



PROVINCE OF NEWFOUNDLAND AND LABRADOR
HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY
MANAGEMENT COMMISSION

Sixty-eighth Meeting

Wednesday, May 30, 2018

HANSARD

Speaker: Honourable Perry Trimper, MHA

The Management Commission met at 5:20 p.m. in the House of Assembly.

MR. SPEAKER (Trimper): First of all, thank you everyone from the House of Assembly Management Commission. This is our meeting scheduled for 30th of May.

My name is Perry Trimper, I'm the MHA for Lake Melville. I'm also the Speaker of the House of Assembly and the Chair of this Commission.

I will now turn to my colleagues in the room and have them introduce themselves. So I'll turn to my immediate left.

MR. P. DAVIS: Thank you, Mr. Speaker.

Paul Davis, the Member for the District of Topsail - Paradise.

MR. HUTCHINGS: Keith Hutchings, the Member for the District of Ferryland.

MS. MICHAEL: Lorraine Michael, the Member for St. John's East - Quidi Vidi.

MR. BROWNE: Mark Browne, MHA, Placentia West - Bellevue.

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

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

MR. WARR: Brian Warr, Baie Verte - Green Bay.

CLERK (Barnes): Sandra Barnes, Clerk.

MS. RUSSELL: Bobbi Russell, Policy and Communications Officer.

MR. SPEAKER: And joining us to my far right.

MR. CHAULK: Bruce Chaulk, Commissioner for Legislative Standards.

MR. SPEAKER: Elizabeth, do we want to identify you? Why not.

Elizabeth Murphy.

Okay, thank you, everyone. As you know, we have distributed materials in advance, and I will call everyone to the agenda.

First of all, I will be looking for approval of the minutes from our last meeting, which was on the 16th of May. You've had a chance to review them; do we have any questions or discussion on the minutes?

MR. P. DAVIS: (Inaudible) a question, but I move acceptance, Mr. Speaker.

MR. SPEAKER: Okay, moving acceptance; a seconder for the acceptance of the minutes.

Mr. Parsons.

All those in favour of approving the minutes.

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Against?

The motion is carried. The minutes are approved.

On motion, minutes adopted as circulated.

MR. SPEAKER: Next, I'll ask you to turn to Tab 2. We have two appeals before us, both of a similar structure. Let's go through them one at a time.

MR. BROWNE: Mr. Speaker, if I could just (inaudible).

MR. SPEAKER: Yes, Sir.

MR. BROWNE: Mr. Speaker, one of the appeals has been submitted to me. In my letter I indicated, as a Member of the Management Commission, I would be recusing myself from discussion on this matter. So I'm going to step out now and let the Commission debate these matters.

MR. SPEAKER: Very wise, thank you very much.

That's the MHA from Placentia West - Bellevue.

So let's deal with the one I have before me, first of all, which is the one for Harbour Grace - Port de Grave.

CLERK: (Inaudible.)

MR. SPEAKER: Okay, do you want to do that? Okay, I'm sorry. Yes, it would be appropriate if he's out, let's deal with his then.

Okay, so the Member for Placentia West - Bellevue, who has recused himself, essentially the context of his appeal is that while the expense occurred within the fiscal year that we're discussing, the invoice arrived after - from the supplier - the deadline, which made it late for him to submit his claim.

So based on the rules of the House of Assembly, staff are instructed to not accept an item if it is beyond 60 days, correct?

CLERK: Well, after -

MR. SPEAKER: After 60 days?

CLERK: After the fiscal year, it's a separate process altogether.

MR. SPEAKER: Right on.

So the item itself would have been eligible but its submission was after the deadline. So the decision is to either accept the Member's appeal or to deny it.

So I'll look to the Member for St. John's West, MHA Coady.

MS. COADY: Thank you very much.

I seem to recall something similar to this at a previous meeting, and I'm very much someone who likes to follow consistent and persistent application of the rules. If memory serves, it was a similar case, submitted after the deadline - after the year end, I won't say after the deadline, after year end.

We all recognize that sometimes small organizations, especially charitable organizations have some challenges getting their invoices submitted on time or released on time

so that some Members may not be able to meet the deadlines that are imposed by government.

So I think with consistent application of that direction that we previously approved, I think it would only be correct to approve this one.

MR. SPEAKER: Any further discussion?

MS. MICHAEL: I move acceptance.

MR. SPEAKER: Okay. I need a seconder.

Ms. Michael has moved for acceptance; seconder is Ms. Coady.

All in favour?

SOME HON. MEMBERS: Aye.

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

The motion is carried.

Could I ask somebody please to go -?

CLERK: I'll go out and get him.

MR. SPEAKER: Okay, thank you.

MR. A. PARSONS: (Inaudible.)

MR. SPEAKER: Yeah, so noted; stern.

The next item is very similar. It's from another MHA and also the similar issue of the invoice. Expenditures were rejected for payment. This is for the Member for Harbour Grace - Port de Grave.

Expenditures were rejected for payment because they were incurred and the fiscal year - but the invoice was not submitted within 30 days of the end of the year, as allowed. It doesn't matter what the item was for. It was an approved item.

I look for any discussion.

MR. P. DAVIS: Mr. Speaker.

MR. SPEAKER: Yes, Sir.

Mr. Davis.

MR. P. DAVIS: I noticed in the Briefing Note in this case, the expenditure was rejected for payment as they were incurred in the 2017-18 fiscal year, but the letter indicates it was actually 2016-2017.

CLERK: This only came in yesterday, so that's a typo on our part.

MS. MICHAEL: Her letter?

CLERK: No, ours.

MR. SPEAKER: No, her letter.

MS. MICHAEL: (Inaudible) her letter.

MR. SPEAKER: Her letter is inaccurate.

MS. MICHAEL: It says 2016-17.

MS. RUSSELL: It can still be approved. It'll just come out of this year's –

CLERK: It can still be approved, it's only that it comes out of this year's allocation because it can't reach back.

MR. P. DAVIS: So what had been with cases in the past like this? Just consistent with –

CLERK: We've gone back two fiscal years.

MR. P. DAVIS: – MHA Coady's comments about consistency, which I agree with.

MS. MICHAEL: This has gone back two years that –

MR. P. DAVIS: Yeah.

MR. SPEAKER: I hadn't noticed that before. That's interesting.

MR. P. DAVIS: I just ask the question for consistency.

MR. SPEAKER: Yeah.

MR. P. DAVIS: If we're two years back, I'm just wondering what process or decisions have been made in those cases in the past.

MR. SPEAKER: I look to the Clerk for a comment on consistency and how we've dealt with it.

CLERK: As long as there were funds available when the expense was occurred, and it's an eligible expenditure, it would be approved. The only thing is the Member has to use funds in the current fiscal year, that's it.

MR. P. DAVIS: Right, so do we –

CLERK: There's no reason why – sometimes invoices get lost, they get delayed for various reasons. We wouldn't hold that against the Member.

MR. SPEAKER: Any further discussion on the item?

MR. P. DAVIS: The funds would have had to have been available in '16-'17?

CLERK: And they were.

MR. P. DAVIS: Do we know if they were available in '16-'17?

MS. RUSSELL: Yeah, CMS has confirmed that.

MR. SPEAKER: I'm looking for a motion one way or the other whether to approve this expenditure.

Mr. Parsons.

MR. A. PARSONS: I move to approve.

MR. BROWNE: Seconded.

MR. SPEAKER: Seconded by MHA Browne.

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Against?

The motion is approved.

Thank you.

In the interest of Mr. Chaulk's time – and that he thinks he may be able to leave on a plane this evening – let's move to Tab 4, if I may ask us to do that.

Tab 4 is a deferred decision from a discussion that we had at our previous meeting. I'll read the possible motion: Whether or not we should, as a Commission, "direct interim application of the Executive Branch Harassment-Free Workplace Policy (effective June 1), using an adjusted process, in situations involving Members of the House of Assembly. The interim application will continue until such time as the House votes on recommendations from the Standing Committee on Privileges and Elections. The provisions of the Code of Conduct for Members would also continue to apply."

If we didn't go in that direction, the alternative is to: "Do not direct interim application of the Executive Branch Harassment-Free Workplace Policy (effective June 1), in situations involving Members of the House of Assembly. The Code of Conduct provisions for Members continues in effect."

I am pleased to say – and thank the Commissioner for Legislative Standards who's here with us. As you recall, this was just less than two weeks ago we had extensive discussion. There's been further discussion amongst ourselves. We're here now with this meeting, so I open the floor for further comment and discussion.

Ms. Coady.

MS. COADY: Thank you very much, Mr. Speaker.

I think we've all been grappling with the current process that we have, which is through the Commissioner for Legislative Standards, the Code of Conduct and the work that is ongoing with the subcommittee –

AN HON. MEMBER: Privileges and Elections.

MS. COADY: Thank you.

Privileges and Elections, it just simply went out of my mind. I appreciate that piece of work is ongoing.

For those that may be listening this evening we have a current Code of Conduct, as Members of the House of Assembly, that we may – as part of the review of harassment policies for this Legislature, I believe it needs to be reviewed and updated. I personally believe it needs to be modernized but there is a committee to do that.

There is a current existing process for the Commissioner for Legislative Standards who has wide-sweeping, semi-judicial – or I guess in some ways judicial; he is able to subpoena people. There is that mechanism that currently exists and we're bridging to the subcommittee's work. I think they have a big piece of work to do around a harassment policy because really what we're talking about here is something that I think – as we talked about it in the last couple of weeks, TIME'S UP, the me too. Movement – it really is important that we recognize we at a tipping point. I've said this a couple of times here: We're at a tipping point.

I did take note over the last several months – and I'm sure all of us did. Bill C-65 was winding its way through the House of Commons, which is An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1. It's all part of the big part of discussions around harassment and violence, quite frankly. The bill itself had two core changes: one, to amend the *Canada Labour Code* to include harassment and violence under occupational health and safety and, secondly, the legislation will now apply to federally regulated parliamentary and government workplaces, including Parliament Hill, banks, telecommunications and transport.

I think this is important and germane to our discussions this evening and from this point. Bill C-65 did set out a process by which it is addressing the issues of harassment. I think it would be important for all of us to note there is a process. It does say that it applies to politicians, including both Members of Parliament and Senate. They will be required to follow the same process as outlined for other federally regulated employees; however, it does not – and I'm going to repeat, it does not – apply to Member of Parliament to Member of Parliament behaviour which is addressed by the House of Commons procedures.

I'm sure most of us have probably reviewed the House of Commons Policy on Preventing and Addressing Harassment which gives definitions. It does procedures; it talks about preventing harassment in the workplace. It does give options for resolving the harassment complaint including talking to the person directly and filing a formal harassment complaint. It also goes on, Mr. Speaker, talking about initiating an investigation process.

The reason I raise this, Mr. Speaker, is our current existing process really speaks to an investigation process through the Commissioner for Legislative Standards. But we are informed by the ongoing debate, national and internationally, that there is more to harassment than a simple, what I'm going to call, complaints process. There really is a multitude of ways to resolve conflict. There is a complaints process and a wraparound process to do that which goes beyond what I'm going to call a formal process.

Restorative justice is a word that comes to mind. My learned colleague knows a heck of a lot more about restorative justice than I do. But there is this concept within a harassment policy of restorative justice, of wraparound, of conflict resolution that is different than, I'm going to say, a complaints process.

In reviewing where we are today – which we have a process through the Commissioner for Legislative Standards, a complaints process for that, a Code of Conduct that is now subject to review by the subcommittee – we're missing a piece in between there. That speaks to, I think, what we were speaking to in the last couple of weeks, whether we need an interim process.

There has been some review of this interim process. I note that Premier Ball did write and suggest that it should be implemented because, of course, it does speak – I keep using the word “wraparound” – to more than the official complaints process. It speaks to this wraparound, how do we resolve conflict, how do we have restorative justice and things of that nature?

