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**Official Report
of Debates
(Hansard)**

Wednesday 24 March 2004

**Journal
des débats
(Hansard)**

Mercredi 24 mars 2004

**Standing committee on
government agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Chair: Dominic Agostino
Clerk: 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 24 March 2004

Mercredi 24 mars 2004

The committee met at 1005 in room 151.

Clerk of the Committee (Ms Anne Stokes): Good morning, everyone. I'd like to draw your attention to the fact that both the Chair and the Vice-Chair are absent today. It is therefore my duty to preside over the election of an Acting Chair. I would like to now ask if there are any nominations.

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

Clerk of the Committee: Are there any other nominations? Thank you. There being no other nominations, I declare Mr Orazietti the Acting Chair. If you'd like to come forward.

SUBCOMMITTEE REPORTS

The Acting Chair (Mr David Orazietti): Good morning and welcome. I'd like to call the meeting to order.

Our first order of business is the report of the subcommittee on committee business dated March 11, 2004.

Mr Parsons: I move adoption of the report.

The Acting Chair: So moved. Any discussion? Seeing none, all in favour? Approved. The motion is carried.

Our second order of business is the report of the subcommittee on committee business dated March 18.

Mr Parsons: I move adoption of that also.

The Acting Speaker: Moved by Mr Parsons. Any discussion on this report? All in favour? The motion is carried. Thank you.

INTENDED APPOINTMENTS

JOAN LITTLE

Review of intended appointment, selected by official opposition party: Joan Little, intended appointee as public-at-large member, Niagara Escarpment Commission.

The Acting Chair: We now move to our appointments review: Ms Joan Little, intended appointee as public-at-large member, Niagara Escarpment Commission. You may come forward. As you may be aware, you have an opportunity, should you choose to do so, to

make an initial statement. Subsequent to that, there are questions from members of the committee.

It has been the practice of this committee to provide each party with the opportunity to ask the first question on a rotating basis at each committee meeting. At our last appointments review we started with the official opposition. With the agreement of the committee to continue this practice, we'll commence the questioning today with the third party. At the next meeting, we'll begin with the government, and then the official opposition and so on. Each party will have 10 minutes allocated for questions, and we'll go in rotation. As is also the practice of this committee, any time you take to make a statement will be deducted from the allotted time of the government party. Welcome.

Ms Joan Little: Mr Chairman and members, good morning and thank you for inviting me to speak to my application for appointment to the Niagara Escarpment Commission.

In 1986, I was appointed to the NEC as a nominee of Halton regional council. When I retired from council in 1988, I was reappointed as a public-at-large member. Government observers frequently attended commission meetings at the time, and early in 1993 I was called by the host ministry, which was then the Ministry of the Environment, to see whether I was interested in becoming chair, because the chair's term was expiring that year. The minister subsequently interviewed me and I became chair. I believe my broad experience in council and with the conservation authority, along with my NEC track record, can be useful today.

Applications may be routine to the commission, but sometimes they are the most important thing applicants have on their plate. It's very important that they be treated with respect, and how they are treated, of course, reflects on the government. I'm dedicated to making sure that applicants are treated with respect. If an application must be refused, it must be done with sensitivity and fairness.

During my three years as chair, the director, chief planner and I visited the escarpment counties and regions to meet councils and staff to introduce the faces behind the names, to forge relationships and to build support for the program. We also visited escarpment MPPs and found most of them keen to learn more about the program.

I would like to take the opportunity to pay tribute to one unsung group that makes the Niagara Escarpment so

special, not just any place in Ontario: the planning and support staff of the NEC. Although in recent years their staffing levels and funding have been severely decimated, they're a wonderful group who love the program and work their hearts out in the face of seemingly undoable workloads.

In 1990, UNESCO designated the escarpment as one of only six world biosphere reserves in Canada then, a place where conservation and development coexist in harmony. Our escarpment biosphere is the envy of many countries because of its unique land use plan. When the NEC director attended a conference of world biospheres in Seville, Spain, in 1995, he was inundated with requests for information on this success story. Later, Mexican officials visited the NEC in Georgetown for advice on preparing a plan for their proposed biosphere reserve. Those kudos all resulted from Ontario's forward thinking in June 1973, when it passed the Niagara Escarpment Planning and Development Act with the support of all three parties, the province's first Smart Growth plan. Today, development pressure in southern Ontario makes that bold 1970s idea seem prophetic. You can count on me to respect the legislation and the NEC plan.

I'd be pleased to answer questions.

1010

The Acting Chair: Thank you very much. Questions?

Mr Rosario Marchese (Trinity-Spadina): My name is not Gilles Bisson; it's Rosario Marchese. I'm just filling in for a little bit. I apologize for not having read much about your resumé in order to be more adequately prepared, but I will ask a few questions that have already been drafted by staff. One of the questions they ask, which I think is a good one, is: What is your understanding of the role of the commission? You touched on some of the things that the escarpment does, but in terms of the role of the commission, what do you think it is?

Ms Little: It's to uphold the Niagara Escarpment plan, to honour the legislation and to continue to make the escarpment a special place, I believe.

