet the needs.

Mr Wood: We're told that—some say 25%, some say 15%, but a significant number of people in the correctional institutions are diagnosably mentally ill. How

would you account for that high number of people that are mentally ill in our institutions?

Mr Clay: I think that the nature of certain types of mental illness is that it can cause irrational and violent behaviour, and so it's not surprising to me and, I respectfully submit, shouldn't be surprising to anyone that undiagnosed or not properly treated people with mental illnesses end up in the criminal justice system and end up in our correctional institutions.

Now, I suppose the question is: after the finding of guilt, should they be in correctional institutions or should they be in high-security specialized psychiatric institutions? Certainly, we have a responsibility as a society to ensure that people we incarcerate receive treatment, because ultimately they are going to be coming back on to the streets, into our communities, and we don't want to have untreated or undiagnosed mentally ill patients with violent pasts in our community.

So I don't think it's surprising that the rate's that high. I do think that does speak to the fact that we have ongoing responsibilities to ensure that people with mental illnesses do obtain the treatment that they require.

Mr Wood: Do you think that those in the institutions by and large have good treatment plans or not-so-good treatment plans?

Mr Clay: I don't think I know enough about the treatment plans within the institutions to comment specifically on how good they might be—

The Chair: The time has expired. Thank you kindly, sir. You may step down, Mr Clay.

HARRY CHADWICK

Review of intended appointment, selected by official opposition party: Harry Chadwick, intended appointee as member, council of the College of Dental Hygienists.

The Chair: Our next applicant is an intended appointee is a member of the council of the College of Dental Hygienists of Ontario, Mr Harry Chadwick. You may come forward, Mr Chadwick. As you know, you are entitled to make an initial statement, should you see fit, and then we will begin the questioning after that.

Mr Harry Chadwick: Thank you, Mr Chairman. Good morning to you and your committee. I do have an opening statement that I would like to make to the committee, if I may.

I would just like to enhance and update my brief resumé with respect to other activities that I have been involved with. When my political life ended—rather abruptly, as they sometimes do—my community encouraged me to become involved in certain activities, one of which was the Chinguacousy Health Services Board, which had land in Brampton to build a hospital but no hospital. The land languished for over 25 years without a commitment of any kind. Of course, our goal was to get that commitment. To make a very long story short, we finally got that commitment. The community was overjoyed after such a long wait. The time and the frustration in achieving such a monumental commitment in these

times—to say the least it was extremely rewarding. So now our community is going to have, within the next five years or so, a nice new hospital that will serve a large and growing community, and I am so proud to be a small part in helping to achieve that goal.

In my political life I was proud of my community and country as I watched and participated with my colleagues of different political stripes, all dedicated and hard-working, to achieve the best for their people—similar, I'm sure, as to how you all feel. I've lived, worked and raised my family in what was once a small town, Brampton, which is now approaching a small metropolis. We'd like to think it's nudging the much larger metropolis of Toronto.

My union involvement is also a source of pride to me. It also taught me that there are so many social problems when you deal with people. When you find yourself in somewhat better circumstances than some, then you feel it rather incumbent to help out in some way. So the experience was important for me to understand how people in a number of ways are fragile and count on you, if you can help, and so you should.

My municipal tenure was certainly an experience of being more involved with people and was a very satisfying time as far as politics was concerned. Your close neighbours were your constituents and of course were ever present, so the personal aspect was there in deference to other levels of politics. I think that what I am trying to say through all of my smoke is that I would like to bring community to the committee that I wish to sit on.

Gentlemen, thank you for your attention. I am in your hands, Mr Chairman.

The Chair: We will begin the questioning with the third party, Mr Martin.

Mr Martin: What political stripe did you carry when you ran federally?

Mr Chadwick: What political stripe did I carry?

Mr Martin: Yes.

Mr Chadwick: Well, I was elected on the Progressive Conservative ticket.

Mr Martin: Yes. I guess that then the next question is: how does a good union guy end up running for the Conservatives?

Mr Chadwick: What's wrong with that? There are lots of union guys that are in different political parties. The union doesn't brand a person, in my view, in a political field, and the political field doesn't brand the union.

Mr Martin: It would be the same kind of question I'd ask if somebody from the chamber of commerce was running for the NDP. You'd be wondering, you know, what was going on.

Mr Chadwick: I understand. I know it's a question in a lot of people's minds whenever I've raised it or when people in my community know my background. They wonder, and it's a question to them: how do you do this?

