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Official Report of Debates (Hansard)

Tuesday 2 November 2010

**Standing Committee on
Government Agencies**

Intended appointments

Journal des débats (Hansard)

Mardi 2 novembre 2010

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 2 November 2010

Mardi 2 novembre 2010

The committee met at 0905 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Ernie Hardeman): Good morning, ladies and gentlemen. Thank you very much for coming to the November 2 meeting of the agencies, boards and commissions committee. The first order of business this morning is the report of the subcommittee of October 28. We need a motion to accept that subcommittee report.

Mr. Michael A. Brown: I so move, Mr. Chair.

The Chair (Mr. Ernie Hardeman): We have a motion to accept the subcommittee report of October 28. Further discussion? If not, all those in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

MR. HOWARD WETSTON

Review of intended appointment, selected by third party: Mr. Howard Wetston, intended appointee as member and chair, Ontario Securities Commission.

The Chair (Mr. Ernie Hardeman): The second item on the list: We only have one interview this morning. It's the selection of the third party, Howard Wetston—interviewing him as a member and chair of the Ontario Securities Commission.

Mr. Wetston has already taken his seat at the head of the table. With that, we will provide you with an opportunity to make an opening statement if you wish, and we will then have questions from each party at 10 minutes per party, and at the conclusion of that, that will be the end of the interview.

We thank you very much for being here this morning, and we apologize for the slight lateness of starting the meeting.

Mr. Michael A. Brown: Chair, who will be starting?

The Chair (Mr. Ernie Hardeman): We'll start with the government side. We don't have the third party here at the present time; hopefully that would give them time to get here, as it was the third party that applied to interview—

0910

Mr. Michael A. Brown: If they're here, they'll start; is that it? If the third party is here, they'll begin?

The Chair (Mr. Ernie Hardeman): If they were here, they would start, but I don't want them to come in,

if they haven't heard the whole interview, and to be the first one to question.

So with that, we'll just move it there. That would give the third party an opportunity to get set in their chair before they start any questioning, with the consent of the committee.

Let's turn it back over to the delegation. Thank you very much for being here. The floor is yours.

Mr. Howard Wetston: Thank you very much, Mr. Chairman. I appreciate the invitation to be here. It's a pleasure to be before the committee this morning. I do have some opening remarks, sir, if I may.

I am honoured to be nominated as the next chair of the Ontario Securities Commission. I have served in the public interest for almost 30 years, including as a crown attorney, a consumer advocate, as the head of the Competition Bureau in Ottawa, as a federal court judge, as vice-chair of the Ontario Securities Commission and, for the last seven years, as chair of the Ontario Energy Board. It has been my honour to serve the people of Ontario and Canada.

Members of the committee, it is a critical time for securities regulation here in Canada and around the world. In the wake of the recent global market crisis, regulators are examining what we could have done better—in particular, how we could have better protected investors.

The financial crisis highlighted regulatory deficiencies that cannot be addressed at the provincial or even the national level. Securities regulators around the world, including the OSC, are contributing to the international response to these challenges.

The evolution of the capital markets also reinforces that now, more than ever, we must reform our system of regulation by supporting the implementation of a national securities regulator. I am committed to supporting the Ontario government, the Canadian Securities Transition Office and participating provincial regulators to make this important goal a reality. Given the size of Ontario's capital markets, Toronto should be prominent within a national regulatory structure, since Toronto is Canada's financial capital.

During the transition to a national regulator, I shall act in the best interests of the OSC and its staff, primarily because they offer excellent expertise. One of my goals would be to transfer that expertise to the national regulator.

Although the market context is changing, the OSC's overriding objective, derived from its statute and judicial confirmation, is to ensure that Ontario's capital markets are fair and efficient and that Ontario's investors are protected. The OSC must continue to be proactive in pursuing regulatory standards that discourage regulatory arbitrage, maintain market confidence, reduce financial crime and safeguard investors.

As a result of my ongoing observations of securities regulation, and if you concur with this intended appointment, I will be focusing on the following three priorities:

Number one, strengthening enforcement: The OSC's compliance and enforcement regime is vigorous and active, but it must be more visible and better understood by market participants and the public in order to have the desired deterrence effect. We must, where possible, streamline the process. I recognize that there will be challenges, but we must responsibly bring enforcement cases along faster. Capital and investment will flow to jurisdictions that have a high level of protection.

Number two, investor protection: Investor protection is central to the OSC's mandate. The interests of investors must be at the core of everything that we do, and we must err on the side of protecting investors. This will be even more critical during these transformational times, when investors have even greater concerns for protection. We also need input from investors. I am pleased that the OSC has created the investor advisory panel. The panel will give feedback on important regulatory initiatives.

