



PROVINCE OF NEWFOUNDLAND AND LABRADOR
HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY
MANAGEMENT COMMISSION

Seventy-fourth Meeting

Wednesday, September 25, 2019

HANSARD

Published under the authority of the Speaker of the House of Assembly

The Management Commission met at 9:40 a.m. in the Committee Room.

MR. SPEAKER (Reid): Welcome, everyone, for our meeting.

Are you still with us, Andrew?

MR. A. PARSONS: Sorry, I had you on mute. Yes, I am.

MR. SPEAKER: Okay.

We're about to start the Management Commission meeting today. First, I should start by allowing everyone to introduce themselves for our people down in the Broadcast Centre.

I'll start over here and we'll make our way around the table.

MR. LOVELESS: Elvis Loveless, MHA for Fortune Bay - Cape La Hune.

MS. COFFIN: Alison Coffin, MHA, St. John's East - Quidi Vidi.

MS. RUSSELL: Bobbi Russell, Policy and Communications Officer, House of Assembly.

MR. SPEAKER: Scott Reid, Acting Speaker.

CLERK (Barnes): Sandra Barnes, Clerk.

MR. PETTEN: Barry Petten, MHA for CBS.

MR. BRAZIL: David Brazil, Opposition House Leader.

MS. COADY: Siobhan Coady, St. John's West.

MR. SPEAKER: We have, joining us by phone, Minister Andrew Parsons.

MR. A. PARSONS: Andrew Parsons, Burgeo - La Poile.

MR. SPEAKER: The first order is we have to report decisions that were made during in camera sessions prior to this meeting. One meeting was held on July 23, 2019. At the in camera meeting on July 23, 2019, the Commission approved recommending to the Lieutenant-Governor in Council that the new

Information and Privacy Commissioner be compensated at EP-10, Step 18, with regular step increases.

At an in camera meeting held today, September 25, the Commission approved the renewal of the lease of the premises occupied by the Office of the Information and Privacy Commissioner for a further term of five years, under same conditions contained in the present lease dated October 31, 2014. The lease is to be between the lessor, Newfoundland and Labrador Housing Corporation, and Her Majesty the Queen in Right of the House of Assembly as represented by the Speaker.

The Commission also approved a precommitment of funds for fiscal years 2020-21, 2021-22, 2022-23 and 2023-24. That's the report of items we dealt with in an in camera session.

The first item is to get approval of the minutes for our meeting on July 23. I think these minutes have been circulated to Members, Tab 2.

So everyone has had a chance to review the minutes. If there are no errors or omissions, I'd like to have a –

MS. COFFIN: So moved.

MR. LOVELESS: Seconded.

MR. SPEAKER: Okay, moved by MHA Coffin and seconded by MHA Loveless.

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Passed.

On motion, minutes adopted as circulated.

MR. SPEAKER: The next item covered in Tab 2 relates to the standard office allocation package for Members and constituency assistants delegates authority to the Clerk for pre-approval of expenditures for other furniture and equipment to a maximum of \$1,000 per item, with the Clerk to report all such approvals at a subsequent meeting of the Management Commission. So this is the item.

The report provided in Tab 2 provides details of the approvals of the Clerk under the standard office allocation package up to September 19, 2019. We're not required to make any decision on this. I think this is just for reporting purposes, if I'm correct.

I don't know if there are any questions or any comments on that.

MR. LOVELESS: So when you say \$1,000 per item, is there a maximum of items or ...?

MS. COFFIN: I think that's per MHA.

MR. LOVELESS: Okay.

CLERK: The standard office allocation package, there are lots of times that somebody requires an extra filing cabinet or something breaks, that sort of thing. This is what this does it allows us to replace –

MR. LOVELESS: So it's up to \$1,000 for Barry or myself?

CLERK: Per item, yes.

MR. LOVELESS: Okay.

MR. SPEAKER: Any further questions on that item?

Another item similar in nature that we don't have to make a decision on it but it's a reporting item: The *House of Assembly Accountability, Integrity and Admission Act* states that the Commission must regularly and, at least quarterly, review the financial performance of the House of Assembly as well as the actual expenditures of the Members compared with approved allocations.

The report is in Tab 3 of our notes and we've all had time to look at those. I don't know if anyone has any questions or comments on that. Everything is fine there.

MS. COFFIN: May I have a question? It says projected savings or overruns from operating budget versus the original budgets. The operating budget is not Interim Supply, that's our regular? How are we –?

CLERK: The original is the estimate as contained in the budget document. The operating budget is actually the Interim Supply amount and that's why you see a significant projection because we're only dealing with funding for the first three months of the year.

MS. COFFIN: Okay. I knew it was the first three months, but that makes sense.

Thank you.

MR. SPEAKER: Any further comments, questions on that item?

There is no motion required on that. It's just another one of the reporting items.

So the next item is the appointment of an auditor. *The House of Assembly Accountability, Integrity and Administration Act* provides that the Management Commission must appoint an auditor of the accounts of the House of Assembly and Statutory Offices before the end of each fiscal year, upon recommendation of the Audit Committee. And we have correspondence – I think that's in the Tab 4 – where the Audit Committee recommends that the Auditor General be appointed as auditor, pursuant to the act.

This item requires a motion, and we have a recommended motion. The recommended motion is: "Pursuant to subsection 43(2) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission appoints the Auditor General of Newfoundland and Labrador to audit the accounts of the House of Assembly and the Statutory Offices for the 2019-20 fiscal year."

So anyone have any comments or any discussion?

MS. COADY: I was just going to move the motion.

MR. SPEAKER: Okay, so the motion has been moved by Minister Coady.

MS. COFFIN: I'll second it.

MR. SPEAKER: Seconded by MHA Coffin.

Any discussion?

Okay, seeing none, I'll call that vote on that motion.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against, 'nay.'

The motion is passed.

The next item is under Tab 5 in our Briefing Notes. Under the act, we're required to do an annual audit of the accounts of the House of Assembly and statutory offices by the auditor appointed by the Commission. So the Auditor General was the auditor appointed by the Commission for the fiscal year ending March 31 of 2019 – so the fiscal year 2018-2019.

The act states that the Audit Committee is to review the audited financial information, audit reports and any recommendations with the auditor, and recommend their approval to the Management Commission.

In correspondence on August 28 of this year, which is included in Tab 4, the Audit Committee recommends that the Commission approve and sign the audited financial information for the House of Assembly and statutory offices for the fiscal year ending March 31, 2019.

We have a recommended motion here. I'll read it out and then we can have some discussion, if you like.

“The Commission approves the audited financial information from April 1, 2018 to March 31, 2019 for the House of Assembly and Statutory Offices, as recommended by the Audit Committee.” That's the recommended motion.

MS. COFFIN: So moved.

MR. SPEAKER: Moved by MHA Coffin.

We need a seconder.

MR. BRAZIL: Seconded.

MR. SPEAKER: Seconded by MHA Brazil.

Do you want to have some discussion on that?

I think we have to call the motion first.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against, 'nay.'

Passed.

We are required to sign this.

MS. RUSSELL: You'll sign here and then one other Member.

MR. SPEAKER: Okay, we need one other person.

MS. RUSSELL: Ms. Coffin is close.

MS. COFFIN: Yeah, that works.

MS. RUSSELL: Perfect. Thank you.

MR. SPEAKER: The next item is sort of a housekeeping item related to some changes in the legislation.

Under Tab 6, we had changes from the *Public Tender Act* to the *Public Procurement Act* in March 2018, so several policies and guidelines of the House of Assembly, approved by the Management Commission prior to the new procurement legislation coming into effect, includes references to the previous *Public Tender Act*.

An amendment to the policies and guidelines listed in Tab 6 in our notes is required to replace any reference to the *Public Tender Act* with the *Public Procurement Act*.

So we have a recommended motion here: Pursuant to subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission approves an amendment to the following House of Assembly policies/guidelines to replace references to the previous *Public Tender Act* and the *Public Procurement Act* related to: inventory management policy; policy for hiring of external consultants; printing policy for Members of the

House of Assembly; and purchasing policy, under \$200.

That's the proposed motion. Does someone want to move it?

MR. PETTEN: So moved.

MR. SPEAKER: Moved by MHA Petten.

A seconder? Moved by MHA Loveless.

MS. COFFIN: I have one question but it could be a bigger question.

