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**Official Report
of Debates
(Hansard)**

A-49

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des débats
(Hansard)**

A-49

**Standing Committee on
Government Agencies**

Intended appointments

1st Session
42nd Parliament
Tuesday 18 May 2021

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

1^{re} session
42^e législature
Mardi 18 mai 2021

Chair: Gilles Bisson
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 18 May 2021

Mardi 18 mai 2021

The committee met at 0900 in committee room 2 and by video conference.

The Vice-Chair (Mr. Aris Babikian): Good morning, everyone. I call this meeting to order. We are meeting to conduct a review of intended appointments.

We have the following members in the room: MPP Bouma. The following members are participating remotely: MPP Gates, MPP Miller, MPP Nicholls, MPP Pang, MPP Stiles, MPP Roberts and MPP Wai. Did I miss anyone?

Mr. Bisson, can you identify yourself and your location, please?

Mr. Gilles Bisson: Yes, Gilles Bisson; Timmins, Ontario.

The Vice-Chair (Mr. Aris Babikian): Thank you. We are also joined by staff from legislative research, Hansard, and broadcast and recording.

To make sure that everyone can understand what is going on, it is important that all participants speak slowly and clearly. Please wait until I recognize you before starting to speak. Since it could take a little time for your audio and video to come up after I recognize you, please take a brief pause before beginning.

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

SUBCOMMITTEE REPORT

The Vice-Chair (Mr. Aris Babikian): Now we will start with our first item on the agenda, and that is the subcommittee report. Our first item of business is the subcommittee report dated May 13, 2021. We have all seen the report in advance, so could I please have a motion? I see MPP Bouma.

Mr. Will Bouma: Thank you, Chair. Through you: I move adoption of the subcommittee report on intended appointments dated Thursday, May 13, 2021, on the order-in-council certificate dated May 7, 2021.

The Vice-Chair (Mr. Aris Babikian): Any discussion? Seeing none, are the members ready to vote? Yes. All those in favour? All those opposed? The motion is carried. Thank you.

INTENDED APPOINTMENTS

MR. THEODORE NEMETZ

Review of intended appointment, selected by official opposition party: Theodore Nemetz, intended appointee as member, Ontario Parole Board.

The Vice-Chair (Mr. Aris Babikian): We will now move to our review of intended appointments. Today we have Theodore Nemetz, nominated as member of the Ontario Parole Board.

As you may be aware, you have the opportunity, Mr. Nemetz, should you choose to do so, to make an initial statement. Following this, there will be questions from members of the committee. With the questioning, we will start with the official opposition, followed by the government, with 15 minutes allocated to each recognized party. Any time you take in your statement will be deducted from the time allotted to the government.

Now we are ready to hear Mr. Nemetz if he wishes. Mr. Nemetz, would you like to make a statement?

Mr. Theodore Nemetz: Yes, thank you. Good morning, and thank you for affording me this opportunity to speak to you today. I believe that you should have before you my CV, but I will give you a brief overview of my background.

I grew up in Vancouver, moved to Ontario in 1981 and have lived in the city of Toronto ever since. I practised law starting in British Columbia in 1973 and continue to practise to this day. And it just occurred to me that I'm closing in on 50 years of it.

In 1996 I was first appointed to a tribunal in Ontario and in the 25 years since that time I have been an adjudicator part-time on five different tribunals, both provincial and federal, in addition to practising law. What drives me as an adjudicator and as a lawyer is a passion for the liberty of the individual and to see that everyone whose liberty has been at risk has been afforded a fair and transparent process.

Although I do not now practise criminal law, I did in the past. I have been both a defence lawyer and a part-time crown attorney, and at one time a standing agent as a prosecutor for the department of justice, which is now called the crown prosecution service.

The position for which I am being considered is as a part-time member of the parole board of Ontario. The role of the parole board is first and foremost the protection of the public. The task assigned is to use all of the skills and evaluations available to assess the risk that any person poses to the general public and to make decisions consistent with public safety.

I had the pleasure of being a part-time member of the Parole Board of Canada, and through that work and training, I gained extensive experience and knowledge of

risk assessment and the application of those principles to parole.

As a member of the Indian residential schools adjudication process, I was keenly aware of and sensitive to the Indigenous population of Canada and the discrimination many within that community have faced. As an adjudicator, it is essential that all decisions must be made in an unbiased and fair manner and must be capable of withstanding not only the scrutiny of higher courts but of the general public.

As I indicated, I've been an adjudicator in various settings for about 25 years, including having served as chair of the Consent and Capacity Board, and I have been involved in training new members. I've had the benefit of what can only be described as the Cadillac or Mercedes of training for parole board, and that was the three weeks of training that was involved in my training for the Parole Board of Canada. I've had the opportunity to apply these skills in real life.

I've also had the chance to travel extensively within this province and to interact with many people from a wide variety of backgrounds, which has given me, in my opinion, a better understanding of the community.

It has been an honour and pleasure to serve the province in this way. Thank you.

The Vice-Chair (Mr. Aris Babikian): Thank you very much, Mr. Nemetz. Now we will go to the questioning. We will start with the opposition. I see MPP Stiles. Go ahead, MPP Stiles.

Ms. Marit Stiles: Thank you, Mr. Nemetz. Thank you very much for joining us this morning. I have a number of questions just—as you know, this is really the only opportunity where the people of the province of Ontario have a chance to, in theory, see the appointees that this government makes. We've had a large number of rather questionable appointments, but obviously you have a lot of experience and expertise particularly related to this. But I do want to ask you a couple of sort of preliminary questions and then delve in a little bit more into some of the specifics around the parole board.

My first question is, did anybody approach you to ask you to put in your application for this position?

Mr. Theodore Nemetz: No, they did not. I applied through the portal.

Ms. Marit Stiles: And was this the only position that you applied for through the portal?