Mr Martin: Yes. Not that I think it's unhealthy. I think a good mix of people in any political party is healthy.

This appointment that you're seeking this morning—I did pick up a reference to some participation in some of the health areas of your community. Why this particular appointment? How did that all happen?

Mr Chadwick: The minister, Mr Clement—I've had some dealings with him in bringing issues to his office from people in my community that live and reside in his area and have problems within his area, and I've represented them because I have time on my hands now. I suppose, through him, one of the members of his office contacted me and asked me if I would like to sit on that committee.

1040

Mr Martin: And what would you hope to accomplish by being on this?

Mr Chadwick: It's public participation on that committee, and I would hope to accomplish a public and community view on that particular committee.

Mr Martin: What are the issues that they would be dealing with?

Mr Chadwick: On the committee?

Mr Martin: Yes.

Mr Chadwick: I have not had any involvement with the committee and it's very difficult for me at this particular time to announce what the issues may be. You'd have to be involved, I would think. As a member of the public, you're not involved in those particular issues unless they're blown up.

Mr Martin: One of the issues, and it's across the board in most of the health care professions, is that there's a struggle over who does what—the scope of practice. You get the optometrists battling with the ophthalmologists over who does what, who should be over who and all this kind of thing, in a community where we're trying to create some level playing field, where different people with training and professional abilities should be allowed to do what they do without either creating the extra bureaucracy or the cost that goes with duplication. In the instance of dental hygienists, one of the issues is, should a dental hygienist be allowed to practise what they've been trained to do, without the oversight of a dentist? If you're like me, you go in every six months and you get your teeth cleaned and, at the end of the cleaning, if you don't have any cavities—and I've been lucky for a while—the dentist comes in for maybe five minutes, if that, and taps your teeth and takes a look and has a chat with you and then walks off to the next room. Sometimes as I'm sitting there I'm thinking, "Man," and then you get your bill, right? What would your perspective on that be? Should a dental hygienist be allowed to practise on their own or should they continue to be under the oversight of a dentist?

Mr Chadwick: I saw some briefing notes just recently in reference to a paragraph or two in reference to the hygienists, and my view from that paragraph, from what I read, is that there's a distinction between the two and I think that distinction has to be met. They have to be kept distinctive. That's just a view that I have off the top of my head from reading paragraphs that I've seen.

Mr Martin: One of the other issues that's out there right now that you might be able to contribute some thought to, if and when you get appointed to this board, is the issue of dental services being made available to all citizens of the province in an affordable fashion.

Mr Chadwick: What is my view of that?

Mr Martin: Yes, and how do you think dental hygienists could contribute to making it, perhaps, more cost-effective?

Mr Chadwick: More cost-effective. Well, I understand from that briefing note that there are a number of dental hygienists in the province and that they're increasing, from what I read. I suppose if they serve some of the far-fetched communities within the province, that can make the whole situation much better than it is today. I think progress in the field with the dental people and the hygienists certainly can contribute to a more efficient system.

Mr Martin: We're looking right now, and I think all stripes of government have, over the last 10 years or so, looked at how we might reform the delivery of basic health care, and there's talk of putting groups of people together. We're now calling it the Ontario Family Health Network of doctors. We have a very excellent example in Sault Ste Marie of the group health centre, where a number of professions have come together and they've pooled their resources, they get funding from the government and they deliver a service that I think is exemplary. Do you think dentists and hygienists should be brought in under that umbrella?

Mr Chadwick: From the little I know about it, I would think doing that would make some sense. I think they should be included.

Mr Martin: OK. Thank you very much.

The Acting Chair (Mrs Leona Dombrowsky): We would now go to government members, and Mr Stewart.

Mr R. Gary Stewart (Peterborough): Thank you, Mr Chadwick, for your comments. It's interesting. I kind of like to see somebody go in with a clear mind so that you don't have the biases, because there is some, as in Mr Martin's comment, developing animosity, for lack of a better word, between the dentists and the hygienists because of turf protection, for lack of a better word. So for you to go in with a relatively clear mind without making it up, I think is complimentary to you because you're going in to represent an organization of the hygienists; you're not going in to represent the organization of the dentists.

It was an interesting comment by Mr Martin, suggesting that whether it is the Ontario Family Health Network or the rostering—whatever you wish to call it—the hygienist and the dentist are doing that now. Unfortunately, everybody likes to spread their wings a little bit and wants to get a little bit more of the action, which represents a few more dollars etc. Of course, one of the concerns that hygienists have is they have been going into nursing homes and so on and so forth and looking after some of the elderly, and some of the other groups are not overly supportive.

