



ISSN 1180-4335

**Legislative Assembly
of Ontario**

First Session, 39th Parliament

**Assemblée législative
de l'Ontario**

Première session, 39^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 21 October 2008

**Journal
des débats
(Hansard)**

Mardi 21 octobre 2008

**Standing Committee on
Government Agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

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Room 500, West Wing, Legislative Building
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 21 October 2008

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The committee met at 0901 in room 228.

SUBCOMMITTEE REPORTS

The Chair (Mrs. Julia Munro): Good morning and welcome to the Standing Committee on Government Agencies.

I draw your attention to this morning's agenda, which will begin with the report of the subcommittee on committee business dated Thursday, October 9.

Mrs. Liz Sandals: I move that the committee approve the report of the subcommittee dated Thursday, October 9, 2008.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? Thank you. The motion is carried.

Our next order of business is the report of the subcommittee on committee business dated Thursday, October 16.

Mrs. Liz Sandals: I move that the committee adopt the report of the subcommittee dated Thursday, October 16, 2008.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? Thank you. The motion is carried.

INTENDED APPOINTMENTS

JUDITH KEENE

Review of intended appointment, selected by official opposition party: Judith Keene, intended appointee as member and vice-chair, Human Rights Tribunal of Ontario.

The Chair (Mrs. Julia Munro): Now we will proceed to the appointment review. This morning our interview is with Judith Keene, the intended appointee as member and vice-chair, Human Rights Tribunal of Ontario.

Ms. Keene, please come forward. Good morning and welcome to the committee.

Ms. Judith Keene: Good morning.

The Chair (Mrs. Julia Munro): As you may be aware, you have an opportunity to make statements if you wish. Subsequent to that, we will then consider questions from members of the committee. So, if you're ready, please begin.

Ms. Judith Keene: I would like to make a brief statement; thank you.

Good morning, Madam Chair, and good morning, members of the committee. Thank you for giving me the opportunity to come here today and speak to you. I'm here to tell you a little bit about my interest in this appointment as a member and vice-chair of the Human Rights Tribunal and answer any questions you might have for me.

I'm honoured to be considered for an appointment to the Human Rights Tribunal of Ontario and to be given an opportunity to participate in a tribunal that has an important role to play in the province. I believe I can make a contribution.

I think you have my application documents in front of you, so you know my legal background and generally what I've done in terms of a career. Human rights law has been an interest and an area of specialization for me since 1980, when I was a student at the Ministry of the Attorney General of Ontario. My career as a lawyer has been heavily focused on human rights law, statutory interpretation and administrative law generally. I've acted as a consultant to the chair of the then board of inquiry under the code, volunteered as an adviser on equity issues with the Law Society of Upper Canada, and regularly published law journal articles on human rights legislation in section 15 of the charter. I have given numerous presentations on human rights law at continuing legal education sessions hosted by the Law Society of Upper Canada and the Ontario Bar Association, and I've published two editions of legal texts based on the code, so I'm quite well versed in the law. I'm also very familiar with the legal milieu in which tribunal members must function and with the tribunal's obligations and responsibilities.

I'd like to highlight another important aspect of what I bring to the tribunal, and that is the variety of my experience as it relates to areas of our public life in which the code has influence. I've worked in the public sector, specifically the Ontario government, as well as the private sector. I've been both a manager and an employee. I've been a service provider and a consumer of services. As both an employer and service provider, and an employee and service consumer, I've been involved in health services, education, policing, government administrative agencies and the provision of legal services.

My volunteer experience has been somewhat wider than that. I've been interested in human rights throughout

my varied working and volunteer life, and the result of this experience is that I have some insight into human rights issues from both the applicant and respondent point of view. I think I can bring that insight to bear in disputes that arise under the code, as to how our rights and obligations can be honoured and integrated in a practical way into our daily business, and competing interests can be balanced.

The core of human rights is inclusion and respect for human dignity. The issues are rarely simple, but as a goal, the achievement of an inclusive society is worth all the dedication and hard work we can muster. This is an exciting and dynamic time for the tribunal and I'm committed to doing my part to ensure that everyone appearing before it—applicants and respondents—respects it for its accessibility, fairness, transparency, timeliness and knowledge of the issues.

