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**Official Report
of Debates
(Hansard)**

A-21

**Journal
des débats
(Hansard)**

A-21

**Standing Committee on
Government Agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

1st Session
42nd Parliament

Tuesday 19 November 2019

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42^e législature

Mardi 19 novembre 2019

Chair: John Vanthof
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 19 November 2019

Mardi 19 novembre 2019

The committee met at 0900 in committee room 1.

The Chair (Mr. John Vanthof): I call this meeting to order. Good morning.

A note before we begin: One item included in the October 25, 2019, certificate has been withdrawn, resulting in a change to today's schedule. Courtney Grzybowski, nominated as part-time member of the Consent and Capacity Board, has withdrawn her name as a potential appointee.

SUBCOMMITTEE REPORTS

The Chair (Mr. John Vanthof): We will now move to consideration of three subcommittee reports. We have all seen these reports in advance, so could I please have a motion for the adoption of the subcommittee report dated Thursday, October 31, 2019? Mr. Burch.

Mr. Jeff Burch: I move adoption of the subcommittee report on intended appointments dated Thursday, October 31, 2019, on the order-in-council certificate dated October 25, 2019.

The Chair (Mr. John Vanthof): Any further discussion? I'd like to call a vote. All those in favour? Opposed? The motion carries.

Could I please have a second motion?

Mr. Jeff Burch: I move adoption of the subcommittee report on intended appointments dated Thursday, November 7, 2019, on the order-in-council certificate dated November 1, 2019.

The Chair (Mr. John Vanthof): Any further discussion? Seeing none, I'd like to call a vote. All those in favour? Opposed? The motion carries.

Can I have a motion for the subcommittee report dated Thursday, November 14?

Mr. Jeff Burch: I move adoption of the subcommittee report on intended appointments dated Thursday, November 14, 2019, on the order-in-council certificate dated November 8, 2019.

The Chair (Mr. John Vanthof): Thank you. Any further discussion? Seeing none, I'd like to call a vote. All those in favour? Opposed? The motion carries.

INTENDED APPOINTMENTS

MS. R. GAIL GOODMAN

Review of intended appointment, selected by government and official opposition party: R. Gail

Goodman, intended appointee as member, Consent and Capacity Board.

The Chair (Mr. John Vanthof): We will now move to our review of intended appointments. First, we have R. Gail Goodman, nominated as member of the Consent and Capacity Board. Could you please come forward? Good morning.

Ms. R. Gail Goodman: Good morning.

The Chair (Mr. John Vanthof): As you may be aware, you have the opportunity, should you choose to do so, to make an initial statement. Following this, there will be questions from members of the committee. With that questioning, we will start with the official opposition, followed by the government, with 15 minutes allocated to each recognized party. Any time you take in your statement will be deducted from the time allotted to the government. Welcome, and the floor is yours.

Ms. R. Gail Goodman: Thank you. Good morning, Mr. Chair and members of the committee. I'm very pleased to be here today to have the opportunity to discuss my qualifications with you for the position of lawyer/member on the Consent and Capacity Board.

I'm a lawyer who retired from the practice of law in May 2017. Since that time, I've tried to use the skills I acquired as a lawyer, in over 30 years of practice, in service to the public and to my community.

As you may know, much of the work of the Consent and Capacity Board involves the review of a patient's involuntary status in a psychiatric facility under the Mental Health Act and for the review of capacity issues under the health care act. I would therefore like to share with you some foundational experiences that I have had in dealing with people with mental health issues.

During law school, I spent one semester and two summers working at Parkdale Legal Services, which is a poverty law clinic that serviced the Queen Street mental hospital, as it then was, and as a volunteer for the Elizabeth Fry Society, which helps women in conflict with the law.

It was during that time that I was first exposed to the realities of the lives of the marginalized and people with mental health issues. I was profoundly impacted by the experience. I learned that people who suffer from mental illness have trouble expressing their grievances coherently, and often were ignored or disbelieved. This is the very reason they are so vulnerable and deserve our help in having their voices heard.

After my call to the bar in 1984, my career again led me to working with mentally ill people in the context of

litigating disability and health claims. About 30% of disability claims result from mental illnesses, and even where the claims are physical in nature, there is usually a psychological overlay.

Working for decades in this area, I became very knowledgeable of psychiatric symptoms, diagnoses, prognoses, treatments and medications associated with mental illness. I worked closely with psychiatrists, psychologists and other experts in the mental health field to understand the nature of mental illness and how it affects people who suffer from it and their functioning. In the context of civil proceedings, I interviewed probably hundreds of individuals with mental health claims in a process that we call “discovery.” I have read and analyzed countless psychological and psychiatric reports, and at every stage of this work I provided concise and clear opinions, recommendations and reports to my clients.

In addition to direct contact with these claimants at the discoveries, I also had the opportunity to interact with them and their counsel at mediations, pre-trials and, in the rare occasion, at trials. In my practice, also, questions would arise about capacity. For instance, in life insurance cases, the capacity of the testator in a will was often an issue. Sometimes, the beneficiaries of benefits or of life insurance were not capable or were minors. Thus, I became knowledgeable of the law concerning consent and substitute decision-making. I was also frequently consulted on privacy and health information protection.

From time to time in disability cases, and even in other cases that were not about disability specifically, litigants were unrepresented, and some of those suffered from mental illness. Their claims and issues were frequently difficult to understand and sometimes even seemed frivolous. Nonetheless, I tried to deal with these individuals with dignity and respect and to encourage them to obtain the help that they needed and the legal representation that they needed.

Today, I continue to try to help people with mental health challenges as a volunteer with Out of the Cold and with the Elizabeth Fry Society. But the job of a legal member of the Consent and Capacity Board does not only require knowledge and experience with mental health consent and capacity law; it also requires a skill in presiding over board hearings, and the ability to make timely decisions alone or as the member of a panel and to write reasons for those decisions.

