



PROVINCE OF NEWFOUNDLAND AND LABRADOR
HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY
MANAGEMENT COMMISSION

Seventy-fifth Meeting

Wednesday, November 6, 2019

HANSARD

Speaker: Honourable Scott Reid, MHA

The Management Commission met at 5:20 p.m. in the Committee Room.

MR. SPEAKER (Reid): First of all, I just want to welcome everyone here to this meeting of the Management Commission.

We have a new Member of the Management Commission, Dr. John Haggie is here.

CLERK (Barnes): A new Deputy Speaker.

MR. SPEAKER: A new Deputy Speaker as well, yes. Derrick is sort of – what is the role? It's not a full Member, it's an ex officio Member as Deputy Speaker and he attends meetings in case he's called upon to Chair the meeting in my absence.

Also, just for the purposes of the people downstairs in the Broadcast Centre, I'm going to ask everyone to introduce themselves again so we know whose mic to turn on and things like that.

So, MHA Petten. We'll start down there.

MR. PETTEN: Barry Petten, MHA, CBS.

MR. BRAZIL: David Brazil, Opposition House Leader.

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

MS. HAWLEY GEORGE: Kim Hawley George, Law Clerk.

CLERK: Sandra Barnes, Clerk.

MR. SPEAKER: Scott Reid, Speaker.

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

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

Scott, I believe you were in acting capacity the last meeting, weren't you?

MR. SPEAKER: Yes.

MR. LOVELESS: Now you're official Speaker, so congratulations to you.

MR. SPEAKER: Thank you.

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

MR. BENNETT: Derrick Bennett, Deputy Speaker.

MR. HAGGIE: John Haggie, District of Gander.

MR. SPEAKER: Okay. I also want to remind Members to say their name each time they speak, again, to assist with the Broadcast services so they know whose mic to turn on and things like that.

The first thing we have to do is we have to report a decision from our in camera meeting held prior to this meeting just a few minutes ago.

As required by the *House of Assembly Accountability, Integrity and Administration Act*, I am reporting a decision made at an in camera session held just prior to this meeting.

At an in camera meeting held today, November 6, 2019, the Commission approved renewal of the lease for premises occupied by the Seniors' Rep for a further term of two years under the same terms and conditions contained in the present lease dated October 26, 2017. The Commission also approved a pre-commitment of funds for fiscal years 2020-21 and 2021-22 for that.

The next item is the approval of the minutes from our meeting on September 25. The minutes have been distributed. People have had a chance to peruse them, I think, read them. Any errors or omissions?

MR. BRAZIL: I move to adopt.

MR. SPEAKER: Okay, I have a motion to this.

MR. LOVELESS: Seconded.

MR. SPEAKER: Seconded by the Member for Fortune - Cape La Hune.

MR. LOVELESS: Fortune Bay.

MR. SPEAKER: Fortune Bay - Cape La Hune. Fortune is different, yes.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

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

They're passed.

On motion, minutes adopted as circulated.

MR. SPEAKER: We don't have to make a decision on this next item but there is a reporting requirement. The approvals are done by the Clerk.

Do you want to ...?

CLERK: I can. This is just an approval for a lateral filing cabinet outside the standard office allocation. Quite often, we'll get requests from Members for an additional filing cabinet or a table or something like that. If they're under a thousand dollars I can approve them, but we have to report them.

MR. SPEAKER: That's just a reporting mechanism.

Next, we have a budget transfer request. The policy related to House of Assembly transfer of funds requires the Management Commission's approval to transfer funds to or from the grants and subsidies to the main object of expenditure.

The transfer of funds is required for the Office of the Chief Electoral Officer, grants and subsidies to provide additional funds for this fiscal year for the candidate and auditor subsidies required under the *Elections Act, 1991*.

As noted in tab 4 of our briefing notes, the transfer is required at this time due to the timing of the 2019 general election. When budget Estimates were prepared and approved for 2019-2020, the general election was scheduled to take place in the fall of 2019. Because it took place earlier, the transfer of funds is required now to cover the candidate and auditor subsidies in accordance with the timelines outlined in the act. That's the issue and (inaudible).

MS. COADY: Thank you.

For clarity and certainty, just for all of us, this is a transfer only, not a request for additional funds?

CLERK: No, no. It's just a timing issue. He would've been looking for funding in next fiscal year, because the cut-off would've been in March and it wouldn't have been processed before the end of this fiscal year, if the election had been held in October or November; but, because it was held in May, the cut-off was in September.

MS. COADY: Yeah. Why I'm asking, this is not a request for additional funds, meaning you were taking it from savings from other areas?

CLERK: Yeah.

MS. COADY: I just wanted to make sure everyone was clear on that.

MS. RUSSELL: The savings are actually coming from within that office, under their salaries.

MS. COADY: I just want clarity on that.

CLERK: Okay.

MS. COADY: Thank you.

CLERK: Yes.

MS. RUSSELL: And just to mention that point there as well on the two-day – the waiting period.