I'm committed to the tribunal's core values and I welcome the opportunity to become a member. I'll leave my comments there and I'm open to any questions you might have.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin this morning's questions with the official opposition. Mr. Hillier?

Mr. Randy Hillier: Good morning. Thanks for being here. A few questions. First, this position, of course, is a full-time position, and you're presently employed. Are you expecting to stay with your present—

Ms. Judith Keene: No, I'll be leaving and joining full-time.

Mr. Randy Hillier: How did you hear about this appointment?

Ms. Judith Keene: You know, that's a poser. Let's see. I saw the advertisement, obviously. Did I hear about it even before then? Possibly. The main thing, I guess, is that I saw the advertisement.

Mr. Randy Hillier: Are you a member of any political party or have you made any donations to political parties?

Ms. Judith Keene: I'm only a regular donor to charities, and I'm not a member of a political party.

Mr. Randy Hillier: Some political parties might think we need charity, but—no, I'm just being—

Ms. Judith Keene: You had me going there for a minute.

Mr. Randy Hillier: The Human Rights Tribunal has been in the press significantly a lot lately, not necessarily just the Ontario one, but throughout the country. We've seen a lot of controversy in the media surrounding human rights and the increasing encroachment of human rights tribunals and commissions into freedom of expression. There have been a couple of high-profile cases. What's your view on the role of human rights tribunals and the censorship or suppression of freedom of expression?

0910

Ms. Judith Keene: The role of human rights tribunals is to adjudicate disputes that have to do with the legislation that's in front of them, and you have to focus closely on the legislation. Very little of our Ontario code

deals with anything that could be referred to as freedom of expression, but there are some sections that deal with that. As with everything else, I think you've just got to apply the law to the facts before you, you've got to listen carefully to the facts before you, and you've got to balance difficult competing interests.

Mr. Randy Hillier: When I hear the term "balancing competing interests," there are always people who have different interests. It doesn't mean that one interest is greater or less than another, it doesn't mean that one interest can interfere with another, so sometimes they don't need to be balanced.

You mentioned there's little in the legislation for the Human Rights Tribunal to interfere or suppress freedom of expression, but we have seen cases and disputes before it where people have been offended by other people's expressions and have brought those cases forward. In your view, do you see that as something that we should prevent from happening, to prevent these cases—I would say, often, beyond the legislative view of the Human Rights Tribunal—from even advancing to it, like the Maclean's case recently?

Ms. Judith Keene: I think we'd be in serious difficulty if we started, as it were, censoring people's right to bring a claim. The right to bring a claim is not the right to have your views vindicated, but this is part of a democratic society, part of our justice system, and everyone has a right to bring claims before the courts and before tribunals.

Mr. Randy Hillier: Unfortunately, there is no compensation for lost time for the people who have had a claim brought against them and who have been found not guilty, if we might use that term.

To me, human rights are the most fundamental and most important aspects that our system must protect. Our freedoms, due process, natural justice—all of these are very important. I'm wondering, in your view, do you think the human rights tribunals are the best place to adjudicate these disputes; or that, in my view, because they're so important, we should use the full weight of the justice system and put it in the courts, not the quasi-courts, to find resolution with disputes? What's your view on where human rights should be ultimately protected and defended?

Ms. Judith Keene: I think it's important to remember that administrative tribunals are very much a part of the justice system, that—I hope and trust and see—appointees are chosen carefully, and that our tribunals really have a very good reputation for fairness and for expertise. So that's a part of the answer to that one.

But part of the reason why administrative tribunals were created in the first place is accessibility. You can't get away from the fact that courts cost a great deal of money, and administrative tribunals, by contrast, are less costly to us and more far-reaching. And accessibility in another way; it's not just monetary. Where you have a more informal procedure, I think, is a big part of accessibility, and human rights law is really too important, to me, to be inaccessible.

Mr. Randy Hillier: I agree; it should not be inaccessible. But we also have seen the case where it has come to be abused. It is so accessible for some people that they have lodged multiple and many actions through the human rights tribunals at, again, no cost to themselves but at significant costs to the ones that they are disputing.

Ms. Judith Keene: Do you know, I haven't seen that in looking at the decisions.

