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**Official Report
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Tuesday 9 December 2014

**Journal
des débats
(Hansard)**

Mardi 9 décembre 2014

**Standing Committee on
Government Agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 9 December 2014

Mardi 9 décembre 2014

The committee met at 0902 in committee room 1.

SUBCOMMITTEE REPORTS

The Chair (Mr. John Fraser): Good morning, everyone. I call the meeting to order. Before we begin our intended appointments review this morning, the first order of business is to consider two subcommittee reports. The subcommittee report dated November 27, 2014: Would someone please move adoption of the report? Mr. Rinaldi.

Mr. Lou Rinaldi: I move adoption of the subcommittee report on intended appointments dated Thursday, November 27, 2014.

The Chair (Mr. John Fraser): Do we have any discussion? All in favour? Opposed? The motion is passed.

The subcommittee report dated December 4, 2014: Would someone please move adoption of the report? Mr. Rinaldi.

Mr. Lou Rinaldi: I move adoption of the subcommittee report on intended appointments dated Thursday, December 4, 2014.

The Chair (Mr. John Fraser): Any discussion? All in favour? Opposed? The motion is carried.

We'll move on to a review of our intended appointments.

INTENDED APPOINTMENTS

MS. LAURA BRADBURY

Review of intended appointment, selected by official opposition party: Laura Bradbury, intended appointee as vice-chair, Workplace Safety and Insurance Appeals Tribunal.

The Chair (Mr. John Fraser): We have one intended appointee to hear from. The first intended appointee today is Laura Bradbury, who is nominated for vice-chair, Workplace Safety and Insurance Appeals Tribunal. Ms. Bradbury, please come forward and take your chair. Welcome.

Ms. Laura Bradbury: Thank you so much.

The Chair (Mr. John Fraser): Thank you very much for being here. You may begin with a brief statement if you wish. Members of each party will have 10 minutes to ask you some questions. Any time that you use will be deducted from the government's questioning time. You may proceed.

Ms. Laura Bradbury: Thank you. Good morning, Mr. Chair and members of the committee. I'm very pleased to be here this morning and honoured to meet with the members of the Standing Committee on Government Agencies. I am here today to offer my services as a part-time vice-chair at the Workplace Safety and Insurance Appeals Tribunal, known as WSIAT.

My professional background includes my training as a lawyer and more than 16 years' experience in adjudicative tribunals, including six years with WSIAT, which was then called the Workers' Compensation Appeals Tribunal, from 1985 to 1991.

Of my time in tribunals, more than 10 years were spent in the area of workers' compensation at the final level of appeal, both in Ontario and in British Columbia, and always as a neutral vice-chair.

I also served as the Workplace Safety and Insurance Board's first fair practices commissioner, which is the ombudsman for the board. I set up the commission in 2003 and retired in June 2012. As commissioner, I was neutral and independent of the board's operating divisions. I reported directly to the board of directors. The commission's role was to promote fair practices and procedures that were consistent with the workers' compensation legislation.

I'm committed to fairness in the adjudicative process and believe that my background and experience make me well-suited for the part-time vice-chair position. I'm also committed to public service and would be honoured to be able to continue that commitment in this role.

Thank you very much.

The Chair (Mr. John Fraser): Thank you very much. We'll begin with Mr. Gates.

Mr. Wayne Gates: Good morning.

Ms. Laura Bradbury: Good morning.

Mr. Wayne Gates: Thanks for coming. I see you've had a little bit of experience in workmen's compensation.

Ms. Laura Bradbury: Yes, a little bit.

Mr. Wayne Gates: Good. Maybe you can explain for the full 10 minutes what's wrong with it, seeing that we spend a fair amount of time in our office with problems related to WSIB, with people getting their claims denied and their appeals. So maybe you can give us what you've found, over your vast experience, is wrong with the system, because it's obviously broken.

