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Jeudi 30 mai 2024

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GOVERNMENT AGENCIES

COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX

Thursday 30 May 2024

Jeudi 30 mai 2024

The committee met at 0900 in room 151.

The Chair (Mr. David Smith): Good morning, everyone. The Standing Committee on Government Agencies will now come to order.

We are joined by staff from legislative research, Hansard and broadcasting and recording.

As always, all comments by members and witnesses should go through the Chair.

SUBCOMMITTEE REPORTS

The Chair (Mr. David Smith): The first item of business will be the adoption of two subcommittee reports, which were distributed in advance. We have the subcommittee report dated Thursday, May 16, 2024. Could I please have a motion? MPP Harris.

Mr. Mike Harris: I move adoption of the subcommittee report on intended appointees dated Thursday, May 16, 2024, on the order-in-council certificate dated May 10, 2024

The Chair (Mr. David Smith): Any discussion? Any further discussion? Are members ready to vote? All those in favour? All those opposed? That's carried.

We have the second subcommittee report dated Thursday, May 23, 2024. Could I please have a motion? MPP Harris.

Mr. Mike Harris: I move adoption of the sub-committee report on intended appointees dated—sorry—on intended appointments dated Thursday, May 23, 2024, on the-order-in council certificate dated May 17, 2024.

I know the Clerk would be on me for the mispronunciation, so we'll just make sure we get it in there.

The Chair (Mr. David Smith): Any discussion? Any further discussion? Are members ready to vote? All those in favour? All opposed? That's carried.

INTENDED APPOINTMENTS MR. MARK WHITE

Review of intended appointment, selected by official opposition party: Mark White, intended appointee as chair, Ontario Energy Board.

The Chair (Mr. David Smith): The next line of business: Our intended appointee today is Mark White, nominated as chair of the Ontario Energy Board.

You may make an initial statement at your discretion. Following this, there will be questions from members of

the committee. With that questioning, we will start with the government, followed by the official opposition, with 15 minutes allotted to each recognized party.

Any time you take in your statement will be deducted from the time allotted to the government. You may proceed, Mr. Mark White, please.

Mr. Mark White: I would like to make an opening statement. I'd like to thank the committee for the opportunity to address it today.

As you know, my name is Mark White. I'm currently the CEO of the Financial Services Regulatory Authority of Ontario. I have served in that role since FSRA's inception in 2018. As the inaugural CEO, I worked closely with government to merge and transform two legacy regulators into today's consumer-oriented financial services regulator.

Financial services are experiencing rapid changes in products, services and operations due to technology, changing preferences, markets and consumer desires. To be an effective regulator in the face of rapid change, we transformed FSRA into a dynamic, principles-based, and outcomes-focused regulator that listens carefully to stakeholders and is intent on fulfilling our statutory mandate by delivering financial safety, fairness and choice to Ontario consumers.

By understanding business models and market forces, we enhanced consumer protections, encouraged innovation and became an efficient and effective regulator. Let me provide three examples.

First, as the regulator of auto insurance rates, we use broad public engagement to identify an opaque, systemic non-compliance with the rule requiring all insurers to take all comers. We corrected this through leveraging insurer processes, controls and governance, and, in some cases, enforcing so that consumers receive the lowest available rate.

Second, at the request of the minister, we investigated postal-code-based auto insurance rating territories. These rigid territories caused large changes in insurance premiums for small movements of location. We successfully are using a test-and-learn environment in our innovation framework so that insurers can now offer cost-based rates that more appropriately consider geography.

Third, in 2019, a law was passed empowering FSRA to stop unqualified and unsupervised persons from representing themselves as financial advisers and planners. We have implemented a regime where consumers can have confidence that persons using those titles are subject to educational standards, ongoing supervision, complaints and discipline processes and are obligated to act professionally, fairly, honestly and in good faith. Today, consumers can use our online public registry to quickly verify credentials.

In each of these examples, FSRA worked closely with government and other stakeholders, particularly consumers, to serve the public interest. We identified and we addressed issues in the fast-changing markets.

Before joining FSRA, I was senior vice-president and head of enterprise risk at the Bank of Montreal. Before BMO, I was assistant superintendent at the Office of the Superintendent of Financial Institutions during the global financial crisis. While at OSFI, I represented Canada on the Basel Committee on Banking Supervision and I chaired its risk management group. Today, I chair the market conduct working group of the International Association of Insurance Supervisors.

