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Official Report of Debates (Hansard)

Wednesday 10 December 2003

Journal des débats (Hansard)

Mercredi 10 décembre 2003

**Standing committee on
government agencies**

Organization

**Comité permanent des
organismes gouvernementaux**

Organisation

Chair: Dominic Agostino
Clerk: Anne Stokes

Président : Dominic Agostino
Greffière : Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 10 December 2003

Mercredi 10 décembre 2003

The committee met at 1004 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Ms Anne Stokes): Good morning, everyone. Welcome to the standing committee on government agencies. My name is Anne Stokes and I'm the clerk of the committee. I would like to preside over the election of the Chair.

Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

Mr Ernie Parsons (Prince Edward-Hastings): I would like to nominate Dominic Agostino.

Clerk of the Committee: Are there any further nominations?

Ms Laurie Scott (Haliburton-Victoria-Brock): I would like to nominate Gilles Bisson.

Mr John R. Baird (Nepean-Carleton): I have a point of order, Madam Clerk.

Clerk of the Committee: I'm sorry. As the clerk, I cannot take points of order. Once there is a Chair in the chair, the Chair can entertain points of order.

Mr Baird: It's about the election process.

Clerk of the Committee: I'm sorry. I can't take a point of order.

Mr Baird: Mr Agostino is a parliamentary assistant and a member of the executive branch of government. I wanted to know, is it in order that a member of the executive branch be reviewing itself? This committee reviews government appointments, and I wonder, is it fair to have a member of the executive branch reviewing executive branch appointments? This is eerily similar to the Howard Wilson situation in Ottawa, where the integrity commissioner works for the executive branch.

Clerk of the Committee: Sir, I cannot entertain a point of order, but—

Mr Baird: What about a point of privilege?

Clerk of the Committee: —I could clarify that the standing orders make no reference to party affiliation for the Chair of this particular committee.

Mr Baird: I'm just talking about the fact that a member of the executive branch of government would be chairing an oversight committee on the executive branch of government. I've read all these press releases and listened to all these speeches where all of the Liberal caucus are now members of the executive branch in one shape or form. I just wonder how fair and right, should

Mr Berardinetti, Ms Matthews, Mr Levac, Mr Parsons, Mr Dhillon, Mrs Smith and Mr Agostino—

Ms Monique Smith (Nipissing): It's Ms Smith.

Mr Baird: Ms Smith. Should they not absent themselves from the vote? It's an inherent conflict of interest, because Dalton McGuinty says they're playing a central role in the government. How can they vote? It's sort of like being allowed to be their own referee. That's unparliamentary.

Mr Dave Levac (Brant): Taking the member's statements seriously, I would prefer that this be dealt with at another level, because there are no points of order in the election of a Chair for this committee. If there is something that seems to be out of order and would be duly recognized at a later date—because we're simply electing a Chair, with no points of order.

Mr Baird: So we can send scrutineers after the election's happened? After the election's over and the ballots are destroyed, then we can send in the scrutineers, Mr Whip? You would have eaten us alive if we had tried this.

Clerk of the Committee: I cannot entertain a point of order and I cannot speak to the issue that you've raised. We can proceed with the—

Mr Baird: What about a point of privilege?

Clerk of the Committee: No, neither a point of privilege. A point of order can be addressed by a Chair.

Mr Baird: Chair, this is outrageous.

Mr Gilles Bisson (Timmins-James Bay): Madam Chair?

Clerk of the Committee: I'm not the Chair. I'm the clerk of the committee. I'm only authorized to preside over the election of the Chair.

Mr Bisson: I think Mr Baird raises a point that is quite important and needs to be taken seriously. To the first point, basically your decision not to hear a point of order, if you take a look at least in Beauchesne and Erskine May, in the federal House and other Houses points of order were taken during the election of Chairs at committee and in the House. So I don't agree with your interpretation that you're not allowed to deal with this. At this point, what I think you have to do is call somebody else down to deal with this point of order, namely, the Speaker of the House or one of the deputies.

Clerk of the Committee: There is nothing I can do. The only authority I have is to preside over the election

of the Chair. Once there is a Chair in place, then points of order and points of privilege—

Mr Bisson: But Madam Speaker—sorry. To the clerk of the committee, I'm saying it is in order for a point of order to be taken. You're right that you as a clerk cannot take it, but we have the right to call the Speaker down into the committee to deal with the point of order that Mr Baird wants to raise. I think the point he makes is a good one. This is an oversight committee. He has a legitimate concern, and I'm sure members of the government want to take this as seriously as is intended. I would request at this point that the committee adjourn in order to call down either the Speaker or one of the Deputy Speakers to deal with this particular point of order before we move forward with the nomination and election of a Chair.

Mr Baird: How can Mr Agostino, with great respect to his personal attributes, oversee an appointment with respect to the Ministry of the Environment when he might have made the appointment? Or how could Ms Smith oversee the appointment to one of the many colleges of health care practitioners when she could have very well made the appointment, or Ms Matthews and the social benefits appeals tribunal? How can they oversee themselves? I mean, this is unprecedented in any country in the Commonwealth.

Mr Levac: I would continue to suggest that we move forward with the election, and by doing so the points that are being raised can be dealt with at a later date. If this is proven to be inappropriate, it will be struck down. If it's not—

Mr Baird: By the person—

Mr Levac: I would appreciate the courtesy we've been extending you to make your points.