MR. SPEAKER: Okay.

Yeah, while it's not identified in the briefing note, the Commission is asking to waive the two-day wait period for this decision in order to expedite the process of the transfer. People are waiting for the transfer. If we can approve that, it will facilitate the process and allow it to happen quicker, yeah.

MS. COADY: So moved.

MR. SPEAKER: So moved.

Seconded.

Okay.

All those in favour?

SOME HON. MEMBERS: Aye.

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

Okay, carried.

The next item is policy respecting reimbursement of legal fees for Members. So, this issue, back in November of 2018, the Management Commission directed the development of a policy for reimbursement of legal fees for Members. In our last meeting, September 25, we had further discussion. We deferred making a decision, asked for additional analysis to be done and that has been contained in our briefing material that we received.

Today, I'd like us to have some discussion on the material, the analysis that was done. I'm going to ask the Clerk now to give us a briefing on that.

CLERK: Newfoundland and Labrador is somewhat unique in the country in that we have the legislative provisions for the Code of Conduct, in that it is a legislative process. So there's a much higher probability of Member-to-Member complaints in our jurisdiction than in others.

In most other jurisdictions, you would see a member of the public bringing an action against a member, a company bringing an action – similar to what the ministers experience in the Executive Branch.

The provisions in policies elsewhere, which are generally case by case, they're built to suit that circumstance. However, we did go and we did look at the policy parameters established in other jurisdictions and tried to determine what implications they would have, given our circumstances, because we have the Code of Conduct and whistle-blower provisions need to be considered. We have the general legal matters that might come in terms of actions brought against the Management Commissions or

Members in the course of their duties. Then, of course, the Harassment-Free Workplace Policy.

In looking at the various policy parameters that other jurisdictions have used, essentially they look at whether or not the legal expenses arise out of the Member conducting their duties as a Member. So if it was a personal nature, somebody assaulted somebody else, we wouldn't look at that. They wouldn't look at it. Or if it had to do with the electoral process, that would not be considered a legitimate expense for reimbursement of a Member.

The next two, they become almost mutually exclusive in our environment, but the Member has not initiated proceedings. They only reimburse where the proceedings were initiated against a Member and the Member is a defendant and, similarly, the allegations against the Member have not been substantiated at the conclusion of the matter.

If somebody brought an action and the Member was found innocent of any allegations, their Board of Internal Economy or Management Commission would reimburse that Member. That does not take into account that we have Members bringing complaints or responding to complaints against other Members.

Essentially, in these situations if you picked 2 or 3, the Management Commission would be essentially adjudicating one Member against the other. The whole idea of having the Code of Conduct process, with the Commissioner for Legislative Standards, is to take all of the Members out of that process until a report arrives in the House.

The request for reimbursement is made at the conclusion of the matter. That's another parameter that's embedded in some policies and that's intended. Once all avenues have been pursued, then the Management Commission or Board of Internal Economy would look at the costs involved and determine whether or not any reimbursement would be made.

Finally – and this is actually a provision in the federal policy – basically, no matter what other parameters have been established, they provide an option here for the Board of Internal Economy to exercise discretion, because there

will be matters that will not fit anything or would be extraordinary in nature. Essentially, it's case by case again. It comes back to the Board of Internal Economy to determine if an exception would be granted to the policy and reimburse the legal fees, in spite of any parameters that have been given.

Generally speaking, as I said, these policies are geared to others bringing actions against Members. In the cases of the jurisdictions that have provided for Members bringing complaints against other Members – that would be the Yukon and the House of Commons – what they have done is set an amount that they will give both the complainant and the respondent. Both of them have chosen \$5,000.

MS. COADY: Is that a maximum?

CLERK: That's the maximum but, again, the House –

MS. COADY: A yearly maximum or (inaudible)?

CLERK: A complaint, it would be by case.

MR. BRAZIL: That's only in the case of Member against Member?

CLERK: Yes.

MR. BRAZIL: It wouldn't be an outside constituent, I'm assuming –

CLERK: No, not at all.

MR. BRAZIL: Okay, Member against Member, \$5,000 maximum.

CLERK: In providing that lump-sum amount, the policy does provide for extenuating or exceptional circumstances by having this discretionary provision written into the policy, which is policy parameter 5 in your table.

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you.

I just want to delve into this \$5,000 per complaint. We've seen, on the floor of the Legislature, very unusual circumstances where a

complaint takes multi approaches. So, we've had a complaint against one Member, then that Member files a counter-complaint. Is it \$5,000 for the total complaint or \$5,000 per instance?

CLERK: It would be per instance. Essentially, there were five reports tabled in the House in 2018. Even though some of them were the same complainants and same respondents, we would have paid out 10 times – if we had \$5,000, it would've been \$50,000; 10 times \$5,000.

MS. COADY: Right, okay.

Thank you.

CLERK: Okay.

