



PROVINCE OF NEWFOUNDLAND AND LABRADOR
HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY
MANAGEMENT COMMISSION

Eighty-ninth Meeting

Wednesday, February 22, 2023

HANSARD

Speaker: Honourable Derek Bennett, MHA

The Management Commission met at 9:30 a.m. in the House of Assembly.

SPEAKER (Bennett): Okay, good morning everyone.

We're going to call the meeting to order.

Before we start, I'd just like to introduce Members of the Management Commission and staff that are present here with us today.

First of all, the hon. John Hogan, Government House Leader; Barry Petten, Opposition House Leader; the hon. Lisa Dempster, Member for Cartwright - L'Anse au Clair; Lela Evans, Member for Torngat Mountains; Craig Pardy, Member for Bonavista; Paul Pike, Member for Burin - Grand Bank. Also with us is Sandra Barnes, our Clerk and Secretary to the Commission; Kim Hawley George, Law Clerk and Acting Clerk Assistant; and also Bobbi Russell, Policy and Communications Officer.

We have four items on our agenda this morning. First item is the approval of the minutes that are included in your briefing package for the meeting that was held on January 31, 2023.

I'll open up for any comments or questions as it relates to these minutes. If there are no errors or omissions, I'll call for a motion to adopt the minutes of the January 31, 2023 meeting.

Moved by Minister Dempster; seconded by MHA Petten.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

On motion, minutes adopted as circulated.

SPEAKER: Our next item today relates to the provisions of reimbursement of legal fees for Members. The current provisions were approved by the Commission in December 2019. The current policy provisions are general in nature and do not address the reimbursement of legal fees specific to the matter. They apply generally to reimbursement of legal fees for Members respecting actions brought against them in carrying out their duties as MHAs.

During recent discussions on requests for reimbursement of legal fees for Members, the Commission directed House officials to review the current provisions and develop policy options for amendments.

In addition, there is an outstanding order of the House to the Commission related to the eligibility of legal fees related to the Harassment-Free Workplace Policy applicable to complaints against MHAs.

The proposed policy approach outlined in the briefing notes is to identify the various circumstances under which an MHA may incur legal fees and develop policy options specific to each circumstances. The table included in the analysis section outlines the various circumstances that are contemplated at this time under which a Member of the House of Assembly may incur legal fees, as well as the policy considerations and options for each.

I'd also like to point the Commission's attention to the possible legislation amendment to the HOAAIAA, which is outlined and explained in the bullets that follow in the table, further to a recent court decision.

As the Chair, I would recommend that we do – there are four different circumstances. I think for ease and to be able to move through these more efficiently, I think we should probably do one by one and the Management Commission make a decision on each of those.

We'll start off with the first proposed option, which basically is with respect to reimbursement of fees for Members. The first one, number one, is a court action regarding the Code of Conduct complaint.

I'll open up the floor for any discussion, any questions on that there. Everybody should have their notes from the briefing material.

Minister Hogan.

J. HOGAN: Thank you.

I guess I would say, I've been reading through this and going back and forth a little bit. The status quo now for this is case-by-case basis. Part of me wants to say that I don't like having a case-by-case basis because it then puts it in the hands of Members who have to debate this and then you sort of may get pressure about whether you should or shouldn't have legal fees. So there's a reason not to do it.

Then the other part of me is that, we all, not we all, but every MHA here now and after us, take these jobs and sometimes you end up in court actions and complaints, through no fault of your own, which maybe shouldn't be initiated, but if it's done, if you're doing things and the allegations are made in the course of your duties, like I can see why on a case-by-case basis you would be entitled to legal fees. It would be unfair to hang someone out to dry for \$20,000, \$30,000, \$50,000 worth of fees for something that maybe they should have been entitled to in the first place, the allegation might be false or vexatious, et cetera, et cetera.

So I think I would prefer to leave it on a case-by-case basis for that reason, even though I think there are arguments for saying that there should be a blanket policy. That's just sort of my initial thoughts.

SPEAKER: Any further comments or opinions?

MHA Pike.

P. PIKE: Yes, I was thinking about that when I was reading through it and I agree, but will there be a point when we can say no? If it does go through the court system and it comes back and a decision is made, then if there's an appeal, do we continue, continue, continue? That's my only question. Is there a cap that we – because if it goes through the court system once, the appeal process may in fact cost more than the actual –

SPEAKER: As identified in the options here, there is an option that we can cap it or put a lump sum that we will pay to a maximum amount.

P. PIKE: Well, I wouldn't want to see a cap in dollar figures, but a cap in our intent to take it to a certain level. That's all.

J. HOGAN: I don't know if Kim can answer these questions.

Theoretically, Code of Conduct shouldn't end up in court, right?

K. HAWLEY GEORGE: So just to add for the Commission –

J. HOGAN: Right, because the House should vote on it and that should be –

K. HAWLEY GEORGE: That's what the –

CLERK (Barnes): That's the reason for it.

K. HAWLEY GEORGE: That's what the recent decision is.

So Justice Chaytor, in the recent decisions on Joyce versus Gambin-Walsh and in Kirby versus Chaulk, essentially decided that – and that is supported by case law across the country – decisions like the House made here are for the House and that the court – she basically said that it's not for the court to weigh in because it's the House's decision.

So in the context of a Code of Conduct decision that is made by the House, the question is does the Management Commission want to pay legal fees for a Member to go to court, where the court has said if you establish the privilege and the scope of the privilege and it's covered by privilege, the court is not going to step in?

J. HOGAN: All the more reason to maybe give a Member legal fees. If they get dragged into court on a matter that recently said they shouldn't be there and the Member is getting dragged in and we're not going to cover the Member for their legal fees.

K. HAWLEY GEORGE: I see what you're saying. That's where the question arose about a legislative amendment to the act, where we could say that an action doesn't lie. Now that doesn't mean that somebody's not going to try it, but there's another thing to explore there and we can certainly take that away for you.

J. HOGAN: I would have clients say to me all the time –

SPEAKER: Just give it a little pause there.

J. HOGAN: Sorry, I would have clients say to me can they sue me for that? They can sue you for anything. They can sue you because they think the sky shouldn't be blue, but you have to deal with it in court and make your arguments, which costs money.

K. HAWLEY GEORGE: Absolutely, yeah.

So the Commission has struggled with this policy for quite a while. There has been a substantial amount of money that has been paid in the context of the Code of Conduct processes that have been ongoing since the filing in 2020, but previous to that, in the Code of Conduct process.

So the question is does the Commission want to stay at a case-by-case basis or do

you want to make some other decisions whereby you will not fund certain things?

SPEAKER: MHA Evans.

L. EVANS: Well, I think it's important when we look at these options to ensure that a Member of the House of Assembly is protected because, like the Member for Windsor Lake was saying, anyone can be sued. So you could be quite innocent and have somebody actually sue you and if you don't have the means to defend yourself or prove that you shouldn't be sued or that you're innocent, then you're very vulnerable. It's really hard for people to actually become an MHA now. Also, it's really difficult for anyone to consider becoming an MHA because of the, you know, the public exposure and the stresses put on people.

So I think that we need to be careful when we're looking at these options that we're not burdening an MHA with extra future issues, right? So at the end of the day, whichever option we choose, it has to be the best option to ensure that the MHA is protected.

SPEAKER: MHA Pardy.

C. PARDY: Am I to assume that the likelihood of court action initiated under a Code of Conduct would be quite remote; the probability would be really low? Have we had any experiences with the court initiating the Code of Conduct – the court initiating it?

SPEAKER: Kim.

K. HAWLEY GEORGE: Somebody would have to bring the matter to the court. The Code of Conduct piece under the act and with respect to parliamentary privileges is for the House. So the decision is in the House.

Previously, before 2018, and the various Code of Conduct reviews that have happened since then, there were no actions in court and no legal fees were paid. There were very few reports that came through.

It's really since 2018 that we've had the bulk of what we're dealing with.

C. PARDY: So since we've had the latest ruling now where we have privilege, the House has privilege and the court has stated that, one would think that the probability of this would be remote going forward?

