

Tuesday, May 6, 2003 Ethics Commissioner and Ombudsman Search

Date: 03/05/06

[Mrs. Tarchuk in the chair]

The Chair: Good morning, everyone. I'd like to call the meeting to order. In your packages you will have a copy of the agenda. I wonder if someone could move that we approve the agenda.

Mr. Tannas: So moved.

The Chair: Any discussion on that? All in favour?

Hon. Members: Agreed.

The Chair: Okay. That is carried.

You also have copies of the minutes of April 7. I wonder if someone would move that we could adopt those minutes. Kevin?

Dr. Taft: Sure. I'll move that.

The Chair: Okay. Any discussion? All those in favour?

Hon. Members: Agreed.

The Chair: Motion carried.

At our last meeting you had requested that the chair and the vice-chair pursue a candidate of choice, so Denis and I can report on that meeting and the follow-up since. I wonder if someone can move that just for this portion we move in camera.

Mr. Tannas: I would move.

The Chair: Don. Any discussion? All those in favour?

Hon. Members: Agreed.

The Chair: Motion carried.

[The committee met in camera from 11:37 a.m. to 11:44 a.m.]

The Chair: Okay. I wonder if someone could make a motion that the Select Special Ethics Commissioner and Ombudsman Search Committee recommend to the Legislative Assembly that Donald M. Hamilton be appointed Ethics Commissioner.

Gary. Any discussion on that motion? All those in favour?

Hon. Members: Agreed.

The Chair: Any opposed? Motion carried. Okay.

We also need a motion at this point that

provided Mr. Hamilton is appointed by the Lieutenant Governor in Council, the Speaker on behalf of the Legislative Assembly is authorized to negotiate an employment contract with Mr. Hamilton concerning salary and benefits.

Would someone move that motion?

Mrs. O'Neill: So moved.

The Chair: Mary. All those in favour? Any opposed? Motion carried.

In your packages you have a copy of the letter from Laurie and an indication of an interest to table a minority report with the Ethics Commissioner search committee report. On your yellow sheet in the package Karen has outlined for us the options that we have. I guess, very simply, today the decision that has to be made is whether or not a minority report becomes part of our report that we table in the Legislature. So I wonder, first, if someone would like to put a motion on the floor, and then we can discuss that motion.

Ms Graham: Madam Chair, having read the proposed dissenting report and looked at the rules which guide this committee and looking at the facts surrounding this situation, which as I recall involved all committee members coming together to agree on the process that we would follow, the screening of the applications, the screening interviews, and the schedule of interviews, and having been present for all of those interviews myself and knowing that at no time did the chair or anyone on the committee ever limit the scope of members of the committee to question candidates and in fact encouraged one in particular, Dr. Taft, to go ahead with questioning, certainly in my opinion there was no restriction on the ability to question the candidates. I don't think there is merit to the dissenting report, and therefore I move that we not include it in the report of the committee.

The Chair: Mary.

Mrs. O'Neill: Yes. I wish to speak to it. I thank you, Karen, for your giving us this information. My reading also of the standing committee is that a minority report may not be tabled in committees, and therefore I don't think we have the ability to do so.

Mrs. Sawchuk: Madam Chair, I guess it would be a play on words sort of, but the content could be considered a dissenting opinion and included in the report under that heading. So it wouldn't be tabled as a separate report attached to the report of the committee. It could be included as a dissenting opinion, you know, the actual content, the second page.

Ms Blakeman: That's right. There are two possibilities. Either it's included as part of the report, or it can be tabled under tablings during the routine of the day but not under tabling of reports from committees. So it's where it gets tabled.

Mrs. O'Neill: Madam Chair, the letter says to "please accept this document as a Minority Report of the Special Select Standing Committee."

Mrs. Sawchuk: Madam Chair, I did check it with Parliamentary Counsel and with the Clerk of Committees. Granted, it was sent to the chair under that heading. However, I guess in the interests of ensuring that there was, you know, a fair review of the information, the committee could choose to look at it in a different format if that was their decision.

Dr. Taft: I'm sure if that were the only obstacle, we could resubmit it as a dissenting opinion and then, you know, change the title of the document. The report obviously reflects on the process and concerns we have with the process. The Member for Calgary-Lougheed has indicated that the process was fully open, and in many ways it was. The limits, however, that I feel were serious were, first of all, the time limits, the scheduling limits. Given that this is a person who at some point may bring down the government, 45 minutes in my view is not sufficient for us to fully judge the situation.

