



Northwest Territories Legislative Assembly

Report of the Special Committee on Conflict Process

Chair: Brendan Bell

Special Committee on Conflict Process

Chairman

Mr. Brendan Bell, MLA for Yellowknife

Members of the Committee

Mr. Floyd Roland
MLA for Inuvik Boot Lake

Mr. Leon Lafferty
MLA for North Slave

Honourable Joe Handley
MLA for Weledeh

Mr. J. Michael Miltenberger
MLA for Thebacha

Committee Staff

Mr. David M. Hamilton, Committee Clerk

Ms. Katherine Peterson, Q.C., Law Clerk

Mr. Andrew Stewart, Assistant Clerk

Mr. Corey McLachlan, Assistant Clerk

Special Committee on Conflict Process

July 23, 2001

HONOURABLE ANTHONY (TONY) WHITFORD
SPEAKER

Dear Mr. Speaker:

The Special Committee on Conflict Process, in accordance with the authority given by the Legislative Assembly and by Resolution 4-14(4) is pleased to submit its report with findings and recommendations.

The Special Committee commends it to the House for consideration.

Respectfully submitted,



Brendan Bell
Chairman



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Background

On May 7, 2001 the Honourable Member for Hay River South, Jane Groenewegen (the "Minister") brought forward an application to the Board of Management (the "Board") requesting the Board direct the Conflict of Interest Commissioner (the "Commissioner") to suspend her investigation into a complaint made by Jack Rowe against the Minister (the "complaint"); and further that the Board recommend to the Commissioner of the Northwest Territories under section 92(3) and 92(1)(a) of the *Legislative Assembly and Executive Council Act* (the "Act") that the Conflict of Interest Commissioner be temporarily suspended and an acting Conflict of Interest Commissioner be appointed. The application alleged that there was a reasonable apprehension of bias on the part of the Commissioner respecting the investigation and that this gave rise to her inability to act due to "cause or incapacity" or that she was unable to act as a result of this.

The Board wished to hear from all parties on the issue and requested submissions on initially, the question of jurisdiction of the Board and secondly, if jurisdiction was found, on the facts and substantive issues in the application.

During the course of this the Legislative Assembly reconvened on June 5, 2001 and the matter became an issue for the Legislative Assembly to deal with because the power of the Board exists only when the Legislative Assembly is not sitting.

As a result of this and because the Conflict of Interest Commissioner intended to release her investigation report, she sought the direction of the Assembly as to whether or not she should hold it past June 13, 2001. The Legislative Assembly passed a motion establishing the Special Committee on Conflict Process to deal with the matter.

Terms of Reference for the Special Committee

The Special Committee on Conflict Process was given direction by the Legislative Assembly by Motion 4-14(4) dated June 12, 2001. The terms of reference set out the membership of the Special Committee. In addition to the incidents of Parliamentary privilege, the Special Committee had the following specific authorities and mandate:

- To consider all aspects of the application made by the Minister to the Board of Management on May 7, 2001;
- In considering all aspects of the application, to have access to such persons, papers and records that it considered necessary;
- To conduct hearings and meetings as it considered necessary;

- The Special Committee was required to provide its report upon conclusion of consideration of the application to the Speaker and to report to the Legislative Assembly with its findings and recommendations no later than July 23, 2001.

Submission of Conflict of Interest Commissioners Report

The Legislative Assembly also directed the Conflict of Interest Commissioner to suspend any further action including but not limited to the submission of the report in the matter of the complaint filed against the Member for Hay River South, the Honourable Jane Groenewegen. The Legislative Assembly also directed that the report on the complaint be held until the Special Committee reports to the Legislative Assembly and the Legislative Assembly has considered the report.

Authority of the Special Committee

The Special Committee does not have the authority to finally determine the issues, only to recommend courses of action based on its consideration of the facts and issues. The Legislative Assembly must ultimately resolve the matter.

The matter would be available for debate in that forum in accordance with the procedures of the House in considering reports of Standing and Special Committees.

Throughout the process the Special Committee was vigilant to ensure that whatever approaches were taken or instructions given that all parties were afforded a fair opportunity to be fully heard.

The Special Committee had the power and authority to:

- compel the attendance of witnesses;
- to require the production of records and documents;
- to hear submissions and evidence and to consider such facts as it considered necessary;
- to conduct itself in the manner that it considers appropriate to the nature of the issues under review;
- to make recommendations to the Legislative Assembly as to the course of action or options available as a result of hearing from interested persons.

While the Special Committee is clothed with Parliamentary Privilege and thus is the complete master of its own procedure, even to an extent larger than administrative tribunals in the normal course, it has been mindful of certain advisable standards to be adopted in considering the issues.

The Legislative Assembly has complete authority to govern the conduct of its members and statutory officers. In doing so, a public trust has been placed in the Assembly as a whole that it will do so with a view to protecting that public trust by ensuring both the integrity of its processes and the actions of Members and statutory officers. Because the Office and duties of the Conflict of Interest Commissioner in and of itself deals with issues of integrity and the conduct of Members, the Committee wished to take care not to improperly interfere with the statutory obligations imposed on the Conflict of Interest Commissioner and to be cognizant of and respect its necessary independence. Balanced against this is the duty of all statutory officers of the House to conduct themselves according to certain standards.

The Special Committee has attempted to deal with these issues on the basis of the following general principles:

- ensuring a fair opportunity for interested persons to be fully heard. This opportunity must, in the circumstances, be extended equally and fully to the Minister and the Commissioner. The Commissioner is of the view that the complainant, Mr. Rowe, is an interested person and should be heard from as a party in these proceedings;
- it must be aware of the roles and obligations of the Minister and the Commissioner as contemplated in the Act which governs their respective duties;
- it must be mindful of the public interest associated with not only this process but in the issue of governing the conduct of members and statutory officers generally;
- it must make any recommendations only on the basis of the facts and issues placed before it and not on the basis of other facts or issues, which are not before it in connection with this process.

A number of these concepts or obligations have various different parts, which are elaborated below. However, the fundamental principal is that of fairness, and common sense is often the best guide to what is or is not fair to all of the interested parties.

The Right to be Heard

In ensuring that interested parties have the right to be heard, it is important that:

- each party or person clearly knows the position of the other party;
- each party have the opportunity to be represented by counsel;
- each party has a reasonable opportunity to prepare for the hearing, a reasonable opportunity to put forward their position and a reasonable opportunity to know and test the position of other parties. Testing the position of the other party can include cross-examining witnesses of the other party or calling witnesses to contradict. No person should be caught by surprise; and
- each party has the opportunity to put the facts that they consider relevant before the Committee and to make submissions on the law as it applies to the facts.

Establishing Process and Conduct of Public Hearings

The Special Committee commenced its work by establishing time frames for the submission of written briefs by counsel for the Minister and counsel for the Conflict of Interest Commissioner. These time frames provided that the Minister would file material respecting the merits of her application by June 22, 2001, the Conflict of Interest Commissioner would file a brief responding to this by June 29, 2001 and the Minister would file a final response by July 4, 2001. The July 4, 2001 response date was changed by agreement to July 6, 2001.

