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Official Report of Debates (Hansard)

Wednesday 14 December 2005

Journal des débats (Hansard)

Mercredi 14 décembre 2005

**Standing committee on
government agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Chair: Tim Hudak
Clerk: Susan Sourial

Président : Tim Hudak
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 14 December 2005

Mercredi 14 décembre 2005

The committee met at 1107 in room 151.

ELECTION OF VICE-CHAIR

The Chair (Mr. Tim Hudak): Good morning. It's nice to be back. What do we call ourselves again? The standing committee on government agencies is back in session. We do have a number of other matters to consider before our first appointee, so I'm going to proceed.

Most importantly, I announce with great sadness that our hardworking, very capable Vice-Chair, Ms. Horwath, is moving on to another committee. She has been promoted to be the Chair of the committee for private bills and regulations—am I right on the title? I do want to thank Ms. Horwath on behalf of the committee for her outstanding work as the Vice-Chair. We will miss her greatly.

Mr. Ernie Parsons (Prince Edward–Hastings): She chaired the best meetings.

The Chair: There's probably no doubt about it.

We will say for the record that we'd have to downgrade in the third party to Mr. Gilles Bisson. Well, we'll see. I can't actually presume the vote of the committee; I should be careful. Mr. Bisson will be the representative of the third party on the committee henceforth.

It is my duty to call upon members to select a Vice-Chair for the standing committee. Are there any nominations?

Ms. Andrea Horwath (Hamilton East): I'll nominate M. Bisson.

The Chair: M. Gilles Bisson, the member for Timmins–James Bay, who is a new member of our committee, has been nominated to take over the reins and try to fill these shoes of Ms. Horwath's as the Vice-Chair.

Are there any further nominations? Seeing none, I declare the nominations closed and M. Bisson has been elected the Vice-Chair of the standing committee on government agencies. I take back everything I said about him five minutes ago. I know he'll be an excellent Vice-Chair of our standing committee.

Thank you very much, folks.

APPOINTMENT OF SUBCOMMITTEE

The Chair: Our next order of business—again, with Ms. Horwath's departure—is the appointment of a subcommittee. Do I have any motions for the subcommittee?

Mr. Parsons: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at 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. Tascona, Mr. Parsons, and Mr. Bisson;

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

That substitutions be permitted on subcommittee.

The Chair: Thank you, Mr. Parsons; very well put.

Is there any discussion on the motion for the subcommittee? Seeing none, all in favour? Any opposed? It is carried. Thank you, Mr. Parsons. We now have our new subcommittee for future meetings.

SUBCOMMITTEE REPORTS

The Chair: Our next order of business is the report of the subcommittee on committee business dated Thursday, December 1, 2005. Does somebody move its adoption?

Mr. Parsons: I move adoption, Chair.

The Chair: Mr. Parsons moves its adoption. Is there any discussion? Seeing none, all in favour? Any opposed? It is carried.

Our next order of business is the report of the subcommittee on committee business dated Thursday, December 8, 2005.

Mr. Parsons: I would move adoption.

The Chair: Mr. Parsons moves its adoption. Is there any discussion? Seeing none, all in favour? Any opposed? It is carried. We're on a roll. I guess now I bring up the motion to increase the pay of the Chair and the Vice-Chair.

COMMITTEE BUSINESS

The Chair: Extension of deadlines: Pursuant to standing order 106(e)(11), unanimous consent is required by the committee to extend the 30-day deadline for consideration of the following intended appointees:

Richard Baxter, intended appointee to the Ontario Labour Relations Board, and R. Michael Lauber, intended appointee to the Smart Systems for Health Agency board of directors. Do I have unanimous consent to extend those deadlines to February 24, 2006? Agreed.

That is passed unanimously. Those who are joining us today, we thank you for your patience.

INTENDED APPOINTMENTS

THEO NOEL DE TILLY

Review of intended appointment, selected by official opposition party: Theo Noel de Tilly, intended appointee as member, Smart Systems for Health Agency board of directors.

The Chair: We will now move to the appointments review. Our first of two interviews is with Theo Noel de Tilly. He's an intended appointee as member of the Smart Systems for Health Agency board of directors. He joins us from Hanmer, Ontario, if I remember from the background. Mr. Tilly, welcome to the committee. Please come forward and grab any of those four chairs. One is luckier than the others, so pick the right one. There you go. Is it Noel de Tilly or de Tilly?

Mr. Theo Noel de Tilly: Noel de Tilly is the whole last name.

The Chair: Monsieur Noel de Tilly. Welcome to the committee. You're welcome to make some opening comments about your interest in the position and your background, and then we use a rotation basis from the three parties for any questions they have about your qualifications or your intentions. That questioning will begin with the government, followed by the official opposition and then the third party. So, M. Noel de Tilly, the floor is yours and welcome.

Mr. Noel de Tilly: Good morning, everyone, and thank you for the opportunity to make an opening statement and to answer your questions regarding my intended appointment to the board of directors of the Smart Systems for Health Agency.