I'm just wondering if that's the only change there is. There's no change anywhere else in either one of those pieces of legislation or policy? Okay, I'm good with that. That's a pretty easy one.

MR. SPEAKER: Okay.

Yeah, so this is what they call consequential changes or –

CLERK: Yeah, that's right.

MS. COFFIN: I'm just making sure.

MS. RUSSELL: It's merely a reference to legislation (inaudible).

MS. COFFIN: Yeah, I understand what's there because you can't make a reference to something that no longer exists. It makes it really hard to enforce.

MR. SPEAKER: Okay, any other questions or comments on that?

We'll call a vote on that then.

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against?

Passed.

The next item is legal fees policy under Tab 7 in our Briefing Notes. This is an item that was sort of pushed forward from a previous meeting on

November 7, 2018. The Commission directed the development of a policy and/or guidelines related to the reimbursement of, and/or financial support toward legal fees, to be brought back to the Commission for review and approval. At that time the Commission was considering requests from Members to reimburse legal fees related to their participation in reviews under the Code of Conduct for Members.

As outlined in the Briefing Note in Tab 7, the Commission proceeded with consideration of these requests in the absence of having of a policy on that matter; however, it directed that the decision would not be considered to be a precedent in similar matters and that the future policy direction would not be constrained by the Commission's decision in that circumstance.

House of Assembly officials have reviewed and conducted an analysis of jurisdictional information, along with the application of various approaches in the context of legislative and policy provisions in place here. They've presented us with two policy options outlined for the Commission's consideration in the Briefing Note in Tab 7.

We can have some discussion on this matter and I guess the intent is that we sort of have a little discussion on this and see where we want to go and possibly come forward with a motion based on the discussion that we have here today.

I don't know if anyone wants to start the discussion.

MS. COADY: I would like (inaudible).

MR. SPEAKER: Okay, Minister Coady.

MS. COADY: Thank you very much.

This is an important topic, obviously, as we've grappled with it for some time now and made some decisions. The one thing I will start with is if in the course of your duty as a Member of the House of Assembly, because of actions or inactions, you may be faced with some litigation or called before a tribunal or called before a commissioner, I think it would be important for us to ensure that there is legal counsel available for MHAs.

This could become more of a norm as we move forward. We don't know that at this point. We know that there's whistleblower legislation, that there are all kinds of different means and ways for people to bring forward complaints against MHAs. I think as the employer, if I can use that – not necessarily the person who hired you because the person who hired us, of course, is our constituents but the organization that handles the responsibility of human resources management, I think in the course of our duty if you're required to have or need to have legal representation, I think it would be important that we have some means and mechanisms of providing that. I think consideration should be given to if you're found in breach, does that still extend or is there a maximum, or what do we do if you are found in breach. Breach of some ethical responsibility or the Code of Conduct – how do we deal with the breach?

Then I also think we have to have some consistency. I grapple with the case-by-case basis where that consistency is. So I, as a Member of the House of Assembly, know that I could petition the Management Commission, but the Management Commission is made up of individuals and could change over time. We have to have some consistent application, some parameters. I think that would be important as we move forward. And whether or not there's a total amount per session – I think in the notes it was around \$5,000, but is that enough? I don't think we have any way of knowing is that enough until we have more examples. We know by the example that we've just come through that in some cases it was not enough, and we actually approved more.

So we have to be careful, I think, in our adjudication of this matter more toward ensuring fairness and protection of Members of the House of Assembly. I think that's important. We have a duty there from a human resource management perspective. We have a duty to the people of the province to ensure there are means and mechanisms to ensure that, should there be a breach, the people of the province are also taken into consideration of payment of legal fees. I think there has to be some consistency in the application of the policy. So I'm grappling with just giving it on a case-by-case basis based on that.

So, as an MHA, I need to know that I can have legal representation. As an MHA, I need to know what those parameters are, and if we're doing it on a case-by-case basis – which seems to be the norm, based on the note that we have. All we have is most jurisdictions consider it on a case-by-case basis. I think seeing what jurisdictions are doing with this, it would be important. Because I think we're grappling with a fairly significant and big issue that as time goes on we may see more of. So I'm struggling with the options here. They are only basically two options and both of them give me some consternation.

Thank you.

MR. BRAZIL: I would like to weigh in also.

MR. SPEAKER: MHA Brazil.

MR. BRAZIL: Thank you, Mr. Speaker.

I agree wholeheartedly. We have a responsibility as servants of the people, as do any other civil servants who work in our province who have protections, either through their union representation or through their various divisions of HR. While we have responsibilities, we need some protections.

I see the House of Assembly as our protection to ensure that due diligence is done and that the proper protocols are in play. Having that protection is based on the principles of innocent until proven guilty in any scenario. You need to have the supports that are necessary.

We're not asking for anything that's different than the process we already have within the civil service. NAPE has its representation that's supportive of its members, the teachers' union has it, the Nurses' Union has it, the police forces have it; it's all relevant to that. I do grapple – I think there's a combination between the two that would be conducive, without it being something that could be either taken advantage of or get so exorbitant that it becomes a major burden on the taxpayers of the province here.

First and foremost, as somebody who sits in the House, as somebody who understands that we're in a volatile career, that accusations can be made, there are rules and responsibilities, we

may step outside of that box and we're held accountable, but at the same time we deserve the same protections and the same legal advice that would be necessary of anybody else who serves the people of the province.

First and foremost, I think we need to put something in play that guarantees the protections there for legal counsel for any Member of the House of Assembly and related staff in the House of Assembly. What that combination is, to me, it's part of option one. I think considering all cases on a merit basis has validity after there are some standards already put in play, that there's already some minimums so people know. Having people incur financial costing before they know if they're going to be covered becomes, obviously, a stressful situation and a financial burden based on the principles of accusations that can be made.

I think looking at these, there are four or five combinations and we may get back to having that discussion about is there a third option that's a combination between the two. We may need another meeting to really review that because while we have some examples of what's happened in the House of Commons and the Yukon, there may be other jurisdictions that have a combination of some other things that – there are none. Okay, fair enough.

AN HON. MEMBER: (Inaudible.)

MR. BRAZIL: Even better, because you know me and I've said it before, I get caught up on when we base what we do here on everybody else. We're not the worst by no stretch and, you know what, why can't we be trendsetters? I say this based on the protection of the taxpayers and the individuals who may have an accusation against an elected official, or the protocol that we didn't follow within the House of Assembly. Also on the others side – and I'm speaking with my political hat – the 40 Members in the House of Assembly who take an oath to serve the people, but, at the same time, are expecting the same protections and services that would be availed of by anybody else who serves the people of Newfoundland and Labrador.

I wholeheartedly support that we need to find a process where legal counsel is covered. To what degree that is, what are the mandates, what are

the restrictions or what are the protocols, I think we need to really (inaudible). I think we have a number of things. I think this is a great piece of work that's been done here and it gives us some legitimate options, but looking at it, I'm seeing a combination, and there may be one or two other things that we didn't think of that could be added to it as part of that.

I would suggest, obviously, after the conversation by everybody, that maybe we need to go back and take another kick at what's common ground, if everybody is of the same mindset that myself and the minister have just shared with you guys, to take it from that perspective.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Thank you very much.

Having a read through both of these, I think option two is more specific. It establishes that legal counsel will be provided under specific circumstances. It sets a limit on how high that will be, so it ensures that all MHAs will have access to that under these two criteria. Then, of course, the other legal matters that this is that combination that perhaps my colleague was talking about here is anything that falls outside of the two pieces of legislation listed there, that has the \$5,000 cap, can be covered on a case-by-case basis.

I think that perhaps option two would be a good place to start where we establish a baseline, we know what can be expected if there is a breach, or if there is an incident where we need representation and then the other legal matters, that piece there, can cover us in other circumstances. I feel comfortable with that.

Also, by setting a cap, it makes sure that we are not going to incur ridiculous legal fees. If we happen to go over that cap, maybe we can talk about that, but that's really going to depend on circumstance. I think that, as MHAs, we also have a duty to behave in a manner that is well within the law. So, that's part of our responsibility as well.

I like option two because it is specific. It does set some clear circumstances in which we allow this to happen and it sets a cap in that. I'm

comfortable with that. Certainly, if we want to have a discussion about how we've addressed some of these before, how some of the costs had escalated in some of the other circumstances, I'm certainly interested in that conversation if we want to go there. But, for me, I like option two, it's a very good place to start and if we find that six months down the road we need to modify this, I think we've established a good baseline.