Mr Marchese: OK. And your understanding of the escarpment plan, again, in some detail if you can, to make me understand what you know about it?

Ms Little: OK. It's a conservation plan, but a conservation plan where development can occur concurrently. There are some areas of the plan which allow development; some do not. The more sacrosanct areas are the natural areas, undoubtedly, but it's a place where the two can coexist. Very intense development is not permitted in many parts of the plan. The development is directed to more urban areas and to towns and hamlets. Extensive development is not permitted within the Niagara Escarpment plan other than in the urban areas, but it's environmental. The development has to conform to environmental standards.

Mr Marchese: In your experience and involvement, do you think the Niagara Escarpment Commission faces some challenges? If so, what are they and how would you deal with them?

Ms Little: The development pressures are the very real thing. The very fact that the escarpment is special

makes it very marketable, so development pressures are certainly the number one problem facing the commission.

Budget and staffing will be an issue. As I mentioned in my opening remarks, the budget was cut very severely. Obviously, I can't do anything about that. You have to live with what you have, but it's my hope that maybe even mentioning it, whispering it the odd time, might provide some help for that.

I don't know whether you are aware that the proposed greenbelt legislation exempts the Niagara Escarpment area, I think perhaps because it was promoted that new urban growth should not occur in the greenbelt, but they figured the Niagara Escarpment plan already did that. I'm not sure that it does. People can still apply for urban expansions, and there are ongoing joint board hearings and so on. That may be an issue.

One thing I find interesting is that we travel to Arizona sometimes and the bottled water in Tucson carried the—I forget whether it was the Crystal Springs or Caledon Springs—brand right in the supermarkets. I looked and I thought, "There are all those underground water resources." I know the Niagara Escarpment Commission has recently looked at water-taking problems, but that, I think, will be a big issue in the future.

I think I'll leave it at those.

Mr Marchese: You mentioned development as an issue.

Ms Little: Yes.

Mr Marchese: What specifically about development are you worried about, and what is your view of how to tackle the issue of development on the Niagara Escarpment?

Ms Little: As far as I'm concerned, if the plan allows it, that's fine. Where the plan does not allow it, it shouldn't go, because the plan does not allow it in some areas for environmental reasons. I think it's suicidal to ruin a conservation plan, which has been carefully drafted, by allowing intense development where the environmental requirements don't permit it.

Mr Marchese: All right. You talked about budgetary problems that you faced for a while. Clearly it's under-resourced, and I presume you probably have some advice for the new government. If you're facing budgetary problems, that means you're limited in your ability to do things effectively.

Ms Little: Yes, that's right.

Mr Marchese: I presume you have a message for the Liberal government, in terms of what you think might be more adequate resources that are required.

Ms Little: A couple of years before I left, our budget was \$2.57 million and we had 34 staff. Today it's \$1.91 million with 22 staff. I think somewhere in between would be wonderful.

I've mentioned the staff. They're a very upbeat group, and it amazes me how much they like the program and how very dedicated they are to it. Any increase would be wonderful.

Mr Marchese: They're doing more with less, obviously.

Ms Little: Yes, they are.

Mr Marchese: I am certain the Liberals are sensitive to this particular issue.

Ms Little: I'm sure they are.

Mr Marchese: I'm sure that once they deal with the deficit problem they didn't know about, money will flow to you. I'm absolutely certain.

Ms Little: I'm sure it will.

Mr Marchese: But they heard you, anyway.

Ms Little, I appreciate your answers to some of these questions.

Ms Little: Thank you, Mr Marchese.

The Acting Chair: We'll move to the government caucus.

Mr Parsons: We'll waive our questions.

Mr Toby Barrett (Haldimand-Norfolk-Brant): I appreciate your being here. With respect to the escarpment, we do have a bit of research from the committee on the escarpment, which starts geologically over in Rochester.

Ms Little: That's right.

Mr Barrett: A lot of it on Manitoulin Island is quite stunning. I understand that's not included in the Niagara Escarpment.

Ms Little: I wish it were, but that's a fact of life.

Mr Barrett: That's partly where I'm going with this. It continues through Michigan and Wisconsin and ends up north of Chicago. You indicate that you wish the Manitoulin section was covered. Is there any work you plan on doing to try to broaden the scope? Manitoulin Island is in Ontario.

Ms Little: The planning area, at the moment, would not permit that. Whether at some future time it would, I don't know. There was discussion years ago at the commission, just generally, about how nice it would be, but beyond that it didn't go anywhere.

Mr Barrett: Further to that, as we know, the escarpment is in New York state—it's in several states on the other side of the border. Do you see any potential there to reach out or to have any discussions, any joint ventures with respect to day-tripping or tourism potential?

Ms Little: I'm not certain. There were discussions several years ago with—is it Door, Wisconsin? I'm not sure. There were discussions across the border. A couple of commission members and staff actually visited, I think, Door, to have discussions about that—nothing formal; it was on an informal basis. But there was real interest in that, just as you said, for the joint tourism.