I speak in favour of an interim process, noting that we don't know at this point the outcome of the subcommittee who will report to the House of Assembly. I would suggest they will do a

robust submission to the House of Assembly, probably similar to what we see in the federal government – sorry, the Parliament of Canada, I can't call it federal government – the House of Commons Policy on Preventing and Addressing Harassment, probably even going beyond because that was written in 2014. We're even now more learned than we were in 2014, and probably going beyond there.

I speak in favour of having an interim process and I speak in favour for two reasons. One, is I think there is a role and a requirement for many steps in resolving conflict and resolving harassment. I think it speaks to not just a process of identification of someone who wishes to make a complaint, but really ensuring, setting a tone – a tone I keep calling it. A tone that says it's not acceptable, and we have to set that tone.

It's not acceptable to have harassment occurring. In today's society we should, especially for us as Members of the House of Assembly, stand I think as an example to people. We can't have harassment or bullying, or intimidation or any of these things happening in our workplace. I think it's important that we have a process that is outlined that addresses this kind of conflict.

I do note that we have a couple of recommended changes, very subtle and very small ones. I will draw attention to my fellow committee Members; one is a small amendment to the notification of responded – making sure that the Clerk of the House and the Clerk of the Executive Council is notified. I note the word “notified,” and that I think speaks to ensuring protection.

I think it wasn't thought about when these interim steps were being put in place, but we want to ensure protection. For example if someone is faced with a situation where they're feeling uncomfortable, by alerting the Clerk of the House of Assembly or Clerk of the Executive Council, if it's dealing with an employee of the Government of Newfoundland and Labrador, I think it's important that we have the opportunity to ensure protection. I think the legislative staff have been involved in that.

The second one – and I'll just speak to that as well – really make sure that a copy of the formal investigation goes to the leader of the caucus to

which the Member belongs. I'm going to speak to that to say a leader of a caucus might want to take their own actions, depending on the outcome. I agree and support with these two amendments. I just draw the attention to Members.

I will also draw the attention to Members of the committee; we have just received a communication from Equal Voice that we haven't had a chance to review. So I would like to take that into consideration. Especially, I'm thinking that they are focused more on the outcome of the subcommittee that is doing the work. I think that they're looking at some of these things rather than the interim process.

I did have one question, and I'll lay it before the House because I raised it in the last meeting. It was addressed by the Management Commission team. That is: Could this apply to someone who currently feels aggrieved? And the answer to that, I believe, is noted in our documentation here today. It says you have up to one year, post-incidents, to bring it forward. So if anyone currently feels aggrieved, they could choose the interim process. They do not necessarily have to go down the road of a formal process to the Commissioner's office. I think that's important.

If there's someone aggrieved today, that something happened to them – and I'll use the fall of 2017 just for ease – they could say, you know I'm really feeling upset about this and I need to address it, they could choose the interim process. I'm glad we have that clarity.

So on that note, I will turn it over to my other colleagues. I'm sure I'll have other comments as we move forward.

Thank you.

MR. SPEAKER: Thank you for your thoughts.

MHA Michael.

MS. MICHAEL: Thank you very much, Mr. Speaker.

Obviously, we're dealing with a very sensitive topic. Everything I'm saying is respecting everybody and everybody in his or her role, but there are some concerns outside of this room

that have been brought to us publicly. I think we're all aware of some of the concerns.

What I've been struggling with is how to take some of those concerns and fit them into the structure that we are part of, even in the interim. In the long term, that'll be dealt with by the Privileges and Elections but in the interim – we all know that if we choose to go as an interim process of taking the policy of the Harassment-Free Workplace – not the process but the policy – the policy is very, very good.

But of course the process, we are under our legislation and under the fact that our Code of Conduct is in legislation, and the process for complaining under that is in our legislation. The Code of Conduct covers all kinds of conduct. It covers everything. When we're dealing with harassment, whether it is sexual harassment or psychological, emotional, whatever the harassment is or the abuse is, we are dealing with something that has a tremendous impact on the individual who is making the complaint.

I know that people out there want to have confidence in whatever it is we decide; have confidence that in the interim concerns are going to be met. The two major concerns that keep coming – and I think they've come from many different sources, even from some MHAs. This has nothing to do with the individual who's in the role; this has to do with just the process. There needs to be a sense of absolute assurance with regard to confidentiality of everything. So even, for example, in saying a copy goes to the leader of the caucus, I would have to say only if the complainant agreed with that.

There's a real concern that if somebody – if an MHA – under an interim process or over the future process, is not sure of absolute confidentiality, then they are going to resist making a complaint. So how do we, in making our decision, put in the language that shows we understand that? That shows that that is something that the Commissioner for Legislative Standards understands. I'm not talking about the person who is in the position; I'm talking about the position itself.

How do we ensure that people feel that is definite, that there is absolute confidentiality? And they need to know that before they even

call and make a complaint, or write a letter and make a complaint. So how do we deal with that, as the House of Assembly Management Commission? The other thing is – and I don't know the answer to how we do this – somebody who is making a complaint or somebody who has gone through an event that has really upset him or her because of the behaviour of another person, that person is going through psychological, emotional and other pain – I'll use that word.

They're going through quite a bit. I know that when you make a complaint, you're not going to get counselling. That's not what it's about. Yet when you put yourself out and make a complaint of this nature, then there has to be something in the system that says that there's somebody there that the person can feel safe and talk to, either before the complaint or during the complaint – it's very complicated.

When I look at what's there for the process outlined in the Executive Branch policy, which of course the process has to be different, the complaint is submitted to the Harassment-Free Workplace manager in the Human Resources Secretariat. They have people who are trained, I think – if they're not, I'd like to know. When we were looking at this also in terms of House of Assembly staff and caucus staff, et cetera, the process was the same. The complaint would be submitted to the Harassment-Free Workplace manager in the Human Resources Secretariat who do have, I think, people who are used to dealing with the personal aspect of the complaint, what the person is going through.

People need to know that if they go to the Office of the Commissioner for Legislative Standards, that's the same thing. Again, this is really tough because it has nothing to do with the person who's in the position; it has to do with the role of the Commissioner for Legislative Standards. What is the assurance for somebody to know when I walk in that door there's somebody there who understands the complexity – this is the issue – of sexual or other harassment? That's the issue.

It takes special training. There are groups around our country who – I mean, the training that goes into this, you just can't even have an ordinary counsellor who deals with somebody. The

complexity of the issues around harassment are great. So the issue of sensitivity, how do they know the system has within it the sensitivity that's needed to make them feel comfortable, and how do we help them understand the confidentiality?

I'm really having a hard time with this. I have heard the Commissioner speak to what he wants to do. He has said that if he needs outside help, he's going to get it, et cetera, and I believe all that. But there's nothing here, written the way it's written, that gives somebody a sense that there's going to be sensitivity to the situation they're dealing with, it's so complex and that it's all going to be confidential.

I put that out there. I really have struggled with bringing that forward in this discussion today, but there have been a number of people who have come and spoken and I think we need an interim. I really do. I don't think we can go without an interim. And even if we went with only the Code of Conduct, I don't think when we approved the Code of Conduct that we thought in terms of, well there are different types of complaints.

Yes, under our Code of Conduct certainly you can say – I forget the number in our Code of Conduct, the clause that indicates the type of behaviour that it would cover. Even if that's there, it really quite different to come forward saying you've been sexually harassed. It really is, and I'm really struggling with it. Are we really ready to finally say today what the interim process should be? I don't know.

MR. SPEAKER: Okay. Can I propose we break this down in two parts, then?

So your first question, I'm going to turn to, if I may, the Commissioner for Legislative Standards just to answer that question.

MR. P. DAVIS: Actually, it may be beneficial if I was able to just present my comments before you did that because I have similar comments, so instead of doing it twice.

MR. SPEAKER: All right, I can follow that lead. That's fine.

MR. P. DAVIS: Thank you.

MR. SPEAKER: If that's in the same vein, then please.

MR. P. DAVIS: My commentary is getting broader but it is a follow-up. First of all, I was going to mention to staff and the Clerk because we received correspondence from the Clerk last week who was seeking any amendments that we had, and very similar to what Ms. Michael just said, we haven't discussed this before coming here today, so she's unaware of it. But very similar to what Ms. Michael just said, we had some challenges with this that are not a lot unlike what she just referenced herself.

First of all, I just want to back up to Ms. Coady's comments. I just want to say I agree with many of her comments and I believe that an interim process is required. I agree with that. She made one comment that the Code of Conduct is under review but I think really what it is is the Commissioner for Legislative Standards process, or I'm sorry the PEC is doing a review on how we deal with this as a result of the PMR May 2.

So the private Member's resolution that was passed unanimously by the House on May 2 was about this very matter, as we all recall and are aware of. Just to remind Members of the Management Commission it indicated: "BE IT RESOLVED that this Honourable House support the introduction of a legislature-specific harassment policy, similar in principle to the policy in effect in the Nova Scotia provincial legislature, where elected representatives and their staff are held responsible for inappropriate conduct"

I won't read the entire PMR, but that was the first one. It's relevant to Ms. Michael's comments regarding if a person has reached, or is in a position where they feel so strongly, or matters of such importance, it's important to have the right services and support available to them, and that they feel comfortable, they feel this is the right place to go.

Mr. Speaker, I have great respect for all of our independent Officers of the House, including the Commissioner for Legislative Standards but when we considered it – and we had several discussions in our caucus about this – it's somewhat inconsistent with what the private

Member's resolution and the PEC, the Privileges and Election Committee, will review. The inconsistency is in Nova Scotia it is actually the Office of the Ombudsman who leads these types of investigations. The Office of the Ombudsman would be consistent with our Citizens' Representative in Newfoundland and Labrador.

As I thought this through, I looked at the Citizens' Representative and the very first what we do section on their website, it provides a province-wide ombudsman service. It opened in 2002. It says the primary work of a Citizens' Representative is to accept complaints from citizens who feel they've been treated unfairly with respect to their contact with government, offices and agencies – sort of what we're looking for here.

The Citizens' Representative and staff will attempt to mediate citizens' complaints. The fundamental process in a respectful workplace process is to give an option to a complainant of an informal process if that is appropriate versus a formal process. A lot of that decision rests with a person making the complaint, but it allows for that. If one is not possible, if a mediated solution is not possible, undertake an impartial and unbiased investigation.

Mr. Speaker, the Citizens' Representative office is actually established to resolve problems, conflicts where people feel so upset or aggrieved by contact with the government, or government agency, or part of government that they can go somewhere where someone can understand their position, but then also have a mediated process or a formal process.

I believe not only is that consistent with the private Member's resolution mirroring the Nova Scotia ombudsman office, but is also more consistent with the harassment-free workplace approach versus what the Commissioner for Legislative Standards has been designed to do. The Commissioner for Legislative Standards – I've said I have great respect for him, we're looking at each other as I'm saying it. I have great respect for what he does.

He's a Chief Electoral Officer as well. He deals with elections, and Members who've been elected through a public election process. He oversees declarations submitted by Members on

private interests and conflict of interest, and potential conflict of interest that all Members supply to the chief on an annual basis, and also oversees the Code of Conduct.

When you think about, from the perspective of wanting people to have an opportunity to come forward and have the right place to go, if the Citizens' Representative was the process to go through – at least on an interim basis while the PC does their work. It's established to do investigations.

The Commissioner himself, the Commissioner for Legislative Standards said here the last time that they – I appreciate your own personal background as financial, but also appreciate it from the perspective that the office was established based on Justice Green's report, which was financial based. It wasn't so much about relationship based, it was financial based. The Citizens' Representative's office is established about: I have a problem dealing with a government agency or a problem with my experience.

