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**Official Report
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(Hansard)**

Tuesday 5 April 2016

**Journal
des débats
(Hansard)**

Mardi 5 avril 2016

**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 5 April 2016

Mardi 5 avril 2016

The committee met at 0902 in committee room 1.

The Vice-Chair (Mrs. Cristina Martins): Good morning, everyone. I'm just calling the meeting of the committee to order here.

SUBCOMMITTEE REPORTS

The Vice-Chair (Mrs. Cristina Martins): Before we begin our intended appointments review, our first order of business is to consider two subcommittee reports.

For the subcommittee report dated Thursday, March 17, 2016: Would someone please move adoption of the report? Mr. Pettapiece.

Mr. Randy Pettapiece: I move the adoption of the subcommittee report on intended appointments dated Thursday, March 17, 2016.

The Vice-Chair (Mrs. Cristina Martins): Any discussion? All in favour? Opposed? The motion is carried.

The second subcommittee report is dated Thursday, March 31, 2016. Would someone please move adoption of the report? Mr.—Mr. Gates, please.

Mr. Wayne Gates: You forgot my name that early? Wow.

I move the adoption of the subcommittee report on intended appointments dated Thursday, March 31, 2016. Thank you, Chair.

The Vice-Chair (Mrs. Cristina Martins): Any discussion? All in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

MR. ROBERT WRIGHT

Review of intended appointment, selected by third party: Robert Wright, intended appointee as member, Ontario Municipal Board (Environment and Land Tribunals Ontario).

The Vice-Chair (Mrs. Cristina Martins): We will now move to the appointments review. We have one intended appointee today to hear from, and we will consider the concurrence following the interview. Our first intended appointee today is Robert Wright, nominated as member, Ontario Municipal Board (Environment and Land Tribunals Ontario). Mr. Wright, please come forward and take a seat at the table.

Mr. Robert Wright: Good morning. Here?

The Vice-Chair (Mrs. Cristina Martins): Yes, please. Welcome, and thank you very much for being

here. You may begin with a brief statement, if you wish. Members of each party will then have 10 minutes to ask you questions. Any time used for your statement will be deducted from the government's time for questions, and questioning will begin with the government once you've completed your statement. Thank you very much.

Mr. Robert Wright: Good morning. My name is Robert Wright. I'm applying for a part-time position with the Ontario Municipal Board as a member. I'm already a vice-chair with the Environmental Review Tribunal and with the Conservation Review Board, which are part of the ELTO cluster, the Environment and Land Tribunals Ontario cluster. Also in the cluster are the Assessment Review Board and the Board of Negotiation. I think it's the first cluster.

The reason I'm here is to contribute my knowledge and experience in the adjudicative work I've done with other tribunals to the Ontario Municipal Board. There has been a recent process of cross-appointments in order to add experience to all the boards from the other boards. I'm part of that process, and that's why I'm here.

First of all, just a little bit about what I do on those boards, and then I'll go backwards in time, I guess, to how I got there.

On the Environmental Review Tribunal, which is where I do most of my work, those hearings, as indicated, involve environmental matters, mostly review of appeals or dealing with appeals of the granting of licences. It could also deal with aggregate matters; it could deal with people complaining about properties that are polluting—they'd been given an order to comply and then they appealed that, so we do hearings.

The hearings can be quite complicated. They involve municipalities, individuals, government lawyers and lawyers for companies. As part of that process, we've also introduced mediation, which I think is, not only since I've been practising, something that has developed and been up and coming but is possibly the way forward to solve a lot of the issues with backlogs in work and to make decisions that people may not all be entirely happy with but are more happy than if a decision is made by a tribunal after a hearing. In any event, we deal with a variety of matters there. I must say that I really enjoyed doing that work and the people I worked with.

The Conservation Review Board deals with heritage matters. We don't have a large volume of cases that get to the Conservation Review Board, and sometimes those

matters get split off to the Ontario Municipal Board—if it's a demolition matter, for instance. There's a bit of an overlap there as well.

It's very, very interesting work because you get into the history of our community and you hear from communities on what's important to them to retain. I also personally enjoy it because it involves buildings and structures, which, when I have time, I do my own work on in my leisure time. For me, it's a combination of the historical, the law and the preservation of some of our heritage, so I find that work interesting as well.