Mr Barrett: I throw that out because much of the area of the escarpment goes through, and that part of northern Ontario, could use some of the tourism and economic development that may come from that—

Ms Little: I think the escarpment has been a wonderful boon for tourism.

Mr Barrett: —and extend the Bruce Trail as well.

Ms Little: Yes.

The Acting Chair: Further questions from the opposition caucus?

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Mr Garfield Dunlop (Simcoe North): Did the government not ask any questions?

The Acting Chair: They waived their opportunity.

Mr Dunlop: OK. A couple of quick questions to Ms Little. The Niagara Escarpment extends right up through the part of the province I'm from, which is Simcoe county, and of course we've got tremendous pressures in the Collingwood-Blue Mountain area on the commission that you would work under.

Maybe you can answer this: With the county official plan and the Niagara Escarpment Commission, which overrules which?

Ms Little: The Niagara escarpment plan is the—

Mr Dunlop: Is the provincial body.

Ms Little: Yes, that's right.

Mr Dunlop: So any development that would be turned down by the Niagara Escarpment Commission is dead, then, at that point?

Ms Little: Yes, it is.

Mr Dunlop: OK. I couldn't quite remember. I'm subbing in on this committee as well, and I wasn't quite sure; I couldn't quite remember from my county planning days exactly what had happened.

Mr Marchese mentioned his concerns about the development. Can you make any comments on the Collingwood area, about the top end of the escarpment up in the Simcoe county area?

Ms Little: A lot of that area through there is designated escarpment recreation, and that allows a lot of uses like the ski hills and that kind of thing. In fact, that's about the only area in the Niagara escarpment plan that has very intense development potential. I guess the tourism dollars are fantastic in the Collingwood area—well, in the Blue Mountain area, the whole area near there.

Mr Dunlop: Yes, and we're looking forward to Mr McGuinty announcing quite a bit of money for a road up in that area, four-laning it to that area.

Mr Marchese: "It's coming."

Mr Dunlop: It's coming.

The fact of the matter is, as you know—I don't know if you're aware of this, but Interwest, the same people who have bought Tremblant and Whistler, are now the owners of the Blue Mountain area and there's billions of dollars of investment occurring in that area. I have had comments from my constituents and people in the county who are quite concerned about the escarpment when they hear of these huge companies moving in and doing a lot of developing in those regions.

Ms Little: Well, it has to conform with the Niagara escarpment plan, and there are a lot of things in the plan—environmental concerns overlay the development concerns. So if it's permitted in the plan, it has to also meet development criteria.

Mr Dunlop: I've got a couple of really quick political questions for you. Are you a member of the Liberal riding association?

Ms Little: I'm not a member of any political party.

Mr Dunlop: OK. That's all I wanted to ask you.

Mr Barrett: Just another quick question. Has there been any thought on any future, whether it's seen as a pressure or an opportunity, for wind power within the mandate of the escarpment lands?

Ms Little: The Niagara Escarpment Commission had a review just a while back looking at setting up policies on that, and what they arrived at was that they would look at a single tower capable of running a farm or a home or something, but that as far as the large, industrial type of wind power installations were concerned, they felt they were not suitable on the Niagara Escarpment.

I had made some notes, anticipating that maybe someone would ask me about wind power. I don't know whether you're aware, but apparently you need generation of 100 megawatts to make it viable. That would require 50 to 70 towers. They are 250 to 350 feet high to the hub, to where the blade is located. The blade is 120 to 130 feet. So the total height you're looking at is 370 to 430 feet. Those are in staggered rows and, as I said, 50 to 70 towers. I would also mention that the Niagara Escarpment only makes up 0.17% of Ontario's area. So when you combine all those things together, maybe the Niagara Escarpment isn't the best place for the wind towers, at least on a large industrial basis.

The commission has said in its policy paper that it would be willing to revisit the whole question once the technology and the science is more mature. I think that's reasonable.

Mr Barrett: Yes. Thank you.

The Acting Chair: That concludes our time. Thank you, Ms Little.

IAN ANDERSON

Review of intended appointment, selected by official opposition party: Ian Anderson, intended appointee as vice-chair, Ontario Labour Relations Board.

The Acting Chair: The second intended appointee is Ian Anderson, intended appointee as vice-chair, Ontario Labour Relations Board. Please come forward. As you may be aware, you have an opportunity, should you choose to do so, to make an initial statement. Subsequent to that, there are questions from members of the committee. Each party will have 10 minutes allocated for questions, and we'll go in rotation. Any time that you take in your statement will be deducted from the time allotted to the government party. Thank you and welcome.

Mr Ian Anderson: Thank you for this opportunity to make some opening remarks. I'm honoured to appear before this committee, nominated as a vice-chair to the Ontario Labour Relations Board. I wanted to point out to the members of the committee that present in the room today are the chair of the Ontario Labour Relations Board, Kevin Whitaker, and one of the board's solicitors, Voy Stelmaszynski, in addition, of course, to Peter Chauvin, who is also nominated to be a vice-chair of the Ontario Labour Relations Board.

The Ontario Labour Relations Board has long been respected as one of the best, if not the best, quasi-judicial administrative tribunals in the province, and indeed in Canada. This reputation is, in my opinion, well deserved and continues to this day. The respect is based on the experience, expertise and independence of the members of that board.

