

Fourth Session - Thirty-Ninth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Tom Nevakshonoff
Constituency of Interlake

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Thursday, January 21, 2010

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Tom Nevakshonoff
(Interlake)**

**VICE-CHAIRPERSON – Mr. Rob Altemeyer
(Wolseley)**

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

*Hon. Mr. Blaikie, Hon. Ms. Howard, Hon.
Messrs. Mackintosh, Struthers*

*Messrs. Altemeyer, Cullen, Dewar, Goertzen,
Nevakshonoff, Pedersen, Mrs. Stefanson*

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster

WRITTEN SUBMISSIONS:

James Beddome, Green Party of Manitoba

MATTERS UNDER CONSIDERATION:

*To consider the process for hiring a new Chief
Electoral Officer.*

* * *

Clerk Assistant (Mr. Rick Yarish): Good evening. Will the Standing Committee on Legislative Affairs please come to order.

Your first item of business is the election of a Chairperson. Are there nominations for this position?

Mr. Gregory Dewar (Selkirk): It's my pleasure to nominate Mr. Nevakshonoff.

Clerk Assistant: Mr. Nevakshonoff has been nominated. Are there—[interjection] Are there further nominations?

Seeing none, Mr. Nevakshonoff has been elected Chairperson. Would you please take the Chair.

Mr. Chairperson: All right. Good evening. Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Dewar: It's my pleasure to nominate Mr. Altemeyer.

Mr. Chairperson: Mr. Altemeyer has been nominated. Are there any other further nominations?

Seeing none, Mr. Altemeyer, you are hereby appointed Vice-Chairperson.

This meeting has been called to consider the process for hiring a new Chief Electoral Officer.

I have a few points of information for the committee.

For your reference, copies of an excerpt from The Elections Act have been provided for members of the committee. I would note that section 22 of The Elections Act specifies that, in the case of a vacancy in the office of the Chief Electoral Officer, the Standing Committee on Legislative Affairs must consider candidates for the position and make recommendations to the president of the Executive Council.

We have received a written submission on this matter from James Beddome from the Green Party of Manitoba. Copies have been distributed to the members. This is not our usual practice for a meeting of this nature, but is it the will of the committee to include this submission in the *Hansard* transcript of this meeting? [Agreed]

Before we go any further, how long does the committee wish to sit this evening? The floor is open for suggestions.

Hon. Bill Blaikie (Minister of Conservation): Well, Mr. Chairman, it would seem to me that how long we sit would depend on how long it takes to conduct the business that the committee has in mind for tonight, but I'm hoping it would only take a couple of hours. It's what, 6 o'clock now? We can—we can leave it open and consider when we—when we want to end the committee somewhere down the line. Don't know if we have to make that decision right now.

I'm a rookie when it comes to legislative committees in this place, Mr. Chair, so—where I come from—or came from—the committee times were fixed, so, I don't know, does the opposition have a suggestion?

Mr. Kelvin Goertzen (Steinbach): We can review at 8 o'clock.

Mr. Chairperson: It's been suggested we review at 8 o'clock. Is the committee agreeable? *[Agreed]* We will do so.

Mr. Goertzen: Mr. Chairperson, I have a motion for this committee.

I move

THAT the Standing Committee on Legislative Affairs postpone its search for a new Chief Electoral Officer until the government of Manitoba commits to a public inquiry into the New Democratic Party's campaign financing arrangements from the 1999 general election.

Mr. Chairperson: Okay. I'm just going to read the text of the motion, for clarity, moved by Mr. Goertzen,

THAT the Standing Committee on Legislative Affairs postpone its search for a new Chief Electoral Officer until after the government of Manitoba commits to a public inquiry into the New Democratic Party's campaign financing arrangements from the 1999 general election.

Is that correct Mr. Goertzen?

Mr. Goertzen: That is correct, Mr. Chairperson.

Mr. Chairperson: The motion is in order. The floor is open.

Mr. Goertzen: Mr. Chairperson, members of the committee, ladies and gentlemen, what we have before us today is, perhaps, one of the most important matters for discussion that any committee could discuss, and I believe in the importance of all the independent officers that the Legislature has reporting to it, including that of the Auditor General and the Ombudsman, but I'm not sure that there's a more important officer for each of us, obviously, here at the table and for others in Manitoba than the Chief Electoral Officer.

In that role, that individual must be not only impartial, but be seen to be impartial. Each of us as candidates who have run for election rely upon that impartiality for our own individual campaigns, as well as for the central campaigns that each of our parties engage in and run.

I don't think that most Manitobans probably think much in terms of the role of the Chief Electoral Officer other than they rely on a fair and democratic

process, and I think they've come to expect that in our province that that process will take place, and it is through the Chief Electoral Officer that elections should be conducted fairly and that all parties should participate fairly.