SPEAKER: Minister Hogan, are you going to –

J. HOGAN: I mean it's a fair comment or question. I guess you can't guarantee that no one will end up in court again, but the law of the land is, right now, which hasn't been brought to the Court of Appeal but the Supreme Court has said that the Code of Conduct is solely for here, right? So lawyers can give advice on that now if anything comes up again, but I would think the lawyers would base their advice on the most recent decision.

CLERK: I just want to clarify. Under the Code of Conduct there are two methods by which the Management Commission could be requested to pay legal fees. One is during the Code of Conduct process itself where, you know, the process doesn't require you to have legal representation.

Up until 2018, no Member who faced a Code of Conduct investigation either sought reimbursement for legal fees or, for that matter, even incurred legal fees. This is something that only happened since 2018.

Under the Code of Conduct process, it's a Member bringing complaints against another Member. It's not like actions initiated by the general public. Yes, the Commissioner could have their own initial investigation, but I think that's a high threshold that would have to be met for that to happen.

There are two circumstances, one in which the Members seek legal fees to participate in this Code of Conduct process and the

other part of it is if they choose to go to the courts after the fact.

Kim, I don't know if ...?

K. HAWLEY GEORGE: Yeah, that's (inaudible).

CLERK: The Commission has struggled with reimbursement of legal fees even to participate in the process and there have been significant legal fees paid out throughout both the Code of Conduct investigation process and the subsequent court process.

SPEAKER: MHA Petten.

B. PETTEN: Thank you, Speaker.

To MHA Evans's comments about protection, I think that's ultimately what the problem is. I've been on the Commission for a nice long time, a nice while now, actually, and we've been back to the last policy on legal fees. I've always been very outspoken. The former Government House Leader, me and him actually didn't agree on a lot – not this one, the previous one. We disagreed on most things, actually, but we always agreed on the legal fees issue as most people here can attest to.

The struggle I've had and I still have here now listening to all the commentary is I don't think we should expose any – and that's us included, all of us – we shouldn't be exposed to any court actions brought against you in doing your duties or whatever it entails. That's my fear, if you just wiped this out and say we're not going to do this anymore, we're going to tighten the restrictions. When you're in the courts, let's be honest, anything can happen in the courts, it can destroy people.

But I do believe that it's overkill when people are getting lawyers involved during the Code of Conduct investigations. To your point, Sandra, when you say that before 2018 we never ever had that happen. Now it

seems rush to get a lawyer. It's almost like the insurance claims in vehicles, everyone goes to get a lawyer if he has a fender bender and that's become a problem. I don't know how you can craft it that you can have it only if it's a court action.

But then when you get into court action, this shouldn't be a licence to print money. We have some lawyers – I mean it is what it is – overcharging in my mind. They are way, way overcharging. You get some bills at \$50,000 and some at \$10,000, doing the same work.

I don't know how you solve that problem but I do believe – maybe I'm trying to get that both ways – you can't expose the Members. I don't think we can expose Members. You can destroy someone in a court action, as we know, but I think you need to tighten up when you get a lawyer. I don't know if there's a way of doing that. I mean it's everyone's right. We can only step in if there's a court action brought against you.

I don't think we should be approving lawyer fees for when the routine things are happening. I don't know how, but that's where my mind is and that's why I find this confusing because I know we've spent a lot of money and I've been very – I think it's a waste. Some of it has been wasteful and it's unnecessary spending, but then part of it is necessary too.

I have struggled with this since the get-go and that's where I've always been on that. I think we all do. I think that's the challenge we have; we're trying to find a happy medium. Right now, it's not a good situation. I throw it out for anyone else's commentary, but I really struggle with this one.

SPEAKER: Minister Dempster.

L. DEMPSTER: So I'm going to continue right from there. As I was listening to the conversation, my thoughts were exactly: where's the middle ground, which is always

a challenge. I agree with many of the comments that were made.

It's an interesting discussion that we're having here at House Management, Code of Conduct, because we all run to represent regions. We are the voice of a body of people in one of 40 districts in our beautiful province, and we swear an oath that we are going to conduct ourselves a certain way, that people can look up to us, et cetera.

Things that we say while we're in this House, we're protected right? Sometimes when you're up speaking and it's a bit of lively, spirited debate, you might make a comment and you know someone outside will take an exception, so we're protected there.

Someone asked a question, things have really ramped up since 2018. Was that a one-off and are they going to go back? I feel like since the virus came in 2020 things are never going to go back and be the way they were in our world since March '20, seemingly. I think, regrettably, that's where we are now. As MHA Evans said, who's going to step up in the future and want to be leaders and represent?

So I think we need to move the discussion to some middle ground, where if I'm carrying out my job as a Member of the House of Assembly and somebody, as MHA Petten said, says I have a problem with that and I'm going to sue – I'm in my job, I need some protection. But I don't think I should be coming before the House Management or the Speaker's office saying at willy-nilly, random: You need to pay up. I'm going to court.

There has to be – so I don't know if there's been some work, if legal can share some information here on where other jurisdictions are, if there is a middle ground. Because it's sort of a running theme that I'm hearing from the Government House Leader right down to the other end is that's what we're looking for.

SPEAKER: Minister Hogan.

J. HOGAN: I think MHA Petten kind of said what I was going to say. But to Minister Dempster's question there, the guidelines do say that – how criteria talk about whether the legal expenses arise out of or are directly related to the Member carrying out duties as a Member.

So there are parameters in place to when legal fees would be provided. It's not just a be-all and end-all, I'm in court, I want a lawyer.

SPEAKER: Kim.

K. HAWLEY GEORGE: The other aspect of that policy, Minister, if you just follow the next line is whether or not the Member initiated. That might be something the Commission wants to evaluate in terms of whether you would proceed to fund.

B. RUSSELL: In terms of the policy options on the table, Mr. Speaker, (inaudible) if a Member initiates versus having initiated against them. So if it's a different threshold or if the Commission thinks it's a different threshold in terms of having something brought against you that's outside of your control, versus actually taking the action as it relates to certain matters. There might be matters where a Member would have to take action, which is why we delineated and separated the Code of Conduct actions in the courts from other actions that might be required in the courts.

SPEAKER: If you look to your briefing notes there it does break them down (a) and (b), as Bobbi said that it's one – if a complaint is brought against an MHA versus initiating it. So we can deal with them individually and make a decision on 1(a) first and then do 1(b) after.

MHA Evans.

L. EVANS: Yes and further to my initial comments, that's what I was referring to.

We have options here. We have options to ensure that at the end of the day we pick the best policy or the moving forward, so these are many options. So we need to consider that when we're looking at them.

SPEAKER: MHA Petten.

B. PETTEN: So it's unclear – are we saying that if it's initiated by an MHA, we wouldn't cover the cost then? Is that what we're – if it's brought against you, that's been our unanimous feel, we need to protect the person. If court action is brought against an MHA in the course of their duties, they should be protected. I agree they should. But if it's initiated by an MHA –

SPEAKER: Then it's an option if we want to cover the cost or not.

B. PETTEN: Yeah. We could make it clear in the line there and say if it's brought against you, we cover the fees and if you're initiating it we don't cover it.

SPEAKER: That's definitely an option.

B. PETTEN: I guess what I'm trying to say here is if we open the door on options of covering fees, and we've been living it since 2018. We tried to do that in 2018. We tried to put caps and assess on a case-by-case basis. There are a lot of different Members here now than back then when we did it, but we've not accomplished anything because we've covered every legal bill that's come in since 2018.

We're trying to get a proper policy in place and trying to cut back on some of this unnecessary spending. I think, again, if you initiate it you don't cover it; if it's brought against an MHA, you cover that MHA's costs. I think that's fair.

We're talking about Code of Conduct stuff here too. I don't think this stuff should ever end up in court, to be quite honest.

SPEAKER: Are you saying that if it's brought against you, then it would be on a case-by-case basis or (inaudible) that.

B. PETTEN: Well, I guess we'd stick to where we are now. We'd assess the bill as it comes in.

SPEAKER: With the current guidance, okay.

B. PETTEN: Yeah, we'd have no choice because we can't dictate what a lawyer charges. Even though I believe some of the costs are too much, that's not for me to decide.

SPEAKER: I think Mr. Hogan was first.

J. HOGAN: Just a quick question. This was before I was here, obviously.

In the recent court case, were legal fees covered for the defendant MHAs and were they covered for the plaintiff MHA?

SPEAKER: We haven't received any bills for it yet.