Ms. Laura Bradbury: Right. I don't know if I can say what's wrong with the system, but I can say it's a huge system and it's a system that has to deal with an enor-

mous range and complexity of issues. The board makes hundreds of thousands of decisions a year, so that's an issue. Resources are always an issue. Workload has become an issue at the board level.

From the commission's point of view, we were really looking at broader system-wide type issues, so we were looking at concerns with respect to delay. There were many of those concerns raised with the commission. We were looking at concerns about the decision-making process. Was it fair? That was something we considered. We looked at communication concerns and we also looked at behavioural issues. Those were the four broad topics that we looked at. I issued public annual reports every year that I was there and they highlighted the steps that I suggested and the board responded to.

Mr. Wayne Gates: Do you find that for workers who get injured on the job, the employers, for whatever reason, seem to deny the claims a lot more than they did in the past?

Ms. Laura Bradbury: That isn't something that I would ever have seen. I know that it's an issue that was raised in the Arthurs report, Funding Fairness, but it's not an issue that would have come to the commission, so it's not an issue that I personally had any experience with.

Mr. Wayne Gates: How long did you serve as vice-chair of the former Workers' Compensation Appeals Tribunal?

Ms. Laura Bradbury: I was there for six years, right from the beginning. The former tribunal, the WCAT, started in 1985 and I was one of the first vice-chairs appointed then. I came from Ombudsman Ontario, where I had been an investigator into workers' compensation matters there. I was already a neutral in the area of workers' compensation. I spent six years there, the first three years as a vice-chair and the second three years as both a vice-chair and the alternate chair, working closely with the chair. From there, I was appointed as chair of the Social Assistance Review Board.

Mr. Wayne Gates: Okay. Do you, as a witness, anticipate any consequences for the tribunal as a result of its 2014 decision, which I'm sure you're aware of, regarding claims around mental stress, which has become a really big issue not only for workmen's compensation, but in society as a whole?

Ms. Laura Bradbury: Right. Well, that was one case that was decided, or at least released, in April 2014—I think that's the one you're referring to—where the panel found that the section of the act that limits entitlement for mental stress cases to an acute traumatic event was discriminatory under the Charter of Rights and Freedoms because other types of claims, claims for physical disability, are not limited in the same way.

0910

I think it's important to note that the panel's remedy was restricted to simply the case that was in front of it, and all we can ever do as vice-chairs is look at the individual circumstances of the case in front of us. That's in accordance with the Supreme Court of Canada decision on that issue, so each case has to be decided on its own merits.

In particular with mental stress claims, the difficulty is proving work-relatedness. There haven't been very many of those. It's hard to say, Mr. Gates, whether there will be more as a result of this case, but if there are, each one will still have to go forward on its individual merits.

Mr. Wayne Gates: But there are a lot more mental stress claims that are going in that end up being denied at the original stage.

Ms. Laura Bradbury: I don't know that. I don't personally know that. I think it's possible that representatives may be bringing more mental stress cases, but whether they're being granted or denied, I just don't know the answer to that.

Mr. Wayne Gates: Just something that was interesting in your opening comments: As you're aware, active cases in June 2014 were almost 8,400, double the 2003 levels. Based on your experience, have you got any suggestions that would assist the tribunal in dealing with this number of active cases? It seems quite large.

Ms. Laura Bradbury: It is large and it's always difficult dealing with a large caseload, particularly with a sudden increase in caseload. But I agree with the chair's written statements that the key to addressing this really is adding additional vice-chair resources. I know that that's the reason he's requesting a number of additional appointments as part-time vice-chairs. That's really the way to tackle—it's the beginning of the way to tackle the caseload.

I know the tribunal has also done a lot in terms of streamlining its processes to make sure things move more smoothly through the tribunal, but I agree with the chair that the key is additional resources.

Mr. Wayne Gates: Okay. How much in resources?

Ms. Laura Bradbury: That, I don't know the answer to.