Mr. Theodore Nemetz: No, there were several.

Ms. Marit Stiles: Okay, thank you. That's not unusual, I should say. I was just curious.

Looking at your experience, I wondered if you wouldn't mind explaining a little bit about your role—I'm just curious; I thought it was interesting—in the Indian residential schools project. Would you mind commenting on your experience with that?

Mr. Theodore Nemetz: I'm not sure exactly what you're asking, but the process was that, in accordance with the settlement with the federal government and the churches who ran and operated the residential schools, there was a compensation program that was put in place for people

who had attended residential schools and had suffered as a consequence of having attended. We received background information on the school, background information about the claimant. We went out and we met with the people, interviewed them, conducted a hearing—in the sense that it was more of an inquisitorial process in which the adjudicator does the questioning, and there are representatives of the government and a representative of the church on some occasions who would ask the chair for questions—and then a decision was made within the framework that had been agreed to and an amount of compensation awarded.

0910

Ms. Marit Stiles: That's interesting. I'm just curious, when you were holding those hearings, as you call them, were there alternative ways of conducting those hearings and stuff?

Mr. Theodore Nemetz: Well, there was only the one way of conducting the hearing, because we had a process we had to go through and certain information that we had to achieve. But were there smudge ceremonies? Absolutely. Were there people who were there to assist the Indigenous who were well-respected community elders? Yes, there were, and I got to participate in those and learn a little bit about them.

Ms. Marit Stiles: Thank you—

The Vice-Chair (Mr. Aris Babikian): Sorry, MPP Stiles, do you want to continue, or do you want to pass the question to your colleague Mr. Bisson?

Ms. Marit Stiles: I have a few more questions, but if MPP Bisson wants to continue first, that's fine too.

The Vice-Chair (Mr. Aris Babikian): Okay. MPP Bisson, go ahead. Unmute yourself, please. Yes, okay.

Mr. Gilles Bisson: My question is this: I've dealt with a lot of the individuals who were compensated as a result of that process. It always struck me that the compensation, rightfully so, was aimed at individuals, but there was no legacy funding for better education on-reserve, some sort of thing that would outlast the compensation going to individuals. Why was it that they never went there? There was no legacy, there was nothing—

Mr. Theodore Nemetz: I'm not in a position to answer that. That's way over my pay grade. I was simply hired to do part of the adjudication process. How they got there and the agreements that were made are way beyond me.

Mr. Gilles Bisson: But you guys never those had those discussions at the board level about how to compensate? It was all done by the government?

Mr. Theodore Nemetz: It was all done by the program that had been prepared. The claimants, the churches and the government had all reached a formula for compensation.

Mr. Gilles Bisson: Yes, well, just for the record, I think there are people, rightfully so, who were compensated, and some never got their compensation, but there was never anything in order to say, "Okay, in order to undo some of the damage, here are some programming dollars that are going to last a while to be able to deal with the after-effects of residential schools on-reserve."

Anyway, that was my question. Thank you.

Mr. Theodore Nemetz: Thank you.

The Vice-Chair (Mr. Aris Babikian): Yes, MPP Stiles, go ahead, please.

Ms. Marit Stiles: Thank you. Part of the reason I was asking that question, Mr. Nemetz, was just that we know that there's such an extraordinary overrepresentation of Indigenous people in our jails, in our provincial correctional system and federal correctional system. When I saw that, I thought that was an interesting part of your history and maybe something that you contribute in this situation.

I have another question. I was looking back at some of the research that's being done, particularly the 2015 review of the Ontario Parole Board. I don't necessarily presume that you've read it or anything, but it raised some interesting points around how few people are actually being granted parole—and going back quite a ways, like to the mid-1990s. It was really interesting. Something that I've been interested in in the past, for a long time, actually, is the very low number of people that are being granted parole. Around the mid-1990s, we started to see this dramatic decline in the number of people being granted parole. In fact, within 10 years, that had dropped by 91.8%—in other words, basically nobody. I think it's now about one in 100 is granted parole.

When they look back at why, the review that was conducted concluded that a lot of this was risk aversion on the part of the board, which one can understand. I think, probably, my perception, from talking to folks I know, is it seems to be linked to the fact that there really are very few community supports available, and so it would make sense to be kind of averse to the risk of just pushing somebody out there when you don't have the supports. On the other hand, what are the risks associated if you send somebody out there without the supports that parole at least provides?

So I wondered if you could comment a little bit on what you've seen, why you think those numbers are so low and if you agree with them, or if you think there are things that government—you know, we're all sitting here trying to learn from this opportunity—could be doing better to address that and perhaps better support the board, but also potential parolees.

Mr. Theodore Nemetz: Well, I can't speak to a lot of what you mentioned. I don't think I have read the report as much as I have read a summary of it, and I am aware of the numbers.

On the federal board, we were very careful because, as I said right at the outset, the standard is always the protection of the public. That's always the first and foremost. But at the same time, in the federal system, there is a considerable amount of programming within institutions that addresses a lot of the risk factors. Alcohol and drugs are probably the two biggest risk factors and, of course, mental health is another risk factor which isn't very well addressed.

But there are programs that address violence, that address alcohol use and drug use, and those are quite often long-term programs. They are not three-month, six-month

or 12-month programs; these are two-, three-, four- and five-year programs, and we would see the federal-system offenders who have been taking these programs for three and four years, and the light has finally come on and they've been able to adjust their behaviour accordingly. Thereby they mitigate a lot of the risk that they pose in the community, and it can be managed.

I don't know what programs are available provincially, but knowing that you only have a maximum two-year sentence, you don't have a lot of time to do a lot of the serious programming, and as I said, alcohol and drugs are probably the biggest driver of crime.