K. HAWLEY GEORGE: In the Joyce versus Gambin-Walsh aspect, the fees, there was no request received from MHA Joyce, who was the plaintiff.

J. HOGAN: Okay.

K. HAWLEY GEORGE: But in terms of the people who were MHAs at the time, yes, but it was the former premier and MHA Gambin-Walsh was a minister, so those fees would've been covered by the Executive Branch.

J. HOGAN: Okay.

CLERK: That's still the same.

K. HAWLEY GEORGE: That would be same, yes.

CLERK: We know what fees the Management Commission pays. Any costs for the former premier, that would have probably been paid by Justice and we wouldn't be privy to that information.

SPEAKER: MHA Evans.

L. EVANS: Just for clarification, we're discussing right now – which MHA Petten raised – where the MHA is the plaintiff, right? What you were saying was that we would look at it on a case-by-case basis. We wouldn't take away the ability for an MHA to not be reimbursed, but it would be reviewed on a case-by-case basis, depending on the nature of the cases being brought forward. Is that my understanding?

SPEAKER: I think my understanding is that if the complaint is coming against an MHA by another MHA, then we would cover the fees for the person that the allegations are against, but the one that's making the complaint we will not be covering the fees. Is that correct?

MHA Pardy, do you have comment?

C. PARDY: I would be interested –

B. PETTEN: We can't stop this.

SPEAKER: You can't stop it, no.

MHA Pardy.

C. PARDY: Just my initial thought. I would wonder about doing that, to have one – because they're defending and all of a sudden with one, they may have a legitimate issue or complaint under the Code of Conduct and we would say that we would not support them. I'm not sure about that, but I'd be interested in seeing what others would say.

Other jurisdictions has stated about the Code of Conduct. If it is going to be handled within the House of Assembly, I'm just seeking some clarity to make sure why

would it end up in the courts, if it's handled in the House?

I know they always have the option to bring it to the courts after. I know that will always be their option, but if the courts have decided that the House does have privilege and they're not going to do that and they've done that and reassured that in the most recent case, then I would assume that we may not see going forward more court actions regarding Code of Conduct. I'm just trying to get my head around it, that's all.

SPEAKER: Sandra.

CLERK: I would anticipate, based on the fact that the court has confirmed that privilege exists, that Members would not take it any further; however, anybody can bring an action into the court. It's up to the courts to decide whether or not they're going to hear it. But now, as Kim said, our case, in addition to others across the country, has established that the privilege is held, but by the House, right?

Kim.

K. HAWLEY GEORGE: Sure. I'll just add to that, Sandra.

I appreciate where you're coming from, I just want to say to the Commission that these are not the first two cases that have established privilege within our country and the aspect of the House controlling its own internal affairs of the freedom of speech that the court looked to in terms of what was disclosed under that Code of Conduct process.

This is not the first time courts have looked at it. Yet, there are a number of cases that have gone – sorry, this is not the first time that privilege has been established, yet there are a number of times that Members or former Members or Senators have gone to court on that aspect.

So there's no way to control whether or not somebody decides to bring that action, in that sense. Whether or not they're going to be successful is where the judgments would come into play.

SPEAKER: MHA Pike.

P. PIKE: I'm just trying to understand this.

So if a complaint is brought against someone, isn't it the Commission's duty to deal with that? No. So what if we made it our practice to give an opinion. It has to go to court –

AN HON. MEMBER: (Inaudible.)

P. PIKE: But I'm just trying to figure out what's the process. When I bring a complaint against Lisa, what would be the – how would that get settled? I don't want to take it to court because I don't think it's necessary so we want to settle it.

CLERK: Under the actual Code of Conduct process, if a Member has a complaint against another Member, it's brought to the Commissioner for Legislative Standards. The Commissioner for Legislative Standards assesses the complaint and determines whether or not they will investigate the complaint. If they don't investigate, they issue a certificate basically saying there is no complaint. They clear the Member who's been complained against. Otherwise, they do an investigation.

They produce a report and in the report they make a recommendation to the House. They don't make a decision; they make a recommendation. That report comes back to the House and it's the House, because it's only the House that can discipline its Members, and the House will debate and vote on that recommendation. They can amend it, which has happened before, but then the House will make a decision on whether or not a Member should be reprimanded or sanctioned in any way.

P. PIKE: So if it goes beyond that.

CLERK: That's what happens. The House made a decision and a current and a former Member decided to take it to the courts.

P. PIKE: Well, I've got to agree with Barry on that.

SPEAKER: MHA Petten.

B. PETTEN: I think just to clear where I'm to. I mean, up until 2018, we've never had anything go to court, then there became this parade to the courthouse. This Code of Conduct has never been designed for court cases. That comes back to my argument, I mean, in my previous life involved with unions and arbitrations, I worked on appeals boards, you didn't have to have a lawyer. They were set up more for low cost, bring it in, express your case, let a board decide your fate.

I think the Code of Conduct, you have the Commissioner for Legislative Standards that does their work and they do their investigations. You're meant to go in and present your evidence or your side of the story and someone else presents their side of the story. Whatever else happens, it comes back here and it unfolds from there.

I don't think it's ever been designed to go to the courts. That's my issue. I've been around here a long time and I've seen a lot of stuff come and go in this House, but it always comes to the House, right, from the Commissioner for Legislative Standards to the House. Whatever happens then it's dealt with.

Why I separate the two is I don't think it's fair for an MHA, when it's initiated against him to be responsible for legal fees, I really don't. I think that's total unfair, because people could do that every day. I could have a court case brought against me or either one of us here every single day if someone had a vendetta or if someone wanted to try to make my life miserable. But if you're

initiating that, if you're trying to make someone's life miserable, why would we ever cover their costs? Because you're in a situation where it's not meant to be in the courts. That should be clear. That's my position on that.

SPEAKER: MHA Evans.

L. EVANS: I agree with MHA Petten, but he's assuming when the MHA is the plaintiff, that the MHA is trying to do something frivolous. But at the end of the day, when the MHA is the plaintiff, option one does allow for the Commission, if we choose option one, to review it on a case-by-case basis to see if it's legitimate or if it's frivolous.

I was wondering why would you want to take that away. Why would you want to take away the Commission reviewing the case on a case-by-case basis?

I haven't made up my mind yet, I'm not arguing for a point. I'm just wondering why would you want to take that option away, because an MHA could feel that they're seriously harmed and they have to take it to the courts.

For me to vote on this, I just want to understand why that option would be removed. We have that option right now for the Commission to review and we've reviewed cases. We looked at them, whether it was frivolous or whether it was malicious where an MHA was doing something malicious and wanting to be compensated for their legal fees.

This is an important decision. I just want to understand why. If I'm going to vote on this, I'd like to understand why would we take away the option for the Commission to rule on a case-by-case basis on whether or not an MHA has a legitimate claim to be reimbursed for their legal fees for the court action, what the situation is. For me to change that, to vote to agree to change that,

I would just like to understand what's the problem with that?

Maybe, Kim, you could answer that question. What are the concerns with that option being maintained and going forward and we selecting it?

SPEAKER: Kim.

K. HAWLEY GEORGE: So just to be clear, this has come before, this policy, the development and the changes through policy, the question has come before the Commission a number of times in terms of the review of legal fees and the Commission has struggled. Right now, it says that you're going to decide on a case-by-case basis and you have.

I appreciate your point on whether or not there's a vulnerable person there and all that kind of stuff. I do understand what you're saying.

This is about the funding of going to court after a House process where the House is the entity that has the right to decide. The court has said once all that privilege is established, the right of the House to manage its own internal affairs and to discipline its Members is not something the court is going to weigh in on. So that's part of why this permutation has been brought before you today.

Further to the recent decisions in our jurisdiction, but also reflected in some other jurisdictions, most all other jurisdictions, is that it is for the House to decide on these matters and you folks are the ones who discipline the Members. Not the Management Commission, not in your work as the Management Commission. You have no role in that. It is your role as an MHA in the House, as it regulates its own internal affairs and not the courts.

SPEAKER: I think Minister Dempster was first and then Petten.

L. DEMPSTER: I'll just pick up on where MHA Evans is, which is where I was when I first came in and then you've got to get refreshed.