MR. SPEAKER: I'm going to go to the Clerk first and then to MHA Petten.

CLERK: I just want to clarify, because some things I'm not quite understanding.

Option one and option two specifically speak to support for legal fees under Code of Conduct violations. Anything else would be under other legal matters. An example of that is that the Members of the Management Commission can be sued in the same way that a minister of a department can be sued. So we would deal with that as it happens, in the same way the Executive Branch.

Option one and option two specifically addresses the Code of Conduct situations where one Member brings a complaint against another, or there's an initiated complaint by the Commissioner, or the House, or the Premier because those are the situations that trigger the whole Code of Conduct investigation.

I just wanted to be really clear about that. Did you have –?

MS. RUSSELL: Just to further the Clerk's comments there, option one is to have everything on a case-by-case basis but option two would break it down by circumstance. So just to clarify because I think you said option one and option two deal with it.

CLERK: Yes, but there are different ways of approaching the Code of Conduct.

MS. RUSSELL: Yes.

MS. COFFIN: Yes, but it's all for the Code of Conduct?

CLERK: It is the Code of Conduct. The other thing in terms of those lump sum amounts, this is evolving in all jurisdictions across the country. So it's only the House of Commons and the Yukon that have brought forward policies at this point that provide this lump sum approach and that's within the last year, year and a half. It's really recent. Everybody else is still dealing with it on a case-by-case basis.

MS. COFFIN: Right.

MR. SPEAKER: MHA Petten.

MR. PETTEN: Thank you.

Just to add to some points because all the points are valid, but there are a couple of things there. Mr. Speaker, \$5,000 in legal fees in 2019 is not very much – a very small amount actually. You could do that in a few phone calls and emails with a lawyer these days; I just went through it.

Alison, you said about the behaviour. You could be the best-behaved person in the House and be faced with an allegation, then you're faced with the challenge of having to go get your lawyer to represent you, to protect your interests and you were totally innocent or at least you feel that way. So I think that's what we need to be careful of when we're putting out amounts.

I don't think it's unrealistic for us to be careful that we don't have \$30,000 legal fees either for Members. I think that's the other end of it too, but I think we should be protected a bit more. I mean, outside of the House of Assembly, we are in a fish bowl in Newfoundland politics. That's just the reality of what we live in here day to day. So I think that's something that, before we agree on either one of these, I tend to agree with Minister Coady and MHA Brazil that maybe we probably should look further into this. That's just my take.

Another point, too, these options are not clearly written under the Code of Conduct. There's only option two that states the Code of Conduct. Option one is just on a case-by-case analysis, and I would not feel comfortable putting a case-by-case analysis if I was faced with a serious charge and I knew I was innocent, to have to face with the Management Commission to

decide they're going to cover my legal fees, which could be an exorbitant amount too.

I think that sometimes we set ourselves up and we're always doing the politically correct thing, but, realistically, we're public figures and we should have the same protections afforded us as MHA Brazil said, if you're a union member, if you're a public servant, if you're an RNC officer. I don't think we're being outside the box by treating ourselves with the same respect and conduct. If we have to conduct ourselves in a certain manner, we should be protected that way. That's my take on it.

MS. COFFIN: Absolutely. And I think option two does do that. It does protect us.

MR. PETTEN: (Inaudible.)

MS. RUSSELL: The Management Commission can set whatever amount it likes. That was put out there because that's what the other two jurisdictions have set. But it's up to the Commission to decide what it thinks could be reasonable if that approach was taken. That's not set in stone.

MR. SPEAKER: Minister Coady.

MS. COADY: Just on that point, I know you might go on to another point, so just on that point of the cost, the question then becomes: Is it per session, per incidence? So you have to be careful. If we say it's \$5,000, okay, that might be an appropriate amount. I think, based on the knowledge that we have, it might be a little low, but then the question is if I have more than one or two, or I could have three and four in a session. So we have to be very specific in what we're saying here.

The other point is – and I'll reiterate it and then I'll stop – what happens if we're found multiple times guilty of an offence? Are we going to continue to pay for legal fees? We have to be careful that we're thinking about these things as we move through this important discussion.

Thank you.

MR. SPEAKER: Before we move to MHA Loveless, was there anything you wanted to clarify or respond to the issues or anything?

CLERK: With the option two, as it relates to the Code of Conduct, it would be per complaint, because they all trigger separate investigations. If there were three complaints lodged – because they could be for different reasons – then it would be per incident, right?

MR. SPEAKER: Okay.

MHA Loveless.

MR. LOVELESS: No, just to add, because I'm grappling with it as well. This is going to be the – who's going to put the right amount on the table and stuff. I like the case by case because there could be a complaint that involves Barry that might not be big at all, but against me it could be a bigger case.

The amounts, I think, questions the fairness of it too. What number are we going to arrive at to make sure that it is fair? We do deserve the protection, there's no doubt about it, but it warrants a further meeting and more discussion than today to wrap our heads around it and come up with a solution.

CLERK: Just as an example, in the legal fees that the Management Commission approved back in January, the range was from about \$2,600 to \$26,000. We did an analysis at the time. There's no comparability in terms of hourly rates, the number of hours. You can't specify. There's just no ability because there are so many variables in each situation.

MR. LOVELESS: Right.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Thank you.

Thank you for clarifying what that range was. It is very circumstantial.

Is there a way we can maybe modify option two to say: To guarantee MHAs access to service, because if we go on a case-by-case basis we could be in a situation where you come to the House Management Commission and you get denied.

To your point of we deserve representation – and there are some nuances in that because if

you were comparing this to a union circumstance, in a union an individual would go to their union, they'd go to their grievance officer and a committee would then decide if the case would move forward. There is that buffer there, you will have representation, but the people who are representing you decide how far they want to pursue that.

This is similar to it, but if we go with option two we get guaranteed representation up to a maximum amount. I am willing to consider maybe a case-by-case basis when fees go over \$5,000, so we get a minimum coverage. Then, if we go past, say, the \$5,000, perhaps we could consider a case-by-case basis, because there could be extenuating circumstances; it could be an exceptional case, it could be a one-off, it could be any number of reasons.

I would be comfortable for that where we get the guaranteed protection and then in other circumstances we could potentially come back.

MR. SPEAKER: Minister Coady.

MS. COADY: Thank you.

I'm grappling with something here and it has to do with, we're only discussing the review of the Code of Conduct or the public interest disclosure, which is the whistleblower. That's the only two instances we are discussing, especially in option two, but there are many, many circumstances where an MHA may require legal services.

You mentioned one, and I didn't quite think about it before but now I'm thinking about it. As a Member of the House Management Commission, we could be sued and we have no legal protection. Think about that, now, just for a moment. Everybody at this table think about that, we have no legal protection, which you would be afforded in any other circumstance. If you were on a board of directors, you would have it. I know that it would be case by case and you might have to go to the Speaker or I'm sure the Management Commission would consider that, but the point is we've got to think about that, this is about ensuring that MHAs have the protection and coverage they require.

I think we have to really make sure that we get this right. I'm okay with the case-by-case basis in the interim, but I do think we have to flush out more circumstances and more considerations and think about if it's per complaint, well how many per session are we going to – this could escalate. If you have somebody who has six complaints against them in a year, that's significant and that could happen multiple times. We have to, I think, have more consideration of some of these aspects.

Thank you.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: In response to that, I'd like to point out that option two you'll note that it has: other legal matters will be considered on a case-by-case basis.

MS. COADY: Again, case by case.

MS. COFFIN: Those issues would be considered there, so I would be cautious about that. Option two does not leave us with no protection. It gives us some guaranteed protection in a couple of specific circumstances and the same protection that we're already getting in other circumstances. So I think that's a thing.

We also need to remember, we need to protect the public purse, which we are aware of, and I hear what you are saying. Perhaps a good question to ask would be: How many incidents have we had repeat offenders? Have we had six in a session? I think that might be an exaggeration of what could potentially happen. If we were to get to that circumstance, I think perhaps we'd need to meet as the Management Commission and say we might have a larger problem than just the legal fees; we have a problem in the House of Assembly.

So I don't think by changing the cap on the amount of legal fees that we have or changing that set of circumstances is going to fix bad behaviour. I don't think that by putting this cap on it we are going to encourage bad behaviour, because if it does then we all need to come back here and really reconsider a whole lot of things: how we are operating in the House of Assembly

and how we are getting along in a collegial manner.