Our recommendation, from that perspective of what Ms. Michael just said, is instead of having the Commissioner for Legislative Standards be the investigator and the point of contact and everything that's laid out in this proposed process, but that the Management Commission, at least on an interim basis, give that role or assign the role to the Citizens' Representative. I don't know, Ms. Michael, if that piques your interest as to some of the matters you raised, but I think it does feed into that.

I also, Mr. Speaker, want to make some comment about the proposed amendments by the government, but if you want we can stick to that particular matter first and then go back to that.

MR. SPEAKER: I'd like to do that because I think we're –

MR. P. DAVIS: Showing too many directions.

MR. SPEAKER: – these are complicated-type questions we're posing. I'm going to turn to the Commissioner, if he wouldn't mind, perhaps starting to comment.

I recorded three main topics. First of all, on the sharing of sensitive material, ensuring – this is Ms. Michael's – it stays confidential. I wonder if you could comment. I have become familiar with this myself but it's certainly much better to have yourself speak to the matter.

MR. CHAULK: Yes, and there are two aspects to this, obviously. One is that any discussion between a Member and the Commissioner is privileged. So it is the highest level of confidentiality. The only who can waive that privilege is the Member themselves. I can't do that. If you bring something to me, I can't do anything with it other than follow it through. It's privileged discussion between me and the Member.

I would also bring out is that if you look at the policy, it talks about confidentiality. The government one, the one that's coming in force on June 1, it talks in there about confidentiality. It says: "Respect for privacy is an important aspect of a respectful workplace. Issues related to harassment will be treated confidentially; however, there are limitations to confidentiality. Absolute confidentiality cannot be guaranteed as resolution processes must involve others. In addition, when agents of the Employer ... become informed of situations involving harassment, they may be obligated to intervene."

That's the first paragraph in the policy that's coming in force this week on everybody else, but I also believe that's part of this process that's being proposed, is my understanding. I still have the concern, not the concern, but that discussions with the Member are privileged.

If I might go on to the – I don't know if that answers the question on the confidentiality but –

MR. SPEAKER: Perhaps, I wonder if – I don't think I'm expanding the scope of your point, Ms. Michael, too far, but could you comment on the process itself in terms of someone bringing forward an allegation and then the accused and what is shared there.

MR. CHAULK: Even in the policy that's coming in on June 1 for everybody, except the group here, the process starts with a written complaint detailing the nature of the harassment or bullying violation. That then is looked upon,

and then that has to be brought in with the other people, the people who are accused of the harassing behaviour.

You can't do it in isolation. Both sides have to be into this. There's no other way around it. The person who is making the accusation and the person who is being accused, they're both going to know what the nature of the allegations are, and they will know who brought the allegations just by the nature of the allegation itself, even if you try to protect the person in there.

It all starts with a written complaint. Even under the Code of Conduct, it starts with a written complaint with the nature of the violation of the code listed in it.

MR. SPEAKER: I'll just turn back to Ms. Michael for a reaction to that comment.

MS. MICHAEL: I understand that, and in talking about confidentiality I think even those – well, I won't say even. Those who are used to this know that if somebody is accused they have to know where it's coming from or else it can't be dealt with. I think that's understood. It's certainly understood by me that that has to be the case.

I think the big issue that I'm hearing, and I think we do have to bring forward what's being said to us. It just can't be what we think as individuals. I'll try to take an example. Let's say I'm not an MHA but I'm somebody who has gone through harassment – let's say it's not even a workplace. I've gone through some serious harassment and I want help. I'd go to somebody or an institution or somebody who has the expertise to help me.

When we're in the situation we're in, harassment is one piece of a whole lot of work that the Commissioner, for example, does, or even the Secretariat does. People are asking – and I'm asking myself – where is the expertise inside to deal with the complexity of harassment when it's brought forward?

I think that's the security people are looking for, that sense of: Where is the expertise to deal with it? I don't mean deal with it from the perspective of process, but deal with it from the perspective of the sensitivity issue that I talked about from

the complexity of what harassment is. I think that's the question that's coming.

MR. SPEAKER: I don't know if you had a reaction before I –

MR. CHAULK: I guess the way to look at that particular issue is that there are so many different things that are covered by the Code of Conduct and so many different matters that can be brought forward to the Commissioner that I will be the first to admit I don't have expertise in something I don't know about already, because something different could come to me tomorrow, but I have the ability, and it's in the legislation, to bring in whatever resources I need in order to deal with that.

I may have, coming up, a need to – I have a need right now for harassment resources which I'm in the process of securing. If it comes to the point that I have to hire them and have them internally within my office, then that would be put forward. Right now, I can bring in the resources externally and I'm right in the process of doing that. From that perspective I can get what resources I need but, at times, I don't know what resources I'm going to need until I receive the complaint.

I would presume or I would assume that I'm astute enough that I would know what resources I would need based on the nature of the complaint. If you look at it, I don't have legal counsel on staff. I hire, I have an external lawyer. As I need him, related to certain matters, I utilize his resources. No different than if I needed a harassment investigator then I would have one of those as well that I could call on. That is the intention.

If it got to the point that there was so much of it coming towards my office, then I would look to have one permanently hired. Or maybe even to the point if there are some at the Public Service Commission then maybe utilize one of them as well. There are a lot of good resources within government and if I can utilize them, I'll utilize them there.

I hope that –

MR. SPEAKER: I have two more points, one that you had raised and one that MHA Davis had raised.

MHA Coady, are you on one of these points or another point?

Can I carry through here?

MS. COADY: Sure.

MR. SPEAKER: I'd ask the Commissioner if he had a comment now. Perhaps I think you just answered it, but I think your second point that you raised was on the need for counselling or at least to have available counselling services for those who may come forward with an allegation.

MR. CHAULK: I'm not sure if that's – usually in situations like that you would have an Employee Assistance Program, which I know is available to the rest of the employees in government. This group is somewhat unique in that there is no EAP program.

AN HON. MEMBER: (Inaudible.)

MR. CHAULK: Oh, do you have one as well?

MR. SPEAKER: Yes, we do.

MR. CHAULK: Okay, well then that would be the appropriate mechanism for that.

MR. SPEAKER: Okay. Then, perhaps, we'll go back to MHA –

MS. MICHAEL: May I ask you a question related to that?

MR. SPEAKER: Certainly.

MR. CHAULK: Sure.

MS. MICHAEL: I've never had to use the Employee Assistance Program, but do we have people there really trained around sexual harassment?

MR. CHAULK: I would have to pass that off to the Clerk. She might be able to respond. I know that's well within the human resources part of the Legislature, but they don't even do it, they

bring in external people as well. I think there's a provider of EAP services.

MR. SPEAKER: We turn to the Clerk.

CLERK: These services are accessed through the Employee Assistance Program which is run by the Public Service Commission.

MS. MICHAEL: Yes, I realize that.

CLERK: So we avail of that.

I am not sure. I would think that they're in the same place as the Commissioner in that they look at the types of complaints coming forward to them and they engage specialists, depending on the nature of the complaint. I can check with them and see exactly what resources they have on staff but, as I said, I would think it's resourced to the common complaints and they access specialized expertise when the situation warrants.

MS. MICHAEL: I'm an MHA and I have been for 11 years, but I wasn't aware of the fact that EAP was available for me.

CLERK: We've reached out to EAP on behalf of even political support staff from time to time. If somebody came and indicated to us –

MS. MICHAEL: No, I understand political support staff –

CLERK: Yeah.

MS. MICHAEL: – but me as an MHA.

CLERK: No, we have the ability to reach out to that particular program in the same way that the House does, in the same way that the government departments do.

MR. SPEAKER: Okay, I don't want to lose the order but I'll go to MHA Coady next, please.

MS. COADY: Thank you, Mr. Speaker.

It's very wide-ranging debate and an important one. I'd like to just kind of narrow in our discussions if I may. I think everyone here is agreeing that we need an interim process. I've

heard agreement on that, that we need an interim process.

There's been a suggestion and I think it's one that maybe we should use the Citizen Representative as part of that interim process. That was the suggestion that was made. I think the fundamental is we all agree that we need an interim process. That's number one.

The second thing I think I've heard is whether or not the Code of Conduct was under review. I'd like to go back to that. I spent a fair amount of time in the last meeting talking about how important I thought it was that it needs to be reviewed. I got some assurances that, of course, as part of the Privileges Committee's work they would have to do that as part of their work because of the harassments area.

I'm just going to go back to that we all agree there's an interim process required. No disrespect to what the current process is or what the future process is, but I've heard consistency in that message. If the interim process that the Clerk and the team of the Management Commission has laid before us is not the right one – I think they've adopted or adapted what is now in place which comes out of the Rubin Thomlinson report that is in place. You've adapted, adopted that process for Members of the House of Assembly.

But I am instructed – again, I'll just go back to the House of Commons Policy on Preventing and Addressing Harassment and say that they outline in their report the options for resolving harassment complaints: talk to a person directly, file a formal harassment complaint using the harassment prevention program to resolve conflict and the responsibility of resolving conflict. They talk about who the formal harassment complaint process – and, by the way, just for our knowledge, it's the Member whip or the chief human resources officer, just so you know, federally.

I'm going to get back. If we all agree that an interim process is required, then I think that we have to find – we have to determine whether the one that's been presented to us by the team of the Management Commission, which is adopted, adapted from the Rubin Thomlinson commission's report, whether it's satisfactory or

what changes there need to be made. We could do that here on the floor or we could do that by subcommittee.

I don't think we're going to be able to change much around the existing process, through the Commissioner, and we can influence – obviously, all of us can influence what the Privileges Committee will consider in the future, but I really want to make sure that, if we're all in agreement, we do focus on that interim process.

I think it's really important; there are people with – as I understand it and I think everybody in the House – maybe some outstanding complaints that want a different process than what is currently before them.

Thank you.

MR. SPEAKER: Go ahead, MHA Hutchings.

MR. HUTCHINGS: Thank you, Mr. Speaker.

Just a comment related to some of the discussion, and I said it at the last meeting, the issue here – and Ms. Coady made a reference in her comments – is the confidence of individuals that may wish to come forward and the process that's established gives them the confidence that there's no restriction in them expressing any harassment or issues of concern for them. I think that's a fundamental issue.

Then we go from what we're discussing here, to the current processes in place, to go to an interim process until we get to a process where we review that to see if we need to make alterations or a different process that reflects that confidence that people have at a point in time that they can come forward. So I guess the fundamental question is: How do we get there?

I've spoken to people and there have been discussions about, maybe we can't do it here, but people even suggest they want to go outside to be totally removed from the whole House of Assembly and the structures and any of the officers of the House. That's not reflected on the individuals, that's reflective of the institution it is and reflective of the current parameters that are in place to hear – in the Code of Conduct – how harassment is dealt with.

My colleague, Mr. Davis, spoke to some of the interconnections between the individual that holds the position of Commissioner for Legislative Standards and the interaction that individual has with all Members of this Legislature through other functions, and many other functions outside of the harassment issue.

Is that an issue to cause people somewhat of a concern that they don't feel the confidence is there to move forward because there's other things going on, they may have interactions at that time? That's not reflective of the individual. That's reflective of the office and the position and the rules around and the functions and the accountability and the roles that individual would play.

So how do we get to the point – and I'll keep repeating it – that people have the confidence that they want to come forward? What I'm hearing, and what I've heard, people don't have that. So what is it that is in people's perception right now that they don't have that confidence? How do we address that? How do we address it on an interim basis and how are we going to address it on a long-term basis?

I think that's the question we're dealing with. It's complex, but, at the end of the day, people have to feel comfortable to come forward in a process that they feel is reflective of what the expectation is.

The issue that Ms. Michael mentioned in regard to expertise and making sure that professional advice and the sensitivity and all of those ingredients that are required when that first interaction or that first conversation is had, I think is extremely important, and from there it gets to the point of what road it takes and what direction it goes in.

That individual or that office needs to have, I think, those expertise readily available to deal with it. So I'm not here to speak to say I have the answer here, but this is just some concerns that I have heard over the past number of weeks from many discussions I've had and what we're dealing with here today and how we move it forward.