Ms. Marit Stiles: Okay. Thank you for that. Yes, it's true. Just in terms of that, are there things that you would be—when you sit on that parole board, you're making those decisions. Obviously those are things that you take into consideration, and I appreciate, obviously that risk to the public is the number one consideration, but it does seem like we increase the potential for repeat offences if we are releasing people into no support, nothing. Is this something you look for when you're considering?

Mr. Theodore Nemetz: It's always something you have to consider—

The Vice-Chair (Mr. Aris Babikian): A little bit less than five minutes left for the opposition.

Ms. Marit Stiles: Sorry; what was that?

The Vice-Chair (Mr. Aris Babikian): Less than five minutes left.

Ms. Marit Stiles: Apologies. Go ahead, Mr. Nemetz.

Mr. Theodore Nemetz: I'm saying that it's one of the factors that you have to look at. It's real. At the same time, you also don't want to turn out into the community, even on parole, somebody whose risk has not been mitigated, but at the same time knowing that there is a future date where they're going to be coming out of incarceration no matter what. It's that balance between—

Ms. Marit Stiles: And so in that sense, too, we've seen—and I'm certainly not putting it on this government's shoulders; we've seen it over decades now—a reduction in the supports and services available to inmates within the province's jails, as well. I mean, we've seen, as you pointed out, that there are very few mental health supports. Now, this was like 15 years ago: I personally was going in with Peter Kormos, one of the MPPs at the time, into some of our provincial facilities on surprise checks—which, by the way, MPPs could do then; I don't know if we can now—and finding an extraordinary number—in fact, the solitary units were all filled with people on suicide watch, which puts both the personnel in those correctional facilities, but also the inmates, at great risk.

0920

I feel like we've seen this reduction in supports within our facilities at the same time. That must be something that the parole board also is conscious of. You can't parole somebody when you know that they would be in a situation which may actually exacerbate the potential for them to come out and reoffend. It's more a comment than a question.

Mr. Theodore Nemetz: It's something that you are aware of. It's in the back of your mind at all times.

Ms. Marit Stiles: I'm sure. All right, thank you very much. I don't know if my colleagues have any further questions, but I appreciate your time here. Thank you very much.

Mr. Theodore Nemetz: Thank you.

The Vice-Chair (Mr. Aris Babikian): Thank you, MPP Stiles. Would anyone else from the opposition like to question Mr. Nemetz? No? I don't see any requests, so thank you very much to the opposition.

Now we will move to the government side. The government side has 11 minutes. MPP Bouma, go ahead.

Mr. Will Bouma: Yes, thank you, Chair. Through you: Mr. Nemetz, thank you so much for joining us today. Looking through your resumé—like you said, almost 50 years of service to your profession, to the community, and just about that long volunteering in different things too. At a time in your life when you could be putting your feet up, it looks like you're ready to get back to work and continue to work, and I really appreciate that.

I have just a simple question I was wondering if you could answer: What motivated you to apply for this position?

Mr. Theodore Nemetz: Well, as I said, having been an adjudicator for almost 25 years, I very much enjoy the work. I found the work on the federal parole board fascinating, wonderful, and it gives you a sense of pleasure and enjoyment.

Mr. Will Bouma: Great answer. Thank you very much. I will leave it to MPP Miller.

The Vice-Chair (Mr. Aris Babikian): MPP Miller, go ahead.

Mr. Norman Miller: Thank you, Mr. Nemetz, for putting your name forward for this position. Following up on MPP Bouma's question: What do you believe it takes to be an effective member of the Ontario Parole Board?

Mr. Theodore Nemetz: I think it takes an open mind, the ability to listen carefully and to read quickly, and to understand the role that you're fulfilling, the risk-assessment process.

Mr. Norman Miller: Very well; good answer. I'll pass it on to MPP Nicholls.

The Vice-Chair (Mr. Aris Babikian): MPP Nicholls, go ahead. Unmute. MPP Nicholls, you are on—

Mr. Rick Nicholls: There we go. Technology, you've got to love it sometimes.

First of all, good morning, Mr. Nemetz. It's nice to have you here with us this morning and to share your thoughts and ideas.

When I was in the wilderness—that is, for seven years in opposition—one of the critic roles I had was that of community safety and correctional services, for which I spent some time talking with people from parole and corrections. I found it very, very fascinating, so I'm very pleased to see that you are, in fact, applying for this position on the Ontario Parole Board.

But you know, the parole board has to try to balance two imperatives that come into conflict. On one hand, it's reintegrating offenders back into the community, and on

the other hand, it's ensuring the safety of our communities. So you've got both; how do we weigh this? I'm sure you take a look at the background of individuals. There are many, many different factors, I'm sure, that you look at because, again, you want to be fair to someone seeking parole. On the other hand, you have an obligation to the communities where these individuals will be reintegrated, ensuring that the communities are safe and there isn't a chance for the individual to, in fact, recommit a crime and so on.

What factors do you specifically take into consideration when you're doing this?

Mr. Theodore Nemetz: That's not an easy question, believe it or not. Because as you have pointed out quite accurately, short of serving a life sentence or an indeterminate sentence, everyone who goes into a jail, the first thing they learn is the day they can come out. And they are going to come out, whether they are of good behaviour, whether they've taken a program, whether they've done anything to mitigate their risk. If they have been given a sentence of X number of a period of time, at the end of that, they get to walk out the door—the proverbial \$50 and a new suit kind of thing. I'm showing my age when I say things like that.

Mr. Rick Nicholls: Me too. It's okay.

Mr. Theodore Nemetz: So you have, on the one hand, the knowledge that people are going to be released at some point. You need to know what they have done while they were incarcerated or while they were pending trial—what they have done, what steps they have taken to address their risk factors. That's really how you look at it. You want to look at the person who has got five impaired driving convictions and say, "Well, what have you done? Have you been to AA? Are you taking alcohol treatment programs? What did you do when you were on bail, pending your trial?"

