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**Official Report
of Debates
(Hansard)**

A-25

**Journal
des débats
(Hansard)**

A-25

**Standing Committee on
Government Agencies**

Intended appointments

1st Session
43rd Parliament

Thursday 29 February 2024

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

1^{re} session
43^e législature

Jeudi 29 février 2024

Chair: Will Bouma
Clerk: Isaiah Thorning

Président : Will Bouma
Greffier : Isaiah Thorning

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Thursday 29 February 2024

Jeudi 29 février 2024

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Will Bouma): Good morning, everyone. The Standing Committee on Government Agencies will now come to order. We are meeting to conduct a review of intended appointees. We are joined by staff from legislative research, Hansard, and broadcast and recording. As always, all comments by members and witnesses should go through the Chair.

The first item of business will be the adoption of a subcommittee report, which was distributed in advance. We have the subcommittee report dated Thursday, February 22, 2024. Could I please have a motion? Member Pang.

Mr. Billy Pang: I move the adoption of the subcommittee report on intended appointments dated Thursday, February 22, 2024, on the order-in-council certificate dated February 16, 2024.

The Chair (Mr. Will Bouma): Is there any discussion on the motion? Seeing none, are members ready to vote? All those in favour? Any opposed? Carried.

INTENDED APPOINTMENTS

MR. DARRYL BOYD

Review of intended appointment, selected by official opposition: Darryl Boyd, intended appointee as member, Species at Risk Program Advisory Committee.

The Chair (Mr. Will Bouma): Our first intended appointee today is Darryl Boyd, nominated as member of the Species at Risk Program Advisory Committee. Mr. Boyd, you may come forward. Thank you very much for joining us today. Yes, you get the chair right there in the middle.

You may make an initial statement at your discretion. 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 that you take in your statement will be deducted from the time allotted to the government.

Again, thank you very much for taking time out of your day for joining us. You may make your statement.

Mr. Darryl Boyd: Thank you, Mr. Chair. I'm honoured to be here today as a candidate for public appointment to the board of the Species Conservation Action

Agency. I'm excited about an opportunity to work with existing agency directors. They're all very accomplished professionals, and it would be a privilege to work with them. As a generalist environmental scientist with a background in planning, permitting and operating mines for the past 27 years, I hope to support the agency in its efforts to deploy funds in an impactful way to benefit species at risk and fulfill its mandate.

I look forward to answering your questions, but before I do, I've been given this opportunity to share a bit about my background and qualifications.

Aspiring to a career focused on environmental stewardship came to me quite naturally at an early age. I was born in northern Ontario and moved to rural southern Ontario before I was eight years old. I grew up living and playing on a dead-end dirt road surrounded by forests and meadows. There, I developed an appreciation for the natural environment where I spent most of my time, along with an interest in protecting it.

I attended the University of Guelph, where I completed a degree in environmental sciences. After a challenging job search when I graduated, my first career-related position was at Myra Falls Mine in Strathcona Provincial Park on Vancouver Island. The 90-minute daily ride on the company bus was more of a vacation than a workplace commute. While my coworkers slept peacefully with their pillows and blankets, I actually stayed awake for the drive so I could enjoy the mountains, the trees and the lakes. It was pretty obvious I was from out of town.

The time spent working at Myra Falls was formative for me. In addition to volunteering to help with environmental research at the mine, I saw how an operating mine could coexist with tourism, recreation and wildlife values. Although I was offered full-time employment at the mine when my contract ended, I returned home to Ontario and to a variety of part-time jobs once again, because my mom was having health issues.

In addition to my years of living at home and commuting to the University of Guelph, it was during this time that I was an active volunteer at the SPCA, and later the Tears of Joy Animal Rescue. In addition to caring for shelter animals, our time was spent operating a thrift store where all the revenue we generated was used to spay and neuter pets in the region. Our goal was simple: We worked at preventing cruelty to animals by preventing unwanted animals. Despite living in a modest 1,200-square-foot home, we managed to take in our share of strays as well. We topped

out at 13 dogs and five cats. It was cramped, but we managed to keep the peace.

Following my mom's recovery, I resumed my search for career-related work and soon found myself living and working at Lac Des Iles Mine, north of Thunder Bay. It was there that I enjoyed my first leadership role in environmental management, and I was part of a team that planned, permitted, built and commissioned a major mine expansion that became a cornerstone contributor to the local economy for the past 20 plus years.

It was also there that my volunteer experience grew to include the local citizens' committee for the Spruce River forest, MNR-sponsored stream rehabilitation projects and the Ontario Mining Association's environment committee, as well as a variety of workplace committees, including mine rescue and joint health and safety. Over a two-year period, I also completed a certificate in environmental assessment at Lakehead University.

I met my wife in Thunder Bay and we relocated to Sudbury, where I continued working in the mining sector to lead planning and permitting for several mining restarts in northern Ontario for FNX Mining, Lake Shore Gold and North American Palladium. These formative years showed me how a mine can truly lift people up. I realized we weren't building mines, we were building communities. Since then, I've become very passionate about creating opportunities for others.

My wife and I and our two boys moved to Waterloo in 2007. I've been fortunate to be able to continue my work on many mining project start-ups, always working closely with government agencies, Indigenous communities, special-interest groups, as well as environmentally focused NGOs from time to time. In my work, I strive to understand the perspectives of others, proactively protect values such as species at risk, and balance the interests of all parties when planning new projects in an effort to earn broad support.

Outside of work and family commitments, my wife and I support organizations that focus on food security, environmental protection, animal welfare and helping people with addictions. Our support right now is limited to financial, but as we get closer to retirement, we'll volunteer with our time as well.