There is nothing wrong with proceeding as you've been instructed to do by the clerk, and then if those points are brought to us as either a point of order or a point of privilege—whatever those circumstances are—if it's inappropriate now, it's inappropriate later, and it will be struck down if it's according to what the gentlemen are saying at this moment. There's nothing wrong with proceeding, and I would suggest that we continue to proceed and move forward, and if we continue to be interrupted on these particular points, we turn the mikes off and proceed.

Clerk of the Committee: I can repeat, my only authority is to preside over the election of the Chair. I don't have the authority to recess. I could disband, disperse the committee and we could meet at a later date.

Mr Baird: I nominate Lisa Freedman.

Clerk of the Committee: I'm sorry, sir. You are not a member of the committee, and I cannot accept that nomination.

Ms Scott: I nominate Lisa Freedman.

Clerk of the Committee: Lisa Freedman is staff of the assembly. She is not a member of the committee. She cannot be nominated. I cannot accept that nomination.

Mr Baird: Under what standing order? She has been nominated as a committee Chair in the past.

Mr Bisson: You're allowed to nominate anyone you want. The difficulty is that the standing orders say that when there is a point of order, it has to be taken immediately. That's in our standing orders. If you look at both Erskine May and Beauchesne, there have been incidents where this kind of thing has happened before, where opposition parties—or in some cases possibly government, but I'm only aware of opposition parties—have tried to raise points of order about the election process of a Chair and have gone so far as to have points of order about the election of a Speaker, and at that point, those points of order have to be taken. Now, in the case of a Speaker, it's a little bit different: It has to be taken up by the Clerk or you have to refer to the previous Speaker; that's the way it's normally done. Here, we're asking that you basically bring down either the Speaker or one of the Deputy Speakers to deal with the point of order.

I take at face value what Mr Baird is raising as a legitimate concern. How can this committee feel it is able to be blind, when it comes to appointments, if the very people we're appointing as Chair are people who are executive council? How can one police oneself? I think it's a legitimate point.

We're asking at this point that you maybe confer with the Clerk's office in order to doublecheck, but I would ask that you bring the Speaker or the Deputy Speaker into this committee to deal with the point of order before we proceed; otherwise, the suggestion Mr Levac makes is, "Because we're the majority, we can do what we want. Therefore, let's move on." I don't accept that as an argument. I'm asking that you bring the Speaker or the Deputy Speaker into this committee before we proceed.

Mr Levac: Madam Clerk, first of all, I'd like to correct the record of what words are being put into my mouth. I suggested very clearly that we move on with what you've described as your parameters as the clerk. I suggest that we continue to do that. I also move that nominations be closed.

Ms Scott: I'd just ask for clarification. Do you know what standing order it is that prevents Lisa Freedman from being nominated as Chair?

Clerk of the Committee: What I might suggest is that if we'd like to pause for a moment, I will confer with Lisa Freedman and we'll see how we can proceed.

Mr Baird: I don't mean to put you in an awkward position, but this is an important issue of oversight.

The committee recessed from 1014 to 1020.

Clerk of the Committee: We are back in order. I would like to put the question on the nomination for the Chair. Mr Agostino was the first nominated. I would like to ask the vote on Mr Agostino as Chair. All those in favour? All those opposed? I declare Mr Agostino Chair of the committee.

The Chair (Mr Dominic Agostino): Thank you. First of all, I appreciate the intercession from the junior member from Nepean. You have the floor.

Mr Baird: There were two candidates nominated. Mr Bisson was also nominated for Chair by Ms Scott. There was no vote on that name.

The Chair: The standing orders say that the first name that gets the majority of votes receives the Chair, so—

Mr Baird: You won't even allow an election?

The Chair: You're interrupting. First of all, wait until I'm finished, please.

The standing orders allow the first name that's nominated with the majority of the votes to become the Chair. So now we're going to move to the Vice-Chair.

Mr Baird: Which standing order is that?

Mr Bisson: Point of order, Chair.

The Chair: I'm still dealing with this point of order, so you're going to have to wait.

Mr Bisson: How would know how these people would vote if you haven't had the opportunity to have the vote?

Mr Baird: I wanted to ask questions of the candidates for Chair.

The Chair: We'll carry on. Just carry on to the election of the Vice-Chair.

Mr Baird: To the point of order: You said it was against the standing orders. I'm asking which standing order it's against.

The Chair: OK, we will find out.

Mr Bisson: On the same point of order.

The Chair: Still dealing with that point of order? OK, go ahead, Mr Bisson.

Mr Bisson: Thank you very much. If I understand, what you just said was that the person who gets the most votes is the person who wins the committee. But how would you know that person would have got the most votes if you didn't accept the nominations that were put forward by the official opposition? There was no election. My point is, how in heck would you know how your members of the committee would have voted or not voted if there wasn't an actual election? The other candidate was not allowed to stand. There were two people duly nominated—

Mr Baird: I wanted to ask them a question before we voted.

Ms Lisa Freedman: Just to clarify what the standing orders require for the election of a Chair, if there is more than one nomination for Chair of a committee, the standing orders and the history of the committee is that you put the first name that was nominated up. If that person gets a majority of the votes of the committee, that person is Chair. You do not proceed to any of the other names.