As you will know, the courts in Canada have, over time, adopted a policy of deference to expert quasi-judicial administrative tribunals like the board. Decisions of such tribunals will only be disturbed by the courts if they are patently unreasonable. This is a very high standard of deference. Much of the jurisprudence giving rise to this standard arises from cases involving labour relations boards. It is a testimonial from the courts to the quality of these boards.

Historically, the Ontario Labour Relations Board has made decisions under the Labour Relations Act primarily concerned with the acquisition, utilization, transfer and termination of collective bargaining rights.

Today, in addition to these areas of what I will call traditional labour law, the board has been assigned a number of other functions by the Legislature. The board now has functions under about 20 different statutes. However, about 95% of cases that are addressed by the board arise from three statutes. They are the Labour Relations Act, which continues to account for approximately 70% of the board's caseload; the Employment Standards Act, which accounts for approximately 20% of the board's caseload; and the Occupational Health and Safety Act, which accounts for approximately 5% of the board's caseload.

In addition, while definitely not the mainstay of the board's practice, the board's jurisdiction to address constitutional and human rights issues which arise in cases before it has now been clearly recognized by the courts.

I believe my 17 years of experience in the practice of law have prepared me well for a position as a vice-chair of the board. While I've always practised traditional labour law, I have also had the opportunity to practise in other areas of law in which the board is now called upon to make decisions.

I articulated at the union-side firm of Golden, Green and Starkman. While I was there, I was fortunate to have the opportunity to act for the worker in an appeal before what was then the Workers' Compensation Appeals Tribunal in what became known as the interest test case. Up until that time, injured workers received no interest on arrears in benefits. In the interest test case, the tribunal awarded the worker interest on arrears. This resulted in a change in board policy so that interest was awarded on arrears in most cases. The additional benefit to injured workers was about \$16 million a year in the late 1980s/early 1990s, when the policy was changed. Board policy was subsequently changed to also award interest to employers on over-contributions of premiums.

Early in my career, I had the good fortune of being invited to establish the workers' rights group at Parkdale Community Legal Services here in Toronto. Parkdale is a

teaching clinic run by Osgoode Hall Law School. On my recommendation, Parkdale made the decision to focus the work of that group on the Employment Standards Act. While I was at Parkdale, the workers' rights group dealt with well over 100 cases under the Employment Standards Act. The largest of these was a case known as Federated Building Maintenance, a case in which I represented approximately 100 unorganized cleaners in their claims for severance pay arising out of the transfer of a contract to clean one of the bank towers at King and Bay.

After Parkdale, I had a taste of what is involved in starting a business when I established my own practice in partnership with Garth Dee. Mr Dee, as some of you may know, is a coauthor of the leading text on workers' compensation law in Ontario. Our practice focused on workers' compensation and other areas of employment law.

I then became in-house counsel for United Food and Commercial Workers Local 175. This was an intensive litigation practice in which I did many arbitration cases. In addition, I was involved in numerous certification and other proceedings before the labour relations board.

1030

While at Local 175, Raj Anand, who was the former chief commissioner of the Ontario Human Rights Commission, asked me to join him in his practice of charter litigation, human rights and union-side labour law at the Toronto office of the firm of Scott and Ayles. I did so and practised there for some three years. Scott and Ayles was, I think it's fair to say, an unusual firm, at least in the context of labour law, in that, as I've noted, the Toronto office was a union-side practice; however, the much larger Ottawa office conducted a management-side labour law practice. The firm, therefore, provided me with many opportunities to associate with management-side labour lawyers in a non-adversarial context, also known as firm retreats. It also provided me with the opportunity to act as counsel for the Canadian Human Rights Commission in several cases.

I left Scott and Ayles to join the union-side law firm of Cavalluzzo, Hayes, Shilton, McIntyre and Cornish. This was, and continues to be, one of the pre-eminent union-side labour law firms in Canada. My tenure at that firm provided me with the opportunity to work with a number of different unions, each with a unique culture, across a variety of sectors. It also provided me with renewed opportunities to appear before the board.

Presently, I am the general counsel to UFCW Local 1000A. This role has given me yet another perspective on labour relations. Among other things, it has allowed me to participate directly in negotiations of collective agreements, which is actually a very rare thing for union-side counsel. I believe this has better equipped me to assess the merits of bargaining-in-bad-faith complaints filed with the board. It has allowed me to observe and appreciate the real-world pressures faced by union staff representatives and also employer-industrial relations specialists, outside of the adversarial context of litigation. That's a very different world than the one that lawyers

experience in the litigation context. It has caused me to develop a sense of perspective on the role of lawyers and legal decisions in the real world of labour relations. That is to say, it has given me a certain humility as to the actual impact of law and lawyers on the conduct of labour relations.