My third priority is proactive rulemaking. We need regulatory responses that are risk oriented in order to restore confidence in the markets. Market quality is important, and investor confidence is crucial. We must get ahead of the curve and anticipate the risks that may threaten in the future. The OSC must help level the playing field between the investor and the market participant. We will continue to work with our provincial colleagues, self-regulatory organizations and international regulators to ensure that our regime remains consistent with global standards.

Members of the committee, in closing, I mentioned that I have a blend of regulatory, adjudicative and enforcement experience. I intend to apply that experience to the best of my ability in meeting the challenges that face securities regulation.

I wish to thank you today, and I would now be pleased to answer any of your questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. Actually, we have to start with the official opposition if we don't start with the government, so we'll start with the official opposition. The original one was going to be starting there. I've moved it back so the third party would be the last.

Ms. Lisa MacLeod: Unanimous consent for the third party to start.

Mr. Michael A. Brown: Agreed.

The Chair (Mr. Ernie Hardeman): It's either the government or the opposition.

Ms. Lisa MacLeod: I just asked for unanimous consent to allow the third party to start.

Mr. Michael A. Brown: Agreed.

The Chair (Mr. Ernie Hardeman): No objection? Third party, Mr. Hampton.

Mr. Howard Hampton: Thank you very much.

I wanted to ask your views on a number of issues. In the United States, the Securities and Exchange Commission is moving to introduce a fiduciary duty across the board. In my understanding, they just passed that legislation a couple of months ago. Australia has already implemented it. My understanding is that the requirement would then be that anyone dealing with investments must actively be able to show that they have acted in the best interest of their clients at all times.

How do you feel about that direction, and how do you see it being implemented in Ontario and possibly in Canada?

Mr. Howard Wetston: Mr. Hampton, I think that's a really good question. As you might imagine, I've not been involved directly in securities regulation for the last seven years. I've kind of held a bit of a watching brief on this issue and watched what has been going on with the SEC. I believe that in order to make this issue of acting in the best interests of one's client viable, it needs to become a statutory duty, as opposed to a lesser duty that is not statutory.

I think there's a lot of discussion on this issue today in Canada. A considerable amount of work has been done on this by some organizations, and I think the best way for me to describe this is that I think it's an important issue and I think it's one that the OSC has to give a lot of consideration to.

The best thing I can say about it is that I think becoming a statutory duty obviously raises the bar considerably and it might be one of those matters that does level the playing field between investors and market participants. Without being able to commit to whether or not that could become a statutory duty—obviously, that would be up to the government—I would say that it's a matter that needs to be looked at, and looked at seriously. I think it's an important issue. I believe in the US the fiduciary duty is legislated—or it's certainly made effective in rules—at the SEC, but I'm not sure how they've incorporated it.

Mr. Howard Hampton: As one person put it to me, in the euphoria of the boom, the investment industry forgot that there are many practices in the financial business world which are legal but which are also totally and completely unethical. As one person said to me, in their perspective that was the root of the problem. People simply said, "Well, if it's legal, do it. Don't ask the question if it is unethical."

Mr. Howard Wetston: Well, you know what they do in those situations, Mr. Hampton. Having practised law yourself, you understand very well what happens. You have these accidents and then they bring the lawyers in to kind of clean up the mess; they're like medics, so to speak. That's kind of what's occurred there, I believe.

The question for me would be—if you're thinking of the US situation versus what's occurred in Canada; if you're thinking about what happened in the US with respect to the market crisis that occurred there, I don't think there's any question about the fact that there were a lot of questions asked about whether or not, indeed, the practices were legal or whether or not, basically, what occurred was a lot of risk taking, which may have been legal but, as you say, unethical. I can't really say whether the practices were unethical or not, but I will say this: I think when you expose investors to such risk, as occurred in the United States, in the name of, for example, enhanced liquidity, where fairness and transparency suffer in the face of those market risks—the best thing I could say about that is that we need to continue to look at these kinds of issues and, as I said in my opening remarks, we need to level the playing field. If it's a matter of ethics—ethics are important. I think those concepts come out when you talk about concepts like “know your client” rules and other such things.

0920

So I think that the point you're making is very well taken, and I believe that simply saying it's legal might create, as I say, this uneven playing field between investor and marketplace. It's something we need to look at carefully.