My experience has been at the intersection of law, finance, risk, regulation and markets. It includes being a managing director at RBC Capital Markets, a partner at Ernst and Young, a senior vice-president at AT&T Capital in Canada and in Europe, and a business lawyer at Fasken. Before this, earlier in my career, I worked as a law clerk at the OEB on hydro rate references and natural gas deregulation.

The OEB plays an essential role in the province's energy system, and I'm honoured to be nominated as its chair. This is a critical time in the energy sector. Energy needs are increasing and the markets are fast-changing. We need energy at a reasonable cost. We have to support the electrification and the low-carbon growth of our economy. New technology is transforming our energy markets, creating opportunities and risks and altering market norms.

While the Ministry of Energy establishes overall policy, the OEB and other participants need to understand and align with those policy decisions. Particularly, the OEB has a key role in managing Ontario's energy market and should be a source of information and expertise.

If appointed chair, I will ensure that the OEB fulfills its mandate to protect consumers and serve the public interest. I will do this through ensuring good governance, a sound strategy to manage energy markets and independent adjudication to fairly balance the rights of the public and regulated entities.

To do this successfully in an evolving market, the OEB must work constructively with other market participants to address issues in shared areas of responsibility and to align with the policy decisions of others while acting within their own mandates. The OEB needs to protect consumers and ensure the reliability and affordability of the energy system. The OEB also needs to leverage off the work of others, such as the Electrification and Energy Transition Panel.

These are historic times for Ontario's energy system. I know from my experience as a regulator that it's essential to have a regulator focused on its mandate and transparently working with others to ensure a change is well managed.

With your support, I look forward to taking on this challenge and to serving the people of Ontario. Thank you for considering me for this role, and, Chair, I'd be pleased to answer any questions.

The Chair (Mr. David Smith): Thank you very much, sir.

I will turn the remaining time over to the government side. MPP Harris.

Mr. Mike Harris: Thank you, Mark, for being here. I've got, I guess, maybe a rather long question I want to ask, and there's a bit of preamble.

Obviously, we have ambitious goals to build, at the very least, 1.5 million new homes over the next few years and new highways and subways, obviously improving rail transportation, and our government has been very successful in attracting new jobs to the province, particularly in critical minerals and electric vehicles. We've seen some fantastic investment in southwestern Ontario.

With this in mind, obviously it's critical that the OEB ensures that Ontario's electricity and gas transmission and distribution system are built to support these goals and done in a timely manner, while, of course, protecting ratepayers, and you did talk a lot about your experience in that through your opening comments.

I wonder how you'll be able to leverage your experience in the regulatory world to maintain the OEB's essential role as an independent economic regulator, while continuing to ensure the government's priorities are appropriately addressed in the process.

Mr. Mark White: Thank you for that question. You are right, MPP Harris, to start with the broad perspective, because energy is an important input into Ontario's economy, and the growth of the province depends upon it. Frankly, all of us depend upon it in our daily lives.

The patterns in the energy market are that the importance of energy is only going to increase with the energy transition from fossil fuels to more carbon-free or low-carbon fuels and the electrification of the economy. So I think it is an essential piece, and that's why I talked about this being a critical time in Ontario's energy market.

What I've learned from my career as a regulator—and from being regulated, because I do learn from both experiences—is that there are certain regulatory tools that are most suited for certain purposes. The Ontario Energy Board's role as an adjudicator and being an independent adjudicator acting to fairly decide between the parties, the public interest and the regulated entity, is essential and sacrosanct. That has to continue.

But where you're dealing with a marketplace such as the energy marketplace that is going through tremendous transition, it's actually a time to bring out other regulatory tools. Those include consultation, use of generic hearings, public consultations more broadly and closely aligning with other regulatory and government partners, as well as listening carefully to other stakeholders. It's only through that broader consultation that the adjudication function can be effectively discharged, because you can't make the

decisions in the vacuum between the parties unless you understand what is happening in the overall marketplace.