You will also have noted from my CV that I have had an extensive involvement in the area of workers' compensation law over the years. Apart from sensitizing me to health and safety issues, I believe that this experience would prove useful to me if appointed to the board in the following respects: It has provided me with many opportunities to organize and manage complex, sometimes multi-party cases. It has developed my skills and understanding in assessing complex technical information and expert evidence in relation to health and safety issues. It has made me acutely aware of some of the issues which arise from overlapping statutory regimes, most notably with respect to the issue of reinstatement. It has provided me with some wonderful opportunities to work jointly with members of the management side of the bar.

You will also have noted from my CV that I have litigated constitutional and discrimination cases and have spoken and litigated on accommodation issues.

Once again, I appreciate this opportunity to make these opening remarks, and I look forward to the questions from the committee.

The Acting Chair: Thank you very much, Mr Anderson. The government caucus has three minutes, should they choose to use their time.

Mr Parsons: Thank you for an excellent presentation, Mr Anderson. I have one question, and I would note, first of all, that there is no wrong answer. Are you a member of any political party?

Mr Anderson: I am. I am a member of the New Democratic Party. However, in the interest of full and fair disclosure, I think I should note that approximately 20 years ago, I worked for a Liberal MP on Parliament Hill, and that my late father owned John Diefenbaker's birthplace, which I actually had the privilege of re-roofing when I was 16 years old, and further used to always refer to Bill Davis as being "that living saint."

Mr Parsons: Thank you. I noted there was no wrong answer, but you've covered everything.

The Acting Chair: Any further questions? Thank you. Official opposition.

Mr Dunlop: You took my question over there.

Mr Barrett: Could I jump in?

Mr Dunlop: Go ahead.

Mr Barrett: The Green Party is not on your resumé?

Mr Anderson: No, the Green Party is not on my CV, and I have to say, I said to my spouse that I was a little concerned about wearing a green suit this morning, but I think it's a sign of spring. I hope you'll interpret it in that manner.

Mr Barrett: I have an agricultural-labour relations issue. You're currently general counsel, United Food and Commercial Workers Canada, and I'm not clear on some of the involvement of that organization in agriculture. We know the NDP passed Bill 91, the Agricultural Labour

Relations Act, a number of years ago, and that extended the right to organize to agricultural workers, who had previously been excluded from collective bargaining. Since then, there has been Bill 7, and it see-saws back and forth. I wondered, just given your background, if you could maybe give us a bit of an update on that area and also your approach to this kind of debate that has been see-sawing back and forth over the last eight or nine years?

Mr Anderson: I can answer at least part of your question. First of all, I am general counsel to Local 1000A of the United Food and Commercial Workers Canada. The local has approximately 25,000 members but it is a different entity from the United Food and Commercial Workers Canada, which is the national office.

The national office of the United Food and Commercial Workers, I think it's fair to say, has spearheaded much of the push for the position that agricultural workers should have the right to unionize. The national office financed a challenge, as you are probably aware, to the previous government's legislation with respect to the exclusion of agricultural workers. That resulted in a decision which was sort of a classic Solomon's decision by the Supreme Court of Canada in which on the one hand they said that agricultural workers had the right to associate but that didn't necessarily mean they had the right to unionize under the Labour Relations Act. That resulted in the previous government—your party—bringing in legislation which provided some form of association to agricultural workers.

I believe there's a case currently before the board, if I'm not mistaken, in which a constitutional challenge has been launched by the United Food and Commercial Workers Canada to that legislation. I have no involvement in the case itself. I've had no involvement whatsoever in the case.

Mr Barrett: I'm asking more out of general interest in this kind of situation.

With respect to the food and commercial workers, I think so much of the food industry—I guess I'm thinking more of the restaurant trade. To what extent is the restaurant trade unionized? I ask that because there are some obvious discrepancies in the salary of someone who is in food preparation in the back of a restaurant chain compared to what perhaps steelworkers and auto workers make.

Mr Anderson: It's not something I've made a study of. I should tell you that the local I'm involved with has no members who are restaurant workers. There is at least one other local of the United Food and Commercial Workers which represents a number of Swiss Chalet employees, actually. So that chain is partially unionized. The typical fast food franchises are, as far as I know—I don't know that there is one that is unionized at present in Ontario. There have been periodic attempts made to unionize fast food franchises. Some have been wholly unsuccessful and some have been briefly successful in the sense that a certificate was issued and then typically, following the first contract, the bargaining unit was lost.

The restaurant workers who tend to be the most unionized, I would suspect, would be in the hotel sector. That is to say, the hotels are unionized and, as part of that, the restaurant workers who are associated with the hotel are unionized. Actually, when I was with Local 175 we had some such members, and with 1000A we attempted to obtain bargaining rights with respect to a hotel where that would have been the case.

Mr Barrett: So the bulk of the membership would be more food processing and tobacco manufacturing?

Mr Anderson: Are you referring to the United Food and Commercial Workers now?

Mr Barrett: Yes.

Mr Anderson: The United Food and Commercial Workers—well, I would say 90% of the Local 1000A membership is involved in the processing, distribution or retailing of food. So, for example, Local 1000A represents the employees of virtually—and I say “virtually”—every Loblaws store in the province. There are a few Loblaws stores which, for reasons which have to do with successor rights under the Labour Relations Act, are represented by a different local of the UFCW. In addition, Local 1000A represents employees at National Grocers distribution centres. UFCW Local 1000A represents employees at various meat processing plants.