Yesterday, House management went through the annual budgetary process and we have a number of independent statutory officers of the House and we pay a pretty substantive amount to maintain those offices. So if I am feeling that I was wronged by another Member, I reach out to the independent officer, the Commissioner for Legislative Standards. Then, you know, depending, he may do an investigation or whatever and then it comes to the House, which as MHA Petten often says, this is our court. Once you are a Member of the House of Assembly, this is your court. We have examples since I've been sitting here. He often says he's here a long time, I think I'm here a bit longer, but I know the *Mitchelmore Report*, there were recommendations and the House debated the *Mitchelmore Report*.

They are difficult things to sit through in the House. I mean, we step up and then your name is – and I remember that as a difficult time. I think what we're really going back and forth and round and round on here this morning is we're saying should we pay for something to go to the court. Right before Christmas we had an example come back where the court says it shouldn't be here. So I think that's – I'm not the legal person, but in my little finite mind that's how I see it.

SPEAKER: MHA Petten.

B. PETTEN: This is my final wraparound on this, because I just wanted to respond to MHA Evans to clarify. It's not about frivolous complaints. Minister Dempster just summed it up pretty good as well, actually. There's a process in place. It's the House of Assembly and we discipline. This is our court like she said, which is true, and it is our court.

These cases, that's going outside the process if someone wants to go to court

with this. I think if someone wants to initiate court action after the House has ruled, the courts already said there's no place for it to be in the courts. Why would we pay for that, pay those legal fees for the initiator of something we know the end result? It's a definition for that and I wouldn't leave it – there's a definition for that when you do the same thing over and again.

We've already got a court ruling, so once you go through the process here, whatever comes out of that process, if you decide you're not satisfied, you can do so at your own risk because we know the end result, but the person that's being dragged into court needs to be covered.

I hope that's clarifies where I'm to, because I think the courts have already decided. Justice Chaytor already made the decision on that. I think we're only beating the same –

SPEAKER: Minister Hogan.

J. HOGAN: So I think Minister Dempster and MHA Petten summed it up, so I won't repeat it, but I will say just to add a little extra layer that if we're telling MHAs they can't have money to go to court for something that the Supreme Court says you shouldn't be in court for, they obviously still have that option to retain a lawyer. If they are successful, at the end of the day, of course, there's the normal cost consequences anyways.

So if they are successful, there will be some reimbursement for their legal fees at the end of the day. That's a risk that every plaintiff has to decide to take on, whether it's worth it or not. A lawyer can advise them whether they should continue with the process to litigate a Code of Conduct complaint, which we have a ruling on and if they want to take that risk and they're successful, there's always the option for judges to give them costs through the normal process anyways.

SPEAKER: I think MHA Pardy was first and then MHA Evans.

C. PARDY: At the sake of redundancy, I agree with the previous speakers.

SPEAKER: MHA Evans.

L. EVANS: I just wanted to clarify. I want to thank him for giving us the legal interpretation because when you said that, it actually clarified what the intent of the options were. For me, it's an important decision. When MHAs are talking, sometimes the waters gets a bit muddled. So having that legal interpretation and giving us the overview, Kim, has really made it clear to me. Myself and Craig were just talking here and we do agree with what Barry was saying.

Thank you for clarifying that very much.

SPEAKER: Okay, thank you.

I think that was some very good discussion on it. I think, based on the discussion for item 1(a) as it relates to a court action for a Code of Conduct complaint brought against the Member, it's the consensus that we stick with the status quo and look at it on a case-by-case basis.

If that's the case, I'd ask for a motion.

And actually the other one, as it relates to if it's initiated by an MHA, then we will not be covering the legal fees, which is option 2.

If that's the consensus of the Commission, I'll ask for a motion.

Moved by Minister Dempster; seconded by MHA Petten.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

Moving to item 2 and that is actions in courts regarding other matters. Again, in our briefing notes there are two options presented. First of all, if it's initiated against an MHA or option (b), again, if it's initiated by an MHA.

I guess the options are to stick with status quo as we've done in the past or if the Commission has any other direction.

CLERK: I'll point out we have absolutely no experience with this scenario.

SPEAKER: Minister Dempster.

L. DEMPSTER: I was feeling it was similar to what we had just discussed, so I was looking at the 1, but the Clerk sort of got me –

CLERK: No, that's the thing, we can't give you examples, right.

L. DEMPSTER: No, no, if we were to follow along the line of initiated against, there has to be some protection. Would we not sort of go case by case here?

SPEAKER: Minister Hogan.

J. HOGAN: The Justice Chaytor decision, that's court matters continuing on with defamation claims, though. That's outside the Code of Conduct, isn't it?

SPEAKER: Kim.

K. HAWLEY GEORGE: You're right, Justice Chaytor allowed for 30 days. Actually, that comes up on Monday.

J. HOGAN: You might have experience very soon.

K. HAWLEY GEORGE: Maybe, we'll see.

Both plaintiffs were allowed to file further information to support their claims of

defamation, but if no further information is filed with the court, then those claims are also struck.

So just to say that this 2(a) and 2(b) is really – I would think about it as something that's not Code of Conduct and not Harassment-Free Workplace Policy. So it could be a pot that has anything else; stuff brought forward by constituents or – we don't have any experience with that is what we're saying. That's why your options are status quo, case by case, because we can't tell you what that might be. There's a lot of case-by-case (inaudible).

CLERK: But for example, and with respect to the recent court case, if it proceeds in court, the Members who said may make comments – if they're sued because of comments they made, say, in the scrum area, is that something that the Management Commission would cover the legal fees for. That's the sort of –

SPEAKER: Bobbi.

B. RUSSELL: Just to clarify in terms of jurisdictional research. A lot of jurisdictions don't have policies on reimbursement of legal fees, but the ones that have established some guidance it's similar in that it's a case-by-case basis.

We are unique in terms of the processes we have that allow Members to make complaints against other Members in terms of Code of Conduct, Harassment-Free Workplace. We're unique in terms of other jurisdictions with respect to –

CLERK: I mean no different than a minister or the Speaker. An individual could sue an MHA in their capacity as an MHA for constituency-related business, right? We don't have examples of that but it's certainly conceivable.

SPEAKER: Minister Hogan.

J. HOGAN: I think 2(a) would be the same arguments we've had as 1(a); we need to protect the MHA in the event that they're sued. I didn't hear anyone arguing against that under item 1. I can't think of any items when we would cover legal fees initiated by the MHA, but there very well might be. I'd hate to rule it out right now, so I would just go case-by-case basis. That's my comments on that.

SPEAKER: So is it the consensus of the – I don't know if there are any more comments first. If it's not, if it's the consensus of the Committee that as it relates to actions in court regarding matters initiated against the MHA or initiated by an MHA, we would look at it on a case-by-case basis.

If that's the case, I call for a motion. MHA Pike.

Seconder? Minister Hogan.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against.

Motion carried.

Item 3 also relates to legal fees. This is in participation in the Code of Conduct review and, again, very similar. If it's initiated by an MHA or against an MHA – and the options are provided as in your briefing notes – that we keep status quo, that we prohibit legal fees or that we provide legal fees or any other direction that the Committee may want to make.

So again, I'll open up the floor and if staff have any comments or any examples of ...

Kim.

K. HAWLEY GEORGE: Just to clarify for the Commission, this would be sort of as a first step where there's a Code of Conduct process. So we're not talking about anything

to do with the courts at this point, it's at the beginning of that process sort of thing and whether or not then you'd want to fund that.

So the options are status quo, which is case by case.

SPEAKER: MHA Petten.

B. PETTEN: I was just asking Minister Hogan: We don't need a lawyer for that, do we? Isn't that kind of where we are in the original debate, number 1(a) and 1(b), because we're getting into the Code of Conduct?

SPEAKER: Sandra.

CLERK: There are two pieces to the Code of Conduct and then it's just from our recent example. One is the Code of Conduct process itself, what goes over to the Commissioner for Legislative Standards. There's an investigation. Up until 2018, there had been a number of investigations, but nobody had incurred legal fees or sought reimbursement.

In 2018, there were five investigations and after the fact we had Members approach the Management Commission seeking reimbursement of legal fees. The Management Commission considered the matter at hand and decided to do it. This was to participate in the Code of Conduct process.