So that's just some thoughts and comments I share.

MR. SPEAKER: I would like to, if I may, just respond to your comment. What's been going on in my office in the last few weeks since the allegations came forward, a lot of it has been education. I just sort of wrote down: Why is there doubt in the current Commissioner for Legislative Standards process?

MR. HUTCHINGS: In the position.

MR. SPEAKER: Yeah, and I feel a lot of it is just the unknown, confusion. People may be asserting something inaccurately and then you're backtracking trying to deal with it.

I know the Commissioner has frankly fielded questions, both from my office but also from individuals, as to what will and will not happen. That's part of it. This has been quite an issue for all of us to deal with and we're obviously taking it seriously. There's a bit of an unknown.

I just want to put that out there that we've certainly been doing our best, and I thank the office and the staff around myself and the Commissioner in doing what we can to educate.

MR. HUTCHINGS: Yeah.

MR. SPEAKER: Next, I think Ms. Michael, I had you next.

MS. MICHAEL: Yes, I'm just remembering – well, not only remembering, I read it again prior to today – in one of the communications from the Commissioner – so he may want to speak to this, actually. It would be helpful for me if he did.

The Commissioner talked about the potential of having two processes right now: somebody making a complaint under the Code of Conduct and somebody making a complaint under the Harassment-Free Workplace Policy, and that you could actually end up having two investigations going on at the same time.

If the interim situation was that we were setting up an interim process under the Harassment-Free Workplace Policy, then we wouldn't be held by the legislative constraint of making a complaint under the Code of Conduct, would we?

MR. SPEAKER: No, it's one of the other or both.

MS. MICHAEL: That's right.

So, if we set up the interim process to be under the Harassment-Free Workplace Policy then – and I think this goes to what Mr. Davis was saying – we could have somebody, other than the Commissioner for Legislative Standards, if the complaint comes in in the interim, because we have no idea what the Privileges and Elections is going to come up with as recommendation.

We could have somebody other than the Commissioner as the person to go to – and it was suggested by Mr. Davis, the Ombudsman or the Citizens' Representative – because the complaint is under the Harassment-Free Workplace Policy and isn't under the Code of Conduct and the legislation refers to if something happens under the Code of Conduct.

MR. SPEAKER: I would like to remind all that the powers of the Commissioner are consistent with the *Public Inquiries Act* and it's relatively unique in our structures around us: his ability to subpoena witnesses and gather information is significant.

MS. MICHAEL: Yes, I know that.

MR. SPEAKER: I question whether some other process would have that ability, certainly at this time, without empowerment and endorsement.

I look to the room to see if anyone wants to make a comment.

MHA Davis, are you –?

MR. P. DAVIS: I know I'm not on the list but I'd further comment again for Ms. Michael.

I think it's fundamental that we realize that one of the starting point problems that we've had is people feeling that there was – have confidence in a process. That it wasn't going to be if someone was to make a complaint – I'm talking very generally now and it's not isolated to here, but when people file a complaint in these types of matters, they look for a feeling of: Okay, if I go through this process I'm going to be okay.

This is a safe place for me to go. People will be empathetic to my needs and take my matter seriously and won't be brushed off. I'll have choices. I'll be able to control the process. All those things that happen in these types of workplace issues because that's what they are, they're workplace issues.

Someone may find the fact that the Office of the Commissioner for Legislative Standards has all those powers, they might find that to be a detriment to filing a complaint. It may not help them feel safer about going there. Some people may say, we're talking about powers of inquiries and subpoenas and so, I don't want to go there. I don't want to go there. I just want someone to help resolve this problem; or, I feel like a co-worker of mine makes me feel uncomfortable and I'd just like for someone to go speak to them.

When you look at the Commissioner for Legislative Standards, the Code of Conduct and powers under law and so on, it may be a deterrent is my point.

MR. SPEAKER: The Clerk –

MR. P. DAVIS: The Commissioner has his hand up behind you, too, there.

CLERK: Yeah, I'll let the Commissioner (inaudible).

MR. CHAULK: The subpoena powers, the powers under the *Public Inquires Act*, only apply if we're talking about a violation of the Code of Conduct. Either under the Code of Conduct, under the *House of Assembly Accountability, Integrity and Administration Act* or under the *House of Assembly Act*, if this is the process underneath the harassment-free workplace then I don't have those – the office doesn't have those powers. It only has those powers if a complaint is filed under the Code of Conduct or as a violation of the *House of Assembly Act*.

MR. P. DAVIS: (Inaudible.)

MR. CHAULK: Yes.

MR. P. DAVIS: (Inaudible) but if I was making a complaint (inaudible) if a person is not

interested in a Code of Conduct complaint per se, is interested in creating a safe working environment for the individual, because an harassment-free workplace investigation, to me, is about the person making the complaint. A Code of Conduct allegation is about the person who's breached it, and they're fundamentally focused in two different directions.

If someone makes a harassment-free workplace complaint, they're looking for a resolution to their own issue. It's not about someone broke the law and I want them to be punished for breaking the law. It's about I want to be safe in my workplace and I need a process where I can create that safety; where a Code of Conduct is about someone doing something they shouldn't have done. It's about what they've done.

If a person is walking in to say I have a problem, I want your help, and in the back of their mind they're thinking well this person could say your complaint is really a Code of Conduct and I have a fiduciary duty now as a Commissioner for Legislative Standards to investigate that.

One of the benefits that I thought of with the Citizens' Representative versus the Commissioner for Legislative Standards, Ms. Michael is right, there could be two investigations. The person may want to file a complaint under harassment-free workplace, and they may or may not also want to file a Code of Conduct. They may want to file the Code of Conduct process and not the harassment-free workplace. They may want to do one or both.

When I look at the line, which I referenced already, the Citizens' Representative, they are there to assist citizens who feel have been treated unfairly with respect to conduct with government.

The top line when you open the Nova Scotia Ombudsman, it says: "If you feel you have been treated unfairly by a provincial or municipal government body, or you have a complaint about a Nova Scotia government service ..."

They are established the same way as to resolve disputes, and that's what the PMR was about. The PMR is going to go in that direction because we all unanimously supported it. The PMR, as I understand, actually constitutes an order of the

House. Then I think that would be the right place to start, and it may give people two separate options to say if I have an issue here, I like this process, or here's a completely separate process and I think I have those options.

I think the ideal of a harassment-free workplace is people feeling confident they have a place to go. Creating those two separate options provides a broader opportunity for people to make those concerns and bring them forward.

MR. SPEAKER: Thank you.

MHA Coady.

MS. COADY: Thank you very much.

I echo Mr. Davis' comments. I think when I began my intervention this evening that was exactly where I was taking us. There is a semi-judicial, or even in some ways power to subpoena is very strong, and that is a very regimented complaints process but there's more of a conflict resolution, wraparound requirements, not everyone has to go to a formal process. There might be some conflict resolutions looking at the various degrees of interventions that can be done to improve the process.

I support Mr. Davis' comments that it can be intimidating if you're going to go down a full complaints process where people just might need a conflict resolution or assistance in conflict resolution. I think that's very, very important.

Just to go back to whether or not it's the Citizens' Representative or whomever, I think that's where we have to kind of focus on. If we believe we have to have an interim process – and I'm hearing that we all believe we do – we just have to find the right process that works for us as MHAs because we are awaiting the privileges committees report and review of the Code of Conduct of how we're going to interface in the future.

Thank you.

MR. SPEAKER: The Clerk was just indicating to myself that if the Management Commission did want to have the Office of the Citizens'

Representative handle this that there's absolutely no issue. That could occur. It's just now you've got two separate offices moving.

MR. P. DAVIS: Yes. That could be a good thing.

MS. COADY: If I may, Mr. Speaker, I wasn't speaking in favour of moving toward the Office of the Citizens' Representative. I'd have to think about that and see if that's the correct mechanism.

I'm more saying that I'm hearing from all of us that we believe there has to be an interim process as we await the outcome of a thorough review by the subcommittee that will report back to the House. Then all Members of this House, if we're getting to that point, we just have to think about what that process is. We have one laid before us, I've made a couple of suggestions. Maybe we need to have a different process or whatever, or maybe we need to have someone else review the process.

All I'm saying is I think what we're hearing is that we believe there has to be an interim process that looks really at harassment-free workplace policy versus what we have today.

MR. SPEAKER: Perhaps in the interest of being a good Chair and trying to move us along, I haven't heard anyone saying they were in disagreement to the fact of having an interim process. I could read the motion that I have before me. Let's see if that sounds like something we could live with maybe at this point to move us along.

The motion before us is whether or not to: "Direct interim application of the Executive branch Harassment-Free Workplace Policy (effective June 1), using an adjusted process, in situations involving Members of the House of Assembly. The interim application will continue until such time as the House votes on recommendations from the Standing Committee on Privileges and Elections. The provisions of the Code of Conduct for Members would also continue to apply."

MHA Browne.

MR. BROWNE: Mr. Speaker, I've listened with great consideration to what my colleagues have said here. There's no doubt, this is a very complex issue and it requires studious thought and consideration, which I'm glad the Privileges and Elections Committee will be doing that.

To echo comments from my colleagues, and it's been good points raised by all, I also firmly believe that we need to have an interim policy in the interim, Mr. Speaker. I think that's important.

You just read a motion. I would move that we accept the motion, if that's the will of the Commission.

MR. SPEAKER: I have a motion before the floor. I need a seconder.

Secunder MHA Parsons.

Further discussion?

MHA Davis, did you indicate verbally, or MHA Michael?

MHA Davis, please proceed.

MR. P. DAVIS: I'm fine; it doesn't matter if I go first or not.

MR. SPEAKER: Okay.

MHA Michael.

MS. MICHAEL: Thank you, Mr. Speaker.

I want an interim process and I think the Harassment-Free Workplace Policy can help us with that. What I'm not ready to do – and this option leaves it open. I'm ready to say using an adjusted process, but I'm not ready to vote on the adjusted process today. I can go with this but knowing we have another step, and that is to do more discussion on the adjusted process.

MR. SPEAKER: Okay, MHA Davis – I'm going to look to the staff particularly, because I'm thinking of what needs to be said here.

MR. P. DAVIS: Just to clarify my position, it's a little similar but a little different from Ms. Michael. I agree to a direct and interim

application of the Executive Branch using an adjusted process. I agree with that. Once that's decided, I think we have to then determine what that adjusted process is.

MS. MICHAEL: That's what I'm saying.

MR. P. DAVIS: If it's not necessarily the one that's here, it's a good basis to start. I think we all agree that we need an adjusted process.

MR. SPEAKER: I'll turn to the Clerk now because there's some functionality. This is something that we were trying to do since the last meeting. I think now we're certainly more focused on where we're going.

MR. P. DAVIS: Just for clarification, I think the difference is Ms. Michael said that she's – I think your comment was you're not prepared to vote on that process today. I may be. I'm just not sure what that process is going to be that we're going to (inaudible).

MR. SPEAKER: I'm going to speak with the staff because I believe I understand some of the mechanics that may have to occur here.

CLERK: When we looked at the Harassment-Free Workplace Policy in terms of application to Members, we had to be cognizant of the legislative Code of Conduct framework. But we also had to look at it in terms of it wouldn't be appropriate to have the Human Resource Secretariat taking complaints about Members of the House.

You're elected officials, you are not employees and the only framework we have outside of that is the Independent Officers. As staff members, when we looked at putting it together, we looked at where is the best place for it to reside and the synergy was with the Commissioner for Legislative Standards.

When we looked at various aspects of the complaint process and the resolution process, we did look at a possible role for the Citizens' Representative as well, and reached out to the Citizens' Representative and said: What do you think? Actually, Barry came back and suggested it all go with the Commissioner for Legislative Standards at the time.