I am reminded of the day that federally we had two parole hearings in one day, both of which involved alcohol—very heavy drinking. One person when he was on bail began his treatment for alcohol. He did some inpatient treatment. He became a member of AA as soon as he got into jail. He had been convicted of either murder or manslaughter, I don't remember which, and had spent about 18 years in jail. By the time he was up for parole, he was already the leader of the groups involved in the teaching of alcohol and how to deal with it. And he ended up getting parole.

The guy who didn't was the guy who had had about three car accidents in a short period of time, injuring people, and said, eh, he'll deal with his alcohol problem when he gets out.

Mr. Rick Nicholls: Well, it's interesting—

Mr. Theodore Nemetz: So—sorry.

Mr. Rick Nicholls: Go ahead.

Mr. Theodore Nemetz: The issue is always one of, you know they're going to get out at some point; what have they done to address that risk factor? You have to weigh that and just try and do the best you can with all of

the training that you've had to measure that. It's not perfect.

Mr. Rick Nicholls: No, I'm sure. You know, it's interesting, having raised three kids, it doesn't take my kids long to figure out, "Well, what answer does Dad want to hear?" And they'll give me that answer. I'm sure that on the parole board, some of those individuals who have spent time in jail, they want to find out a little bit about you to find out what answer can they give that will be the right answer that you want to hear, and you have to weigh that as well.

Mr. Theodore Nemetz: After 25 years of listening to this, you get a bit of a radar for what's nonsense and what's real.

Mr. Rick Nicholls: Is that—

The Vice-Chair (Mr. Aris Babikian): The government has four minutes left on its time.

Mr. Rick Nicholls: All right. I'll pass this over now to MPP Billy Pang. Thank you.

The Vice-Chair (Mr. Aris Babikian): MPP Pang?

Mr. Billy Pang: Good morning, Mr. Nemetz. It was a very interesting answer to MPP Nicholls's question. There's just one thing I want to look at from the other direction. What sort of engagement do you have in your community, say, volunteer work, other than the legal sector?

Mr. Theodore Nemetz: At this moment, none right now. When my daughter was a lot younger, we had formed our own ballet school for teaching and we helped a number of kids in that. It was mostly related to my daughter when she was a lot younger—a lot, lot younger.

Mr. Billy Pang: So you do not have other sorts of—

Mr. Theodore Nemetz: Right now, no. No, most everything has sort of fallen to the wayside, particularly in the last year and a half.

Mr. Billy Pang: I understand that. I asked this question because I believe other than your own professional experience, it may be an eye-opening experience if you have more opportunity to engage in different types of community volunteer work, so that you can—

Mr. Theodore Nemetz: No, I haven't. I can't mislead you; no, I have not in the last while.

Mr. Billy Pang: Okay, I appreciate that. I want to pass my next question to MPP Roberts.

The Vice-Chair (Mr. Aris Babikian): MPP Roberts, go ahead.

0930

Mr. Jeremy Roberts: Mr. Nemetz, thank you so much for presenting today and taking time out of your busy day to appear before the committee. It sounds like you have a lot of great qualifications to bring to the table for this role, so we appreciate your stepping forward.

I just wanted to ask, briefly—obviously, COVID-19 has changed the way a lot of our different agencies and government organizations operate, particularly for the Ontario Parole Board. We've had to move away from in-person hearings this past year. I'm just wondering if you think that there is additional value to having in-person, or if you think that virtual is something that can work well for parole board hearings. Do you think there are other

ways that the Ontario Parole Board could have better adapted to the situation? I'm just wondering about your general thoughts around the situation we find ourselves in and how that impacts the work of the parole board.

The Vice-Chair (Mr. Aris Babikian): Two minutes.

Mr. Theodore Nemetz: Well, having not been a member of the parole board as yet, I don't know that I can answer that. I understand most of them are being done by telephone. I think video is preferable, and in-person is preferable to video. But technology is what it is and you have to do what you have to do because the work has to be done, because the work is important and needs to be done. So you do what you have to do to get the work done.

Mr. Jeremy Roberts: Sure. That makes sense. I think, in our last minute, we have one last question from—MPP Wai, I think? Perfect. Thank you, Chair.

The Vice-Chair (Mr. Aris Babikian): MPP Wai, you have 20 seconds.

Mrs. Daisy Wai: Oh, I will have to be brief, then. Thank you very much, Mr. Nemetz, for your experience. How would you see your experience supporting you in this position on the Ontario Parole Board?

Mr. Theodore Nemetz: Well, thanks—

The Vice-Chair (Mr. Aris Babikian): Thank you very much, Mr. Nemetz. Unfortunately, the time is up. Thank you for coming and sharing your experience and skills with us.

MR. BRIAN SMEENK

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

The Vice-Chair (Mr. Aris Babikian): Now we will move to our next witness. We have Mr. Brian Smeenk—I hope I pronounced it correctly, Mr. Smeenk—nominated as vice-chair of the Ontario Labour Relations Board. As you may be aware, Mr. Smeenk, you have the opportunity, should you choose to do so, to make an initial statement. Following this, there will be questions from the members of the committee. With the questioning, we will start with the government, followed by the official opposition, with 15 minutes allocated to each recognized party. Any time you take in your statement will be deducted from the time allotted to the government.

You can start, Mr. Smeenk, if you have any opening remarks to make.

Mr. Brian Smeenk: Thank you very much. I do have a few opening remarks. Thank you, first of all, for the opportunity to appear before you and answer your questions today. It may be useful for you if I provide a little more information about myself to supplement what you see in my CV, which you have.