My name is Theo Noel de Tilly and I'm a resident of northern Ontario, more specifically Nickel Belt riding. I'd like to take a few minutes, if I may, just to present to you my professional experience that I believe to be relevant to the Smart Systems for Health Agency's mandate.

During the past 20 years, I've worked at promoting, designing and managing supporting information and communication technology networks. In 1985, I started my career as a teleconference coordinator with the Northeastern Ontario Telehealth Network. My experience with the organization allowed me to gain an understanding of the health sector and the challenges of deploying health network technology.

During my employment as a network coordinator and regional technical officer with Contact North, a large pan-northern distance education network, I developed strong network design and human resource management skills. I was responsible for supervising a staff of 20 at a distance and for the management of the distance education technologies located across northeastern Ontario. Working closely with telecom carriers and equipment suppliers allowed me to gain an understanding of net-

work design principles and technology planning procedures.

In 1985, I was seconded to Collège Boréal to help implement its regional distance education network. As their chief technologist, I was responsible for researching, designing and implementing new distance education technologies. I was also responsible for evaluating new telecom equipment and systems, coordinating the activities of the regional technical staff and providing internal and external consultation regarding ICT systems.

In the late 1990s, I started a small telecommunications consulting firm specializing in regional telecom network development and ICT applications. My various projects with clients and stakeholders located across the province allowed me to develop and refine my negotiating skills and to gain an even deeper understanding of the challenges involved in implementing large regional and pan-provincial technology-based initiatives.

For the past five years, I have worked with FedNor, Industry Canada's economic development initiative for northern Ontario. As a telecommunications and community economic development officer, I've had the opportunity to work with a variety of innovative communities and organizations to develop and support advanced ICT initiatives, including geographic information systems, video conference networks, broadband infrastructure projects, municipal and tourism Web portals and several community-based telecom networks.

My work at FedNor has also afforded me the opportunity to work with dozens of health-related ICT projects, including regional PACS initiatives, Telehealth projects, regional health networks and a pan-northern ICT strategic plan for northern Ontario hospitals and health centres.

I've had the good fortune of working on exciting ICT initiatives with very talented and innovative organizations and professionals during my career. I strongly feel that my experience and work ethics will assist the board in meeting its mandate. Again, I thank you for the opportunity to speak to you today and I look forward to answering your questions.

The Chair: Thank you, Mr. Noel de Tilly. We start with the government side.

Mr. Parsons: No questions.

The Chair: No questions from the government members. The official opposition; Ms. Scott.

Ms. Laurie Scott (Haliburton-Victoria-Brock): Thank you, Mr. Noel de Tilly, for coming all this way. I hope you came in last night and not in this morning's snowstorm.

Mr. Noel de Tilly: I did, yes.

Ms. Scott: OK, this is good. You have a very interesting background for this. We need to progress in e-health at a faster rate than we are progressing with it. You mentioned broadband. I represent the rural riding of Haliburton-Victoria-Brock and I have met, specifically, the Haliburton and Lindsay health services. Haliburton county is trying to put broadband in. They're having difficulty working within the smart systems, because

what they're putting in is more progressive than what's available from the Ministry of Health right at the moment in terms of speed, capacity and—I'm not going to get technical.

Could you comment on whether you feel there should be more flexibility for regions? I feel there can't just be one system; you have to link up, like Lindsay, Cobourg, Haliburton. I guess the information system is similar, but what they're proposing is far more advanced than what the Ministry of Health is letting them do. I don't know if you could comment, maybe from your experience, especially from what you mentioned, about the challenges that are facing my local hospitals in this situation.

Mr. Noel de Tilly: I don't think the situation you're describing is uncommon to other areas in northern Ontario. It's perhaps ironic that some of the more remote areas of the province are pushing the envelope in terms of applications, and by doing that are challenging the broadband infrastructure that's available there. I understand that's an issue probably across the province.

I believe that in order to be as flexible as possible to accommodate those communities, there have to be connectivity standards and bandwidth standards established. It's an issue similar to FedNor, but others—I know the Ministry of Economic Development and Trade and other ministries—are looking at a system of deploying the broadband. They should try to support initiatives that support those types of very advanced broadband applications, like a regional PACS network. I'm assuming you're probably talking about something like digital imaging, which would require a whole lot of bandwidth. The broadband initiatives that are being rolled out across the province should consider those applications when funding them. Beyond that, I'm not sure if I understood your question correctly.

Ms. Scott: I don't know how much information you were given about the board, and I know there's a learning curve when you first start, and orientation. Do you feel there's going to be flexibility on the Smart Systems board, to look at—

Mr. Noel de Tilly: Alternative ways?

Ms. Scott: Yes.

Mr. Noel de Tilly: I think there already is, to a certain degree, a bit of flexibility there. I think as long as the technical parameters are well established, there can be some flexibility, looking at different carrier services to provide the infrastructure to transmit the images from one place to another. I think Smart Systems for Health has a mandate to develop connectivity standards. I know they're working very hard on security standards, and they've been doing quite a bit of work on that in the last couple of years. I think that's their role with regard to infrastructure, and then whatever carrier or whatever service provider is selected should at least meet those security, confidentiality and transmission standards.