So, that's it in a nutshell, because we have to be careful in looking at policies. You can't codify everything because they're so unique, the circumstances. You will be left with having to make determinations. However, looking at these policy parameters and taking into account our statutory provisions and our circumstances, we essentially divided the circumstances into three categories, which is in this shaded table.

The option would be, for a review under the Code of Conduct or the whistle-blower provisions, you could provide an equitable reimbursement to both the complainant and the respondent on a pre-established lump sum, and the Management Commission would have the discretion as to the quantum.

In doing so, if you so wished, you could take the approach used by the House of Commons and write in this discretionary provision that if circumstances warranted, you could come back and look at it in the case of something extraordinary. We don't know what extraordinary might be.

MR. SPEAKER: MHA Coady.

MS. COADY: I would suggest we're in pretty extraordinary times as they are. The nature of my question is, we've not seen the period that we've just come through, and, hopefully, we'll never see it again, if what we're doing in Privileges and Elections and the interim policy acceptance, we would be able to mitigate these

concerns before they become full-blown complaints.

I guess my question to the Clerk is: Is this extraordinary circumstances that we're in; therefore, the exceptional circumstances, provisions are there, or have you seen this kind of action in previous times?

CLERK: Well, we've only ever had – before the request that came forward last year, the only request was in 2007 and the Management Commission denied it.

MS. RUSSEL: That's for legal fees; reimbursement of legal fees.

CLERK: That was for legal fees, yes.

Prior to the five Code of Conduct reports that came forward, previously, we had only had three since the legislation came in.

That being said, we've seen the evolution of harassment-free workplace policies in a number of legislatures or Code of Conduct that address harassment-free work environments. This is where you see the House of Commons coming out with its new policy and the Yukon coming out with its new policy, as well as Code of Conduct provisions for the Senate and other jurisdictions. Saskatchewan have it appended to their Standing Orders.

So while they're not identical to us, we're seeing more of a move towards stating what acceptable behaviour is. We were just ahead of the pack on it.

Where there was absolutely nothing before, we're seeing a development of an articulated expectation of behaviour. As I said, the investigation and the penalty provisions of those are evolving over time as well.

MR. SPEAKER: I think MHA Petten had something that he (inaudible).

MR. PETTEN: Thank you, Mr. Speaker.

I'm a bit confused following this. I was here the last time and I thought I had a good handle on it, but I want some clarity.

So, the \$5,000 lump sum is for Code of Conduct and whistle-blower violations?

CLERK: Yes, it would be.

MR. PETTEN: Okay.

CLERK: That would be for each one. So if you had five complaints made against you, it would be \$5,000 for each one.

MR. PETTEN: Then the question, too – and I'm trying to write it down. I think I have it but I just want to confirm. So a case is made, I guess – if someone makes a complaint against one of us in the course of our duties as MHAs.

CLERK: That is the next section, that green section.

MR. PETTEN: Okay.

CLERK: Okay?

MR. PETTEN: Another question now, just for clarity, too. You're saying \$5,000 per –

CLERK: I'm just saying that's what the Yukon –

MR. PETTEN: Oh, no, I'm using it for an example here now.

CLERK: Yes.

MS. RUSSELL: Using it to determine what's –

MR. PETTEN: Yeah. Based on what just happened previously, as Minister Coady alluded to, I hope we don't go back there, how much money was paid out in legal fees for those 10 – did you say it was 10 complaints? What was covered in this previous round of harassment allegations?

CLERK: They were all done on an individual basis. We do have the amount.

MR. PETTEN: I think it's worthy of bringing it up or comparing it.

MS. RUSSELL: There were four Members that were reimbursed. There was \$14,559 for one Member.

MS. COADY: Can we just get a compilation?

MR. PETTEN: Total?

MS. RUSSELL: Yeah, I don't know what the total –

MR. PETTEN: Okay.

MS. RUSSELL: I had the individual amounts. I don't have them all totalled up. There was \$26,277 for another Member, there was \$2,219 for another Member and \$12,502 for another Member.

CLERK: Just over \$50,000.

MS. RUSSELL: That was all reimbursed.

CLERK: Then another Member was reimbursed through the Department of Justice. We don't know what the cost is for that.

MR. PETTEN: That's the point I want to make, so I'll be on record. Paying \$5,000 lump sum, those figures – and I'm not saying people are overcharged. I want to be on record as saying – I mean hopefully I never need a lawyer to protect me while I'm carrying out my duties as an MHA, but I don't want to be exposed. I don't think it's fair for any of this to be exposed, us or the other 30-odd MHAs that we represent when you're making these decisions. I just want to be clear about that point.

MR. SPEAKER: MHA Coady.

MS. COADY: Thank you.

I've given this quite some thinking, and I concur with my colleague's remarks. We don't want to see any Member of the House who, in the execution of their duties, have a challenge of being able to pay for legal fees, but there are extraordinary circumstances too.