Before I close, I wanted to share my thoughts on the mandate of the agency and how I'm well positioned to support them. The agency has a clear mandate as provided in the act and the prescriptive regulations under it. I've worked with this legislation and the policies that flow from it since their inception. This has enabled me to analyze proposals for undertakings and will allow me to contribute to effective decision-making by the agency.

I've held management roles related to species-at-risk evaluation and protection in Ontario since the early 2000s. I have the wherewithal to interpret technical documents where necessary and help carry out the agency's mandate in this regard. I've worked with respected consultants, special-interest groups and stakeholders for more than two decades on a variety of issues, including species at risk. I appreciate the diverse views and concerns that arise from

these engagements. I can offer this perspective to the agency and engage with these stakeholders, if and when appropriate. Finally, I can contribute mining sector-specific perspectives and views related to the agency's mandate.

In closing, I feel strongly about serving my community and society. I'm excited about the prospect of contributing to the agency and its protection and recovery mandate to the benefit of the people of Ontario. Thank you once again for your time, and I'm grateful to be considered for this appointment.

The Chair (Mr. Will Bouma): Thank you very much. We'll now turn to the government, with nine minutes and 24 seconds. Member McGregor, go ahead.

Mr. Graham McGregor: Thank you, Chair. Good morning, colleagues. Good morning, Mr. Boyd. Thanks for being here with us here today.

I want to double-click on your experience regarding the environmental assessment and permitting processes, and if you could give us any take-aways and insight you have about the implementation of the Endangered Species Act, specifically regarding your experience in the mining sector.

Mr. Darryl Boyd: Right. Permitting new mines is what I do. I've been doing that since the early 2000s. The act came in in 2007. Prior to 2007, companies I was working for were proactively looking to evaluate species at risk so that impacts could be mitigated and species at risk ultimately could be protected. Since the inception of the act in 2007, I've worked with MNR, who were originally responsible for administering the act; more recently, I've been working with the Ministry of the Environment, Conservation and Parks with respect to the act.

There have been some challenges, to be frank. Some of the other legislation we often deal with in the mining space—the act, the regulations, the policy that flows from them is a little bit better understood. The guidance documents are clear. With respect to the Endangered Species Act, we're just not there yet. The precedents available to sort of guide and show proponents where the goalposts are, coupled with guidance documents to again describe the playing field, are in their infancy, I would say. So I think there's some opportunity for improvement in that regard. But certainly the staff I've worked with are proactive and dedicated and eager to help proponents like myself. Hopefully that answers—

The Chair (Mr. Will Bouma): Member Pang, with seven minutes and 25 seconds.

Mr. Billy Pang: Thank you, Mr. Chair. Thank you, Mr. Boyd. Very impressive experience and passion on environmental initiatives. You shared a little bit about the committee's mandate. What else can you share with us or that you know—especially, "Okay, this is my mandate," something like that—and how are you going to make it happen?

Mr. Darryl Boyd: With respect to the committee's mandate, I'm aware of identifying species that are eligible for the program. I'm aware of the objectives for the funding that's accepted pursuant to the program. With my experience, I've got enough technical wherewithal, enough

managerial wherewithal, to be able to evaluate proposals for undertaking so that we can deploy the funds in an effective way that will benefit species at risk in a measurable way and in a way that I think would be apparent to all stakeholders, so that we can, again, try to earn some support for what we're doing.

0910

Secondly, with respect to the committee's mandate of identifying opportunities for additional species to be listed and be eligible for the program, and to further define and implement overall benefit, I think, again, having had the benefit of being schooled and educated by staff from MNR and the Ministry of the Environment, as well as some respected consultants I've been fortunate enough to engage, I think, again, I can bring that experience to the committee and that perspective, and, again, just give our work some added credibility.

Mr. Billy Pang: Thank you very much, Mr. Chair.

The Chair (Mr. Will Bouma): Member Hardeman, with five and a half minutes.

Mr. Ernie Hardeman: Thank you very much for putting your name forward to be on this committee. You have extensive knowledge in the industry and also seem to enjoy what you're doing. My question really is based on—having been so involved with species at risk, and then you look at the mandate of the committee, you become the judge of the sector that you were working for in the past. Could you tell me a little bit more about what impact your experience and your volunteerism will have to make you a good committee member to be the oversight of the industry?

Mr. Darryl Boyd: Well, the industry perspective, I think, is one where the industry wants to be a good actor in this process. The industry wants to be protecting species at risk and wants to be seen protecting species at risk. I don't think it would be a case of the fox protecting the henhouse, or however that saying goes. I think what the industry is calling for is faster decision-making and, again, a better understanding of where the goalposts are. What we tend to see in recent years is a fairly long and drawn-out approval process where, at the end of the process, we kind of arrive at the conclusion that we forecast at the start of the process, which is a modest amount of money to create an important species-at-risk habitat feature. I think companies generally would just want to fast-forward to that point, and companies are happy to overcompensate and do their part to protect SAR and SAR habitats.

I don't foresee it being a conflict for myself, but I think that that's the resounding sentiment from the industry, and that's what I can bring to the committee and government agencies in an effort to hopefully make everyone's life a little easier, help us get to the finish line collectively a little easier, a little faster. Again, the notion of overcompensating, it comes with a cost, but I think industry is happy to pay that cost.

Interjection.

The Chair (Mr. Will Bouma): Very good. Member Sandhu, with just under three minutes.

Mr. Amarjot Sandhu: Thank you, Mr. Boyd, for appearing before the committee. My question to you is—I want to speak more broadly about your philosophy on public service and what it means to serve the people of this province. What do you think you will be able to bring to the table at the Species at Risk Program Advisory Committee?

Mr. Darryl Boyd: Well, as you heard from me this morning, volunteering has been a part of my life for a number of years, and I think it's in our family's DNA. I think I'm a hewer of wood, drawer of water—roll up the sleeves and get to work when there's a job to be done.