Ms. Scott: Minister Smitherman, on December 6, indicated they were launching an operational review of the Smart Systems for Health. He said that 16 members had been nominated to the board, bringing accountability

and new energy to the governance structure of the agency. Did anyone talk to you before your appointment about this operational review and maybe what their expectations might be?

Mr. Noel de Tilly: No. I've been interested in the Smart Systems for Health for a couple of years now, since I first heard about it. As I mentioned in my opening statement, I've been involved in ICT and networking for health care delivery since 1985. I was always interested in seeing how I could get involved in the process, and this summer I decided to apply on-line. I visited the—I forget the name of it; I think it's called the appointment board secretariat, to see if there were any vacancies on the board or other similar types of initiatives. They were accepting applications, so I submitted it on-line.

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Ms. Scott: Do you know any of the board members right now?

Mr. Noel de Tilly: Yes, I know Richard Pentney from Whitefish; he's from northern Ontario.

Ms. Scott: Minister Smitherman also made reference in the newspaper interview that he would be sending a clear set of expectations about what he wants board members to focus on. Have you heard from this individual you know if that letter has been sent out to them?

Mr. Noel de Tilly: No. I haven't talked to him about Smart Systems for Health.

Ms. Scott: I guess one of my other questions goes to the political side. We've covered the technical base and now we can get back to the political base. Have you ever been a member of the Liberal Party or donated to the Liberal Party?

Mr. Noel de Tilly: I did donate to Rick Bartolucci's campaign. I was a member of the PC Party, a cardholding member, and I did make a contribution back in the 1990s.

Ms. Scott: Were you ever the Liberal campaign manager in the riding of Sudbury?

Mr. Noel de Tilly: Yes.

Ms. Scott: For Rick Bartolucci?

Mr. Noel de Tilly: Yes.

Ms. Scott: I have no further questions.

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): What involvement have you had with Mr. Bartolucci or Mr. Smitherman with respect to this appointment?

Mr. Noel de Tilly: The only involvement I've had politically was running his campaign in the last election.

Mr. Tascona: So how did you hear about this appointment?

Mr. Noel de Tilly: I was surfing the Net. I was looking to see if there were any appointments, and they were looking for nominations and I applied on-line.

Mr. Tascona: Did you speak to Mr. Bartolucci or Mr. Smitherman after you applied?

Mr. Noel de Tilly: I don't know Mr. Smitherman, but I spoke to Mr. Bartolucci a couple of months ago and mentioned that I had applied, and he wished me good luck. That was it.

Mr. Tascona: Thank you.

The Chair: To the third party; Ms. Horwath.

Ms. Horwath: Mr. Noel de Tilly, can you tell me what you think the biggest challenges are that are facing successful implementation of the Smart Systems for Health?

Mr. Noel de Tilly: I think there are probably a few challenges that are being taken care of and met head on, one of which M^{me}. Scott alluded to earlier: the allocation of bandwidth and availability of bandwidth. I think it's not uncommon, though, given the magnitude of the project and the fact that sometimes end users are ahead of the curve in terms of the application, and sometimes the available infrastructure has to catch up. I think that's an issue that's going to have to be grappled with on an ongoing basis.

I understand there may be some challenges with regard to quality of service of the infrastructure. So allocating a specific amount of bandwidth for specific mission critical applications like emergency health care needs to be looked at and perhaps tweaked a little bit. I don't have in-depth knowledge of what those challenges are, but I understand anecdotally that's been a challenge. I think those are the two that I see. Oh, and I understand that they've addressed the privacy issue and have done quite a bit of work on the security issues. I understand they've addressed or implemented a very sophisticated security system with two data centres physically separate from each other and backing up the data from both centres, which is critical to ensuring the integrity of data and the security of data. But apart from that, I'm not aware of any major issues.

Ms. Horwath: OK. It's interesting that you mentioned in your remarks that it's not, from your perspective or from what's happening in other communities, I would imagine, or other systems, other states or provinces, what have you—you said it was not unusual that there would be problems in the start-up of a system of this nature. Are you aware of the studies that were published in the British Medical Journal around, for example, the Kaiser system in California and any of the information that has come out of those studies?

Mr. Noel de Tilly: I'm afraid I'm not.

Ms. Horwath: Interestingly enough, a lot of what appears to be some of the problems that are happening here were happening in these other locations as well, and in some of these articles there's an indication that there is a transient climate of conflict that was associated with the adoption of systems. I think, considering what Ms. Scott had to say around some of the tensions that occur, and I think you've reiterated that, that might be what's reflecting upon the government's inability to get these things up and running and fully supported.