There were comments – well, we're on *Hansard*, but I'll go on the record. This particular candidate, for example, raised some very interesting observations about earlier Premiers flying on corporate jets, and it's a matter of record that the current Premier flies to his fishing lodge on corporate jets. I would have thought other government members might want to probe that sort of issue.

The passing of time and some reflection open up other questions. I think there just was no opportunity to go back and probe further with this or any other candidate on issues that came up or maybe came up in subsequent interviews or maybe came up after a day or two's reflection. I'm quite clear, certainly based on previous experience, that recruiting to a senior position, much less one that could bring down a government, is worth more than 45 minutes of face-to-face contact with the committee, and I think the Member for Edmonton-Centre obviously feels the same way. That's the basis for our dissenting opinion.

Mr. Friedel: My concern is that I've sat on this committee for just about 10 years now, and I don't know how many legislative officers we've recruited in that time, but the process has always been pretty much the same. I guess just for a matter of record, Kevin, you referenced 45 minutes. The process actually involves a lot more than that. You review the applicant's résumé. Alayne does the preliminary review and interview. We go through the information that is presented to us from that, and then we do our own interview. I think the process allows ample time.

If we're going to select one office for special attention, then I would think we would want to identify in advance why that one should receive a different kind of a process than we have followed in others. I would suggest that the Auditor General, for example, has as much sway in terms of whether the government or, you know, any member of the Legislature is doing the right or wrong thing. Your comments about bringing down the government kind of imply that there might be something ulterior – and I don't think that's your intent . . .

Dr. Taft: No.

Mr. Friedel: . . . and that there is some special implication to this recruitment of this person at this time.

I guess my biggest concern is that by endorsing any kind of a special report, it would then say that we agree that there's something flawed in the process, and I certainly cannot agree to that. I personally felt that we went through all the motions that we would normally do. I don't think there was anything missing. That doesn't take away from the right of any individual members on this committee to voice a dissenting opinion, but I would have to agree with Marlene's motion that doing so officially on behalf of the committee would almost be tantamount to admitting that the process is flawed.

I have no problems with you or any of the members indicating that you had problems and using whatever method was there to get that message out, or if you have some concerns with the individual, you know, take those. But I certainly wouldn't agree to officially sanction something that would say that we made a decision in haste or in a flawed way.

The Chair: Denis.

Mr. Ducharme: Thank you very much, Chair. I echo a lot of the same concerns that my colleague Mr. Friedel has just expressed, but I do have a major concern with the comments that Dr. Taft has made regarding, let's say, the comments that have been made by that

candidate regarding the use of corporate jets. I think it's a very unfair statement for him to link the Premier to using corporate jets to go to his fishing lodge. I don't have evidence of that. I don't know if you have evidence of that. I know that it came up as a concern in question period by the opposition parties in the past, and I believe it has been addressed. I feel that the statement was very, very unfair, and I'd ask for a retraction. I don't think it has anything to do with the discussion that we're having right now dealing with a minority report.

11:55

The Chair: Raj.

Dr. Pannu: Thank you, Madam Chair. I find myself in a somewhat difficult situation to speak at any length about this because I missed the last, crucial meeting. I want to put on record that it was because of my misread of my own schedule, so I take the responsibility for it. But having missed the meeting and having made that observation, I want to focus on the contents of that one-page minority report. I will limit my comments to that. I think that if it is indeed the case, as stated here, that the request for additional interviews with certain candidates was declined, I certainly regret that because the committee, in my view, I think would have been in a much stronger position to make the case for appointment of the person of their choice had it allowed that request for further interview time and deliberation.

I think it's clear that we as members of the committee had only 45 minutes for direct chat back and forth between our shortlisted candidates. There are at least seven or eight of us here, and 45 minutes does limit our ability to probe. Sometimes questions that arise during that probe need some reflection and revisiting, and a 45-minute, one-session interview format doesn't allow that. So I think the observation made here by Dr. Taft and Ms Blakeman is something that I share and the concerns expressed there in that observation.

Given the limitations of the Standing Orders under which we operate, I think option (b) indicated on the yellow sheet is something that I would urge the committee to consider so that in the final report the committee introduces the dissenting opinion. Clearly, option (a) is not available. Option (c) is not, I think, something that I prefer. So option (b) is the one that I would recommend the committee to consider seriously.

Mr. Tannas: Two things. The first thing is – I'd like to ask Laurie and Kevin to help me with this one – that this minority, dissenting, or whatever report is not on the decision but on the time taken or permitted to reach the decision. Is that what we're talking about? So we're not dissenting with the decision.