With respect to the committee, I think the mandate and my understanding of the mandate is clear and defined. There's work to be done, and I'd like to be a part of the team. Again, being a contributing team member is part of my DNA, and I think an opportunity to work on the committee and serve is something that I would welcome.

My background: I probably can't say anything much more about it, but that's what I bring to the table. I'd be happy and honoured to accept the duties assigned to me and do my part.

The Chair (Mr. Will Bouma): Thank you very much. A minute and 25 left: member Gallagher Murphy.

Mme Dawn Gallagher Murphy: Okay. I'm going to go real quick here.

Thank you, Mr. Boyd, for being here. Part of the task for the species at risk is the development and promotion of best management practices. Hearing your experience and your background, was there a specific species, maybe in your early years, that you got to know that was at risk that prompted you to get into this field?

I ask that because I know I had an experience with bats, and, oh boy, did I learn so much about bats at risk, which has given me appreciation. I'm wondering, was there a specific species for you?

Mr. Darryl Boyd: Well, this is going back a few years, but that dead-end dirt road—Mississauga Road to be specific—where I grew up, we had blue heron. We lived on the shores of the Credit River—a tributary of the Credit River—and we had a pair of blue heron that visited every spring and summer. At that time, it was—this predated the act, but that was an endangered species. So, yes, that contributed to my interest and wanting to get involved.

Mme Dawn Gallagher Murphy: Excellent. Thank you, Mr. Boyd.

The Chair (Mr. Will Bouma): I think I will just cut that off there.

We will now turn to the opposition side, with 15 minutes for questions. Member Fife, go ahead.

Ms. Catherine Fife: Good morning, Mr. Boyd. It's good to know that you're from Waterloo. That's one of the best places to land, I think, in Ontario.

I did read through your CV, and I understand the roles and responsibilities of being a part-time member of the Species at Risk Program Advisory Committee. I just wanted to ask you—because it's a very interesting time to be coming before committee here in Ontario for a number of reasons, which I'll go into. But regarding the specific

environmental agenda of this government, are you aware that in 2019 the government introduced a bill that made amendments to the Endangered Species Act? One change was that the minister could suspend protections for species that are listed as endangered or threatened. Does that have a concern for you when you see a government empowering a minister, potentially, to override even the work of the committee?

Mr. Darryl Boyd: That's worrisome. Again, my experience, my work, my priorities, my values align with protection of species at risk for the sake of the species, and also in an effort to gain and earn support for the projects I've been a part of. So, yes, that's worrisome. I'm somewhat comforted by having guardrails in place such as judicial reviews and tools in our tool box of that nature. I cringe to say that, but I suppose I take some comfort in the fact that there are some guardrails and checks and balances if decisions are being made that really shouldn't be made.

Ms. Catherine Fife: Okay. I want to say, I take some comfort in the fact that you are looking at some of those guardrails, actually. However, those guardrails may not be as strong as they used to be, given the current situation here in Ontario. But I thank you for that answer.

I'm just going to go back to the Auditor General. The Auditor General has been very concerned about the environment. You pay attention and you're very engaged, and so you would know that. Following that 2019 Auditor General report, the auditor found that the number of species at risk is increasing, with 65 species newly listed and 29 whose risk status has increased.

Following that report, the 2021 Auditor General concluded that the ministry "is failing in its mandate to protect species at risk." And among other things, the audit found that "permit applications to harm species at risk" or other habitats "are always approved," and noted that, in 2020, 96% of approvals under the act were conditional exemptions.

I just wanted to put that out there for you, because I think that you've highlighted where your values are, but you may be coming into a committee that the ministry itself is undermining. When I tell you that the Auditor General—who is an independent officer of the Legislature, so no partisanship here—says that the ministry is failing in its mandate to protect species at risk, I want to know, as a potential committee member, how does that make you feel?

0920

Mr. Darryl Boyd: Pretty bad. Statements like that are worrisome, indeed. I think statements like that need to be pulled apart a little bit. We need to do a bit of a dive and understand what underpins those statements.

The objective of the act, I think, is well intentioned. The administering of the act and application of the act—as I alluded to earlier, I think we're still learning. This isn't the Ontario Water Resources Act, which has been around for several decades longer than the Endangered Species Act, and frankly, the science associated with the Endangered Species Act is not as mathematical and linear as we'd like it to be, so where decisions are as easy and obvious.

But, yes, that's worrisome. A statement—

Ms. Catherine Fife: That's an interesting statement from you, Mr. Boyd. Can you unpack that a little bit?

There are some very large infrastructure projects that have been introduced, and I'm thinking, in particular, of the Bradford Bypass and Highway 413. These are new projects that this government has introduced midway through the 10-year transportation strategy. We do have a very good idea of what the environmental impact will be with those projects.

Could you give us an example of how you would deal with the choice between 16 species at risk being further at risk—at the cost of an infrastructure project?

Mr. Darryl Boyd: That's challenging, and it demands a fair bit of baseline data to just inform the analysis and the decision-making process. Certainly, we have to look at each species; we have to look at their habitat, their range; we have to look at important sub-range features. There are a number of things we need to accomplish when we collect our baseline data.

With respect to a flawed decision, again, I take comfort in some of the checks and balances that have been in place in Ontario since the mid-1990s. Specifically, I'm thinking about the Environmental Bill of Rights and the opportunity for public input; I'm thinking about the opportunity for bump-up or designation requests for individual EAs if the simple-class EA or the simple permitting process is deficient—

Ms. Catherine Fife: Yes, those are really good points.

The Environmental Bill of Rights used to guide, essentially, the ministry; however, that has been seriously undermined. So I just wanted to put it out there for you.

I have one more question for you, just to circle back. You're coming before this committee at a very tense time, I would say. This committee itself has had to be dealing with some appointments that had to be reversed. I don't know if you're aware of this, but last year a developer was appointed to this committee by the government and was later removed for serious allegations, after it came to light that he was misappropriating millions of dollars from one of his own developments.