So mine is not a question; it's more to the fact that you are going in without any biases, one way or another, and I think that you should be. You've learned that through your involvement with the Conservative Party and the CAW, sir.

Mr Chadwick: You're absolutely right.

Mr Stewart: Right, thank you.

The Acting Chair: Were there any other members of the—

Mr Wood: We'll waive the balance of our time.

The Acting Chair: Thank you. Mr Gravelle.

Mr Gravelle: Good morning, Mr Chadwick. I do want to pursue a little bit further the issue, though, that Mr Martin was bringing up and Mr Stewart was talking about. This issue in terms of the dental hygienists' abilities and right to be able to provide the service without getting authorization from the dentist or dental surgeon is an important one. There are some who have made the case that because of the restrictions that are in place, this actually reduces patient accessibility, at times, to a dental hygienist.

I've certainly spoken to the dental hygienists on a number of occasions about this issue and have written the minister about it, and I don't think they're saying that dentists or dental surgeons should not have a very significant role to play. I think Mr Martin made the point that you go in on a regular basis to get your teeth cleaned and things like that. So as much as you're saying that you don't have a strong position on it, I do want to pursue it a bit with you because obviously, in going on this particular board, your input is going to be very important and you're going to be, I would presume, lobbying one way or the other. How much have you investigated this? You mentioned that you read the briefing note, but was there anything beyond that that you were familiar with?

Mr Chadwick: Nothing beyond that, no, sir.

Mr Gravelle: So you've got no familiarity with it at all?

Mr Chadwick: None whatsoever. I have an open mind.

Mr Gravelle: OK, well you have an open mind, and I do appreciate that, but do you have an opinion? With the briefing that you've received and the questions that have been asked, are you prepared to at least take a position on a tentative basis, just based on the discussion today?

Mr Chadwick: I find that when you're involved on a board, you usually try to find out the issues that are on the board, what the issues are all about, and investigate them. I haven't had that opportunity or that chance to do that and I really find it difficult to be able to take a position on anything in that respect without knowing what the position of the board is and what the arguments have been. I'd like to research that. As a politician, I'm sure you're aware that you research all of those things before you come to a point or a conclusion.

1050

Mr Gravelle: That's right, you try to do that, there's no question about it, but I guess my continued questioning is based on the fact that you certainly did know you

were being brought forward for this particular appointment. I don't know exactly when that was, but you were called forward.

Mr Chadwick: Fairly recently.

Mr Gravelle: I would have said, with the greatest respect, that you did have an opportunity or you would have had time to do a bit of research, this being one of the bigger issues that's out there. You just haven't had that opportunity?

Mr Chadwick: No, not at all. I appreciate what you're saying. I certainly would like to find out what the views of the board are and what has happened with the board; a little of the history of the board and what the positions are on the board.

Mr Gravelle: All right. Thank you very much.

The Acting Chair: Thank you very much, Mr Chadwick, for coming this morning.

WILLIAM PARKER

Review of intended appointment, selected by the official opposition party: William Parker, intended appointee as member, Criminal Injuries Compensation Board.

The Acting Chair: The next person on the agenda would be Mr William Parker. Mr Parker, we are a bit ahead of schedule, which is good. You will have an opportunity to make some opening comments and following that there is a possibility that you might receive questions from members of this committee.

Mr William Parker: Very good. Thank you very much for the chance.

I have been a practising lawyer since 1970. I grew up in the city of Toronto, in the Queen and Bathurst area, and attended Central Technical School there. I went back to school to matriculate, as they called it then, went through teachers' college in the summertime and taught upper-school English for a couple of years before going back to law school. I started law school in 1966, I think it was, and also started working in the summertime here in this building with the Attorney General's office, in the criminal appeals branch upstairs—special prosecutions 2, it was called—and then was hired on as counsel there in 1970.

I should tell you I'm married, still to the same person. I've got four lovely children, the last of whom is finishing aeronautical engineering this year, and a little grandson who is soon to go to school. He has a little play school now that he goes to; he doesn't like it a bit.

I travelled all over the province prosecuting criminal matters largely in the special prosecutions branch and also conducted hearings under the Police Act on behalf of the police commission into the operations of police people, police chiefs, police boards, local boards of commissioners of police.