What we have in Manitoba, though, is a very unique situation here today. We are here, obviously, because of the announced resignation of Mr. Balasko from his long-term position as the Chief Electoral Officer for the Province of Manitoba, but, make no mistake, this is not something that took place in isolation. There's been a long lead up to this resignation, and I know there are some members of the committee who might suggest that this is something that's unrelated and untied to past events, and I would say to them that they live in a Pollyannic world that many people would love to live in.

* (18:10)

But the fact is that when you look at what's happened over the last couple of years in terms of disclosures about what happened in 1999 where the New Democratic Party in 13 of their campaigns purposely falsified election returns to secure \$76,000 of taxpayers' funds that they were not entitled to, and that they knew they were not entitled to, through a deliberate scheme to claim election expenses that should not have been rebatable by the public. Following that scheme, the New Democratic Party applied pressure on Elections Manitoba to have removed a gentleman by the name of David Asselstine who was a renowned—an internationally renowned—auditor who believed that there was problems and that there was potential legalities with what was happening with the NDP's return in 1999. Elections Manitoba bowed to that pressure and removed Mr. Asselstine from the file and from Elections Manitoba work altogether.

We only learned the details about this over the last couple of years as a result of a Mr. Jim Treller, who was an NDP insider who came forward to bring forward specific information along with information that presumably was leaked from Elections Manitoba, in itself an extraordinary event. And in the course of those discoveries from Mr. Treller, from information that came forward to our party, we realized that there was a long and—trail where the New Democratic Party, in working with the Elections Manitoba, was able to get this situation of the \$76,000 illegally obtained taxpayers' funds swept under the carpet so that Manitobans wouldn't hear about it at least until after the 2003 campaign. And,

frankly, they probably never would have heard about it had it not been for Mr. Trellor and for information that was leaked from presumably Elections Manitoba.

So it was an extraordinary circumstance where, in the 1999 campaign, you had Elections Manitoba aggressively prosecuting certain candidates from some political parties for, one would say, in terms of financial means, relatively minor matters, and yet worked extensively with the NDP to ensure that their \$76,000 rebate scheme—which had gone for a number of years, I might add—wasn't brought forward to the public in a timely way. In fact, the now Premier (Mr. Selinger) himself recognizing that this was a concern, asked for a letter of absolution from his political party—didn't come forward to the public, but asked for a letter from his own political party.

And so, with that background, we learned of Mr. Balasko's resignation after Mr. Balasko had lost the confidence of two of the three recognized political parties in the Manitoba Legislature. And the NDP would have us believe now that none of this is related and that we should simply close our eyes and go forward with the selection of a new electoral officer even though there's a cloud that's over that office, not just the individual, but over that office. We've had a senior elected official with the federal government come forward and say that he has concerns. We've had organizations like the Council of Women; we've had media through editorial boards come forward with concerns. We've had other outside organizations, NDP members, who have said that this needs to be investigated.

This cloud over the Elections Manitoba office—not just over one individual, it's about the integrity of the office. And yet the Government House Leader (Mr. Blaikie) and members of the government would like us to just simply close our eyes, go ahead and elect, or—and hire a new electoral officer and to put them into that same position, to put them in a position, into an office that has questions surrounding its operation, that has questions surrounding its impartiality.

And I say to members of this committee, and would say to all Manitobans, that we do no service to anybody that we would hire into that position, regardless of their qualifications or backgrounds, we would do no service to those—that individual, to put them into an office that has this hanging over, and it's up to the government to clear the air through a public inquiry so that we know exactly what transpired with

the NDP and with Elections Manitoba in 1999, and only then could an individual go into that office and not be constrained by the cloud that currently is over Elections Manitoba.

And make no mistake, we all rely on the impartiality. We all rely on the integrity. We all rely on the notion that Elections Manitoba operates fairly and equally and that all political parties are held to the same standards when conducting elections. And to put an individual, whoever he or she might be, into that office with the taint and the concern that hangs over that office now, without an independent inquiry, would do no service to the conducting of elections in the province. It would do no service to that individuals. And it would certainly do no service to each of us around here as elected officials who rely upon that office.

So I'm going to say to the Government House Leader (Mr. Blaikie): I know in the past the government has used its majority to shut down committees and they were looking at discussing this issue. They've used their majority in the past to try to change the election process and to try to change the election laws. This is no time for that sort of approach. This cannot be the sort of process where the government uses its majority to ram through a process, to try to have somebody go into an office, regardless of their qualifications, that I think justifiably has a lot of questions and concerns around it, and whether or not it's operating in the way that all Manitobans rely upon it to operate in a democratic society.