I think that you've come before this committee with good intentions. You've highlighted your values. But I just needed you to know what you're walking into.

The Premier himself has said that he's looking for "like-minded" people. This is a very awkward question for me, but would you consider yourself a like-minded person—as an appropriate term?

Mr. Darryl Boyd: I don't know that I would. I don't know the Premier well enough to—

Ms. Catherine Fife: Well, maybe you know enough about him; I don't know, Mr. Boyd.

These are challenging times. These public appointments, historically, have really been about seeking people who have the experience and the desire to serve publicly as well. So I'll thank you for putting your name forward, but I do want you to be aware that you are coming into—pardon the pun—a quagmire right now on the environmental file, and the stakes are very high.

I'll pass it over to my colleagues.

The Chair (Mr. Will Bouma): Member Gates, with just under seven minutes.

Mr. Wayne Gates: Oh, I've got lots of time. I'm going to take my time on my questions. I've got 104 questions, sir, so it's going to be rapid-fire.

First of all, I just want to ask, just because I listened to my colleague's questions: Were you approached by the Conservative Party to apply for this?

Mr. Darryl Boyd: No, I wasn't.

Mr. Wayne Gates: I'll respond to that: I'm not surprised, because you actually sound like you have the qualifications to sit on this committee. I've been doing this committee for a long, long time. That's not always the case. I want to say thank you for following your passion. I think a lot of us get into politics to follow our passions, and then, when we get here, we go, "What the heck happened?" So I just want to say thank you for following your passion.

It sounds to me like it's not just your passion; it sounds to me like your wife has a similar passion on protecting our environment, understanding the importance of volunteering, all those things that it's nice to see on a—what's today, Thursday?—on a Thursday morning at a committee, that it actually sounds like there's somebody here that really cares about our environment and protecting our endangered species.

My first question is going to be about the fact that—my colleague also talked about the 413, where that highway is going to go through prime farmland. We know that there are a number of endangered species that live in those lands. Have you looked at the 413, knowing that that's going to be probably raised at your committee as we go forward? It doesn't sound like the government is going to back down on the 413 unless the environmental studies, which they don't agree with, through the federal government—are you aware of the 413? Are you aware of the risk for the species?

Not just on the 413, by the way; even in my riding—I live in Niagara Falls and there's a lot of housing development that's going on. They end up choking off the wetlands. I say that because what they do is, they build around the wetlands, and then the wetlands just die. So maybe answer that, and then I'll follow with a question on the wetlands as well.

Mr. Darryl Boyd: Sure. I'm not fluent with the 413 project or the projects that you've mentioned. I am familiar with some of the planning and the practice that accompanies them, whether it's modifying a project, whether the project can't be modified due to land tenure constraints or others and habitat has to be removed. I'm familiar with achieving no net loss, the notion of achieving a net overall benefit. I can speak to some familiarity with the process, but I'm not fluent. I'm not familiar with the project specifically that you mentioned. My apologies.

Mr. Wayne Gates: But you do agree that if you build around wetlands, that will make it worse. I saw a picture just the other day where the wetlands are completely dried up and you see all these endangered species that are dying,

which is a horrible, horrible picture. It's a big mistake if you care about the environment at all. We shouldn't be choking off our wetlands.

Mr. Darryl Boyd: Agreed.

Mr. Wayne Gates: I will ask you one other question—I'm not sure you can answer it—and then I'm going to turn it over to my colleague, because we don't get enough time to ask all of these questions, if I'm being honest. What you make of the government's record on environmental issues, in particular on Bill 23 and their treatment of the greenbelt and not wanting environmental studies done? Because you're going to get that question when you're on the—you're going to get on the committee; they have more votes than we do. But I want to say, because I can't vote today for technical reasons, you are one of the first that—and I've been doing this for four, five years now. I'm impressed with your credentials. I'm impressed that it's a family passion. I'm a big guy to following your passion. And I just want to say that I'm glad that I got a chance to ask you a few questions, and particularly this one, and then I'll pass it on to my friend.

Mr. Darryl Boyd: I appreciate that. I appreciate those words. I do.

Not being fluent with the greenbelt issue, but the little bit that I know—and again, you've heard me speak earlier today. I'm an advocate, I'm a proponent, I'm a fan of environmental protection and balanced approach to development. Yes, we need housing. I don't know that developing in the greenbelt was creating the kind of housing we need. My family, when we talk about it around the supper table, we've regarded it as sprawling estates in the greenbelt, not the sort of housing that there's a shortage of right now. That's been our discussion in my family and in my circle.

With respect to expediting developments—whatever the development is—at the expense of the environment by making them exempt from environmental studies, I don't agree with that. I've got some ideas and thoughts around streamlining and expediting developments, but it's more around codifying codes of practice. We talked about codes of practice a moment ago. Here's the gold standard. Follow the gold standard, you get your permit quickly. If you can't follow the gold standard for whatever reason, then there's staff with the government agencies, there's permitting processes to negotiate that and navigate that, but that should be plan B. Plan A should be: Follow the code of practice. It sets a very high environmental standard, and those are the goalposts. That's the playing field. Welcome. And if you can't do it, let's talk about it. That's my summary statement in 20 seconds or less.

0930

Mr. Wayne Gates: I appreciate that. I'll turn it over to my colleague.

The Chair (Mr. Will Bouma): Member Glover with just over a minute.

Mr. Chris Glover: Just one minute? Oh, boy. Okay.

Thank you for your passion and for your commitment to the environment and to protecting endangered species. You've had extensive experience both on the environmental side and working with mining companies. Are

there any projects that you've come across that you thought should be exempt from the Environmental Bill of Rights or the Environmental Protection Act?