Dr. Taft: That's right. This is not about the candidate that's chosen, particularly. This is about the process that was used, yeah.

Mr. Tannas: All right. Thank you. That makes me feel a lot better.

The second thing is that I didn't realize that we were really limited to 45 minutes – I thought we were trying to work at that – because I well remember one individual who went for, if memory serves me right, well over an hour. Some of us were beginning to think: is he ever going to stop talking? He had relatively long answers, thorough answers, mind you. I don't know whether it was a matter of record how long that particular one went, but it seemed to me that it went well past the hour. Maybe an hour and a bit is not that far away from being 45 minutes, but certainly we did seem to have some flexibility as I recall.

Thank you.

The Chair: Just before we move on to Marlene, just a comment for the record and a reminder. The evening that we had booked interviews, we booked an hour apart, and if I recall correctly, I think we started the first one a little bit early because the candidate had arrived early. The morning that we met, we had booked an hour and 15 minutes apart. My recollection in chairing the meetings is that I don't ever recall an interview where we actually – I mean, from my perspective, we exhausted the questions, and we made sure that there was no more discussion needed or more questions that wanted to be posed. As well, just a reminder that we did not follow up on the candidates and quickly make a decision. We actually took the next week off to, as Raj put it, reflect on the interviews and then had the discussion at the next meeting.

Marlene.

Ms Graham: Well, thanks, Madam Chair. I would certainly concur with you that there was no limitation placed on the interview process, and certainly no substantial objection was ever raised at the time, which would be the obvious time. And you know, Dr. Taft, you complained at one point, "Well, I don't feel that I have enough time," and you were encouraged by the chair and all members present to proceed with your questions. So any limitation that you feel was, I would say, self-imposed, and I think it's unfair to the chair and everybody else on this committee to now, when the process is done, go back and complain when you participated in setting the process and you agreed to it. I think it's very misleading and it's not being fair to this committee to now take that position and to suggest to us that we aren't being fair because we won't include this after-the-fact complaint on process when the process was agreed to by everyone and there was no objection at the time. So I'd ask you to reconsider your request to have this included, and if you're not prepared to withdraw it, then, Madam Chair, I think we should vote on my motion.

The Chair: Okay. I still have one more person on the speakers list.

Dr. Taft: Do I get a chance to respond?

The Chair: Sure. Go ahead. Oh, I'm sorry. Well, Mary's the last one on the speakers list, and then, Kevin, you may respond.

Mrs. O'Neill: Well, first of all, I would like to second the request of Denis to have you withdraw your comments, that I think were quite out of place, with respect to comments made by one of the candidates and then the comparison that you made or at least the reference you made to the Premier. I think it is absolutely necessary, since we are on record in *Hansard*, that you do so.

Back to the topic here. I find that the request for a minority report, for all of the reasons that have just been expressed by Marlene, is a reflection on how we have done our job and the process which you agreed to in the first place. I think we all spent a great deal of time and deliberation and concern, and we addressed the issue in various ways. But to suggest that 45 minutes was limiting and then to make the dramatic comparison about interviewing someone who could possibly then bring down the government I think is theatrical to begin with.

Secondly, I find that the process we entered into, agreed upon, and then acted upon and left open-ended for anyone to ask any questions for as long as it took – we were all in agreement to do so, so please don't suggest, which I find this request here before us does, that we

did not work as we had agreed to do within the rules or at least the process that we had agreed upon. We did our job, and it was not an easy job given the calibre of all of the candidates, and I do not like to be implicated in the fact that we didn't do our job.

12:05

Dr. Taft: Well, many comments have been made. I would have to go back through my notes, but certainly my understanding was that we were trying to keep the interviews to 45 minutes and that we were under some time constraints. That was quite clear. I mean, we can go back through the schedules and so on, but maybe it was an hour. My memory is that it was 45 minutes of interview and then 15 minutes or something for discussion. Regardless, it was clear, and it is in the minutes that both Ms Blakeman and I were concerned about the shortage of time. We did have a week off for reflection, and it was in that period where it became very clear to me that I had other issues I would like the opportunity to raise.

As for the theatricality the truth is that this is a position which could bring down the government, and the previous Ethics Commissioner was in that position at least once, if not more. So it's not meant to be theatrical. It's meant in the most serious manner possible. That's a distinct possibility for the person in this particular position.

I did raise an example in anticipation – and perhaps that was an error – of a question that had been put to me in an earlier meeting by the Member for Calgary-Lougheed: well, what sorts of questions would you have asked if you'd had more time? That was put to me while we were in camera in the meeting of April 7. I put that out as an illustration of the kind of question. Factually, I stand by that question. If it was a violation of confidentiality, I regret that, but factually I will stand with that question. It is exactly the kind of probe that a longer discussion would merit. I return again to my own experience, and generally I think the length of time allowed for the interview was quite brief.