How I came to the adjudicative world: I'm a lawyer, called at about 1980. I initially did commercial litigation for about 20 years. I then went and joined part-time an environmental non-profit organization called the Sierra Legal Defence Fund. I worked for them for about five years and was the head litigator in the Toronto district. It's a country-wide organization. It takes no government money. It attempts to deal with precedent-setting cases regarding the environment. I enjoyed that work very much and had the privilege of going to pretty much every court in Ontario and, on a couple of occasions, to the Supreme Court of Canada on behalf of interveners, and to other provinces. I went from there to the Environment Review Tribunal.

So I've worn a number of different hats. I've worked, as I said, at the commercial end in private practice for many years; I've also worked in the public interest; and, more recently, I've been doing adjudication. Hopefully, I can add all that to the position.

The Vice-Chair (Mrs. Cristina Martins): Thank you, Mr. Wright. The questioning will now begin with the government side: Mr. Rinaldi.

0910

Mr. Lou Rinaldi: Thank you for being here, Mr. Wright. I just want to say thank you for broadening your horizons by your involvement with other functions. Looking over your resumé, which you talked about this morning, I think it's very well fitting for you to proceed. I really don't have a question. I think your resumé that we have and what you commented this morning highlights—so I just want to say thank you for doing even more, and it's very much appreciated.

Mr. Robert Wright: Thank you.

The Vice-Chair (Mrs. Cristina Martins): Any other questions? Ms. Vernile.

Ms. Daiene Vernile: The love-in continues. I've looked over your resumé and I want to add on the record that you are going to bring great value to this position with your background. So again, thank you for your public service.

Mr. Robert Wright: Thank you.

The Vice-Chair (Mrs. Cristina Martins): Further questions? Ms. Hoggarth.

Ms. Ann Hoggarth: Good morning. Thank you for your resumé and thank you for putting your name forward. I agree with the past two speakers.

I just want to ask one question. You're a very busy man already on other boards; you are confident that

you'll be able to put the time forward to do this job as well?

Mr. Robert Wright: I'm hoping that the position will involve dealing with matters that I think I can have value added to. For instance, Conservation Review Board matters also end up at the OMB, and on occasion some of the hearings require a person to adjudicate who has both OMB and Conservation Review Board qualifications. So I hope I can add there.

Also, a great many of the matters involved environmental issues. On the Environmental Review Tribunal I also sit on as a hearing officer for the Niagara Escarpment Commission, which, as you know, is also a special planning area. So I'm hoping that I would be utilized for those kinds of proceedings, and I think I can add to those.

It's a long way of coming around to your question. It is a part-time appointment, and I think that by doing the cross-appointments it's allowing flexibility for all the tribunals to get the work done and appoint the right people to deal with the matters before them. That's how I look at it.

Ms. Ann Hoggarth: Thank you very much.

The Vice-Chair (Mrs. Cristina Martins): Any further questions from the government side?

We now go to the official opposition. Just give me one second. Okay. Mr. Pettapiece.

Mr. Randy Pettapiece: Good morning, Mr. Wright. You certainly have an impressive resumé, I must say, and in-depth legal knowledge. I note that you worked at the Sierra Club Legal Defence Fund. Did you serve as counsel on cases before the OMB?

Mr. Robert Wright: Not with them, no, I did not. The reason is that, generally, it was court decisions that we looked at because they're precedent-setting on a larger, across-the-country scale. We operated both provincially but also with a mind to Canada-wide issues.

Mr. Randy Pettapiece: I see. Can you describe your understanding of the OMB and explain whether your past work relates to the work of an OMB member?

Mr. Robert Wright: First of all, because this a cross-appointment, what I was trying to indicate was that the work with the Environmental Review Tribunal and the Conservation Review Board does already cross over with planning work with the OMB. For instance, I've sat on a joint board as an ERT member with two OMB members. That was related to a quarry matter.

On the Conservation Review Board, we're finding that there's a great overlap under the Ontario Heritage Act as to what the Conservation Review Board can do and what the Ontario Municipal Board can do. So there's already an overlap there in the work that I do. So being appointed would allow me to wear two hats, if you will, deal with those kinds of matters.