Although my whole professional career has been in Toronto, I was born and raised in London, Ontario. My parents were immigrants from Holland who came here after World War II. I was the fifth of their nine children, and the second one born in Canada. We were all encouraged to get a good education, but we had to pay our own

way. I did that by getting some pretty good summer and part-time jobs when I was in school, at places like Labatt's in London, Budd Automotive in Kitchener, McIntyre Porcupine Mines in northern Alberta and, when I was in law school, at the Anti-Inflation Board that Prime Minister Pierre Trudeau had created, in the economic research branch under David Dodge, who later became governor of the Bank of Canada.

Perhaps because I was a middle child, I developed an academic and occupational interest in dispute resolution. And perhaps because of the wide variety of industrial and government workplaces that I worked in as a young person, I developed an interest in human resource management and labour relations, because I was really curious about the vast differences in the culture of workplaces that I'd been exposed to.

When I was doing my master's degree at the University of Michigan, I was fortunate to work on two studies, under two different professors, studying the elements of successful labour dispute resolution systems. During that time, I obtained my first professional labour dispute resolution work when I received several appointments from the Education Relations Commission of Ontario to be a neutral fact-finder—ERC, as it was called. ERC fact-finders were appointed in those days to look into and issue public reports on why there was an impasse in negotiations between a particular school board and a teachers' union.

At that time, I was very interested in pursuing a career as a neutral in the dispute resolution field, and I was in fact offered an articling job at the Ontario Labour Relations Board's legal branch, but I instead accepted a position in the law firm of Warren Winkler. As you may be aware, Warren Winkler became one of Canada's leading labour lawyers, and following that had a distinguished judicial career, ultimately becoming the Chief Justice of Ontario, and he is still a leading mediator and arbitrator. So I was very fortunate early in my career to work closely with and be monitored by one of the very best in the field of labour relations and labour dispute resolution.

I later had the good fortune to become a partner at first one and then another of Canada's largest and best law firms, the second of which I retired from in January 2020. During the course of my career I've represented employees, as well as employers of all sizes across virtually every part of the private and public sector. I've represented small entrepreneurs, some of Canada's largest companies, nursing homes, hospitals, school boards, universities and government ministries, as well as crown corporations. I've litigated, arbitrated and mediated just about any kind of employment dispute one can think of, both in respect of unionized and non-union employees. I've negotiated literally hundreds of collective agreements.

Regarding the position that I'm here to discuss with the committee today: In a sense it would take me full circle to where I began, being able to contribute to the employment dispute resolution process as a neutral. When I decided after retirement from my law firm that I was interested in offering my expertise in the service of the public, I contacted the chair of the OLRB to inquire about possible

vacancies on this board. He is somebody who I've known and litigated against for virtually my whole career, before he became chair of the board, as he practised on the union side primarily, and I practised mostly representing management.

He encouraged me to create a public appointment profile and await a public advertisement for this role, which he anticipated might be forthcoming in the not-too-distant future. I did that, and ultimately, through that site I was notified of this vacancy. I applied and went through the competition process. That process included an interview by three senior officials of the Ontario Labour Relations Board, including the chair, and after that I understand I was recommended to the minister's office.

I would be very pleased to have the opportunity to use my 40 years of experience and accumulated knowledge in labour and employment matters to help resolve employment disputes in a fair and expeditious manner. I'm confident that I can make a positive contribution to making the system work well.

Those are my opening remarks.

The Vice-Chair (Mr. Aris Babikian): Thank you, Mr. Smeenk.

We will go to the government side. You have nine minutes left. MPP Bouma.

Mr. Will Bouma: Yes, thank you, Chair. Through you to the applicant: Thank you for joining us today, Mr. Smeenk. I'll try to keep it brief. Your resumé is thorough and your opening statement filled in those gaps.

I was just curious: The labour board mediates and adjudicates a range of employment and labour relations matters, from matters of certification of bargaining agents to reprisals under the Occupational Health and Safety Act. Given the qualifications to be an adjudicator of the labour board, such as the ability to formulate impartial and fair decisions and understanding of jurisprudence and rules of practice, can you elaborate on why you believe you are a good fit as a vice-chair? Perhaps you can touch on your practice at Fasken or previous experiences, as you've done already.

0940

Mr. Brian Smeenk: Thank you very much for that question. Yes, I think, really, it's the 40 years of experience in labour and dispute resolution that I can bring to the process. As I've said, I think I've seen and litigated, mediated just about any kind of employment dispute one can think of. I have always taken great pride in problem-solving and getting to a satisfactory resolution in the most expeditious way possible. I very much believe in win-win outcomes for the parties. So I've successfully done that as a practising lawyer and I know that I can do that successfully as a neutral now as well, and I do already have some experience doing so.

Mr. Will Bouma: I appreciate that very much. I'll turn it over, Mr. Chair, to MPP Pang.

The Vice-Chair (Mr. Aris Babikian): MPP Pang, go ahead.

Mr. Billy Pang: Thank you, Mr. Chair. Through you to Mr. Smeenk: You have extensive experience in labour and

environment law, both in the private and public sectors. Your practice, I see, includes clients like universities, hospitals, school boards and crown corporations. How have these experiences shaped your viewpoint when it comes to the work of the OLRB, such as the balance of considerations when it comes to resolving complex matters that include multiple, if not conflicting, interests?

Mr. Brian Smeenk: Thank you for that question. I think my experience across the public sector has shown me, and I've learned, the complexity of the public sector. As you say, MPP Pang, it's very complex, as we know, and there are multiple stakeholders and multiple interests, and one has to be sensitive to all of those interests as they affect a particular issue.

The OLRB is, I think, one of the leading tribunals that we have in Ontario of any kind, and a leading example of a successful dispute resolution process. It's very successful in mediating settlements of matters that come before it, and when that's not possible, it has a record of doing expert and excellent adjudication. I have participated in that as a counsel and I'm very familiar with how it operates. I am confident that I can add to its arsenal of talent to assist with that process.

