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**Official Report
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(Hansard)**

Wednesday 27 February 2002

**Journal
des débats
(Hansard)**

Mercredi 27 février 2002

**Standing committee on
government agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Chair: James J. Bradley
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Wednesday 27 February 2002

Mercredi 27 février 2002

The committee met at 1005 in room 228.

INTENDED APPOINTMENTS

CHRISTOPHER BRANEY

Review of intended appointment, selected by official opposition party: Christopher Braney, intended appointee as member and vice-chair, Environmental Review Tribunal.

The Chair (Mr James J. Bradley): I will call the meeting to order. The only item on the agenda this morning is the consideration of the appointment of Christopher V. Braney to the Environmental Review Tribunal.

Before I do that, I just want to mention that the subcommittee which deals with further committee business will be meeting later, I think, at 12:30, because Mr Wood is unable to be with us at this time and he's the Conservative person on that. The subcommittee people will meet at 12:30 today to discuss further business of appointments later on.

Mr Steve Gilchrist (Scarborough East): Mr Chair, does that mean Mr Martin is around today?

Mr Michael Gravelle (Thunder Bay-Superior North): No, by conference call.

Mr Gilchrist: That wasn't noted.

The Chair: The consideration of the appointment of Christopher V. Braney to the Environmental Review Tribunal: as you know, the interviewing part has taken place. This is the discussion and voting part that we're involved in now.

Mr Gilchrist: I presume it's appropriate for me to move concurrence in the appointment of Mr Christopher Braney.

The Chair: Mr Gilchrist has moved concurrence in the appointment of Christopher V. Braney to the Environmental Review Tribunal. Discussion?

Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington): I will not be supporting this appointment. I think it's important that I state for the record, and hopefully impress upon the members of the government, who, it is assumed, would support the appointment, some of the points that I think are very serious with regard to the appointment.

Last week when Mr Braney was interviewed it was very clear, and in fact the Hansard would reflect, that Mr Braney acknowledged he had no qualifications in either

environmental studies or the law. We are talking about an appointment to a quasi-judicial body. The Environmental Review Tribunal is a body that considers issues in terms of how environmental laws are respected, if they are; if the law has in fact been followed on any variety of issues.

Also, I've had the opportunity to review other people who have been appointed to the tribunal in the past by your government, individuals who certainly were patronage appointments from the perspective that they were probably from a Progressive Conservative background or had that in their history, but also individuals who had been able to demonstrate that they had some experience in areas that would relate to the work of the tribunal. Clearly this is not the case with Mr Braney.

I have been so concerned by the fact that this individual brings no professional credentials to this role that would relate to the role. In fact, I have some question about the credentials that were presented last week. He did state that he has a diploma. However, that is not what is reflected in the resumé that he presented to us for consideration, where it is indicated he studied marketing management. I think it begs the question, if he has a diploma, why that would not have been stated in the official documents that had been filed with this committee for our consideration and that are a matter of the public record. For me, there is even a question about what professional credentials he himself carries.

I have been so concerned with this lack of qualifications for the role that I have written to the Minister of the Environment to bring to her attention that in fact there is an appointment—and while I certainly can appreciate that I've been on this committee long enough to understand that very regularly we interview people who are members of the Conservative Party and supporters of the party and of individuals and I have voted in favour—and the members opposite will reflect and understand that I don't oppose all of those, because I believe we have a responsibility at this committee to assess the abilities that an individual has and what they can bring and contribute to the role to which they are appointed—I am very concerned that the individual we interviewed last week does not have the qualifications that this very important body requires. This is a quasi-judicial body.

1010

I have also had the opportunity to speak with some lawyers who have encountered Mr Braney in his capacity

as a member of the Toronto East Rental Housing Tribunal, and some of the comments that have come to me about this individual are that he really has no appreciation for how to run a hearing; that he is incapable of hearing submissions on points of law; that he's impatient. Those are comments that have come to me from people who have no personal issue with Mr Braney, but when asked about whether they would they see him as capable in a quasi-judicial role, these were comments that were made to me. I believe that last week there were even members of the government who were here for the interview who had some question about whether this appointment was worthy, and hence there was a motion to defer from a member of the government.

I think these are all important points to consider for those who were not able to be here last week when the intended appointee was interviewed. I think the members of the committee would know me and my performance on this committee. I don't regularly speak at length or as passionately as I am today about an intended appointee. I say this to you so that you understand how very serious I take this matter. I think that the Environmental Review Tribunal serves a significant function for us as government to protect the people of Ontario and I'm looking for the very best people, who have a background, who can assist us in that way. For those reasons, I will not support the appointment of Christopher Braney, because I do not believe he brings any of those qualities that are essential to be effective in that role. I do not believe he possesses them.

I regret very much that I have to make those kind of comments here. I think the government has had an opportunity to consider the intended appointee and I certainly had hoped that perhaps there would have been some indication, as has happened in the past, that the intended appointee would be removed from consideration for this appointment. That has not happened, so it has meant that I've had to speak as strongly as I have this morning.

The Chair: Any further discussion?

Mr Michael Prue (Beaches-East York): I was going to speak but I think all of the points have been covered. I don't believe that I can support this appointee either.

Mr Gilchrist: First off, let me put on the record that Mr Braney phoned me. He asked for a copy of Hansard and, on reviewing Hansard, had noted that at one point crosstalk with Mrs Dombrowsky had left Hansard with the impression—he thought you had asked the question, "Was it a diploma program?" and he made it clear to me that the résumé that's been circulated to you is in fact the accurate reflection.

I'm not here to attribute blame one way or the other. As we know, quite often it is the case in committees where two people are talking at the same time, and Mr Braney certainly wanted the record to reflect that he had not finished that diploma program, although he is in the process of finishing it. But the résumé that was sent to you is in fact accurate.