As I said, we didn't look at any aspect of the policy except where would the complaints go because everything else will apply. Confidentiality, a timeline, we didn't look at any of that; it was just how can carriage of this policy work. We were looking at it on a long-term basis and, of course, then the private Member's resolution. That kind of put a spanner in the works in terms of we have to rethink this now because this can only be interim that the House had given direction to one of its committees.

I don't know if I'm being clear but that's essentially where we delved into it. I guess we were looking at in terms of the nature of the complaints and the fact that you could have various investigations ongoing at the same time depending on what complainants require and request in order to make sure that all their needs were addressed.

If you had, for example, an employee come forward with a complaint against a Member and another Member comes forward with a similar complaint, then there would be a number of investigations that could be going on from different quarters. This way, at least they would proceed because they would be within the one organization and the appropriate set of resources could be acquired to facilitate any dispute resolution or investigation or as appropriate under the application of the policy.

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you, Mr. Speaker.

Thank you for that intervention.

I think we're coming to some agreements in terms of we all agree there's an interim process, we all agree how important it is to have what I call a harassment-free workplace and the wraparound services of that, and the multi-levels of conflict resolutions that could occur. I think we're all in agreement on that.

We've had the information the Clerk has given us now for, I think, a couple of weeks, maybe three weeks. I've reviewed it. What it is, it's an adaptation of the harassment-free workplace that's coming for the provincial government on June 1.

I'm just asking my colleagues what other changes – I've heard one recommendation of going to the Citizens' Representative. I'm hearing that they need more time to review the adaptation or is it that you're – I'm not quite sure what my colleague's needs are and that's what I'm trying to suss out.

MR. SPEAKER: Thank you. You're actually reading my mind.

That's what I meant, I guess, when I was thinking about the mechanics of it. If we, as a Commission, agree that we should move to secure an interim process, I think some of the specifics – and we did have some input from others as to what they would like to see in there. I'm proposing and looking to the Clerk and to our communications team as to whether or not we might circulate the table again to the Members of the Commission and invite them to place their comments, compile and report back to the Commission.

MHA Coady.

MS. COADY: I thought that was already done. I'm looking just for confirmation of that.

MR. SPEAKER: Well, it was.

MS. COADY: Okay.

CLERK: Sorry, I was engaged.

MS. COADY: No, I think the question from the Speaker was has there been a process to help gather some of the thoughts with regard to the interim process. I believe there has been.

CLERK: If I might.

MR. SPEAKER: Yes, the Clerk.

CLERK: Our understanding was following the last meeting everybody was going to consult with their caucuses and bring back their views, hopefully in advance of this meeting, so that we could incorporate it. I know that we did our best to answer questions, supply additional information and make sure we circulated anything we've received.

The other thing I wanted to mention, the Commissioner and I have had a number of conversations about the Harassment-Free Workplace Policy and we do have the resources of government to draw on. As an example, the Public Service Commission has already reached out, called the Commissioner and offered any of their dispute resolution services, should the nature of the complaints require that.

Given that this is a brand new application – and at this point we don't even have any authority to apply it yet – it's really difficult to establish the appropriate staffing until you get some sense of the nature of the complaints that are coming forward. As the Commissioner has said, he certainly does have the authority to acquire the resources that are needed.

Given that June 1 – and there could be people that want to bring forward complaints or allegations and they're waiting for this timeline. I'm looking for a way that we can respond to their concerns in a timely fashion, using what we have available to us. I don't know any other way to say it. It's not perfect. It's going to take some time to resolve.

I know that we have our Code of Conduct that's Member to Member, but there could be employees, political staff, employees of the public service or whatever that may want to have discussions with the Commissioner. As of June 1, the policy applies for employees but not the Members, so we will have a gap.

As I said, there's no perfect answer at this point because it's uncharted territory.

MR. SPEAKER: Again, we as a Management Commission conclude – and I believe that the motion is there; we have a first and second – that an interim policy be developed.

MR. P. DAVIS: Mr. Speaker.

MR. SPEAKER: Yes, Mr. Davis.

MR. P. DAVIS: Thank you.

I appreciate the comments from the Clerk and also from the Commissioner for Legislative Standards. I'll reiterate my confidence in his abilities and also in his office, but I also just

wanted to revisit my comments earlier about the importance of having a process that gives people confidence and comfort, and believe that it's a good process and it gives them an option.

I go back to the PMR on May 2 where it was unanimously approved by the House of Assembly to support the introduction of a legislature-specific harassment policy, similar in principle to the policy in effect in the Nova Scotia provincial legislature. I know that doesn't mean exactly like it means and similar – and the discussion and debate at the day talked about having something that mirrors what is in Nova Scotia.

In Nova Scotia, they use the Office of the Ombudsman. Separate from the Code of Conduct here in Newfoundland, the Citizens' Representative doesn't have any dealings with the Code of Conduct. It's a completely different process and I think we need to get away from comparisons to Code of Conduct, which is not what we're talking about here. Code of Conduct was about the finances and how Members of the House of Assembly spend funds, how they are overseen and approved, how they make sure that they are free of conflict, financial conflicts and so on, and those types of matters.

This is different than that. I think this is focused. Even the Premier's own correspondence to the Management Commission, I think, is more consistent with my comments when he said he's looking for a more restorative process aimed at improving the culture of how politics is done, and also a victim-centred and restorative process mechanism to deal with harassment and words right from his own letter as well, which is included in our binder.

So having that process, the two amendments, I have a couple of questions on one of them. Depending on the answers to the amendments, I think I might be okay with those that are there. But I think overall we'll better serve the Members of this House if it's done separately from Code of Conduct, we do it in a way that's consistent with the unanimous PMR that passed in our House on May 2 in a harassment-free policy similar to that in Nova Scotia.

We give serious consideration that the Citizens' Representative is a comparable office to that is

the Office of the Ombudsman in Nova Scotia which is what their policy is, and it's an interim basis until the Privileges and Elections Committee does a more permanent basis.

I think we'd be better served if that's what we considered here today.

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you, Mr. Speaker.

What I think I'm hearing from Mr. Davis is a recommendation that would change the interim process to now include another commissioner. For me personally, I'm hesitant to do that because I don't know the impact on the Code of Conduct which I think is important that we understand the impacts. So I wouldn't be prepared to vote on that right now. I'd have to understand the impacts.

We are governed by a Code of Conduct as MHAs, and if we move from that what are the impacts, what are the unintended consequences I always call them. I'd have to take that under advisement and seek to understand what the impacts are. I appreciate the comment and I do understand the desire to ensure that we do more of a harassment-free workplace rather than a complaints process. I understand the intent. I'd just have to take that away and consider it because I don't want us to do something not having reviewed it and make that unintended consequence, so I will say that.

I will also say that – and I really want to put this on the table – we've got to get to proactive measures to prevent this. We've spent a huge amount of time here, and I think it's very important time, but we really need to get to preventing these circumstances, not to ensuring we have a process when they occur, but how do we prevent them.

One of the ways of course is through training. I really think that we must have very good training and very knowledgeable people coming in to train, and I believe in always having the best expertise come to do your training. Because we really need to start focusing on prevention, not on restorative justice. I'd like to get to that point as well at some point tonight.

MR. SPEAKER: Hence the oath to the Code of Conduct.

But I'll –

CLERK: (Inaudible) the Code of Conduct is a lot more – it's very broad, it's much more than financial. To date we've had three requests for opinions under the Code of Conduct; two of them were behavioural, they were not financial at all. So I just want to put that out there.

MR. SPEAKER: MHA Michael.

MS. MICHAEL: Yes, thank you, Mr. Speaker.

I want to come back to the point that I had made earlier, in actual fact, where it is, is in the Briefing Note, where one of the bullets says that the following should be noted in considering the option of interim application, and that's where it says complaints related to harassment against Members will have the option of being addressed under the Harassment-Free Workplace Policy or the Code of Conduct, and I've spoken to that.

In saying that we want an interim application, I would do it with that understanding. When it comes to the process – because one is the principles of the policy, and the principles of the policy I would say we want to maintain as the interim. When it comes to the process, I respectfully would say that I know that you spoke with the Citizens' Representative but I think that we need to reconsider the Citizens' Representative based on so much that has come out in the last few weeks.

Groups that have spoken with us – I think all of us in this room met with Equal Voice, if I'm not mistaken – individuals who have expressed concern, and I think it's a discussion that should be re-opened with the Citizens' Representative and, once again, to say that we all agree we need the interim policy and we like the policy, not from the perspective of the process but the policy from the Harassment-Free Workplace Policy that's coming in June 1, and take the time to do the extra bit of work with regard to who is the point person.

I would suggest, if it's the Harassment-Free Workplace Policy that the point person be the

Citizens' Representative. I would suggest if it's the Harassment-Free Workplace Policy that the point person be the Citizens' Representative. If it's under the Code of Conduct, we have no choice – and I don't mean it that way; excuse me, Commissioner, you'll understand the way I'm meaning that. If it's under the Code of Conduct, then it is the Commissioner for Legislative Standards and that both of those policies, both of those processes become very clearly presented so that anybody knows they have a choice in where they go.

And we're talking about interim; we're not talking about this – because PEC has to come up with what would be recommendations for our ongoing policy. But in the interim, I don't see there's a complication. So what if there are some cases being dealt with by the Citizens' Representative and some being dealt with by the Commissioner. I don't see that as a problem, personally.

MR. SPEAKER: I'm just going to make a comment so I can hopefully describe where we are. It's similar to the debates we have here in the House. We do have a motion before the floor whether or not to accept an interim process. The challenge we have – and the Clerk is reminding me – we need to understand what that process is.

We have three options before us. One is the option that was put forward on May 16, that's your Attachment 2; the second option is the one that was put forward by the government caucus, Attachment 4; or a third option is whatever we may create here through our discussion.

We're almost, I would suggest, dealing with this like an amendment. We need to understand which process are we feeling –

MHA Coady.

MS. COADY: Thank you very much, Mr. Speaker.

As I said, I listened quite intently to my hon. colleagues when they talked about utilizing an opportunity under the Citizens' Representative, but I really would like to understand what the possible unintended consequences – albeit – so I will be hard pressed to make a learned decision tonight as to whether or not we can go down that

road. From my perspective, I just don't want to do something without having understood what the impacts of so doing might be.

MR. SPEAKER: We have a motion before the floor, but as I look around my colleagues, are we discussing perhaps a deferring decision to another meeting.

MHA Coady.

MS. COADY: A deferral is always such a difficulty so I apologize for not – I just don't want to do something that we have unintended consequences about, without having good discussion and thought as to if you have this process and this process and the possibility of another commissioner.

So I just want to make sure that we have time to take a breath to understand we're going to have the Commissioner for Legislative Standards, we're going to have the Harassment-Free Workplace and now the possibility of another avenue. I just want us all to understand that and how one bumps up against the other before we take that decision without having had the opportunity to really review it and I argue fairness to the Clerk as well.

CLERK: (Inaudible) that's one of the things we did look at. Anybody that is coming forward under this policy is doing so under duress to start with. We have a policy that carriage, for the most part, is through the Human Resources Secretariat because it's employee to employee usually.

So all of a sudden we have another process now where possibly a Member is involved and so complaints, if they're in the departments, they're going to go to the human resources, they're going to that channel. Those people will have to indicate I can't take it here; this is where this one has to go. Because as I said, you can't have carriage of complaints against Members within the public service itself.

Then it gets even more complicated, especially if it's a Member. Is it under the harassment-free policy, is it under the Code of Conduct, is it the Citizens' Representative or is it the Commissioner for Legislative Standards? Those are the things you would have to work through

and try to develop really clear flow charts, so you could give very concise guidance, I guess, to somebody. Like I said, I look at the person coming forward, if they're under duress then how do you make it accessible?

You know where I'm coming from, yeah.

MS. MICHAEL: We're all struggling with that because –

CLERK: Yeah.