The Special Committee anticipated that it would be in a position to conduct a Public Hearing Thursday July 12, 2001 to deal with the application by the Honourable Jane Groenewegen in this matter. Due to various conflicting schedules, it was difficult to obtain a date for the Hearing in sufficient time to allow for a report back to the House by July 23, 2001 as directed in the motion, which established the Committee. This Hearing date was available to all with the exception of the Conflict of Interest Commissioner, who had other previously scheduled commitments in Vancouver. However, it was anticipated that her counsel would be in attendance and that the Conflict of Interest Commissioner could be connected by telephone to the proceedings.

The written material was, for the most part, provided by the parties within the time frames established by the Special Committee. This written material was made available to the public in advance of the Hearing.

Appearance of Witnesses

The July 6, 2001 Reply material of the Minister contained a request that the Special Committee hear evidence from witnesses to resolve a conflict in facts that appeared as between the Minister and the Conflict of Interest Commissioner. This conflict in facts surrounded the question of what information the Conflict of Interest Commissioner had prior to any complaint being filed and as a result of a discussion and interview with Lee Selleck, a reporter for CBC North television. Counsel for the Minister urged that this conflict in facts was critical as it was alleged that the actions of the Conflict of Interest Commissioner could have been affected by any advance knowledge that she had regarding the details of the complaint. It was suggested that such knowledge could have affected the statements made in the media by the Conflict of Interest Commissioner and the approach in conducting the investigation, once a complaint was received.

The Conflict of Interest Commissioner in her written submissions, stated that the interview with Mr. Selleck dealt with conflict provisions generally and was not about a concern regarding a specific Member of the Legislative Assembly. She further asserted that any suggestion that she had received prior information from Mr. Selleck indicating that the Minister remained a director was incorrect. She stated in her submissions that the CBC reporter did not make her aware of the existence of documentation filed in the Corporate Registry concerning the identification of the Minister as a director of a company or companies.

The Minister alleged in her material that as a result of a conversation between the Conflict of Interest Commissioner and Lee Selleck on March 15, 2001 the Conflict of Interest Commissioner was aware of the existence of documentation filed with the Corporate Registry concerning the identification of the Minister as a director of a company or companies. It further alleged that the Conflict of Interest Commissioner was made aware that Mr. Selleck's investigation was based on his view that the Minister was in violation of the Conflict of Interest provisions of the *Legislative Assembly and Executive Council Act*.

The Minister further alleged that a tape-recorded telephone conversation between John Bayly, Principle Secretary and the Conflict of Interest Commissioner, which occurred March 26, 2001 confirmed these facts.

Legal Counsel and Representation for the Conflict of Interest Commissioner

In addition to this issue, the Special Committee has to some degree been hampered throughout by the absence of an executed contract between the Speaker and the lawyers for the Conflict of Interest Commissioner. Such a contract would provide that legal counsel for the Conflict of Interest Commissioner be paid for by the Government of the Northwest Territories. Disagreement arose between the Speaker and the lawyers for the Conflict of Interest Commissioner respecting certain specific terms of the requested contract.

The Speaker, while confirming that the relationship between the Conflict of Interest Commissioner and her lawyers is one of solicitor/ client and thus confidential, requested that details of time spent be provided in legal bills sent to the Assembly so that the reasonableness of time and public costs expended could be assessed. The contract provided that in the event of any disagreement over time spent, the Clerk of the Supreme Court, as an independent third party would review the bills. The lawyers for the Conflict of Interest Commissioner refused to sign a contract with these terms, stating that such terms violated the solicitor/client privilege of the relationship and undermined the independence of the Conflict of Interest Commissioner's office. They further stated that as the Law Clerk was responsible for advising the Speaker on the terms of the contract and advising the Special Committee respecting its functions, this represented a conflict of interest and the Law Clerk should be discharged from her role as legal advisor to the Special Committee.

The lawyers for the Conflict of Interest Commissioner advised the Special Committee July 11, 2001, that they would not be attending the Public Hearing scheduled for the following day. This correspondence stated that "The untenable position in which the Conflict Commissioner has been placed, described in detail in our previous correspondence, required her to instruct us not to travel to Yellowknife today for the meeting of the Special Committee."

Therefore, as July 12, 2001 approached, it became clear that various threshold issues had to be decided and it was unlikely that the Hearing could proceed as originally intended. These issues were as follows:

1. Whether new legal counsel should be engaged to advise the Special Committee, replacing the Law Clerk, as requested by counsel for the Conflict of Interest Commissioner;
2. What, if any steps, could be taken by the Special Committee to resolve the issue of legal representation for the Conflict of Interest Commissioner;
3. Should the Special Committee hear evidence from witnesses and if so, what witnesses should be requested to appear before the Special Committee;

4. Should the Special Committee conduct any of its proceedings *in camera*. It was suggested by counsel for the Minister that some aspects of the evidence should be taken *in camera*;
5. If witnesses were called, how procedurally, should their evidence be presented;
6. Should the tape recording and transcript of it respecting the March 26, 2001 telephone conversation between John Bayly and the Conflict Commissioner be provided to the Conflict of Interest Commissioner's lawyers as requested by them; and,
7. Should a portion of the investigation report of the Conflict of Interest Commissioner be sealed and delivered to the Special Committee until conclusion of the matter as requested by counsel for the Minister.

On July 12, 2001 the Committee met *in camera* to decide the question of whether new legal counsel should be retained. The Committee decided not to do so and to continue with the services of the Law Clerk.

Conduct of Public Hearing on July 12, 2001

The Public Meeting was convened in the afternoon of July 12, 2001. Mr. Chivers, legal counsel for the Minister was in attendance. Further faxed submissions were sent by counsel for the Conflict of Interest Commissioner respecting the issue of whether evidence should be called.

As a result of consideration of the various issues, and upon reviewing the submissions of counsel for the Conflict of Interest Commissioner and those of Mr. Chivers, the following decisions were made:

1. As the Speaker has exclusive authority respecting any contract for legal counsel for the Conflict of Interest Commissioner, this matter was referred back to him in the hope that it could be expeditiously resolved;
2. The Special Committee decided that it was necessary to hear evidence from witnesses to clarify certain issues and facts. In this regard, it directed that Invitations to attend before the Committee be issued to the Minister, the Conflict of Interest Commissioner, John Bayly, Wendy Morgan, Jack Rowe and Lee Selleck;
3. Mr. Chivers indicated his willingness to provide a transcript of the tape-recorded March 26, 2001 telephone conversation to the Law Clerk for provision to the lawyers for the Conflict of Interest Commissioner. It was directed that this transcript be so provided;

4. The Special Committee declined to have a copy of the transcript for its information as the admissibility of this material could be in issue. Committee members therefore, as at the date of this Report, have not been provided with this transcript and are not privy to any information that it may contain;
5. Mr. Chivers did not press for any portion of the proceedings to be held *in camera*. The Special Committee therefore directed that proceedings would continue to be in public. If any application was made at a future point to go *in camera*, it would be assessed on the merits and reasons for that request;
6. The Special Committee directed that the Conflict of Interest Commissioner continue to hold her investigation report as originally directed by the Legislative Assembly in its June 12, 2001 motion;
7. The Special Committee indicated its wish to reconvene the public Hearing July 24 - 26th, 2001 if it was granted an extended mandate from the Legislative Assembly and if witnesses and counsel were all available. It further directed that if these dates were not acceptable, that alternate dates be canvassed with all concerned; and
8. The Special Committee concluded that it would submit its report to the Legislative Assembly July 23, 2001 indicating that it was unable to conclude its tasks. A further extension of time would be sought to allow it to conduct the Hearing and conclude its mandate.

