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**Official Report
of Debates
(Hansard)**

Tuesday 29 May 2012

**Journal
des débats
(Hansard)**

Mardi 29 mai 2012

**Standing Committee on
Government Agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Chair: Bill Mauro
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Hansard Reporting and Interpretation Services
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Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
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Toronto ON M7A 1A2
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIES

Tuesday 29 May 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Mardi 29 mai 2012

The committee met at 0901 in committee room 1.

The Chair (Mr. Bill Mauro): Good morning, everybody, and welcome to government agencies. We have one intended appointee today. We have a few issues to deal with before we get to that, so, Mr. Kitchen, I'll just ask you to keep your powder dry there for a minute.

SUBCOMMITTEE REPORT

The Chair (Mr. Bill Mauro): The first issue is a subcommittee report. Can I have a motion to adopt the report, please?

Mr. Jim McDonell: I move that the subcommittee report be received.

The Chair (Mr. Bill Mauro): Thank you. A seconder for that?

Interjection.

The Chair (Mr. Bill Mauro): Don't need a seconder. Any discussion? Seeing none, all in favour? It's carried. Thank you very much.

INTENDED APPOINTMENTS

Mr. Bill Mauro: Item number 2 is a request for an extension of deadline for Yasmeeena Mohamed, and the official opposition has something they would like to share with us on that. Mr. McDonell.

Mr. Jim McDonell: I'd like to ask for unanimous support for the agreement that—do you want me to read the whole? Ms. Mohamed was selected by the official opposition for review on the May 4 certificate. She has been out of the country until the past weekend and was not available to be scheduled. We must consider her for June 3, 2012—that is a Sunday. Pursuant to standing order 108(f)(11), with the unanimous agreement of the committee, we would like to extend the deadline, and I am requesting unanimous agreement to extend the deadline for her to appear before this committee.

The Chair (Mr. Bill Mauro): Any discussion? Concerns?

Miss Monique Taylor: I'm sorry, I didn't hear one word of what he said.

Mr. Jim McDonell: Do you want me to read it again?

The Chair (Mr. Bill Mauro): Please, yes.

Miss Monique Taylor: Sorry about that.

Mr. Taras Natyshak: Summarize it.

The Chair (Mr. Bill Mauro): He's asking for an extension for one of the intended appointees. It's listed as item number 3 on your—

Interjection.

The Chair (Mr. Bill Mauro): Oh, you don't have that. I'm sorry.

So Ms. Yasmeeena Mohamed was an OIC selected by the official opposition to appear before us. She has been out of the country and unable to meet before us or be here and attend before us. Her appointment will lapse if we don't extend and allow her to come back to committee so that we can have her interviewed here. So the official opposition, who selected her from the OIC list, is asking for us to extend the deadline to allow her to appear.

Is there unanimous consent to allow that to occur? Any concerns? Okay. Thank you very much.

Item number 4 is the same issue for the May 18 certificate. Mr. McDonell, were you going to speak to that as well?

Mr. Jim McDonell: Yes, I'll read this. There were four selections for the May 18 certificate. These selections must be considered before June 17. As the House is expected to rise on June 7, there's not enough time to consider the intended appointments during this next meeting. Pursuant to standing order 108(f)(11), with the unanimous agreement of the committee, we can extend the deadline. I'm requesting unanimous agreement to extend the deadline to consider these intended appointees.

The Chair (Mr. Bill Mauro): Discussion? Do we have consent for that? Okay. Thank you very much.

MR. ROBERT KITCHEN

Review of intended appointment, selected by official opposition party: Robert Kitchen, intended appointee as vice-chair, Ontario Labour Relations Board.

The Chair (Mr. Bill Mauro): Our first intended appointee today is Mr. Kitchen, who is here before us today. Mr. Kitchen, thank you for appearing today. You may make a brief statement if you wish. Any time that you use will be deducted from the government's time for questions. Each party will have up to 10 minutes, and when you're concluded, the questioning will start with the third party. Welcome, Mr. Kitchen.