MS. MICHAEL: – that's the basis of what we're struggling with.

CLERK: And where the Commissioner for Legislative Standards has carriage of the Code of Conduct, has carriage of the conflict of interest provisions on the House of Assembly act, then if Members are involved that's an obvious spot. Anybody calls in, people call in with a complaint against a Member, they call our office and we say you have to speak to the Commissioner, 729-6068. At least he can talk to them and explain how it all works.

MR. SPEAKER: I'm trying to understand where to go from here. The Clerk has reminded me that to be effective in terms of our proposed motion that was to accept an interim process, unless we can identify the interim process we're at a little bit of an impasse. I'm not sure if we can have a qualified statement to at least, as a Commission, we're moving away from the fact that we don't want to do something. We do want to do something.

MHA Davis.

MR. P. DAVIS: Thank you, Mr. Speaker.

I think one of the issues here is that right now the Code of Conduct provisions and the Code of Conduct process for complaints and investigations, I don't think there's any argument that that process should stay in place, and if we conduct a review as part of the work of the Committee, as part of the Code of Conduct, I fully support that – updating, making sure it's accurate, it's up to date and it meets current responsibilities and requirements and what the people of the province expect from us.

When you look at the two options, because Option 2 says the Code of Conduct provisions for Members continues in effect. I think the Code of Conduct provisions continue in effect anyway, and should continue in effect anyway. I think it's separate from what we're talking about from Harassment-Free Workplace. That's a point I was trying to make earlier. I think they're completely two different things. They're two different matters.

The Harassment-Free Workplace Policy and Code of Conduct should be completely different. Can they be the same incident? Yes, they could. Both could be involved with an incident or an issue or a workplace problem, but they're completely separate from each other.

So what we're looking for is an interim harassment-free workplace policy which we're all in agreement to adopt the Executive Branch policy. Where the change has to happen is: What is the process for implementing that policy, or delivering on that policy? So that's where we are today. I don't think it has anything to do with Code of Conduct. I think we should park Code of Conduct aside and talk about Harassment-Free Workplace and what's the best way to do it.

Your staff, Mr. Speaker, have done I think a good job of doing a side-by-side presentation of how we can adapt the Harassment-Free Workplace Policy to fit the unique circumstances of elected Members of the House of Assembly and the Legislature. As an interim basis, I think they've done a good job of doing that. We're going to have a more permanent process, or a process that would reach a more permanent structure. It may come out to be the same, whatever we do on an interim basis but it may be very different through the committee of the House known as the Privileges and Elections Committee that have been tasked to do that. So the question we have here today is: What do we use for an interim Harassment-Free Workplace Policy?

I think the adaption, as laid out, I think is very good. One of the concerns that I had was about where people are going to make the complaint and how they'll feel about that. We've already heard concerns about that, Mr. Speaker. We've heard from Members of the House of Assembly, and publicly, concerns about the process of

having to go to the Commissioner for Legislative Standards and so on.

So what I'm suggesting is if we're going to mirror the Nova Scotia matter, or the Nova Scotia policy, which uses the Office of the Ombudsman, the parallel office in Newfoundland and Labrador is the Citizens' Representative, but it seems to me, Mr. Speaker, that there's been indication by Members that they want to have a chance to have a look at how that would work and what that would look like.

I'm not opposed to that. I think it's the right thing to do, if it means take a day or a couple of days to have a look at how that would apply to the policy and what the implications are and consider that, and maybe even bring it back to their caucus, I don't have any objection to that.

I think for a matter of a day, or a few days, it would be beneficial to get the – it allows for a better process. I'm okay with deferring from that perspective.

MR. SPEAKER: MHA Coady.

MS. COADY: Just for clarity.

What I think I'm hearing is we're pretty much okay with what has been presented, except for one small change, one change. Instead of complaints submitted to the Commissioner for Legislative Standards, you want the complaints submitted to the, I'll call it the Ombudsman?

MS. MICHAEL: Citizens' Representative.

MR. P. DAVIS: Office of the Citizens' Representative.

MS. COADY: Yeah, I think we'd have to consider what the unintended – Clerk?

CLERK: Like I said, when we looked at it first, we did have discussions with Barry, and he thought it should all go to Bruce, at the time, the Commissioner. So we never – we would have to go back and have a discussion.

MS. COADY: Yeah.

CLERK: We can't –

MR. SPEAKER: It's interesting, yes, the staff had actually anticipated that option weeks ago.

CLERK: Bruce has the ability to go out and engage additional resources as he needs them, under his legislation. Barry has a very fixed structure and he doesn't have – he has investigators but they're not specialized in harassment on staff.

MS. COADY: Unintended consequences.

CLERK: So we had to come back to the Management Commission and look for – it's not as easy for Barry as it would be for Bruce, in terms of the ability to go and just engage who they need, as they need it. It's just because of the way it's set up in the legislation.

MR. SPEAKER: MHA Browne.

MR. BROWNE: Mr. Speaker, I acknowledge the comments made by my colleagues and I acknowledge Ms. Coady's point about unintended consequences. Obviously, as I've said before, this is very complex. It's something that I believe requires a significant degree of attention and care in terms of making those decisions.

If we're going to make the analysis of the role of the Citizens' Representative, I think that it would be fair to Commission Members that, not only that we would go and think about that, but that your staff undertake a thorough assessment of the roles and the abilities of each office, as you just mentioned, what the legislative powers are of both offices and determine even if he would be eligible or whether that would be satisfactory to the Commission, but, certainly, I think there is a motion before us. So I'm not sure where that's going.

MR. SPEAKER: Clerk.

CLERK: They're conferred their powers under statute.

MR. BROWNE: Okay.

CLERK: As I said, the Commissioner for Legislative Standards was set up to deal with issues related to elected officials. Like I said, we don't know what that capacity is. It would be up

to the Citizens' Representative to undertake that assessment and determine if it could be appropriately handled. It's not something we could do.

MR. SPEAKER: MHA Michael.

MS. MICHAEL: Mr. Speaker, I'm ready to vote for this option, with the understanding that we have work to do with regard to the process. I'm just not willing to vote with regard to the process, in terms of the starting point of the process. I think we do need to look a little bit further, I think.

I haven't looked at the Nova Scotia one in a while. I think maybe what we need to do is look at the Nova Scotia one, not just in terms of the Ombudsman but the process that led up to the Ombudsman. Maybe it's all of us, with the Citizens' Rep, who needs to sit down, I'm not sure, but I do want to get an interim process.

I think what we have from the Executive Council, which we were calling it Executive Council's Harassment-Free Workplace Policy is a good policy. Let's say we can accept that, but with the understanding we haven't agreed on what the adjusted process will be and get this question answered. If it looks like, no, it just can't work then it would – but I don't think we have the full information about why it can't with the Citizens' Representative.

CLERK: (Inaudible.)

MS. COADY: Your mic is not working.

CLERK: Nova Scotia policy, it would be totally inappropriate.

MS. MICHAEL: No, no, that's not what I was –

CLERK: Okay.

MR. SPEAKER: MHA Parsons.

MR. A. PARSONS: No, no, I'd prefer if –

MS. COADY: We can't hear you. There's something wrong with your mic.

CLERK: Okay.

As I said, we –

MS. MICHAEL: That's not – may I clarify?

CLERK: I'm sorry, okay. I thought you wanted us to – we don't have the authority anymore.

MS. MICHAEL: No, that's not what I meant.

CLERK: Okay.

MS. MICHAEL: What I meant was, in helping us make a decision about the Citizens' Representative or staying with the Commissioner for Legislative Standards, just reading through that process might help us in making our decision about that one point. That's all I meant. I didn't mean anything else other than that.

CLERK: Okay, I –

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you, Mr. Speaker.

What I think I'm hearing is consensus with regard to the, what I'll call the recommendation of the staff of the Management Commission, save for one piece, the submitting complainant, the equivalent proposed process if respondent is an MHA clearly says: Complaint submitted to Commissioner for Legislative Standards.

What I'm hearing is you're okay with everything except that one bullet. You'd like further clarification on it. I'm seeing nodding heads. So I think we could probably just save that, but I would like to say, I made two suggestions for additional changes to what the Clerk had given to us. One being the notification to ensure protection, and I'm seeing the Clerk nodding her head, she's in agreement with that and, as well, as a copy going to the Leaders. I agree with Ms. Michael saying: Only if agreed by the complainant. I'm okay with that.

Just for clarity when we go to vote is to make sure that we're going to include those two changes, if that's okay.

MR. SPEAKER: And you're referring to which version? The original one prepared by the staff or the modified one by government caucus?

CLERK: The modified.

MS. COADY: The modified version.

MR. SPEAKER: Okay, Attachment 4.

CLERK: There are only two –

MS. COADY: Right, two small – and I think you're okay with them.

CLERK: The stumbling block is carriage. Okay?

June 1, if somebody calls me and they have an issue, I need to be able to refer them somewhere. That's the stumbling block. At this point in time, I understand the Commissioner for Legislative Standards, as a matter of fact, is away at meetings. I know he's meeting with specialists to have them available to him on things that he has under the Code of Conduct, the complaints he currently has.

In the interest of moving this forward, I don't know if the Management Commission would consider adopting it with the adjustment. We do have several inquiries that the Commissioner has already told us has to go under the Code of Conduct. If we have any more he can use his resources that he needs to hire to start that process.

There's nothing stopping the Management Commission from assessing – because it is new – how it is working. If we need to make adjustments, we can make adjustments. That will give us an opportunity to explore with the Citizens' Rep, but at least we would have something there for anybody who feels they've been harassed or bullied or whatever as of June 1. I guess that's where I'm kind of landing.

MR. SPEAKER: MHA Michael.

MS. MICHAEL: Based on everything else that's written in the Briefing Note, if we don't make a final decision tonight with regard to Citizens' Rep or Commissioner – which we can't, I don't think – to me, the status quo of the Commissioner is there. But could we – know that we want to have further discussion but with the understanding that on June 1 the Commissioner is still there.

CLERK: The Commissioner only has powers, though, under the Code of Conduct. If a Member or an employee comes forward and wants to pursue an allegation under the Harassment-Free Workplace Policy against a Member, there's nothing available to him or her from that angle. The Commissioner only has oversight of Code of Conduct. That's Member to Member. It's different. It's a different process.

MS. MICHAEL: Well, then, what makes a difference if we're saying that we're agreeing with the Harassment-Free Workplace Policy – if that's what we're putting in place and not the Code of Conduct, then you're saying if somebody says that's what I'm going on, the Commissioner has no powers.

CLERK: This policy hasn't been adopted.

MS. MICHAEL: No, I know that.

CLERK: So in adopting it, somebody has to have oversight of the policy. The proposal is that the Commissioner for Legislative Standards holds that oversight. If we don't make a decision on the policy, it does not apply to the Members. It applies automatically to the staff, the political staff and the public service staff in the House because of the Green act, but it doesn't apply to the Members. This application is reaching beyond and, basically, it's complementing or augmenting the Code of Conduct. It's giving another vehicle that's not there currently.

MS. MICHAEL: What you're saying is if we don't put this in place the Commissioner doesn't have any place with regard to the workplace policy.

CLERK: That's right.

MS. MICHAEL: We have to name him and if we do, then his powers are the same as if it were under the Code of Conduct?

CLERK: No, he has subpoena powers under the Code of Conduct, under the legislation. His powers are exactly the same as the Human Resource Secretariat and all those others in terms of administering the policy.

MS. MICHAEL: Well, then why not have the Citizens' Representative, if that's the case?

CLERK: The Citizens' Representative is not staffed to handle this any more than the Commissioner for Legislative Standards. The Commissioner for Legislative Standards, because of the opinions that he's been asked to do now, is out looking for specialized resources that have expertise in harassment.

MR. SPEAKER: He's building up his resources.