Mr. Noel de Tilly: If I can just add a comment to that: Along with the comment about the challenges with infrastructure, comments were also made that the follow-up in the resolution of those problems was done fairly quickly. I can only speak a little bit more intimately about what's happening in northern Ontario, but I know that some of the regional networks have pushed the envelope quite a bit, out of need.

As I mentioned earlier, ironically, some of the more geographically dispersed communities are the ones that challenge the infrastructure. Their applications were quite robust, but the reaction from Smart Systems for Health was quite timely in terms of upping the bandwidth allocation or tweaking the quality-of-service parameters to allow them to do their business. That's why they've been able to continue to move forward over the last year or so.

So those challenges are being identified, but I do believe they're being addressed rather quickly as well.

Ms. Horwath: Just to switch tracks a little bit, I'm wondering what was involved in the work that you did as a member of the information and communications technology blueprint working group that assisted the northeast LHIN and the integration—

Mr. Noel de Tilly: I wish I could take credit for that, but I really was just a project officer on that who helped support—as you may know, FedNor provides contributions to projects like the ones I listed, and that one as well. It really was something that was spearheaded originally by the Sudbury Regional Hospital, but at the time was taken over by the three district health councils in northern Ontario, as it was their mandate to do that kind of study. They requested assistance from us to help support that.

I worked with them through the development of the terms of reference of that study and ensured that deliverables were met. But basically, what they did was map out an ICT blueprint for all of the health care providers in northern Ontario: I believe there were 68 organizations involved in bringing forward their information. They've agreed on about 14 principles of approach that they would respect when moving forward with ICT.

A study like this, from my understanding, is unprecedented. It's never been done in the province, and I don't think it has been done—we spoke with the folks at Canada Health Infoway with Health Canada, and they've never seen a study of this level done anywhere in Canada. I think it bodes well. It's consistent, they've done it in consultation with the folks with Smart Systems for Health and the Ministry of Health and Long-Term Care, so I think their findings and conclusions connect well to the provincial objectives.

Ms. Horwath: Excellent. How much time do I have left, Mr. Chairman?

The Chair: Three minutes.

Ms. Horwath: Getting back into Smart Systems for Health, have you had a chance to familiarize yourself with the structure and are you able to comment on how workable you think the structure is?

Mr. Noel de Tilly: Are you speaking of the technology structure or the human resource and board structure?

Ms. Horwath: The governance, I would think.

Mr. Noel de Tilly: I'm not all that clear on the governance yet. I have looked at the makeup of it; I don't know the backgrounds of the individuals on the board. Hopefully my skill sets will be complementary to

theirs—I don't expect they're very different—and I'm hoping that the individuals involved will have skills that I don't have and vice versa. I believe that the board structure is representative of that; geographically, as well, from what I can tell.

In terms of the operational structure and the staffing, I'm not familiar with the details of that. I do know that they have been hiring quite a few folks in the area of security, IT specialization and field officers, but I don't have a really good grasp on the breakdown yet.

Ms. Horwath: That's fair. Can I just ask you one final question, which is what your knowledge is about the level of participation of the Ontario Medical Association in the Smart Systems project.

Mr. Noel de Tilly: I'm not sure what the level of participation is, although I do know that Smart Systems for Health supports a number of initiatives under the e-health umbrella, about seven or eight of them, if I remember correctly. I think that is and should continue to be Smart Systems for Health's mandate, to help all programming activity in northern Ontario that's related to health care, but I'm not familiar with the OMA's role.

The Chair: Mr. Noel de Tilly, thank you very much. The interview is now concluded. We have one more to do, and then we move to our concurrence votes on your intended appointment. You're welcome to stay, and that will probably take place in about 20 minutes to half an hour.

1130

ANDREW DIAMOND

Review of intended appointment, selected by official opposition party: Andrew Diamond, intended appointee as vice-chair, Licence Appeal Tribunal.

The Chair: Our next intended appointee is Andrew Diamond. Mr. Diamond hails from Toronto, Ontario. He's the intended appointee as vice-chair of the Licence Appeal Tribunal, aka LAT. I have some affection for LAT, as a former minister for that area. It has various and sundry acts that fall under it. So it's very interesting to have a LAT intended appointee here before us to talk more about the under-appreciated work that happens at LAT.

Mr. Diamond, you're welcome to make an initial presentation on your background and interest in this position, and then we'll begin any questioning with the official opposition. Mr. Diamond, the floor is yours.

Mr. Andrew Diamond: Thank you, Mr. Chairman and members of the committee. I actually wanted to make my opening comments and break them down into two parts, because I may be in the slightly unusual position of having been a member of LAT since the spring, and give you both some insight into my qualifications and then into the work of the tribunal, which I do agree is under-appreciated.

I was called to the bar in Ontario in 1991. I practised with two of the leading corporate commercial law firms in Toronto and was involved in some of the most

complex pieces of litigation in the province, including the CCAA and bankruptcy of Confederation Life, and the CCAA and bankruptcy of SkyDome, where I represented the province of Ontario as the second secured creditor.