Mr. Darryl Boyd: No.

Mr. Chris Glover: Okay. Are you aware that the government exempted the Ontario Place project, the Therme project there, from the Environmental Bill of Rights and the Environmental Protection Act?

Mr. Darryl Boyd: I heard something about that, yes.

Mr. Chris Glover: Okay. And what is the danger if a project proceeds without abiding by those acts?

Mr. Darryl Boyd: It's specific to the project. Some brownfield redevelopments where all the infrastructure is in place, services are in place—they're pretty low-risk projects, and I could understand reasons to streamline those and fast-track those in certain instances. But the risk with completely eliminating requirements under the Environmental Protection Act is that you're eliminating—

The Chair (Mr. Will Bouma): Thank you, Mr. Boyd.
Interjection.

The Chair (Mr. Will Bouma): Thank you, sir. We've run out of time there.

Thank you very much for joining us. You're more than welcome to stay, or you can tour the building, because I think the intent is to close it after the next election for a while for some major refurbishments, so I hope you take that opportunity. But thank you very much for joining us today. That concludes the time available.

MS. BARBARA WALKER-RENSHAW

Review of intended appointment, selected by official opposition: Barbara Walker-Renshaw, intended appointee as member, Consent and Capacity Board.

The Chair (Mr. Will Bouma): We will now go on to our second intended appointee: Barbara Walker-Renshaw—Ms. Walker-Renshaw, you may come forward—nominated as member of the Consent and Capacity Board. Thank you very much for joining us today. You may make an initial statement at your discretion. 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 that you take in your statement will be deducted from the time allotted to the government.

Again, thank you very much for joining us today, for taking time out of your schedule. You may start with your statement whenever you're ready.

Ms. Barbara Walker-Renshaw: First of all, thank you, Mr. Chair, and thank you to the members of the committee for the opportunity to appear before you today. I look forward to any questions you may have regarding my intended appointment as a legal member of the Consent and Capacity Board. I thought that what I would do is, first of all, make some overview or summary remarks about the role of the Consent and Capacity Board—in my experience, not very many people are familiar with it—

and then I'll speak a bit about my own background and my reasons for applying.

First of all, the Consent and Capacity Board, or “the board,” is an administrative tribunal that was established under part IV of Ontario's Health Care Consent Act. Its purpose is to provide a forum to which persons may apply for a review of certain health care decisions that are related to them and with which they disagree. Two very common examples of this: a review of whether or not they are capable or incapable of consenting to treatment, and whether they should be admitted to a psychiatric facility against their will. It's a very important civil power to be able to place a patient in a psychiatric facility against their will, and creating an opportunity for an impartial review of that decision is really important, I think, in a free and democratic society.

The board's role is essentially to consider the legislated criteria that applies to these types of decisions and decide whether or not the evidence that has been provided—not by the patient, who has no onus of providing any evidence, but by the health care provider who has made the decision—supports the decision. If it does, then the decision is endorsed. But if it does not, then the board does have the power to revoke the decision under review.

In terms of my own background as a lawyer, since I'm being proposed to be appointed as a legal member: I began my legal career in mid-life. Prior to that, I think you'll see on my CV, if that's been circulated, I was involved in volunteer activities. I also worked in corporate communications and some volunteer activities and some paid employment that was related to supporting women in the community.

My legal career started at the age of 40 when I attended Osgoode Hall Law School, graduating from there in 1999. I had completed my articles at the Supreme Court of Canada, where I clerked for Madam Justice Louise Arbour. Following my call to the bar, I started work at Borden Ladner Gervais LLP in its health law practice group here in Toronto. I continued to practice law at BLG until I retired, 22 years later, on December 31, 2022.

Over the course of my career in health law, I defended the interests of health care organizations and health care providers generally in civil litigation that related to allegations of health care negligence, but sometimes involved other issues, such as public law, constitutional challenges to health-related legislation and sometimes hospital policy. I also represented health care clients at coroner's inquests and before commissions of public inquiry, and provided advice regarding health-care-related litigation. Often, hospitals are very concerned that they be in compliance with the statutes that govern them.

I acquired expertise in mental health law, which is the domain of the Consent and Capacity Board, and administrative law by representing psychiatric facilities and health care providers before the Consent and Capacity Board and also before the Ontario Review Board. That's a federally appointed tribunal that is governed or established under part XX.1 of the Criminal Code that deals with persons

who have been found unfit to stand trial or not criminally responsible by reason of a mental disorder.

I also handled appeals of those matters. Decisions of the Consent and Capacity Board are appealed to the Superior Court and the Ontario Review Board appeals go directly to the Court of Appeal.

My work in this area also led me to participate in three mental health law committees on a volunteer basis. The Consent and Capacity board has—the current chair, Margaret Creal, established several years ago a board and bar committee; it was not to discuss any individual decisions but rather matters of procedure or practice that were of importance both to the patient's bar and the health care provider's bar.

I was also involved in what was called an estates list users committee. Interestingly, the Consent and Capacity Board matters are considered part of an estates list by the Superior Court. Similarly, practitioners there got together on a regular basis to talk about procedural issues.

I was also a member of the mental health appeals program, which was a committee run by the Court of Appeal to look at, in particular, the amicus program, which provides counsel for the mentally disordered offender, who often is not in a position to afford counsel.

As I gained experience dealing with issues that were specific to mental health law, I also became involved in continuing legal education. So that involved publishing a number of articles and publications and also participating in conferences.

I would like to give you two examples. One on the publication side would be that I'm the co-author of a text that was published by the Ontario Hospital Association called *A Practical Guide to Mental Health and the Law in Ontario*. It's about 173 pages, and it's really aimed at health care providers and practitioners working in hospitals who, when they're in the business of providing psychiatric care, need to be familiar with the law that governs their delegated authority to detain people involuntarily, the authority for physicians to make decisions around a person's capacity to consent to treatment etc.