So I'm going to ask the members of the government to go back to their—by passing this resolution—to go back to others in the government and say we want to have the air cleaned. We want to ensure that this taint is removed. We can do that through an independent inquiry into what happened in 1999, and then we can move forward with getting somebody into that office who can have the confidence of all political parties, those represented in the Legislature and others who will be operating in the next election because that confidence is fundamental—fundamental to the democratic process that each of us rely upon, that each Manitoban relies upon.

I look forward to hearing the comments from others around this table who would also support the notion of a free and democratic election through the operation of an independent office, as perceived to be independent, that is operating independently, and

that can only be accomplished through an independent inquiry in terms of what happened with the NDP and Elections Manitoba in 1999.

Thank you very much, Mr. Chairperson.

Mr. Kevin Lamoureux (Inkster): Mr. Chair, I appreciate and would support the motion that's been brought forward by the member from Steinbach.

I do believe that it is important for us to recognize our independent offices and there is no other office, and it's, over time, developed more into an institution, that is critically important in terms of having public confidence in, and no matter what it is that the government might believe, I would argue that there is a lack of public confidence in Elections Manitoba's ability to be unpartisan.

There have been some issues that have been raised in regards to Elections Manitoba's actions, or lack thereof, in certain situations, and those issues, in my opinion, have put a grey cloud over Elections Manitoba's office, and just because the Chief Electoral Officer has decided to step down for whatever reasons, it doesn't clear the slate.

I believe that there is a need for a public inquiry. Not only is it important that this institution do things in an impartial way, but it has to be perceived as doing things in an impartial way. Over the last couple of years, more specifically, in the last number of months, we have seen a couple of situations that have come to the floor of the Legislature, and it's been articulated quite well as to why it is that Elections Manitoba tends to have the perception of favouring—taking an action that seems to be in the government's best interest, the New Democratic Party's best interest, and this has happened now on more than one occasion.

The government needs to be concerned about it because you have two opposition parties inside the Legislature that have said that we want to see a public inquiry. We believe preferential treatment, or the perception of preferential treatment, is there, and I think that we need to get to the bottom of this.

* (18:20)

The member from Steinbach made reference to the 13 candidates, and the—and the whole exchange and my understanding of it is very simple. You have 13 candidates, their campaigns, and they listed workers as volunteers, in essence, and that's the way they recorded it on their election papers. And then someone from campaign central within the NDP—we

really don't know who—but someone ultimately had that reversed. And I understand official agents weren't even told about it.

There should be no doubt there was an intent by the New Democratic Party to take tax dollars by making this change. And I've used the term of "steal," that the NDP attempted to steal \$75,000, and I don't say that lightly. That's what it looks to me as if the NDP tried to do.

Then when you watch as to what had taken place afterwards, Elections Manitoba has no problems and—you know, there was a time in which I was very critical of the Conservatives when they were in government. And when Vic Toews had some issues related to Elections Manitoba, there didn't seem to be any problem in terms of taking Mr. Toews to court, and I believe there was even fines that were involved.

And, you know, I try to contrast the two. Which one is more serious? And I think to the layperson, I would've thought, that an attempt to steal \$75,000 or, you know, from the taxpayers, would've been of a more serious nature. And again, that's an allegation, and I say that because I see the deputy clerk is watching as I try to explain myself.

You know, in the Monnin inquiry there was a recommendation that there should be a code of ethics, and in that code of ethics, if political parties didn't adopt it and didn't implement it, then there would be an obligation on the government to bring in legislation, in essence to put in a code of ethics. Well, you know, I've been raising these issues related to the NDP on another—on another front, and you know, Elections Manitoba ultimately said, well, it's up to the political parties. Yet the Monnin inquiry said that ultimately if parties aren't gonna do it, it should be brought in form of legislation.

Why did not Elections Manitoba pursue the issue, you know? And it's one of those issues that I believe that ultimately benefited the government by not pursuing, just like the 13 candidates. Why was there never any strong actions taken? And that's why, you know, when I sit back and I look at issues of this nature, it does seem that there is some—or appear to be some preferential treatment that's going on, and it is in favour of the New Democratic Party or the governing party.

And here now we have a situation where there's a need for us to provide clarity, clear the air. Let's look at what's happened over the last number of

years, and ultimately, I believe, we would be doing a disservice to hire a Chief Electoral Officer under the circumstance that we find that we're in today.

Any hiring of an electoral chief officer has to be done on a consensus. We have—and Clerk, or you, Mr. Chair said, well, we have The Elections Act before us. And, yes, you know, there's something that's in the law that says the process, but I believe that all Manitobans expect the right thing to be done here. And that is, if you're gonna have and hire an electoral—a Chief Electoral Officer, that that Chief Electoral Officer has to have the confidence of all the political parties that are represented inside this Chamber and beyond.