In 1979, I guess it was—I had just turned 40 at that point—I decided to enter private practice. Just before going into private practice, I worked for a year down at the crown attorney's office here in York county prosecut-

ing fraud cases, which was sort of a specialty of mine while I was here.

Since becoming a private practitioner, although I have a general practice, I have largely done criminal matters, at trial and on appeal to the Court of Appeal and to the Supreme Court of Canada. I also take civil counsel work and I still practise. I do some medical malpractice, some personal injury work with other younger lawyers who like to do the paperwork more than I do.

I should tell you, as a matter of sensitizing my brain to some of the larger issues, while I was at the Attorney General's office—Arthur Wishart was the first Attorney General, and there was about five of them that I worked for as the time went on. I was one of the counsel there who drafted replies for the minister's signature in matters where people would come to the Attorney General as the chief law officer of the crown and expect to have answers to all of their problems associated with the courts and lawyers and the justice system generally. So it was quite an experience to have to look at the matter from not only a legal point of view but a broader justice point of view. That was one of my jobs there.

As counsel, I acted in prisoners' appeals for a couple of years. That's a situation where the prisoners don't have lawyers, so for a couple of years I had to make sure the prisoners felt their appeals were being pursued and their point of view got across to the court, although they weren't often able to express it for themselves in personal hearings.

I've mediated cases at the request of other counsel. I have a reputation for fairness, I'm glad to say, in addition to being punctual and industrious and just about everything else you'd like in a person like this, without being immodest.

I found out about the vacancies on boards like this but wrote in to the appointments office seeking an application form for this particular board. It's right in line with the kind of work I do. It's a chance to assist the applicants as well as the board in resolving these claims for compensation arising out of criminal cases.

I applied some time in the spring, I guess it was, and heard back a little while ago. I met with the chairman and the co-chair and another member of the board down at their offices on University Avenue. They outlined to me the kind of work they do and what they expected a person like me to do. I think at the end of it they felt, as I feel, that my talents and experiences are the kind of thing that might be of use on the board.

With that by way of an introduction, I'll answer any questions.

The Chair: Thank you very much. We begin with the government caucus, Mr Mazzilli.

Mr Mazzilli: Sir, you left the prosecutor's office in 1979?

Mr Parker: In 1979, yes.

Mr Mazzilli: So that was well before all the big raises came.

Mr Parker: It was. I took all the pension money out and blew it on furniture and a car, too.

Mr Mazzilli: So you'll be practising for some time because of that decision. That's my only comment.

Mr Wood: One of the important goals identified by the public of the broader criminal justice system is that of restitution to the victim. I think it's important not only that restitution be accomplished but that the victim feel that restitution has been accomplished. Have you given any thought as to how you might convey to the victim that restitution has been accomplished and give the victim a certain degree of closure to the matter?

Mr Parker: That's probably the most important function of the board. Because of the financial limits on compensation, it can't always be done financially, to compensate them or put them back in the position they were in before this misery happened to them.

During the hearing, I would hope that's an opportunity, in talking with them and hearing their application, to let them know that it's certainly within the board's mandate to compensate them. And there's the broader hope that the hearing would give them an opportunity to get their feelings out, more than just their claim for damages, and that they would feel they had been understood as a plaintiff, as a complainant and as a claimant. The hearing itself, quite apart from the award and the reasons for the award, may give them some comfort and understanding that they've been compensated as best society can do it.

Mr Wood: Those are my questions, and I gather we'll waive the balance of our time.

Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington): Good morning, Mr Parker. I am impressed to understand from your opening comments that it was under your own initiative that you had some interest in participating in this venture. Sometimes, we understand, that is not how people find themselves appointed to various roles. I am not saying that is always wrong either, but I am always impressed when a candidate comes forward. It would explain that you had some particular interest yourself in pursuing this type of service, and it's certainly a very impressive resumé that you've provided to the committee. I am curious to know if you have been involved politically at all in your career.

Mr Parker: I'm probably as apolitical a person as you might meet. My father was a CCF/NDP supporter for many years; my mother wasn't. I vote but I don't really have any firm views. Gerard Kennedy is the member in my area. I've never met him personally but I've admired the work he has done in the past and he's certainly an effective person in the House. I don't take any strong political views.

1100

Mrs Dombrowsky: I know that you have had the opportunity of being provided the same background around issues concerning the Criminal Injuries Compensation Board, and of course, that those people who would come before the board have had some issues around the level of compensation. Do you have an opinion about the level of compensation that is offered for victims at the present time?