Mr Baird: Under what standing order is that?

Ms Freedman: Under the practice and procedure for electing Chairs and Vice-Chairs of subcommittees.

Mr Baird: Which standing order is that?

Ms Freedman: You won't find it in the standing orders, Mr Baird.

Mr Baird: I've never heard of where you could not nominate another candidate and have a competitive election. There was a motion to nominate Mr Agostino, and with great respect to him—I think he's a great member—I wanted to ask a question of the candidates. I had a question for Mr Bisson. I had a question for Mr

Agostino. Frankly, I had a question for Ms Freedman as another nominated candidate.

The Chair: The ruling has been made. I think Ms Freedman has explained the procedural practice that has been used. I'm going to move on to the next item. If you want to challenge the Chair's ruling, you can do that and we'll put it to an immediate vote.

Mr Bisson: A clarification: Is "the direction received by the Premier" what you just said?

The Chair: No, no. What Ms Freedman had said.

Mr Bisson: I heard "Premier."

The Chair: No, no, not at all. You've got to listen a little carefully.

Ms Scott: Chair, are you taking nominations for Vice-Chair at this time?

ELECTION OF VICE-CHAIR

The Chair: Now we move to the election of the Vice-Chair.

Ms Scott: I'd like to nominate Gilles Bisson for Vice-Chair, please.

Mr Vic Dhillon (Brampton West-Mississauga): I'd like to nominate Ms Deb Matthews.

The Chair: We have two nominations. We'll take a vote.

Mr Baird: You didn't call for any further nominations.

The Chair: Any further nominations?

Mr Bisson: I would like to nominate Lisa Freedman.

The Chair: You can decline, if you would like, or accept. Any other nominations?

We'll now move on the first nominee. Let me explain it. If the first person nominated receives a majority of the votes, then that person becomes the Vice-Chair. If not, we'll move to the second person nominated.

All those in favour of the nominee, Mr Bisson. Opposed? The nomination has been defeated.

Now we'll move to the second nomination.

Interjection.

The Chair: Nominations are closed.

We will now move to the second nomination. All those in favour of Ms Matthews as Vice-Chair of the committee? Opposed? Ms Matthews is Vice-Chair of the committee by a majority.

Mr Bisson: I ask for a recorded vote.

The Chair: We will do it this time. Generally, you ask before the vote takes place.

Mr Bisson: I didn't get a chance. You were moving pretty quickly.

The Chair: This time we will allow a recorded vote. On the first or the second?

Mr Bisson: On the second.

The Chair: Raise your hands and it will be called out.

Ayes

Berardinetti, Dhillon, Levac, Matthews, Parsons, Smith.

Nays

Bisson, Scott, Tascona.

The Chair: Thank you.

APPOINTMENT OF SUBCOMMITTEE

The Chair: We now move to the appointment of the subcommittee on committee business.

Ms Scott: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or on the request of any member thereof, to consider and report to the committee on the business of the committee;

That the subcommittee be composed of the following members: the Chair as Chair, Mr Parsons and Mr Tascona;

That the presence of all members of the subcommittee is necessary to constitute a meeting.

The Chair: All those in favour of the motion? Any opposed? It's carried.

Mr Baird: Point of order, Mr Chair: Could I ask for unanimous consent if, as they've done in other committees and as per government notice of motion number 5, brought in by Mr Duncan, which I have been very supportive of, I say to his capable team who are here—

The Chair: Mr Baird, you're out of order because you're not a member of the committee.

Mr Baird: I'm asking for unanimous consent.

The Chair: You can't do that. You're not a member of the committee and you are not subbed in. It would have to be—

Mr Baird: Can't you do anything by unanimous consent?

The Chair: No. You don't have the floor to ask for any consent at this point. You can speak on an item, but you have no vote unless you're subbed in for someone else.

Mr Bisson: Chair, I would ask for unanimous consent that we do as we have in other committees, that I be allowed to sit on the subcommittee to be able to deal with matters that come before the subcommittee, as per what is in government notice of motion number 5.

Mr Levac: Chair, just a clarification: That was to be invited to participate.

Mr Bisson: What happens on other committees—for example, Ms Churley sits on a subcommittee. There was unanimous consent at that committee to allow that to happen. The committee can only function if members participate. The business of this committee is going to be determined by subcommittee, so I'm asking for unanimous consent to allow me to sit on the subcommittee as a permanent member of the subcommittee.

Mr Levac: I believe that's not the case. I believe they are invited to attend those subcommittee meetings. That's what we will accept as unanimous consent, but not to sit on the subcommittee. If that's the intent, if that's the

wording they're using, that Mr Bisson sit on the committee, we will not accept it.

The Chair: Mr Bisson, would you be willing to change that to "invited"?

1030

Mr Bisson: I've asked for a motion on unanimous consent. If you want us to move another one—

The Chair: All right. We have a motion for unanimous consent. Do we have unanimous consent?

Interjection: No.

The Chair: Thank you. Mr Levac?

Mr Levac: I would come back to the same issue, except worded differently, that Mr Bisson be invited to attend those subcommittee meetings, as per the other arrangements made in the committees.

The Chair: We're asking unanimous consent. Do we have unanimous consent? All those in favour? We have unanimous consent, so Mr Bisson will be invited to attend the subcommittee meetings, as is the practice with the other committees.

