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**Official Report
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Tuesday 1 March 2016

**Journal
des débats
(Hansard)**

Mardi 1^{er} mars 2016

**Standing Committee on
Government Agencies**

Intended appointments

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Tuesday 1 March 2016

Mardi 1^{er} mars 2016

The committee met at 0901 in committee room 1.

The Chair (Mr. John Fraser): Good morning, and welcome back to another Tuesday morning. We have one intended appointee today.

SUBCOMMITTEE REPORT

The Chair (Mr. John Fraser): First we have a subcommittee report. The first order of business is to consider the subcommittee report. Mr. Pettapiece?

Mr. Randy Pettapiece: I move the adoption of the subcommittee report on intended appointments dated Thursday, February 25, 2016.

The Chair (Mr. John Fraser): Thank you very much, Mr. Pettapiece. Any discussion? All those in favour? Opposed? Motion carried.

INTENDED APPOINTMENTS

MR. HUGH WILKINS

Review of intended appointment, selected by official opposition party: Hugh Wilkins, intended appointee as member, Ontario Municipal Board (Environment and Land Tribunals Ontario).

The Chair (Mr. John Fraser): As I said, we have one intended appointee today. We have Hugh Wilkins, nominated as member, Ontario Municipal Board (Environment and Land Tribunals Ontario).

Mr. Wilkins, can you please come forward and take a seat? Good morning.

Mr. Hugh Wilkins: Good morning.

The Chair (Mr. John Fraser): Thank you very much for being here this morning. You'll have time to make a brief opening statement. Any time that you use in your statement will be taken from the government's time for questions. You'll get questions from members of all three parties. The questioning will begin with the official opposition.

Again, welcome here this morning. You may begin.

Mr. Hugh Wilkins: Thank you very much and good morning. My name is Hugh Wilkins. I am an applicant for a position on the Ontario Municipal Board. Thank you again for having me here this morning and for the opportunity to appear before you.

I am presently a member of the Environmental Review Tribunal, which is a sister tribunal of the municipal board at the Environment and Land Tribunals Ontario cluster.

As a member of the ERT, I have had the opportunity to adjudicate over a variety of issues arising from appeals of environmental orders, approvals and permits.

As a member of the ERT, I have also served as a hearing officer with the Niagara Escarpment Hearing Office, hearing appeals of development proposals on the Niagara Escarpment, which generally include a mixture of environmental and planning law and policy issues.

My background is in law. I was called to the bar in 1998 and have had the benefit of practising in a variety of areas of the law.

After my call to the bar, I practised at a firm in downtown Toronto, focusing on civil litigation and administrative law, including planning law work on files before municipal councils and the municipal board on behalf of various types of stakeholders.

I then went to study in the United Kingdom and obtained a master of law degree at the London School of Economics. There, I worked first as an intern and then as a paid researcher for one of my professors at the Foundation for International Environmental Law and Development, or FIELD, in London. At FIELD, I was involved in various matters focusing on international law, including assisting in giving law and policy advice to the European Commission and to small island states.

Upon my return to Canada, I continued working for FIELD, and then as a consultant for the World Wide Fund for Nature international, or WWF, and the International Institute for Sustainable Development. I worked initially on international governance issues and later on wildlife trafficking issues for WWF, and I worked reporting on negotiations on international conferences for the International Institute for Sustainable Development.

After working several years in this area, I switched gears and refocused on domestic law and policy issues, working for about seven years at Sierra Legal Defence Fund, which was later renamed Ecojustice Canada, practising public interest environmental law. This work involved advocacy before various courts and tribunals, including involvement in cases before the municipal board.

I also have experience in teaching and in legal writing. While I was at WWF and Ecojustice, I edited for 10 years a legal journal named the Review of European Community and International Environmental Law, and also taught natural resources law for five years as an adjunct professor at Osgoode Hall Law School.

Also, prior to my appointment to the Environmental Review Tribunal, I taught a course on Canadian environmental policy at the York University faculty of environmental studies.

As a member of the ERT, I've gained experience and expertise as an adjudicator and was just recently reappointed for a second term, which is for three years.

Over the course of the past two years, I have participated in courses on adjudication and mediation put on by Osgoode Hall Law School and the Society of Ontario Adjudicators and Regulators. I also participated in a workshop held by the University of Windsor's faculty of law in the Stitt Feld Handy Group.

I believe in the need for accessible and fair proceedings, applying active adjudication and alternative dispute resolution tools whenever possible to ensure fair, efficient and effective decision-making.

I believe that I have experience, knowledge and training in the subject matter and legal issues dealt with by the municipal board. I have aptitude for impartial adjudication and an aptitude for applying alternative adjudicative practices and procedures.

I'm pleased to answer any questions that you have on my background and my experience. Thank you very much.