I'm going to hearken back to something you just said that I kind of went, oh my goodness. If we have one Member that has five complaints per incidence, there's a bigger problem here that needs to be addressed. That's why I'm kind of, in my reflections over the last little bit – this case-by-case basis really does resonate with me. Even though I like clarity and certainty on most

everything, I'm that kind of a person, but I'm looking at exceptional circumstances in most cases here.

The point I would say is we are trying to move away from the harassment-complaint issue, right? We're not talking about a harassment complaint because that's under a different process. All we're talking about, Code of Conduct and whistle-blower, and maybe having a top-up of \$5,000 per complaint, but couldn't we be guided by that and look at it on a case-by-case basis? I'm kind of moving towards that.

If it's extraordinary circumstances, \$5,000 may not be enough, I don't know. If there's more than one incident against one Member, someone has to pause and reflect that as well.

CLERK: And that's essentially what the House of Commons has done. Upfront, they have decided to give \$5,000 to the complainant, \$5,000 to the respondent. Thereafter, Policy Parameter number 5 would kick in, and they would consider. That's essentially a case-by-case basis where you would exercise discretion. If it was something really extraordinary, the Management Commission would reserve its right to say, no, in this case, we wish to not provide or provide additional support.

MS. COADY: Could I ask a follow-up to that?

MR. SPEAKER: MHA Coady.

MS. COADY: I'm wondering if we did set a guidepost, that \$5,000 per incident, would we encourage more of this behaviour or not? I just want to reflect on that.

The House of Commons, they have 338 members. That's a lot of moving parts, and they've set a stipend. Should it be a case-by-case basis here? If it's known that it's \$5,000 per instance, are we encouraging more discussion, more complaints? I just raise that as a thought point. I'm not saying it would; I'm just wondering if it would.

CLERK: Can I?

MR. SPEAKER: You have a response?

CLERK: Yes.

MR. SPEAKER: Okay, and then we'll go to –

CLERK: I think we have to bear in mind that the Code of Conduct covers a wide range of behaviours. Our experience in the last year has been with harassment, and, of course, the ideal place to deal with harassment behaviours is in the Harassment-Free Workplace Policy. Currently, Members can choose to go and use that policy, but they could still pursue harassment through the Code of Conduct process.

If the Privileges and Elections report, their recommendations are revived and decided upon, then it would take the process for dealing with harassment out of the Code of Conduct process and put it in a policy process, a Legislature-specific policy.

Kim, I don't know –

MS. HAWLEY GEORGE: Yes, that is correct.

CLERK: Okay.

MS. RUSSELL: That was the recommendation that all harassment complaints be dealt with outside of the Code of Conduct.

MS. COADY: Which they are under the interim policy.

MS. HAWLEY GEORGE: But you can still proceed under the Code of Conduct, so you get the choice.

MS. COADY: Oh, under the Code of Conduct.

MS. RUSSELL: Yes, right now you still have two options.

MS. COADY: Okay, perfect.

Thank you.

CLERK: To be quite honest, you could go under the policy and if you didn't like the outcome, you could still go back to the Code of Conduct, the way it is right now.

MS. COADY: Yes.

MR. SPEAKER: Okay, MHA Brazil had some comments.

MR. BRAZIL: Thank you, Mr. Speaker.

My only concern is – and it's both ways and similar to Minister Coady there, relevant to are we encouraging people to do it. But on my flipside of that is, at the end of the day when you interpret the Code of Conduct and you're not really sure if either your complaint or your defence can move beyond what the policy is and needing legal advice, that you would have that protection.

I'm in between. I'm almost with the House of Commons that we have a stipend of \$5,000 up to for both and then individual cases, because you have that peace of mind or that freedom to be able to engage legal advice when you're not quite sure. When unsure, you need to have the right advice to move forward. Whether the Code of Conduct policy would cover what you're trying to do or if you think it's another outside entity that you need to be able to push it.

To me, there has to be some trustworthiness that we're all going to act as professionals, and that doesn't necessarily mean that's how it always works. But, at the end of the day, the primary objective I thought, from our conversations over the last meeting, was about also ensuring that every Member in the House of Assembly has protection from both entities, internally and externally, as part of that.

Personally, I'd be a little bit more comfortable with an amount there for both the complainant and the defendant, respondent, and then the discretionary use of clause 5 that if it's an extraordinary circumstance that gets determined that the Commission has that discussion about what additional resources would be allocated as part of that.

CLERK: If I may? In terms of – oh sorry.

MR. SPEAKER: We'll go to you first and then –

CLERK: Okay.

In terms of how often we might encounter this, this legislation was passed in 2007. Up until last

year, we only had three complaints under the Code of Conduct and those three complaints were because of actions taken by an MHA – they were brought forward by another Member, but it wasn't the interpersonal relationships, it was because of something the MHA had done that another Member reported as an infringement of the Code of Conduct.

Last year, was quite extraordinary in terms of the nature of the complaints that were brought. Hopefully, it's an anomaly.

MR. SPEAKER: Dr. Haggie.