I think we have to be very cautious about what could potentially happen, but we do need to put some very tangible rules in place here. That's my perspective on that.

MR. SPEAKER: Any points of clarification?

CLERK: In terms of the numbers in the last General Assembly, there were three complaints against one Member and two complaints against another. That's the most we've ever seen. Prior to that, I think we had three complaints under the Code of Conduct in total in different years.

MR. SPEAKER: Before we move on to Mr. Brazil, in terms of the jurisdictional scan, the number of complaints in other jurisdictions, do we have any information on that?

CLERK: We're the only jurisdiction that has a legislated Code of Conduct, although I think recently the Senate has moved to a different model and I think there's another province moving, but we have been way ahead of other jurisdictions in terms of having – some of them have statements of principles and ethics, those sorts of things.

Of course, everybody has conflict of interest that are adjudicated by conflict commissioners, but we're the only ones that have a legislated Code of Conduct that Members must swear to uphold as part of their oath, and then a process in legislation to bring forward complaints and conduct investigations and come forward with recommendations.

MR. SPEAKER: Okay.

MHA Brazil.

MR. BRAZIL: Thank you, Mr. Speaker.

While I agree there are parameters and we have responsibilities, the difference here is one of the faults I've had with the House since I've been here, we've been always reactive. We haven't been long-term proactive. We're only starting to do that now thinking further and further down the road.

Because we have a Code of Conduct, because it's gotten so much exposure in the last period of time – and I know, I'm somebody who went through a Code of Conduct investigation, I know all the parameters, I know all what was and wasn't, I know what's changed since then because of the parameters. I know what has gone to the Commissioner that the Commissioner didn't interview and went other avenues. So there are a number of things there that the general public or that the general operations of the House are not aware of.

The issue, from my perspective, about being proactive, is on two sides. We have to protect those in the House of Assembly, but also the general public. The issue here is that when the general public become more aware of it, those that have merits will go through the protocol. There are going to be a number that don't have merits, and I can tell you that from example. There are going to be ones that have no merits to it.

We need to be more proactive to know that all the loopholes are covered and that all the protections are there down the road. I say that not because this doesn't fit that, I'm saying it because I think another meeting or so for us to flesh this out, I'd like to talk to some people from a legal background, I'd like to talk to some people from an investigative background of what would be included, or what they would think might be some of the things to be cognizant of down the road for protecting the general public, for anybody in the House of Assembly who violates the Code of Conduct or the whistleblower or any other legal matter for that example.

But on the other side, too, ensuring that we've done enough due diligence that we have put in play scenarios that we haven't thought of, that we could think about over the next period of time, to protect the MHA themselves. Or at least to give them the proper legal advice that they would need to address whatever the issue was.

That's my only concern. I think here we've got 95 per cent of the parameters. I'm just saying there's probably a little issue we may be missing that we may be rushing that we haven't thought of long term down the road. And I'm not saying put this off for a long-term period of time. I'm

saying, our next meeting is in November, give us that period of time to put that in play. I know our people would look at it and I would think other people would reach out to whoever they know.

I have no qualms reaching out to the Commissioner to have that discussion also to see what their view may be in retrospect to what they would think they may run into and what they expect an MHA may have to face, or what the general public should have protections on also. That's my view on that one.

MR. SPEAKER: MHA Petten.

MR. PETTEN: Would it be a stretch to have something in the interim, past now until we come up with something, as MHA Brazil said, in November, just some sort of protection now, because right now there's nothing. Right now you're totally at the mercy of the Management Commission. The last time they came in, as their notes show, it was an in camera session. It was approved; it was not meant to be precedent-setting. But at least there'd be something, because, as we know, this could happen anytime.

It'd be an interim protection of us in this room. But you'd almost put – I know that cap is really low, but something there to show there's some coverage in the event that you'd need legal representation between now and November, then, as we're asking, flesh it out more, and come out with a more formal option in our next meeting. But in the interim have some interim protections for all Members. Just a thought.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: I'd just like to point out that on the bottom of page 3 they have the interim procedure outlined.

MR. PETTEN: But that's still a case-by-case basis.

MS. COFFIN: Yeah.

MR. PETTEN: I'm talking about covering the \$5,000 cap. That's not in that. They're two separate things. There's still an option – that's

still done on a case by case. Other legal matters are still done – there's no guarantee.

If we leave here today and put that back to November's meeting, we're leaving here with nothing. What I'm saying is right now, today, to have some protections there. We're saying if we decide to push this out until November, this is the interim. I'm not really talking about any – I'm saying something for the interim.

MS. COFFIN: The interim is what we already have.

MR. PETTEN: Which is nothing.

MS. COFFIN: So if we want to change that we have two options –

MR. PETTEN: But we have nothing.

MS. COFFIN: Right.

CLERK: It's case by case.

MS. COFFIN: It's a case-by-case basis.

MR. PETTEN: Right, there's an interim which is –

MS. COFFIN: Unless you're proposing something as an interim, we choose option A or option two, which gives us very specific protections, or we go with the procedure that we're currently using. So, the same thing we came into the room with, we'll go out with.

Unless we have another option on the table, we continue with the interim one or we pick one or two. One looks like the interim one; two gives us very specific, \$5,000 under these two circumstances and the case-by-case basis in other legal matters. If you want to go with another interim option we need to propose that interim option, so something different than we're doing right now.

MR. PETTEN: No, you're probably splitting hairs there now. I'm basically saying we can go with option two for now to cover us until November.

MS. COFFIN: Okay.

MR. PETTEN: That doesn't really matter.

MS. COFFIN: That's a different thing.

MR. PETTEN: That's more definitive than option one when it's a case by case. I don't feel comfortable with case-by-case analysis in a political arena when you have a group of people from all parties sitting there deciding your fate. Sorry, I'll respect everyone around the table but I don't really comfortable with that.

I do feel if we're going to go with something interim, option two until we come up with a better, more fleshed-out idea that we're comfortable with. That's what I was really saying when I said the \$5,000, going with option two.

MS. COFFIN: That's what I was suggesting for option two.

MR. PETTEN: But not permanent, right?

MS. COFFIN: It does give us specific.

MR. PETTEN: Just for the time being.

MS. COFFIN: That's the nuance there is that permanency. I'm comfortable with two and if we want to reconsider this, what are our options in terms of reconsidering this? We can bring anything back to the table at any particular time, is that correct?

CLERK: Oh, any time. We can bring this back the next meeting. MHA Brazil indicated that he wished to do some consultation.

MS. COFFIN: Sure.

CLERK: If he could feed that back to us, then we would incorporate anything like that and bring it forward as another briefing for the Management Commission.

MR. SPEAKER: I noticed Minister Coady had her hand up and I notice –

AN HON. MEMBER: Do you want to go first?

MR. LOVELESS: Ladies first.

AN HON. MEMBER: Go right ahead.

MS. COADY: No, that's okay. I've spoken a number of times. You go ahead.

MR. SPEAKER: Okay.

MHA Loveless.

MR. LOVELESS: Just to your comment on case by case determined by the fate of this Commission, I'm not reading it – the case by case is going to be determined by somebody else, if there's a complaint. Unless I'm reading all this wrong.

When we talk about –

MR. PETTEN: The cost of this is going to us.

MR. LOVELESS: No, when we talk about the case, I'm looking at it, okay, there's a complaint, the case against her or me is going to be determined by somebody else, not you and I.

MR. PETTEN: (Inaudible) cost, we're talking about covering legal fees, case by case on legal fees.

MR. LOVELESS: No, I thought you referenced in terms of the case itself is going to be determined by us.

MR. PETTEN: No, no, it's legal fees, the cost associated.

MR. LOVELESS: Yeah, okay. That was just for clarification.

MR. PETTEN: Yeah.

MR. SPEAKER: Minister Coady.

MS. COADY: Thank you very much.

A couple of points, just on the conversation that we've been having. On the bottom of page 3, you talked about that interim process is really around the Harassment-Free Workplace Policy and not necessarily around Code of Conduct or public interest disclosure (whistleblower), so I don't see one being able to cover the other.

I understand my colleague's point about what do we have in the interim. I see in the interim it's on a case-by-case basis, that's the way we've

done this, based on what we've been faced with over the past year.