Events Following the July 12, 2001 Public Meeting

The Committee Clerk sent notices to the witnesses required for the Hearing on July 13, 2001. It was determined that Mr. Selleck was declining to appear and Mr. Bayly would be required to return from Ontario in order to attend the July dates for the Hearing. Mr Rowe, Ms Morgan, and the Minister confirmed that they would be available on the dates outlined by the Special Committee. On July 17, 2001 the Special Committee was advised by correspondence from counsel for the Conflict of Interest Commissioner that they would be unable to attend on the dates tentatively established. It appeared that the Special Committee's attempts to quickly conclude this matter would again be frustrated by a combination of circumstances.

Issues also arose with respect to the tape recording of the March 26, 2001 telephone conversation between John Bayly and the Conflict of Interest Commissioner, to which the Minister was privy.

The Minister was prepared throughout to provide an audio copy of the March 26, 2001 telephone conversation. She indicated that any other matters on the tape in question were confidential and should not be disclosed to third parties. Counsel for the Conflict of Interest Commissioner wanted a copy of the entire tape, indicating that there may be other matters on the tape which were relevant to either the March 26, 2001 telephone conversation or issues generally touching upon matters before the Special Committee. After some difficulties, the tape in question was delivered to the Law Clerk, to be held pending further consideration of whether a portion of the tape or the tape in its entirety should be copied and provided to counsel for the Conflict of Interest Commissioner.

Attempts were then commenced to establish new dates for the Hearing. However, on July 18, 2001 correspondence was received from counsel for the Minister requesting that they be permitted to withdraw the original application. While the Minister remained convinced of the merits of her application, her concern was that the proceedings had become far more protracted and costly than was warranted. This correspondence quite properly was framed as a request. This is due to the fact that once the matter is before the Special Committee, it is for the House to ultimately decide on the appropriate conclusion of matters. If it so wished, the House could direct that the matter be completed irrespective of the request to withdraw by the Minister.

The request to withdraw was forwarded to counsel for the Conflict of Interest Commissioner, requesting that they advise whether they agreed or disagreed with the request. The Conflict of Interest Commissioner responded with correspondence dated July 20, 2001 directed to the Chair of the Special Committee. The correspondence did not squarely address the question of whether or not she agreed with the request to withdraw. However, the Conflict of Interest Commissioner did indicate relief that the Minister had decided to withdraw the application. In doing so, she communicated concerns that the fairness and propriety of her conduct, and the integrity of her office had been brought into question by the Minister in a most public and protracted way. Further lengthy materials in the form of Speaking Notes of counsel were also submitted. The materials did not go to the question of whether there was agreement about withdrawal of the application.

The Special Committee felt it was necessary to have a further public meeting prior to Session commencing to consider its options and to draft its Report to the House.

July 22, 2001 Public Meeting

The Special Committee convened a further public meeting on the afternoon of July 22, 2001 to consider the request to withdraw the application, to assess its options and finalize its Report to the House. Counsel was not present for the Minister or Conflict of Interest Commissioner. The further lengthy submissions from counsel for the Conflict of Interest Commissioner were not considered, as the submissions went primarily to the merits of the bias issue.

The Special Committee considered three possible options respecting recommendations that could be made to the Legislative Assembly:

1. That the matter is considered concluded on the basis of the request to withdraw the application, and that no further action by the Special Committee is mandated;
2. That the matter goes forward irrespective of the Minister's request to withdraw the application;
3. That the Committee be reconstituted to look at related issues of conduct of Members and Statutory Officers of the House and others.

During the course of the meeting, the Minister requested an opportunity to clarify a matter. As the comments made by the Minister were not clarification but essentially a submission on what should be done with the investigation report, the Special Committee did not take those remarks into consideration.

Issues of Public Confidence

The Special Committee has significant concerns that a number of varied and serious allegations have been made, which at the present point in time have no definitive resolution. These allegations include:

- The allegation by the Minister that the statutory functions of the Conflict of Interest Commissioner have not been duly carried out and are affected by a reasonable apprehension of bias on the part of the Conflict of Interest Commissioner in the conduct of her investigation of the Rowe complaint;
- The allegation of the Minister that the written submissions made on behalf of the Conflict of Interest Commissioner contain serious factual discrepancies;
- The allegation of the Minister that there has been a "pattern of avoidance" on the part of the Conflict of Interest Commissioner in dealing with this matter and the process of the Special Committee;

- The allegation of the Conflict of Interest Commissioner that neither the Board of Management nor the Legislative Assembly through the Special Committee ought to have undertaken a review in this manner, respecting her actions;
- The allegation of the Conflict of Interest Commissioner that it has been an unfair process and improper to require her to defend her actions and that the Speaker has undermined her independence by placing any limitations on her right to counsel;
- The allegation of the Conflict of Interest Commissioner that her concerns about the process are compounded when the application to withdraw is made in the face of seeming pressure to produce the whole of the tape recording.

These allegations and innuendo, which flow from them, are indeed very serious. Quite apart from the various allegations made by each the Minister and Conflict of Interest Commissioner, the Special Committee is disturbed by the steps by both which have resulted in the process being both more costly and protracted. It is disturbed that the factual accuracy of material put before it may be in question. It is disturbed by the knowledge of a telephone conversation occurring between senior staff and a statutory officer of the House, which was surreptitiously tape-recorded.

In the view of the Special Committee serious issues of public confidence have been raised by these proceedings to date. These include:

1. The Office of the Conflict of Interest Commissioner is charged with a variety of functions. One such function is to ensure that Members meet the requirements of the Act respecting conflict avoidance. In addition, the general goal is to ensure that Members of the Legislative Assembly conduct themselves in a manner, which engenders public trust and confidence in their integrity. The Office must therefore be in a position to deal fearlessly with complaints of infractions and with independence from political influence or interference. Members should exercise the utmost judgment in bringing forward allegations concerning the due conduct of these responsibilities. However, once such a question is raised, the Assembly must also ensure that the fulfillment of these serious statutory obligations is beyond reproach and it has a duty to ensure that the confidence of the public is duly entrusted to this Office and those who occupy it. Once such a controversy has been embarked upon, the air must be cleared so both the confidence of Members and that of the public at large can be restored.

2. The ability of a Conflict of Interest Commissioner to properly fulfill his or her statutory duties depends to a large degree on maintaining an effective working relationship with Members. This is particularly so as the Commissioner must provide advice on an ongoing basis to Members with respect to the proper ordering of their interests. When a cloud has been cast over the conduct of a Conflict of Interest Commissioner, the maintenance of such relationship becomes very difficult if not impossible.
3. The conduct of Members of the Legislative Assembly reflects on the credibility of the Assembly and its ability to maintain public confidence in its actions and initiatives. The public deserves to know that its faith in the integrity of Members of the Legislative Assembly is rightfully sustained.