MR. HAGGIE: Yes, thanks.

In actual fact, the Clerk partly made one of my points, which was even if you bundle all of these complaints in as eligible, it's not an onerous amount of workload for this Committee, if you adopted a case-by-case approach.

The case-by-case approach, casuistry, if you want it, is flexible. It ends up there anyway and the concern about setting a sum I would have is that would then become the floor and it would be what everybody went for, rather than up to, because you didn't actually say anywhere: up to.

So, really if it's effectively four complaints in 12 years, I don't know the kind of discussion that you can bring to the table and the Law Clerk, wouldn't just enable an informed, accurate and contextual decision to be made that would be fair to all parties. It would be a bit like an adjudication process, but it ends up there anyway.

If there is a range of costs that we've heard there, we've overpaid the ones for \$2,000 and we've underpaid the ones for \$2,600, unless we do case by case. We have to do case by case anyway, just accept the inevitable and go for it.

MR. SPEAKER: Any other comments, discussions, questions?

CLERK: We've addressed complaints brought under the Code of Conduct or whistleblower; however, we do have the other legal matters category and an option would be to consider each request on a case-by-case basis or to impose some of these policy parameters. For

example, if the Member initiated the action, is that something you would want to consider?

Then in terms of the options for reimbursement, most jurisdictions use a case-by-case basis when they make the determination, they pay the legal fees in there entirety. The House of Commons uses a maximum hourly rate based on a scale. They have a scale set based on the years of experience at the bar for the lawyer. If you have a junior lawyer, it would probably be \$50 an hour, whereas if you had a senior counsel you might be in the \$350 range, but they haven't set a cap on the number of hours.

That's one of the issues we ran into when trying to analyze the request: What is the right number of hours? We can't make that determination.

MR. SPEAKER: Dr. Haggie.

MR. HAGGIE: The other legal matters are the Wild West. I mean, you have no box around that at all and you've no idea – it's like the military intelligence thing, it's an unknown unknown, you really don't know what you don't know. I would argue that a case-by-case analysis with advice from the Table staff would be the most sensitive way of doing it.

As to hourly rates or whether or not you want to set a rate, that may just simply complicate the matter. If you leave yourselves the discretion, how many hours is enough? Is it fee for service, like we'll pay you this much to take your gallbladder out, but if it takes you five hours, you lose on it because we're not going to pay an hourly rate? That's the environment I came from. I was never in the law world. I was paid for the end result, not the bit in the middle.

MS. COADY: (Inaudible.)

MR. HAGGIE: Yeah, well, you were lucky some days. Again, I'm just arguing for the discretion of the committee, basically, the freedom to do it.

CLERK: I will point out the 2007 request, which was denied by the Management Commission because the Member initiated the legal advice herself, that's the only one we've had.

MS. RUSSELL: Yes, prior to what (inaudible). I think that's important.

MR. SPEAKER: I have two people, MHA Brazil and then MHA Petten.

MR. BRAZIL: I concur on two sides here; one, I still think clause 5, the discretionary use, that would come back for that discussion. Again, I would think we'd confuse it and make it more complicated by putting number of hours attached to it, the salary base is based on years of experience versus whoever – if it's me, who there's an accusation against or I want someone to defend me, if I'm making a complaint, would have that particular person with their skill set, regardless of what they're worth in the eyes of an entity outside.

I would think that the case-by-case review that would look at what the expenditures are at the end of the day that's approved, that would be where I would land.

MR. SPEAKER: MHA Petten.

MR. PETTEN: Yeah, I guess basically, I was going to – pretty well what Dave just said in a nutshell.

Just to Minister Haggie's point of setting a rate or setting an amount, I get the point, but I guess I'd probably be a dissenting voice in the sense, I think I like some surety. You know, you like to have that comfort level that there is some surety when you're left to the mercy of a committee to make approvals.

In the sense of there are some sensitive issues, I think some strong consideration should be given to have a base amount. Whether that turns out to be the standard that they'll charge and go up from there, I don't know, but I'm of the belief you need some surety and a sense of security for Members if they're faced with that.

I agree with part 2 of that, too. Is this based on hours; \$50 to \$350, I think that clouds the issue. That number 5 could be applied right across this extreme circumstances, too. I think you could have that extreme circumstance in either one of them, but I do like to have a set amount or I'd like to have it considered to be some kind of surety.

MR. SPEAKER: MHA Coffin.

MS. COFFIN: Thank you.

I have to agree with MHA Petten in that, yes, we need some certainty for Members knowing that if you are accused or you're subject to legal action, you need to have some certainty that you are going to be taken care of there. However, I think coming to the Management Commission, we have to give credit to our colleagues here. We are smart, we know we have great resources available to us, we're going to be very certain of what each of the circumstances are. So I think the certainty of knowing the Management Commission will review it for appropriateness and applicability, I think that might be enough certainty.