I've also been involved in other numerous complex litigation matters. In addition to appearing before all levels of courts in the province, I have appeared before a large number of the boards and tribunals in the province, including the Ontario Municipal Board, the Ontario labour board, the liquor licensing board, the Assessment Review Board, and the Ontario Energy Board. So I have an in-depth knowledge of both civil practice and administrative law. I believe it is that experience over 10 years which qualifies me to sit as a vice-chair of the Licence Appeal Tribunal.

I have been raised in a family which prides itself on public service. My father has had the honour of sitting on the Ontario Human Rights Commission, the board of directors of Ontario Place and the Golden commission for the GTA. Not to be outdone, my mother is a lay bencher for the Law Society of Upper Canada. Of my parents' four appointments, at least one has come from the government of each major party sitting in this room today. I, in turn, have been on the board of directors of a charity for individuals with disabilities. I volunteer at my children's school and have assisted with their hockey programs.

I have recently had more time available. So in the spring, I too, like the previous intended appointee, was directed to the Web site for the Public Appointments Secretariat, and I used the on-line facility to apply for a number of apparent vacancies in which I was interested and where I thought my skills would add value. In the spring, I was contacted by the chair of the Licence Appeal Tribunal and asked if I would be interested in sitting as a vice-chair. I indicated I would. We had a brief conversation about the responsibilities and time commitments. Then I went through the process of training and have been sitting since the summer.

As I say, it was my understanding and his understanding and the registrar's understanding that I was appointed then as a vice-chair. It was later brought to the registrar's attention, I think through the payroll department, that in fact I wasn't and that the per diem should be reduced. That resulted, in turn, with letters being written to amend the appointment, which is what brings me here today.

The question may be, "So what?"—the difference between a member and a vice-chair. That's why I'd like to give you a little more background about the workings of the Licence Appeal Tribunal. I know you have a research memo before you which outlines the general work, but I think you need to understand how the work of the tribunal is broken down.

As you've seen from the statistics, the tribunal hears between 600 and 700 appeals a year, which result in slightly under 1,000 hearing days being scheduled. That's the big picture. The smaller picture is, because the tribunal is a result of the amalgamation of several tri-

bunals under the streamlining efforts of the previous government, the work can be divided in half, and then each one of those halves, in turn, in half again.

The first half is under the Highway Traffic Act, dealing with what most people think of as licences, when you think of a licence, and that in turn is divided in two. Half of that is medical suspensions. Those are people who are applying to be reinstated because—an easy example, I've been told, is an epileptic who has their condition under control, and they and their doctors believe that they do not pose a risk. Those appeals are made to the tribunal, and similarly, people who've had their licence suspended for failure to give either blood or breath samples because of medical reasons. Those matters are only heard by doctors, as is required by the act, and those doctors sit as members and they receive a per diem of \$450. I'm told there is no difficulty in attracting members of the medical profession to sit on those.

The next half of the Highway Traffic Act issues is administrative suspensions and the impoundment of vehicles. I have not sat on any of those, but I am told that those matters are relatively straightforward. The hearings are quite short, where three or four can be done in a day, the decisions are yes or no, and the written reasons are based on a pro forma standard form that the member uses. Because those matters are relatively routine, though obviously not for the person who is seeking their car back or their licence reinstated, they are heard by the general members of the committee, or, without any sense of the pejorative, the lay members—people who aren't doctors or lawyers. So that is the one half of the Highway Traffic Act and counts for half of the volume that significantly rests on half of the hearing days.

The second half of the business is divided in two. The first half deals with appeals from the Ontario New Home Warranty Program, now administered by Tarion. Those appeals arise when a purchaser of a new home has problems with their home that they think should be covered under the Ontario New Home Warranty Program, the Ontario New Home Warranty Program inspects and cannot reach conciliation with the builder and then denies the warranty claim. The homeowner then has the right to appeal to the tribunal.

The second half of the appeals on that side of the tribunal are what I refer to as the business licence cases, those people under the 20 acts who are regulated by registrars. The examples we're all most familiar with are real estate agents and real estate brokers, car dealers and salespeople, and travel agents. Then we get into some more obscure ones like undertakers and cemetery operators. There is a long list, which is before you.

Perhaps I can give you an example of what I've done and how complex and difficult these cases are. I have just finished a two-day hearing in a Tarion matter, where the allegation is that the person's house was not built in conformity with the Ontario building code. After two days of hearings, both lay witnesses and expert witnesses, I now have to interpret the Ontario building code. I am reviewing a case brief from counsel for Tarion. I

have approximately 10 cases. Also, because in many of these cases the applicants are unrepresented, I feel it necessary to undertake independent legal research on their behalf or on behalf of their case because they were not capable of doing so. My reasons in this case have now reached some 20 pages and have taken me over three days to research and draft after two days of hearings.

Similarly, I'm in the middle of a hearing with respect to, again, Tarion, but this is on the other side, where the registrar, or Tarion, has decided not to grant the renewal of a builder's licence. At stake for this person is their livelihood, their company. I now have to grapple with whether or not this person should have their licence reinstated. To do that, I have reviewed balance sheets, security, as well as technical issues with respect to the ability of their construction.