Actually, I will make one other point. This was on the request for a minority report. It was a simple request. One way or the other it will be presented, and we just thought we owed the committee the courtesy to go through this channel. It doesn't look like it's going to succeed, so let's call the question and clarify the issue. I call the question.

The Chair: If there's no further discussion, we have a motion by Marlene Graham that

the committee not include the report of Ms Laurie Blakeman, member, and Mr. Kevin Taft, member, dated April 14, 2003, as a dissenting opinion in the final report, part 1, of the Select Special Ethics Commissioner and Ombudsman Search Committee.

All those in favour of that motion, please say aye.

Some Hon. Members: Aye.

The Chair: All those opposed?

Some Hon. Members: No.

The Chair: Motion carried.

You also have in your package a copy of the report of the Select Special Ethics Commissioner and Ombudsman Search Committee. The report includes the biography of Mr. Hamilton. A motion is required to accept the report. Gary will make that motion. Any discussion on the report? All those in favour?

Some Hon. Members: Agreed.

The Chair: Opposed?

Some Hon. Members: No.

The Chair: Motion carried.

Our understanding is that the committee will be tabling the report on Thursday.

Just a reminder of dates for our next meetings. We've set Thursday, May 15, 6 to 9 p.m., and Friday, May 16, 9 to noon, and those are the interviews for the position of the Ombudsman.

Mr. Ducharme: Once you're finished that item, I would certainly like to raise a concern.

The Chair: Okay.

Lastly, a future meeting Wednesday, May 21, 9:30 to 10:30, to discuss a decision on the candidates for Ombudsman.

Go ahead, Denis.

Mr. Ducharme: Thank you, Madam Chair. I go back to the request that I talked about earlier in regard to the comments that Dr. Taft made. I still feel that there has to be a retraction of those comments linking the Premier to comments that have been made by a candidate. I think they were inappropriate and didn't belong here in this discussion today.

The Chair: Do you have a comment on that?

Dr. Taft: I'm missing something. Help me understand why they're inappropriate, Denis.

Mr. Ducharme: Well, I felt that by linking a comment that had happened during the interview – you then came forward and made accusations that the Premier was using corporate jets to go to his fishing lodge.

Dr. Taft: Well, if you find that those are unproven, I would withdraw. But, in fact, if you go back to *Hansard*, the Premier openly admitted that and said that it happened more than once and wasn't a big deal, and the Premier's chief of staff confirmed it. So I was using what I understand to be a factual example. If I'm wrong, I will retract it with apologies.

Mr. Ducharme: If I correctly recall that discussion that took place during those questions and answers at that time, there was also a statement made that the Progressive Conservative Party of Alberta paid for that fare at that time. You've brought in an innuendo, you've made an accusation, and it's just improper to have said it today. It has nothing to do with our discussion, and I'd ask for a retraction, please.

Dr. Taft: Well, I'm not planning to retract. It is exactly those kinds of gray areas that I thought would have been fruitful topics for further discussion. So I just don't feel that I'm wrong in using that example for the purposes you're describing, Denis.

The Chair: Laurie.

Ms Blakeman: Thanks. Exactly how much time is allotted to interview each of the candidates in the next round?

The Chair: We have one on Thursday evening booked at 6:30. So that is open-ended. We have two on Friday morning one hour apart.

Ms Blakeman: This committee has been in the habit, in my time of serving on it, of having a 15-minute turnaround in between candidates. So would I take it, then, that if a candidate is to be interviewed on Friday, May 16, at 9:15 and the second candidate follows at 10:15, in fact we are considering a 45-minute interview here?

The Chair: Or using up to the hour. I don't know that we specify that 15 minutes have to be set between the candidates.

Ms Blakeman: Okay. I'll stand by my earlier points. I do not believe that 45 minutes is enough. I would like to see a minimum of a 60-minute interview face to face between candidates and members of this committee. If in fact 45 minutes is being considered for the interview of the candidate on Friday, May 16, at 9:15 a.m., could we please – or I'll put it before the committee as a motion if necessary – ensure that it is a minimum of a 60-minute face-to-face interview? Perhaps we need to formalize this.

Dr. Taft: The other option is to allow time for a second interview.