I'm personally more comfortable with waiting until November where people have an opportunity to, as my other colleague has said, review it, discuss it, determine what might work best and then come back for a better roundtable discussion on the parameters.

I do agree with my other colleague that we definitely need parameters. I don't like the case-by-case basis; I said that upfront this morning. I'd much rather have parameters. I also have concerns around option two where it says you have to seek prior approval prior to any legal cost being incurred. Well, if you have coverage, you have coverage or you don't. It's not to be determined by someone, you have coverage.

So I have some concerns about option two and that's why I think we need to flesh it out a little bit more. In the interim, it is a case by case, just as we've been doing it.

I do think we also have to consider the Harassment-Free Workplace Policy may be part of that reimbursement of legal fees. Right now, we're only talking about the review of the Code of Conduct and public interest disclosure. Are there other parameters we need to ensure MHAs are covered for as well?

So, I think there are considerations here. We only received our package yesterday. I think we need the time to consider this and really review it.

Thank you.

MR. SPEAKER: I think the Clerk has some comments she wants to make.

CLERK: In terms of Harassment-Free Workplace Policy, the Commission adopted the interim policy modelled after the Executive Branch policy last year while the Privileges and Elections – and that policy is very specific in that there is no reimbursement of legal fees. Privileges and Elections tabled their report and made a recommendation; however, that report was not dealt with by the House prior to dissolution.

This is separate. Until either that Privileges and Elections report is revived or we do something else, we are bound by the interim policy. Now, that's quite different from the interim approach that you were talking about because that relates to Code of Conduct which is separate. I just want to be sure we're all on the same wavelength.

MR. SPEAKER: I sort of see a couple of themes developing here. One is that we need to have maybe a little more time to examine the overall implications of where we're going with this. It's an important issue. But I also see another theme that maybe we have to have a little more protection in terms of the interim sort of – while we're developing this overall structure, we need something that guarantees there will be some – am I reading that correctly? Maybe not? Some people are –

AN HON. MEMBER: (Inaudible.)

MS. RUSSELL: If that's the case, you just want to put forward a motion to defer and (inaudible).

MR. SPEAKER: Okay.

So I don't know if there is any further direction. The staff feel they have enough direction in terms of items, where we want to go with this and where the questions that need to be answered before we can move forward.

We'll have a motion to deal with this at a future meeting. Anyone want to make that motion?

MHA Loveless; seconded by MHA Coffin.

We'll move to the next item. The next item relates to caucus funding and it's under Tab 8 in our briefing materials. Currently funding is provided to caucuses according to provisions approved by the Management Commission, following specific direction from the Green report to review the funding arrangement for caucuses. The provisions were initially approved in 2008, based on recommendations by the external consultant engaged to review the matters at that time, with various amendments since that time.

The Briefing Note in Tab 8 provides an overview of various changes to caucus funding

since 2008. So in the *House of Assembly Accountability, Integrity and Administration Act*, a caucus is defined as a registered political party having two or more Members elected to the House.

A review of the caucus funding was done prior to the election of the 49th General Assembly, as a fourth registered political party was fielding candidates in the general election. That review revealed an inconsistency between the application of the caucus funding provisions in previous General Assemblies and the Legislature.

Following the review, officials were of the view that despite the policy and practice, the current definition of a caucus in the *House of Assembly Accountability, Integrity and Administration Act* would provide caucus funding to a registered political party that elected a single Member to the House of Assembly. Furthermore, the provisions allow for funding to independent unaffiliated Members, but those would not apply to the registered political party with one Member elected to the House.

CLERK: I can speak to this, if you like.

MR. SPEAKER: Okay, yes.

CLERK: As the acting Speaker indicated, this came to light when we were doing transition planning after the election call. And, of course, it was the first time we had a fourth registered political party, and we were looking at the caucus funding. That's when we noticed there's a discrepancy between the legislation and the practice.

When the caucus funding policy was brought in in 2008, the Third Party had one Member in the Legislature, and it was recognized in *Hansard* and in submissions that it didn't fit the definition of caucus in the legislation. Despite that, the Third Party did receive the caucus funding, as intended by the policy. However, our review and the Law Clerk's opinion is that there is no authority – if, for example, the Newfoundland and Labrador Alliance Party had elected a Member and we had a caucus of one, we would have been in a bit of a vacuum until the Management Commission could be assembled and we could deal with it.

It's clear from Green that the concept of a registered political party and the funding provided to a caucus, even a small caucus, is quite different as opposed to the treatment of an unaffiliated Member.

So, we have to either fix the policy or fix the legislation because, right now, if we had an election tomorrow and we had a caucus of one, we have no ability to provide any sort of funding. We have no authority to do it. The best time to deal with it is when we're not forced to have to make a decision. So, we thought it prudent to bring it forward at this particular point in time.

MR. SPEAKER: Okay.

I noticed Minister Coady had her hand up.

MS. COADY: Thank you very much.

I completely concur with the Clerk that it's always better to deal with something well in advance of requiring it. Thank you for bringing it to our attention.

I just had a couple of questions. One is, I know you referenced it's policy, but I just see it as precedence. We have an act that says one thing and we had a Management Commission, in their infinite wisdom in 2007, determined that the Third Party should receive funding and they made that determination, which is precedent setting, but I don't see it as setting a policy. It's setting a precedence, but not a policy.

The policy is really driven from the act and the act was in response to the Green report. I think there was an interpretation and an acceptance and a precedence maybe, but I don't see it as policy.

I think we have to be cautioned here. The reason I say that is, in the next election or elections to come, there maybe multiple parties. We're seeing that globally. We're seeing multiple parties. There might be a Green Party Member. There could be, as you said, the Newfoundland and Labrador Alliance; Newfoundland and Labrador First could have a party. There are many, many iterations of what could be and if we agree that every one of them have the same means and mechanisms today, we have to be

careful then of even divvying up around Question Period because once you recognize them as one Member caucus – just if I may finish.

I think we really have to think about what we're saying here. I don't see it as policy setting what happened in 2007, I think it's an interpretation and I think in their infinite wisdom the Commission made a decision, which may set precedence, but the policy really does come from the act.

I'm a little cautioned here because you could have 40 independent parties in the House at some point in time. If you look around the world you're seeing machinations of multiple party systems where there are coalitions being made, so I think we have to be cautious as to what we're trying to achieve by changing the legislation.

Thank you.

CLERK: If I may.

The House of Assembly Accountability, Integrity and Administration Act sets the administrative framework. In terms of time in Question Period and privileges in the House, that's covered under parliamentary procedure and it is separate. That is guided by the Standing Orders and parliamentary precedents and those sorts of things. We really do need to separate those two.

Under the act, this only guides what financial resources will be provided. It doesn't set out what the privileges would be in terms of Question Period, response to Ministerial Statements, those sorts of things. I just need to make that differentiation.

MR. SPEAKER: Any further discussion there?

So, just for clarification, my understanding is that if one Member is elected to the House as an independent, unaffiliated, that person would not be entitled to any caucus funding. But one person elected to the House, as a Member of a registered political party – and the registration of political parties is through the Elections Act –

CLERK: Elections Act, right.

MR. SPEAKER: – and administered by the Chief Electoral Officer. There are rules set out, what you have to do to become a political party in terms of the number of candidates that you've ran in a previous election or signatures and things like that around it. By being elected and being part of a registered party would entitle you to more caucus funding.

CLERK: I can be specific if you wish.

MR. SPEAKER: Okay.

CLERK: A third party or fourth party, however many we have, as you said, in order to be considered, it's subject to the Elections Act and that definition, right?

Right now, the subsequent parties are entitled to leader's office funding, core funding and currently that's about \$162,000 annually. They are entitled to base funding of approximately \$127,600 and then there's a variable funding component, which you get per private Member. That's currently \$22,974 annually. It's adjusted by the consumer price index on an annual basis. It started off at \$18,000 and now it's up to \$22,974, but that's allocated on a per-private Member basis. Then there's a caucus grant on a per-Member basis and that's currently \$123.65 a month per Member with a minimum of eight for a caucus.

As an example, when the Official Opposition had seven Members – or the Third Party has three Members right now – you get a floor of caucus grant based on eight Members. An unaffiliated Member receives the variable funding amount, which is \$22,974 per year and they receive the caucus grant based on a single Member, which is currently \$123.65. Similarly, the Office of the Speaker receives the caucus grant funding of \$123.65. That's how it works.