One of the questions raised, to anticipate the research memo, is with respect to the staffing of the tribunal. This 50%, the business licence matters and the Tarion matters, is only heard by vice-chairs. It is the rule, as I understand, of the tribunal that you have to be a lawyer to be a vice-chair, due to the complex nature of these matters and the serious matters being dealt with, both in dollar terms and in people's livelihoods.

The tribunal has 15 vice-chairs that are listed, though I'm told by the registrar that this number is misleading. Two of those vice-chairs are in Ottawa and tend to only handle matters in Ottawa. Four of the vice-chairs, while appointed, are rarely available. Two of the vice-chairs who have busy legal practices have indicated that they are only prepared to sit one day per month, which then eliminates them from multi-day hearings. Most of these Tarion hearings are two and three days. The daycare hearings are multi-day, some of them going on for weeks. Then we have other vice-chairs who also would like to limit the number of days they sit because they have other practices. That leaves four or five vice-chairs who are carrying on the vast bulk of this complex work. Really, for several of them, it is a full-time job. They are there most days—if not hearing, writing—all for a stipend of \$220 a day.

Those are my introductory remarks. I had hoped to anticipate some of the questions raised in the research memo. Obviously, I'm happy to answer any questions you may have.

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The Chair: Thank you, Mr. Diamond, for your opening presentation. As I said, I'll begin any questions with the official opposition.

Mr. Tascona: It's my pleasure to have you here today, sir. I just want to ask you right up top, are you related in any way to Stephen Diamond, who's a well-known condo lawyer here in Toronto and a Liberal fundraiser?

Mr. Diamond: No. I've known Stephen a long time. As I say, his father's the developer and mine's the architect, so we know each other, but are not related.

Mr. Tascona: So how long have you known him?

Mr. Diamond: I've known Stephen 20 years probably, but not well. Our children have been to school together in the past, but aren't currently at school together. We have children of the same age. We see each other in the hockey rink occasionally.

Mr. Tascona: Are you currently a member of the Liberal Party?

Mr. Diamond: I am not.

Mr. Tascona: Have you donated to the Liberal Party?

Mr. Diamond: I have donated to the campaign of Dr. Shafiq Qaadri, who was a high school classmate of mine.

Mr. Tascona: Is he the MPP for Etobicoke North?

Mr. Diamond: He is, and I see him occasionally socially. I believe that I have also donated, or my partner has donated, to the leadership campaign of John Tory, who's also someone I've known since—I articulated for him at Torys and have known him a long time as well.

Mr. Tascona: OK. I didn't see here where you articulated.

Mr. Diamond: No. I articulated at Torys, and all the Torys were there at that time.

Mr. Tascona: I noticed you were with Blakes for 1991-97 and onwards.

Mr. Diamond: And then Osler.

Mr. Tascona: But you're currently an independent consultant with projects to both private clients and governments, including issues of corporate governance etc. What governments are you—

Mr. Diamond: I think that was referring to—I don't have any government clients. Actually, that's not true. I had a government client, and the government I'm referring to there is the government of St. Vincent and the Grenadines, where I was involved in assisting in producing a business plan as to whether or not the government of St. Vincent and the Grenadines could afford to construct an international jet port. Currently, they do not have a runway that can handle aircraft from North America and are left using gateways like Barbados and St. Lucia. They were examining whether or not they could afford to build an international airport.

Mr. Tascona: Are you currently consulting for the provincial Liberal government?

Mr. Diamond: I have never consulted for the provincial government. My only retainer by a provincial government was when I was at Osler, and that was on the SkyDome case.

Mr. Tascona: With respect to this appointment, you initially were a part-time member, and now you're going to become a part-time vice-chair.

Mr. Diamond: Yes.

Mr. Tascona: What do you get paid as part-time vice-chair?

Mr. Diamond: Two hundred and twenty dollars a day.

Mr. Tascona: OK. Is that for a hearing day?

Mr. Diamond: That's for a hearing day.

Mr. Tascona: What about the research? You were mentioning research you were doing.

Mr. Diamond: The general rule of thumb is that you are entitled to one writing day per case. If you're going to

go over one day, you need permission or leave of the chair.

Mr. Tascona: Who's the chair right now?

Mr. Diamond: Carl Dombek.

Mr. Tascona: What's the term of this appointment?

Mr. Diamond: Three years.

Mr. Tascona: Did they ask you to become the vice-chair? Did you ask for it? How did it come about?

Mr. Diamond: As I say, the division of the work is that these highly complex matters are heard only by lawyers, and it has been the practice of the tribunal, as I understand it, that all lawyers who are appointed are appointed as vice-chairs. It was initially the board's understanding that my initial appointment was to be as a vice-chair, and no one is quite sure where the change or switch occurred, but as soon as it was realized that I had not been appointed as a vice-chair the chairman wrote to the Public Appointments Secretariat, as I understand it, to attempt to rectify—

Mr. Tascona: I noticed you looked for a lot of different agencies. You had quite a few different agencies you were looking for and—

Mr. Diamond: As I said, I was looking for an opportunity in public service and went through their list on the Web site; then they approached me. I knew very little about the tribunal before—

Mr. Tascona: Who approached you about the licence tribunal?