Mr. Howard Hampton: Given that we seem to be in a state of flux in Canada—the federal government wants a national approach, but due to our historical and constitutional precedents, we have a provincial approach. In that context, what do you see as the role of the OSC?

Mr. Howard Wetston: I think the government has committed to participation in a Canadian securities regulatory authority. I believe that the OSC's commitment to that, in supporting the government's policy initiative in this area, is to ensure that we provide a great deal of support to the creation of that national commission. That would mean providing the expertise that we have, resources where necessary, but not resources to the extent that we reduce the importance of the oversight of capital markets by the Ontario Securities Commission during this transition period. There's an important balance that needs to be maintained there.

I think the role is necessarily to provide that expertise—we have a great deal of it at the securities commission in many areas—and to obviously assist in the regulation-making function that the transition office will be undertaking over the next couple of years. I believe that in supporting that work, as I say, we need to ensure that the Canadian Securities Transition Office and the support that it gets from the OSC ensures that this new entity is of the highest quality as a national regulator. So I believe that the OSC can contribute to ensure that the standards that are maintained by this national commission are no less than the high standards that the OSC has today in its oversight of the capital markets.

Mr. Howard Hampton: I want to ask you a bit about the OSC today. Should it be simply a referee that reviews

disclosure or should it be an investor advocate or guardian of investors? Because they're very different roles.

Mr. Howard Wetston: Yes, it's a very different role. I think there's a very fine line between both. What I'm advocating, as I indicated in my opening comments, is that we need to put the investor at the centre of the work of the OSC. Investors expect more protection, and we need to do our best to ensure that that occurs. It's not simply a matter of reviewing disclosure in the way you described; I think we need to elevate the importance of investor protection at the OSC going forward.

Mr. Howard Hampton: How should we do that?

Mr. Howard Wetston: It's more than just education. We're starting with the investor advisory panel, which has just been formed. We will take their advice. I've looked at the roster; I've looked at the panel members. I think it's an excellent group. They've just had one meeting. I've looked at the minutes of this meeting. I think that it'll take some time for it to get going, but I think they'll make a valuable contribution to the work we're doing at the commission.

As I indicated in my opening remarks, everything that we do has to be risk-oriented. We have to look to see where the risks are for investors. We have to try and get ahead of the curve and try and enable ourselves to meet these challenges more quickly.

Mr. Hampton, one of the issues with the fragmented system we have, as you very well know, is that it takes a long time to do national instruments because we have to do it across Canada with regulators across the country. My belief is, if we have a national commission, even if we have a Canadian securities regulatory authority made up of seven provinces and not all 10 at this point, we will be able to get to rule-making more quickly and, along that line, be able to protect investors more thoroughly in the less fragmented context.

So I truly believe that we need to keep that focus in summary, keep the investor at the heart of the work we do, look at the risks and ensure that we try and get them early on and move towards a national commission, which will help get speedier results from the point of view of the actions that the commission needs to take, both in enforcement and in rule-making.

The Chair (Mr. Ernie Hardeman): Very, very quickly, Mr. Hampton. You have one minute left.

Mr. Howard Hampton: Putting the investor at the heart of what you do, some have suggested that what needs to happen is the appointment of part-time commissioners who can bring more of a retail investor perspective. What do you think of that idea?

Mr. Howard Wetston: I think that you get the best person that you can on the commission, and I think the most qualified people are the people—depending on the qualifications you need at any point in time—for the commission. The creation of the investor advisory panel is a very good start. As I understand it, they're going to include that in the national legislation as well, which, as you know, is before the Supreme Court as well as before

two courts of appeal in two other provinces. So I do think that it's important to look at it.

There are members of the commission now who do have a retail investor background, and I suppose most of them are also retail investors. But, having said that, I think it's important to look for the person who has the most qualifications at any moment in time, depending on the needs that are required at the commission, and of course, you should look at individuals who have that background. If they're the right people with the right competencies, then I think the commission should look at them and the government should look at them.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes the 10 minutes there. We'll now go to the government side. Ms. Cansfield?

Mrs. Donna H. Cansfield: I actually don't want to ask you a question; I would like to make a statement. I think the government has been well served by you in the past for all of the initiatives you've undertaken, particularly in the last number of years, at the OEB. We are indeed most fortunate as we go forward, looking at a national strategy, to have someone with your expertise and extraordinary experience to bring to the table in order to make this policy a reality on behalf of the government.

So I just want to thank you for putting your name forward and to say that certainly I'm well pleased with, as most people will be, hopefully, your appointment in the very near future.

The Chair (Mr. Ernie Hardeman): We'll now go to the official opposition—oh, we have more from the government side.