That's been very well received. It was first published in 2009. We recently published the fourth edition in I think it was June 2023. I think it has been very much appreciated by hospital and health care providers.

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In terms of continuing legal education, for several years I was a frequent speaker and workshop leader at a professional association called the Canadian Academy of Psychiatry and the Law. This involves psychiatrists from across Canada who are involved in the provision of forensic mental health care; in other words, they practise at specialized psychiatric hospitals where persons who have been found not criminally responsible or unfit to stand trial are detained. My role at those conferences would largely be to provide updates on the appellate case law, which in turn influences very directly the provision of psychiatric care.

I'm going to stop. I haven't done this much talking as this morning, so I'm going to have a little sip of water.

I was also a member of the part-time faculty at Osgoode Hall Law School's centre for professional development. I was a regular speaker on mental health law in a number of different programs, but in particular I was a co-chair of a five-module program called the certificate program in mental health law. This was something that would be convened for a full day one day a week for five weeks. We had health care providers, sometimes newly appointed executives to designated psychiatric facilities or the director of nursing, the chief psychiatrists, but we also had members of the legal profession who were interested in becoming more involved in mental health law matters. I co-chaired that program for a number of years with a forensic psychiatrist who also did civil psychiatry, as well, and it was very well received.

I think one of the interesting things that happened when I last co-chaired that program in the fall of 2022 was that on our agenda was to hear from a representative of the Ontario Review Board and a representative of the Consent and Capacity Board to talk about, given that it was 2022, how the pandemic had affected the practice of these two tribunals. Among the number of things that they discussed—including the move to, rather than conducting the hearings in person, having to conduct them via Zoom—was that that transition to Zoom hearings meant that a number of their new appointees had actually never had the opportunity to attend a hearing in a psychiatric facility. Certainly, if they didn't have someone in their family who had had a psychiatric admission, they may never have been inside a mental health unit on a hospital. When I heard that, I thought, "Oh, dear. That's concerning," because certainly, having been in psychiatric hospitals, having been on units where people are receiving psychiatric care and attending hearings, I had a very good understanding of what it might be like either as a patient or as a health care provider to try to deliver care in what can be extremely challenging circumstances. It was part of that experience and having learned that that I considered applying to the board once I had retired from private practice.

I certainly understand the law that's applicable to the hearings and know that it's a constantly changing area and so have the research skills to remain updated. I thought that the practical experience of having attended would be of value to the board.

I felt like, as much as I'm looking forward to—I'm enjoying being retired; I have four granddaughters whom I'm enjoying spending more time with, as well as my two daughters and their families. But I really felt, I guess, that my practical and professional experience would be of assistance, so that led to my application to the board and the reason why I find myself here before you.

Following receipt of my application—I don't know if you're familiar with the process, but I was interviewed by the chair of the Consent and Capacity Board as well as two senior vice-chairs. It was a pretty involved process. They ask the same questions of every single person who appears before them. Because I was seeking an appointment as a legal member, I was given a fact scenario and a summary and was asked to write a draft reasons for decision, because

that can fall into your responsibilities as a legal member. It's my understanding that, as a result of that process, my application or appointment was recommended by the board, which does operate at arm's length from the ministry, and now I'm here.

I look forward to any questions that you may have.

The Chair (Mr. Will Bouma): Thank you very much.

We'll turn to the government first, with two minutes and 39 seconds on the clock. Member McGregor.

Mr. Graham McGregor: Thank you for putting your name forward and joining us today.

I've got to say, I'm very impressed with the Minister of Health. I'm not just sucking up because she's funding a hospital in my city, but I'm very impressed with the quality of candidate before the committee today.

Off the top, the fact that you started law school at age 40—I think my parents are still holding out hope that I'll go to law school one day, so I hope they never see this.

Could you imagine me as a lawyer? Oh, my God.

Ms. Catherine Fife: Yes.

Mr. Graham McGregor: Probably too well.

Let me get to the topic. You mentioned that you had to give a legal opinion as part of the application process. Obviously, you're fulfilling—

Ms. Barbara Walker-Renshaw: I didn't do a legal opinion. I wrote a draft reasons for decision.

Mr. Graham McGregor: That's why I couldn't be a lawyer.

The draft reasons for decision—are you able to share with the committee a little bit about what that was, what the scenario was, and how you tackled that problem?

Ms. Barbara Walker-Renshaw: Well, I'm not supposed to discuss the facts. I signed an undertaking that those would remain confidential, probably because they use similar fact situations for other applicants.

Mr. Graham McGregor: Fair enough. I won't push on that.

Speaking about your 20 years working in health law, could you speak a little more generally about that type of experience and how you hope to bring that to the Consent and Capacity Board?

Ms. Barbara Walker-Renshaw: I think one of the things that will be helpful is that—the board is under a very tight timeline; from the receipt of an application to when a hearing has to be convened is seven days. Certainly, working in private practice, I'm used to urgency and, often, the phone calls that come in on Friday afternoon requiring urgent advice that can't wait until Monday. So there is certainly an ability to understand why sometimes things have to move forward at a pace faster than we might like, and then what steps you need to take to manage that and remain calm and collected when you're facing difficult situations.

The Chair (Mr. Will Bouma): Member Gallagher Murphy.

M^{me} Dawn Gallagher Murphy: With a decade of working with the Canadian Academy of Psychiatry and the Law—I was going to ask you how you feel that equips you for this role.

The Chair (Mr. Will Bouma): That will have to wait. We will now turn to the opposition. First up is member Glover.

Mr. Chris Glover: Ms. Walker-Renshaw, thank you so much for applying for this.

This is an issue that I have a great deal of passion about, but not a whole lot of in-depth knowledge, so I'm going to ask you about your view on this.