It is not appropriate and, I would ultimately argue, unethical for a government to use its majority in order to try to hire an electoral—a Chief Electoral Officer when they cannot even muster the support of one opposition party in terms of—in terms of the process, and I suspect that it is something in which would merit looking at legal action against government if, in fact, they attempted to do that.

You cannot be as arrogant to believe that you have the right to go and pick whoever it is you want as the Chief Electoral Officer. The government does not have that right. You know, in law, they might be able to articulate as to, yes, we do, the law says we can. Well, ultimately, I think there's something that's more important than that. And I believe, at the end of the day, that Manitobans as a whole would want to see an Elections Manitoba office that has the support of all political parties, and the government is doing a disservice by trying to push the issue of trying to hire someone under the current situation.

And that's why I support what it is the member from Steinbach is doing. Bringing forward a motion, in essence, saying that we need to have a public inquiry and let's get on and do that, do just that, have the inquiry. You know, what is the government so fearful of that it's not in favour of having an inquiry? If they have done nothing wrong, then, obviously, they shouldn't be in fear of it. And if that by having that inquiry is going to restore public confidence and all-party confidence in the Elections Manitoba office, I would suggest to you, then, that's what we need to do.

And, as I indicated, I support the motion and I look forward to hearing the government's response, and, hopefully, they, too, will see the merit of the motion and then we can go forward from that.

Mr. Blaikie: Well, Mr. Chairman, I guess I could begin by saying that I am somewhat disappointed, but, nevertheless, because I did receive a letter from the—from the honourable member from Steinbach earlier in the day, I'm not surprised by the—by the motion. Although there wasn't the formal notice of the motion, as such, but there's certainly an indication on the part of the official opposition, now supported by the Liberal Party, or the independent member on the committee, that, you know, they would like to see the process which, and the job that this committee now has before it, held hostage to an ongoing debate that's taken place in the Legislature for some time, primarily during question period, the persistent desire to refight the election of 1999. As the former Premier Gary Doer often used to say, it doesn't matter how many times we go back to 1999, it still has the same outcome.

And what we're concerning—what we're concerned about here is the future. And this committee has a job to do. And that's why the committee was called into being this evening because the Chief Electoral Officer of Manitoba has resigned. He has resigned after many years of service, and there is a process, which has been employed in the past, to select independent officers of the Assembly, in this case, the Chief Electoral Officer. And I did communicate with the honourable member from Steinbach that what we had hoped to do this evening, and which, I hope, we may yet do after honourable members have had a chance to put their views on the record, is to commence a process similar to the one that was used to select the Auditor General in 2006.

That's not a case apropos of what the honourable member from Inkster had to say of the government imposing its will on the Legislature or on the committee. It was a case of setting up a process whereby there would be a subcommittee of this particular committee. People—we agreed at that time—I say "we," I wasn't here—but the parties agreed at that time that there would be a panel of independent people, a panel that was agreed on, and that they would conduct the interviews and do the screening, and whatnot, and make a—recommend a short list to the subcommittee and that we would proceed from there. And it was the thing that was done on the basis of consensus. It wasn't something that was done through government fiat or in some dictatorial way. And that's exactly the same process that we are hopeful of engaging in when it comes to replacing the chief elections officer of Manitoba.

* (18:30)

So I reject, categorically, that what the government's trying to do here is impose its will on the committee or on anyone else with respect to who might be the next chief elections officer of Manitoba.

We do have a responsibility to impose not just our will, but the will of the law of Manitoba that when someone is—retires or resigns, that they be replaced, and that's the responsibility that the government takes very seriously, and it's a responsibility that's before this committee tonight.

And so what I had hoped to do, and I want to just put it on the record is that what we're suggesting—and what I suggested to the official opposition—was that—and this is what the government would have preferred—was that we would have proceeded tonight, and at some point we will, the subcommittee of the Standing Committee on Legislative Affairs be struck to manage the process of hiring a new Chief Electoral Officer. This is all what was done when the new—when the current Auditor General was selected a couple of years ago: that the subcommittee report back to the committee with recommendations; that the subcommittee consist of four government members, two official opposition members and one independent member involving everybody; that the subcommittee have the—*[interjection]*—the government has a majority. Well, the government often has a majority. When the government has a majority, the government has a majority—that the subcommittee have the authority to call their own meetings and be able to undertake duties it deems necessary in order to fulfil its responsibilities in the hiring process.