After the House made its decision on the recommendations from those reports, then there was a secondary piece which we just discussed, which went to the courts because two of the Members decided to pursue it through the court process.

So this is really the first part of the Code of Conduct process that we've experienced recently. This is the investigation by the Commissioner for Legislative Standards.

SPEAKER: MHA Petten.

B. PETTEN: Yes, thank you, Speaker.

Again, I think it still goes back to my initial argument. This doesn't belong. This is not set up for lawyers. This process is set up for Members to go state their side of the story to the Commissioner for Legislative Standards, which is in place to deal with the Code of Conduct.

It's meant for that reason. You're meant to go in there and sit down as a Member and tell your side of the story. I still struggle with why you need a lawyer for that process. Why are we incurring these costs for a process that I think could be done just as easily by a Member sitting down and speaking to the Commissioner for Legislative Standards?

I'm still in the same place. I don't understand why we're getting into – that's what got us here originally. That's what got us here. Someone ran and got a lawyer and everyone went and got a lawyer.

Let's be honest, I go back. Again, five years ago this was not a case; this was not an issue. This all happened in one big influx. Myself and Minister Dempster remember it well. It was pretty interesting days. Everyone had a lawyer. Everything was gone to the Commissioner for Legislative Standards and who never had a lawyer were walking out of the RNC building down filing police complaints. It was the wildest experience you've ever witnessed in your life as a politician. Why are we paying the legal fees? I can't be more blunt about it than that. Why are we paying the legal fees for a process that was never meant to have lawyers involved?

It's meant to be a respectful – I mean the Commissioner for Legislative Standards and Chief Electoral Officer are who we give our oaths to when we do our Code of Conduct. Again, if we go approving legal fees for this, we open up that Pandora's box again. We'll not solve anything from having a policy, I can't be clearer than that.

Thank you.

SPEAKER: Thank you.

MHA Evans.

L. EVANS: I'm actually agreeing with –

SPEAKER: We have this in *Hansard*, you know.

L. EVANS: – Member Petten. I'm actually agreeing with him, but like I said, it's because these decisions are so important, because it effects change. That's why we're having this discussion, that's why we vote on this. That's why I wanted clarification earlier on, just to make sure.

According to what you said, this is the first step in the Code of Conduct process before legal action takes place.

SPEAKER: Correct.

L. EVANS: Also, basically at this stage, you're just participating in the Code of Conduct review. Technically, it should be a safe place for an MHA to go and participate without having to have legal counsel.

To me, I do agree with Member Petten. I do agree with Barry on this one, because like I said, they have the opportunity to participate in a process without legal counsel. If it accelerates or escalates, then they can make the decision later. I totally agree with him on this point.

SPEAKER: Thank you.

Minister Dempster.

L. DEMPSTER: I'm going to use myself and my colleague here as an example. I'm sure he'll be good with that.

One day in the House I felt he breached my rights as a Member and I came back the following day on a point of privilege. Then I think it was recommended that the Member

apologize. It all worked itself out. We're under different banners but we have a great working relationship here in the House on behalf of the people of the province.

I didn't go to court because he made me feel like a little girl that day. I don't think he meant what he said and we moved on. It's all good. Here we are today, both wearing pink because we want to be buddies, not bullies.

SPEAKER: Thank you, Minister Dempster.

MHA Pardy.

C. PARDY: I, too, concur. I just wanted to weigh in. I know that the sensitivity of any allegation that would be made and what's at risk in the House. As long as the process is fair – and I guess it probably is legally tested, the process that we do have within the House of Assembly – that should be enough.

If ever we question that that process needs to be tweaked or looked into at some point, then that would be our responsibility to make sure that's done. So I would agree with MHA Petten as well.

SPEAKER: Thank you.

I think it seems like it's the consensus of the Committee that as it relates to item 3, participation in Code of Conduct review initiated by an MHA or against an MHA, that the Commission will prohibit reimbursement of fees in these cases.

Is that a consensus? If it is, I'll call for a motion.

Will someone move the motion? MHA Petten.

A seconder? MHA Evans.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

Item 4 as it relates to legal fees again is Complaints under Harassment-Free Workplace Policy Applicable to MHAs.

Kim, would you like to ...?

K. HAWLEY GEORGE: Absolutely.

So this is the last instance that would be brought to your attention. Previously, we were talking about Code of Conduct; now we're talking about the Harassment-Free Workplace Policy.

The Harassment-Free Workplace Policy, as you remember, was developed by the Privileges and Elections Committee further to an order of the House. It was brought to the House after a lot of work by that Committee. The House voted on it so it is in place and required by the House itself.

So the options that you have here are to prohibit the reimbursement of legal fees to remain consistent with an Executive Branch policy, which is applicable to complaints against employees. The Privileges and Elections Committee looked at that particular Executive Branch policy and modelled your policy quite heavily on that.

You've also made a decision fairly recently, as you might remember – so there is a precedent set whereby a Member has asked for reimbursement under this policy in terms of the process and you did not grant reimbursement in that case. That's where you are here.

I would just add that under that policy there are a lot of informal resolution processes. There could be an in-person resolution, conciliation arbitration: various ways to resolve things before it even went to a formal process. That was built in very purposefully by the Committee.

SPEAKER: MHA Petten.

B. PETTEN: This is just a question I guess. At our last – we had an in camera and we talked about this issue. So without identifying it, there was a letter requesting payment. We rejected it because we said that it was no place for legal fees and we never did it before, correct?

CLERK: Exactly, yes. That was the first time.

B. PETTEN: That's the only request?

CLERK: Yes.

B. PETTEN: But we haven't had a request for someone that it was brought against them or initiated it because this would be different. I'm just getting clarity now. So the letter was requesting legal fees be covered for the person who had the complaint brought against them and we said no. And that's the only occurrence that's ever happened.

B. RUSSELL: Since this policy came into effect, this was the first instance.

B. PETTEN: That's for the harassment policy.

B. RUSSELL: Right.

B. PETTEN: Okay.

SPEAKER: Minister Dempster.

L. DEMPSTER: It seems to me that we're in the right spot remaining consistent with the Executive Branch, aren't we? Is there any reason – something I don't know there?

SPEAKER: Any other comments or anything?

So is it the consensus that we would go with option one and prohibit the reimbursement of legal fees to remain consistent with the Executive Branch policy?

Okay, I call for a mover and a seconder of that motion.

Moved by MHA Pike; seconded by MHA Pardy.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

Okay, we'll move to agenda item –

CLERK: That's whether –

SPEAKER: Sorry?

CLERK: – or not they want to look at the act.

B. RUSSELL: The amendment to the act. The bullets after the table.

SPEAKER: Oh, okay. Sorry.

Okay, where are we?

CLERK: Right there.

SPEAKER: So in your briefing package in the same section, after the tables on page 4: "In consideration of recent decisions of the NL Supreme Court in *Joyce v. Gambin-Walsh*, 2022 NLSC 179 and *Kirby v. Chaulk*, 2022 NLSC 180, the Commission may wish to consider an amendment to the HOAAIAA to provide that civil actions or proceedings relating to the Code of Conduct do not lie with the Court, similar to statutory provisions that currently exist in other instances."

So I guess we did some background work on that there. Sandra, I'll let you ...

CLERK: Yes, we've done some analysis, but it's not extensive enough. We'd like to look at it and be very thorough, but is it

something that the Commission even wishes us to pursue?

SPEAKER: MHA Hogan – or Minister Hogan, sorry.

J. HOGAN: I'm still an MHA.

SPEAKER: MHA first, minister second.

J. HOGAN: If people wanted to go ahead. But at the same time I think two things, the common law says what it says already, I don't know if we need to codify it. I think we've sent a signal anyway by changing our policy on legal fees for Members initiating court actions. It sort of says don't go to court. An action doesn't lie. There are already two items, I think, in the public sphere that says what the research is going to ask us to do anyway.

SPEAKER: MHA Pardy.

C. PARDY: Just for the record, I concur. I think a good thing is to pursue our background work on that. I'm sure that'll be brought to the Management Commission for consideration when it's thoroughly fleshed out. I would be in agreement to that.

SPEAKER: Kim.

K. HAWLEY GEORGE: Could I just ask a point of clarification? Minister, I might have misunderstood you, but I thought what I heard you just say was that maybe we didn't need to codify it because the status of the case law is really that it's not going to be successful in any event.