The Chair (Mr. John Fraser): Thank you very much, Mr. Wilkins.

Mr. Pettapiece?

Mr. Randy Pettapiece: Good morning, sir.

Mr. Hugh Wilkins: Good morning.

Mr. Randy Pettapiece: You certainly have an impressive resumé. I wonder, when you worked at Ecojustice Canada—you acted on cases before the OMB?

Mr. Hugh Wilkins: I did.

Mr. Randy Pettapiece: Can you please provide further detail on that work and how it may influence your role as an adjudicator on the OMB?

Mr. Hugh Wilkins: The work that I did at Ecojustice was public interest work, so we often represented grassroots groups. One of the cases that I had before the municipal board had to do with the regional official plan amendment in Peel for the urban expansion of Brampton, which we were able to work with a number of stakeholders and reach a settlement on.

I was also involved in work regarding water issues and development issues on the Oak Ridges moraine and was involved in a case that went to the Divisional Court. I didn't actually appear before the municipal board on that matter but was involved in those proceedings.

As a lawyer at Morris Rose Ledgett, when I first started off 20 years or so ago, I did a fair bit of administrative law work, and as I mentioned in my opening statement, I was involved in municipal law issues before both councils and the board as well.

Mr. Randy Pettapiece: Okay. Much of your work experience centres around environmental and natural resources law. The OMB deals with many land use planning cases. What I'm interested to know is, how do

you plan to balance your interest in the environment and municipal development?

Mr. Hugh Wilkins: Well, as adjudicator, each case has to be judged on its facts and the evidence presented to the tribunal member. Also, one must apply the relevant statutory provisions and policies. Each case is going to be specific to its situation.

With respect to my background in environmental law, I think that is applicable. As a hearing officer with the Niagara Escarpment Hearing Office, I've dealt with a number of cases which have a mixture of environmental and planning law issues. I've really enjoyed that work and found it very engaging. But I don't think my background in environmental law—I think it's an asset. It will add value to work on the municipal board. I don't think it is in any way a hindrance.

I think my background in legal writing and my experience as an adjudicator with the Environmental Review Tribunal are assets which would be adding value to work on the municipal board.

0910

Mr. Randy Pettapiece: I certainly agree that it would probably be an asset. It's just that it can be a really difficult balancing act between developers and environmentalists. Sometimes we do get involved—and for good reason—in disputes, if we can put it that way, with that type of thing.

Certainly, there have been calls to reform the OMB. I understand that government will be conducting a review of the board, although they haven't said when. What are your thoughts on the effectiveness of the OMB? Would you have any ideas on possible areas of improvement for the board?

Mr. Hugh Wilkins: Well, I certainly believe that there's a key role for an impartial tribunal in which people can come forward and have their issues and disputes with respect to planning law addressed. I think having an administrative body is more accessible and less formal than having a court deal with those types of issues. So I think it's important to have a municipal board that is accessible to the public and can provide fair and impartial decisions.

In terms of whether the scope of the board's jurisdiction should be changed, I think that's really an issue for the Legislature to determine. It's not something that a board member can, obviously, deal with at all.

Mr. Randy Pettapiece: Sir, I was a municipal councillor for a number of terms. There was a perception, certainly shared by the council I was with and different municipalities around the province, that developers have a much better chance at the OMB than others because of financial and legal resources. So there's a perception that the unelected OMB controls much of Ontario's development. How would you respond to that, and, as an adjudicator, what kind of regard will you have for municipal decisions?

Mr. Hugh Wilkins: I think there is a challenge in that some parties have more resources than others when they come before an administrative tribunal. There are ways to

try to ensure that all parties have an opportunity to have their day in court and are able to fully engage in the process. Through active adjudication, an adjudicator can make sure that the issues are focused and that everybody has the appropriate opportunities to make their case.

It's a difficult situation if there's not an opportunity for people to have the resources that they need to present a full case. Again, unfortunately, I think that's something that the Legislature would have to address, if they wanted to provide funding for participants in proceedings like this. As an adjudicator, I think we have a responsibility to ensure that everybody has the best opportunity possible to make their case, certainly.

Mr. Randy Pettapiece: And often it is a financial consideration, and they just say—you know, throw your hands up and just let it go.

I'm going to ask you this question here about conflicts of interest. Do you have any conflicts of interest either at the municipal or developer level? Have you provided legal advice to developers in the past?

Mr. Hugh Wilkins: I don't have any conflicts of interest. When I worked at Morris Rose Ledgett some 20 years ago, I did represent developers, but that was so long ago I couldn't even tell you the names of the people, so I don't see that as a real conflict. However, if ever a case arose where there was a possible perception of bias or of a conflict of interest, I would certainly make known that potential conflict to the parties and recuse myself, if necessary, from the proceedings.