Furthermore, the striking of a Special Committee to deal with such serious issues requires a high level of conduct and professionalism for those who actively participate in this process. It requires that those who undertake roles do so in a way that assists the Special Committee in fulfilling its mandate. Direct and concise responses to issues, attendance at Committee Hearings, use of appropriate language in written submissions and due respect for the Special Committee process and requirements should all be present without question. These standards have been noticeably absent at various stages of the proceedings to date.

Recommendations

Due to the serious issues respecting public confidence, which have been raised to date, the Special Committee therefore seeks a further mandate from the Legislative Assembly to conduct a review of allegations of bias together with the questions of conduct, which have presented themselves to date. While this process does require expenditure of public funds, the Committee is greatly concerned that should matters abruptly cease at this juncture, significant funds which have been expended to date will have resulted in only doubts and questions being raised without answers and definitive conclusions. Absent a conclusion to this review, there will continue to be a cloud hanging over the reputations of both Statutory Officers of the House and Members.

Therefore, the Special Committee is recommending to the Legislative Assembly the following:

1. that the Legislative Assembly approve the request of the Honourable Jane Groenewegen to withdraw the application, as filed with the Board of Management on May 7, 2001;
2. that the Legislative Assembly advise the Conflict of Interest Commissioner that she may transmit her report on the investigation to the Speaker;

3. that notwithstanding the withdrawal of the application, the Legislative Assembly authorizes and extends the mandate of the Special Committee on Conflict Process to consider the allegation of an apprehension of bias in relation to the investigation conducted by the Conflict of Interest Commissioner, and to consider related matters which have arisen or may arise during the normal course of proceedings of the Special Committee;
4. that the Legislative Assembly instructs the Special Committee on Conflict Process to undertake its extended mandate as expeditiously as possible and to report to the Legislative Assembly at the next session, no later than October 23, 2001; and
5. that the authority and Terms of Reference of the Special Committee on Conflict Process as approved by the Legislative Assembly are hereby amended and extended with the adoption of this report.

Conclusion

The tasks that the Legislative Assembly mandated the Special Committee to consider became a daunting proposition and one that each of the Committee Members found difficult at times. The members of the Special Committee were vigilant to ensure that whatever approaches were taken, fair opportunities were afforded to those who may be affected by the process we embarked upon. If the Legislative Assembly approves our recommendations, I can assure you that we will continue to apply our best efforts to give fair consideration of the issues. The Special Committee would like to express its appreciation and confidence in the assistance provided to it by the Clerk and Law Clerk. This concludes our report as required by our Terms of Reference and it is commended to the Legislative Assembly for its consideration.

APPENDICES

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| Appendix 'A' | Appointment and Terms of Reference of the Special Committee on Conflict Process |
| Appendix 'B' | Committee Exhibits Register |
| Appendix 'C' | Verbatim Transcripts of Public Hearing held July 12, 2001 |
| Appendix 'D' | Verbatim Transcripts of Public Meeting held July 22, 2001 |



Motion

Appointment of a Special Committee on Conflict Process

WHEREAS the Legislative Assembly has enacted the *Legislative Assembly and Executive Council Act*;

AND WHEREAS the Legislative Assembly has the inherent power to control its own proceedings, privileges or prerogatives;

AND WHEREAS the Legislative Assembly has established the Board of Management to be responsible for the overall management and direction of the Office of the Legislative Assembly and to comply with its statutory requirements;

AND WHEREAS the Legislative Assembly may establish such Standing and Special Committees to aid and advise it as it considers necessary;

AND WHEREAS the Legislative Assembly has the power to discipline its Members and the right to regulate its own internal affairs;

AND WHEREAS the Legislative Assembly has provided for the obligations of Members that they shall perform their duties of office and arrange their private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the Member;

AND WHEREAS the Legislative Assembly recommends to the Commissioner of the Northwest Territories the appointment of Statutory Officers to exercise powers and perform duties as provided for in Statutes of the Northwest Territories;

AND WHEREAS the Legislative Assembly recommends the appointment of a Conflict of Interest Commissioner;

AND WHEREAS in accordance with its authority contained in the *Legislative Assembly and Executive Council Act*, the Board of Management was considering the matter of the Application filed with the Board of Management by the Member for Hay River South, the Honorable Jane Groenewegen;

Date of Notice: June 12, 2001
Date of Introduction: June 12, 2001
Disposition: Carried
June 12, 2001

Moved by: Mr. Braden
Seconded by: Mr. Nitah

Subject out of Order

AND WHEREAS there is a question as to the capacity of the Board of Management to continue consideration of the Application;

AND WHEREAS the Conflict of Interest Commissioner has requested the direction of the Legislative Assembly concerning the release of her report in the matter of the complaint filed against the Member for Hay River South, the Honourable Jane Groenewegen;

AND WHEREAS it is in the interests of the Legislative Assembly to resolve the matter;

NOW THEREFORE I MOVE, seconded by the Honourable Member for Tu Nedhe that the Legislative Assembly in accordance with Rule 88(1) hereby establishes a Special Committee to be named the Special Committee on Conflict Process;

AND FURTHER the following Members be named to the Special Committee:

Mr. Brendan Bell, Member for Yellowknife South
Hon. Joseph L. Handley, Member for Weledeh
Mr. Leon Lafferty, Member for North Slave
Mr. J. Michael Miltenberger, Member for Thebacha
Mr. Floyd Roland, Member for Inuvik Boot Lake

AND FURTHER notwithstanding Rule 88(2), that the following Members be named as alternate Members to the Special Committee:

Hon. Jim Antoine, Member for Nahendeh
Mr. Michael McLeod, Member for Deh Cho

AND FURTHER that the Legislative Assembly establishes the following as the Terms of Reference for the Special Committee on Conflict Process as follows:

1. The Special Committee shall have the authority and is directed to consider all aspects of the Application filed by the Member for Hay River South, the Honourable Jane Groenewegen, with the Board of Management on May 7, 2001;
2. The Special Committee shall have access to such persons, papers and records necessary to the conduct of its business;
3. The Special Committee shall conduct such hearings and meetings as required to consider all aspects in relation to the Application;
4. The Special Committee is authorized to engage legal counsel and employ such staff as may be necessary to carry out its responsibilities;

5. The Special Committee shall report to the Legislative Assembly with its findings and recommendations no later than July 23, 2001;
6. The Special Committee is authorized to provide its report to the Speaker if the Legislative Assembly is not in session and the Speaker shall cause the report to be tabled at the first practicable opportunity:

AND FURTHERMORE the Legislative Assembly directs the Conflict of Interest Commissioner to suspend any further actions including but not limited to the submission of the report in the matter of the complaint filed against the Member for Hay River South, the Honourable Jane Groenewegen, until the Special Committee has reported to the Legislative Assembly and the report has been considered by the Legislative Assembly.