Also, as I indicated, the Niagara Escarpment work is planning-related. I will say that when I was doing commercial litigation, I did a lot of real estate litigation—not planning litigation, but I'm pretty familiar with issues regarding property rights, etc.

Mr. Randy Pettapiece: Yes. That leads me to my next question. Much of your work experience has centred

around environmental issues. The OMB deals with many land use planning issues or cases, so I'm interested to know how you plan to balance your interest in the environment with municipal development.

Mr. Robert Wright: That's part of the process. That's why you have the hearing: to balance those interests. You've heard many times, I'm sure, that decisions are made by the adjudicators based on the evidence before them and within the confines of the legislation they're dealing with. I always find that looking at the purpose of the statute and basing it on the evidence before you—and then, of course, you always get assisted by counsel making their submissions. That's what the balancing is. If you're dealing with unrepresented persons, there's sometimes a problem with that balancing. That's something we're always wrestling with, but we're conscious of it and try to deal with it as best we can.

Mr. Randy Pettapiece: I was a former municipal councillor before I came here. There is a perception that developers have a much better chance of success at the OMB because they have access to financial and legal resources. There's a common perception that the unelected OMB controls much of Ontario development. How do you respond to that, and, as an OMB adjudicator, what kind of regard will you have for municipal decisions?

Mr. Robert Wright: First of all, I think there's always a high regard for municipal decisions, but that's also not to say that, as you know, decisions will always accord with what the municipality wants or with what any party wants. It's a question of what comes before the tribunal and the adjudicator. As I'm not on the OMB yet, I'm at a bit of a disadvantage to come up with specifics. I do know—and in fact, I think it's quite well summarized in the briefing note that I was just looking at here, that I picked up this morning—that there is a review of the processes. A quick look at the bullet points there—I thought they hit a lot of the top ones that I would have suggested.

Earlier, I mentioned alternative dispute resolution. That's one possibility for involving parties at a stage where they may have more of a say in dealing with things than if they end up in a hearing and they have that issue with resources that you talked about. Another one is looking at how to provide resources so that it's equitable, not just for municipalities but also for individuals and community groups to have a fair shot before the board. I only speak to that from my knowledge, really, of my work on the tribunal and with the Conservation Review Board. I think there are steps under way that I can see that are being looked at, and I think they should be looked at.

Mr. Randy Pettapiece: I think you can see the frustration. I'm from a small community. A \$60,000 cost that has to go on taxes and be paid for is a 1% jump in what we need to charge our constituents for tax increases. That's why we were very shy, unless we thought we had a really good case. I suppose you should do that when you go to this type of thing anyway. It kept us away from

maybe doing some things that we wanted to do. Certainly, after we got done doing our official plans and all this type of thing, somebody would jump in and try to throw some of those decisions out that the council had made. So it's a scary thing, especially when you talk about the dollars that could be involved in fighting a case at the municipal board.

The next point that I'd like to ask you about is that municipalities across the province have recently been contacting the government and calling on them to limit the jurisdiction of the OMB and to uphold planning decisions of municipal councils unless they are contrary to legislation. What is your response to this campaign and how do you think this municipal sentiment could impact your role as an OMB member?

Mr. Robert Wright: I think that, as the municipalities have shown a concern, clearly it's a matter that should be dealt with. I refer back to the review that I understand is imminent. I would expect that not just the municipalities but you folks would have a big voice in what comes out of those hearings.

0920

More specifically regarding the municipalities, from what I've seen anyway, when they do appear they are well represented, as you said. They don't go into it lightly because of the potential cost. But they should continue to participate, and not only continue but maybe ramp it up, because I think they are listened to and they add a great value.

Going through the process and making sure the interests are brought forward and that any procedural matters that can assist with that process—because you look at the legislation but you also look at the internal procedure and how a hearing runs. The two things are important to a party putting their position forward. You have to look at both of those.

What I can say, on the other end, is that the people in this process of cross-appointing are going to change the complexion of the board. It doesn't mean there are better people. I can tell you that the people I do know who are on the board I have the highest regard for. They work hard, they think hard about what they do and they make very thoughtful decisions.

The advantage, moving forward, is with cross-appointments. You're going to find that you have people with broader backgrounds, potentially, to canvass the issues that you're concerned about.