MS. MICHAEL: He has that power even if the complaint is coming outside of the Code of Conduct?

CLERK: Oh yes. For example, if somebody comes under conflict of interest and he needs specialized resources, he has the authority to go out and get those resources. If he has carriage of this policy, his office has the authority to go out and get the specialized resources it needs.

MS. MICHAEL: Can we take like a day or two to have further thinking about that? It's more information than we had before with regard to the difference between the Citizens' Rep and the Commissioner. I know when June 1 is coming, but I –

MR. SPEAKER: MHA Coady.

MS. COADY: I'm just worried about our timelines here, not just for June 1 coming, but the potential the House may close. I'm just wondering if we could take 24 hours and before end of day tomorrow we can get together. I'm just concerned that as we move forward we may not have the opportunity to get back together as quickly and as easily as we need to.

MR. SPEAKER: Go ahead. I think we have some issues.

The Clerk.

CLERK: No, no, no, we were just looking at logistics, that's all.

MR. SPEAKER: Twenty-four hours, I am entertaining a motion.

MHA Coady.

MS. COADY: Not a motion, just I have an event tomorrow night so we would have to be relatively diligent, I think, in making the –

MR. SPEAKER: I won't be here at 7 tomorrow night.

MS. COADY: No, I can't be either.

We'd have to be diligent in our motion tomorrow if we're prepared for it. If we're not, then we'll have to wait until next week or the week after.

MR. SPEAKER: There is a motion on the floor but, still, I'm looking for clarification as to the process that we're accepting.

MHA Michael.

MS. MICHAEL: I'm willing – in the interim, interim – to say that we recognize the Commissioner in the motion now, but I don't want the discussion ended. I guess that's what I want to say. I understand the conundrum that we're in right now.

MR. HUTCHINGS: Once you pass the motion, the motion is adopted.

MS. MICHAEL: No, but the motion doesn't name anything like that. The motion is open ended.

MR. P. DAVIS: No, it's not.

MR. HUTCHINGS: No, it's not.

MS. MICHAEL: Yes, it is, the motion that I read here in my notes.

MR. SPEAKER: We do need the indication of which process we would be following.

MS. MICHAEL: Oh, okay.

MS. COADY: If I may, it does say, Ms. Michael, complaints submitted to the Commissioner for Legislative Standards though.

MS. MICHAEL: That doesn't mean we can't revisit the decision.

AN HON. MEMBER: No, not at all.

MR. SPEAKER: No.

MS. MICHAEL: That doesn't matter, we can pass that motion knowing that we want to revisit.

MR. SPEAKER: As the Clerk said, we can get started and if we feel it's not working, we are the Management Commission.

MS. MICHAEL: As long as we know we have a commitment to revisiting this and not in a year's time. We're doing this tonight because of the pressure. I do want to have further thought given to that point person.

MR. A. PARSONS: We all know Privileges and Elections is coming back too. We're going to have consideration then too. We know this is coming back.

AN HON. MEMBER: (Inaudible.)

MS. RUSSELL: Yes, essentially, but you have to identify what the process will be.

MR. SPEAKER: The motion, but I do want to be clear and I think that we all as –

MS. MICHAEL: Can we agree that the motion is (inaudible)?

MR. SPEAKER: The motion is whether or not to direct interim application of the Executive Branch Harassment-Free Workplace Policy, effective June 1, using an adjusted process in situations –

AN HON. MEMBER: (Inaudible.)

MR. SPEAKER: That's the one in attachment 4.

CLERK: Yeah. The adjusted process would be that as proposed by – as modified by government Members with the change that a copy only goes to the leader of the caucus if the complainant agrees. That's what Ms. Michael mentioned.

MR. SPEAKER: Then I'll just finish up with a motion, if I may. Then, carrying on: "The interim application will continue until such time as the House votes on recommendations from

the Standing Committee on Privileges and Elections. The provisions of the Code of Conduct for Members would also continue to apply.”

MS. MICHAEL: That’s the sentence that would counteract what I’m saying. If we leave that sentence in, “The interim application will continue until such time,” do we need that sentence in there? What I’m saying is –

CLERK: Why don’t we change it to: unless otherwise directed by the Management Commission.

MS. MICHAEL: Sure.

MS. COADY: Agreed.

MS. MICHAEL: Yeah.

MR. SPEAKER: That was the intent of that.

CLERK: Taking out: the interim app will continue unless otherwise directed by the Management Commission.

MR. SPEAKER: I’m going to go back to the mover and the seconder just to ensure that revised motion is representative of what they intended.

I can’t remember who seconded. MHA Parsons?

Do I need to read it again or are we fine there?

MR. A. PARSONS: We’re good.

MR. SPEAKER: We’re fine?

Okay, I’ll seek further discussion.

MR. P. DAVIS: When I spoke the first time I said I had some questions on one of the amendments, which we never got back to.

MR. SPEAKER: Okay. Sorry.

MR. P. DAVIS: The notification of the Clerk of the House of Assembly or Clerk of the Executive Council, are we applying if the complainant agrees to both or just the second?

CLERK: No.

MR. P. DAVIS: Are we applying to that one or just the second one?

CLERK: If it’s an employee of the Legislature, I would be notified.

MR. P. DAVIS: Yes.

CLERK: As Minister Coady quite rightly noted, it would be to ensure the protection for that employee; if the workspace needed to be moved or accommodation needed to be made, that sort of thing.

If it was an employee of the Executive Branch, then the appropriate notification would be to the Clerk of the Executive Council.

MR. P. DAVIS: I understand all that, I’m just wondering – and I wasn’t sure – if the comment about if the employee agrees with it or approves it, does that apply to both or just the second one?

CLERK: No, that applies to the other proposed amendment.

MR. P. DAVIS: Okay.

CLERK: This would be in terms of notification. There was a discussion about if a Member was involved, would the leader of the caucus want to take action, apart from the policy, in terms of discussion or whatever. That’s where that came in.

But as Ms. Michael said, she was in agreement with it as long as the complainant was comfortable, was in agreement with that notification.

MR. P. DAVIS: Okay, I understand all that. I just wanted to be clear if it was for both amendments or just the second one.

CLERK: No.

MR. P. DAVIS: The second amendment is that the Commissioner for Legislative Standards provides a report to Standing Committee on Privileges and Elections, PEC, and a copy goes to the leader of the caucus to which the Member belongs. Note: If the Member that is the subject of the complaint is the leader of the caucus, the

report will only go to the Privileges and Elections Committee.

I'm fine with that. My question is: We have three independent Members here; if someone was to file a complaint against one of those independent Members, am I assuming correctly then that provision would not apply?

CLERK: That wouldn't because they don't – the leader of the caucus may wish to ask that person to leave the caucus, but with the independent Members that sort of thing doesn't apply, so it's only Privileges and Elections – that's the only place it can go for them because they're unaffiliated.

MR. P. DAVIS: Okay, I just wanted to confirm that was the case.

CLERK: Yeah, that's our understanding.

MR. P. DAVIS: If somebody files a complaint tomorrow against one of the independent Members, then it doesn't go to a leader of a caucus.

CLERK: It will go to the Privileges and Elections and eventually it has to come back to the House.

MR. P. DAVIS: Okay.

MR. SPEAKER: Okay, I think we're ready.

All those in favour of that motion?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Against.

Did I see nobody was against? So the motion is carried unanimously.

Thank you very much.

Now we'll go back to Tab 3, and this was also an item that we had deferred from our last meeting. We've had also substantial debate and discussion. I will go to the motion. If approved, the Management Commission will approve a policy change to allow caucus Members and staff in the Opposition caucus offices to utilize the funding allocated for the leader's travel.

I'll now open it up for discussion.

MR. P. DAVIS: Mr. Speaker, I know it's late in the evening, it's been a long week and I'd be quite happy to offer some commentary. I can offer extensive commentary if you wanted, but I think the note speaks very clearly. If it's necessary for me to expound on the note, I can certainly do that if there's any objection to it, or I can speak to it anyway. But if there's objection to it, I could speak at further length.

The note very clearly says that it's a fund for travel by the leader, subject of the request. It's laid out there in the background. The leader's travel is comparable to allocations provided the Premier's office, the minister's office and government departments. It's subject to the Ministerial Expense Reimbursement Policies as outlined. The leader can delegate travel to other elected MHAs, as directed by 2008-025. Right now, MHA David Brazil is the leader of the Official Opposition. Because of the way the House structure works, we have to go bring this to the House Management Commission to allow Mr. Brazil to obtain the fund which exists for the Leader of the Opposition.

In a nutshell, I could provide other commentary, it's probably not necessary but I could provide other commentary as well.

MR. SPEAKER: MHA Michael.

MS. MICHAEL: Yes, I have a question, and I did present this to the Clerk. In the legislation, the legislation says Leader of the Official Opposition. It doesn't say designated or non-designated or anything; it says Leader of the Official Opposition. In this House of Assembly, David Brazil is the leader of the Official Opposition. So I don't understand why he can't access that fund as leader of the Official Opposition. I don't see the need for what's being asked because I don't understand why he can't. It doesn't say in the legislation anything about designation. It says Leader of the Official Opposition; Leader of the Third Party.

So Leader of the Third Party – that has a different meaning than Leader of the Official Opposition. And there's nothing about designation, there's nothing about – because he is the leader of the Official Opposition right

now. The fact that there's a leader of the Progressive Conservative Party who's outside of the Legislature does not affect the fact that there has to be a leader of the Official Opposition. And that leader is David Brazil. So why can't the leader of the Official Opposition access that leader money in the same way as if Ches Crosbie were there?

I don't understand it. To me, it's just logical. And I did speak to a lawyer about it. We have two differing legal understandings there. The lawyer I went to said I think your interpretation is correct, the language is very clear, and there's nothing else anywhere that I was able to find in the legislation that gives any definition to deny what I'm saying. So I don't understand why he just can't access it as the leader –

MR. SPEAKER: Perhaps I'll make a couple of comments and then I'll look to the Clerk, if I may, just to support me in this but the Green act did not envisage the concept of acting or designated in terms of leadership. There's no reference to it. As we know the Green act overrides everything that we do now in this House.

So that's one point. My second point – and the one that the Clerk has indicated to me a few times to help me understand this – is that say the current government failed to a non-confidence vote, who would become the premier, who would the Lieutenant-Governor ask to form government?

MS. MICHAEL: Could you say that again?

MR. SPEAKER: Who would become the premier, who would the Lieutenant-Governor go to? Who would she approach? Would she approach Mr. Crosbie or Mr. Brazil to become the premier?

AN HON. MEMBER: What does that got ...?

MR. SPEAKER: It's just –

CLERK: If I may (inaudible). We're operating under two pieces of governance. In the House, we operate under procedural governance. And you're quite right, in the House MHA Brazil is no different than MHA Davis was when he was leader of the party and leader of the Official

Opposition. He has the same rights and privileges – you're right – but he is designated because the leader of the party is not a Member of the House, then the Members of the caucus, someone has to be designated to take that role.

It sounds like it's splitting hairs and I understand that, but the act that we're following doesn't anticipate any acting or designated capacities. And you'll remember we had to make some amendments to that act, for example, for the Table Officers to allow acting capacities. The statutory interpretation of that is that because it doesn't anticipate it we don't have the authority to pay Mr. Brazil the Leader of the Opposition salary; we don't have the ability to pay him the benefits, the allowances afforded to the Leader of the Official Opposition.

However, from a parliamentary process it is that – and you might remember back in 2008 there was a wrangling around the language because you were leader of a recognized Third Party, and that definition wasn't and they had to go in and do an amendment –

AN HON. MEMBER: (Inaudible.)

CLERK: Exactly.

So it's the statutory language, Ms. Michael. The former Law Clerk rendered an opinion; the current Law Clerk concurred in that opinion. For example, the Alberta legislation says the person, the elected member, the speaker recognizes – slightly different language, world of difference in terms of how it is interpreted from a statutory basis. I'm not a lawyer. That's probably the best explanation I can give. We figure we need an amendment to the act to be broader.