Mr. Robert Kitchen: Thank you, and thank you for the opportunity to appear before the committee. It's my intention to make a brief opening statement.

I made my first appearance before the Ontario Labour Relations Board in 1976 as an articling student. Since my call to the bar in 1978, I have practised, with few exceptions, exclusively in the area of labour relations. There were many facets to that practice, but they focused on three principal areas.

First was providing ongoing advice and representation to employers with respect to the statutes which impacted the employment relationship: the Labour Relations Act, the Employment Standards Act, the health and safety act, among others. That involved, over the years, numerous appearances before the Ontario Labour Relations Board. I have appeared on virtually every issue which impacts upon employers, from certifications to unfair labour practices to successor rights and common employer applications to unfair reprisal complaints under the health and safety act.

The second area of focus was advising employers on the interpretation of collective agreements and representing them before boards of arbitration.

The third area of focus, and frankly, somewhat unique for a lawyer, was, over the years I have been chief spokesperson in over 350 sets of collective agreement negotiations. I believe that has given me a keen insight into the dynamic of labour relations.

As a result, I believe I am widely respected in the labour relations community for my knowledge and judgment, for my integrity and for my sense of fairness.

I'd be pleased to answer any questions you may have.

The Chair (Mr. Bill Mauro): Thank you, Mr. Kitchen. You used about four minutes. So, the government, should you wish to ask any questions, there'll be about six minutes left for you.

We'll start with the third party. Miss Taylor.

Miss Monique Taylor: Good morning. Thank you for being here with us today.

You have been serving employers for 33 years—

Mr. Robert Kitchen: Someone has to do it.

Miss Monique Taylor: Yes, I understand that completely. Being on the Labour Relations Board, how do you feel that you would be able to be impartial? Unions and workers will be coming before you, expecting an impartial hearing at that time.

Mr. Robert Kitchen: I strongly believe that every party to litigation should have a fair opportunity to present their case, and that case be given full consideration. My reputation in the trade union movement is one of being an effective problem solver. I think I will be viewed as impartial by the trade unions, and I'm very confident that I can be so.

Mr. Taras Natyshak: Thank you for appearing before us.

How can the OLRB more effectively deal with the high volume of cases that are currently before it?

Mr. Robert Kitchen: My short answer is, I don't really know. My dealings with the OLRB have been as counsel, so I am not aware of the inner workings of the board and how cases are assigned and things of that nature.

It would strike me, just as thoughts without any background, that effective mediation—

Mr. Taras Natyshak: What does that mean?

Mr. Robert Kitchen: Judicial intervention into disputes, with a view to assisting the parties in resolving their disputes rather than litigating.

I would also think that looking for opportunities to expedite hearings and the timely rendering of decisions would all assist. But, I confess, I don't know, because I don't know the workings of the board.

0910

Mr. Taras Natyshak: But I can tell you're aware that there is a backlog and anxious to dig in to the inner workings of the OLRB to take on that challenge.

Mr. Robert Kitchen: Well, yes. I'm from the labour relations community that the board serves, and I think that community wants two things: They want predictability and they want timely resolution of issues, and I'm very interested in assisting.

Mr. Taras Natyshak: In that same light, in terms of predictability and the timeliness of resolutions, I'd like to get your opinion on provisions within Bill 55—which is currently before us as the budget implementation bill—that state that if interest arbitration cases are not entirely completed within 12 months of being referred to an arbitrator, then the OLRB would take the case away from the arbitrator and take it on itself as a going concern. What are your thoughts about that provision, in terms of adding to, or potentially adding to, a backlog within the OLRB? Positives and negatives, I guess, I'm looking for on that type of provision.