Certainly, you and I had a conversation previously about how this works in labour relations. If an individual in a union has a complaint, you reach out to your union and then your committee is assigned, and they determine the validity of your complaint, whether or not it has enough merit to move forward on. So, does it become a grievance and then is it actionable and then are there legal resources applied to it.

I think by the time you get down to we're actually spending money on it, lots and lots of people have been consulted, and I think the boxes have been checked. So I feel quite comfortable coming to the Management Commission and saying, this is an issue, we need your advice on whether or not we should proceed on this and will the legal fees be covered. I am also tending towards the case-by-case basis because of the nuance in all of the cases and circumstances could vary widely.

Now, I do want to jump and ask, when you mentioned earlier that all legal fees would be covered, is that an automatic? If we choose case-by-case basis and we say, yes, this has merit and we deserve to pay, can we say, yes, all the legal fees will be paid or can the recommendation be up to a certain dollar value?

CLERK: That is within the discretion –

MS. COFFIN: That's in our discretion?

CLERK: That is within the discretion, because as we pointed out in the policy parameters, depending on what you adopt, right?

MS. COFFIN: Yes, yes.

CLERK: So you would probably institute – in saying a case by case, you would probably give some guidance in –

MS. COFFIN: Right.

CLERK: – terms of the legal expenses arise out of or directly related to the Member carrying out their duties as a Member. So it's quite clear to Members, if you get into a personal situation or it's an electoral matter, don't even bother to come forward because it's not covered.

If a Member has not initiated proceedings, so that would be – this is where we get into trouble in the Code of Conduct because probably we would have to look at that as a Management Commission because we have complainants and respondents both being Members in that sort of situation.

In a general situation, if a Member decided to go out and sue citizen x because they said something about the way they undertook their duties as a Member of the Management Commission, you wouldn't cover that; but, if citizen X launched a suit against a Member because they didn't like, that's legitimate. You have to cover the Members in the performance of their roles, right.

MS. RUSSELL: So case by case, essentially, means that the Management Commission has discretion, whether it be for – in terms of looking at the matter and whether it's going to be reimbursed and then the amount that it would reimburse.

MS. COFFIN: Yeah. Okay, so discretion (inaudible).

CLERK: But these are the sorts of things you would (inaudible).

MS. COFFIN: Yes, yes.

MS. RUSSELL: And these are the ones –

CLERK: (Inaudible.)

MS. COFFIN: Yeah.

MR. SPEAKER: MHA Coady had something she wanted to say.

MS. COADY: Thank you.

I just read – turn to page 4 – the options that are before us, and my mind keeps going to a bit of a hybrid and maybe we want to – I'm a decision maker, so I don't like pushing it off to the next meeting, but time to craft the best motion, give us that time. I'm leaning towards, and I'm hearing a general sense of case-by-case basis and we'd need to set some parameters around that maybe, and you've given us some good policy parameters here to consider, but if we set limits and give it per complaint or per instance amount of money, I think we're trying to fit a square peg in a round hole.

These are extraordinary circumstances that we've had over the last number of years and I'm kind of thinking more case-by-case basis, which is not one of our – unless we want to try and craft a resolution here at the table, which I think would be much more difficult.

CLERK: Well, we could craft one to say that the Commission wishes to develop a policy based on a case-by-case basis and considering certain policy parameters. We could draft that as a policy statement and then bring it back for finalization, but at least the direction would be we're working on a case-by-case basis as opposed to lump sum or something like that, right? So we would be further ahead.

MR. SPEAKER: I'll go to Dr. Haggie first.

MR. HAGGIE: Thank you, Chair.

This is directly to the Clerk's point, which in actual fact is – let's leave ourselves a little bit of discretion and maybe instead of policy, you might even want to use the word guidelines. I hate wordsmithing on the fly, but the bottom line is I really think we're in such exceptional territory. It's that 1 per cent of situations where you're trying to write a policy that might be read by 99 per cent of everybody else.

I think I'm hearing a broad consensus that we need to have the ability to be a bit more thoughtful about these. It's not like it's happening every week, fortunately, and if four in 12 years is what it is, then – it would be nice if it was less, but it's manageable. That was my only comment.

Thanks.

MR. SPEAKER: I'm just trying to get a sense of the consensus. I hear some people saying that the case-by-case element of it is important, but I also hear some people saying they want surety. I'm sort of wondering, in terms of the debate around whether or not we have a base amount in there with also the flexibility to do some case by case for larger amounts, I'm wondering is – someone mentioned the possibility that we might encourage people, but I'm also wondering, is there a possibility that discouraging people might be a bad thing? I'm just wondering.

MHA Coady.

MS. COADY: I'm sensitive to the fact of ensuring people know they have coverage. I'm sensitive to that, very much so, but I think if we had the guidelines – and I thought it was a smart word – if we had the guidelines helping people understand that, yes, they have a means and a mechanism to be covered and here are the guidelines for that, I think that might give them the surety that we all want to give them, versus saying \$5,000 per incident. That worries me a little bit, because then you might put in five or six incidents, but if we had the guidelines and said here are the parameters that we're thinking about and we'll adjudicate it on a case-by-case basis because maybe it's more; maybe it's less.