I was a mediator for a number of years, and in doing so, I acted as a neutral—not for one side or the other—allowing the parties to voice their issues and resolve their differences without litigation. Frequently, emotions would erupt in these proceedings, and I was called upon to defuse volatile situations so that the parties could constructively move forward.

As a legal member of the Consent and Capacity Board, I understand that where the parties agree and the law permits, I can mediate a settlement of the application or use my mediation skills to narrow or define the issues. I will also be able to call on my experience to recognize and utilize opportunities to save unnecessary time and expense of the board wherever possible.

As a litigation lawyer for more than 30 years, I think I have an excellent grasp of the rules of evidence and the rules of procedure. I have participated as counsel in many applications, motions, hearings, trials and appeals. On the Council of the College of Naturopaths, I currently perform the role of an adjudicator as well, which I very much enjoy.

0910

As the chair of discipline hearings, I have sat to run the hearing as a presiding member. In that role, I hear legal submissions, witnesses and expert evidence, which would be very similar to the types of hearings that I would preside over as a member of the Consent and Capacity Board.

In that role for the College of Naturopaths, I make rulings for the fair and expeditious conduct of the hearing. My overarching duty, I feel, is to the public in those hearings, and also making sure that the parties are treated with respect, that they are heard—not only heard but seen to be heard—and that the hearing is conducted within the principles of natural justice.

The discipline panel included both public and professional members. I was a public member. During the time that we conducted the hearings, there would be a panel of four or five of us. I can tell you that I very much enjoyed the experience of working on a panel and drawing on each panel member’s specific expertise to come to a decision together. It was my responsibility, though, to ensure that the decision that the panel made was based on the evidence and the evidence alone, and that the application of the law to that evidence and the decision was made independently and free from bias.

Drawing on my years of writing legal opinions, legal submissions and reports, I feel that I am able to draft reasons for decisions which are well reasoned, clear and concise.

Also, I spent some time as the chair of the discipline committee. In that capacity, I decided on motions and was required to make orders with respect to the administration of hearings and pre-trials.

I understand that as a member of the Consent and Capacity Board I may be called upon to participate in meetings of the board and in training and mentoring sessions. Having served on many boards, including one where I currently serve as secretary, I’m very familiar with board procedures, conflict-of-interest rules and codes of conduct of boards. I have also mentored students and lawyers throughout my career and I continue to volunteer as a coach and mentor to lawyers through the law society’s program.

Also, as I am not currently working on a full-time basis in law, I have the ability to travel to hospitals throughout the province where the hearings take place. I also have the flexibility to work within tight timelines and on short notice, as the board requires.

I am technologically and computer proficient. Despite being retired, I’m still a member in good standing of the Law Society of Ontario.

Committee members, I’m looking forward to continuing to fulfill my commitment to public service by being

appointed to the Consent and Capacity Board as a legal member. I thank you for your time and I will be willing and more than happy to answer your questions.

The Chair (Mr. John Vanthof): Thank you very much for your presentation. The first round of questioning will start with the official opposition. Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Chair. Thank you so much, Ms. Goodman, and good morning. Welcome to your Ontario Legislature. It's a pleasure to meet you. Thanks for your testimony here and thanks for appearing before us today. I don't know whether you are aware, but you are the first intended appointee that we've been able to hear from in over six months.

Chair, was that our last deputation, five months, six months?

The Chair (Mr. John Vanthof): It's been a while.

Mr. Taras Natyshak: It's really great to hear from you. I applaud your experience and thank you for the work that you've done. To hear from deputants is a really integral part of this process so that we know what your intentions are, what your motivations are, what your aspirations are and how you can contribute to the board in which you will serve. So, again, from the bottom of my heart, thank you so much for being here.

I have a couple of questions, some of which are pro forma questions that you may have heard before. One of them is unique in that—are you aware of some of the controversy and potential scandal that has arisen from this committee and its intended appointees and the nature of appointments through the Premier's office?

Mrs. Robin Martin: Chair?

The Chair (Mr. John Vanthof): Mrs. Martin.

Mrs. Robin Martin: I'm not sure of the relevance of that question for this hearing.

The Chair (Mr. John Vanthof): Is that a point of order?

Mrs. Robin Martin: Yes, point of order.

The Chair (Mr. John Vanthof): I would ask that the member make sure to indicate the relevance of this question to the witness, please.

Mr. Taras Natyshak: Sure. The relevance is that, as I remarked, you're the first deputant that we've heard from in six months, all the while hundreds of potential appointees and appointees have been named to various boards.

Mr. Will Bouma: Point of order, Mr. Chair.

The Chair (Mr. John Vanthof): Mr. Bouma.

Mr. Will Bouma: I fail to see the relevance of this with someone being appointed to the consent board.

The Chair (Mr. John Vanthof): Thank you, Mr. Bouma.

Could you make the question specific to the witness?

Mr. Taras Natyshak: Yes, I was halfway through the sentence and the relevance was about happen at the end of that sentence. Nevertheless, there have been appointees that we haven't had the chance to talk to and some hard questions and difficult questions that we haven't been able to pose. That is not only our right, but it's our obligation and our duty as elected members. But again, I applaud you for being here today. It's really important that we do that.

Some of the questions that we've raised in the past were important to the relevancy of my preambles, Chair, in that there have been areas of conflict in some of our appointees that have come out later, after the fact, that we weren't able to ask. We have to ask these questions.

Ms. Goodman, do you know the Premier personally? Are you connected to the Premier in any capacity?

Ms. R. Gail Goodman: Not at all.

Mr. Taras Natyshak: Do you have any business or financial dealings with the Premier, his executive staff or any ministerial officials that may be construed as conflicts of interest?

Ms. R. Gail Goodman: No.

Mr. Taras Natyshak: Have you ever been a member of the Progressive Conservative Party of Ontario?

Ms. R. Gail Goodman: No.

Mr. Taras Natyshak: Have you ever been a candidate in an election for the Progressive Conservative Party of Ontario?

Ms. R. Gail Goodman: No.