Mr. Billy Pang: So do you see any working signs that you can resolve these complex matters?

Mr. Brian Smeenk: I'm sorry?

Mr. Billy Pang: Is there any—like, the definition: Okay, this is the way it should be to resolve this type of complex matter.

Mr. Brian Smeenk: Well, I think every matter is quite different. We've seen disputes recently in the news involving teachers and their concerns about the health and safety aspects of the pandemic response on the one hand, and on the other hand, the board sees certification disputes involving small units of employees in the private sector. So the differences of the kind of dispute are so vast, there is not one one-size-fits-all solution.

Mr. Billy Pang: Thank you, Mr. Chair. I want to pass the floor to MPP Nicholls.

The Vice-Chair (Mr. Aris Babikian): Four minutes left. MPP Nicholls?

Mr. Rick Nicholls: Thank you, Chair. Good morning, Mr. Smeenk. Born in London—you're not too far from my hometown of Chatham. When you mentioned the University of Michigan, all I want to say is: Go Blue. I could get into their theme song too, but I won't do that right now.

Our government introduced Bill 288, the Building Opportunities in the Skilled Trades Act, to broad support across both labour and management stakeholders, like LiUNA, the building trades, Unifor, the homebuilders' association, RESCON, the progressive contractors, and I'm sure there's more.

As that bill is going through the legislation process now, it is proposed that the OLRB would continue its role as the appellate body of notices of contravention regarding the prohibitions on the work of compulsory trades. Can you comment on that from your experience with the construction industry and your ability to preside over such matters?

Mr. Brian Smeenk: Thank you, MPP Nicholls. I'll just say with respect to Chatham, I have deep roots in Chatham myself. My in-laws are from Chatham, and I used to do a lot of work for a company in Blenheim back in the day.

Mr. Rick Nicholls: I probably know them—probably.

Mr. Brian Smeenk: Yes, you would, probably. He was a pretty prominent business person in the area.

To answer your question, I am somewhat familiar with the bill. I don't pretend to be an expert at it, but I do understand, in broad terms, the processes that it proposes to put in place.

I do have considerable experience in the construction sector, having represented construction clients for most of my career, off and on. One of my early cases before the labour relations board was, in fact, a jurisdictional dispute between two construction trades when computer flooring was just coming in to be known. The question was, what union had the proper jurisdiction to install computer floors?

These questions of the dividing lines between the trades are very important and they're not easy, because there is overlap. One just has to, I think, bring the knowledge of how the construction industry works and a sensitivity to the expertise of each trade but also where the grey areas are.

Mr. Rick Nicholls: Thank you very much. I'll turn it over to the MPP Miller.

The Vice-Chair (Mr. Aris Babikian): MPP Miller?

Mr. Norman Miller: Thank you, Mr. Smeenk, for putting your name forward—

The Vice-Chair (Mr. Aris Babikian): One minute.

Mr. Norman Miller: —for the Ontario Labour Relations Board. As you know, the Ontario Labour Relations Board is responsible for mediating and adjudicating a variety of employment and labour relations matters under the Labour Relations Act and over 30 other statutes. Do you have any thoughts on the strengths or weaknesses of the OLRB?

Mr. Brian Smeenk: Well, yes. My overriding thought, Mr. Miller, is it's a very strong tribunal. I think it is highly respected by the parties that appear before it. It has done an excellent job over the years of acquiring competent chairs and vice-chairs, as well as, very importantly, the labour relations officers and the staff that work beneath the board. It has always had an excellent cadre of labour relations officers who are very important in dispute resolution.

I would say that a challenge—not necessarily a weakness of the board, but certainly a challenge for the board is that it has, over the years, been given such a broad variety of mandates from so many different pieces of legislation that it's challenging, I think, to have expertise for all—

The Vice-Chair (Mr. Aris Babikian): Thank you, Mr. Smeenk. The government's time is over. Now we will move to the opposition. I see MPP Gates will start the questioning. Go ahead, MPP Gates.

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

Mr. Brian Smeenk: Great.

Mr. Wayne Gates: We've got something in common. I've spent most of my working life representing workers with first the UAW and then the CAW and then Unifor. I'm showing you my age there if you understand that process as well as you say you do.

Mr. Brian Smeenk: I do. I sat across the table from CAW representatives many times, when it was the CAW.

Mr. Wayne Gates: I'm sure, and I'm sure you didn't enjoy it as much either. I would like to ask you what motivated you to take this appointment, before I ask you some other questions.

Mr. Brian Smeenk: Well, when I decided to retire from the practice of law, I decided I wanted to do something in the public service and I wanted to do something that would allow me to utilize my expertise and my experience. As I said in my opening, I kind of wanted, when I was young, to work in a neutral field. That's always been something that I knew I would enjoy doing, so I wanted to come back to it and contribute in the public service in this way.

0950

Mr. Wayne Gates: So if you sat on the management side, you're familiar with a lot of stuff. But one that really has always bothered me is employers using scabs in the workplace. Down in Niagara, right now, as we speak, a place called TRW, which used to be Thompson Products, has been locked out and that employer is now using scabs, which is interesting to me considering that we're in a lockdown and they're busing workers in from Hamilton.

Do you have an opinion on whether employers should use scabs when you consider that 98% of all collective agreements are settled without a dispute? In my opinion—I'd like to hear yours—I find that by utilizing scabs, the relationship between both parties is really hurt and I believe it slows down the process and doesn't help the process.

Mr. Brian Smeenk: Thank you for the question, Mr. Gates. I don't have an opinion on whether that should or shouldn't be done, or whether it's a good or bad idea. That really is a policy question for the Legislature to consider. As you probably know, Mr. Gates, the Legislature has considered that question from time to time over the years. My job on the labour board would be to adjudicate the legislation and the rights and restrictions that are there as we have them. So I don't have a position on the policy question of whether that's a good thing or not.