I thought Ms. Coffin gave a really good – she is correct. We have great Table staff and great memory and we can look at other jurisdictions on an ongoing basis and understandings, I think, that will help us as we go through these guidelines and parameters.

So I'm sensitive of the fact that ensuring people understand these parameters and guidelines are there for them and that there is an opportunity for reimbursement of legal expense, I think, is important.

MR. SPEAKER: I'll go to Dr. Haggie first and then Mr. Petten.

MR. HAGGIE: Thanks, Mr. Speaker.

Based on my experiences elsewhere I think if you set a sum, it becomes what I would call a second-order problem and whilst the people in here who would manage the policy won't do anything, the word will get out that that's what you can get. And that will be what the bill will be when it comes back because it won't be us – and no disparaging comments about lawyers intended at all here but if you're a professional individual and you know you're eligible for \$5,000, then you'll find \$5,000 worth of work to submit.

MR. SPEAKER: MHA Petten.

MR. PETTEN: I just wanted to clarify, Mr. Speaker, you did say – and I did say I think we need an amount there, and case by case I have no issue with that. But I restate – I said this when we met last time too – I think the surety is required. Like, you got someone being faced with having to get a lawyer. They're going in on the blind. They're going in based on this committee, and I'm not knocking anyone around this room, everyone is going to be fair, us included, but they're going in really on the blind, so to speak.

That \$5,000 threshold, I know where Minister Haggie is coming from, it makes sense, but I guess that can be applied across the board to a lot of professions. My point is, to know you have a base amount, to know you have something that you're covered with, you may need to pay a retainer to a lawyer to find out where you stand, what's really involved here, almost like the ground rules. Without that there, you're kind of at the mercy of this committee on your own, to a degree, until us as a committee approves it.

That's where I struggle in my mind. I'm thinking we're exposing our Members to – we may cover it. I hope that if it's legit we're going to agree to it, but the \$5,000 threshold is not meant to be blank cheque for a lawyer, it's meant to be a protection to an MHA that they have that surety when they go and if something happens, through no fault of their own, they can

go down and see whatever lawyer they want and get advice and they'll need to pay a retainer to get through the door.

I just think it's enough stress obviously if you're faced with a legal challenge or what have you in the course of your duties. That's the surety point I'm trying to make. It's not a matter of any abuse involved, it's to be able to protect the people that sit in the House and are exposed on a daily basis like we are. That's all it is. It's not about a blank cheque. I get that argument, but I respectfully disagree because we're talking about reimbursing legal fees and protection of all our MHAs' interests.

MR. SPEAKER: I'm going to go to MHA Loveless first and then I think MHA Coady.

MR. LOVELESS: I'm going to try to add to this. I concur with Dr. Haggie in a lot of what he said and I'm leaning towards the case by case as well but in terms of the protection – I know where you are, Mr. Petten, in terms of the protection. I do have a bit of concern in terms of I'm sitting there knowing that I do have protection of \$5,000, I don't know if it's going to encourage me – let me see if I can find my words – to not behave in a certain way.

I don't know if it is a protection or not. I don't know. My mind is in different areas here but I'm hoping it would be a protection, other than someone looking at it and saying I'm protected, so I'm going to say something more than I should. Is it, at that point, a protection? I don't know. I raise that as a concern as a Member of this Management Commission.

MR. SPEAKER: MHA Coady.

MS. COADY: Just following up because I'm sensitive to what you're indicating and it is something that worries me is that making sure that people know they have coverage.

I'm wondering if, as part of the guidelines, just a thought process here, we indicate that initial consultation will be covered and that a timely response – and I don't know if that's 10 days, 15 days, 20 days of the Management Commission would be satisfactory. I'm just throwing it out there because I'm sensitive to what you're saying, but I'm also sensitive to the fact that

\$5,000 per instance, it might be a great thing, I don't know, but I'm concerned about that.

I'm just trying to find some mechanism in the guidelines that might address the concerns that you're indicating. Just an option.

MR. SPEAKER: Okay, you have something related to – then we'll go to MHA Brazil, if that's okay.

MS. HAWLEY GEORGE: I'm aware of the fact that I'm not a member of the Commission, so thank you for letting me speak.

What I did want to point out is it is possible in the guidelines that you're developing, or you're considering developing, to put in language that indicates that in Code of Conduct aspect the Management Commission will treat both the complainant and the respondent equitably. Because as my memory of other conversations that you have had about this policy, that was one of your concerns. That might meet that concern there, and then you don't have to be pinned down by particular language or choose.

Thank you.

MR. SPEAKER: MHA Brazil.

MR. BRAZIL: Thank you, Mr. Speaker.