Mr Baird: The members of the official opposition and the members of the New Democratic Party do have a concern. Given that the committee normally meets between 10 and 12, I perhaps could speak to it now, not as a point of order or point of privilege but just as a matter of business that this committee is reflecting on.

There is a significant concern among many, both in the official opposition and I think in the third party, that this Chair—and I have a tremendous amount of respect for your capabilities and capacity as a member to undertake your responsibilities, both as a member of the executive branch and the legislative branch. But there is a tremendous concern among many members and people outside of Parliament that a government oversight committee, this being one of the three government oversight committees, is being chaired and vice-chaired—and the subcommittee is now a majority government committee, for the first time. It has never happened in our 136 years as a country.

The Chair: Just to clarify, the subcommittee is one member of each party.

Mr Baird: And the Chair.

The Chair: Yes. The Chair is non-partisan. I think you have to respect that role.

Mr Baird: I know, but the concern is that you have two parliamentary assistants in that subcommittee, forming a majority. As the Integrity Commissioner of Ontario has ruled, in virtually every single ruling, you cannot separate your responsibilities as a member of the executive branch of government from your responsibilities as a member of the legislative branch. You always have both hats on.

There is a terrific amount of concern with respect to this committee being chaired by a member of the government. I was wondering if you had any thoughts or any response as the Chair. You have an important responsibility at the Ministry of the Environment. Now that we have, for the first time ever, a member of the executive branch of government chairing an executive

branch oversight committee, would it be your intention to remove yourself as Chair if they were considering a Ministry of the Environment appointment? Would the Vice-Chair withdraw herself if it was an issue with respect to the Ministry of Community and Social Services? Should parliamentary assistants or members of the Legislature who sit on a cabinet committee vote on areas that—for instance, if you are a member of the cabinet committee on economic development and there is an appointment with respect to Ontario Exports, should you vote on an appointment to the board of Ontario Exports?

I'm just troubled to understand how you could sit on a cabinet committee which the Premier has described as a central decision-making body in his government and then be in oversight of yourself. I have a tremendous concern about it. I think it's best to be honest and upfront and have the courage of my convictions to put these concerns on the record. They are serious concerns. We were earlier trying to make a point, in one of the only vehicles we have in our parliamentary system, on a very serious issue. This has never happened before. I think there's a need to establish some ground rules now that the government has come in and used its majority to impose its will on the committee. There has to be a set of rules of engagement. When the subcommittee is meeting to consider an appointment—I mean, Mr Parsons is the parliamentary assistant to the Minister of Transportation. If there was an important responsibility coming forward on transportation, how could you have Mr Parsons on the subcommittee, now controlled by the government? Mr Parsons, who will be at the table when these decisions are made, could very well be making the appointments himself. How could he now be doing the oversight on that committee?

My concern is both with the subcommittee members, now comprised of a government majority, and with the Chair and the Vice-Chair. I know Ms Matthews to be an honourable person and I know you to be an honourable person, but I think it puts you in a terrible predicament. I know you and Ms Matthews don't want to be in a conflict of interest. But even more than that, I know that neither of you wants to be in a position where there might be a perception among members of the public or members of Parliament that there's a conflict there. I feel very strongly about this and I wanted to raise it and I wanted get some direction from you on how this very serious issue affecting an important committee of the Legislature would be dealt with.

Mr Bisson: On that point, just to talk to it, this is a serious issue. Since 1986, this committee has existed. It was created originally, if I understand correctly, by the Peterson government—

Mr Lorenzo Berardinetti (Scarborough Southwest): Chair, what do you have to do to get recognized here? I'm new, and I want to speak as well. I know that the other members here are much more experienced—

Mr Bisson: You'll be next. Not a problem

The Chair: We'll have points of order, and we'll go on a rotation.

Mr Berardinetti: Thank you very much. And do we have time limits in place for speaking?

The Chair: Twenty, minutes, say, is the time limit. Actually, we are going to go through a process of explaining how the committee works. We'll deal with the points of order first, then we will go through that process on time limits and time for speaking and rotation—basic housekeeping items of the committee.

Mr Bisson: To the point, I just want to weigh in where Mr Baird has entered. This committee is responsible for the oversight of all appointments to government agencies of this provincial government. We now have a situation where, for the first time since this committee has been struck—it was originally struck in 1986 by the Peterson government for the very reason of giving the assembly an ability to oversee the appointments to various public agencies. At that time in 1986 and ever since then, under Mr Peterson, under Mr Rae, under Mr Harris and under Mr Eves, it has always been understood that the oversight committees are chaired by the opposition, because the government does not want to be seen as having influenced the order of business that comes before this committee or to be seen as using their majority to stifle the role this committee has to play, which is the oversight of those appointments.

So here we are. I want to echo what my friend Mr Baird has said. It's not a question of disrespect to Mr Agostino. I know him to be an honourable member. That ain't the point. The point is that this committee is here to oversee all the appointments. So here's the problem we've now got: The subcommittee is now, by majority, controlled by the government. The Chair is on the committee and so is the official opposition. That's two. Then you've got the Conservative opposition member who's on the subcommittee as a voting member. I'm only there by invitation; I don't have a vote on the subcommittee. That very subcommittee is going to determine who is called before this committee for oversight when it comes to public appointments. I can't control what's going to happen because we no longer have a majority on that committee. By virtue of the Chair being a member of the government, they now control the subcommittee. If I or a member of the official opposition want to call person X before this committee to ask questions about a public appointment this government has done, you can use your majority on the subcommittee to block that person from appearing before this committee. I think you are putting yourselves in an awful position. Quite frankly, and rightfully so, not only the members of the opposition but the public and the media will recognize that basically you're blocking the ability of the opposition to call forward public appointments.