Mr. Diamond: The chair.

Mr. Tascona: The chair approached you.

Mr. Diamond: Yes.

Mr. Tascona: Did you know the chair before?

Mr. Diamond: Never met him before.

Mr. Tascona: Did he say why he approached you?

Mr. Diamond: He said that my resumé had been sent to him by the Public Appointments Secretariat, that he was looking for vice-chairs because of the workload and the few vice-chairs he had to do this work, as I described, and that my experience as a litigator was what he was looking for.

Mr. Tascona: OK. Did you speak to the MPP for Etobicoke North about this appointment?

Mr. Diamond: I've spoken to his office since I was appointed and it was discovered I was appointed as a member and left a message about the attempts to have the appointment reassigned as a vice-chair. Actually, I haven't spoken to him personally about that. Before the appointment, he was one of the people who directed me to the Web site to look for various appointments that I might be interested in. So I didn't speak to him specifically about this appointment before it happened, either as a member—and, as I said, only as a vice-chair did I leave a message with his office to tell him what was happening.

Mr. Tascona: Did you work on his campaign at all?

Mr. Diamond: No.

Mr. Tascona: Did you speak to Steve Diamond about these appointments?

Mr. Diamond: No, I didn't. I gather he has recently received an appointment, but I've only just discovered that in the last day or so.

Mr. Tascona: Are you familiar with the new initiative that the Ministry of Government Services is undertaking on the Liquor Licence Act?

Mr. Diamond: I am not, no.

Mr. Tascona: They sent out a press release on December 1, 2005, saying, "Liquor Licence Act consultations to focus on safety, service, choice." It was put out on their Web site in a press release. So you're not familiar with that?

Mr. Diamond: The liquor licensing board? No.

Mr. Tascona: No, the Liquor Licence Act.

Mr. Diamond: No.

Mr. Tascona: You haven't been made aware of that?

Mr. Diamond: No. Are those appeals now to come to the Licence Appeal Tribunal? The last two acts that I know the Licence Appeal Tribunal now has appeal responsibility for are under the new building code requirements and under the Ontario Film Review Board. People dealing with the building code in the province, from building inspectors to design-build contractors, architects and engineers, have to now pass an exam with respect to the building code and be licensed to provide advice with respect to the building code. Similar to other professional licences in the province, if they appeal the disciplinary action taken by the registrar, those appeals will be coming to the tribunal.

Mr. Tascona: In terms of caseload, what is the greatest percentage of cases that come through the statutes that are mentioned?

Mr. Diamond: I actually have the specific numbers here. If you give me a minute, I can pull them up. It's approximately 50% under the Highway Traffic Act, and then the other 50% is divided—let's see. It may be in the briefing memo as well. Here we go: Motor Vehicle Dealers Act, 18%; the Ontario New Home Warranty Program, 25%, which is with respect to the houses; Ontario new home warranty plan registration, which is registration and deregistration of builders, 5%; motor vehicle impound, 16%; Highway Traffic Act medicals, 19%; and then the bulk of it is 1% and 2% from the various other acts, although I am told by the registrar currently there is a cemetery—I don't remember the name of it. There is a proposed closing which then gives the right to appeal to anyone with a vested interest. So we're now talking about another potential—I think it's 160 appeals on that one particular closing under the Cemeteries Act.

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Mr. Tascona: OK. Thanks very much.

The Chair: For the third party, Ms. Horwath.

Ms. Horwath: I have to say that I really don't have very many questions because I think you did a very thorough job explaining your experience and your perspectives on this particular body, the Licence Appeal Tribunal. But I was curious around the comments you were making about the challenges with the vice-chairs

and attempting to slot the vice-chairs for the more complex hearings. What briefing note do you have? We have one that doesn't have really nice coloured charts and photographs.

Mr. Diamond: Oh, no, the nice coloured charts come out of the annual report from the tribunal.

Ms. Horwath: I was just curious. OK, thank you.

One of the things that our research people came up with was a similar concern around the vice-chairs, particularly the expectation that about 15 vice-chairs and 30 of the 41 part-time members are due to expire in the first half of next year. I was wondering if you could comment on that from two perspectives. One is your experience as a fairly new member—you have been a member for about five months or so; just as a member—

Mr. Diamond: Yes.

Ms. Horwath: —the length of time it takes to get up to speed to be prepared to take on these hearings; then, secondly, any advice you would give to ensure that we have a full operating slate of vice-chairs who are able to divvy up the caseload in an appropriate way.

Mr. Diamond: As I say, while I was appointed as a member, I have been conducting the functions that are normally reserved for vice-chairs in hearing complex matters.