Mr. Randy Pettapiece: Thank you, Chair.

The Chair (Mr. John Fraser): Thank you very much, Mr. Pettapiece.

Mr. Robert Bailey: I do have just one question, if I've got enough—

The Chair (Mr. John Fraser): Sure. Yes, you do.

Mr. Robert Bailey: Thank you for coming in, Mr. Wilkins. I don't think this has been asked. Just a short answer—I probably don't have a lot of time. Can you give us an idea of some of the challenges you think lay before the OMB, going forward, in the future?

Mr. Hugh Wilkins: The OMB as an institution or for an adjudicator at the—

Mr. Robert Bailey: Well, both: as an adjudicator, but more the institution itself, the OMB.

Mr. Hugh Wilkins: I think it's important that, as I said before, everybody has a fair opportunity to make their case. I think adjudicators must work hard to ensure that it's a fair and impartial process.

As to whether the public perception of the OMB can be changed, I think the best the adjudicators can do is just to do a good job and work hard to ensure that it's a fair process, and hopefully the board's reputation will be a good one based on that.

Mr. Robert Bailey: Okay. Thank you.

The Chair (Mr. John Fraser): Thank you very much, Mr. Bailey. Mr. Gates, good morning.

Mr. Wayne Gates: Good morning. How are you?

Mr. Hugh Wilkins: I'm well, thank you.

Mr. Wayne Gates: Good. I'm going to start by just making a little bit of a statement. I was a city councillor as well. I enjoyed my time there, but one thing that was very, very frustrating is that as an elected council we would make a decision based on presentations and all that stuff and an unelected OMB would overturn it. I'll give you an example. There's a school in my riding where we said they couldn't put a service station right beside the school. They appealed to the OMB and the OMB said they could. Those are the types of decisions that are being made and, quite frankly, I believe that's why the OMB has so many problems.

I've got four questions. I'll read them off to you and you can hopefully give us a response.

Mr. Hugh Wilkins: Certainly.

Mr. Wayne Gates: As you're aware, no doubt, the OMB has often been accused of siding with developers in the face of local municipal opposition to development projects. In fact, in some cases the OMB has gone so far as to essentially rip up municipal planning documents created by duly elected members of local councils. Given this, do you believe the OMB should continue to operate in its current format or do you believe that changes are needed to better balance the system?

Mr. Hugh Wilkins: I don't think I can really comment on whether there should be a change in the scope of the board's jurisdiction. I certainly believe, as I said before, that it's important that adjudicators act in a fair and impartial manner and try to ensure that everybody has an ability to present their case before the board.

In terms of municipal decisions under the Planning Act, the board has to have regard for the decisions of the municipality and the materials that the municipality used in making its decision. Certainly, municipal decisions and the materials that those decisions are based on are things that are taken into consideration by the board, but the board can only work within the statutory mandate that it's given and the policies that are relevant to an issue before it. It's somewhat confined to what it can do.

Mr. Wayne Gates: Thank you. As a member of the OMB, how will you work to ensure that the voices of councils and, more importantly, the voices of the people they represent are not overshadowed by large, deep-pocketed corporations?

Mr. Hugh Wilkins: Again, I think it's important to make sure that each person has a fair opportunity to have their case heard. Through actively adjudicating and making sure that people have opportunities to speak, and that the issues are focused on the key aspects that need to be adjudicated, I believe that everybody can have a fair hearing.

Mr. Wayne Gates: It's an interesting comment, quite frankly. If you're telling me that a resident of Niagara Falls or any community in the province of Ontario can go up against lawyers and big money, I don't think you can say that you're always going to get a fair and balanced hearing. I guess I'll add to that: You have represented developers in the past, and I think it would be fair and reasonable to say that sometimes, because of dollars,

residents don't have the same resources as developers do in front of the OMB. When you present your case, I think a lawyer may be a little better than Wayne Gates, who's not a lawyer, presenting a case. To say that it's always going to be fair and balanced I think is a stretch.

Mr. Hugh Wilkins: And I do agree with you. Being a litigant is a very stressful, very difficult thing to do. There needs to be ways to ensure that people are able to come before tribunals like the OMB, to make sure they're accessible so that although it's going to be stressful and it's going to be difficult, it can be facilitated as best as possible.

Mr. Wayne Gates: I appreciate that, but I think you can appreciate where I'm going as a resident in a community.

When members of the public present to an OMB hearing, they are not protected—this was interesting to me when I read this—from legal action against them by the developers they are usually trying to stop. This has created a chill effect, leading people not to take cases to the OMB for fear of legal action.

Do you believe it is appropriate that individual members of the public do not have legal protection when presenting at an OMB hearing?