Ms Blakeman: Well, second interviews don't seem to come, and obviously a collegial approach is not always entirely satisfactory. So if we need to get this recorded in *Hansard* and through motion to begin with, I'm happy to do that now and put forward that motion, that it be a 60-minute minimum interview.

The Chair: Denis, on this point?

Mr. Ducharme: Yes. Madam Chair, this committee over the past year, a little over a year now, has been involved in hiring three officers of the Legislature. Not once do I ever recall seeing as we were doing the interview that someone said: "Okay. Time is up. Let's move on. We've got to move on to the next candidate." I don't recall that ever happening, and I don't envision seeing something like that occur either. If we're not finished asking the questions, the other individual is going to be very comfortable on a chair in the other room, and we have people that can say: "Hey, the committee is running a little overtime. Excuse us. It'll be a little longer before you come in for the interview." But not once do I recall any of us telling any member to say: "Hey, time is up. We've got to wrap up."

Ms Blakeman: Well, with respect, this is putting things both ways. No, there's no limitation on it, but when I try to say that I'm having problems with the 45 minutes, that I'd like it longer – and I will point out that for the previous two positions that were interviewed for, that of the Auditor General and the FOIP Commissioner, the interviews were planned at 60 minutes. I think that in fact there was an hour and a half between candidates, so that was even an hour and a quarter. So the 45 minutes really stuck for me, and I'm not comfortable with this sort of looseness, of saying: well, if you need more time.

I'm conscious of being in a minority on this committee, and I would like to have a more formal understanding of the minimum amount of time. If you want to leave it open as to the maximum amount of time, that's fine, but I feel very strongly that 45 minutes is not enough. I would say, looking at this, that a 45-minute interview is anticipated in at least one case here, and I would like to clarify that the committee would agree that it would be a minimum of 60 minutes, which hopefully would alleviate any future problems around timing or people feeling constrained. I tend to obey the general wishes of the committee, and I was certainly under the

impression, perhaps erroneously, that we wished to conclude interviews within 45 minutes, and I would have held future questions if we were close to that 45-minute mark. So I'd like to see it acknowledged at more than 45 minutes.

12:15

Ms Graham: I'm not sure what point I'm on at this juncture, but, you know, with all due respect, if you had questions that you held back from asking in those interviews, then you didn't do your job. I mean, we can take a week, we can take two, and we can always come up with new questions: well, I wish I'd asked that, or I wish I'd asked that. I'd ask you, Dr. Taft, why you didn't ask Mr. Hamilton the question that you now say you'd like to ask him. If you weren't prepared, well, that's unfortunate, but you didn't do your job. And the same with Ms Blakeman. If you had questions you didn't put to the candidates, you didn't do your job, and I'm sorry that you didn't, but that's not our fault. You've never been restricted, and you never will as long as I'm on this committee.

Ms Blakeman: Well, I've moved beyond this past one. I'm asking for the future. That's what I was suggesting, and that's what this discussion is about. You're saying that you don't wish to see that.

Ms Graham: You've never been restricted and you never will, but we're just trying to utilize everybody's time. Quite frankly, Ms Blakeman, you had a very difficult schedule for us to work around. You could not be available most of the times that the rest of us could. So we worked around your schedule, and we really tried to accommodate you.

Dr. Taft: I'm sorry. You know what? This is getting out of hand. This is ridiculous.

The Chair: Can I just make a suggestion here? We have on the Thursday just the one candidate, so obviously there's not going to be a problem with taking as much time as we want. Can I make the suggestion for Friday that – Alayne, have we told the first candidate 9:15 or 9 o'clock to be on hand?

Ms Stewart: We told them 9:15. There is an hour between there, the hour until 10:15. We ask them to fill out some forms when they come in, to do a reference signing to confirm that it's okay for us to check references and that. We ask them to do some paperwork on the front end.

The Chair: So it could be up to an hour and 15 minutes, sticking to this schedule. Is that fine? Okay.

Dr. Pannu: I think, Madam Chair, you have addressed the question, suggested a solution. The problem that could arise is with one of the candidate's schedule. That's the only one where we're tight. I'm talking about 9:15 to 10:15. That's the only one-hour sort of tight slot, and if we could adjust that, that resolves the problem.

The Chair: And it sounds like we probably have done that with the instructions that have been given.

Dr. Pannu: Yeah. So you have proposed a solution, and that should work so long as we all share the understanding that more time needed should be more time given.

The Chair: If there's no more discussion on that, could someone move that we adjourn? Gary. Any discussion? All those in favour?

Hon. Members: Agreed.

The Chair: Opposed? Motion carried.
Thank you very much.

[The committee adjourned at 12:19 p.m.]