The question is really just a question about use of your people resources at this point. The law has established this. Do you want us to work on whether you want to codify it by putting it in the statute, or have you sent a signal now that it's strong enough in this context? That's the question, that's all.

If we don't do it now, we could always do it –

SPEAKER: Revisit it.

K. HAWLEY GEORGE: Revisit it later, yeah.

SPEAKER: Minister Dempster.

L. DEMPSTER: I'm just feeling isn't it just a waste of resources with everything that's been going on if the law is the law?

SPEAKER: MHA Petten.

B. PETTEN: If we never codified it, what's the risk?

SPEAKER: Kim.

K. HAWLEY GEORGE: Thank you, Speaker.

Even if we did codify it, somebody could still bring it to court. We recognize that. The purpose of codifying something in legislation is – we've done lots of that in here over the years – something is very clear, you don't need to revisit it and so forth. It's another signal, in my opinion.

You've said very strong signals today in terms of funding, so maybe you'd like to defer it to another time, if it becomes an issue or we could certainly do the work.

SPEAKER: Minister Hogan.

J. HOGAN: I think you summed up what I said, but I don't think it's – I'm not telling you how long it's going to take. I don't think it's an extensive amount of research to come to a recommendation on what a codification would look like. So just to give the Commission some comfort, I think maybe we should proceed with the analysis and we can decide then.

CLERK: Just from the (inaudible) perspective, we'd have to bring it back to the Commission, you'd need to make a decision, then because it's a change to the act, it will have to go to Cabinet for

approval, come back as an amending bill and then be debated in the House.

So while it's not difficult work to do, it takes an investment of resources here and from the Members, I mean. So is it something you want to pursue, basically?

SPEAKER: Any additional comments?

Is it the consensus that we park it, I guess?

Do we need a motion for this now?

CLERK: Only if they want us to do it.

SPEAKER: So it is the consensus that we leave it for now?

J. HOGAN: Yeah, I think so.

SPEAKER: If it's needed at a future date then we'll bring it back to the staff to do further analysis. As Minister Dempster said, it is a timely process and our resources are very limited.

Okay, we'll park it for now and, if needed, we'll readdress it later at another date.

Item 3, Intra & Extra Constituency Allowance allocations. Allocation is provided under section 38 of the Members' Resources and Allowance Rules for the purpose of providing travel and living expenses primarily for travel around the Member's district but also includes other types of travel as identified in the briefing note. In order of reference for the 2016 Members' Compensation Review Committee (MCRC) included direction that the Committee review and make recommendations to the Management Commission on the I & E allocation amounts established for each district.

In this report, the MCRC instead recommended that the Management Commission appoint a subcommittee to conduct the review, utilizing public servant resources to assist with the task. The

subcommittee consisted of MHA representation, as well as staff resources from Economic and Statistics Branch, the Department of Finance and the House of Assembly.

There were a number of assumptions outlined by the 2016 MCRC further to its recommendation. Based on those assumptions, the subcommittee identified two components that could be used in developing a formula to calculate I & E allocations for each district: a geographic/demographic component and also a quantum component. Further details on these components are in the analysis that's provided in the proposed funding formula and they are outlined in the briefing notes.

The following analysis of the two component numbers assigned for each funding component were used to calculate an I & E allocation for each district using the proposed formula and calculation assumptions, also explained in greater detail in the briefing notes.

Attachment 4 compares the proposed I & E allocations for each district category against the current allocations and historic usage. When comparing the proposed allocations against the historic usage since 2015-2016 there was no district that was adversely affected by these proposed changes.

Everybody has a copy of the briefing notes. Also, we did a presentation on this at a previous meeting. I'll open up the floor to see if there are any comments or questions on it.

Minister Dempster.

L. DEMPSTER: Speaker, we had a pretty fulsome review on this, maybe back in the summertime, was it?

CLERK: We did a technical briefing.

L. DEMPSTER: Yes.

CLERK: A technical briefing you can't make decisions, so at the time we said it would have to come back for a decision.

L. DEMPSTER: That's right, yeah, but I remember a pretty technical review and all of my questions at that time were thoroughly answered. I was comfortable with where things had landed. I want to acknowledge the tremendous amount of work that obviously went into putting this together.

SPEAKER: The Clerk put many hours into this formula and working out – and I think, as I said, there is no district that is greatly affected by it. I think it's safe to say that the allocations that are being proposed are easy for Members to work within. We have had challenges because of geography and district locations and the amount of travel that some MHAs have, that they have found it difficult to stay within their allocated budgets, where other districts are not using their budgets.

The formula and the analysis, it was broad ranging and, like I say, I do commend Sandra for the amount of work she put into it.

CLERK: If I might, you know, the allowances that were set up in 2007 through Greene, I mean, were really, really good considering the data that they had to work with at that time. You know, the data we have today is tremendous compared to what was available back then and it has stood in good stead over the years. With very few exceptions, there has been enough I & E and we've got the numbers now since 2007. In that time, there's been different Members in different districts and we've had an electoral boundary reorganization and we've had another census and all that. With few exceptions, most districts have pretty much enough, but there needs to be some redistribution and some method to allocate.

We'll have an electoral boundaries review, I think, in 2026. We did have new census information. It was released in 2022 for the

2021 census. So Economics and Statistics, which I should say does the most wonderful work, took the new census information, recalculated all the density index and then we went and put the quantum component back on it and it was fine, everything was fine. It stood that test.

So, anyway, that's about as much as I can say about it except if anybody who wants to come see the spreadsheets, come on.

SPEAKER: So I think from our previous (inaudible) there was the general consensus of the Committee that we would accept the recommendations, but if any Committee Member wants to have any further discussion on it, we'll definitely – if not, we're going to call for a motion. It's going to be a fairly lengthy motion so we got Bobbi to prepare the proposed motion to pass and circulate to Members to have a quick look at it.

B. RUSSELL: If I could just before I pass it out. So it does have a number of components. The Commission will be approving the components of the formula and the various assumptions that'll be assigned to the districts and the categories of districts, as well as there is an amendment that will be required to Schedule A of the rules, subsequent to the approval of the formula.

So that process has to go through in accordance with the act. It has to be tabled with the Commission. If the House is not in session, it has to be posted on the House of Assembly website and distributed to all Members and then it has to come back to the Commission again.

So today's motion would just capture, I guess, us initiating that process of the amendment. So just to clarify that before I pass out the –

SPEAKER: I'll give Members a quick minute to take a look at the proposed motion and if they have any questions, if

not, then I'll have to read it into the record, the motion.

Any Members have any questions or comments as it relates to the proposed motion?

MHA Pike.

P. PIKE: I'd like to seek clarification. The mileage, the number of kilometres times the average of the designated Government of Newfoundland and Labrador mileage reimbursement rates in the preceding calendar year. Could you explain how that would work?

CLERK: The mileage allowance or the mileage rate is calculated on a quarterly basis by Treasury Board and it's posted to the website. So there are four quarters and what we've been doing for this is averaging the four quarters to get an approximation of what the reimbursement rate would be for Members. Previously, it was based on, I think, 34 cents per kilometre and that was the rate that was in place in 2007. So if there was a major change to the mileage rates, we might have to increase the allowance a small amount.

P. PIKE: Thank you.

SPEAKER: MHA Evans.

L. EVANS: I'd just like to make a comment. I hope someday that the MHA for Torngat Mountains will sit here and actually ask for a review of this, because we would have the ability to actually claim our transportation solely by mileage, by driving and have a road.

SPEAKER: It will come.

L. EVANS: (Inaudible.)

SPEAKER: Any further comments or questions? If not, the motion will be: The Commission approves the proposed funding formula for the intra and extra constituency

allocation, which allocates consistent funding for districts in the same category according to the density index, as calculated by the Economics and Statistics Branch and uses historical usage data to assign estimates for funding components and calculation assumptions.

The Commission assigns the following categories, according to the density index and the following numbers for each intra and extra constituency allowance funding components:

Category 1: Meals: 15; Accommodations (# of nights): six; Mileage: 5,800 kilometres; and Other Travel: \$1,000.

Category 2: Meals: 25; Accommodations (# of nights): 10; Mileage: 8,800 kilometres; and Other Travel: \$1,000.