1040

In addition to representing retail food employees and retail food processing employees, other UFCW locals in Ontario, which I assume is your primary interest, represent a broad array of employees. The sort of historical occupation bases for a trade union, the concept of an industrial trade union that represents people in a particular industrial sector, has gradually been breaking down. For example, when I was with Local 175, which is now 13 years ago, the president used to boast that we represented people who work with people from cradle to grave. We literally had members who were employees of daycare centres and members who worked in funeral homes. So it was quite a range.

Mr Marchese: I only have one question, really. When the New Democrats came to power in 1990, we made a number of changes that were clearly designed to help workers and labour, generally speaking, which was our attempt to establish some balance, we argued. Then the Tories came in and of course introduced a whole new set of laws that clearly were designed to go in the opposite direction. We all have a different sense of what achieves the balance between the interests of labour and business. In your view, what is that balance? How do we achieve that?

Interjections: Liberalism.

Mr Marchese: God bless the Liberals. They're always right there in the middle.

Mr Anderson: With all due respect, Mr Marchese, in my view it would be inappropriate for me to answer that question, and let me explain why, if I might.

Mr Marchese: Sure.

Mr Anderson: I certainly have opinions. Anyone who is active in the field of labour relations—I'm interested in my field, so I have opinions.

Having said that, when a lawyer litigates a case, the question isn't whether you like the law or whether you think the law is correct; the question is whether you can succeed, given what the law is. Until they're elected to this august body, lawyers do not change the law, they argue based on the law.

Lawyers in private practice are free to express their opinions, and often do. However, for those of us who are before you seeking to be members of a quasi-judicial tribunal where one's function is simply to apply the legislation of the day, I think it would be inappropriate, frankly, to express an opinion on the current balance, whether it's right, wrong or ideally Liberal. I just think that would be an inappropriate thing for me to comment on.

Mr Marchese: Right. If I had asked it differently, perhaps we might have had a different answer; I'm not quite sure. However, I appreciate the answer.

I'm going to ask a follow-up question in relation to what you presented—it was a long list of accomplishments, really. What is it about this job that attracts you to it?

Mr Anderson: What is it that attracts me to it?

Mr Marchese: Yes.

Mr Anderson: I think many people who practise law find that over time they become more and more knowledgeable about the law. So when a case comes in, they know what the two sides of the argument will be. Typically, I find the hardest problem I face as a litigator is not in the hearing room and not with the opposing counsel but with my own client, in terms of explaining to them what the law is and sort of explaining what the other view is. Over time, if one didn't start out that way, one becomes balanced. It's sort of the cruel lash of experience.

Mr Whitaker was kind enough to remind me that in one of my appearances before him, I lost. Presumably he was applying that lash of experience to me and teaching me that I was wrong in terms of my analysis of the case, or more appropriately, I think, that my client was wrong in terms of his assessment about what would happen with the case.

What attracts me to the position is that, over time, I feel like I've become more and more judicial in terms of how I approach things in any event, and I look forward to the challenge of actually writing those decisions, mediating between the parties, mediating between their interests and attempting to get to the right answer as quickly as possible.

The Acting Chair: Thank you, Mr Anderson. You can step down now.

Mr Anderson: Thank you very much.

PETER CHAUVIN

Review of intended appointment, selected by official opposition party: Peter Chauvin, intended appointee as vice-chair, Ontario Labour Relations Board.

The Acting Chair: The third interview is Peter Chauvin, intended appointee as vice-chair, Ontario

Labour Relations Board. You may come forward. As you may be aware, you have an opportunity, should you choose to do so, to make an initial statement. Subsequent to that, there are questions from members of the committee. Each party will have 10 minutes allocated for questions. We'll go in rotation. Any time you take in your given statement will be deducted from the allotted time given to the government caucus. Welcome.

Mr Peter Chauvin: I do have an opening statement. Thank you, Mr Chair. Good morning, members of the standing committee. I thank you for this opportunity to appear before you to speak about my intended appointment as a vice-chair of the Ontario Labour Relations Board.

I'm aware that you have a copy of my resumé. However, I'd like to spend a few minutes to provide you with some further information and outline some aspects of my education and professional experiences that make me, I believe, a well-qualified and suited candidate for this appointment.

I was born and raised in Windsor, Ontario. I'm the fourth child in a family of six children. I attended the University of Windsor from 1978 to 1980 before being admitted to the University of Western Ontario law school in 1980. While at law school, I worked as a research assistant for Professor Earl Palmer, one of the most esteemed arbitrators in Ontario. During this period, I assisted Professor Earl Palmer in writing the second edition of his text, *Collective Agreement Arbitration in Canada*. While in law school, I achieved very high academic standing. I was ranked fifth and eighth in my first and second years respectively, and I received a bursary for my academic standing.

Upon graduating from law school in 1983, I articulated with Miller Thomson. Given my experience with Professor Palmer in connection with labour relations, I focused on labour relations during my articles and was hired back into the firm's labour relations and employment law department.