The difference between a caucus of one and an unaffiliated Member is that there is leaders and – core funding and base funding provided for that registered political party to do its research and represent itself in the House.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Thank you.

A quick jump in on this. Differentiating between a caucus and an individual Member is very important because you need to think about the responsibilities of a caucus versus that of an individual Member. An individual Member is responsible for their district and that's where their responsibilities lie. Their phone calls come in from that, their CA is associated with that. That is the nature of their work.

As a caucus, your reach extends across the province, so there is a responsibility across the province. I think that in terms of democracy and equity, any political party that has become a political party according to the Elections Act, is deserving of equal consideration no matter the number of Members they elect, because they have a responsibility that extends across the province. I think that's an important thing to recognize and I think as we move towards democratic reform – and that is something that we are undertaking in our House – we need to recognize democracy and equity across all parties.

Again, if we want to consider, well, what happens if we have 40 individual caucuses, the likelihood of that is slim to nil really. If we get to that point, then these large chunks of money that go to larger caucuses right now will be disbursed among the 40 Members who have individual caucuses. Again, we're pretty sure we're not going to go there, so I think it would be more of a reallocation of resources across all of those Members.

In terms of the financial implications, that might be worth looking in to, but we have to look at this in terms of democracy, equity and responsibility to all our constituents, be it district based or province based.

MR. SPEAKER: Any other comments?

MHA Brazil.

MR. BRAZIL: Yeah, I do see the minister's concern about how, I shouldn't say frivolous, but groups who have a personal stake – something totally different than what would be considered normal democracy – could, at a spur of the moment, set up a political party to go that route.

My defence of democracy is if they go through the protocol that's been established to get their number of candidates, to get their number of signatures, to pay their fees and that, then democracy rules; let the people rule there. I mean Green did outline that the difference between an individual Member and a party are very distinctive. They're clarified there. You don't get any more privileges because you're an individual as an independent, you get the privileges because you're established as a party and you followed the proper democratic protocol to get elected based on that.

I support that component of our democracy. I do still have the fear – and I agree – that sometimes things can get segregated for the sake of segregation than it is for the betterment of the people, but as much as it doesn't work in other countries, maybe it can work here. We've seen parties come, particularly, nationally. I mean at one point there were nine parties on a ballot a number of years ago.

I don't fear that, but I do say we have to be cognizant of the reality that we can't minimize what it would take to establish a political party. So that anybody off the streets can come in, establish something tomorrow and then the taxpayers of Newfoundland and Labrador are on the hook for something equal to a third elected party that has a political history, or an Opposition, or the government parties as part of that.

I do think we need to bring it in line. I do agree that Green protected it. I saw some foresight there that he had looked at that, but things are changing now and it becomes a little bit of a difference of what we adopted. I know in 2007 what was adopted for the Third Party at the time. I would think it was done in the motive –

MS. COFFIN: Reasonable.

MR. BRAZIL: Yeah, democracy, moving democracy forward as part of it, having a party system that works. I still support that inkling, but I do want to emphasize and have it on record that we not get in, anywhere down the road, of minimizing what it would take to establish a political party in Newfoundland and Labrador, so that it just can't happen frivolously by anybody off the streets that would jeopardize

democracy or jeopardize the costing to the taxpayers here.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Perhaps as a follow-up and depending on how we decide to go here, it would be useful to look at potential cost implications and maybe have a mechanism for review. So maybe if we hit a place where we have 10 independent – or 10 caucuses that we are dealing with, perhaps we need to go back and reconsider what we've had happen.

I'm comfortable with this if we have maybe a review mechanism in place and we have some idea of what maybe the cost implications might be. I think, today, we're pretty clear what the cost implications are going to be – negligible at this point – but further on down the road we might want to consider what they might be. I don't know if that's been considered in the preparation of this document or not.

MR. SPEAKER: Minister Coady.

MS. COADY: Thank you.

My concern is more around unintended consequences. That's why I'm saying really let's be careful. We know we dealt well in 2007 when it came to the Management Commission. The Management Commission, in its wisdom, determined that the Third Party was the caucus so they deserved the funding and I'm completely supportive of that. I just don't want us to have an unintended consequence if we enshrine it in legislation, because once you enshrine it in legislation, you lose that flexibility.

The second thing – and I completely agree with the Clerk – it is a separate decision-making process around allocations of time, Question Period and all those things. Once you're accepted as a caucus and once you're accepted in the House, one normally then has a further discussion and debate as to the allegations in the House of Assembly and that's why I think the Third Party and the Opposition have been allocated certain time.

All I'm saying is just be careful of unintended consequences by what we think is just cleaning up legislation and really we have a mechanism

for ensuring that we recognize other caucuses. That's my final point.

MR. SPEAKER: Did you have a point of clarification?

CLERK: I just want to understand.

My understanding is – or what I think I understand is that our current practice of applying the caucus funding would continue despite that definition of caucus in the act.

Well, we would to have a have a discussion with the Law Clerk, I think, in terms of how we might word the policy so that it could fit within the confines of the act.

MR. SPEAKER: Minister Coady.

MS. COADY: This is a 12-year standing here. In 2007, a decision was made – the act was in place but the decision was taken by the Management Commission to allow the Third Party to have that allocation, correct? So that's kind of precedent setting.

CLERK: Yes.

MS. COADY: I think what we're saying is we would like to, in an abundance of caution, make sure that there are no knock-on effects to changing the act to now say a caucus means a group of one or more Members who belong to the same registered political party.

I think what we're just grappling with is what are the intended consequences that we should be considering. I'm laying out a few that's all.

CLERK: Okay, but is it the intention that we would continue to fund in the same manner as we did in the 2007 to 2011 General Assembly? In that case, we had a caucus of one and the caucus funding was provided because it was a registered political party.

MS. COADY: You have that precedence.

CLERK: Yeah.

MS. COADY: I don't know why you want –

CLERK: The Law Clerk is of the view that if we had a General Election tomorrow, there's a gap between policy and legislation and we would not have the authority, despite the previous practice, to allocate caucus funding to a Third Party if they elected one Member.

MS. RUSSELL: Or a fourth party.

CLERK: Well, you could have a situation where you had a government of 38 Members and then one in an Official Opposition and one in a Third Party, and neither one of those could we provide caucus funding to.

MS. COADY: It would come to Management Commission, as it did in 2007.

CLERK: But the thing is, is that following a general election and everybody's trying to get up and running, they need to hire resources. We don't have any authority to give them any money until we get that Management Commission together.

I have to tell you, I took a deep sigh the morning after the election, knowing this issue. Thank God there's no caucus of one.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: I'm reading the options here, and one is no change and the other is we amend the legislation to provide for consistency. Perhaps we can direct the Law Clerk to give us a sample of what the legislation would look like for when it is amended for consistency.

I would be comfortable with the recommendation of: we task the Law Clerk to make the legislation for consistency, it comes back to our committee for review, and that will give us all the opportunity to consider some of the unintended consequences, to consider, perhaps, some of the financial implications, to consider the democracy part of it. Then when we come back to meet again, we can look at that legislation and say: Do these things realign?

My personal preference is that we recognize all parties, no matter the size of the caucus, just because the procedure it takes to become a registered political party, and the responsibilities associated with that.

That's where my head is. I would be comfortable, as a Commission, to recommend that we propose the legislation, and it can come back to us for discussion after.

Is that an option that we can consider? I'm asking this from a procedural point of view, not necessarily from ...

MR. SPEAKER: Okay. My –

MS. RUSSELL: I'd like to ask a question, sorry.

MR. SPEAKER: Sure, yes.

MS. RUSSELL: So, in terms of bringing direction back to the Law Clerk, would it be the intention that you would be open to amending the act? What is the number you want? Because, right now, it says it has to be two or more Members, and I'm hearing from around the room that the appetite to change that to lower is maybe not there, at this point.

So what is the number that you're going to direct the Law Clerk – if she is to draft an amendment to bring back for the Management Commission to look at, would it be that it is a caucus of one or more Members? I'm just looking for some direction that we can bring back to the Law Clerk, given that she's not at the table right now to hear the discussion.

MR. SPEAKER: MHA Brazil.

MR. BRAZIL: Yeah, I would live with the one.

My question – I'll throw this out, and I'd like to see this attached for clarification, and probably it's already spelled out. For example, one of the elected independents could now move to a party that ran established before and now be considered a caucus. I'd want that clarified that that couldn't exist in an upcoming process, right? That would be my fear. I'm just thinking long term –

MS. COADY: Oh, unintended consequences.