SPECIAL COMMITTEE ON CONFLICT PROCESS

Committee Exhibits Register

Exhibit Number	Description	Date Registered
SPC 1-01	Submission of the Hon. Jane Groenewegen to the Special Committee on Conflict Process, Legislative Assembly of the Northwest Territories, June 22, 2001	June 22, 2001
SPC 2-01	Response of the Conflict of Interest Commissioner (June 29, 2001) and Authority, Vol. I & II	July 6, 2001
SPC 3-01	Reply of the Hon. Jane Groenewegen (July 6, 2001)	July 9, 2001
SPC 4-01	Briefing Note: Public Hearing Process and Procedures (July 11, 2001)	July 12, 2001
SPC 5-01	Speaking Notes of the Conflict of Interest Commissioner for the Northwest Territories to the Special Committee on Conflict Process (July 12, 2001)	July 12, 2001
SPC 6-01	Letter dated July 18, 2001 from Counsel for the Minister Requesting Withdrawal of the "Application"	July 19, 2001
SPC 7-01	Correspondence from the Conflict of Interest Commissioner in Response to the Request to Withdraw the Application	July 20, 2001
SPC 8-01	Correspondence from the Counsel for the Minister (Mr. Chivers) dated July 20, 2001 in Response to the Conflict of Interest Commissioners letter to the Chair	July 22, 2001



Northwest Territories Legislative Assembly

Special Committee on Conflict Process

Conduct of the Public Hearing

Thursday, July 12, 2001

VERBATIM TRANSCRIPT

Special Committee on Conflict Process

Chairman

Mr. Brendan Bell, MLA for Yellowknife South

Members of the Committee

Mr. Floyd Roland
MLA for Inuvik Boot Lake

Mr. Leon Lafferty
MLA for North Slave

Honourable Joe Handley
MLA for Weledeh

Mr. Michael Miltenberger
MLA for Thebacha

Counsel

Mr. Barry Chivers, Counsel for the Applicant (Hon. Jane Groenewegen)

Ms. Deborah K. Lovett, Q.C., Counsel for the Conflict of Interest Commissioner (Ms. Carol E. Roberts) (not present)

Ms. Susan E. Ross, Counsel for the Conflict of Interest Commissioner (Ms. Carol E. Roberts) (not present)

Legislative Assembly Staff

Mr. David Hamilton, Committee Clerk

Ms. Katherine Peterson, Q.C., Law Clerk

Mr. Andrew Stewart, Assistant Clerk

Mr. Corey McLachlan, Assistant Clerk

SPECIAL COMMITTEE ON CONFLICT PROCESS

Conduct of the Public Hearing

Thursday, June 12, 2001

Yellowknife, Northwest Territories

3:00 p.m. – 5:46 p.m.

CHAIRMAN (Mr. Bell): Thank you. I would like to welcome everybody to the public hearing to be conducted today by the Special Committee on Conflict Process. As you all know, the Special Committee on Conflict Process was established by motion of the Assembly in June and before introducing the members of the committee and staff, I would like to go through the terms of reference briefly.

The Legislative Assembly established the following terms of reference for the Special Committee on Conflict Process:

1. First, that the special committee shall have the authority and is directed to consider all aspects of the application filed by the Member for Hay River South, the Honourable Jane Groenewegen, with the Board of Management on May 7, 2001;
2. The special committee shall have access to such persons, papers and records necessary to conduct its business;
3. The special committee shall conduct such hearings and meetings as required to consider all aspects in relation to the application;
4. The special committee is authorized to engage legal counsel and employ such staff that may be necessary to carry out its responsibilities;
5. The special committee shall report to the Legislative Assembly with its findings and recommendations no later than July 23rd, 2001;
6. The special committee is authorized to provide its report to the Speaker if the Assembly is not in Session then the Speaker shall cause the report to be tabled at the first practical opportunity;

Furthermore, that the Legislative Assembly directs the Conflict of Interest Commissioner to suspend any further actions including, but not limited to, the submission of the report in the matter of the complaint filed against the Member for Hay River South, the Honourable Jane Groenewegen, until the special committee has reported to the Legislative Assembly and the report has been considered by the Legislative Assembly.

The membership of the committee is Mr. Mitenberger, Mr. Lafferty, Mr. Roland, Mr. Handley, myself Brendan Bell. Our staff, Mr. David Hamilton, Clerk of the Assembly; Ms. Katherine Peterson who is the Law Clerk; Mr. Stewart and Mr. McLachlan will also be assisting us here. We also have with us today Mr. Chivers who is counsel for Member Groenewegen. The counsel for the Conflict Commissioner, I understand, will not be with us today and is not able to attend and we had previous knowledge that the Conflict Commissioner would not herself be here today.

There are several issues that we have to decide today. The first of which is whether to proceed here given that the

commissioner and her counsel are not in attendance. We also have several other issues, one is whether or not this committee would engage new counsel for the committee and not have Ms. Peterson act in that capacity, as had been requested by counsel for the Conflict Commissioner.

There are several issues that may affect that and we will get into that. I should tell you as an information item that the committee met this morning in camera to consider the issue of Ms. Peterson continuing to act as counsel for the committee. We considered the request and the correspondence from Ms. Ross, counsel for the Conflict Commissioner on this point. It also considered correspondence from Mr. Chivers. The committee has decided to have Ms. Peterson continue to act in this respect.

On the issue of whether or not to proceed here today there are a number of other issues that have been brought forward to the committee that may affect this decision, and I believe that we should and will review those first.

In hearings of this sort, we will endeavour in all aspects to deal with matters fairly and openly and I would like everybody to keep those general considerations in mind as we deal with all of these issues here today.

I guess to start, I am going to ask the Law Clerk, Ms. Peterson, to address some of the following issues, but first if we could start with the absence of the Conflict Commissioner here today and her counsel and get into issues around the contract and where we seem to be hung up. So with that, Ms. Peterson, if you would.

MS. PETERSON: Thank you, Mr. Chairman. As you've indicated, it was known at the time of scheduling this meeting that the Conflict of Interest Commissioner herself would not be able to be in attendance due to commitments that she had in Vancouver for today. At the time the hearing was scheduled, it was not anticipated that her presence in person would be necessary for this committee to undertake its responsibilities, and in any event, she would be connected by telephone to her counsel, whom it was anticipated would be making legal submissions on her behalf.

Matters have changed somewhat over the course of time since the scheduling of this hearing, and I will deal with that in a bit more detail as we go through it.

With respect to the attendance of her counsel, Ms. Susan Ross and Deborah Lovett, they advised this week that they would not be in attendance today for the hearing. The reason for that is -- and you are going to require some background on this -- is that when the Conflict of Interest Commissioner is appointed to act for the Legislative Assembly, she is...that occurs by way of a contract between the Conflict of Interest Commissioner and the Speaker.

That contract contemplates that the Conflict of Interest Commissioner may, from time to time, require legal advice

on various matters. This is such a matter in which she would require, normally, the advice of counsel, although there are all kinds of other matters which might require advice that are not of this sort. So the contract that she has with the Speaker contemplates that, and the Speaker is authorized to enter into an arrangement for counsel for the Conflict Commissioner.

That efforts have been made to put such a contract in place for counsel for the Conflict Commissioner, and those efforts to date have not been successful in finalizing an arrangement that is mutually acceptable to the lawyers for the Conflict Commissioner and the Speaker.