Mr. Wayne Gates: I'll tell you, when you look at the caseload—I don't know. I'm sure my colleagues don't know this as well, from the calls that they get into their offices: Somebody gets injured on the job. They can no longer work. Sometimes in a unionized workplace you can still get your sick benefits, and, when you get your compensation claim approved, you would then compensate the company first on the sick benefit. But in a lot of workplaces, that worker is out there with no money and they go through denial.

I'll give you an example. I've had people come to my office where they physically had an operation, a hernia at work, but they don't get paid. They get denied WSIB, so now they're out there for six, seven weeks, depending on how quickly they heal, with no money. Or they hurt their back and are out there for a long period of time with no money.

It's a real challenge in today's society to make sure. It's supposed to be there. If you get injured on the job there should be a process that certainly is relatively fair and quick so there's no financial hardship if, through no fault of their own, a worker gets hurt on the job. It seems that that's not happening in the province of Ontario. The

caseload is showing that; 3,000 to almost 9,000 is a huge increase.

I'm not saying you're the one who's going to do it, but I think it's important to have this discussion, particularly with your background, being a lawyer, and particularly with your background of understanding and dealing with the WSIB over a long period of time. I'm sure that over that period of time you have seen that there is a need to fix the system. I think that's kind of where I'm at. If adding more resources, by the sounds of it, is one way to do it, then I think we have to add a lot more resources to it. It seems to me that it's just not working.

I'm glad that you like to do public service. I think it's important to have people who have been involved with the WSIB, people who, obviously, have your background as a lawyer; I think that's important as well. But we've got to find a way to fix the system because my office is just—and they're desperate.

A lot of other things happen. It's not nice to say, but a lot of other things—you've seen marriage breakups. When people don't have money, they get desperate. Hopefully, over the next little while, we can fix the system, because it certainly isn't fair to injured workers in the province of Ontario.

Ms. Laura Bradbury: I agree with you that delay is certainly a serious concern, and it's the major concern that the commission looked at. We were able to help quite a few people with that. I know the chair of the tribunal is committed to dealing with this issue as well. So I appreciate your comments on that.

Mr. Wayne Gates: Thank you.

The Chair (Mr. John Fraser): Now we'll move to the government side. You have about eight minutes and 20 seconds: Ms. Vernile.

Ms. Daiene Vernile: Vernile.

The Chair (Mr. John Fraser): I know. As soon as I did that—Ms. Vernile.

Ms. Daiene Vernile: There's a famous football coach in the States, Dick Vermeil, and I get mistaken for him many times—well, not him, but the name.

Ms. Bradbury, thank you very much for coming and speaking to us today. It would appear that you were retired. Is that correct?

Ms. Laura Bradbury: Yes.

Ms. Daiene Vernile: What is it about this part-time position that interested you, that you wanted to apply for it?

Ms. Laura Bradbury: As you know, I retired two and a half years ago, and I was very busy initially with volunteer work that I do with the Forum of Canadian Ombudsman. Then we got that moving along, and I thought, "I've got time and energy and commitment." And I just happened to see the ad from the Public Appointments Secretariat and thought perhaps I could make a contribution. I was ready to commit to that. I told the chair that I have time and that I can be flexible and I'd like to help out as much as I can with respect to the workload.

Ms. Daiene Vernile: What unique qualities do you think that you will bring to the position?

Ms. Laura Bradbury: I have a lot of experience in the area of workers' compensation, and a fairly broad experience. I've got experience both as an adjudicator and as an ombudsman, so I've been able to look at the issues from many different angles. I have experience both in Ontario and British Columbia. I think, from the chair's statement, that having adjudicators who are experienced in and knowledgeable about workers' compensation is one of the main criteria that he's looking for, in terms of having people who can help with the caseload.

Ms. Daiene Vernile: You've talked about your concern about a back-load. How do you hope to affect that? What specifically will you do?

Ms. Laura Bradbury: My personal, individual role, if my appointment is approved, will simply be to hold hearings and issue timely decisions. I'm committed to doing that and making myself as available as possible.