Mr. Taras Natyshak: Have you ever donated to the Progressive Conservative Party of Ontario in any election or any capacity?

Ms. R. Gail Goodman: No.

Mr. Taras Natyshak: When were you aware that this position was available? Did somebody reach out to you from the executive council or from the Premier's office? How did you become aware of this position within the Consent and Capacity Board?

Ms. R. Gail Goodman: On the website for the Public Appointments Secretariat—and that's how I was appointed to the Council of the College of Naturopaths—what you can do is you can indicate interests in certain boards when you sign up on that website, so when a position becomes available they notify you and then you can apply.

Mr. Taras Natyshak: So it was solely your own interest to become involved in this board?

Ms. R. Gail Goodman: Yes.

0920

Mr. Taras Natyshak: You had served on a board previously, you mentioned?

Ms. R. Gail Goodman: I'm presently still on a board. My term expires in March.

Mr. Taras Natyshak: Which board, again? Sorry.

Ms. R. Gail Goodman: It's the Council of the College of Naturopaths of Ontario.

Mr. Taras Natyshak: Okay. How long have you served on that board for?

Ms. R. Gail Goodman: Two years, and then I was reappointed for another year.

Mr. Taras Natyshak: So you have some experience in the construct of boards and how they work—and that's a good thing. That is what we need to hear from deputants: very, very simple questions that should make us—not only us but the general public, more importantly—more comfortable with the experience and capabilities of those who will be serving. Congratulations on your imminent appointment. It certainly will happen, we know.

What motivated you to jump into this line? What motivated you to switch or to look at a different pathway for your service from the naturopath board that you'd served on?

Ms. R. Gail Goodman: I applied to other boards. I think my main motivator was that I felt that I could make a difference in the hearings particularly and—

Mr. Taras Natyshak: With your legal background?

Ms. R. Gail Goodman: —because of my legal background. After having been the chair of a number of discipline hearings—and there aren't that many on that particular board—I felt that I would really like to do a lot more of that and be a presiding member on hearings all the time, not just going to the council work.

Mr. Taras Natyshak: Have you reviewed the caseload for the Consent and Capacity Board over the last number of years? Are you aware of the number of files that they would deal with specifically?

Ms. R. Gail Goodman: Not really. I don't think they have that in any of their published materials.

Mr. Taras Natyshak: They actually do, and—

Ms. R. Gail Goodman: Do they have it—

Mr. Taras Natyshak: They do, and I'm going to get it for you because I'm asking for it right now. I had just seen it a couple of days ago. Without specifics, I can tell you that there has been quite an uptake in caseload that the board would have to deal with. Let's say that it's gone up 50% over the last five years, is what I'm seeing in the graph on the slide deck that I'd reviewed: somewhere around 1,400 cases, let's say, in 2013, to nearly 3,000 today. This is at a time where I believe the annual budget for the board is around \$6 million and has recently been cut, reduced.

Do you have any concerns on the fact that the money allocated to deal with an increasing caseload—again, if my numbers are correct, and I believe them to be because they aren't my numbers but we'll get you that information. If that were the case—you had mentioned that you were going to look for ways with your experience to save time and money. How do you envision being able to do that within the construct of the board?

Ms. R. Gail Goodman: I do understand—first of all, with respect to what you were saying in the preamble to your question, I'm not aware of the uptick in the number of cases—

Mr. Taras Natyshak: Fair enough.

Ms. R. Gail Goodman: —or the money allocated to the ministry to deal with those cases. I'm not aware of those things, and I don't have any real comment on them.

But in terms of the ability of a presiding member, I understand that there are procedures available within the board to speak to applicants and, instead of having a full-blown hearing, to either mediate with the presiding member so that they can resolve the application or have a meeting with the presiding member whereby the issues that are going to come up in the application will be narrowed. I think that if there's that ability and flexibility to do that, a lot of times you can focus things so that the time will be shorter or maybe you can dispense with the

hearing altogether. I think those things are important, and if I'm allowed within my role to do them, I will do them.

Mr. Taras Natyshak: Great. Would you be able to comment on your thoughts around why that board—

Mr. Will Bouma: If I could—point of order.

The Chair (Mr. John Vanthof): Mr. Bouma.

Mr. Will Bouma: If I could, Mr. Chair, a point of order. Just wondering: Were we splitting time, and how much time was going to be given to the government?

The Chair (Mr. John Vanthof): Yes. The official opposition has about four minutes and you have a minute and 30 seconds. At the start of the proceeding, I explained how the time would be allocated—15 minutes to the government and 15 minutes to the official opposition, but the witness's deputation comes out of the government's time, as is the practice.

Mr. Will Bouma: Okay. Just making sure. Thank you.

Mr. Taras Natyshak: I'll try to get back on my train of thought. If the graph that I had seen recently is accurate, in the increase in cases that are being seen before the board, would you have any comment on potentially why that might be happening? What resources within the community might be prohibiting these issues from being dealt with? Why are we seeing more incidences of the need for resolution within the parties than we generally have in the past?

Ms. R. Gail Goodman: I don't know the answer to that; I'm sorry.

Mr. Taras Natyshak: Yes, okay. It would seem to me that resources within the community that could potentially be there around mental health support and intervention—family intervention, crisis intervention, supports and mechanisms that used to be in place in communities—are less and less accessible for families, whether that's due to budget cuts or increasing population or the density of population and ability to access where those services are provided.

What I'm pulling from or drawing from is the experience that we have in our constituency office. I have quite capable staff, as I hope other elected officials do, but we have seen an uptick as well, and we aren't equipped to deal with that. Somewhere within the community there should be some safety nets to be able to intervene, to identify and to support those individuals who may be progressing towards crisis and towards conflict. I wonder if you have any idea around the supports in the community that could enable families to have intervention, prior to actually coming to your board and requiring the services of the board.