We'd like to see the subcommittee pursuant to the process that was followed in the past—*[interjection]* I say to the honourable member from Steinbach, I mean, I sat here while he and the other members sort of participated in great calumnies against my—and unsubstantiated allegations against my party. So, I mean, I would just hope that he would try and be a bit civil. He can always go wild later—that the—*[interjection]*—I'm saying that the subcommittee, I'm hoping that the subcommittee would, at some point, then, be able to appoint an expert advisory panel of two or three members agreed on by the subcommittee to assist in the hiring process, and, ultimately, provide the subcommittee with a prioritized list of candidates. The subcommittee could then establish the terms of reference for the expert advisory panel, and, finally, that the

Legislative Assembly staff be authorized to attend all the meetings of the subcommittee.

So this is a process, Mr. Chairman, that has been—was followed in the past. It was agreed on in the past. It doesn't necessarily have to unfold this way. If the, if the opposition had other suggestions as to how we could arrive at consensus we could have entertained those suggestions, but none were offered because what's on the table is an attempt to hold this particular process hostage to a particular view that the two opposition parties have with respect to Elections Manitoba. And the fact of the matter is is that we have a job to do. We have a responsibility to live up to, and we are not seeking the right to impose anything. We are seeking, at the moment here tonight, to start the process, and if we want to have a new chief elections officer by the time that the current chief elections officer resigns or his resignation takes effect, then it seems to me we have a responsibility to commence that process tonight.

And I hope that the official opposition and the honourable member from Inkster, having had an opportunity to put their views on the record—well known views, I might add, but nevertheless, views that they obviously hold strongly—that at some point we can move beyond this motion, which the government does not intend to support, and live up to our responsibilities as a committee to begin the process, the consensus seeking process by which a new chief elections officer for Manitoba might be selected.

This is not the appropriate venue in which to hold the process, not the government that the official opposition is holding hostage here to its view that there should be a public inquiry. It's the rule of law that's being held hostage by the official opposition and the member from Inkster, because what the government is trying to do here is to live up to its responsibilities and responsibilities of this committee to commence the process and to commence it as soon as possible so that the people of Manitoba know that this particular committee takes its responsibilities seriously.

Mr. Chairperson: Thank you, Mr. Blaikie.

Mr. Cliff Cullen (Turtle Mountain): Well, thank you very much, Mr. Chair, and I thank you for the opportunity to speak to this particular motion.

I will be speaking in favour of this motion. I thank the member for Steinbach (Mr. Goertzen) for bringing forward this motion and it's good to see the

Liberal Party are also in favour of this particular motion.

The member for Steinbach is also the Progressive Conservative Justice critic and I think the point should be made that this really is a matter of justice for all Manitobans. There's a clear cloud hanging over the Elections Manitoba office, and even with the resignation of the CEO, that particular cloud has not been removed.

So, if the minister and the Government House Leader (Mr. Blaikie) believes in responsibility, if he believes that his government is responsible, his government would do the right thing and call a public inquiry so that the issue can be put behind us, and we can move forward here in the province of Manitoba with a new CEO for Elections Manitoba, and we'll have all those outstanding issues resolved when he or she moves into that particular office. And I think it's something that all Manitobans would like to see justice served here.

There's a history of the NDP in terms of trying to cover up various events. They've been reluctant to call public inquiries on very important issues across Manitoba, whether it be a Crocus fiasco, or here we are now in Elections Manitoba, with some interesting developments over a number of years where we have—we still have actually sitting members of the NDP caucus involved in these allegations. I would think those members that are still sitting, including the Premier (Mr. Selinger) of the Province, would like to have the air cleared, have their names cleared, and if there's—if there's nothing there to hide I'm sure they would be willing to call an inquiry as to have this matter resolved.

Mr. Chair, it really is about the integrity of Elections Manitoba and that's the important issue here. And we would like to see the integrity of the office resolved and that we move this thing forward. If there was any illegal, untoward, fraudulent activities that did take place during the 1999 campaign, that those issues are dealt with and we move forward so that the integrity of the office is brought forward and brought to the highest regard.

So, with that, I certainly speak in favour of this particular motion.

Mrs. Heather Stefanson (Tuxedo): Mr. Chair, just briefly I'd like to add that, you know, certainly there is a time and a place for a process such as this to replace an independent officer who has decided to resign from office, and all we are asking is that

members opposite agree to a public inquiry as to what took place.

So, as soon as that does take place, we're happy to move forward with the process and move on from there, but there is a time and a place for a process like this. When the very integrity of the office is in question, that we're trying to replace by setting up this committee, how can we possibly go forward with this type of a process? It's impossible. It would be completely unfair to anybody who would be coming forward to replace that office, completely unfair to those people, completely unfair to the people of Manitoba, when the independence of that office is in question.

So what we need to do here is clear up some of the allegations that are out there. We need to have—the only way to do that is through a full-blown public inquiry in order to clear the air, then we're happy to go through with the process of replacing that person who has resigned as the Chief Electoral officer—officer—with Elections Manitoba. Until that takes place, it's absolutely impossible and I don't see how members opposite could not agree with this.