Ms. Daiene Vernile: Thank you.

Ms. Laura Bradbury: You're welcome.

The Chair (Mr. John Fraser): Thank you very much, Ms. Vernile.

Ms. McGarry.

Mrs. Kathryn McGarry: Thank you very much, Ms. Bradbury, for coming. Do you feel that your background and your experience will help to actually resolve the logjam because you're already up to speed, in essence, in your role?

Ms. Laura Bradbury: Yes, that's a good point. I am up to speed. I mean, I will go through the four-week orientation program, because my experience is quite a long time ago with respect to this particular tribunal. I'll go through the orientation program, and then I think that I'll be able to jump right in, really. That will help.

Mrs. Kathryn McGarry: Thank you.

The Chair (Mr. John Fraser): Thank you very much, Ms. McGarry.

Mr. McDonell.

Mr. Jim McDonell: Thank you for coming out today. You talked about the heavy workload in front of you. What's the typical time to go through each individual case? Is it a number per day? Is it days per—

Ms. Laura Bradbury: Sorry, are you talking about an appeal hearing?

Mr. Jim McDonell: Yes, each appeal that's in front of you. There are 8,400. What's a typical time frame for them?

Ms. Laura Bradbury: I'm not sure that I can really answer that specific question, but I can tell you I read the last annual report that was produced from the tribunal. There's a time limit in the legislation to release decisions within six months of the hearing. From the last annual report, it appears as though at least 85% of those cases meet that timeline. So it's around six months from the time of the hearing to the time the decision is released.

Mr. Jim McDonell: So it's six months to release. Would you see a number of those cases in a day for the appeal? I'm just trying to get a feeling—

Ms. Laura Bradbury: Again, I'm taking this from the annual report, not from my personal experience, but I

think the tribunal has a number of ways of dealing with cases.

There are preliminary matters that they'll often have people hear as a group, so you might hear 10 preliminary matters a day. There are some cases that are decided by way of written submissions, and you could do a number of those in one day. Then there are some cases that require oral hearings, and they take more time in terms of how much time they need to be scheduled and the hearing time and the decision-writing time.

So there's a range of issues and types of cases and a range of ways that the tribunal has developed for dealing with them.

0920

Mr. Jim McDonell: Yes, I know. I was just trying to get an idea of that 8,500, just what type of time we're talking about.

In your time in the role you had previously, do you see any recommendations that you would have to change things around?

Ms. Laura Bradbury: Well, not specific recommendations beyond the one of adding the resources. In 1985, when the tribunal started and I was there—that was following new legislation—when we opened our doors, there were already hundreds of cases waiting for an appeal because they'd been held at the board pending the implementation of the new legislation. So the chair at that time asked for additional resources and was able to get that, and use part-time vice-chairs; we were able to successfully deal with that backlog. I'm thinking that this will be very similar as well.

Mr. Jim McDonell: I guess, looking at the cost of the WSIB, it's a huge payroll tax, and then we have a deficit involved that, over the last 10 years, has gone from \$4 billion to—I've seen numbers as high as \$19 billion, huge numbers. That has to be paid off and, at the same time, we have to work through this inventory.

When you worked on the Fair Practices Commission, can you give us examples of some of the positive things you achieved as far as some of the individual cases?

Ms. Laura Bradbury: Sure. Maybe I'll just talk about three main types of system-wide issues that I feel good about.

One had to do with occupational health and safety cases. A number of those had been quite delayed. I made 10 recommendations following an investigation and the board accepted all of those. As a result, there haven't been ongoing delays in those cases, and I think that the employer and worker communities are satisfied that they're now dealt with in an expeditious way. As Mr. Gates said earlier, for people who are waiting for a decision in those cases who are ill, it's really important that those matters be heard quickly.