Mrs. M. Aileen Carroll: I'd reiterate my colleague's comments, but I'm also delighted to hear your strong commitment to a national securities commission. I'm serving my first term at the provincial level, but I came here totally convinced of the need, for a very long time, when I served at the federal level, for a national securities commission. I think what you've suggested, that we should move forward possibly with the consent of seven provinces, may be the way we have to go. Obviously, I reflect the views of this government in their very strong support for a national securities commission, so I'm delighted that, in addition to everything else you bring to the table, you also bring that perspective. Thank you.

Mr. Howard Wetston: Thank you very much, Mrs. Carroll.

The Chair (Mr. Ernie Hardeman): We have a further comment. Mr. Brown.

Mr. Michael A. Brown: We're not being too difficult with the questions at the moment, but one of the things that I think has occurred to both small and large investors, especially in these times, when we saw what many people would believe is the cause of the recent economic difficulties, which were worldwide and clearly not an Ontario-driven or Canada-driven situation—and many would say that we probably had the best regulation in the world at the time.

I just wonder about your view in this position: how you see us interacting on the world stage, seeing as I

think we have a fairly good reputation at the moment, and where you, as the chair of the OSC, would see the Canadian regulator—if that comes to pass—going and playing a larger role in world affairs.

Mr. Howard Wetston: Mr. Brown, I think that's a really good question. When I was at the Ontario Securities Commission between 1999 and 2003, when I left the federal bench, I immediately got immersed in international issues with IOSCO, the International Organization of Securities Commissions. At that time, the OSC played a very significant role in IOSCO, actually heading up one of the most important committees of IOSCO for a number of years—I think for a two-year period—in which a lot of heavy lifting is done in the development of international standards in securities regulation. I think the OSC became very well known at that time in IOSCO.

0930

We also did a lot of work in another organization, North America/South America, to bring a common view of the standards that are necessary to regulate the capital markets, because the capital markets are global. The numbers in Canada go from 2% to 3% with respect to our representation of national markets. Toronto itself is the third-largest capital market in North America, behind New York and Chicago. It's not well known to people, but this is a centre for the capital markets and it's well known internationally.

If I just give you this thought: Right now, the OSC is continuing to be very active in IOSCO. Previous chair David Wilson, who I think has done a really, really good job at IOSCO, is the co-chair of a very important committee on systemic risk; the very first time, I think, that securities regulators worldwide are actually engaged in issues of systemic risk, which they really weren't, at a considerable level, prior to these incidents which occurred several years ago. I think he's the co-chair of a very important committee of IOSCO. I will correct that if I'm incorrect, but I believe that to be the case. I certainly know that's not the only committee that the OSC participates in internationally at IOSCO.

We have a role. We'll continue to have a role. As I indicated in my opening remarks, international standards are really important, because capital will flow to Canada if our markets are safe and people have confidence in them. I think being part of the international scene does assist that a great deal.

Thank you for your question.

Mr. Michael A. Brown: Thank you very much.

The Chair (Mr. Ernie Hardeman): Thank you very much. We will now go to the official opposition. Ms. MacLeod?

Ms. Lisa MacLeod: Welcome to committee, and congratulations on your appointment.

Mr. Howard Wetston: Thank you, Ms. MacLeod.

Ms. Lisa MacLeod: I only have a couple of brief questions for you, as they pertain to a national securities regulator. You're probably aware that our party has been calling for that and has supported that initiative for some time. I guess specifically, I have a quick question on

what Ontario could be doing to further advance a national securities regulator in the current context.

Mr. Howard Wetston: I think one of my challenges—and I think it's not only my challenge, but will be the government of Ontario's. I've committed to supporting the government as much as I can in working with my federal colleagues, as well as provincial colleagues, in ensuring that, at this stage, we at least—and it's not a matter of whether or not it's not as good a solution as having the entire country committed to a national regulator. As you know, Ms. MacLeod, we don't have—Quebec has challenged it in the courts. Alberta's challenging it in the courts. Manitoba's not involved yet.

I think that my goal will be to work within the CSA and with our colleagues in the CSA. My goal will be to work with our self-regulatory organization. My goal will be to work with the federal government. We do have a committee, which is made up of the Bank of Canada, the federal Ministry of Finance and the federal superintendent of the banks as well. We meet fairly regularly to discuss these kinds of issues, particularly around systemic risk, but also the topic, I'm sure, of the national securities commission.

My commitment, and I think the commitment that we have, is to do whatever we can to ensure that we maintain that momentum, and I think the momentum is there.