0920

Mr. Hugh Wilkins: I know that recently the Ontario government passed anti-SLAPP legislation. That's legislation against strategic lawsuits against public participation. What that legislation does is it aims to stop meritless lawsuits from being brought. In the past, in this jurisdiction and in others, defamation cases have been brought by people and have acted as a deterrent for people who wish to come forward and engage in public processes. There has been a chilling effect. I believe and I hope that this new legislation will have an impact on that and reduce that chilling effect.

Mr. Wayne Gates: When you say "people," who are you talking about?

Mr. Hugh Wilkins: It could be anybody. It could be a developer; it could be a public interest group. The legislation aims to ensure that there is a procedure for dealing with meritless claims and proceedings on an expedited basis.

Mr. Wayne Gates: More likely, though, would you say that in most cases, it would be more developers?

Mr. Hugh Wilkins: I can't say. I think you'd have to look at the facts as to who in the past has brought meritless claims. It's probably a mixture of both developers and others.

Mr. Wayne Gates: As a lawyer, have you ever done that?

Mr. Hugh Wilkins: Have I ever brought a defamation case?

Mr. Wayne Gates: Have you ever followed the OMB and said, "Okay, who's doing this?"

Mr. Hugh Wilkins: Sorry, have I ever brought a meritless claim? No, I've never brought a meritless claim.

Mr. Wayne Gates: Do you believe the city of Toronto should be subject to the OMB given that they have repeatedly asked to be removed from their jurisdiction?

Mr. Hugh Wilkins: I believe that's an issue that the Legislature would have to deal with. As an adjudicator, as I said before, I think we've got a responsibility to ensure that we provide impartial and fair proceedings. But in terms of the scope of the board's jurisdiction and whether certain municipalities would be exempt from proceedings before the board, that is something I believe the Legislature would have to deal with.

Mr. Wayne Gates: I'll add to that, and you can add to it if you like: When you see a city like Toronto—which is really the heart of Ontario—that wants out of the OMB, then that would say to me, or certainly send me a signal, that there must be some problems.

Mr. Hugh Wilkins: Having a tribunal or a board dealing with difficult issues is always going to make some people unhappy. As I said before, it's necessary to have an administrative tribunal which deals with those issues because it's less formal and less costly and more accessible than the courts. I think it's necessary to have such a body. As to whether the scope of its jurisdiction should be changed by the Legislature, that's something for the Legislature to address.

Mr. Wayne Gates: I appreciate that, but I think your response was a little surprising. You said "some people." We're talking about an entire city that's not happy with the process—elected reps.

What challenges do you see happening with the board?

Mr. Hugh Wilkins: Challenges for an adjudicator on the board?

Mr. Wayne Gates: Yes.

Mr. Hugh Wilkins: Cases can be long, difficult, complicated proceedings. At the Environmental Review Tribunal, I've been on cases which have been over 20 days of hearings. Particularly, joint board hearings, which are hearings comprised of both municipal board and Environmental Review Tribunal members, can last for months. A long, complicated hearing can be a very difficult thing for an adjudicator, but I think we have the resources at ELTO to deal with that sort of thing. It's a good challenge as well. Certainly, it's not easy work, but I think it can be rewarding.

Mr. Wayne Gates: It's maybe a little off the subject, but as an environmentalist, do you have a lot of concern, or any concern at all, with the amount of development that's going on our prime farmlands?

Mr. Hugh Wilkins: I don't really have an opinion on that, no.

Mr. Wayne Gates: Even as an environmentalist? That's surprising. Thank you.

The Chair (Mr. John Fraser): Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Mr. Wilkins, for being here today. It's a very impressive resumé. All I want to say is thank you for wanting to apply to this particular board. Certainly, your qualifications would more than meet the requirements of the board.

Again, thank you for being here and applying for that position.

The Chair (Mr. John Fraser): Thank you very much, Mr. Rinaldi.

Thank you very much, Mr. Wilkins. The time for your interview has concluded and you may step down. We'll consider the concurrence right after you step down. You're welcome to stay. Again, I want to thank you very much for being here today and presenting to us.

Mr. Hugh Wilkins: Thank you.

The Chair (Mr. John Fraser): We will now consider the concurrence for Hugh Wilkins, nominated as member of the Ontario Municipal Board (Environment and Land Tribunals Ontario).

Mr. Rinaldi?

Mr. Lou Rinaldi: I move concurrence in the intended appointment of Hugh Wilkins, nominated as member of the Ontario Municipal Board (Environment and Land Tribunals Ontario).

The Chair (Mr. John Fraser): Any discussion?

All those in favour? Opposed? Motion carried.

Congratulations, Mr. Wilkins. Thank you very much for being here, again.

We're adjourned.

The committee adjourned at 0926.

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