From my experience at FSRA, we've also had fastevolving markets and we also have a role as a statutory decision-maker, whether it's setting rates or licensing entities or deciding what conduct to discipline. And we heavily work on understanding what is going on in the marketplaces and the businesses that we focus on so that we can understand where the tensions are and where the potential consumer harms lay.

When you understand what is happening in the business, what's changing the models, you can look for gaps and you can look for where consumers are not being well served. That's where you then focus your effort as a statutory decision-maker, to make sure that that broader context is then brought into play to fairly discharge your statutory adjudication responsibilities.

I could give you other examples of that, but I don't want to use up too much time on the committee.

Mr. Mike Harris: Yes, I do want to pass it on and give my colleagues an opportunity as well. But thank you very much.

The Chair (Mr. David Smith): MPP Holland, go ahead, please.

Mr. Kevin Holland: Thank you for coming in today, Mr. White, and for your interest in serving on the board.

I'm curious to know more about your experience with broad-based stakeholder relations. We know there's a need for regulators to have access to external expertise and a spectrum of perspectives. This need has been made especially clear when a December OEB decision noted that impacted sectors were not invited to participate or provide evidence, leading to the government passing the Keeping Energy Costs Down Act.

As part of this new legislation, the OEB will conduct more public engagement to ensure impacted individuals and organizations have an opportunity to participate in proceedings. Can you speak a bit more about this and how we might be able to get a broader set of stakeholders involved in regulatory consultations?

Mr. Mark White: Thank you for the question, MPP Holland. Regulators have a mandate, but it has to always be based on public trust and confidence. You achieve that through transparency, where your actions are seen to be or decisions are made after consultation, where you have taken in all the input from all relevant stakeholders, and then you're actually making decisions and explaining your decisions, what you do and why it is in the public interest and within your mandate.

That's true in the energy sector as well as the financial services or any other sector: The role of a regulator is to discharge that mandate, but always based on transparency, accountability, trust and confidence. The accountability is to the public through the legislation, but it's also to the minister and making sure that you're aligned with policy objectives where the ministry or other government actors, such as the IESO in the case of energy—you understand, and you work closely together in shared areas of responsibility to respect each other.

At FSRA, we've done this. There are quite a few examples, but our consultation, our transparency is believed by stakeholders to be—I've been told it's the best in Canada of any regulator. We have structured consultations. We have a consumer advisory panel that I'm very proud of—I attend all their meetings—where it is independent consumer advocates, supported by a secretariat that we sponsor, so that they are actively resourced. They help us set our priorities, our research agenda. They have independent submissions to our organization on all matters of policy where we're going to make decisions, and that includes places where we're actually deciding where we're going to develop supervisory frameworks and enforce.

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We also have structured relationships with all of our sectors, both at a board level and a management level, and on targeted issues. So we're constantly seeking that input. And that's not just the industry players. We have retirees on our pension panel, we have diverse members on our credit unions panel so that we're getting all those inputs at all times. So we're always trying to make sure that we're acting in conjunction with that stakeholder input in a transparent way and we're working closely with government and other actors.

Now, a couple of quick examples on that: working with the OSC and the government on segregated funds and mutual funds and deferred sales charges, or on what is the right division of responsibility to make sure that mortgage investors and private mortgage transactions are well protected after some of the losses that occurred six or seven years ago. Those are areas where we actually had to work closely with those partners, respecting their jurisdiction, as well as being transparent and accountable in our own jurisdiction.

Mr. Kevin Holland: Great. Thank you very much for

I'll go pass it on to MPP Martin.

The Chair (Mr. David Smith): MPP Martin, go ahead, please.

Mrs. Robin Martin: As you noted yourself in, I think, answering MPP Harris's question off the top, economic progress and development are inextricably linked to having an energy system which is not only reliable but also affordable and clean, but also has the processes that are predictable, efficient and effective. I was wondering if you could please share with us your personal experiences supporting regulatory efficiencies and how you foresee being able to increase efficiency at the OEB to support timely decision-making and ratepayer interests.

Mr. Mark White: Thank you, MPP Martin. I'll start off with the points I made about the consultation. So after taking in the public interest, we then work very hard as a regulator—I think this is best regulatory practice—to make sure we're being transparent in setting out the overall parameters in which we will then make individual decisions about how we're going to decide on auto rates or how we're going to decide to enforce against conduct. But that is a transparent framework where we both should be transparent about our interpretation of the law, of other

policy inputs and our approach to how we'll actually discharge our statutory mandate.