The second point is that by having this committee chaired by a member of the government, we are breaking the tradition of what this committee was all about in the very first place. For members who've just been elected here, three committees are oversight committees of this House: You have the public accounts committee, you have the estimates committee, and you have the public

appointments committee. Those committees are always chaired by the opposition for a reason. They're oversight committees. They're very important committees.

Public accounts looks at the details of the expenditures of the government. It is chaired by a member of the opposition. By virtue of having an opposition member as Chair of that committee, you have a certain ability, at the subcommittee at least, to order up the business of that committee. It's pretty well driven by the opposition. I accepted that in government. I know Mr Baird accepted that in government. Quite frankly, people who served under the Peterson government accepted that.

1040

The same thing goes when it comes to estimates. The estimates committee is chaired by a member of the opposition for that very reason. It is the committee we have, as members of this assembly, to call any ministry before it to ask questions about expenditures within that particular ministry. Again, why is it chaired by a member of the opposition? So we have an oversight. There is at least a sense that the government, by way of its majority, is not controlling the business of that committee. That's why we put in place opposition Chairs.

It's the same thing with this committee. I would argue that this committee is one where you as a government would want to make sure you have squeaky clean hands. You will have appointments over the next four years; you will appoint some of your own, and that's natural. I don't argue that you shouldn't appoint Liberals to agencies, because we have to have people of all persuasions, including Liberals, in those agencies. But if there's ever a controversial appointment made, you could be in the position as a government—mark my words—where you will be roundly criticized for being partisan in your appointments, because this committee will not be seen as serious in doing its job in overseeing those appointments. I'm just saying to members of the government, you don't want to go there.

You might think this is neat with Mr Agostino, as your own, as a Chair. No disrespect to the Chair, but you will be seen as interfering in the oversight process we have to overlook the appointments of the government. I think where you're going is very wrong, and I want to strongly put forward not only my opposition to this but the opposition of all members of the New Democratic caucus. This is not good business; this is not the way this committee should operate. It's somewhere you should not want to be going. If you do, it tells me that your sense of democratic renewal is quite opposite to what you promised in the last election.

Mr Berardinetti: In reading the booklet in front of us today, the resource binder—again, I'm new to all this, so I respect the opinions of Mr Bisson and Mr Baird and anyone else who speaks here—on page 2 it says basically “It is not the responsibility of the committee, committee Chair or committee clerk to determine whether a conflict of interest exists. Members with a possible conflict of interest should seek the advice of the Integrity Commissioner, as outlined in the Members' Integrity Act.”

We're governed by the Members' Integrity Act, and I would simply put forward, in addressing the point that has been raised here, that those concerns, with all due respect—and perhaps they're legitimate concerns; we don't know at this point in time—should be put forward to the Integrity Commissioner if these members feel that is the route to go. Other than that, I think we need to proceed and go forward with what is—

Interjection.

Mr Berardinetti: I'm sorry. I think I heard something said there.

Mr Bisson: I apologize.

Mr Berardinetti: OK. I've had my experience being on city council committees that ran days and nights and evenings. Quite frankly, if there's a problem, we try to resolve it, and the way to resolve it is through legislation, through the law. The law here is the Members' Integrity Act, as far as I can see. So I would suggest we use that act if it's required, that if there's any perceived or actual or even potential conflict we go that route. Otherwise, let's go forward with the business of this committee.

The Chair: On the same point?

Mr Levac: Yes, Mr Chair. I will repeat what I said, before you took the chair, in my comments to the clerk. The concerns being raised by the two members opposite are legitimate. As a matter of fact, any concerns that get raised are legitimate concerns if people believe something is not appropriate. There is a path to take. The first one we're taking right now is the point of order, leaving the Chair with a bit of work to do in terms of clarification as to whether or not this an appropriate action.

I would point out to the members opposite, particularly those on the official opposition side, regarding the appointments and the question of whether anyone who is part of the government should be participating, that in terms of appointments from 2001, Mr Kells, up until June 13, 2001, was a member of the standing committee on government agencies, Mr Mazzilli was a parliamentary assistant, Mr Ouellette was a parliamentary assistant, Mr Spina was a parliamentary assistant and Mr Wood was a parliamentary assistant.

I also want to make it very clear, to correct the record as spoken by the member of the official opposition, that they are not members of the executive council. People do not swear the oath to the executive council, nor to cabinet, and they did not participate. It's a non-appointment under the Executive Council Act, to make that perfectly clear. We took arguments as to whether or not this is legitimate. The record indicated up to this point that some of those issues they're talking about—if you're going to be looking into them, you look into them under the fact. The fact is that they are not members of the executive council and they did not swear that oath to the executive council under the Executive Council Act. I would reinforce the fact that if there is a conflict, each of us is responsible in our own right. If there are those who are not, it would definitely be brought to the Integrity Commissioner, because they can charge somebody under the Integrity Act and have an investigation as to whether

there is a conflict. We've seen some of those charges and accusations fall by the wayside, and the Integrity Commissioner made it quite clear there was not a conflict; in other cases, there have been conflicts. That's the job of the Integrity Commissioner.