How could we possibly find a replacement for an office that is—where the very integrity is in question? It's unfair to Manitobans. It's unfair to all of us as elected officials or anybody who wants to run for any party in the next election. And, you know, for those reasons I encourage members opposite to speak up tonight, tell us why you don't—you would not support this. But I would encourage you to look—to think about those that are looking to run for our parties, each of our parties, and other parties out there, and do what's right for democracy in Manitoba and support this motion. Thank you, Mr. Chair.

* (18:40)

Mr. Chairperson: Seeing no further comments, is the committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: The question before the committee is as follows, moved by Mr. Goertzen:

THAT the Standing Committee on Legislative Affairs postpone its search for a new Chief Electoral Officer until after the government of Manitoba commits to a public inquiry into the New Democratic Party's campaign financing arrangements from the 1999 general election.

Shall the motion pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All in favour of the motion, please say aye?

Some Honourable Members: Aye.

Mr. Chairperson: All opposed please say nay?

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

Formal Vote

Mr. Goertzen: I request a recorded vote, Mr. Chairperson.

Mr. Chairperson: A recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 6.

Mr. Chairperson: The motion is accordingly defeated.

* * *

An Honourable Member: Point of order.

Point of Order

Mr. Chairperson: Mr. Goertzen, on a point of order.

Mr. Goertzen: For the record, Mr. Chairperson, each of the government members voted against the public inquiry. Each of the opposition members voted for a public inquiry. I suspect that the member for Inkster (Mr. Lamoureux), had he had a vote on this committee, also would have voted in favour.

Seeing that the government is unwilling to adhere to a democratic right of Manitobans, members of the opposition are unwilling and certainly fear that we cannot participate in the dissolving of integrity of Elections Manitoba. We wish you a good night, sir. We will not participate in this process.

Mr. Chairperson: Mr. Goertzen does not have a point of order.

* * *

An Honourable Member: On a point of order, Mr. Chairman.

Point of Order

Mr. Chairperson: The honourable House leader, on a point of order.

Mr. Blaikie: I wonder, Mr. Chairman, if we still have quorum and the committee could proceed, but I wonder if it would be useful to have a five-minute recess, so that the remaining members of the committee could confer as to what the committee might do now in the circumstances.

Mr. Chairperson: Okay, first of all, we do have quorum and a recess of five minutes has been requested. What is the will of the committee? *[Agreed]*

* * *

Mr. Chairperson: We will have a five-minute recess.

The committee recessed at 6:43 p.m.

The committee resumed at 6:50 p.m.

Mr. Chairperson: Okay. I'm gonna call the meeting back to order and I'm just going to read into the record from the *House of Commons* practice—or *Procedure and Practice*, some advice on quorum and it is as follows: "As a courtesy, most committees do not begin their meetings until at least one member of the opposition is in attendance even if a quorum is present. However, committees may meet and adopt motions in the absence of one or all opposition parties." So with that—and that is found on page 844, as I said, of *House of Commons Procedure and Practice* by Marleau and Montpetit.

So, with that advice, I'll open the floor to questions.

Mr. Blaikie: Mr. Chairman, I might just add, apropos of your reading from Marleau and Montpetit, that you'll notice that the courtesy is to be extended at the beginning of a meeting, but you don't start a meeting until members of the opposition or one member of the opposition is present. If members of the opposition choose to leave at some point during the meeting, then that's a different matter altogether. And it's clear from what happened tonight that the official opposition has no intention of

co-operating in the process of selecting a new chief elections officer.

The government is—will take its responsibility seriously. This committee, and those of us that are still here tonight take that responsibility very seriously, and so, with that in mind, Mr. Chairman, I move

THAT a subcommittee of the Standing Committee on Legislative Affairs be struck to manage the process of hiring a new Chief Electoral Officer;

THAT the subcommittee report back to the committee with recommendations;

THAT the subcommittee consist of four government members, two official opposition members and one independent member;

THAT the subcommittee have the authority to call their own meetings and be able to undertake duties it deems necessary in order to fulfil its responsibilities in the hiring process;

THAT the subcommittee appoint an expert advisory panel of two or three members to assist in the hiring process and ultimately provide the subcommittee with a prioritized list of candidates;

THAT the subcommittee establish the terms of reference for the expert advisory panel, and that Legislative Assembly staff be authorized to attend all meetings of the subcommittee and the expert advisory panel.

I have a copy of the motion here, Mr. Chairman. If I might speak to the motion—

Mr. Chairperson: Just one second. Order.