Category 3: Meals: 40; Accommodations (# of nights): 20; Mileage: 14,000 kilometres; and Other Travel: \$1,000.

Category 4: Meals: 50; Accommodations (# of nights): 25; Mileage: 16,000 kilometres; and Other Travel: \$1,000.

Category 5: Cartwright - L'Anse au Clair: Meals: 50; Accommodations (# of nights): 40; Mileage: 18,000 kilometres; and Other Travel: \$11,100.

Conception Bay East - Bell Island: Meals: 40; Accommodations (# of nights): 28; Mileage: 5,800 kilometres; and Other Travel: \$1,000.

Torngat Mountains: Meals: 60; Accommodations (# of nights): 48; Mileage: 0 kilometres; and Other Travel: \$11,680.

The Commission approves the following formula and assumptions to calculate intra and extra constituency allocations for each district category and anomaly districts: Meals, Accommodations, Mileage and Other travel.

The Commission further directs that the reassessment of the formula components and possible intra and extra constituency allocation adjustments be carried out under the following circumstances and brought back to the Commission for consideration: new census; electoral boundary changes; significant price increases; changes to per diem rates; and resettlement of remote communities.

The Commission directs that the process to amend Schedule A of the *Members' Resources and Allowances Rules* proceed at the time pursuant to subsection 15(5) of the *House of Assembly Accountability, Integrity and Administration Act* to reflect a new intra and extra constituency allowance allocation amounts and calculate it using the formula.

Can I have a mover for that motion?
Minister Dempster.

A seconder? MHA Petten.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

This is the longest motion we've had so far.

Our last item on the agenda as it relates to language training expenses for Members. In recent months, a Member inquired about availing of French language training offered through the Centre for Learning and Development of the Public Service Commission, while another Member inquired whether training in a different language would be an eligible expense.

An analysis undertaken of the relevant provisions of the rules identified that it may be difficult, depending on the characteristics and demographic of an electoral district, to establish a direct connection between the

requirement for language training and a Member's responsibilities as it relates to constituency business.

The House does not have a general budgetary allocation for training for Members. Any funding for language training would have to be covered in either the Members' allocation or through caucus funding and subsequently subject to eligibility provisions for those funding sources.

So I guess we need to make some decision if we're going to cover this. We did have one Member that has asked for French language training and another a different language than that. So I'll open the floor for discussion.

Minister Hogan.

J. HOGAN: So it says: "An analysis undertaken of the relevant provisions of the Rules identified that it may be difficult" to link the language of training to a Member's responsibility. What analysis is that? Who undertook that?

SPEAKER: Sandra.

CLERK: Yeah, the rules required that it has to be directly related to the operations of their constituency office and their constituency business. So unless you had a sizeable French population, for example, in your district and there was a need to converse in French, it would be difficult to establish it for other districts.

J. HOGAN: Where is that analysis is the question.

CLERK: Pardon?

J. HOGAN: It says: "An analysis undertaken" So who undertook it and where is the analysis?

CLERK: That analysis is a very basic analysis because it's so prescriptive in the

legislation, but basically, the particular district, did it have a significant French population so could we say it was directly related to constituency business.

J. HOGAN: So who did that analysis?

CLERK: It's done in Corporate and Members' Services and then if they basically think it's ineligible, they will reach out to –

J. HOGAN: I understand if it's ineligible. I'm asking who did it. Because I have a problem with someone telling an MHA that there has to be a sizable population of a language in their district for this to be available to them. If there's one Ukrainian in my district, and I want to learn to speak Ukrainian to speak to that person, I think that's a decision for me to make as an MHA and publicly that would be posted on what I spent my money on as an MHA and the voters can decide if that was worth the money or not.

CLERK: Which is why we're here asking the Management Commission –

J. HOGAN: Right. That's why I asked who did the analysis.

CLERK: It's done by the staff based on the current legislation. Under the current legislation, it has to be directly related to constituency business. So if we can't identify a direct link –

J. HOGAN: But Sandra, what you're saying is the direct link in the analysis is that it has to be a substantial population of a foreign language. I disagree with that. I think it can be one person. So I think the analysis –

CLERK: And you won't find any disagreement here. It's just because of the way the rules are –

J. HOGAN: I guess my question is: Why is it here? Because I don't understand why that analysis was done by that individual to say –

CLERK: Because it's not provided for in the current legislation.

J. HOGAN: Sure it is.

CLERK: And the staff do not have the authority to amplify the rules to cover it.

J. HOGAN: The rules say there has to be a link and someone said, no, no, no, it has to be a very large link.

CLERK: Well, I mean, it's the same thing with advertising. In terms of when you advertise, it has to reach a significant portion of our constituency. That's the way it's always been, but there are a number of cases where can the rules be amplified to address these situations. The staff are only authorized to make decisions based on the rules as they exist and any applications or directives that have been given by the Management Commission.

In this situation, we thought the rules were too restrictive and we brought it forward. That's why we're asking the Management Commission to consider making this an allowable expense that could be charged against either the constituency allowance or your office allocation, because the House doesn't have a general provision for training.

SPEAKER: Minister Dempster first.

L. DEMPSTER: I just make a comment. Each MHA, we have a little, small pot – very small, that's a bit discretionary – that we get to sort of say how we're going to use it to serve our constituency. I don't know the cost here, but would that not be something we could make a decision on that to cover or is there a different – I know there are other categories in my budget where it's more substantive that I could take from like that we use for.

CLERK: There are two places that could conceivably – and, you know, the recommendation is that if the Management

Commission approves its amplification, then the Member could choose – it could go against the constituency allowance or it could go against the office allocation; that's where you pay your advertising and stuff. That's a bigger – once you take the tax off, it's just over \$10,000.

SPEAKER: Minister Dempster.

L. DEMPSTER: (Inaudible) I think even it's interesting, you think Cartwright - L'Anse au Clair is so far away from the seat of government and the last multicultural event that I attended in Cartwright - L'Anse au Clair, it was incredible how many new Canadians and that's going to continue to grow, as an example. So I think that times have changed and that is something we need to look at. If an MHA wants to put the time into that and I think all our workloads vary as MHAs and I'm not sure I'd have the time to take on a training course, as a minister, but I think the flexibility should be there.

SPEAKER: MHA Pike first.

P. PIKE: (Inaudible) in my district, for example. We do a lot of work with the residents from Saint-Pierre and Miquelon. Especially when it comes to economic development and so on, we have common groups that work with the Saint-Pierre and Miquelon people when it comes to transportation and they use the Burin Peninsula as their main shopping area. I could make a case, I guess, for wanting to be able to improve my language skills to be able to communicate with the people from Saint-Pierre to put on excursions to the peninsula and so on. I also have a trip in my budget – one trip to Saint Pierre and Miquelon per year.

So is that an extraordinary situation there? I don't have a large number in my district but I would like to be able to converse with people from there.

CLERK: You're not limited to one trip a year to Saint-Pierre and Miquelon. It's basically whatever funding you have available to you, but that was an amplification of the rules because the I & E rules, the intra and extra constituency allowances rules provide for Members to travel throughout their district and to other districts and also provided for travel to other parts of Canada, like a trip to Ottawa. Of course, Saint-Pierre and Miquelon is another country. So we had to amplify the rules for the representatives from the Burin Peninsula to be able to claim against their I & E for that purpose.

SPEAKER: MHA Evans first, then MHA Petten.

L. EVANS: Yeah, I just had a question and a comment. In my district I have my constituents, about 50 per cent of them speak Inuktitut and about 20 per cent of the overall population from my district speak Innu-aimun. I always try to cover myself off to make sure that we're looking after our constituency by hiring an assistant that's bilingual, who speaks Inuktitut and English.

But I was wondering – and I would never ever be able to have the time, like Lisa said, to probably take on doing any training – out of curiosity, because I never ever asked this question, the language courses that are approved, are they only through the Centre for Learning and Development of the public service, or do you have the option to have – ?

CLERK: No, the intent of this is that if Members decide that they want to do any language training, they can procure and expense it against either their office allocation or their constituency allowance allocations. It just happens that French is provided through the centre, but that's the only language training we know that they do provide. But even French language training, you could procure it in whatever fashion you wanted and claim the expense.