They have indicated that is the reason for their presence, or for their absence today, and that they have, further to that, rendered accounts for services which to date have not been paid. The reason for the non-payment is the fact that there is no contract in place yet or authority under which payment can be made.

That has been hung up and the details of the contractual arrangement have been hung up essentially on terms which the Speaker has proposed which the lawyers for the Conflict Commissioner have found unacceptable. Those unacceptable terms to them are terms which contemplate her legal counsel, the lawyers specifying in their accounts for services, the details of the time spent by them on the matter. Disclosing the time spent on the matter constitutes an infringement of solicitor-client privilege, they say, and if this privilege is not protected in the manner required, neither the Conflict Commissioner nor her lawyers can properly fulfil or undertake their responsibilities.

They have also indicated they cannot fairly participate in the process before the special committee. The suggestion in the draft contract that particulars of time spent, though no narrative about the time spent which would indicate the nature of advice sought or given, be provided to the Law Clerk for review and discussion, and failing agreement that those accounts be taxed by the Clerk of the Supreme Court, are wholly unacceptable to the lawyers to the Conflict Commissioner.

They have indicated that the involvement of the Law Clerk in attempting to assist the Speaker in putting a contract into place is objectionable to them and in their view constitutes a conflict of interest.

There is no dispute as to hourly rates. There is no dispute as to disbursements. There is no ceiling that has been suggested on legal fees by the Speaker. It is the disclosure of time spent which is at issue and the reason that this matter has not come to date to a satisfactory conclusion. The Conflict of Interest Commissioner has advised that she will be provided with details of time spent, and she will review and approve it or otherwise.

The Speaker will be provided with a statement showing the amount of the account only and the period to which it applies.

The Conflict Commissioner initially advised the Speaker that she was of the view that a contract for her lawyers with a stated ceiling of \$100,000 for fees and \$20,000 for disbursements would be sufficient with respect to this application as it was then contemplated. She felt that a contract with this stipulated ceiling amount would be acceptable. The Conflict Commissioner, on learning that the Minister wished to call evidence in the matter, indicated that

the ceiling of legal fees should be revised to \$300,000 and disbursements of \$50,000.

Particulars of the draft contracts are not a matter of public record, nor should they be a matter of public record. Those draft contracts are issues as between the Speaker and the commissioner's counsel, and are privileged in that respect. But counsel for the commissioner was very concerned that the reason for their non-attendance be fully put forward at this particular meeting. The Conflict Commissioner, as I indicated, has the right to retain counsel of her choosing and her contract contemplates that. The Speaker is the only office that has the authority to enter into that contract for the Conflict Commissioner.

The Conflict Commissioner, of course, has the right to expect that a relationship with her lawyers be clothed with solicitor-client privilege as well and that's a reasonable expectation.

In summary, the options of the committee at this particular point in time are somewhat limited. It does not have the authority itself to deal with the matter of the contract between the Speaker and lawyers for the Conflict Commissioner. Only the Speaker has that authority. This committee should be concerned that parties who wish to have counsel, do in fact have counsel, but there is a reasonable balance to that issue as well. Achieving a balance is an important part of any process which involves the fair representation of individuals.

So you may wish to consider how you wish to handle that particular issue, but that's somewhat of a long-winded explanation as to why counsel are not here. If you have any questions about that, please let me know.

CHAIRMAN (Mr. Bell): Okay. Before we go any further with whether or not we are going to deal with the substantive bias issues here today without the counsel for the commissioner present, could you maybe give the committee some indication, in your opinion, as to whether or not having to disclose details of time spent does in fact violate the client-solicitor privilege and maybe if you are aware of other contracts that the Speaker has entered into in a similar manner or other GNWT contracts that have been entered into that will give us some precedent and whether or not details were provided in those instances?

MS. PETERSON: Thank you, Mr. Chairman. There is some case law in the area. One of the leading cases is a case involving Sinclair Stevens which was heard by the Supreme Court of Canada. In that particular case, very similar fact situation, and the issue squarely before the court was the extent to which accounts which were rendered by lawyers were the subject of solicitor-client privilege. However, the important distinguishing factor in that particular case was that it was agreed amongst all parties that time spent details were produced.

Where the issue arose was about narrative and whether that narrative would disclose the nature of advice sought or given. So the court indicated that the narrative would be the subject of solicitor-client privilege and there were some additional remarks by the court which would indicate that all of solicitor-client bills could be the subject, or are the subject of, solicitor-client privilege.

However, the facts of that are important in terms of what was or was not disclosed. In our experience in this jurisdiction, when we have had to deal with similar arrangements in the past, for example with the Morin inquiry, counsel was

retained for the Conflict Commissioner in that case, and this simply was not an issue there. Particulars of time spent, and indeed narrative respecting the time spent, was disclosed in the normal course.

The difficulty from the Speaker's perspective is the Speaker is governed by the Financial Administration Act. In terms of the entering into contracts with third parties, the financial directives that have been issued as a result of those obligations, and an accounting with respect to how public funds are spent on behalf of this Assembly is an important part of those obligations.

In the view of the Speaker at this point in time, the request to provide particulars of time spent, although not narrative, was a reasonable request.

CHAIRMAN (Mr. Bell): Okay, thank you. Just so we can be clear, in your opinion, could the Speaker legally enter into a contract that didn't provide some sort of mechanism for accounting of these details, considering that this is public money being spent?

MS. PETERSON: He would be in breach of a number of statutory policy directives if he did so.

CHAIRMAN (Mr. Bell): Okay. Any questions from committee members? Mr. Chivers, anything to add here as we discuss whether or not we should go forward from this point?

MR. CHIVERS: Thank you, Mr. Chair, members of the committee. I have no submissions on this aspect of the matter.

CHAIRMAN (Mr. Bell): Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, it seems to me that if the Speaker is the only body that can enter into a contract then clearly this is a matter that he has to deal with in determining that contract. That seems to me that is not something that this committee can deal with. It is the Speaker's prerogative. I think that, you know, there is a need for him to resolve that, and resolve it within a reasonable period of time, and so we can move on here.

CHAIRMAN (Mr. Bell): Okay. Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. I agree with Minister Handley. Just that, in the area of needing to get on as well, we have a mandate right now that establishes this committee to July 23rd. After that date, I don't believe we have the authority to continue unless the House extends that authority once again. So we have a time line to meet here, and in the effort of trying to meet the interest of the public of the Northwest Territories, I believe it is an issue we need to move on.

I guess we should urge the Speaker that a, a contract be in place that would allow the Conflict of Interest Commissioner to have representation if we are, if we are to proceed with submissions, if there is submissions to be made by yourself, besides the written documentation that we have.

CHAIRMAN (Mr. Bell): Okay. Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Mr. Chairman, I have been thinking about this issue as well. It does seem clear to me, on the face of it, that this is a separate issue but it's being -- it's being dragged into this arena for some reason that I am not quite clear on or is not readily apparent to me.

But the reality is, as I think it was pointed out by Ms. Peterson, that the issue of the money is not in question, or will the bills be paid. It is a question of how do we account for public money. And it seems to me, withholding the lawyers from this proceedings has a separate sort of agenda to it that I am not quite clear what that is, but it is unfortunate that it has come to that.