Mr. Wayne Gates: I appreciate your response, but I would think that if you've been involved with it this long, that you would probably think whether it's a good or a bad idea from the employer's side. I understand that you don't want to answer the question fully, but it's one thing that I think the province of Ontario has been making a mistake for a long, long time on, utilizing scabs, because when you get 98% of all collective agreements resolved without it, I think the 2% isn't worth the hurt relationship to the employers and to the employees.

The one that Mr. Nicholls brought up on Bill 288, the Building Opportunities in the Skilled Trades Act, which is important both concerning *[inaudible]* extremely well. It's

important to have the opportunity *[inaudible]*. Unfortunately, they're rushing this bill through the committee. It's very, very concerning to me, so I just—

The Vice-Chair (Mr. Aris Babikian): MPP Gates, excuse me. We're having a problem with your Internet connection. Can you address that issue, please?

Mr. Wayne Gates: Can you hear me okay?

The Vice-Chair (Mr. Aris Babikian): Yes, we can hear you now. It's better.

Mr. Wayne Gates: Okay, thank you.

The Vice-Chair (Mr. Aris Babikian): Okay, go ahead. Continue.

Mr. Wayne Gates: Anyway, I was just saying that Bill 288 is being rushed through. It took two years to bring a bill forward, and to rush it through, I think, is a disservice to both parties, whether it be on the management side, whether it's on the union side. There is some support from the unions, but in talking to some of the unions over the last couple of days, the fact that it's being condensed so much, it's not giving them an opportunity to present, and I think that's a mistake. I think that goes, again, into labour relations that you're really familiar with, particularly on the management side.

I'm going to ask you a couple of questions around political parties. Have you ever donated to or belonged to a political party, a riding association or anything during your career?

Mr. Brian Smeenk: I've donated to all three major parties over the years. To the best of my recollection, I don't believe I've ever joined one of the parties. I always kind of followed Groucho Marx's advice: I wouldn't want to belong to a club that would have me as a member.

Mr. Wayne Gates: Do you remember if you ever donated to an individual candidate?

Mr. Brian Smeenk: I can't think of one off the top of my head, but I'm pretty sure I probably have. I'm not sure.

Mr. Wayne Gates: Would it have been an NDPer, would you think?

Mr. Brian Smeenk: I think I have, yes.

Mr. Wayne Gates: From 2019 to 2020, only 52% of cases were completed within 90 days from receipt of the initial application. I'm sure that COVID-19 has made delays worse. What do you think should be done by this government to make sure that more cases are completed within the 90-day time frame?

Mr. Brian Smeenk: I'm not familiar enough with the details of how the labour board is operating right now. I understand that it did pivot, to use a COVID word, quite quickly to virtual hearings and virtual mediations and that things are proceeding pretty well under the circumstances. As you may know, I'm now chair of the Public Service Grievance Board as well, and that board has pivoted to virtual hearings and mediations. It's not ideal, but it does keep the process moving along pretty expeditiously. So I'm sure things can be improved, but I couldn't answer your question in detail as to what the improvements might be.

Mr. Wayne Gates: I appreciate that.

This may be a little tougher question for you, but I certainly think we should have an answer to it. In 2018,

you wrote an article in the Financial Post entitled “Freedom Is Slavery at the Law Society of Orwellian Ontario.” Can you explain what you were arguing for this article?

Mr. Brian Smeenk: Yes. Well, that was one of the titles. It had different titles in different places. But that was a column about the concern about the very important constitutional issue of freedom of expression, and in that case, policy of our law society, which I felt involved compelled expression as opposed to freedom of expression. It was a concern about the independence of the legal profession. I turned out to be, I think, in the majority of the profession in that case. The governing body of the law society was pretty much overturned in the following election, and that policy was rescinded.

Mr. Wayne Gates: Okay. Thanks for that.

Are you aware that many organizations require employees to sign a workplace code of conduct as a condition of employment? Have you ever objected to signing such a code of conduct yourself? As a labour lawyer, have you encountered employers who have implemented such codes of conduct, and do you consider them a violation of free speech?

Mr. Brian Smeenk: That’s an interesting question, MPP Gates. I can’t think of a case where I’ve seen a requirement to sign a code of conduct. I’ve certainly assisted employers in writing up rules of conduct or codes of conduct, if you want to call them that, about the expectations of behaviour in the workplace. But I may have come across—I can’t think of examples where anybody was forced to sign a code of conduct, per se—

Interjection.

Mr. Brian Smeenk: Pardon me?

Mr. Wayne Gates: As a lawyer, you have written them for employers?

Mr. Brian Smeenk: Yes. I would say it’s very common for employers to have—

Interjection.

Mr. Brian Smeenk: Pardon me?

Mr. Wayne Gates: As their legal representative?

Mr. Brian Smeenk: Yes. It’s very common to have codes of conduct for behaviour in the workplace, things like “You can’t steal.” I can think of—Sunnybrook Hospital, for example, has something called a respect in the workplace policy. That’s a form of a code of conduct which is a very positive thing.

The Vice-Chair (Mr. Aris Babikian): Five minutes.

Mr. Wayne Gates: We’re having that problem with our nurses. They don’t feel they’re respected either in the workplace right now, which I’m sure you’ve heard of as a lawyer.

In an article, you claim that the LSO’s policy of promoting equality, diversity and inclusion is “abhorrent because it’s an attempt to compel speech by lawyers and paralegals.” Can you elaborate more on your position on that?

Mr. Brian Smeenk: Yes. I was not concerned about the promotion of equality and diversity—quite the contrary. I think that’s quite clearly a desirable thing. What I was concerned about was the compelled speech aspect, the

requirement at that time of the law society for lawyers to put together something they called a statement of principles. That sort of compelled speech was, in my view, a violation of the Charter of Rights in terms of freedom of expression, because nobody in our society is compelled to make statements.