Mr Parker: It was revisited in the red tape change and some of the figures were hiked up a bit. The board has its limits. They're modest; in many cases they've never approached the damage that's been done to people. Would more be better? I suppose it would. There are people who actually caused this harm, and often of course they have no money in these kind of criminal matters. So the answer is yes; I imagine that more money would be better. That's a political matter for legislation. I'd be just wishing, I guess, if I said there should be more.

Mrs Dombrowsky: As a member of the board, obviously you would be in a position to understand those concerns that would come from victims. Do you think you have a role or a responsibility to in any way track the number of people who would appear before the board and who would say, "This in no way is going to compensate me for the emotional cost or even the very real cost to my family or my own personal situation"? Do you think that as a member of the board you have a responsibility to transfer that information to the powers that be, to the government of the day, so that they would understand that while the board is serving a very important role, some reconsideration needs to be given so that a more meaningful effort is put forward to truly compensate victims of crimes for the circumstance in which they find themselves?

Mr Parker: I suppose the only thing I can say is that it would be a highly subjective view as to whether or not the claimants were satisfied with the amount of money. I'd be guessing—I think it'd be a shrewd guess, though—that there'd be over 95% that felt they didn't get enough money. There has got to be a bit of art, I suppose, in hearing, and part of my practice of the law referral system is to explain to members of the public who run into difficulties with the law society that there are of course limits, and everybody has to deal with the limits. I think that's an important part of the work. If there were more money then I'm sure it could be given out. I know it's quite a budget as it is, but not very helpful anyway.

Mrs Dombrowsky: That will conclude my questions, Mr Chair.

Mr Martin: In accepting this appointment or being interested in this appointment, are there any things about the compensation board that you had concerns about or you thought you might bring particular perspective to?

Mr Parker: Like I say, without being immodest, I'm pretty good at dealing with people. I just know that the majority of the claimants, with the limits that are placed on their compensation, will be dissatisfied with the way the thing works. Without being an apologist, I would hope that I'd be able to take a role in making sure they feel satisfied with what has happened.

Mr Martin: Which brings me to another point. I've had some back-and-forth with some claimants in my office who, first of all, felt like they were before the courts again. They had thought, "OK, the courts are over; that's done. Now it's a question of seeing if I can't get some compensation that will help me maybe get some

counselling or get my life, to some degree, back in order again so I can move forward.” They’ve felt in some instances, even with the physical set-up of the interview they went to, like they were back in court again. They had to relive a whole lot of very horrible experiences all over, simply to satisfy the criminal justice board members that in fact they should get this modest amount of money. Any comment on that and have you heard anything of that nature?

Mr Parker: Well, of course the claimants don’t have to appear. They can pursue their claims in writing. Most, I’m told, come to the board. They can also do an application electronically, so there is no unnecessary need for confrontation between an offender, for instance, and the claimants. So while it is difficult, I am sure, for a claimant to, as you say, relive these things, if it’s tough for them or impossible for them, they can do it in other ways and make sure that their position is put forward. But as far as conducting a hearing in the room goes, I’d feel comfortable that I could minimize the discomfort for them enough to help.

Mr Martin: In the example that I am thinking about, one of the people in the family did appear and was quite dissatisfied, felt confronted. Then another member who chose to write but then was asked that they should appear was very hesitant and fearful of that. It just made the whole experience rather distasteful and difficult when they had already been through that.

I appreciate the fact that you understand that there are different levels of comfort here and that there is a need to deal with the fact that not everybody is the same. Some people will be more comfortable in different circumstances. Would it bother you as a member of a tribunal if somebody refused to show up in person because of fears that maybe they aren’t willing to put on the record? Would that be a problem?

Mr Parker: I don’t know what position the board takes in, I would think, a very isolated and peculiar case such as that, but if there were any provision for them to be visited or their position taken outside the precincts of the board, I imagine one might be able to do something like that. I don’t know whether that fits into the policies of the board or not.

Mr Martin: Do you see it as a role of the board to somehow bring further closure or healing to this circumstance? Some of the folks who I have talked to who have been through the justice system share with me that really there is no justice. It’s simply a question of negotiation. You get what you negotiate at the end of the day in some instances, which is a term you hear often these days. Do you see this board as an extension of the system to try to somehow bring some justice or bring some closure, or does it serve another function?

Mr Parker: Well, it has that role, I think, quite clearly, as I have said. My position in relation to that, as I have said, is I would like to play my part in making sure there is some closure to the extent that is possible in a public forum like this. I acted for the woman whose husband was murdered up here in the University of

Toronto, and her children. It was very tough to deal with that.