Ms. R. Gail Goodman: I can only speak to my personal experiences, which are limited to Toronto and my volunteerism with the Out of the Cold program. It is busier than ever, and I know that we also had to keep it open from March to April—including April—and it seems to be getting worse. That's all I can say for my—I'm sure it's an extremely complicated, complex issue with lots of data and causes—

Mr. Taras Natyshak: Ms. Goodman, I've got one minute left.

Ms. R. Gail Goodman: I'm sorry. But what I'm trying to say is that it's a big issue and I can't really help you.

Mr. Taras Natyshak: You hit on the key word, "data." The graph that I was looking at was actually provided by this committee. I was just sent it from legislative research. The caseload increase in 2003 was 3,500 applications and 5,000 hearings. In 2017-18, we're at 5,000 applications and around 8,000 hearings. The board's budget was \$6.4 million for the 2017-18 fiscal year, reflecting a 5% reduction from the previous year's allocation. Also, the board carried a \$2.3-million deficit. So it validates the general numbers that I was going after.

0930

You're walking into higher caseloads, and probably more complexity, with a reduced budget. I wish you well, going into that. I know that you'll bring a tremendous amount of resources to the board, but we hope that the outcome for those clients is a positive one, and that's our role here to identify.

Thank you again for being here and appearing before the committee, and good luck.

Ms. R. Gail Goodman: Thank you.

The Chair (Mr. John Vanthof): We will now switch to the government. Mrs. Martin?

Mrs. Robin Martin: Thank you, Ms. Goodman, for being here. I'm a former litigator myself and also an Out of the Cold volunteer.

I have looked at your credentials, and they're very impressive. Thank you. I think it's fairly obvious to myself, and would be to members of the general public, that they should be very comfortable with your qualifications, and that your intentions, motivations and aspirations, as my friend was referring to at the beginning, are clearly in the right place. You want to help, and you've got great experience to bring to the table.

I was very interested in all of the experiences you described, but I was particularly interested in the comment you made about your ability to write good reasons. Maybe you could explain for everybody else—not everybody here is a lawyer or a litigator—how that is important to a board like this.

Ms. R. Gail Goodman: It's very important. I understand that there is a very strict time limit in writing the reasons, and the reasons will get reviewed by the individual applicants and other people involved. They're also published, so other people can read them and be guided by them. They have to be clear and concise. From a legal point of view, you have to deal with only the evidence that you hear. You have to apply the facts to some very complicated legal concepts and provisions and legislation. But in writing the reasons, you have to make it clear enough that the lay reader can understand why you made the decision the way you did, and that anybody who wanted to review it, like the court above who may review your decisions, will know why you made the decision.

Mrs. Robin Martin: Right. And you—

The Chair (Mr. John Vanthof): Thank you. That ends the time for questioning.

Mrs. Robin Martin: Thank you.

The Chair (Mr. John Vanthof): Thank you very much for your time. You may step down.

Ms. R. Gail Goodman: Thank you.

MS. SUSAN HEAKES

Review of intended appointment, selected by official opposition party: Susan Heakes, nominated as member, Consent and Capacity Board.

The Chair (Mr. John Vanthof): Next we have Susan Heakes, nominated as member of the Consent and Capacity Board. Would you please come forward?

As you may be aware, you have the opportunity, should you choose to do so, to make an initial statement. Following this, there will be questions from members of the committee. With that questioning, we will start with the government, followed by the official opposition, with 15 minutes allocated to each recognized party. Any time you take in your statement will be deducted from the time allotted to the government.

Welcome. The floor is yours.

Ms. Susan Heakes: Good morning. Thank you, Mr. Chair and members of the committee. This morning I would briefly like to tell you about my qualifications to be a board member of the Consent and Capacity Board, including my experience and knowledge of mental health and capacity issues; my hearing management skills, including my ability to ensure that self-represented parties are heard and treated fairly; my experience writing decisions; and also my experience balancing public interest with individual rights.

After clerking for the Ontario Court of Appeal, I practised civil litigation for 20 years. I was a partner at Blake, Cassels and Graydon, as it was then called, and Heenan Blaikie, as it then existed. I worked in both firms as a corporate litigator, but I also did some family law and I was the senior estate litigator in both law firms. There, the issues of testamentary capacity and mental health came up on a regular basis. It was necessary to review extensive medical reports and to retain psychiatric experts.

In the last decade of my private practice, I developed an expertise in cases involving elder abuse. In my practice, I frequently saw the effects of Alzheimer's and dementia. Unfortunately, I also saw family members and caregivers who preyed on the vulnerabilities of these seniors. As a result of my practice and my interest in that area, I became a board member of ACE, the Advocacy Centre for the Elderly, and I worked on that board for a number of years. I have also written extensively on the financial exploitation of seniors and about estate issues generally.

In 2007, I joined the law society as a senior prosecutor. There, I was the practice lead, so I managed a team of prosecutors, as well as gave strategic advice to the investigation team. I argued a number of high-profile and sensitive files for the law society before the law society tribunals, the Divisional Court and the Court of Appeal.

To give you an idea of the volume of work that we had there, I did a CanLII search this morning, and when I pulled up my name as the counsel, I saw that there were

177 cases in the 11 years that I was at the law society. Some of these matters lasted over 80 days—80 or 90 days.

At the law society, many of the licensees who appeared before the law society tribunal were self-represented. There is truth to the old adage that a lawyer who represents himself or herself has a fool for a client. I was a counsel on several capacity files as well.

Apropos of the comments you made earlier, sir, the law society was also seeing a significant increase in capacity cases generally and in particular the number of aging lawyers with mental health challenges who were unable to provide competent legal services and yet refused to retire.

In September 2018, I became semi-retired, but I have continued to work on a part-time basis in administrative law. As well, I have always continued my teaching.

Since my semi-retirement, I have been the independent legal counsel for the Chartered Professional Accountants of Ontario. I regularly sit with panels on hearings and provide procedural and substantive advice. I have written over 50 draft decisions for the CPAO, all of which were delivered in a timely manner.