The registrar tells me that she has no particular concerns with the ability to attract members to sit on the less complex. She has a large slate and, while a number of them are up for renewal, many of those people want renewal and they are constantly being approached for new appointments. So that's not a difficulty.

The difficulty is with respect to the vice-chairs. Right now, while the turnaround times are impressive and the work that these people are putting in is impressive, it really is being held together by five key vice-chairs, most of whom are retired civil litigators, as they call themselves. They are old trial hacks who are doing this partly for public service and partly because it's just something to do on a part-time basis in their retirement.

The fear—I sit there as perhaps one of the youngest vice-chairs, if not the youngest vice-chair—is that these people on any given day may not feel like doing it and, when they decide that they no longer wish to do it, how do you attract people of sufficient quality and calibre? As I said in my opening remarks, I think that's incredibly important, because we are dealing with are people's houses—their largest investments—and people's livelihoods.

Not to sound self-serving, but the reason two of the vice-chairs have said they're only prepared to take one day a month is because they have busy legal practices where they can make a lot more money than \$225 a day. It is my understanding that the labour board ran into the same issue, needing technical experts to deal as vice-chairs.

Candidly, the way to ensure that you will continue to attract quality people is to take a per diem that was fixed in 1985, when my guess is a senior counsel was earning somewhere around \$220 an hour, and move that up to a

point where a senior counsel these days is making between \$500 and \$600 an hour. There's some nice symmetry there. The labour board vice-chairs are making \$550 a day. Doctors on this tribunal are making \$450 a day and there doesn't seem to be any difficulty in attracting them.

Candidly, right now you're relying on truly the goodwill of people who believe in public service, who have time, who have the skill. I don't think you can count on that. Maybe the government and the appointments secretariat know they can; I just don't. But I would have thought, to have some comfort that these cases can continue to be served—I mean, you can see from the statistics. Our turnaround times, while some of the best, but I'm told, in the tribunal world—around four months—are continuing to creep up as the matters become more complex, as the volume increases and the number of chairs doesn't, and/or as the chairs and vice-chairs you have say they want to do less and less. I'm saying it in a number of different ways, but the way to ensure it is not to pay market, because clearly it is public service, but to recognize the experience you really require to do this job and at least give some sense of understanding of that through the stipend.

Ms. Horwath: Thanks very much, Mr. Chair. Those were my questions.

The Chair: Thank you very much, Mr. Diamond. Your initial presentation was just more than 10 minutes long, which takes away the government's time, according to the procedures of the committee, so we don't have time for any questions from the government side. Mr. Diamond, thank you very much for your comprehensive presentation and response to members' questions.

We'll now move on to the concurrence votes. We will do that in the order of the presentations.

We now consider the intended appointment of Theo Noel de Tilly, the intended appointee as member of Smart Systems for Health Agency board of directors.

Mr. Parsons: I move concurrence.

The Chair: Mr. Parsons moves concurrence. Is there any discussion? Seeing no discussion, all those in favour? Any opposed? It is carried. Congratulations, Mr. Noel de Tilly. All the best on the new appointment.

We will now consider the intended appointment of Andrew Diamond, the intended appointee as vice-chair of the Licence Appeal Tribunal, LAT.

Mr. Parsons: I move concurrence.

The Chair: Mr. Parsons moves concurrence. Is there any discussion?

Ms. Horwath: On my last day with this committee, although I'm sure I'll be helping Mr. Bisson as time goes on, I wanted to take the time to acknowledge that although there are times when we sit at this committee and are a little concerned about the qualifications of some appointees and fear sometimes that these are simply political appointments, notwithstanding the fact that both of these appointees indicated some relationship with the Liberal government that's appointing them, in both cases I think it's fair to say that they are extremely well qualified and will do a good job on these committees. I'm pleased to be able to have voted in favour of the first one and will do so again with the second appointee.

The Chair: Any further comment?

Mr. Tascona: I'd just like to thank Ms. Horwath for her time on the committee. She's going to be missed. I just wanted to say that, Mr. Chairman.

The Chair: Agreed. Thank you, Mr. Tascona. I think we have unanimous support in wishing Ms. Horwath all the best on her new committee and thanking her for her work as the Vice-Chair and member of our standing committee.

I feel like we're getting a little bit off topic. Any further discussion on Mr. Diamond's intended appointment? Seeing no more, all in favour? Any opposed? Very good. Mr. Diamond, congratulations and all the best now as a vice-chair of LAT.

I want to let members know that with the extension of the certificate for those two individuals earlier on in the day, that means we currently have no backlog. We'll see if other certificates come forward, either this week or in early January. The next meeting of the subcommittee or the committee will be at the call of the Chair. We are returning into session, if all goes as planned, on February 13, which would mean we could expect the next meeting of this committee to be on Wednesday, February 15. Unless you hear from me otherwise, that's how we will proceed.

I think that is it for the Chair's comments. Is there any other business? Then this meeting is adjourned.

The committee adjourned at 1159.

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