Mr. Wayne Gates: What do you believe the law society’s motivation was behind creating this new policy other than noted recommendations from the 2016 law society committee report?

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Mr. Brian Smeenk: Well, the committee report speaks for itself. I think that was its motivation. I have no problem with the motivation. I think the problem was with the execution of the policy.

Mr. Wayne Gates: As I’m sure you’re aware, in many instances, the OLRB will handle claims for racialized individuals. These cases may very well deal with issues of racism, discrimination and inequality. How can Ontarians from the racialized community expect you to make judgments about their lives after you argued against the promotion of equality and diversity?

Mr. Brian Smeenk: I didn’t argue against equality and diversity—quite the contrary. To answer your question, I think one can look at my volunteer work in the community. I have been the president of something called the Merit Award bursary program, which I began 26 years ago. It, in a very clear and demonstrable way, assists students across the GTA in getting education, and something like 75% of our recipients in that program are racialized.

Mr. Wayne Gates: Before I move on to my next question, are you—

The Vice-Chair (Mr. Aris Babikian): Two minutes left.

Mr. Wayne Gates: Pardon, Chair?

The Vice-Chair (Mr. Aris Babikian): Two minutes left, MPP Gates.

Mr. Wayne Gates: I’ve only got two minutes left? Time goes quick.

Right now, the government is altering the structure of skilled trades and their regulations with Bill 288. That bill will grant powers to the OLRB to rule on issues within the trades like compulsory status and scope of practice. Do you believe the OLRB is the best organization to be dealing with these issues, and how familiar are you with the trades?

Mr. Brian Smeenk: Thank you. It’s not for me to answer whether the OLRB is the best tribunal to do the job. Again, that, it seems to me, is a policy question for the Legislature. The OLRB does have a lot of experience dealing with skilled trades, including dealing with jurisdictional disputes, which, as I said earlier, I’ve been involved with since the beginning of my career. So I have experience dealing with what are the key skills of each skilled trade. I think it is certainly able to do such work if the Legislature decides to pass the legislation as it’s now drafted, but as I said, it’s for the Legislature to decide whether that’s the best forum for those disputes or not.

Mr. Wayne Gates: I guess my other question is, how familiar are you with the trades?

Mr. Brian Smeenk: Quite familiar. As I said, I've done construction labour relations work for pretty much my entire career. When I practised with Warren Winkler and Roy Filion in that firm, a very substantial part of our work was construction industry work. I did work involving many, many of the different skilled trades.

Mr. Wayne Gates: I've probably only got a minute left, so I'll ask you a couple of more light-hearted questions, if you don't mind—

The Vice-Chair (Mr. Aris Babikian): Thank you, MPP Gates. Thank you, Mr. Smeenk. The time is up. Thank you, Mr. Smeenk, for coming and sharing your thoughts and your insights with us.

We'll now consider the intended appointment of Theodore Nemetz, nominated as member of the Ontario Parole Board. MPP Bouma will move a motion.

Mr. Will Bouma: I move concurrence in the intended appointment of Theodore Nemetz, nominated as member of the Ontario Parole Board.

The Vice-Chair (Mr. Aris Babikian): MPP Bouma has moved the concurrence for the nomination of Mr. Nemetz. Any further discussion? MPP Stiles, go ahead.

Ms. Marit Stiles: I just wanted to note for the record again that these committee hearings continue to be conducted without any kind of public opportunity to view. We talked at great length about some of the reasons that we've been given for that, but it still, to me, seems confusing when we know that other jurisdictions have managed it. Where there's a will, there's a way, and if this government wanted to prioritize public transparency and accountability, we'd be having the opportunity here. I think it does a disservice to our appointees today that they haven't been able to have that public viewing of these proceedings. I just want to put that on the record. Thank you.

The Vice-Chair (Mr. Aris Babikian): Okay. Thank you, MPP Stiles, for your comments. I see MPP Gates.

Mr. Wayne Gates: I'd certainly like to echo my colleagues. I think we've called for this now for about a month—MPP Stiles and MPP Bisson. I believe it does

create a disservice that you're having a committee of government agencies and it's not able to be viewed publicly, in a time of our history when everything's on Zoom. It just looks like there has been absolutely no effort over the course of the last month to have these proceedings go public and see what we're saying. I agree with my colleagues on the fact that I think it certainly does a disservice to the people who are volunteering, and also to people who maybe considered volunteering to a lot of these committees. A lot of them go unfilled, quite frankly, and maybe one of the reasons why they're unfilled is that they don't understand that they are available.

I want to say to my other two colleagues that I wish the PCs would put as much effort into this as they do some of the other stuff that they do, because I think it's equally as important.

The Vice-Chair (Mr. Aris Babikian): Thank you, MPP Gates. Any further discussion? Okay. Thank you very much. I see none. Are the members ready to vote? Yes?

All those in favour of the nomination of Mr. Nemetz? All those opposed? The concurrence carries. Thank you.

Now we will move to consider the intended appointment of Mr. Brian Smeenk, nominated as vice-chair of the Ontario Labour Relations Board. I see MPP Bouma. MPP Bouma, go ahead.

Mr. Will Bouma: I move concurrence in the intended appointment of Brian Smeenk, nominated as vice-chair of the Ontario Labour Relations Board.

The Vice-Chair (Mr. Aris Babikian): MPP Bouma moved the concurrence of the nomination of Mr. Smeenk to the position of vice-chair of the Ontario Labour Relations Board. Any further discussion? I see none. Are the members ready to vote? Yes?

All those in favour, please raise your hand. All those opposed? I see none. The concurrence is carried.

That concludes our agenda for today's meeting. I declare the session adjourned. Thank you.

The committee adjourned at 1009.

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