The other issue that I'm proud of is dealing with seriously injured young workers, which is a group of workers aged 15 to 24. When I started to look at that category of cases, I found that they often got very limited retraining because they hadn't been in the workplace very long and their wages were quite low. That was the

basis that the board used for deciding how to retrain them. As a result of my work, the board created a new policy for seriously injured young workers and enhanced retraining for that group. So I'm pleased with that.

The final category was older workers. We made some strides with respect to older workers being treated consistently and fairly. Those are three areas that I feel good about.

Mr. Jim McDonell: I think as Mr. Gates had alluded to, the mental health issues are becoming a bigger issue, more than the physical injuries. From a WSIB perspective, any ideas on how we can deal with this increase in this category of injury?

Ms. Laura Bradbury: You know, you're absolutely right that mental health issues are a growing concern. I'm hopeful that the board will start to look at those somewhat differently at the front end. I think that might make a difference. If they can be dealt with there, then they don't necessarily have to come on to appeal.

Mr. Jim McDonell: I often wonder, sometimes, when we spend a lot of time trying to figure out, really, someone getting hurt and some of the benefits, but we're sitting here with a health system that's supposed to look after people. If you get hurt at work, you're treated differently than if you get hurt at home or on the way to work, and you wonder, why the difference in a society that's supposed to have full health coverage? Any comment on that or a procedure where it really puts it more to the health system—not that there's not an employer insurance cost, but trying to figure out where it should go. It goes back to the system and people get the attention they need?

Ms. Laura Bradbury: Right. The board has made quite a few strides in working much more closely with the health system and health system providers. I would say that in the past 10 years, they've done a lot to try to make sure that those programs mesh together and not have people stranded in one system or the other. I'm sure there is more to be done, but they recognize the benefits of working together and having coordinated processes wherever possible. They have very good people at the top who are looking into those issues.

The Chair (Mr. John Fraser): That concludes the time for the interview this morning. Ms. Bradbury, thank you very much for appearing.

Ms. Laura Bradbury: You're welcome.

The Chair (Mr. John Fraser): You may step down.

Ms. Laura Bradbury: Thank you.

The Chair (Mr. John Fraser): Now we'll move to concurrences. We will now consider concurrence for Ms. Laura Bradbury, nominated as vice-chair, Workplace Safety and Insurance Appeals Tribunal.

Mr. Lou Rinaldi: Chair?

The Chair (Mr. John Fraser): Mr. Rinaldi.

Mr. Lou Rinaldi: I move concurrence in the intended appointment of Laura Bradbury, nominated as vice-chair, Workplace Safety and Insurance Appeals Tribunal.

The Chair (Mr. John Fraser): Any discussion? All in favour? All opposed? Motion carried.

Congratulations, Ms. Bradbury. Thank you very much.

Ms. Laura Bradbury: Thank you very much.

The Chair (Mr. John Fraser): Now we will—

Interruption.

The Chair (Mr. John Fraser): We have a quorum call going on.

Mr. Vic Dhillon: We're done, right?

The Chair (Mr. John Fraser): No, we still have a couple of—I guess we'll have to go back up and then come back down, right? We'll see.

Mrs. Kathryn McGarry: Chair?

The Chair (Mr. John Fraser): Yes?

Mrs. Kathryn McGarry: Respectfully, with the bell going, do we not need to be in the House?

The Chair (Mr. John Fraser): We'll recess, and we'll come back after the quorum call.

The committee recessed from 0925 to 0926.

The Chair (Mr. John Fraser): I call the meeting back to order. We have a couple of appointees whose certificates will expire before we come back in February. We just want to extend them to, I think, February 27. We'll just get the names; I think there's two.

Do we have unanimous agreement to extend the deadline to consider the intended appointment of Gérald Naud, nominated as a member of the Social Benefits Tribunal, Social Justice Tribunals of Ontario, and Erica Phipps, nominated as a member of the Pesticides Advisory Committee, to February 27, 2015? Do we have unanimous consent? Agreed? Agreed.

I think that concludes our business for the day, so meeting adjourned. See you in February.

The committee adjourned at 0928.

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