That then gives the parties the certainty that we won't know their particular facts, but they will understand our view of the law and the policy and how we will approach those situations. When you have that type of transparency, then parties know how to conduct themselves. It also does, as I mentioned earlier, involve dialogue with other stakeholders, both government and non-government, and consumer perspectives, so that you're putting that all in and then you have a framework for making decisions.

The Chair (Mr. David Smith): Thirty seconds.

Mrs. Robin Martin: Thirty seconds?

Mr. Mark White: I have a feeling the next question— The Chair (Mr. David Smith): Thirty seconds.

Mrs. Robin Martin: You can finish. You have 30 seconds remaining.

Mr. Mark White: Thank you. So, at FSRA, we have actually taken very important actions to do that. We've actually created a guidance framework. We also respect that it's important to cut through red tape. We've taken 600 pieces of inherited guidance. We cut over 60% of them in our first two years and the others are all on a five-year review.

The Chair (Mr. David Smith): That's all the time you have, sir. I'm sure you have a lot more to tell us. We will turn to the opposition. You have 15 minutes.

Mr. Chris Glover: Thank you—

The Chair (Mr. David Smith): Carry on, MPP Glover. Mr. Chris Glover: Thank you for putting your name forward. We'll give you an opportunity to tell us some more here.

First of all, I just want to say, the work of the Ontario Energy Board is absolutely critical for our economic development in this province because energy costs can be a competitive advantage or a competitive disadvantage in this province. Right now, for example, our electricity rates are a competitive disadvantage. They're much, much higher than Quebec and other jurisdictions, so the work is absolutely crucial.

I was really impressed that you were talking about how the independence of the Ontario Energy Board is sacrosanct. There have been some conflicts between the government—and "government" means different things. So, there is the political side of government and then there's the bureaucratic side of government. Between the political side of government and the OEB, there have been some conflicts recently.

Let's see. I'll start with Bill 165, the Keeping Energy Costs Down Act, which threatens to lock in high greenhouse gas emissions for years, considering the current climate crisis. What can the Ontario Energy Board do to help steer Ontario towards lowering pollution from energy?

Mr. Mark White: Sorry; your question is, what can the Ontario Energy Board do to help?

Mr. Chris Glover: Right. What can the energy board do?

Mr. Mark White: The energy board is a manager of the marketplace as well as an adjudicator, so the retail marketplace. There are certain decisions related to fuel sources at a generation level on the electricity side, and there are other decisions that transition away from fossil fuels. Those are not directly within the mandate of the Ontario Energy Board to decide those questions. So it takes those as parameters within which it operates and makes its adjudicative decisions.

The Bill 165 and—you referred, I think, to the Enbridge decision. Those are examples of where there was an attempt by the regulator to independently discharge its adjudicative function. I haven't been briefed on it. I have read the decision. My understanding is that the government did not actually in any way interfere in that adjudication. They let the process run its course. But reading the decision and, in particular, the dissent, it appears that there were decisions made based upon what they believed the facts were, one of the facts being what government policy was to support energy transition. In fact, I think history has shown and the dissent says that all the facts were not actually in evidence to make the decision, and there was a considerable break from OEB precedent, which—going back to my comments on regulatory certainty, making sure that you're providing a good foundation for decisions is very important. So the fact that Bill 165 has been enacted gives the OEB a parameter to work within, and that is actually an important direction to the regulator when it's making those interparty adjudications. So that can actually be very useful.

It is important that the OEB fully and faithfully discharge its mandate as an independent adjudicator. But as a manager of the marketplace, it actually needs to understand the authorities of the other participants in the marketplace, such as the IESO, and to understand what is overall government policy so that you're actually finding a way to work in alignment but still discharging your statutory mandate.

Mr. Chris Glover: Okay. So with this one, the decision that the OEB made was that the government should not be subsidizing the expansion of natural gas lines into rural communities because it would be actually cheaper for those communities to have heat pumps and also that there would be stranded assets, because if we are to achieve net zero by 2050 and the interim targets along the way, the consumers, Enbridge consumers, which is the majority of the people in the province—we would be subsidizing the expansion of these gas lines which would become obsolete within a decade or two. So the OEB ruled that this was not a decision that was in the best interest of the consumers, of Enbridge consumers, in the province. The government has overruled that decision.