We certainly have had another week to reflect and we believe, as we believed last week, that this is an appoint-

ment quite appropriate for concurrence. It is our experience—it's certainly my experience—that the folks who most likely get appealed from tribunals are people who come in with legal background. They are the folks who, more often than not, want to make it into the record as having set a precedent one way or the other. They tend to be perhaps more focused on the detail and less on the overall substance of the case that you're hearing.

I think at the Rental Housing Tribunal we have a particular dynamic where most often it is the well-resourced landlord going up against a not-too-accomplished, at least in legal terms. I think an accommodation has to be made, and I have no doubt that in those tribunals it is quite often the case that you don't exactly follow the same protocol you would in a court of law, where both parties are represented by equally trained lawyers.

I'm not at all uncomfortable with the fact that people get appointed to different jobs without having an exhaustive background, particularly in the law. If that were the case, there would only be about eight MPPs, and you wouldn't be one of them, Ms Dombrowsky. If there is a job in this province that has a requirement for a greater knowledge of law and law-making, I can't think what it is, other than MPP or MP. I don't think anyone would suggest you're not qualified to bring to this body whatever background and skills you've been able to develop over the years, as with the other 102 members who sit in that chamber.

To suggest that people are not capable of bringing a number of talents, augmenting that with the specific training they get, exhaustively in this panel—I'm told it could be as much as six months before you hear any cases on your own, and before that you sit on joint panels. In that circumstance, I think it's quite appropriate to concur in the appointment of Mr Braney, and we still support that concurrence very strongly.

Mr Gravelle: First of all, I'd like to make sure we have a recorded vote on this, if I may request that.

I will also not be supporting Mr Braney's appointment. I think even listening to Mr Gilchrist just now, it's an interesting defence of this appointment in that he is, quite frankly, acknowledging Mr Braney is not particularly qualified, in fact not qualified at all in this specific way. The fact is, this is an important quasi-judicial body. It is the Environmental Review Tribunal.

It appears the major qualification Mr Braney has is that he is a good supporter and friend of Mr Gilchrist. We know he's made a \$1,000 donation to Mr Gilchrist's campaign, we know he worked on Ms Mushinski's campaigns, and that's just fine, but those appear to be the major reasons this is going forward.

We also know, just based on what happened last week, that Mr Wood himself, who is the chief government whip on this particular committee but is not able to be here today, has expressed some reluctance, and some of the other members did as well, and I think for all the right reasons.

Mr Braney clearly is not qualified. Upon further investigation it appears he's even less qualified than we were told last week. I would ask the government members to be very careful in this decision. When we've seen what's happened in the Ministry of the Environment over the last four or five years, it just seems very unfortunate to be putting forward the name of a person who is so clearly not qualified, other than by his political connections.

I feel very strongly about this and will be voting against it myself.

Mrs Dombrowsky: I'm going to respond to the comment made by Mr Gilchrist with regard to his understanding of the requirement for some type of understanding of the law. This is a quasi-judicial body; the Legislature of Ontario is not. This is a quasi-judicial body, and it is the role of the people there to consider issues in terms of how the law has or has not been applied. They work exclusively with the law. While members of the Legislative Assembly make the laws, we are politicians, and I would suggest that our chief and most significant role is to be the representative voice of the people who sent us and to provide that perspective when laws are made.

I think it is also interesting to note that when defending Mr Braney in terms of the qualifications he doesn't have, there was no significant effort made to explain how someone who, in my opinion, has no professional background or has not demonstrated any occasion where he has studied the environment would even be considered for a role on the Environmental Review Tribunal. I can't impress enough the importance or the significance of that. I'm sure we all know the importance the people of Ontario place on environmental issues. I think it's only responsible that when we are considering people who will be looking after our environment and making sure all the laws that impact our environment are being considered, we're going to have people there who know what they're talking about. I don't believe Mr Braney brings the credentials that would enable him to do that as other people would.

The Chair: If there is no further discussion, I'm going to put the question. There's been a request for a recorded vote, so we'll proceed in that direction. All in favour of the appointment of Christopher V. Braney to the

Environmental Review Tribunal; in other words, in favour of the motion?

Ayes

DeFaria, Gilchrist, Hardeman, Mazzilli.

Nays

Dombrowsky, Gravelle, Prue.

The Chair: The motion is carried.

COMMITTEE BUSINESS

The Chair: The next item of business is simply a housekeeping one. As you know, the committee is sitting in the intersession, and that sometimes requires us to get on the telephone and try to get consent for waiving the 30-day period of time after an appointment has been made. We've always had that consent. It has been suggested to me that perhaps we would have consent from the committee today to waive that 30-day period. I think the House is not likely to come back on the normal schedule, because we have the leadership convention and one would anticipate the government wouldn't be back the day after or anything of that nature, so it requires that. Can we have unanimous consent?

Mr Gilchrist: Are you suggesting that pursuant to that the committee would not meet?

The Chair: No, the committee meets. But there's a 30-day period after the cabinet passes an appointment when the committee has to consider it. Sometimes the schedules of members of the committee are such that we can't have a meeting within those 30 days. So what we normally do is have an extension that takes place. As I say, the government and the opposition have agreed to that every time. Do I have that consent?

Mr Gilchrist: Yes, agreed.

The Chair: Thank you very much.

Is there any further business for the committee that anyone wishes to raise? If not, the committee is adjourned.

The committee adjourned at 1022.

CONTENTS

Wednesday 27 February 2002

Intended appointments	A-347
Mr Christopher Braney	
Committee business	A-349

STANDING COMMITTEE ON GOVERNMENT AGENCIES

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