Having said that, Mr Chairman, I would suggest to you as well, under government motion number 5, which was used in the other one I was talking about re the parliamentary assistant, those are where that comes from, in terms of motion number 5.

I would ask that we move on with the business of the day, and then have the concerns that have been raised dealt with in an appropriate manner.

The Chair: I'll entertain Mr Baird and then Mr Bisson and then we'll move on.

Mr Baird: I appreciate the intervention of the chief government whip, because he does bring up some fair points. If I could just respond, yes indeed, many parliamentary assistants over the years have sat on this committee. But three things were different. One, the Chair was a member of the opposition, two, the Vice-Chair was a member of the opposition, and three, the sub-committee comprised a majority of opposition members, so it had the capacity to deal with things.

I made no suggestion that parliamentary assistants were members of the executive council. What I did say is that they're members of the executive branch of government. They hold official capacities in the executive branch of government. They're housed in executive offices, not in legislative offices, and their expenses are paid out of the executive branch. They work in the executive branch of government, while not on the executive council. And they do swear an oath to cabinet. The concern I would have is that if the Chair, Vice-Chair or one of the steering committee members, now that it's a majority, was in a cabinet committee and said, "We'd like to appoint Mr X to a board or commission," and serious concerns were raised about Mr X in that cabinet committee, those three individuals have sworn an oath that they can't disclose that anywhere else and would be put in a position where they would go to official legislative business knowing that there were serious concerns about Mr X and being prevented from raising them. It's only in the context that it's a majority government committee, a situation, in all fairness, that the government put themselves in, that causes me concern.

I appreciate the comments of Mr Berardinetti with respect to the Integrity Commissioner. We only have one option to file an official complaint, that we believe someone has broken the law and is guilty. You actually have to present evidence to the Integrity Commissioner as such. It's something I've never done against another member. I know Mr Parsons; I vehemently disagree with him on a lot of things, but I know him to be an honourable member. I know Ms Matthews, by reputation, to be an honourable person. I certainly know Mr Agostino, in eight years, to be an honourable member. I don't think it's appropriate to say, "Wait until a crime has been com-

mitted, wait until someone has broken the law, before we deal with this."

I think it's more of an issue, and a substantive issue, today because we have, for the first time since 1986, a government member chairing it. We have a Vice-Chair that's a member of the government. A majority of members on the steering committee are in government. I was on this committee as parliamentary secretary to the Chair of Management Board some years ago, but whenever I went to the subcommittee, I was in the minority, so I couldn't control anything—nothing.

The concern I have is that, rather than going to the stage of—you know, if I file a complaint against Ms Matthews, she's got to get a lawyer to defend herself. The last time someone filed a case against me, I had to spend seven grand on a lawyer's bill to prove that the allegations were false. In the regrettable circumstances we find ourselves in, we've tried to suggest it's not a good idea for the government to chair and vice-chair and have a majority of the control committee. The committee has decided that they're going to do otherwise. I think there should be some very clear guidance or statements from the three individuals to say that if there is a government appointee of their ministry or any cabinet committee that has any relation to it, they would absent themselves from the role of Chair and Vice-Chair—not as a member of the committee. The public perception, and the reality of this, is a very real concern.

1050

Earlier on, I think we were trying to make a point. It perhaps was some legislative tomfoolery. I think it's regrettable that that's the only vehicle we have to make our case. I just want to put these concerns on the table. I think they're best able to be dealt with upfront. I think it would be in the interests of the Chair, the Vice-Chair and the subcommittee member, who are all parliamentary assistants, to try to assuage the concerns that those of us in the opposition have in terms of how this would be done.

I am not going to file complaints against Ms Matthews, Mr Parsons or Mr Agostino, because I don't think they've broken any rules. I think there is a very real perception that all members will have, that the media will have and that the public will have that there is not a fair oversight of these appointments. Thank you for the indulgence of committee members to listen to the point.

Mr Bisson: I don't want to go any longer than we need to, but I think the members of the government really need to reflect on this. You are going to be perceived as trying to stymie an oversight process that we have here in the Legislature. There's just no other way of putting it.

We're all honourable members here. I know that the newly elected people want to do the right thing. Those who have been here before understand how this process is supposed to work. Power is an alluring thing, in the sense of being able to have one of your own on this particular committee. I just repeat that you're really putting yourselves in a bad spot. The minute there's a controversial appointment that comes before this com-

mittee and you use your majority on the subcommittee to block any opportunity the opposition may have to order that person before the committee, you're going to be in one heck of a spot. I want to put it on the record.

That's why I think you should reflect on what has been said and that we should return to opening nominations for a new Chair, so we're in a position to have this oversight committee do what it's struck to do. We need the opposition to have a majority on the subcommittee. Mr Baird made this point, and I sat on this committee when I was in government. There were people whom Liberals and Tories called before the committee that I, as a government member, didn't want called, because the person happened to be a New Democrat and I didn't want to go through what that meant in that people may or may not have raised issues. But I couldn't do anything about it, because the majority of the subcommittee and the business ordered before this committee was controlled by the opposition. That's a good process, because at the end of the day, if your political appointments as a government can't stand up to the scrutiny of this committee, you're only doing yourself a favour by not allowing that appointment to go forward.