I'll first eliminate one thing. I'm wholeheartedly sold on case-by-case process. My first comment was about I still feel there has to be a surety there of being able to start it not – and I have no disrespect for anybody who's here, who's been here in the past, who will be in the future. To me, and from day one, the discussion was already about us having a reassurance of protection in the case that we need to make an accusation to protect ourselves or we're being accused of something, as part of that.

With that being said, what Minister Coady is proposing would get us not exactly where we would go for full surety, but at least gets us over the threshold, in my opinion, of saying my first bit of legal advice, which would tell me whether or not I'm on the right path to proceed forward, would be covered so I'm not incurring any expense.

As the Member for Fortune Bay - Cape La Hune had said, it's a Catch-22. Would it encourage me to do more or would it deter me? In this case, that proposal, to me, would make it equitable, that you would go in not sure, but you don't want to incur an expense that may be out of your own pocket, yet it protects you to know whether or not I have rights to move forward that the Commission would consider it. Because I would think the legal advice, the first initial one, would look at our parameters and their definition from a legal point of view, and the parameters around whatever the legal action you're taking, whether or not that would go forward on that basis.

So, I could live with going on the case by case, but having at least the initial legal consultation being covered, if that's (inaudible). Again, that would have to be on the case by case because individuals could be totally different and it would be on every incident also.

Anyway, I think that might be in part of our policy that could be adopted.

MS. RUSSELL: I just want to ask a question in terms of being able to draft any guidelines that would be brought forward.

MR. SPEAKER: Okay. Bobbi is trying to draft a motion as (inaudible) –

MS. RUSSELL: In terms of initial consultation – because that's a little, I guess, wide open in terms of the initial consultation and what that would mean. So that's just the first time you go in through the door of the lawyer's office and then however many hours that takes, whether it's five hours or four hours. I'm just wondering, in terms of do you want to leave just as the consultation, what would that mean?

The other point, before my mic is turned off, because I know it was mentioned around the table about putting timelines on the Management Commission dealing with the, I guess, initial request, whether you said making commitments to deal with it within 10 days or 15 days. Just to put it out there that in terms of boxing the Commission into deal with it in a certain time frame, Commission meetings are not always – because there are a number of you that have to – in co-ordinating schedules, in terms of scheduling meetings, it may not always be

possible to deal with a request in a certain amount of time whether it be whatever the Commission decided. Just to put that out there for consideration in terms of any guidelines that are put in place.

MR. SPEAKER: Did you have something related to that?

CLERK: I do want to point out, though, in terms of a timely response, we do have a provision for getting the direction of the Commission on urgent financial matters where we don't go to the full Commission, we go to a subset of the Commission. Then the decision is ratified at a subsequent meeting.

We could craft in a draft guidance statement something along that line, if you thought that might be helpful. I'm just throwing it out there.

MR. SPEAKER: I think MHA Coady, and Dr. Haggie is next.

MS. COADY: We can define initial consultation, it could be \$1,000. I'm not adverse to it either, an amount or timelines or whatever. I'm more interested in a concept that if I need to consult with my lawyer, I can do so in a very timely manner and then go to the Commissioner and I know that within – I have a timely response within 15 days or whatever the appropriate amount is. I don't want to make policy on the fly either. Whatever the appropriate amount of time is, so that I know I can go talk to my lawyer and I can have a decision in a very short period of time.

That's kind of my protection is what I'm thinking about from a policy perspective.

Thank you.

MR. SPEAKER: Dr. Haggie.

MR. HAGGIE: Yes, I think we've actually almost answered the option question that was put before us on the briefing note. We're actually into the next meeting already.

I think the points that are being brought up are actually great. I just wonder if, from a process point of view, this isn't an opportunity to say, has the staff got enough from the table to craft

something that we could bring back and discuss next time and vote on?

MS. RUSSELL: Just one more question from my perspective.

In terms of the initial consultation, would that be intended for all legal matters regardless of whether it's under the Code of Conduct or public interest disclosure, or just for Code of Conduct? Because that wasn't made clear when it was put out.

AN HON. MEMBER: I would think all.

MR. BRAZIL: Because all are severe, in dealing with it.

MS. RUSSELL: Yes.

MS. COADY: Not harassment, though, because it's dealt with separately.

MS. RUSSELL: Harassment is dealt with separately, yes.

CLERK: Harassment doesn't provide –

MS HAWLEY GEORGE: The policy doesn't provide for harassment under Code of Conduct, right?

CLERK: Yeah.

MR. SPEAKER: Okay. Does anyone else want to make a comment before we –?

MS. RUSSELL: Do you want to make a motion just to defer a decision – yes, just defer it until the next meeting.

AN HON. MEMBER: So moved.

MR. SPEAKER: A motion to defer to the next meeting where we'll have options presented.

Seconded by –

MR. BRAZIL: I'll second it.

MR. SPEAKER: Okay, yes.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

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

Okay, good.

That's our last item, I believe.

CLERK: That's the last item.

We need a motion to adjourn.

MR. SPEAKER: A motion to adjourn.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Passed.

On motion, meeting adjourned.