I have also spent a lot of time teaching for the Society of Ontario Adjudicators and Regulators, also known as SOAR.

I work as a trainer, and I have taught several decision-writing courses, as well as hearing management programs. I recently helped with a hearing management assignment for the new law society benchers and was an instructor for that course.

I am a board member for the Immigration Consultants of Canada Regulatory Council, also known as the ICCRC. I have trained with them, but I have not presided over hearings yet. The commitment there will be three to five days per month. If I am appointed to the Consent and Capacity Board, I don't anticipate that there would be any conflict there in terms of time allocation or in any other terms.

As you've seen from my resumé, over the last 25 years I have been an adjunct law professor at Osgoode Hall, Queen's law school and the University of Toronto law school. I am currently teaching a course at the University of Toronto law school which is entitled advanced civil procedure and professionalism, which is actually a lot more interesting than it sounds. I am something of a process geek, but I also teach litigation ethics. In that program, I teach young law students how to run a civil law file.

I'm a regular instructor in advocacy programs at the Advocates' Society. I also teach other advocacy instructors.

0940

I currently volunteer for an organization called Matthew House. It's an organization that supports refugees to Canada. The volunteer work that I do there is that, on a weekly basis—I do one or two hearings a week—I conduct a three-hour mock hearing for a refugee claimant, and then give the refugee claimant some feedback on how they have answered the questions and how they can tell their story as clearly as possible. I did a

hearing yesterday afternoon, and I'm doing another one this evening. They are infinitely fascinating, and they make me so grateful to be Canadian.

To summarize, I believe that I can contribute to the excellent work that is already being done by the Consent and Capacity Board. I greatly appreciate the opportunity of addressing you today, and I look forward to your questions. Thank you.

The Chair (Mr. John Vanthof): Thank you very much. The first round of questioning will go to the government. Mrs. Martin.

Mrs. Robin Martin: Thank you, Ms. Heakes, for your presentation and for being here today.

I was interested in your work with elder abuse. I imagine that a number of the cases coming before the Consent and Capacity Board—I don't know for sure, but I imagine a lot of them are dealing with elderly people, perhaps in end-of-life stages where there is some battle about their care or their ability to judge, maybe. I'm wondering if you could just give us some insights into how you would want to deal with stuff like that, given your background in elder abuse.

Ms. Susan Heakes: Yes. One of the first things to recognize in elder abuse—and this is a sad truth—is that most of the elder abuse comes from family members and, secondarily, from caregivers. In considering an elder's situation, one has to be somewhat skeptical about the people who are in their lives. Be compassionate, because obviously it's a challenging situation, but be on guard, if you will, to understand the dynamics of the family.

I have done several training programs in interviewing elderly individuals, and worked with the police. A number of the police forces, as you know, have elder abuse units. There are ways to address elders so that they can essentially tell their stories as well as they can.

You have to balance the need for their protection with respect for their autonomy and their right to make decisions, subject to any limitations to their abilities.

Mrs. Robin Martin: With respect to that, and I don't know if that's how you see it, what do you think will be the biggest challenges that you might be facing at the Consent and Capacity Board? Is it those kinds of issues or others?

Ms. Susan Heakes: In the hearings that I have observed, one of the issues is because of the time frame. As you're aware, after the issue comes to the attention of the Consent and Capacity Board, they have seven days to commence the hearing process, so there is a tight time frame, and thus, all of the information needed to make the decision may not be available to the adjudicators. So one of the limitations is trying to gather as much information in as short a period of time as possible. That will be a challenge.

There will be the challenge of self-represented individuals. The doctors are self-represented, in a sense. Their ability to articulate the issues and make sure that they have laid out the proper case for the panel will be a challenge. But then also, as Ms. Goodman mentioned, the ability of the patient to explain their situation and to describe their issues will be a challenge.

Mrs. Robin Martin: Thank you.

The Chair (Mr. John Vanthof): Ms. Kusendova.

Ms. Natalia Kusendova: Good morning, Ms. Heakes. Thank you so much for your deputation this morning. It is very obvious that you have a great wealth of knowledge, skill and professional mentorship, teaching and volunteer experience, and you're very passionate about everything that you do. So thank you for putting your name forward for the Consent and Capacity Board.

Ms. Susan Heakes: Thank you.

Ms. Natalia Kusendova: As has been noted, mental health is on the rise. I believe about 70% of Ontarians have had some kind of mental health challenge. So it is no surprise that the number of cases that are being heard by the Consent and Capacity Board is also on the rise. But there are different ways that we can find efficiencies, including, from what I've been reading, through video conferencing and use of technology. With your experience, and in connection with mental health and working with persons who have challenges in mental health, what do you think is the largest challenge right now at the Consent and Capacity Board for hearing the voices of those people who cannot always speak for themselves very clearly?

Ms. Susan Heakes: Both you and your friend have mentioned the issue of volume. Obviously, volume is the current problem. I did read the CAMH report from January 2019 which spoke to the increase in mental health issues in our society generally.

Again, to mirror the comments made by Ms. Goodman, in litigation generally, and in dispute resolution, there are a number of tools that can be used to make the process move more smoothly, such as mediation/arbitration. But ultimately, if a person wants a hearing, pursuant to the legislation, they have a right to a hearing. Very important issues are being dealt with: their ability to make treatment decisions, their ability to live where they want to live. These are critical decisions. Ultimately, if there has to be a hearing, there has to be a hearing. You can run the hearing as efficiently as possible, but sometimes the only way to resolve disputes is to have a third party make that determination.

Ms. Natalia Kusendova: I'm a nurse by profession. In my experience, a language barrier is sometimes something that we face in our work. When we're working with people with mental health challenges, a language barrier can be a factor that has a great effect. Have you dealt with those cases? Because living in Toronto, and of course in Ontario, we speak so many languages. What is your experience with language barriers as they relate to mental health challenges?