The Vice-Chair (Mrs. Cristina Martins): Mr. Bailey?

Mr. Robert Bailey: No, I have nothing. I just want to thank Mr. Wright for being here today. I've enjoyed his presentation so far. Best of luck.

Mr. Robert Wright: Thank you.

The Vice-Chair (Mrs. Cristina Martins): We are now going to pass the questions to the official third party. Mr. Gates?

Mr. Wayne Gates: Mr. Wright, how are you this morning?

Mr. Robert Wright: Good—yourself, Mr. Gates?

Mr. Wayne Gates: My first question is relatively long. I'll read it out, not necessarily slowly. It is long, but there's a point to it.

In response to more than 40 municipal resolutions asking the OMB to uphold municipal planning decisions, the Minister of Municipal Affairs and Housing said, "I'd like to see more emphasis put on local planning because if we do that, to the extent that it's done properly, there's really no need for an OMB. But that responsibility falls squarely on the shoulders of municipalities across the province." He basically said that the only reason OMB appeal exists is because municipalities don't do their jobs.

A few years ago, the OMB reviewed the Duntroon quarry on the Niagara Escarpment, which was opposed by the Niagara Escarpment Commission. It was approved in spite of that opposition and in spite of the fact that the sole Environmental Review Tribunal member on that joint tribunal also disagreed and dissented. Knowing that the lone dissenter was you, I'd like to ask your opinion on the minister's remarks. Do you think the OMB appeal occurred because the municipalities and the Niagara Escarpment Commission didn't do their jobs?

Mr. Robert Wright: It is a long question.

Mr. Wayne Gates: It is long, but there's a point to it and I think it's important to get it out.

Mr. Robert Wright: The difficulty in answering your specific question—and I will get to it; I'd like, if I could, to set the scene a little bit—is that when you're dealing with the Niagara Escarpment plan you're dealing with a special situation that's somewhat different than most of—it's a hybrid, if you will. It's one that is largely with the Environmental Review Tribunal except for certain situations where there are joint boards.

That particular decision was from a joint board. I was the lone member of the Environmental Review Tribunal on that joint board. My dissenting opinion was on the extent of the expansion of the quarry over certain areas that I felt were environmentally sensitive. That's all on the public record and in the decision; I don't think there's any need to revisit all that.

But the point is—back to your question—do you need an Ontario Municipal Board if municipalities are doing their job correctly? I think my answer to that is, yes, you would still need that, because a lot of right-minded people disagree on where things should go. You very rarely have 100% accord on any matter. There should be an avenue for parties to take their dispute to what should be an impartial and fair process. There have been a lot of recent complaints, I think, about that process. I'm not getting into whether they have merit or they don't have merit. The fact that there are complaints means that people want a review of it, and I think that is, as I understand it, going to happen.

I don't think the answer to your question is that municipalities aren't doing their jobs is the reason one has the OMB. My experience is that most are doing their jobs, but even then, you have disagreements and I think you

need someone—whether it's the Ontario Municipal Board or some other format—to deal with those.

One thing I would emphasize again is that if that process can include more alternative dispute resolution, I think it's in everyone's interest and is a way of dealing with interests where you don't have to come up with a black and white answer for a decision which is the result of a hearing process.

Does that answer your question? It was a difficult question.

Mr. Wayne Gates: It's probably difficult to answer in 10 minutes, so obviously you need to get all the facts. I want to be clear that I certainly don't feel that municipalities are not doing their jobs. I certainly don't feel, as a former city councillor, that the council that I had the privilege and the honour to sit on doesn't do its job. Obviously, I think the comment certainly wasn't fair without elaborating on it. That's not you; that was the minister.

When a municipality has spent time and resources updating their official plan and zoning bylaws, when they hire professional planners to give advice, when they have consulted with the public to balance competing interests and when they have done everything that the province has asked to conform with policy and statute, do you think it is appropriate for the OMB to set their work aside and make up new planning policies?

Mr. Robert Wright: I guess the first response—there's an assumption there that that's what the OMB is doing. I can't comment on that assumption as I'm not a member of the OMB at the moment. That assumption may be wrong or it may be right.