I agree as well that we have to and should proceed, that the Speaker should hopefully resolve this issue. But I think there is a fundamental principle that I support as well, that there should be some adequate accounting for the spending of public money.

I agree that the narrative issue is not one that I don't think is of concern to this committee or to the Speaker. And I do recollect, if I can just harken back to about five or six years ago when I was involved in a legal proceedings with my court case over the election, there was stacks of accounting like this provided for every penny that was spent; every phone call, every fax. There was no narrative about what we talked about, but it was very clear that we had to justify how we spent the public money.

So it is unfortunate that the commissioner and her lawyers have chosen not to come to this process, but they should've been here. I think it's just confusing the issue by dragging in the money as a reason for not being here because they should be here. So I think we have to proceed as far as we can.

CHAIRMAN (Mr. Bell): Okay. I would agree that we can't let this grind us to a halt, so maybe we can suggest to the Speaker that he endeavour to finalize a contract with the counsel, whoever that might be, for the Conflict Commissioner and do so quickly. I don't know if we want to set some sort of time frame, whether it be seven days or something like this and if anyone has any suggestions, maybe we can hear that. Ms. Peterson, do you have anything to add in this matter before we...

MS. PETERSON: I'd only wish to clarify one point. The right to a fair hearing often includes the right to retain or have legal representation if you want to have that, but that is, as I mentioned, within reasonable boundaries. The committee should not be under the impression that it is completely prohibited from going forward at a future point if counsel are not present for the parties. It's not a threshold requirement, but a reasonable opportunity to have counsel of your choice represent you is an important aspect.

CHAIRMAN (Mr. Bell): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. A little further, I mean we are discussing that, as you suggested earlier, that the contact be made with the Speaker to try to ensure that contract is entered into and finalized. I think we should also be sending a message back to the Conflict of Interest Commissioner that we, at some point, there is a date that we will have to proceed full course, even if we are initially here at this time just going to go as far as we can until there is a date set where she might be able to do a, appear and make some comments to proceedings to date. But there needs to be sort of a time line. As I stated earlier, right now our mandate clearly spells out July 23rd. Thank you.

CHAIRMAN (Mr. Bell): Okay. Thank you. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I agree. The Speaker is under the same responsibility in terms of public accountability as any of the offices are. I think while we can't

cause this to bring everything to a stop, I think we may want to recommend to him that he do it expediently in terms of settling the...entering into a contract, but I am not sure that we have any authority to tell him he has to do it within seven days or within five days. I don't know. Maybe the Law Clerk can clear that up. But it seems to me, we may recommend to him that he do it, but we've got to move ahead. We can tell him that we need this done in order for us to have all the information before us here, but we can't tell him he has to do it in five days, seven days or whatever it may be. But we have to, I agree, we've got to proceed here, we can't cause this to hold us up.

CHAIRMAN (Mr. Bell): Okay. Then are we in agreement that the matter should be referred to the Speaker to conclude arrangements for counsel for the Conflict Commissioner as soon as possible?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Agreed. The next item that we'll look at is a request from Mr. Chivers, I believe, counsel for the Minister, that the committee hear evidence from a number of witnesses in this matter. I am wondering if Ms. Peterson could speak to that first.

MS. PETERSON: I will provide some background to that. You should hear from Mr. Chivers on it as well. In addition, just minutes before the meeting opened this afternoon a fax came in from counsel for the Conflict Commissioner on this issue. What I am going to suggest we do is, that I would outline the issue generally, then I think it might be in order for us to take a bit of a break.

I think Mr. Chivers should have an opportunity to read what the Conflict Commissioner's counsel is saying on the issue. I think what they are saying should also be made an exhibit in this hearing and that Members should also have an opportunity to read that. There has been a request that it be read into the record. It's fairly long, we might be able to deal with that more expeditiously by Members reading the materials themselves and asking any questions that they may have on it.

Alternatively I am quite prepared to read it into the record if that is your wish. So, subject to any objections, I suggest that that's the way we deal with that particular issue.

CHAIRMAN (Mr. Bell): Agreed then, that it be marked as an exhibit?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Also agreed that we allow Mr. Chivers an adjournment to go over the material before responding, if that is agreeable to you as well, Mr. Chivers?

MR. CHIVERS: Agreed.

CHAIRMAN (Mr. Bell): And ourselves.

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Okay, we are adjourned until then.

-- BREAK (3:35 p.m.)

CHAIRMAN (Mr. Bell): Okay. We will call the hearing back to order and we are going to deal now with the issue of whether or not this committee should be hearing from witnesses and should be hearing evidence and I will ask Mr. Chivers to speak to that initially, witnesses and evidence in

general. We will also hear from Ms. Peterson. So Mr. Chivers, if you would.

MR. CHIVERS: Thank you, Mr. Chair, members of the board. It's regrettable that we, for all concerned, and for Mrs. Groenewegen as well as the committee, that we find ourselves in a position where the Conflict Commissioner and her counsel have chosen not to, not to appear.

Inabsentia proceedings, any part of them, are never desirable and always difficult, and they are very unusual. To complicate matters, we now have additional submissions at the last moment, which essentially are a rehash of positions that have previously been advanced. It's, for my part, beginning to feel a bit like being in a boxing ring with an invisible sparring partner.

But I want to begin by reciting a few of the historical facts. I am sure I will try not to belabour things. I am sure the committee is pretty much aware of these facts from the written material that has been submitted to you.

But I see here a pattern of avoidance. April 25, 2001, the original issue is raised with the Conflict Commissioner by the appropriate mechanism, which is to explain to her the concerns, the matters giving rise to the concerns, the assertions of fact, and to request -- which is not unusual in administrative law -- to request that a member of a tribunal stand themselves aside because of a concern on the part of one of the parties to the proceedings that there is an appearance or an apprehension of bias. And most often when these requests are made, the individual concerned will either clarify the facts and straighten the matter out that way, and therefore satisfy the person challenging that there is no reason to have an apprehension of bias.

That's not what happens here. April 25th, the Minister's assertions of fact are presented to the Conflict of Interest Commissioner. The Conflict of Interest Commissioner has no questions in respect of the assertions of fact at that time and responds on May 2nd with a letter which simply asserts, "I see no reason why I should stand aside."

Now, there is no indication at that point in time that there will be reasons given, and I'll come back to that later on, and indeed what next occurs is the Minister takes the next step, which is provided by your statute, which is to take the matter to the Board of Management. That application was made on May 7th. As a result of that, counsel for the Conflict Commissioner, who did not seem to have any problem in representing the Conflict Commissioner during that point in time on, makes representations through the Law Clerk, and agreed b by counsel for the Minister, that that process would be divided into two stages. The first stage being to address the jurisdiction. The second stage being to address the merits, the facts.

Well, of course, we never reached the factual stage. We never even had conclusion of the jurisdictional stage because the Conflict Commissioner chose to abort the procedures by taking the position -- and rightly in law I may add -- that once the board, excuse me once the Legislative Assembly reconvened on June 5th, the Board of Management's jurisdiction was, I would describe it, suspended during that sitting. Although, had the matter been left with the Board of Management, they would have been able to resume immediately the Legislature rose and would have jurisdiction to deal with the matter.