Okay. It has been moved by the honourable House leader

THAT a subcommittee of the Standing Committee—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense? Dispense.

The motion is in order. The floor is open.

Mr. Blaikie: Yes, Mr. Chairman, I mean, I think it's unfortunate that the official opposition isn't here to offer whatever comments they might have about this process, but I feel better about it in the sense that I know that this is a process that they have agreed to before, which I think it's important to put on the record, and, secondly, that it's a process which includes them fully in all the ways that they have been included before in previous processes for

choosing officers like the Auditor General, or, in this case, the Chief Electoral Officer.

So our hope is certainly that, in spite of the fact that they walked out of the committee tonight and aren't prepared to continue the work of this committee, we are prepared to continue the work of the committee, and that's why I moved this motion. And it's important, I think, to get this motion passed tonight, I say to members of the committee remaining, so that we can get this process under way. And I hope the members of the opposition and the honourable member for Inkster (Mr. Lamoureux), who we've included in the process before and want to include now, will see fit, once the process has been established to participate in it, because it is important, notwithstanding the ongoing debate about the 1999 election of what may or may not have happened.

I mean, obviously, the government has a different point of view with respect to all of those issues and with respect to what constitutes, you know, preserving the integrity of a particular office. I don't think you preserve the integrity of the chief elections officer and of Elections Manitoba by constantly calling its decisions into disrepute. It's—the fact of the matter is is that it was the NDP that respected the integrity of the chief elections officer and Elections Manitoba by agreeing to pay back the money that Elections Manitoba ruled on. This happens to many people, any party, and this has been recorded time and time again in the Legislature and elsewhere that many parties have to refile. It's not a question of fraud or falsification or stealing or all the other words that have been—have been used. It's a question of—it's like filing your income tax. You make a claim. They make a—they say, no, I'm sorry, that doesn't count. You have to do it this way; you have to do it that way. Not everybody who files a return and then has to file another return is charged with evasion or fraud or whatever. This goes on all the time in all kinds of these kinds of processes, and this is what went on then. That's our view of the matter and our government would be highly irresponsible if it yielded to the call for a public inquiry every time someone thought that because there was a dispute that there was something untoward going on and that, therefore, an inquiry should be called.

So the view of the government is quite different than the view of the opposition on this, and our view of this tonight is that this process, a very important process for choosing a new chief elections officer of

Manitoba, shouldn't be held hostage to this ongoing debate between the parties in the Legislature with respect to these other issues. This, then, will have no effect on the integrity of whoever comes to be chosen as the chief elections officer or on the office of the chief elections officer unless, of course, the opposition parties continue to act in the way they are. They will be the ones who will be, who will be undermining the integrity of the office and whoever comes to hold that office if they continue to behave in this way.

So, Mr. Chairman, I've moved the motion. Others may wish to speak to it, briefly, I hope, and I think that we can—let's get this process under way. We have the right to proceed and it's never a preferred option for a committee to work in the absence of others but it's certainly happened many times in many legislatures and parliaments. So, with that, I would urge my colleagues to support the motion and proceed from there, Mr. Chairman.

Mr. Chairperson: Thank you. Are there any further speakers? Seeing none, is the committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: Okay, the question before the committee is, as I read just a moment ago, the motion moved by Mr. Blaikie.

Shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: The motion is accordingly passed.

All right, well, that concludes the business of the committee.

The hour being 6:58 p.m., what is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: The committee rise.

COMMITTEE ROSE AT: 6:58 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: To consider the process for hiring a new Chief Electoral Officer.

Dear Members of the Legislative Committee on Standing Affairs,

I. INTRODUCTION: Providing some context.

This committee, The Legislative Committee on Standing Affairs (herein referred to as "Standing Committee"), is meeting to begin the process for hiring a new Chief Electoral Officer (herein referred to as "CEO"). As the Standing Committee is likely aware the previous CEO Richard Balasko had a thirty year career with Elections Manitoba, and held the position of CEO for twenty years. Balasko is leaving amidst cries from opposition party leaders for him to resign or elaborate further on the decision not to proceed with prosecutions against any NDP party member regarding the improper recording of union workers as expenses rather than donations-in-kind during the 1999 election. Balasko for his part has claimed that the law keeps him from speaking openly about the investigation.

This controversy hurts all Manitobans! It is neither good for our democracy, nor is it fortunate, that a long-standing CEO's integrity is in question. There are serious allegations that need to be addressed. The NDP party, and those individuals involved could voluntarily waive their rights to privacy and allow Elections Manitoba the right to release the information regarding the investigation. Or a public inquiry could be called. Either way it is vital to a vibrant democracy to clear the air, one way or another. That said, nothing is conclusive at this moment, and it is more productive to look at the selection of a new CEO as an opportunity to review what other jurisdictions have done in order to determine how we can avoid these types of problems from occurring in the future.