L. EVANS: Just to follow up on that, I guess if it was related to your critic role then, of course, you'd actually have –

CLERK: You can pay that out of the caucus funds.

L. EVANS: Out of the caucus funds, so that would take care of itself.

CLERK: Exactly.

L. EVANS: It's just basically the constituency.

CLERK: That would be another source of funding for language training.

L. EVANS: Thank you very much.

SPEAKER: MHA Petten.

B. PETTEN: Just a couple of quick points. If we were to approve this, would we also decide which fund it comes out of, or would that be something we decide after? If it were approved –

CLERK: Yes.

B. PETTEN: Do these come out of constituency allowances or does it come out of, as Minister Dempster was asking –?

CLERK: You just have to submit it like an expense claim.

B. RUSSELL: As a Member, you could decide which allowance you want to charge it against. It's either the constituency allowance or the office operations.

B. PETTEN: It would be our option?

CLERK: Oh yes.

B. RUSSELL: You could look at the funds available and make that decision.

CLERK: See, both the constituency allowance training allow for training and

conferences under those set of rules, and then under the office allowances, it says staff professional development in relation to constituency operations. If we amplify and say any language training, then it's just you submit your claim.

B. PETTEN: One other thing, this conversation is going on and I heard about this coming up. We're a bilingual country. We have two official languages, French and English, and we're being prescriptive that you have to have a French person living in your district and English, and we're being prescriptive that you have to have a French person living in your district, or a pocket of French people to be able to learn French. Whereas Minister Hogan rightfully pointed out, which is a good point, he has Ukrainians. We're a diverse population as Canada. Newfoundland has become a totally – you go out now, we have many cultures around.

As MHAs, you're going around your district, you're to the go-to person and those people, they're directed to their local MHA to get help with various programs within the government. One example I'll give, it struck me, this week we had the Acadian Youth Parliament here. Some of them could only speak French. So we had them in the caucus room on Monday for lunch and we had one of our – well, actually, MHA Ottenheimer spoke to them in French. She had it written and prepared. She has some proficiency in it.

We couldn't communicate with some of them young people. That hit me at that moment. I said this is not good. You get stuff that comes up in the House, there are only very few people here that can even get up and read it from a piece of paper. So if you want to take the initiative, if you have the time and the interest, to be having impediments like this, it is kind of startling actually. So I totally think this is a no-brainer for me.

SPEAKER: Thank you.

MHA Pardy.

C. PARDY: The Centre for Learning and Development already has an online platform for learning a second language, I think French in particular, for public servants as well as ministers.

CLERK: Yes.

C. PARDY: It's available. Do we have the background as to what the cost is for that online forum? I know you had said earlier that it could be tutorials, in-person –

CLERK: I think it's about –

C. PARDY: Or numbers availing?

CLERK: Yes, if we avail of that, it has to be paid for. I think it's around \$100, \$130 a module and I don't know exactly how many modules there are. They contract the service. They don't provide it with internal resources. They actually have a contract for it. They would just have to recover the cost if it's provided to Members.

C. PARDY: Is it participant based? Would it be that the rate would change if you had 20 as opposed to three?

CLERK: No, I think it's a set rate.

C. PARDY: It's the same.

CLERK: It's a set rate.

SPEAKER: Yes, a set rate per person.

C. PARDY: Okay, so that could be made available to others as well.

CLERK: It's available to Members, but it is done on a cost-recovery basis because Members aren't employees.

C. PARDY: Oh, okay.

CLERK: They provide it to employees and they absorb the cost, but Members aren't

employees and we don't have a general training allocation that we could charge it against.

C. PARDY: No. So not a large cost to your –?

CLERK: Well, I guess if you add up all the modules but you pay for it, I guess, as you do each module.

SPEAKER: Is that clear, MHA Pardy?

C. PARDY: That's good.

SPEAKER: Minister Hogan.

J. HOGAN: Sorry to go back to this, but I do want to say because it's important to me, I really struggle with an approved in the first place. The legislation says the Member is entitled to be reimbursed for his or her constituency expenses necessarily incurred by that Member to carry out his or her constituency business. If a Member felt that it was necessary to speak another language to talk to a constituent, I think that really should have been approved. The fact that the analysis says they need to speak to multiple people, I just can't get my head around that. What we're saying or what is being said is that other constituents are more important than another group because of language issues.

I don't see that in the legislation. So to be here to ask for an amplification of the rules, I don't see that. If we're here seeking clarification of the rules, I'm okay with that and I would submit that clarifying that language courses fall within the current structure of the legislation, I would clearly support that.

SPEAKER: Kim.

K. HAWLEY GEORGE: Speaker, thank you.

Just for the purposes of the Commission and Minister Hogan, I appreciate where you

are coming from. I absolutely do. Two things I would add to the conversation are that, first of all, the Green act – the HOAAIAA, as we talk about it – it's very prescriptive and the interpretations that have been – and certainly, traditionally – interpreted very narrowly and prescriptively because of the history of this place. Because of the spending scandal and the genesis of the HOAAIAA, and staff, very rightly, are very much trying to be compliant with what is there.

Now whether or not the language could bear it, I hear you. I really do. The question is, because of the accountability framework, so on the other end, once the auditors come in, that's when some of this could arise because if we've got audits that – we have multiple layers of audits here, as you're aware. So if it is approved, if it is seen by the auditors as being outside of that, that's where the staff have to be very, very careful. So all we're asking for is a clarification that this is okay. That basically, where it's coming from.

CLERK: I guess that's why that provision was added into the legislation is to make sure that it can be adapted to the Members' needs, but where the authority comes to make those adaptations is clear. So in this case, the Management Commission certainly has the right to interpret the rule that way and that's why we're here.

SPEAKER: MHA Evans.

L. EVANS: I'm just looking for clarification now. What would be the drawback? What would be negative about expanding it to not just include ministers that can avail of this but regular MHA's? Like what would the issue be with that? Is there any downside to that?

CLERK: We would need to have a funding provision because the Executive Branch has to pay the costs of participants in this training and, as they indicated, they provide it to employees. They have a budget and

they provide it to employees. I think the ministers can avail of it as well. We can't direct the Executive Branch to provide it to Members that are not employees, so they would either have to increase their budget and change their policies to include Members, or we would have to have a separate budget here that they could charge against if Members decided to participate in their training.

L. EVANS: Would you be expecting a huge increase because I don't think many MHA's would have the time to avail of it? But just looking at encouraging MHA's to be able to communicate to everybody within the province, especially –

CLERK: It's fairly time intensive.

L. EVANS: Yes.

CLERK: They're pretty in-depth modules and there's an evaluation component to them as well. So I honestly don't know what the uptake would be because of the time commitment.

L. EVANS: We are supposed to be a bilingual country and we're supposed to be encouraging everyone to learn a language, especially French. I understand that –

CLERK: Then the other thing is because of increasing diversity, you want to be flexible enough to basically address other languages, if you consider them necessary. We didn't think that flexibility was there at all, so we were just looking at the quickest way we could address this issue.

L. EVANS: Right.

SPEAKER: It is something we could readdress later. If we see what the uptake is, if we do approve this and Members start to –

L. EVANS: (Inaudible.)

SPEAKER: Sorry, I don't think your mic is on there MHA Evans.

L. EVANS: Sorry. So the reason why I asked is I'm just wanting to see if there was a downside to making that decision.

SPEAKER: Any further discussion?

I think it's pretty well the consensus that Members feel that we should be providing that ability for Members to do other language training, if they choose so.

If it's the decision, then I call for a motion that the Commission issues the following directive pursuant to subparagraph 20(6)(b)(i) of the *House of Assembly Accountability, Integrity and Administration Act* that the purposes of training expenses charged under section 46 and section 24 of the *Members' Resources and Allowances Rules* allow for language training.

Could I have a mover for that motion?

Moved by Minister Hogan; seconded by MHA Petten.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: All those against, 'nay.'

Motion carried.

I just want to thank everyone. Great discussion here today and some positive moves forward.

This concludes our meeting for the day. We will be in contact for proposed dates for our next meeting. Hopefully, we'll try to get one in before the House reconvenes on the 13th of March.

I call for a motion to adjourn.

Minister Dempster.

Seconder: MHA Petten.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

SPEAKER: We stand adjourned.

On motion, meeting adjourned.