I'm just saying again, this really sets a dangerous precedent. This committee's mandate, when it was struck, was as an oversight committee set up to give the opposition the opportunity to call forward any public appointment that the government of the day makes. You're really opening yourselves up to a fair amount of criticism—and I think it'll be fair criticism—in having the ability to control the subcommittee and the chair.

On the issue that the honourable member raises in terms of the Integrity Commissioner, I hear what you're saying, but that doesn't resolve the issue we have here. The problem, I repeat, is that a member of the subcommittee could all of a sudden say, "I want to refer this matter to the Integrity Commissioner to find out if I'm able to block a particular appointee from coming before this committee." The Integrity Commissioner ain't going to deal with that. He or she is only going to deal with, "Are you in a direct conflict?" The Integrity Commissioner cannot deal with the politics of the appointment.

If I'm the parliamentary assistant to environment and I'm on the subcommittee and I'm trying to block any appointment review such as for Environmental Commissioner, yes, the Integrity Commissioner can deal with whether you're in a conflict vis-à-vis that actual situation, but he cannot deal with the politics of this thing. That's all I'm saying. In our business, perception is everything, and the perception you're creating by doing this, quite frankly, is very dangerous.

Mr Baird: I think we are really trying in the House to work differently than we have in previous years, and I appreciate the work that the government—certainly working with the official opposition. Might I suggest, we're not out here for any gotcha-type game. We've made points; I've been impressed that members have sat and listened to them. Perhaps all the members of the

committee, ourselves included, could reflect on what you've said, if you could reflect on what we've said, particularly the three individuals in question, and maybe confer with each other and discuss this at a future meeting. I don't think there's anything to be gained. I think the points have been made. I appreciate that they've been taken seriously by you, Mr Chair, and by other members of the committee. I did not raise a point of order, so you don't have a ruling to make, but these members may just want to reflect on it and then discuss it at a future meeting.

Mr Levac: I appreciate those words, because that's what I've been trying to say since the clerk had the chair. My last comment, though, is that we're being presented with the worst-case scenarios. I want to make that perfectly clear. There are worst-case scenarios being presented by the members from the other side. There is an assumption, it seems to me, that we will block as many appointees or as many people coming to give deputations as possible. That's not the case. I would like to suggest that the record will show, eventually, that no matter how it's being painted into a corner, those corners are not necessarily even there. I just want to make that point, because the worst-case scenarios are being presented.

Mr Bisson: Can I have just one very, very last point? Just to draw an analogy, we have an Integrity Commissioner here in the province of Ontario who is independent. We have all the confidence, as members, in our Integrity Commissioners over the years doing a good job. Look at what has happened at the federal level, where the Prime Minister appoints the—what do they call them?—oversight commissioner. It's not even an Integrity Commissioner. There's no confidence in that process because people well understand that it's a public appointment, an appointment by the Prime Minister's office. All we're saying is this committee is one of the important committees of oversight in this Legislature.

I just say again that the minute you bring forward an appointment that is controversial and we decide we want to interview that particular person, there will be all kinds of pressure, from the Premier's office on down, to block certain appointees from being questioned at this committee. It will happen. Trust me. It has happened under every government before. It happened under the Peterson government, it happened under the Rae government, and it happened under the Tories, where the government tried to not have certain people come before this committee for appointment review.

If we as the opposition are not able to control who is called before this committee, this committee is defunct. It has no power. This is our ability as opposition members to call forward any appointment you have to come before this committee. I repeat, if the appointment can't stand the test of this committee, that person should not get the appointment.

I'm just saying right now that I understand where you're going, Mr Levac, chief government whip. You're an honourable person. This is not a personal attack on

you. I'm just saying that at the end of the day, it'll be very hard for your government not to utilize its majority on the subcommittee. You guys will use your majority on the subcommittee, because you will have appointments that you don't see as controversial but that we do, and you will try to block reviews.

The Chair: Thank you. First of all, the points that have been made have been well taken and understood. There are no standing orders broken with this process we're using. The rules are being followed. What I will say, though, is that I think that as honourable members, all of us, we have to trust the integrity of the members. If a member feels they're in a conflict, he or she will remove themselves from that position. The practice of the subcommittee has been not to block recommended names that come forward. I believe that practice will continue. I appreciate the concerns raised by the members here.

We'll move on now. It's not on the agenda, but I thought it may be useful for members of the committee to get a quick overview of how the committee works, the process, particularly for the new members. If there are questions of the clerk, we can go from there.

1100

Clerk of the Committee: Mr Agostino has asked me to give you a brief overview of the committee. I'd like to introduce Larry Johnston. He's the research officer. Larry participates each week in the committee and is very useful to the committee. I thought I would talk about the appointments aspect of the job and Larry could talk about the agency review aspect of the mandate.

As you may know, there is a twofold mandate in the committee. One is the authority to institute a review of any agency, board or commission that the committee wishes. It's a very broad-ranging mandate in terms of the scope of the review it would like to undertake. This is a committee in which the standing orders are quite explicit in how it operates. The second mandate of the committee is what we have just been talking about, the review of intended appointees that are made by order in council. It is a public oversight of these order in council appointments that are made.