MR. BRAZIL: Yeah, exactly, that's what I'm thinking. I'm trying to think five steps where we might go. I'd have no problems with the one, but that things would be explicitly spelled out: You

must have stood as a candidate, if that's the norm, during the general election, the General Assembly.

MS. COFFIN: May I, just clarification there?

You're saying, for example, in the last general election, we did have an Alliance Party there. If one of the, for example, independent Members, or even one of the affiliated Members, decide now I want to be an Alliance Member, am I a caucus on my own? I think that some of that might be associated with the party or the caucus that they might want to create because that's an internal thing as well; the constituents are also part of that. So that might fall more to the Elections Act and I would appreciate some clarification on that for sure.

CLERK: We'd have to do a little bit more research into that.

The way it's structured now, for example, any Member could move – and we've had Members move – from one caucus to another and the funding followed them, okay? If an independent decided to join with a caucus or join with a party that was registered – because that's separate, that's in the Elections Act – then, technically, they would receive caucus funding, unless there was something that didn't allow that except under certain conditions in the policy statement itself.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: If I may go back to this: A caucus is a caucus is a caucus. All caucuses have responsibilities associated with it, whether you're sitting on the Management Commission, whether you're sitting on the Government Services Committee, anywhere at all, there are responsibilities associated with being at caucus.

Whether you're an independent and you become a caucus because you're affiliated with a party, you then have responsibilities that need to be supported. If you're one and you want to join that party, absolutely. If you're an independent Member and you want to create a party, you're still a caucus and then you still have responsibilities associated with that.

I think I would be in favour of any caucus that has the responsibilities of a caucus, ought to be funded appropriately. I think that's essentially where I sit with that. In terms of how they become a caucus and the Elections Act and what the responsibilities are, I'm certainly open to clarification on how we define all of those things and responsibilities, time in the House, what committees you have to sit on and the number of representatives on those committees. But I think that if you are a caucus and you have that slate of responsibilities, you need to be adequately resourced.

MR. SPEAKER: Okay.

MHA Petten.

MR. PETTEN: Just one quick point to MHA Brazil's point. Right now we could have five caucuses, five parties – we could have five different caucuses in the House of Assembly – but during the general election we had three parties that had candidates elected and two independents. Either of those two independent Members could join or create a new party – one could – the other could go with the existing party that's registered to form the Newfoundland Alliance.

I tend to agree with Minister Coady and MHA Brazil that we do need to be careful and I do know where MHA Coffin is coming from as well. I think there is probably a bit more to this, the Green system. I thought when I read it first it was kind of like, yeah, it wasn't – I didn't really look at that other angle. It's an interesting angle but I think it's something that we need to be aware of, as you said, with the public purse.

I believe if you stand for a party and you get elected for that party, well then everything should be available to you whether it be one, two or 22. But I have concerns about creating – you could have a fringe group, you could have anything. I just think you're opening up to something that we need to be very careful of. That's just my observation after not having an opinion at first.

MR. SPEAKER: Minister Coady.

MS. COADY: Thank you very much.

I just want to make sure I'm clear. I'm completely supportive of the intent here, I just want to make sure we have no unintended consequences going forward. There's a lot to consider here.

Independents sometimes could think that they represent the province as a whole or could represent the province as a whole, and some of them are saying they'd like to be part of these meetings and do more. We just have to be cautious, I think, making – just are we ensuring that there's no knock-on effect or unintended consequences. In bringing this forward let's just make sure we're making an informed decision understanding the ramifications here.

As my learned colleague opposite just said, if you are recognized under the Elections Act, then you're a legitimized party. That might be what we want to be able to say and seek clarity around that and how does that happen. That's all; it's an abundance of caution here in making a change to legislation because changing legislation and undoing circumstances, we don't want to be in that condition in years to come.

MR. SPEAKER: If I'm reading the discussion correctly, we've had an interesting discussion; a lot of variables have been brought up. I think, given that we don't have to make an immediate decision on this, it might be prudent if we – if I'm reading the discussion correctly, maybe we want to see the changes to the legislation that the Law Clerk would provide. Then to sort of have a look at that and maybe have the Law Clerk here to discuss some of the consequences of that legislation and some of the various scenarios that might develop based on that. I think we could –

MS. COFFIN: Just to add to that.

In terms of if we're looking at what will the legislation look like? Maybe a brief write-up on how it would affect the affiliated legislation. How it is related to the Elections Act in forming a party? How it is related to what the responsibilities in the House might be? Is that too much? I'm just trying to capture the concerns, but – please.

CLERK: We have to be careful. This deals with an administrative aspect that's covered under the HOAIA, okay?

MS. COFFIN: Yeah.

CLERK: Anything to do from the parliamentary perspective is governed by Standing Orders, parliamentary conventions, those sorts of things.

MS. COFFIN: Right.

CLERK: You can't have one intrude on the other.

MS. COFFIN: Okay.

CLERK: Now, the Standing Orders Committee may want to look at the constitution of a caucus in the House from a parliamentary perspective, but that's a separate matter.

MS. COFFIN: Okay.

CLERK: The Management Commission really can't encroach on that.

MS. COFFIN: Okay, good.

MR. SPEAKER: I think what we need to do here is to have a motion to defer the motion and maybe direct further analysis, and to deal with this at our next meeting.

MR. BRAZIL: So moved.

MR. SPEAKER: So moved.

MS. COFFIN: I'll second.

MR. SPEAKER: Moved by MHA Brazil; seconded by MHA Coffin.

Okay, our next item is sort of an issue that is brought about by change in federal legislation, I believe, so it's related to the monthly automobile allowance under the I&E.

In 2019, the Human Resource Secretariat, which administers compensation and benefits for the Government of Newfoundland and Labrador, conducted a review of taxation practices for vehicle and other allowances to elected officials.

The review was necessitated as a result of changes to the federal *Income Tax Act*. The Secretariat invited the Legislature to participate in the review.

Three allowances, subject to the review, are outlined in our Briefing Notes in Tab 9. The review highlighted that prior to 2019, subsection 81(2) of the federal *Income Tax Act* prescribed that an allowance received by an elected official is to be excluded from income, unless the total of all allowances exceeds one-half of the elected official's salary.

In January 2019, subsection 81(2) of that the federal act was repealed and as a result, all allowances now must be included in taxable income. As a result of the January '19 change to the *Income Tax Act*, tax will be deducted from all allowances for tax years 2019 and forward. T2200s will be issued for any Members availing of the two-vehicle allowances outlined in the Briefing Notes. The T2200s will allow those Members to deduct vehicle operating expenses.

Members who claim mileage cannot be issued the T2200s, as mileage is not treated as an allowance, but rather reimbursed as an expense incurred. This matter is being brought to the Management Commission's attention as to whether a consistent approach is preferred for all Members with respect to vehicle expenses. The denial of the T2200s to a former Member who was reimbursed for mileage was a contentious matter during the previous General Assembly. The options are outlined in Tab 9.

With that, I'll open it up for discussion.

Do we need any clarification on this?

CLERK: I think it's fairly straightforward.

MR. SPEAKER: Straightforward.

CLERK: Essentially, those who are entitled – and there are only a number of districts that are allowed to have that \$200 a month – will be able to also deduct vehicle expenses, whereas all the other MHAs can only claim mileage. It's a bit of a different treatment.

If the Management Commission so chooses, we continue, but an informed status quo was better

than an uninformed one. So we just thought it was important to bring it forward, because, as it's indicated in the note, it did become quite a difficult situation, previously, when we said, no, you can't have – now, this is before any T2200s were issued, except to the office holders. Park those, that's separate, that's the \$8,000 a year crowd.

So, there is a slight difference in treatment, which is fine. From an administrative, it makes no difference to us. It's just that if we have a Member coming who gets mileage, we cannot give them a T2200. So we have to accept that there will be a different treatment of Members.

MR. SPEAKER: Yes. So just before –

CLERK: If I could.

MR. SPEAKER: Yes.

CLERK: We can't quantify, because everybody's tax situation is unique to them.

MR. SPEAKER: Yes.