You talked also about—the other factor in this is that we are in an energy transition period. So we should, with the greenhouse gas emissions and with the forest fires and just—our climate is in crisis right now, and yet the government wants us to subsidize Enbridge's expansion plans.

How does this policy—so, you talked about the new bill. The new bill is overriding the OEB's decision. The OEB's decision was the best decision for consumers. It was the best decision of the future of the environment and the transition to green energy. How does the OEB fulfill its mandate for consumers and for the environment if the government is overriding decisions like that?

Mr. Mark White: Thank you for the question. There are a few predicates to your question that I'm not sure, actually, from my reading of the decision, support it, for example, that the government is subsidizing Enbridge's expansion—

Mr. Chris Glover: If I said "government," I should have said "consumers." The Enbridge consumers would be subsidizing it.

Mr. Mark White: Okay. And you are correct that one of the elements of the decision is the capital cost recovery in what period and that the energy transition is a very important factor in determining what not only will be the available life of installations of capital investment but also its useful life.

The energy transition, though, the primary policy-maker to determine that is the government of Ontario. So the government of Ontario, I understand, did not provide evidence. It was not a generic hearing. There was not a broader public consultation. As the dissent said, there were decisions made where there was not a full evidentiary basis. Assumptions were made or decisions were made based upon what they think developers would do, and I believe that a regulator actually has a duty to broadly consult with all participants that have input into the decision before it makes that type of decision.

0920

The fact that that decision was made—I have no doubt that the adjudicators were trying to faithfully discharge their obligations to make a decision based upon the evidence before them, but it is clear that they actually made assumptions, for example, of government policy on energy transition, that were actually not well founded. The fact that the government has taken action to show, "No, that is not our policy on energy transition," is an appropriate role for the Legislature. We're in a democracy. The regulator acts within its mandate and has to take those parameters as a given.

You also referred to the energy board as having an environmental objective. Its primary objectives are related to protecting the consumers, a reliable system and low costs. Where appropriate, obviously, it should take into consideration broader considerations of the environment. But again, those are matters that the policy direction should come from other actors in the public sector.

Mr. Chris Glover: So, just to clarify—and I want to give my colleague time on this as well—what I'm hearing is that the OEB made a decision based on what they thought was in the best interests of the consumers and what they thought was in line with the government's energy transition policy. But the government has since passed this bill that says, "No, our energy transition policy is for Enbridge consumers to support the Enbridge expansion," even if those assets—the additional gas lines—are going to be obsolete in 10 or 20 years and the consumers are going to be left holding the cost of these stranded assets. Is that a fair summary of what you're saying?

Mr. Mark White: That's not my understanding of Bill 165. I haven't been briefed on this. I have read it. Bill 165 is providing that policy direction, which you've rightly pointed out was incorrect in the OEB's adjudication. They thought there was a policy direction that there was not. And so that is appropriate for the Legislature—the elected, accountable officials to the population—to correct the regulator when they misunderstand the broader policy parameter. I believe that is always correct, because that is a fundamental part of our accountability. Bill 165—

Mr. Chris Glover: Actually, I want to make sure my colleague has time, so I'll pass it to my colleague MPP Pasma.

The Chair (Mr. David Smith): MPP Pasma, go ahead, please.

Ms. Chandra Pasma: Thank you very much for being here this morning, Mr. White. I want to follow up a little bit on my colleague's line of questioning. I appreciate that he focused on the energy transition, because it's something that's incredibly important and I think concerns us all.

I want to focus a little more on the other half of the mandate, which is the protection of consumers—which you've spoken about a number of times—because the OEB's decision would have actually saved consumers \$1 billion over the next four years, which, for the average consumer, works out to \$300. We have a major affordability crisis in the province right now, so \$300 for each consumer is actually a lot of money right now. That's a lot of food on the table.

So given that Bill 165 put a stop to this decision, how can the OEB exercise its mandate to protect consumers and ensure that they are paying the lowest possible prices?

Mr. Mark White: Thank you for the question. I'm not aware of the billion-dollar figure, so I can't comment on that.