Ms. Susan Heakes: Language barriers, generally—I can say that I've done countless trials and hearings where we have interpreters. One of the important things is that even if a person has the capacity, the ability, to speak English, you don't want them necessarily struggling with their second language in the course of a hearing, because there are such important issues being dealt with. You want to make sure that they are as comfortable as possible in a highly stressed situation.

Again, in terms of the mental health issue, there has to be a lot of—I don't mean to put this the wrong way, but just a lot of patience. I have spent a lot of time in northern Ontario, dealing with the survivors of residential schools in the context of a hearing that I was involved with for the law society—about two years, interviewing First Nations individuals. I learned an awful lot about interviewing people with cultural differences, language differences and occasionally mental health issues. It takes time.

Again, we're talking about a process that is underfunded, apparently, and overwhelmed with work. But sometimes you just need time to listen and to hear people and to make sure they've been heard.

The Chair (Mr. John Vanthof): Mr. Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. Through you to the applicant, thank you so much for being here today. You spoke so eloquently about the challenges that we face in this role, and what your place would be on the Consent and Capacity Board. If you could: How would you measure success in such difficult situations, where it seems like everyone is a loser because you're in this situation? How would you measure that?

The Chair (Mr. John Vanthof): If I could: You have one minute.

Ms. Susan Heakes: Yes, thank you.

Success is having people feel that they have been heard and treated fairly. Ms. Martin asked a question about the decisions. It's really important, when individuals read the decisions, especially the "loser," the one who hasn't achieved what they wanted to achieve, that they know that they have had a fair hearing and a fair process. That would be success.

I suppose, on a broader level, success is the protection of the public and ensuring that the public interests are protected. But on a more individual level, I think it's that everyone, even if they feel they haven't been successful, knows that this has been a fair process.

Mr. Will Bouma: Thank you.

The Chair (Mr. John Vanthof): Thank you very much. Right on time.

The next round of questioning goes to the official opposition. Mr. Natyshak.

Mr. Taras Natyshak: Thanks, Ms. Heakes, for being here. It's a really intriguing deputation, and quite an intriguing career you've had thus far.

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Thank you for the work that you've done, specifically the work on First Nations dealing with residential school survivors and victims of sexual abuse and assault. I, too, as a member of this House, have had the ability to travel to those remote communities as a member of the Select Committee on Sexual Violence and Harassment. It's gripping testimony. It's difficult to hear but it's important to learn, and it's information that the general public needs to know. Similar to this committee, it's important information that you have given us and that you will continue to give us which the public needs to know, because ultimately, they're the ones whom we serve.

As you heard with my earlier line of questioning, the basis of some of the questions is pro forma. They're questions that I've asked of almost every deputant before us that has appeared. They're born out of a need to identify some issues of concern, a track record this government has had thus far and some of the controversy that has embroiled this committee, so please don't take offence; they're not meant to be personal. But they are questions that we have to ask. It is our duty; we are duty-bound to do this work.

Therefore, have you ever been a member of the Progressive Conservative Party of Ontario?

Ms. Susan Heakes: No.

Mr. Taras Natyshak: Have you ever donated to the Progressive Conservative Party of Ontario?

Ms. Susan Heakes: When I was partner at Blake, Cassels and Graydon, an amount was taken out of our draw to donate to the Conservative and the Liberal parties. They didn't know that Bob Rae would become the Premier at that time.

Mr. Taras Natyshak: I don't think Bob Rae knew that he was going to become Premier at that time. Fair enough.

Have you ever run as a candidate for any political party?

Ms. Susan Heakes: No, sir.

Mr. Taras Natyshak: Were you approached by anyone within the government—the Premier, his executive staff or any ministerial officials? Did anyone from the government reach out to you to hand-pick you and say, "Susan, we need you here"?

Ms. Susan Heakes: No, sir.

Mr. Taras Natyshak: So it is of your own volition that you identified this board and applied for it?

Ms. Susan Heakes: Yes.

Mr. Taras Natyshak: Was it something that had given you interest in the past? Had you attempted to apply in the past ever?

Ms. Susan Heakes: No, I hadn't applied in the past, but I know a number of board members and former board members, and over the years they've talked to me generally about their experiences. I've been very interested in this board for five or six years now.

Mr. Taras Natyshak: Have you ever served on another board or an agency within the government?

Ms. Susan Heakes: I'm currently a board member for the ICCRC, which is a federal board. But otherwise, no, sir.

Mr. Taras Natyshak: Okay. How long have you served on that board?

Ms. Susan Heakes: I was appointed in July and I've only done the training. I haven't started any work yet for them.

Mr. Taras Natyshak: I'm interested in the work that you had mentioned you do with new immigrants. Is that pro bono work?

Ms. Susan Heakes: It's refugees, and yes, it's pro bono.

Mr. Taras Natyshak: How long have you been doing that?

Ms. Susan Heakes: I think I started in April.

Mr. Taras Natyshak: And do you find that rewarding?

Ms. Susan Heakes: Tremendously.

Mr. Taras Natyshak: Is there a correlation between the work that you do with those clients and those that you'll be working with through the Consent and Capacity Board?

Ms. Susan Heakes: No, they won't be the same individuals, but what it does give me is, on a weekly basis, the experience of running a mini-hearing, if you will. But also, apropos your comments, most of these hearings are using interpreters, and quite often, even if there's no interpreter, English isn't a first language, so you have to listen very carefully to make sure that you understand everything that's being said. So it's good practice for that.

Mr. Taras Natyshak: That raises a question: Are you bilingual?

Ms. Susan Heakes: No.

Mr. Taras Natyshak: That's okay.

Oh, that's what I want to do. That's the packet.

Ms. Susan Heakes: Thanks.

Mr. Taras Natyshak: You're welcome. That's the packet that was provided by legislative research, and it's quite insightful around the work and some of the challenges that the Consent and Capacity Board may face, and has faced in the past.

One of them that jumps out is the increase in the caseload from 2002 to 2018. It looks like it has more than doubled.