Just before I move to MHA Petten. My understanding of the two different methods of charging mileage arose because Members in the city, the distances they travel are very short, and to be compensated for the mileage they incur in the work that they do would cause a lot of paperwork, a lot of recordkeeping. So the idea for MHAs that represent urban areas was that they just be given a block amount, but eliminate a lot of paperwork and a lot of recordkeeping for small amounts of money.

So, that's the discrepancy between the urban and the rural and the terms of the way mileage reimbursement – the way it sort of initially arose.

MR. PETTEN: Thank you, Mr. Speaker.

Yes, I just wanted to discuss that. I don't know, it seems routine when you read it, I guess, but there are a couple of points there.

The capital region, which I'm one of the capital region MHAs – Brazil is as well – you're right, there are a lot of cumbersome issues when it comes to writing in five kilometres here and four

kilometres there. I never wrote them in. So when MCRC, which is the Members' Compensation Review Commission, we sat down with them, that was brought to my attention by them. They asked me the question, and I said I don't put in kilometres, I just absorb the cost because it's not worth the grief. I tried to do it when I first started, when I was elected. It was insane.

If you live in rural Newfoundland – and I look at MHA Loveless there and I know from former colleagues there are a lot of travel costs; I know a lot of our MHAs have 20 little districts – the travel is exorbitant. A travel allowance would not be fair, in my opinion, to a rural MHA just by the virtue of the amount of travel.

This amount of \$200 a month was a nominal figure that the MCRC decided. It wasn't us, they decided. We passed it in the House or it went through the Management Commission, whatever the case was; this has been brought in and it's been in place since then. We're going to do another as a result of the previous election. Another MCRC is going to sit down and review all this stuff again. So point one on that is, in my personal opinion, let them be the ones to sit down and decide: Are we treating everyone fairly or not?

Point two is you say there's a disparity among Members that don't receive the capital region allowance, which is the St. John's area and Corner Brook, and urban Members who claim mileage. So you have the one who (inaudible) a vehicle allowance of \$200 a month and the mileage – there's a discrepancy because one group gets the T2200, which is the capital region, and the urban group don't get it.

There's already disparity there. You get office-holders – you get \$8,000 a month and T2200s. It's been in existence since 1997 and I don't have a problem with that. I'm just using it as a comparative analysis. When we're trying to do things across the board fair, I question that, I question the disparity. This disparity has existed for a long time and we accept it.

As for removing this \$200 a month for how many MHAs, six or seven or eight MHAs – there's only six using it this year. To be fair to urban MHAs, I get the argument to the degree; it's not that I'm not getting that point. But then

on the flip side it's like we live within disparities anyway and why not let the MCRC decide it instead of us coming back here.

I'll even go a step further because I did some thought on this. During 2016 we had the MCRC come in and make a recommendation on pensions. It was a contentious issue, but at the time a great debate went on in the former Management Commission. Who were we to question what the MCRC were doing?

No one had any problem with taking away pension benefits because that's what they recommended. We shouldn't do that, no, hands off. They gave this travel allowance to capital region Members because they decided, not us – they asked us questions and they felt this was the fairest thing to do for Members who live in the capital regions. Yet it's all right now then that we're trying to debate it, so it's fine to take that away too? That was a benefit they gave you.

What is it? Why not fight for something or object to something that you feel that, as a Member – and in conducting your business as MHAs? I know, personally speaking, in my district I do a lot of short jaunts. If that's removed, I'll just suck it up because it's not worth the aggravation of me and my assistant to be able to do these little travel allowances for three kilometres here and – I'm not going at it. It creates too much work in here because a \$5 claim is the same as a \$5,000 claim; the same amount of work goes into the staff. I know that.

That's just my take on it. I see the issue, but if you claim the kilometres and you live in rural Newfoundland, you get a lot of kilometres back if you travel a lot. It makes it worth your while to put in that travel claim. If I travel with the Committee and go to Edmonton, all my travel is covered under that.

As rural MHAs and your travel and that, you get it covered. As a capital region MHA we're at the mercy of – we really have nothing. You get your compensation, but there are no other benefits involved in the sense. At least you're getting a bit of mileage covered, but you're not going to go through the cumbersome process of putting in two kilometres, three kilometres and five kilometres. That's just my take on it and I'll just leave it at that.

Thank you.

MR. SPEAKER: Minister Coady, I think.

MS. COADY: Thank you very much.

You raised something that I was going to raise. We do have a Members' Compensation Review Committee that will be struck during this Assembly that will review the compensation that is paid, including the travel claims and other portions – the travel allowance as well as other appropriations.

I see this going as part of that bigger discussion. Rather than this Commission making the determination that we're going to take something from somebody or give something to somebody, that we would let the Members' Compensation Review Committee analyze this.

MR. SPEAKER: MHA Brazil.

MR. BRAZIL: Yes, I'm just going to bow in with the full support that I would recommend that we stay status quo and the MCRC will review it. It gives every Member – rural, urban – an opportunity to vote in and there might be a new alternative. This came from a recommendation that me and a couple of other people – that my colleague had about not being able to be compensated for wear and tear on your vehicle and the depreciation that is part of it.

I since don't do that. I don't do the travel claims; I pay my assistant out of my own pocket because it's just not worth the aggravation for the small amount. But I still think there has to be a fairer system that works for everybody in the province. I make more when I go travel for the leader than I ever did as an MHA in the city. I'll be totally honest, tongue-in-cheek, this was because I didn't want to put the staff through the aggravation of trying to read my writing for three kilometres or 12 kilometres or 20 kilometres to Bell Island as part of that.

I think the MCRC are going to have more dialogue than we did the last one. We had more dialogue after. I don't think we had enough prior to it and that's our own fault. That's some Members' faults for not being engaged, but I think it's an opportunity.

My recommendation would be status quo, let the MCRC – and recommend to everybody that we all bow in on what our issues are around travel and everything else.

Thank you.

MR. SPEAKER: Any other comments on this?

MHA Loveless.

MR. LOVELESS: I'll just add, in about two months I wore out a set of tires. All this comes down to fairness. It doesn't make any difference what political party you are, you're representing the people of this province and it's all about fairness. I just want to add that.

When it comes to me and my direction, it would be about fairness for all. I just want to add that.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Professional opinion: Is that a reasonable direction to move this to the MCRC or are we obligated by being a part of the House Management Commission to deal with this now?

CLERK: You can certainly send it to the MCRC.

MS. COFFIN: Okay.

CLERK: I will note in the 2012 MCRC it was noted that these decisions are within the purview of the Management Commission, but it is definitely within your right to refer it to them as well.

MS. COFFIN: I think, given the timing of that review, that's perhaps a very appropriate place to put it. Let's look at it as a larger package as opposed to just a little tiny fraction of a piece that applies to only some people.

CLERK: As I indicated, the reason we brought it forward is that there was a change in treatment and we had encountered significant issues –

MS. COFFIN: Right.

CLERK: – with the lack of T2200s on the mileage fees. As I said, an informed status quo is

better than just leaving the matter until somebody is upset.

MS. COFFIN: Absolutely, and all Members are aware of the tax implications of what their choices are. As long as everyone is aware of what the status quo is, I'm very comfortable deferring the decision.

CLERK: Well, any Member affected – the office-holders are the ones that get the \$8,000 and then there are Members with the \$200. So they should have all received communication now because there was a change; like 2018 was done right, 2017 was done wrong and 2019 is going to be slightly different again.

MS. COFFIN: Right.

CLERK: All of those have received communication now on the impact and revised T4s as appropriate.

MS. COFFIN: Okay, good.

Thank you.

MR. SPEAKER: Okay so to remain the status quo, we need –

CLERK: Just refer the matter.

MR. SPEAKER: – a motion for that as well. Also, I think we can incorporate it.

I can read a suggested motion here now that would include that we keep it the way it is –

CLERK: And refer it.

MR. SPEAKER: And refer it to the MCRC.

The Commission directs that the \$200/monthly vehicle allowance option for intra-constituency travel provided to Members in Capital region districts and the Corner Brook District continue as provided in Section 38 of the *Members' Resources and Allowances Rules*, with the matter being referred to the next Members' Compensation Review Committee.

Anyone want to move that motion?

Moved by MHA Petten; seconded by MHA Coffin.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Against?

Passed.

Before I ask for a motion to adjourn, I just want to thank everyone for their participation; thank the staff for the work they've done on these issues. Thanks very much, everyone.

We need a motion to adjourn.

Moved by MHA Petten; seconded by MHA Loveless.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Carried.

On motion, meeting adjourned.