I was called to the bar of Ontario in March 1985 and I've been practising with Miller Thomson in the area of labour relations and employment law since then. In 1990, I was offered a partnership with Miller Thomson, which I was proud to accept. Since 2001, I have been the co-chair of Miller Thomson's labour relations and employment law practice group.

Miller Thomson is now one of the largest and most respected law firms in Canada. I have been with Miller Thomson for my entire professional career. I have established a very successful practice at Miller Thomson. Over the past 19 years, I've represented a broad range of both public and private sector clients.

In the public sector, I have represented hospitals, nursing homes, homes for the aged, associations for community living, libraries and municipalities. In the private sector, I have represented a broad range of companies in industry, manufacturing and construction. I have appeared before the Ontario Labour Relations Board, or the OLRB, as I will refer to it, on numerous occasions in connection with a broad spectrum of

matters, including applications for certification, sale of business applications, related employer applications, employee status applications, unfair labour practice complaints, duty of fair representation complaints and construction industry applications.

In addition to my work in connection with the OLRB, I have acted as counsel in connection with numerous rights and interest arbitrations pertaining to such issues as discipline, contracting out, layoffs, restructuring of workplaces and the interpretation of collective agreements.

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Finally, I have also had extensive experience with regard to the Workplace Safety and Insurance Act, the Pay Equity Act, the Employment Standards Act, the Ontario Human Rights Code and the Occupational Health and Safety Act. I have acted as counsel in connection with numerous matters pertaining to these statutes. I am the co-author of the Canadian Employment Law Factbook, published by Carswell-Thomson Professional Publishing Canada. This textbook summarizes employment standards, human rights, labour relations, occupational health and safety, and pay equity legislation across Canada, and is updated quarterly by myself.

From 1999 to 2001, I sat as an executive committee member-at-large on the Ontario Bar Association. In this role I participated in the planning of OBA events and activities and chaired one of the bar association's programs pertaining to recent Supreme Court of Canada decisions regarding human rights. I have been a frequent speaker at conferences, seminars and lectures, as is set out in my resumé. I consider myself to be a very fortunate individual, and in doing so I have tried to give back to my community as much as I can. I have been a Boy Scout leader and a soccer coach, and I give generously to charities.

I look forward to your questions, and thank you again for this opportunity to appear before you.

The Acting Chair: Thank you very much. We'll start with the official opposition.

Mr Dunlop: Thank you very much for your presentation, Mr Chauvin. It's good to see you here today. Both you and the previous appointee have a legal background in labour law and as well will be vice-chairs of this committee—this is a question looking for information; I'm not trying to attack you or anybody else. When you've had a number of clients over the years, how will you personally, as a member of the board, deal with potential conflicts when they come before the board? I just want a clarification on that, because I'm not sure of that exact role.

Mr Chauvin: I believe that there's a very established practice for that. There would have to be, because it would be quite inappropriate if I received this appointment on Monday, speaking hypothetically, and I was to be the vice-chair in a case in which one of my former clients, as of today, was the applicant of the responding party. You would expect the other side to raise a concern of bias. Because of that, I understand and would expect the board—though I'm not familiar with the board's

practices yet—to have a policy that states that you probably have to declare who your clients are once you are appointed to the board. The registrar is then very careful not to assign you to any case in which a previous client of yours is either the applicant or the respondent. If that process erred, either because I forgot to include all of my clients, who are numerous, then it would be my job in receiving a file to say, "I can't take this file. I shouldn't."

Mr Dunlop: I just needed that little bit of background. I can understand, when you have a number of clients over a 20-year career, how you could easily have former clients come up and be part of the hearing.

Mr Chauvin: I think it's very normal. It happens, and it's dealt with.

Mr Barrett: I was reading with interest the various seminars and the very wide variety of topics that you present on. At the Ontario Trucking Association one of your seminars is titled "Independent Contractor or Employee?" What's the answer?

Mr Chauvin: It's funny that you ask that, because at the end of my presentation—I thought it was a very good presentation, and you're obviously very aware of the issues surrounding that—there was almost a riot in the room and I had to get out the back door. Everyone wants a simple answer. There is no simple answer to whether someone is an employee or an independent contractor. There are many, many factors that you have to look at. Business concerns and practical concerns are always at odds with the law in that regard.

Mr Barrett: I know the feeling. I went before the trucking association to sell them on Drive Clean. I know the feeling. I don't know whether you're still following that, but there certainly are pressures on the trucking industry—insurance pressures—especially the cross-border guys, and a lot of them are either using US plates or thinking of setting up on the other side of the border.

Mr Chauvin: I've been following that for probably 20 years.

Mr Barrett: Some of your other presentations on plant closures and workplace restructuring—maybe I'll focus on workplace restructuring in a more positive way. I'm thinking of Stelco, for example. In so many places, workplace restructuring is required, so many of the questions we get—those of us who are concerned about what Stelco is going through—are about where people's pensions lie, whether they're in a union or not in a union. We hear of mistakes, perhaps, that were made in the past in some of the negotiations as far as the kind of pension packages that are funded or weren't funded or that people may have or may not have.