I've read the history of what happened in our psychiatric hospitals when medical experiments were conducted on people, particularly—that I have read about—in the 1960s and 1970s. We closed many of our psychiatric hospitals in the wake of some of those revelations and changed the laws so that people could only be formed if they were a danger to themselves or to others. You're looking to sit on the committee that will actually adjudicate whether somebody can be committed.

During the pandemic, I was delivering meals to people experiencing homelessness. I've known many people who had opioid addictions; I've known several who died. There was one father whose young daughter was addicted, and he said to me that an opioid addiction, a fentanyl addiction, is a death sentence. He tried to get her formed but could not. She would go in for three days—or 10 days, I think is the longer one—and then she would be released and she would go back to the streets to the abuse that she was suffering, and also to incredible risk to her life.

How do you weigh those two factors? How do you make a decision, especially in light of the opioid epidemic that we have? How do you weigh the individual rights to be free and to make your own decisions versus the imminent danger of having an addiction?

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Ms. Barbara Walker-Renshaw: It's a big question. I would say, certainly in my experience, that I've seen many people who suffer from a mental disorder also have a concurrent substance-abuse disorder. The two often go hand in hand, and it's often someone trying to, in a strange way, self-medicate for the mental health issues that they're experiencing.

Certainly the job of the panel that hears any particular case is to consider whether or not the person is suffering from a disorder that puts them at risk of serious bodily harm to themselves or to others or even—there's a criteria for serious physical impairment, and certainly serious physical impairment can include putting yourself in harm's way. So you just have to review what the evidence is and, if there's sufficient evidence before the board, then the board may confirm that certificate. But the board is confirming a certificate of involuntary admission that has a specific timeline, the first one being, I think, two weeks, and then after that a month and then two months and then three months. So, unfortunately—from the parent's perspective, in this case—if someone comes to the end of their period of involuntary admission and has improved enough that they no longer meet the criteria, it is difficult. But many health care workers I know and have worked with take very seriously the responsibility of trying to put people into follow-up outpatient care for substance abuse and other types of mental health care support.

Mr. Chris Glover: Thank you. Yes, it's a difficult situation and very complex, for sure.

That was the main question that I wanted to ask. I'm going to pass it to my colleagues, to Ms. Fife.

The Chair (Mr. Will Bouma): Member Fife, with just under 11 minutes.

Ms. Catherine Fife: Thanks for being here and for putting your name forward to serve. The responsibilities of this role actually are quite profound, which you did touch on: reviewing "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 Consent Act...." These are pretty serious issues by the time it gets to this point, as you know.

I wanted to ask you, Ms. Walker-Renshaw, if you knew that the number of applications and hearings has risen in recent years, with applications increasing by 170% and hearings increasing by 225% since 2003.

Ms. Barbara Walker-Renshaw: I'm aware.

Ms. Catherine Fife: You are aware.

Ms. Barbara Walker-Renshaw: And I'm worried about it.

Ms. Catherine Fife: You're worried about it. Can you tell us, please, why you're worried about it? That would be helpful.

Ms. Barbara Walker-Renshaw: Well, my concern is that the board is under-resourced, and I don't know that there are enough members to handle the incredible volume that they're facing. That's one of the reasons why I decided to apply. At the same time, it's a part-time appointment.

Ms. Catherine Fife: So you see this as a resource issue. I was also wondering, on the other side, how bad conditions have become. Can you talk—

Ms. Barbara Walker-Renshaw: Oh, definitely. Mental health issues are on the rise for a big variety of reasons.

Ms. Catherine Fife: Yes, and it's also coming at a time when we have a better understanding of how complex mental health is. We've done a very good job, I think, of destigmatizing mental health so that now we have a greater understanding. But the corresponding response to that destigmatization I don't think has been there.

Can I ask you—in Ontario, obviously, there's some real financial and economic challenges, cost of living has really skyrocketed, and this is compounding some of these social issues as well. This can make it difficult for many seniors and people with disabilities, both mental and physical, to access the care that they would choose. How will your perspective help aid more Ontarians to have more agency over the types of care that they receive?

Ms. Barbara Walker-Renshaw: I don't think I can, frankly.

Ms. Catherine Fife: That's a good answer.

Ms. Barbara Walker-Renshaw: My role is to be an impartial adjudicator of matters that come before it. Certainly the panel itself and the board is striving in its education of panel members to increase a sense of inclusivity, recognition of diversity and respect towards the people who are appearing before it. There is a great em-

phasis on conducting the matters in a judicial, impartial way and in a way that makes people feel heard as patients.

Ms. Catherine Fife: That's actually very reassuring.

The panel is going to be responsible for holding hearings and for making decisions on matters in which the least restrictive, least onerous and least intrusive decisions are made to maintain the safety of the individual, protect the safety of the community, maintain the dignity and the autonomy of the individual, and preserve the right of a person to have treatment when required. You're going to be navigating some complex situations which may be ethically challenging. Can you tell us if, in the past, you've had to navigate some of these spaces before, and perhaps how you handled it and if that led to future advocacy?

Ms. Barbara Walker-Renshaw: I haven't had to navigate that in my personal life, but certainly professionally I've worked in very difficult situations where patients have had to be in an intensive care unit and a psychiatric setting, and certainly I have an understanding of the weightiness of the decision of the board. I wasn't on the board, but acting with the health care provider, there are sometimes times when you need to bring motions for an interim treatment order pending the outcome of an appeal, because the person is in such a difficult situation, and that is done on the basis of medical evidence.

So obviously ethics is very important, but you count on the health care providers to be acting ethically with respect to the patients and guiding people through that situation.

Ms. Catherine Fife: Yes. Obviously, the panel will be dealing with individuals who will be refusing care. Have you ever had to deal with that, where patients—

Ms. Barbara Walker-Renshaw: Oh, yes. I've handled almost every type of hearing that has come before the Consent and Capacity Board, with a couple of exceptions. But I feel well positioned.