If that assumption is right, then clearly that's not something that should be happening. But I think if you look closely at those situations, you're going to find that someone—you didn't give me a specific one—made a decision based on, as I said earlier, the legislation and the evidence before them. The process of review may want to look at that if people aren't happy with the outcomes out of it. I think there are a number of suggestions that I've seen already, as I said, in the briefing paper that are things that are going to be discussed to deal with those.

As far as the qualities of the personnel of the OMB to make decisions, I think there are good people there that I've seen and I think that it is a good starting point. You've got to also look at it from the other perspective, which is the tools you give them to work with.

Mr. Wayne Gates: I appreciate that, but I can tell you that the cost to municipalities and to the taxpayer is extremely large. Quite frankly—I've heard it a number of times and it was actually touched on by my Conservative colleagues—developers just say, "Hey, I don't really care what the council says. I'll go to the OMB and win."

It's a big issue. I'm going to give you an example because you said there wasn't one. In Niagara Falls, on Thorold Stone Road and Kalar, there's a school, St. Mike's school. They made a decision, a developer, to put a service station right beside the school on a busy corner.

The residents obviously had their meetings. They said, "No, we don't want that. We don't want our kids exposed

to it.” The council said no; the mayor said no. The developer took it to the OMB and the OMB said yes.

Those types of decisions I believe are what give the OMB the reputation it currently has with some people—I would think most people. I gave you a decision on that. To me, when you see that happening in community after community in the province of Ontario, we’ve got an issue.

The last question I’ll ask you is: The city of Toronto and Toronto politicians of all stripes have long advocated for the removal of OMB control over the city. Do you believe that Toronto should remain under the jurisdiction of the OMB, and are there reasons why or why not?

Mr. Robert Wright: I respectfully remind you that I’m here for an appointment as a part-time member. That’s really a matter for the Legislature.

I will say this, though: First of all, you have to look closely at what it is they’re going to replace—which decision-making aspects of it. Is it all of the jurisdiction of the OMB or is it some aspect of it? Does it make sense to take some things within the city of Toronto, but not all?

The second thing is the cost of duplicating a system. I have no idea what’s involved in that, but I imagine there’s substantial cost. Having said that, I see there are in the discussion paper some thoughts about what it is—

The Vice-Chair (Mrs. Cristina Martins): You have 20 seconds left, please.

Mr. Robert Wright: —what it is you would leave with the OMB. There may be fruit for discussion there to shift some of the work so that, in fact, the OMB has a workload in dealing with matters that are a little higher up the scale.

Mr. Wayne Gates: Just to finish up my last 10 seconds, I was told you’re a pretty good guy, so I asked you tough questions—

The Vice-Chair (Mrs. Cristina Martins): Thank you, Mr. Gates. That time has expired for the interview.

Mr. Wayne Gates: Okay. Thank you.

The Vice-Chair (Mrs. Cristina Martins): That concludes the time allocated for this interview. Thank you very much, and you may step down now.

Mr. Robert Wright: Thank you.

The Vice-Chair (Mrs. Cristina Martins): We will now consider the concurrence for Mr. Robert Wright, nominated as member, Ontario Municipal Board (Environment and Land Tribunals Ontario). Would someone please move the concurrence? Mr. Rinaldi.

Mr. Lou Rinaldi: Chair, I move concurrence of the intended appointment of Robert Wright, nominated as member, Ontario Municipal Board (Environment and Land Tribunals Ontario).

The Vice-Chair (Mrs. Cristina Martins): Any discussion? All in favour? Opposed? The motion is carried.

Congratulations, Mr. Wright.

Mr. Wayne Gates: I have something on new business. Can I do that?

The Vice-Chair (Mrs. Cristina Martins): Yes, Mr. Gates.

Mr. Wayne Gates: In fairness to my colleagues, when they’re asking questions, I do not interfere, and I would appreciate it if the government, when I’m asking fair and balanced questions in my eyes, doesn’t make comments while I’m questioning anybody who comes here before us. I think it was unfair, uncalled for, and it shouldn’t happen in this chamber.

I appreciate that. Thank you.

The Vice-Chair (Mrs. Cristina Martins): Thank you, Mr. Gates.

If there’s no further discussion, the meeting is adjourned. Thank you very much.

The committee adjourned at 0934.

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