The Chair (Mr. John Vanthof): Mr. Natyshak, could you point to the page so everyone can—

Mr. Taras Natyshak: Pardon me. It's page 4, figure 2, on the slide deck. Do you see it?

Ms. Susan Heakes: Yes, I do. Thank you.

Mr. Taras Natyshak: I was close in my guesstimate, in that it has gone up 50%. I guess the CCB applications have gone up 79%, and hearings have increased 134%. Over the past years, actual expenditures through the board—the costs that the board incurs to provide this service—the costs have increased 58%.

So you're seeing more cases, you have fewer resources to deal with those cases, and I would imagine that at some point, we'll reach a critical mass where the service level diminishes. Do you have any comments on what could be done to ameliorate that situation?

Ms. Susan Heakes: As I mentioned earlier, and as Ms. Goodman addressed the issue, I think you can look at other dispute resolution mechanisms, such as mediation and pre-hearings, to reduce the length of the hearings. But ultimately, people are entitled, pursuant to the legislation, to have a hearing. Their personal rights are being hugely impacted by the nature of these hearings, and they have a right to a hearing. So I am hesitant to suggest that we come up with some quick fixes to these problems.

We have people who need to make decisions about their medical treatment and their psychiatric treatment, or their decision-makers need to make those decisions. It's very important decision-making that's going on here.

Mr. Taras Natyshak: Have you been privy to the Law Commission of Ontario's report, 2017, that examined the Consent and Capacity Board, among other things, meaning powers of attorney, guardianship and health care consent? Are you aware of that document?

Ms. Susan Heakes: No.

Mr. Taras Natyshak: Apparently, they made 58 recommendations to build on the system's strengths and to address some of the gaps.

One of the areas that was identified by the law commission that required further clarity and procedural protections was the authority of substitute decision-makers to make decisions about detention in a long-term-care or retirement home, many of which include secure units. Is that a part of what you referenced when you were talking about outside conciliation? Could that fall into that category?

Ms. Susan Heakes: It could. Based on the conversation that I had with Ms. Martin, though, about elder abuse, you've got to be very cautious with giving substitute decision-makers the ability to make decisions about a person's health care and about whether or not they are free to leave the hospital.

With that slight caveat, I think that it's an area that needs to be worked on and reviewed, but it also has to be looked at with some degree of caution.

Mr. Taras Natyshak: When you see the graphs that I pointed to—figure 2, and figure 1 on page 3—the percentage of total hearings by application type in 2017-18—any comments on what you could attribute of that increase to the caseload? I could come up with a whole bunch of different rationales as to why they are seeing more. But in your experience, having some specific experience in mental health and support with seniors, and in your legal career, do you have any ideas of what might be happening on the ground, so to speak, in the community, that could be attributed to the increase?

Ms. Susan Heakes: You've mentioned the demographics. We have an increasing number of individuals who are living longer and, sadly, experiencing more mental health issues such as Alzheimer's and dementia.

Last evening, I was looking at the CAMH report from January of 2019, and it spoke to the increased number of mental health issues, particularly suicides with young people. In terms of demographics, we've got an aging population that is experiencing more mental health issues but unfortunately we've got a younger population that is subject to increased stresses and problems. In the CAMH report in particular, they talked about, with young people, the impact of social media on their mental health.

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In a way, it's a perfect storm. We've got different demographics in our society that are being hit hard by mental health issues. Clearly, from the statistics on suicide and on mental health issues, it's not going to get any better. This problem is going to increase.

Mr. Taras Natyshak: I thank you very much for your insight on that. We here are also concerned as we're seeing the effects of everything you mentioned: the demographic challenges, challenges on youth mental health, support,

addiction. It's really causing a crisis in so many communities across the province. We're also concerned about the fact that the government doesn't seem to be taking it as seriously as the problem that we feel in our communities.

Specifically with the resources in reference to the graphs that we have here and the resources that the board has, it's my hope that the challenges are acknowledged by this government and that allocations through the Ministry of Health to budget the sufficient resources that you are going to need in the future—because we're not seeing this go away any time soon—are enough to sufficiently allow that really important service.

The Law Commission of Ontario stated that the fundamentals of the Consent and Capacity Board are sound. So it's something that shouldn't be tinkered with but should be supported and addressed in terms of making it better, but it's our job here to sound the alarm, and I hope that you feel, in your new capacity, that you have the ability to do that. You can always circle back to us and let us know how things are going. Really, the impetus of this committee is to hear from you.

I have no doubt that your experience and your capabilities will be an asset to the board. Again, I really appreciate you being here. You are the second deputant I have heard from—and our thanks to the previous deputant as well, because it's really comforting to know that folks have the good intentions and have the right mindset to go there, to apply themselves and to serve our communities and our boards. It's a shame that it has taken this long to see and to hear from deputants.

I'll leave it there. I don't think my colleague wants to jump in on the last 30 seconds, but I truly appreciate you being here and I wish you all the best in your service on the board.

Ms. Susan Heakes: Thank you very much, sir.

Mr. Taras Natyshak: Thanks.

The Chair (Mr. John Vanthof): No further questions? That concludes the time allotted. Thank you very much for your presentation, and you may step down.

Ms. Susan Heakes: Thank you very much.

The Chair (Mr. John Vanthof): We will now consider the intended appointment of R. Gail Goodman, member for the Consent and Capacity Board. Who is going to move the concurrence?

Mr. Will Bouma: I move concurrence in the intended appointment of R. Gail Goodman, nominated as member for the Consent and Capacity Board.

The Chair (Mr. John Vanthof): Concurrence in the appointment has been moved by Mr. Bouma. Any further discussion? Seeing none, I would like to call a vote. All those in favour? Opposed? It's carried.

We will now consider the intended appointment of Susan Heakes, member for the Consent and Capacity Board. Mr. Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. I move concurrence in the intended appointment of Susan Heakes, nominated as member for the Consent and Capacity Board.