II. LEVEL OF CONSENSUS: Making the appointment process multi-partisan!

Under *The Elections Act (C.C.S.M. c. E30, s. 22,23)* if the CEO position is vacant or will be resigning within a year the Standing Committee on Legislative Affairs is to consider candidates and make recommendations to the President of the Executive Council (also known as the Premier), and the Lieutenant Governor is to appoint the CEO. Thus in Manitoba in effect it is the Premier who tells the Lieutenant Governor who to appoint, based upon the the recommendations made by the Standing Committee. In this way we can see that under a majority government the Premier has a considerable amount of sway in the appointment process, and this thereby needlessly politicizes the appointment process.

Under British Columbia's *Election Act (R.S.B.C. 1996, c. 106, s. 4.1)* the Lieutenant Governor is to appoint, on recommendation of the Assembly, a CEO who has been unanimously recommended by a Special Committee of the Legislative Assembly. When the Special Committee of the B.C. Legislative Assembly last met in 2002, the Special Committee of the Legislature was largely composed of Liberals but importantly it included Joy McPhail, a B.C. MLA and Provincial Leader of the opposition NDP, thus the perspectives of at least two parties were considered during the selection process. It should be noted that although dominated by Liberals the Special Committee was reflective of the composition of the Assembly at the time which was overwhelmingly Liberal.

Appointment of a CEO in Prince Edward Island, according to the *Election Act (R.S.P.E.I. 1988, E-1.1, s. 2)*, requires a recommendation by the Standing Committee on Legislative Management, and a resolution by the Assembly with more than a 2/3rds approval from the P.E.I. Assembly.—thus under this system, with the present NDP majority in Manitoba, some opposition support would still be required to appoint a CEO.

Most provinces do require some form of legislative oversight in the selection process, but the two statutes above, stand out as exemplary because they require a high degree of consensus in the appointment process. Therefore in most ordinary circumstances, appointment of a CEO would require approval from multiple political parties. If multiple political parties perspectives are taken into account during the selection process then there will be less of a basis to question the CEOs integrity.

II. LIMITING TERMS: Providing an opportunity for periodic review.

Many provinces also limit the term of a CEO. In most cases CEOs can be reappointed, but particularly, if as discussed above, a bi-partisan process is used, this can provide a very valuable opportunity to hold the CEOs accountable.

British Columbia (*Election Act, R.S.B.C. 1996, c 106 s. 6*), and Saskatchewan (*Election Act, R.S.S. 1996, E-6.01, s. 4.4*) limit the term of a CEO from the date of appointment until 12 months after the completion of two general elections, and in Alberta (*Election Act, R.S.A. 2000, c. E-1 s. 3.3*) the appointment is limited to a 12 months period after a single general election, before re-appointment or retirement is

required. New Brunswick (*Election Act, R.S.N.B. 1973, c. E-3, s. 5.1.1, 5.1.2*) in contrast limits the term of a CEO to a fifteen year maximum; CEOs are appointed to term ranging from eight years to ten years, and this can be extended for an additional five years before the CEO must retire.

III. CONCLUSION: Looking Forward

Nothing in life is perfect, and it seems fair to mention the above-mentioned provinces have also had their share of controversy. The political controversy in Alberta, surrounding the removal of Lorne Gibson instantly comes to mind. I do not pretend that these other provinces statutes are perfect, rather I think given that we in Manitoba are now beginning the process of selecting a new CEO, that we should look at the strong points of other provinces legislation to craft our own unique "made-in-Manitoba" process. I have highlighted how other provinces have term limits, and a higher degree of consensus in the appointment process. Being in transition from one CEO to another, presents the perfect opportunity to amend the *Elections Act* accordingly.

I would note that today I received an e-mail from Mr. Blaikie, in which he indicated that he "... would be happy to arrange to meet ... to hear the input that the Green Party of Manitoba has to offer regarding the hiring process of the Chief Electoral Officer." I thank the Minister for this invite, and will follow up accordingly, but I do believe that the input of political parties needs to be formalized into the process. One idea, similar to the BC model, might be that CEO candidates would need to receive unanimous approval from a committee composed of a designate from each registered political party in the province.

In any event, what we need to do is to try to de-politicize the process by which the appointment of a CEO is done. Sitting before us we have the perfect opportunity to do so. I hope that you will take these ideas into consideration. I would also be more than happy to speak to the Standing Committee and answer any questions that they might have. I will be in attendance this evening and I can also be reached via e-mail, but post, or phone (with e-mail typically providing the fastest response).

Respectfully submitted on January 21, 2010,
James R. Beddome,
Leader, Green Party of Manitoba

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>