Ms. Catherine Fife: Okay. And then I'm going to circle back to the first question around the rise in cases and the backlog with regards to this, because that also may become an ethical consideration, as well, right? Sometimes not hearing people in a timely manner is—I think justice delayed is justice denied.

Ms. Barbara Walker-Renshaw: Certainly. Again, I'm not yet a member of the board, so I don't have access to that information, but my understanding from having read the board's annual reports is that they continue to meet their mandate, which is to conduct hearings within a seven-day period. They can occasionally go beyond the seven-day time limit if the parties, including a patient who is represented by counsel, agree to an adjournment. But they always are prepared to convene that hearing within seven days.

Ms. Catherine Fife: Well, I hope that that is your experience as you move forward on this committee, and I do want to thank you once again for putting your name forward.

I have no further questions.

The Chair (Mr. Will Bouma): Member Gates, with four minutes.

Mr. Wayne Gates: Thank you; I appreciate it.

Good morning. Thanks for being here. We've had an interesting few years with this particular government. You being a lawyer—from my understanding, you're a very good lawyer, and a very good writer as well—do you believe that governments should be putting bills in place to protect long-term-care facilities that had bad outcomes from being sued so the families can't get closure?

Mr. Graham McGregor: Objection: leading the witness.

Ms. Catherine Fife: See, you should go to law school.

Mr. Wayne Gates: Well, he thinks he's a lawyer, but I asked the lawyer.

Ms. Barbara Walker-Renshaw: I mean, I feel that that's a political question and outside of the mandate of the committee. But I'll say generally: One of the purposes of civil litigation is to hold people to account. If harms have occurred, people have a right to sue them on that basis, to bring a lawsuit, to make those allegations—and people who are sued have a right to defend them. So I think that's an important check and balance in our justice system.

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Mr. Wayne Gates: I appreciate that sort of answer, but I'm going to—

Ms. Barbara Walker-Renshaw: In a general sense.

Mr. Wayne Gates: No, that's fine. I have no problem with a general response from a lawyer.

What the government also did was put laws in place so that the government can't be sued. That's one of the first times I've ever seen that in the province of Ontario, that somebody who was wronged can't sue the government, and they put a bill in place to protect themselves. Again, most of this was around long-term care, which you're very, very familiar with.

We know that close to 6,000 of our moms, our dads, our aunts and uncles died in these facilities, most in private facilities—about 78%, which is extremely high when you consider it—to a publicly run facility. I believe and the families I talk to believe that families deserve to get closure. They deserve to have the right to sue the people who are making these terrible decisions when their loved ones are dying in horrifying conditions—including the workers, by the way. There were workers who died in these facilities.

In general, do you believe that governments should be writing laws that protect them from not being sued when they're responsible for their decisions?

Ms. Barbara Walker-Renshaw: No, I don't believe that, in general.

Mr. Wayne Gates: I really appreciate that opinion.

Another one I want to ask you—and I'm going to give you an example of this, because you talked about it, and you've seen the effects of a senior, somebody who is aged, whether it's with mental health or other issues, who is in the hospital.

The government brought in Bill 7, which forced seniors to consent to be moved out of alternate-level-of-care and be forced out of their community, in some cases—if you were in the north, it was close to 300 kilometres. In my riding, they could move them as far as 150 kilometres away. And I'm a firm believer that—both of my wife's

parents ended up in long-term care. She was there every day. She made sure Mom and Dad got their pills and made sure they were being fed properly, helping staff; they were understaffed at that time. Do you believe that is something that helps seniors—with Bill 7—being forced to consent and being forced out of their community? As you know, as we all age, it gets a little harder to get your family to drive 150 kilometres or 300 kilometres to make sure we're being taken care of.

So are you familiar with Bill 7, and do you think that seniors should be forced to sign on, to consent?

The Chair (Mr. Will Bouma): Unfortunately, we will not be able to hear the answer to that question, as we are out of time.

Ms. Walker-Renshaw, thank you so much for joining us today. Take a minute to have a look around, because the building will probably be closed for quite some time after the next election, or you can stay and listen.

Colleagues, we will now consider the intended appointment of Darryl Boyd, nominated as member of the Species at Risk Program Advisory Committee. Do we have a motion? Member McGregor.

Mr. Graham McGregor: I move concurrence in the intended appointment of Darryl Boyd, nominated as member of the Species at Risk Program Advisory Committee.

The Chair (Mr. Will Bouma): Is there any discussion on that motion? Seeing none, are members ready to vote? All those in favour? Any opposed? Carried.

We will now consider the intended appointment of Barbara Walker-Renshaw, nominated as member of the Consent and Capacity Board. We have a motion from member McGregor.

Mr. Graham McGregor: I move concurrence in the intended appointment of Barbara Walker-Renshaw, nominated as member of the Consent and Capacity Board.

The Chair (Mr. Will Bouma): Concurrence in the appointment has been moved by member McGregor. Is there any discussion on that motion?

Mr. Ernie Hardeman: I'm requesting a recorded vote.
Interjections.

The Chair (Mr. Will Bouma): Seeing no further discussion and seeing that there's been a recorded vote requested, all those in favour?

Ayes

Dowie, Fife, Gallagher Murphy, Gates, Glover, Hardeman, McGregor, Pang, Sandhu.

The Chair (Mr. Will Bouma): That is unanimous. Thank you very much, colleagues.

Before we leave: The deadline to review the intended appointment of Twee Brown, selected from the February 2, 2024, certificate is March 3, 2024. Is there unanimous consent to extend the deadline to consider the intended appointment to April 2, 2024? I heard a no.

That concludes our business for today. This committee now stands adjourned.

The committee adjourned at 1005.

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