Mr. Robert Kitchen: I'll confess, my practice was very significantly private sector-oriented. I have done some interest arbitrations. I think that the arbitrator community will take note of that legislation, should it be passed, and I think there a lot of good arbitrators out there who are hearing these cases. I think that they would be embarrassed to have a case taken away from them and referred to the board. I don't know, but my gut says that it would not substantially increase the workload of the board, because if I was an arbitrator, I wouldn't want a case taken away from me.

Mr. Taras Natyshak: Okay. I appreciate your thoughts on that. It conjures up some thoughts that the arbitration community—how much time do I have left, Chair?

The Chair (Mr. Bill Mauro): You have about three and a half minutes.

Mr. Taras Natyshak: Thank you—that the arbitration community would feel that this provision would undermine its ability and potentially even its credibility. We wouldn't want them to feel that pressure that could exist under this provision to fast-track any—really, to take a quick route around the need for comprehensive arbitration. So I'm pleased to hear your thoughts on that.

Mr. Robert Kitchen: And just to give you some perspective, there's a provision in the Canada Labour Code that says that a rights arbitration decision has to be delivered in 30 days.

Mr. Taras Natyshak: How often does that happen?

Mr. Robert Kitchen: Not often, but it does provide some motivation. It sends a message, I think, to those deciding the cases that timely resolution is important.

Mr. Taras Natyshak: And I'm sure we're all focused on that.

My last question is simply, can you identify some of the more pressing challenges faced by the OLRB at this point in time?

Mr. Robert Kitchen: Again, I have to say that I'm not overly familiar with the inner workings of them. I think that, given the fact, from reading newspapers, we are in a time of limited resources across the board—

Mr. Taras Natyshak: Don't believe everything you read in the newspapers.

Mr. Robert Kitchen: Oh, okay. The speedy resolution of issues is something that the labour relations community would like to keep on the forefront, but again, I'm speaking as a former counsel as opposed to one who knows the ins and outs of the board.

Mr. Taras Natyshak: I have no more questions, Chair.

The Chair (Mr. Bill Mauro): Thank you. Does the government want to use their time? They do. Ms. Jaczek?

Ms. Helena Jaczek: Thank you, Mr. Kitchen. Clearly, you've detailed your very long experience as a member of the labour relations community, as you've said, but what in particular motivated you to seek this position as vice-chair?

Mr. Robert Kitchen: I announced my retirement from the law firm in June 2010, to be effective at the end of February of this year. I really didn't know what I wanted to do after that, except teach skiing. In November, I was approached—and, frankly, I never thought about seeking a position with the board, nor was I aware that there was that possibility. In November, I was approached by a vice-chair of the labour board and the chair, both of whom are former union labour lawyers of some 30 years whom I've had cases against. I was advised of the possibility, and I was encouraged to think about it. As I said to my 20-year-old daughter, who doesn't know what she wants to do when she grows up, neither did I. I thought about it, and I thought that it would be a very interesting challenge. I believe that I can make a positive contribution, so I submitted my application.

Ms. Helena Jaczek: Thank you. Having had the opportunity to discuss the position a little bit with the chair and vice-chair, are there any particular challenges, then, that you think you can bring your skills to bear on? You've mentioned a couple of things from your perspective that you feel the labour relations community expects. Could you sort of expand a little bit on perhaps how you see your role?

Mr. Robert Kitchen: Well, I am looking forward to the role of an adjudicator. I have some experience in that area, having acted as nominee on boards of arbitration in both interest and rights arbitrations. I have, I think, a reputation of being an effective problem solver. I've resolved over the years probably far more than I've litigated,

on some very difficult issues. I think I have strong mediation skills, and I would bring those skills to the board.

Ms. Helena Jaczek: Thank you very much.

The Chair (Mr. Bill Mauro): To the official opposition. Mr. McDonell.

Mr. Jim McDonell: Thank you, and good morning, Mr. Kitchen.

Mr. Robert Kitchen: Good morning.