Do you have any advice on either that situation, or maybe in more general terms? The present labour legislation: Are there barriers in place that are preventing organizations or companies and unions from working together to do any necessary restructuring as the world moves on?

Mr Chauvin: You've asked a couple of questions, and I'll start with the last. I think you asked whether there are any structures or things in place that prevent employers and unions from discussing and working

together to resolve problems. I'm not aware of things that prevent the parties from working together. Throughout the years, any number of processes have been put in place to facilitate discussion.

In the question you asked before that, you were alluding mostly to pension plans and whatever as a result of restructuring. That is a very complex issue. You'll note that in the statutes that I said I work with and know about, I did not list the pension statutes, so I really can't offer much of a response on that.

Mr Marchese: Mr Chauvin, I just wanted to rephrase a question I asked of Mr Anderson. There have been many changes over the last 14 years in terms of Ontario labour relations. Do you have an opinion on those changes, in terms of how they have affected labour relations generally or specifically?

Mr Chauvin: This is my answer, but it happens to be the answer that I think Mr Anderson gave. I will respond to your question with regard to the past, but with regard to my opinion in the future, assuming that I am appointed to the labour relations board, I don't think it's appropriate. I consider myself, at this point, to be neutral.

As far as the past goes, we've seen a number of governments elected and enter into a regime of new legislation regarding labour relations. Subsequently it was really referred to, starting with Bill 40 and then Bill 7, as the issue of the balance, because those revisions were so substantial that you could consider them as starting to affect the overall balance, whereas other amendments earlier were piecemeal and probably didn't affect the balance very much.

Determining the balance for labour relations is such a large issue, so multi-faceted, that it's really a question that is more worthy of a thesis than what I could provide to you at this point in time. Determining a balance is an incredibly relative thing, not an absolute concept. I can say that in my years of practice dealing with those various statutory regimes, I did accept the legislation as it was passed and as it was before me, and work with the legislation. I did not spend a lot of time making opinions about the rightness or wrongness of the legislation.

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Mr Marchese: I appreciate the answer, again. In terms of an answer to future changes, the Minister of Labour recently released a discussion paper ending the 60-hour work week and soliciting public input concerning two possible models for overseeing extra weekly hours. I'm not sure you've had a chance to see that or whether you have any advice to the minister in that regard.

Mr Chauvin: I've seen it. As to whether I have any advice, I think that enters into the area of whether I should be expressing my advice now, in the new role I will be in. I think it brings very new responsibilities and obligations. I don't think it's appropriate for me, at this point, now, to be giving opinions to the government.

Mr Marchese: I understand. Thanks, Monsieur Chauvin.

The Acting Chair: The government caucus has five minutes if they wish.

Mr Parsons: No questions.

The Acting Chair: Thank you, Mr Chauvin. You can step down.

We will now consider the intended appointment of Ms Little as public-at-large member, Niagara Escarpment Commission.

Mr Parsons: It is my pleasure to move concurrence in the appointment.

The Acting Chair: Concurrence in the appointment has been moved by Mr Parsons. Any discussion on the appointment? All in favour? Carried.

We will now consider the intended appointment of Mr Anderson as vice-chair, Ontario Labour Relations Board.

Mr Parsons: I would move concurrence in the appointment.

The Acting Chair: Concurrence in the appointment has been moved by Mr Parsons. Any discussion? Seeing none, all in favour? Carried.

We will now consider the intended appointment of Mr Chauvin as vice-chair, Ontario Labour Relations Board.

Mr Parsons: It is my pleasure to again move concurrence in this appointment.

The Acting Chair: Concurrence has been moved by Mr Parsons. Any discussion? Seeing none, all in favour? Carried.

Mr Dunlop: Mr Chair, before you adjourn the meeting I'd like to make a motion, please. Under the standing orders, clause 106(e), page 74 of the standing orders, we as members of this committee are empowered to ask for a review of certain committees that are under the jurisdiction of the province of Ontario. To the members of this committee, I move for unanimous consent to have this committee review the Ontario Securities Commission in its entirety.

The Acting Chair: I'm sorry. I think the motion is out of order. It's against standing order 106(e)(10).

Mr Dunlop: I'm sorry. I'd have to have a clarification on that. I think it's very clear that you are—

Mr Marchese: Could you read that for us? What does it say?

The Acting Chair: "A report that the committee will not review an intended appointee shall be deemed to have been made by the committee and adopted by the House in any of the following cases...."

"(b) the subcommittee does not at its first meeting following the day on which the minister tables the certificate select the intended appointee for review."

Mr Dunlop: Mr Chairman, I'm not dealing with any intended appointees. I'm dealing with the operation of the Ontario Securities Commission in its entirety. I'm moving for that, to have this committee unanimously consent to review it. It's as simple as that. For a government that's looking at democratic renewal, I think this is something—I'd like to see the two vice-chairs come to this committee.

The Acting Chair: Concurrence?

Mr Parsons: No.

Mr Dunlop: So much for democratic renewal.

The committee adjourned at 1105.

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