Mr Martin: One of the issues—and I’m not sure how it is connected to this, but I thought I would ask. One of the things that I discovered is that—I thankfully have not been involved in the justice system yet—at the end of the day you hear of people being found guilty or innocent and there are fines levied. I assumed for the longest time that that money would go to the victim of the crime, but it doesn’t. Would you have any suggestion as to, perhaps, a better use of that money to do what you suggested here this morning: maybe up the ante a bit and give people money that would be more appropriate to the damage that was done?

1110

Mr Parker: A judge can always order compensation from the offender, and that is certainly done in some cases. Restitution is a part of the criminal case. The surcharge on fines was just hiked up. That money is collected by the system and applied in pursuit of policies that the government has laid down there. I don’t know if any of or part of that money finds its way to fund the program of this board or not, but that has just recently been reviewed and it has been raised. That money is collected as a surcharge where fines are levied in cases in court. That’s quite a pile of money, I would imagine, but that’s still part of the government’s role, I guess, in apportioning all that.

Mr Martin: You are aware that the government brought in a piece of legislation a while ago called the Victims’ Bill of Rights that was really laughed at by a judge when it was brought before him and used as an argument to allow for compensation. Are you aware of that particular circumstance?

Mr Parker: I am aware of the Victims’ Bill of Rights, but not in detail. It’s intended to assist people, as victims, to put their case forward. It’s very much a part of the approach of this board.

Mr Martin: OK. Thank you very much.

The Chair: That concludes the questioning today. You may step down, sir.

Mr Parker: Thank you very much.

The Chair: We now move to the consideration of the appointments. The first in consideration is Philip J. Clay, intended appointee as member, Consent and Capacity Board.

Mr Wood: I move concurrence.

The Chair: Mr Wood moves concurrence. Any discussion? If not, all in favour? Opposed? The motion is carried.

The second one is Harry Chadwick, intended appointee as member, council of the College of Dental Hygienists of Ontario.

Mr Wood: I move concurrence.

The Chair: Mr Wood has moved concurrence. Discussion?

Mr Martin: I’m probably going to support this appointment, but I have to put on the record my concern, and it was highlighted by Mr Stewart in a more positive

light, that Mr Chadwick comes to this job with absolutely no experience or knowledge of the area that he is now going to be called to be involved in. Granted, he will learn. Obviously, he has done so in his past life pursuits, but I'm not sure if absolutely no knowledge in areas that people go into, particularly where the public interest is concerned and the development or the application of public policy is concerned, is as positive a thing as Mr Stewart has laid out. There's no bringing of biases, but there's also no bringing of any experience or information either. I would not find that argument convincing, but nevertheless I will probably support Mr Chadwick's appointment, given his very strong CAW background and the knowledge he will bring because of that to this job.

The Chair: Any other discussion? OK, I'll call the vote. All in favour? Opposed? Motion carried.

The next one is William J. Parker, intended appointee as member, Criminal Injuries Compensation Board.

Mr Wood: I move concurrence.

The Chair: Concurrence has been moved by Mr Wood. Any discussion?

Mr Mazzilli: I just want to say that I certainly will be supporting Mr Parker. What impressed me about some of the things he talked about was when the bait was put out for him as to what proper compensation should or ought to be, he did not bite that bait. Essentially what he said was, "Society cannot compensate financially." What is

the proper amount for someone who has been sexually abused? There is no proper amount. And what he said was, "This is a process where people have to have dignity through the hearing, and society can compensate them the best they can," and I think that, going into that position, that's an important attribute to have.

Mrs Dombrowsky: I was very impressed with Mr Parker and will be able to support him. I would for the record, however, want to make very clear that there was never any intention to bait Mr Parker with any of the line of questioning, and I would caution the member not to judge me by your standards.

I think it is refreshing when we have candidates who come to this committee who have actually, of their own volition, sought out and got information and decided that it was a role that they wanted to pursue. So to his credit, he did that; he wasn't asked or it wasn't suggested that he might like to consider this. That someone has, because of his interest in serving the public in a very different way, decided to let his name stand on this board makes me very happy to support him in this.

The Chair: I'm going to call the vote, then. All in favour? Opposed? The motion is carried.

Any further business for the committee?

Mr Wood: I move adjournment.

The Chair: Mr Wood has moved adjournment. All in favour? Opposed? Carried.

The committee adjourned at 1115.

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