In case of the leader's travel, that's all under policy. The Management Commission has made decisions on it before and is certainly within its authority to make decisions on how that funding is used again.

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you, Mr. Speaker.

My only comment is the same comment I made a couple of weeks ago: I want consistency in the application and adherence to the rules. When

Ms. Michael was the Third Party leader in this House, if she had access to those funds then, absolutely, I agree that everybody has access.

I just want consistency applied to whatever applied to the Third Party and when the Liberals were Opposition. I just want the same consistency. That's what I want to make sure is that the utilization of those funds is available consistently, that's all.

CLERK: If I may, there has been inconsistency. In 2011 there was a change in the Liberal Party at the time that was in Opposition, and it looks like the matter was never raised. Even though Mr. Kevin Aylward was the elected leader, then Ms. Jones continued to be compensated as if she was continuing. It looks like the matter didn't get raised or investigated at the time.

In early 2015, January 2015, when we knew there was going – and I will say that we don't know what happened there because the people who would have been engaged in that have all since retired and there's nothing in the files to indicate the matter was raised or considered. It's quite possible that it was assumed it would be the same as it always was. Prior to Green, these positions, whether designated or actual, would have been compensated and they were.

Then, in 2015 the current chief financial officer, knowing that we were going to have a change in the Third Party, asked the Law Clerk of the day to render an opinion – asked the question: What happens now? What do I have to do? That's when the opinion was rendered that we didn't have the statutory authority to compensate in accordance with the way the act was structured.

Similarly, it was looked at again in advance of the latest party leadership to say what do we do? It was a bit more complicated this time because we had to understand then, from a parliamentary as well as an administrative process, what to do.

Ms. Michael's privileges didn't change in the House. She still has time in Question Period and she still has her 20 minutes. There was no change there but someone had to carry the rights of the Leader of the Official Opposition in the House. That's why if the party leader is not elected, then an elected Member of the caucus is

designated with that responsibility from a parliamentary procedure purpose.

MR. SPEAKER: MHA Hutchings.

MR. HUTCHINGS: Thank you, Mr. Speaker.

I have just a couple of comments in regard to some of the discussion. Initially, some time ago, we asked for an explanation on this. The reference was to Green, pre and post. At that time it was indicated that there was never an instance after Green that this was ever exercised, but now you're telling us there is.

CLERK: We went back – remember Minister Parsons raised it at the last meeting?

MR. HUTCHINGS: Yes, indeed.

CLERK: I wasn't aware. Now when we went back I remembered the situation.

MR. HUTCHINGS: Okay.

CLERK: But to be quite honest, it predates my time, it predates the current Law Clerk.

MR. HUTCHINGS: I understand that.

CLERK: No, no, but we – and if there had been a legal opinion rendered at the time, it would have been in the file. When the chief financial officer asked about the situation with Mr. McCurdy and Ms. Michael, it would have been pulled out.

It looks like it wasn't considered at the time. I will note the timing. Mr. Aylward assumed the leadership in the middle of August and the writ was dropped about a month later. Then he indicated he was resigning the end of October. It happened in a very short period of time and it's quite possible it just didn't occur to anyone. Pre-Green it didn't make any difference whether you were designated or actual, it was compensated.

MR. HUTCHINGS: The other comment I'd make in regard to Green and the reference and the statutory changes that were made – and I've certainly spoken of this before – the act is silent on the issue of interim. My understanding is that the Westminster system recognizes in the Parliament there is a leader of the Executive,

which is the Premier, and there is a Leader of the Loyal Opposition, which is the Opposition Leader.

It seems someone made the decision that because it's silent we're going one way. In going that way you're not respecting of the Westminster system, in my opinion, which would be logical. The Parliament doesn't function without a Leader of the Loyal Opposition, which is part of the parliamentary system.

Whether someone outside of that legislative body is elected of a party or not, to me is irrelevant. The issue is you have the caucus with the second-most seats, which under the Westminster system is designated as the Official Opposition. If someone within that group is designated or elected or appointed as the Leader of the Official Opposition, they are, for all intents and purposes, the Leader of the Official Opposition. Anything that flows from that should be designated to that position. I know we've talked about this before, but I just wanted to get that on record.

MR. SPEAKER: If I may, I go back to the Clerk's comment; she indicated we have had two Law Clerks review the matter. They both came up with the same conclusion. The solution before us, as a Commission, is to affect the policy which we are fully in our ability to do.

I look for a motion from the floor.

Any further discussion?

MR. P. DAVIS: Your point being that's why we're here, because the Commission has the ability to –

MR. SPEAKER: To make that change.

MR. P. DAVIS: – direct that so it's in keeping with those interpretations.

Mr. Speaker, it's interesting to point out that the correspondence attached to the note under Tab 3 comes from David Brazil, leader of the Official Opposition on the Office of the Leader of the Official Opposition letterhead with the address to the Office of the Leader of the Official Opposition on the bottom of it. As far as I'm

concerned – and in the general public – David Brazil is the leader of the Official Opposition.

CLERK: But he's designated, Sir, and I'm not arguing. He has the exact privileges. If he was leader of the party and leader of the Opposition within the Parliament, he has exactly the same privileges. The issue is that we have a very specific act that governs the administration. The statutory interpretation is that it doesn't provide for that designated from that perspective. As a result, we don't have statutory authority to compensate that person.

I understand it's really –

MR. P. DAVIS: If I may, Mr. Speaker, my comment wasn't actually directed to our Clerk. I wasn't taking issue with the Clerk's comments. My comment was for the benefit of the Management Commission to say David Brazil is leader of the Opposition. The people of the province see him as the leader of the Official Opposition.

To my colleague, Mr. Hutchings's comment, in our process he has a responsibility as the leader of the Official Opposition that's designated and recognized in the Westminster process. In order for him to do that, he has to travel around the province. This's what this allows him to do.

MS. MICHAEL: Yes, but it allows more than that.

MR. P. DAVIS: It does so.

MS. MICHAEL: It allows more than that. If it were only a motion to allow for David to be able to access the money, I could accept it. But the precedence is that we've had policy with regard to leader's travel and we followed that policy generally – well, we have. We have followed that policy.

Cannot we make the decision that David be able to access that money as the designated leader?

AN HON. MEMBER: Yes.

MR. HUTCHINGS: That's what we're saying here.

MS. MICHAEL: No, no. This is the whole pile of money just for whoever in the caucus wants to use it.

CLERK: It still has to be signed off by Mr. Brazil. He's the one that holds the signing authority for that caucus.

MS. MICHAEL: Right.

CLERK: And the caucuses already use that money because there is delegated authority. I can pull the expenses from when the Liberals were in Opposition. Their staff used the funding. Your staff has used the funding. There's no issue with that, but it's delegated by the person who holds the signing authority for the caucus. In this case, it just happens to be Mr. Brazil.

MS. MICHAEL: But the option is, and I'm presuming this is the motion: "Approve a policy change to allow caucus Members and staff in the opposition caucus offices to utilize the funding allocated for the Leader's travel."

CLERK: Because right now –

MS. MICHAEL: That's not what I said.

CLERK: Okay. Right now, Ms. Michael, it's specified as "Leader's travel."

MS. MICHAEL: Right.

CLERK: If you want to put in the recognized Leader of the Official Opposition, that might address the concerns you have, and that would allow – it doesn't make any difference if they're designated or the actual, it is recognized leader, and then the other policies of the Management Commission would apply.

MS. MICHAEL: Well, I'd be ready to make that as a motion because that I would feel comfortable with.

MR. BROWNE: What is that?

CLERK: Person recognized as Leader of the Official Opposition.

MS. COADY: In the House of Assembly.

CLERK: In the House of Assembly.

MS. COADY: That's the difference, right?

CLERK: Yes.

MS. MICHAEL: And then as the recognized leader in the House of Assembly, that person can then access the leader's travel money.

MR. BROWNE: And delegate to the –

MS. MICHAEL: Well, that's there anyway.

CLERK: The policies are there from the Commission.

MS. MICHAEL: It's just being able to access the leader's travel money, and if that motion would do it then I'm making that motion.

MS. COADY: Just for clarity, it has to be noted: in the House of Assembly.

MS. MICHAEL: Yes.

MS. COADY: Okay. It can't just be Leader of the Official Opposition because somebody at some point may interpret that to be somebody outside of the House. We want to make sure – I want clarity that it's the Leader of the Official Opposition in the House of Assembly.

CLERK: It should apply to both caucuses equally. Why don't we have: the recognized leader in the parliamentary role?

MS. MICHAEL: Yes.

MS. COADY: Right. That's clear.

CLERK: And that will take care of it.

MR. SPEAKER: MHA Hutchings.

MR. HUTCHINGS: It's the elected designate, or whatever you want to call them. Just to be clear, there's no ability for anybody who's not elected to get entitled to any funds within the House of Assembly. So to suggest that somehow someone outside who's not elected here can access funds is not –

CLERK: There's absolutely –

AN HON. MEMBER: (Inaudible) the same thing.

MR. SPEAKER: That's why the qualifying words: in the House of Assembly.

MR. HUTCHINGS: Yes.

MR. SPEAKER: That does it. The only way you get in here is to be elected.

MR. HUTCHINGS: Right.

MS. MICHAEL: Yeah, that's right.

MR. SPEAKER: I'm going to ask Ms. Russell, if I may, to just read the motion that might be before us.

MS. RUSSELL: Okay, so if I got this right.

The Commission approves a policy change to allow the person recognized –

CLERK: The elected Member, Bobbi.

MS. RUSSELL: The elected Member recognized as the leader in the parliamentary role in the House of Assembly to access the leader's travel allocation and delegate to other caucus Members and staff in accordance –

MS. MICHAEL: We don't need to say that.

CLERK: We don't need that.

MS. MICHAEL: That's in policy.

MS. RUSSELL: We're going to reference the other one, but that's fine if you don't want to do that.

CLERK: We don't need to because the delegation will apply –

MS. RUSSELL: Okay.

CLERK: – with other policies applying as appropriate.

MS. RUSSELL: I think it's better to reference the minute, but –

CLERK: Okay.

MR. SPEAKER: MHA Browne.

MR. BROWNE: Just back to Mr. Hutching's point, that no one elected can access it, only if they're a staff Member of that given caucus and approved by the leader. That's correct, right?

CLERK: That's the –

MS. MICHAEL: The consistency is written as a – it's in the policy. We've been using that policy since it came in.

MR. BROWNE: Okay.

MR. SPEAKER: Yeah, it has to be approved.

I'm going to ask Ms. Russell just to read that again, as we –

MS. RUSSELL: I'll read it again.

The Commission approves a policy change to allow the person recognized as the elected leader in a parliamentary role in the House of Assembly to access the leader's travel allocation.

MS. MICHAEL: No, the elected person, not elected leader.

CLERK: Yes.

MS. RUSSELL: That's what I said, elected.

CLERK: The elected Member is probably the best thing to put there.

MS. MICHAEL: Who is the recognized leader in the parliamentary role.

CLERK: Who is recognized as the leader in the parliamentary role in the House of Assembly.

MS. MICHAEL: In the House of Assembly.

MR. SPEAKER: Okay.

Do we have a mover and a seconder?

MS. MICHAEL: I move.

MR. SPEAKER: A mover, Ms. Michael; seconder, Mr. Davis.

Looking around the room, no further discussion.
I'm going to ask for a vote.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

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

The motion is carried, unanimously.

I'd like to thank the Members of the
Commission for your attention and time.

Motion to adjourn.

MR. P. DAVIS: Motion to adjourn, Mr.
Speaker.

MR. SPEAKER: Thank you, Mr. Davis;
seconded by Ms. Michael.

Thank you very much, thanks for watching.

On motion, meeting adjourned.