Mr. Randy Hillier: I think there's a fellow at the Canadian human rights named Richard Warman who has lodged more than 50% of all complaints, so that one individual comes to mind. When one individual can lodge 50% of all complaints, then we know it is far too accessible for that person, anyway. I would think we would all agree with that.

Ms. Judith Keene: Again, I think that's a different system, and you're not talking about tribunal hearings—50% of tribunal hearings, 50% of decisions. I think when something is contentious or when a lot of people object to someone coming forward with something, it just takes on a bigger—it seems bigger than it is; it seems more frequent than it is. I think that's not quite true; the day-to-day business of administrative tribunals is perfectly unexceptionable cases.

Mr. Randy Hillier: I'll just finish off. I found it interesting that in your earlier response, you said you wouldn't want to censor applications to the tribunals, and I can understand the reasoning there. But I find it interesting that we're prepared to censor freedoms of expression and thoughts, or at least put them through the millstone of our tribunals; we're prepared to censor that end of things but not censor the applications. Thank you very much. Those are all my questions.

M^{me} France Gélinas: Good morning, Ms. Keene. Welcome to Queen's Park. I was interested in the different areas of public life that you have experience with. You mentioned the health care, policing etc. I wanted to know if you have any experience working with First Nations people.

Ms. Judith Keene: Some, but relatively little. It's been largely in a volunteer capacity and some experience in my present work, because some of the clinics I advise deal specifically with aboriginal people.

M^{me} France Gélinas: Okay, and I was interested in knowing your knowledge of northern Ontario.

Ms. Judith Keene: I'm sorry. Specifically? Northern Ontario is a beautiful place. I've been to a number of places in northern Ontario. I have huge respect for the legal clinics that operate in northern Ontario, with the vast distances and so on. I'm not quite sure, though, what you want me to focus on.

M^{me} France Gélinas: If you've heard claims, if you've worked in northern Ontario, if you have experienced the barriers, the difficulties, the differences for residents who live in northern Ontario versus southern Ontario.

Ms. Judith Keene: Well, I have some knowledge of that. It's vicarious. I haven't worked in northern Ontario myself, but what I have heard of and taken in is the challenges of living in northern Ontario, which include things that so often, in the southern part of the province, we take completely for granted. My present office, for example, does services by Internet, which is all very lovely, and I'm very proud of what we do, but the fact is, if you can't get Internet service, if it's out—and sometimes that's the case in the north. You can't depend on things the way you can in the south, that sort of thing, some sorts of infrastructure which just don't extend north. So it would be short-sighted in the extreme to expect that people working in the north will have the same supports as people working in the south, and you don't. You have to govern yourself accordingly.

M^{me} France Gélinas: And do you speak French?

Ms. Judith Keene: I don't speak French enough to conduct a hearing, I'm afraid. I try, but conversational is about all I get, and I'm a bit halting at that, I'm sorry to say.

M^{me} France Gélinas: Those were my questions. Thank you.

Mrs. Liz Sandals: Thank you for appearing this morning, Ms. Keene. You've got a wonderful background to work with the tribunal, and best of luck.

Ms. Judith Keene: Thank you very much.

The Chair (Mrs. Julia Munro): That concludes the questions from members of the committee. I want to thank you for coming here today; we appreciate the time you've taken.

I'd now like to deal with concurrences.

We will now consider the intended appointment of Judith Keene, intended appointee as member and vice-chair of the Human Rights Tribunal of Ontario.

Mrs. Liz Sandals: I move concurrence in the appointment of Judith Keene as a member and vice-chair of the Human Rights Tribunal of Ontario.

The Chair (Mrs. Julia Munro): Concurrence in the appointment has been moved by Ms. Sandals. Any discussion?

Mr. Randy Hillier: I would ask for a deferral.

The Chair (Mrs. Julia Munro): Okay. A deferral has been asked for, so we will then move on.

Mr. Michael A. Brown: Do we need to ask for a recorded vote now?

The Chair (Mrs. Julia Munro): Either way.

Mr. Michael A. Brown: We're asking.

The Chair (Mrs. Julia Munro): Okay. We will defer the vote, then. This concludes our business on intended appointments. We will now proceed into closed session, so I'm going to take a five-minute recess while we allow people to get organized for the next section of our meeting.

The committee continued in closed session at 0919.

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