We're waiting, as you know, for the Supreme Court of Canada decision, which will probably come out in the spring. That will be a very important decision that will set the framework and the groundwork that we need to go forward.

Ms. Lisa MacLeod: Perhaps when those court challenges are complete, and in the case that Alberta and Quebec are encouraged to throw their support behind a common regulator, how do you see your role play out in this, and Ontario's role? Obviously, we are the financial centre of the country. How do you see Ontario proceeding?

Mr. Howard Wetston: I think in my opening remarks I said that Ontario and Toronto must and should have a prominent role in any national securities regulator.

I think if I understand your question, my hope would be that at some stage—I think the opportunity for Alberta and Quebec—should we have support for a national regulator under the general trade and commerce power; should this legislation be passed under that power; should that occur, there will be opt-in provisions available for Alberta and Quebec and Manitoba, if they're not part of it, to be able to join this national commission.

The point I think I'm suggesting here is that, given the structure that's been presented and represented by the Canadian Securities Transition Office—if you look at that structure, you'll see a board, a chair, a chief regulator and a chief adjudicator. In my view, if you look at that structure, Toronto has to have a prominent role in that structure.

We have 350,000 jobs in the financial services sector in Ontario. The financial services industry is the second-largest, behind manufacturing, in Ontario. There are, for

example, 1,600 registered firms in Canada; 1,400 are registered to do business in Ontario. There are over 122,000 registered persons to trade and give advice in securities matters, of which I believe 65% are in Ontario.

So my point on all this is that when you think about Toronto and Ontario, it must have a prominent role in this national organization.

Interjection.

Mr. Howard Wetston: Just my last comment—I'm sorry to be so long-winded about this. The expert resources of the OSC will be transferred to that organization, because we have the expertise, we have the quality and we have the experience. I think, frankly, that's a commitment from the transition office as well as the federal government.

Ms. Lisa MacLeod: I appreciate that. I just have one final question, and then I think we can get on with the business of letting you get your feet wet in this new job.

Obviously, you've pointed out three key priorities for you, which were strengthening enforcement, investor protection and proactive rule-making, and I appreciate that. But particularly in these tougher economic times, and in relation to the rest of the world, as my colleague Mike Brown pointed out, Canada's banking system remained relatively strong. What can you do in your role—to maybe add perhaps a fourth priority—on promoting the brand of Ontario to encourage investors around the world to invest in a safe market and a safe place to put their money? I don't think we've done enough of that, and I think there's a golden opportunity for us in Ontario, as well as for you as the new OSC chair, to start that branding exercise.

Mr. Howard Wetston: I really take your point, and I think it's a very important point. My brief comment on that would be that the best way for Canada to represent itself internationally is to have a market that's safe, that people have confidence in, and that they feel protected in when they invest in this market.

I agree with you to this extent: that while I don't see the chair of the OSC as a marketer in that sense, I see an important role is to be able to communicate with our international colleagues, to be present internationally, and to be able to demonstrate internationally the work we are doing to be protective of the capital markets. I think that's another way of saying that I agree with you, and I think that presence is really important.

Ms. Lisa MacLeod: Okay. Thanks very much.

Mr. Howard Wetston: Thank you for your questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for coming in this morning. That does conclude the interview. Again, we wish you all the best. We will deal with the committee's concurrence, or lack thereof, following the interview. We want to thank you for coming in and we want to wish you all the best in your future endeavours.

Mr. Howard Wetston: Thank you, Mr. Chair, and I'll be waiting for that op-ed piece that I spoke to you about.

The Chair (Mr. Ernie Hardeman): Thank you.

Mr. Howard Wetston: Thank you so much.

The Chair (Mr. Ernie Hardeman): That concludes the interview this morning, so we will now proceed with the concurrences. We considered the appointment of Howard Wetston as a member and chair of the Ontario Securities Commission. Can we have a motion to deal with it?

Mr. Michael A. Brown: I move concurrence in the appointment of Howard Wetston as chair, member and CEO of the Ontario Securities Commission.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Discussion?

Mr. Michael A. Brown: A recorded vote, please.

The Chair (Mr. Ernie Hardeman): A recorded vote's been requested. No further discussion? All those in favour?

Ayes

Albanese, Brown, Cansfield, Carroll, MacLeod, Pendergast.

The Chair (Mr. Ernie Hardeman): All those opposed? The motion's carried.

That concludes that part of the meeting this morning. We will now go into closed session to continue our deliberations on the report on the Ontario Municipal Board.

The committee continued in closed session at 0935.

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