There clearly is a trade-off to be made during the energy transition between natural gas as a fossil fuel versus electrification. The duration of that energy transition and how long the equipment will have in-place value is a question that is going to be determined by the policy driving that energy transition. There is clearly an upfront cost that has to be paid, and the question is, do consumers pay that upfront cost of natural gas expansion—because developers don't pay costs; consumers do—or would there be different decisions made by developers and consumers if there was no amortization of the capital cost over time?

That is a fundamental question. It is important for the regulator to make decisions based upon the value of the equipment and what should go into the rate base and the term over which it should be covered. That's an important role. But they have to make that in the fullness of evidence. So I talked about the need to understand energy transition. The decision also rightly notes that it is a comparison to electricity installation costs and electricity versus natural gas operating costs.

So my view is that those are also important pieces of that decision. If the OEB would like to actually look at that broader question in a generic hearing or through some type of public consultation, I think that would be completely appropriate—hopefully working closely with government, because it will be an overlapping area of jurisdiction,

because it will quickly get into the government's overall mandate.

Keeping rates down and having a reliable system are essential to what the OEB does, but it doesn't do it in a vacuum. It needs to make sure that it has the full input from all the different participants and the information to make those decisions.

Ms. Chandra Pasma: I do just want to point out that if the original decision had been maintained, it could have pushed developers to use more energy-efficient but also more cost-efficient models like heat pumps, making homes more energy-efficient and using community sources of energy such as solar, which would have not only supported energy transition, but would have also made things more affordable in addition to saving the \$300.

I have another question, because this decision now has been made by the government in favour of Enbridge. Enbridge's parent company has an annual revenue of \$43.6 billion. In 2022, the OEB refused Enbridge's leave-to-construct application for a \$123.7-million gas-pipeline-replacement project, and it looks like Enbridge is planning to refile that request. Bill 165 gives the government the power to force that decision through.

Then, also in 2021, the OEB fined Enbridge \$250,000 for using estimated bills instead of doing actual meter checks, which resulted in some significant catch-up bills for consumers. Enbridge now continues to fall below targets for meter readings.

With the government siding with Enbridge on so many issues, how does the OEB fulfill its mandate and ensure that Enbridge is not receiving further favourable treatment?

Mr. Mark White: I'm not aware that Bill 165 is about the government siding with Enbridge. My understanding is that it was going to be a way to transparently communicate parameters that are essential for the OEB to discharge its adjudicative function.

It also gives very important tools. You mentioned one is to make sure that there's the ability, where there is a policy vacuum and adjudication might also make a decision which is not fully fact-based, that they can get that information by way of a directive.

It also talks about the importance of broader consultation in generic hearings. I think those are tools, particularly in areas of overlapping responsibility between the OEB, other regulators or the government, that will actually make sure that in the future, decisions are made with the fullness of information, taking into account all the inputs that are available and allowing everybody who is a participant in the overall energy ecosystem.

The OEB, with its mandate of protecting consumers: You talked about important work it does in enforcing against Enbridge and other utilities where they're not treating consumers fairly; that must continue. But that is different from making sure that the marketplace is well managed by the OEB at a retail level, by the IESO at a wholesale level and by the government at a policy level.

Ms. Chandra Pasma: Do I have any time left at all?

The Chair (Mr. David Smith): That concludes the time available. We'd like to thank you very much for your presentation.

We will now move to consider the intended appointment of Mr. Mark White, nominated as chair of the Ontario Energy Board. Recognizing MPP Harris: Go ahead, sir.

Mr. Mike Harris: I move concurrence in the intended appointment of Mark White, nominated as chair of the Ontario Energy Board.

The Chair (Mr. David Smith): Any discussion? Are members ready to vote? All those in favour? All opposed? The motion is carried.

The deadline to review—

Interjections.

The Chair (Mr. David Smith): Order.

The deadline to review intended appointments selected from the May 3, 2024, certificate is set to expire on June 2, 2024. Is there unanimous consent to extend the certificate by 30 days? I heard a no.

That concludes our business of today. This committee does now stand adjourned.

The committee adjourned at 0934.

STANDING COMMITTEE ON GOVERNMENT AGENCIES

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Vice-Chair / Vice-Présidente

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