The Chair (Mr. John Vanthof): Thank you. Concurrence in the appointment has been moved by Mr.

Bouma. Any further discussion? Seeing none, I'd like to call for a vote. All those in favour? Any opposed? Seeing none, that is carried.

Our next issue will be deadline extensions to see if we can extend the deadlines to have people appear.

(1) The deadline to review the intended appointment of Dan Weagant, selected from the October 25, 2019, certificate is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Dan Weagant to December 24, 2019? I heard a no, so we do not have.

(2) The deadline to review the intended appointment of Lori Marzinotto, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Lori Marzinotto to December 24, 2019? All those in favour? I heard a no; we do not have consent.

Mr. Taras Natyshak: Could we have a recorded vote?

The Chair (Mr. John Vanthof): Yes, you can. Would you like a recorded vote on all the further—

Interjection.

The Chair (Mr. John Vanthof): Typically, we don't do a recorded vote for unanimous consent.

Mr. Taras Natyshak: No worries.

The Chair (Mr. John Vanthof): Thank you for asking.

(3) The deadline to review the intended appointment of Dr. Benjamin Longstaff, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Dr. Benjamin Longstaff to December 24, 2019? All those in favour? I heard a no; we have no unanimous consent.

(4) The deadline to review the intended appointment of Colin Cassin, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Colin Cassin to December 24, 2019? I heard a no.

(5) The deadline to review the intended appointment of Scott Carter, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Scott Carter to December 24, 2019? I heard a no.

(6) The deadline to review the intended appointment of Jason Melbourne, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Jason Melbourne to December 24, 2019? I heard a no.

Mr. Taras Natyshak: I said yes.

The Chair (Mr. John Vanthof): I heard a yes, but I heard several noes.

(7) The deadline to review the intended appointment of E. Jane Bullbrook, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of E. Jane Bullbrook to December 24, 2019? I heard a no.

(8) The deadline to review the intended appointment of Blair Roblin, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Blair Roblin to December 24, 2019? I heard a no.

(9) The deadline to review the intended appointment of Jill Scrutton-Fulford, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Jill Scrutton-Fulford to December 24, 2019? Once again, I heard a no.

(10) The deadline to review the intended appointment of Katherine Tomaszewski, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Katherine Tomaszewski to December 24, 2019? I heard a no.

(11) The deadline to review the intended appointment of Anna-Marie Castrodale, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Anna-Marie Castrodale to December 24, 2019? I heard a no.

(12) The deadline to review the intended appointment of S. Ford Ralph, selected from the October 25, 2019, certificate, is November 24, 2019.

Mr. Taras Natyshak: Chair, pardon me.

The Chair (Mr. John Vanthof): Mr. Natyshak?

Mr. Taras Natyshak: How many more of these do you have to go?

The Chair (Mr. John Vanthof): I'm up to number 12, and we have up to number 15.

Mr. Taras Natyshak: Okay.

The Chair (Mr. John Vanthof): Do we have unanimous agreement to extend the deadline to consider the intended appointment of S. Ford Ralph to December 24, 2019? I heard a no.

(13) The deadline to review the intended appointment of Lewis Jay Richardson, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Lewis J. Richardson to December 24, 2019? I heard a no.

(14) The deadline to review the intended appointment of Robert Maich, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Robert Maich to December 24, 2019? I heard a no.

(15) The deadline to review the intended appointment of Shirley P. Durance, selected from the October 25, 2019, certificate, is November 24, 2019. Do we have unanimous agreement to extend the deadline to consider the intended appointment of Shirley P. Durance to December 24, 2019? I heard a no.

We didn't have unanimous consent on any of those extensions.

Mr. Natyshak.

Mr. Taras Natyshak: Can I ask that the committee provide us with an update on selected appointees that we've identified and what the status is of their availability?

The Chair (Mr. John Vanthof): Would you like that as a committee request or a personal one, and for which certificates?

Mr. Taras Natyshak: The most recent selections—

Mr. Jeff Burch: November 1 and November 8.

Mr. Taras Natyshak: Okay, the November 1 and November 8 certificates.

Interjection.

The Chair (Mr. John Vanthof): You could answer that.

The Clerk of the Committee (Ms. Jocelyn McCauley): Sure. As of right now, the only individual that we have received availability for is Mr. Blair Roblin, I believe. He said he was not available for the next two weeks. Aside from that, though, the way in which we schedule is that we schedule the two and then once the meeting occurs, we schedule the following two.

Mr. Taras Natyshak: Have all other selected appointees declined?

The Clerk of the Committee (Ms. Jocelyn McCauley): No.

Mr. Taras Natyshak: They have no response yet or—that's just what I'm asking for: What's the status?

The Clerk of the Committee (Ms. Jocelyn McCauley): No response yet. We haven't contacted them—

Mr. Taras Natyshak: No response from anybody else?

The Clerk of the Committee (Ms. Jocelyn McCauley): Yes. Based on the timing and how the constituency weeks fit, the expiry for a number of those certificates is upcoming, so we basically needed to wait until we confirmed that we had unanimous consent or not in order to then continue scheduling from there.

Mr. Taras Natyshak: Okay. I guess that's on the record so I don't need a formal response.

The Chair (Mr. John Vanthof): No, you got your answer.

Mr. Taras Natyshak: I got my answer. Sounds good.

Could you say that person's name again one more time?

The Clerk of the Committee (Ms. Jocelyn McCauley): I believe it was Blair Roblin. I will confirm and email the committee, though.

Mr. Taras Natyshak: Blair Roblin? Okay.

The Chair (Mr. John Vanthof): I see no further business. Seeing none, the committee is adjourned.

The committee adjourned at 1013.

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Vice-Chair / Vice-Président

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Mr. Will Bouma (Brantford–Brant PC)

Mr. Lorne Coe (Whitby PC)

Mr. Rudy Cuzzetto (Mississauga–Lakeshore PC)

Mr. Parm Gill (Milton PC)

Mr. Taras Natyshak (Essex ND)

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