The standing orders, and you'll find them under standing order 106, are explicit. They go through a step-by-step process on how that is accomplished. What I'm distributing now is an example of what a certificate looks like. This is the certificate that is signed by the Premier on behalf of the cabinet and is tabled to indicate the appointments made at the most recent cabinet meeting. Once the certificate is tabled and a copy comes to me, as clerk of the committee, I distribute this certificate to the subcommittee members. The subcommittee members select one or more intended appointees that they would like to review. They can select zero. You don't have to select somebody, but it could be any number. It could be the entire certificate, if one of the members would like to do that. The subcommittee reports to the committee. There is a report prepared by my office that goes to the committee at the next meeting to indicate what those selections were. I might add that the standing orders also

provide that this committee reviews only those appointments that are made for more than a year. Appointments for a year less a day or reappointments do not come before this committee.

The standing orders state that when the subcommittee reports to the committee, the committee determines the date for the review of the people and the time that will be allocated for each appointment. In the past, the committee has established procedures on its own to facilitate this process. It was found to be cumbersome to try to set up subcommittee meetings, often on a weekly basis, to get all the subcommittee members to go through the certificate and make their selections. So what the committee has adopted in past practice, which was readopted in the last Parliament, was that for that particular procedure, once the subcommittee members receive the certificate, they are required to get back to me as clerk by the following Thursday at 5 o'clock any of the selections that have been made. So rather than holding a meeting, they have been sending in their selections to me and then I proceed to notify the ministries involved of those people who have been selected or not selected and we start scheduling people for interviews.

Rather than setting up a requirement to determine, each time, how much time would be allocated to each review, that same procedure that the committee adopted established the practice whereby each interview would last 30 minutes. Those 30 minutes would be divided equally among the three caucuses. If the intended appointee arrives and makes a statement at the beginning, that time has customarily has been deducted from the government's time, in terms of asking questions.

Once somebody has been selected for review, we receive a biographical background or resumé for that person, and the research officer, Larry, prepares information on the agency, board or commission to which that person is going to be appointed. Larry will provide the background on the agency, he will discuss certain issues that have been raised with that agency, and he can even provide sample questions or areas of inquiry that you might want to pursue. This information is produced and compiled by my office and is given to you before each committee meeting, hopefully the week before so you have time to review it before we schedule people. We work closely with the Public Appointments Secretariat, because they provide us with that biographical information and of course they provide us with the contact information and how to reach those people.

Only the intended appointee may be called as a witness. So it's only that person whom you are interviewing. Then, at the conclusion of that meeting, the committee will vote and decide whether to concur in that appointment.

You've already seen an example of the vote. Normally, the Chair will ask for a motion and one of the members will move that concurrence be given for this particular appointment. The Chair will ask, "Is there any debate?" and then there could be debate and it's usually done on a rotational basis. That debate can last as long as you wish.

Then we'll ask for a vote and it's generally conducted by a show of hands. If, however, when the Chair says he's going to put the question, one of the members asks for a recorded vote, there will be a recorded vote, which we have also had an example of today, whereby the Chair will then put the question and ask for all in favour. As the clerk, I will announce the names so they're read into the record, and it's a permanent public record of who votes in which way. You may abstain if you wish, but any hand that's raised will be recorded as for or against.

Those appointments concurred in are reported to the House that same afternoon and the report is deemed to be adopted by the House. At that point, if the appointment has been concurred in, the Public Appointments Secretariat can proceed with the actual appointment. For those people who have not been selected from a certificate, once we advise the Public Appointments Secretariat that they have not been selected, they also then can proceed with that appointment.

There are certain deadlines we have to pay attention to. In the oversight role, we are not trying to hinder in

any way the appointments that are taking place, so if a report has not been made on a selected person within 30 days, that person is deemed to have been concurred in. The committee can, by unanimous consent, defer any of those deadlines. So you'll find that with the 30 days, if somebody isn't available to come when they are—

Ms Smith: Chair, I really appreciate that the clerk is doing this for us, especially the new members, but I was wondering if we could adjourn the committee and do this as an information session. I have another meeting that I need to attend. I was wondering if I could move adjournment of the committee at this point and we could just continue on with the clerk as an information session.

The Chair: All those in favour of adjourning the committee? OK, then, we'll continue as an information session for members.

Ms Smith: Thank you very much. Thank you, Ms Stokes.

The committee adjourned at 1107.

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Mr Dominic Agostino (Hamilton East / -Est L)

Vice-Chair / Vice-Président

Ms Deborah Matthews (London North Centre / London-Centre-Nord L)

Mr Dominic Agostino (Hamilton East / -Est L)

Mr Lorenzo Berardinetti (Scarborough Southwest / -Sud-Ouest L)

Mr Gilles Bisson (Timmins-James Bay / Timmins-Baie James ND)

Mr Michael A. Brown (Algoma-Manitoulin L)

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Mr Vic Dhillon (Brampton West-Mississauga / Brampton-Ouest-Mississauga L)

Mr Dave Levac (Brant L)

Also taking part / Autres participants et participantes

Mr John R. Baird (Nepean-Carleton PC)

Clerk / Greffière

Ms Anne Stokes

Staff / Personnel

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Research and Information Services