Mr. Jim McDonell: I see from your questionnaire that you're very qualified, and so it's more of just a discussion here. But I'm just wondering: You've had quite an opportunity to deal with the board, and I see that in their annual report, the board talks about how they are meeting their targets very well. Only 1% of the certification votes take over 10 days, 85% of their cases are settled by mediation, and 90% of appeals upheld the board decision. In your dealings, do you see the board as working as well as they claim, or do you see places for improvement?

Mr. Robert Kitchen: From appearing as counsel, I think that the board historically has, through their labour relations officers and on occasion the vice-chairs, made significant efforts to resolve cases. So I wouldn't quarrel with that 85% figure. I wouldn't quarrel with only 1% of votes not taking place within 10 days. The legislation, except in exceptional circumstances, requires it take place in five days, and I've never had one go beyond five days.

The board's issue is that over time its jurisdiction has expanded. Now it does the employment standards complaints—previously, that didn't fall with the board—and the occupational health and safety. So you're looking at expanding jurisdiction, and I don't know whether resources have expanded to the same extent as their jurisdiction, and that's a challenge.

0920

Mr. Jim McDonell: On these additional issues, have you been involved with those? Do they seem to be working through, other than possibly an issue of manpower?

Mr. Robert Kitchen: I'm sorry. I don't really understand the question.

Mr. Jim McDonell: On this expansion of duties, which can, I suppose, make up almost the majority of the work the board looks after, have you had any work with them or any occasion to be involved with those cases?

Mr. Robert Kitchen: Yes. My last case at the board was an unfair reprisal complaint under the Occupational Health and Safety Act. The vice-chairs at the board are very knowledgeable adjudicators, and I'm very satisfied with—no one is perfect, but on balance I'm very satisfied with my appearances before the board. I just wish I'd always won.

The Chair (Mr. Bill Mauro): Mr. Pettapiece?

Mr. Randy Pettapiece: That's what our life is too: We wish we could always win, but that doesn't happen.

Thank you for coming. I understand you're an expert in the duty to accommodate. You even teach courses on that subject. What can you bring to the OLRB from your

experience in that field? And does the OLRB approach of today in this regard satisfy the needs of employers and employees?

Mr. Robert Kitchen: Yes, I've taught many courses over the years. I once said that when I started, all I knew about the duty to accommodate was making a reservation at the Holiday Inn, because it wasn't introduced until 1981 or 1982.

From my experience, the board does not have a significant role in administering or adjudicating the duty to accommodate. That principally arises under human rights complaints, but it also arises under collective agreements before private arbitrators, so at least in my experience that's where I've dealt extensively with the duty to accommodate.

Mr. Randy Pettapiece: What do you see as a recent failure of the OLRB that you think needs addressing?

Mr. Robert Kitchen: From my perspective, I don't see a lot of failure. What I do see is an ongoing desire of the labour relations community to have timely resolution of complaints, and the nature of any complaint that I've heard over my years of practising has been in respect of scheduling, getting cases on, getting them heard and

getting them finished, because parties want a decision and want to move forward.

Mr. Randy Pettapiece: Thank you.

The Chair (Mr. Bill Mauro): Thank you very much, Mr. Kitchen. Thank you for appearing before us today. We appreciate your time.

Mr. Robert Kitchen: Thank you.

The Chair (Mr. Bill Mauro): Okay, we will now consider the concurrence of the intended appointment of Robert Kitchen, nominated as vice-chair of the Ontario Labour Relations Board. Ms. Jaczek?

Ms. Helena Jaczek: I move concurrence in the intended appointment of Robert Kitchen, nominated as vice-chair of the Ontario Labour Relations Board.

The Chair (Mr. Bill Mauro): Any discussion? Seeing none, all in favour? Opposed? Seeing none, it's carried.

Thank you very much. We are adjourned, although there is a subcommittee meeting immediately, so if we could have one member from each party remain for the subcommittee meeting starting immediately after adjournment, thank you all very much.

The committee adjourned at 0925.

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