That did not happen. What the Conflict Commissioner did at that point in time is issued an ultimatum, "I am going to

release my report by," -- I believe it was June 13th -- "unless I receive directions otherwise." That's how this committee came into being. This committee was established as a result, essentially, of positions taken by the Conflict Commissioner that the Board of Management had lost jurisdiction and consequently the matter came in seeking directions as to what she should do.

The Legislative Assembly accommodated the Conflict Commissioner, created this committee, gave it jurisdiction to deal with -- and if I might just for a moment review briefly some of the material you reviewed at the outset, Mr. Chairman -- gave this committee a full jurisdiction with respect to the matter that was before the Board of Management. That jurisdiction included having the authority and being directed to consider all aspects of the application file, to have access to persons, papers, records necessary for the conduct of business and to conduct such hearings and meetings as required to consider all aspects in relation to the application.

Well, one of the aspects in relation to the application are the facts. For the first time on June 29th, the Conflict Commissioner puts forth her version of the facts. Up until this point, all the Conflict Commissioner has said on May 2nd, "I see no reason to stand aside", giving no reasons, no explanations and no response to the facts alleged by the Minister.

At some point during the voluminous correspondence that's been exchanged since part of these proceedings, the Conflict Commissioner has indicated that she has included in her report, which she has been directed to hold, she has included her address, her response to those facts. I am going to be coming back to that later on because that, in my opinion, is a matter that needs to be considered by this committee as well.

In any event, we are now on June 29th. At June 29th, from April 25th to June 29th, for the first time, the Conflict Commissioner gives a position on the facts. Now on April 25th, she had a specific letter and I am not sure whether it's necessary for me to identify it for you, but it is in the Minister's materials, the letter of April 25th, went into the full details of this matter, explained precisely what it was that caused the Minister to have a reasonable apprehension of bias. The first time there was a response to the factual assertions of the Minister, other than the, the assertion that is made in the Board of Management proceedings that the assertions, the facts alleged by the Minister were merely assertions and are challenged or disputed. There's no details, no information given as to what it is.

It is only on...it is only on June 29th that the Minister, for the first time, sees the material in the submissions of counsel for the Conflict Commissioner and can identify what facts are disputed. At...at that point in time, the...the Minister did the appropriate thing. She has prepared a brief responding to those facts, pointing out where there is a discrepancy, where there are contradictions between facts asserted by the Minister and facts asserted by the Conflict Commissioner, has addressed them squarely. They have been identified. They are in your briefing note. They are more -- they are more fully explained in the -- in the material, the reply of the Minister. There is no doubt, absolutely no doubt that there is a dispute on the facts.

And what do we have now? We have an argument, a last-minute, 13th-hour submission again rehashing many things that have been stated before, but the point is that the Conflict Commissioner does not want to address the facts.

There is a reference in her submissions, in her written submissions which were filed today, to the tape recording, which is -- and I have handled the matter of the tape recording, by the way, very, very carefully. And I have done so for a very good reason. I have done so for an evidentiary reason. I have not made reference to the tape recording in the brief. I have not recited it, notwithstanding the imputation in some of the arguments submitted by counsel for the Conflict Commissioner because I believe that would be inappropriate to do so.

There may well be issues as to admissibility of that document. Certainly from the correspondence, although no details have been provided, no specifics have been provided by Ms. Ross, but she has suggested that there are other points concerning the document in question. And I've handled it very carefully. I've revealed the existence of the previous inconsistent evidence. I have certified transcripts available of it. They are available here today. I'm prepared to provide the certified transcript to the Conflict Commissioner. I am not prepared to provide her the tape recording. The tape recording is the original evidence.

The difficulty here is simply this: let's call a spade a spade. The Conflict Commissioner does not want to deal with the facts. She does not want to deal with the facts that she has put in dispute. The only way in which the facts that have been put in dispute for the first time on, July, excuse me, June 29th, the only way in which facts can be dealt with and resolved by any decision-making body, be it a court, be it an administrative tribunal, be it a committee of the Legislature with powers such as this committee.

The only way that it can be dealt with is through viva voce testimony. Facts are critical to the issue of apprehension of bias. The facts that are contraverted are critical facts to the way in which you will perceive the events that are going to be the subject matter of discussion and argument in these proceedings.

The position of the Minister is that at best, if the Conflict Commissioner chooses to do so, and essentially that may be the result of the non-attendance today, at best she may be entitled to an adjournment so that she has some time to come to grips with these things, but she has not approached it on that basis. It has not been approached on the basis that, "Well, I need some more time, I need an adjournment." It has been approached on the basis of following through on what I would describe as a pattern of avoidance.

Now, it is difficult to, and I had originally not intended to make submissions with respect to these matters, but in view of the last-minute document that was provided moments ago, I see no alternative but to discuss it fully and discuss it on the record. If the committee has any questions, I would be happy to address them.

Previous inconsistent evidence is a very special category of evidence in evidence law. I have provided the Law Clerk, and I assume that has been included in the material that has come to the committee, with an explanation of how that process works. There is no obligation to tell a witness that you intend to examine or cross-examine them with respect to a previous inconsistent statement, nor do you even need to show them the previous inconsistent statement. What is necessary is to ascertain whether they agree or disagree, and at that point you may be required to prove the previous inconsistent statement.

The Minister is prepared to lead evidence to prove it. And the appropriate way of dealing with it is to deal with any

issues as to admissibility, as to relevance, and to address them openly with her counsel here so we can respond to something other than an invisible sparring partner.

Those are my submissions.

CHAIRMAN (Mr. Bell): Thank you, Mr. Chivers. Before we get to the detail of whether or not we are going to entertain having a transcript tabled here or provided to the commissioner, I guess I would like to hear from Ms. Peterson. I think your position obviously has been that there is a necessity to hear from witnesses because we have to clarify factual disputes. I would like some advice from Ms. Peterson in this matter before we go any further. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I think perhaps I will approach the issue by initially dealing with the material which was received by fax this afternoon from the Conflict Commissioner because I am going to invite you, once I make some comments on that, to hear from Mr. Chivers as to whether my understanding of some of the issues is correct or not.

It might help to back up a little bit and just talk in a broad sense about what facts appear to be in dispute so that's clear on the record. My understanding of the position being put forward by the Minister is that the facts that are in dispute are facts which go to what the Conflict Commissioner was aware of at what point in time. That those are the facts which the Minister considers critical to this matter.

Further to that, in the correspondence Mr. Chivers referred to, in April the specifics of those factual allegations were in fact suggested to the Conflict Commissioner and those are found at tab i of volume one of the authorities, the correspondence and the particulars of those facts.

The conflict which is being alleged in the facts arises from the reply material, which was filed on behalf of the Conflict Commissioner. So the fact being alleged is that the Conflict Commissioner was aware on the 15th of March of the particulars of an allegation of being in breach of certain provisions of the conflict of interest section of the act. The Conflict Commissioner's position put forward in her brief is that she did not have that information on the 15th of March. I have set out in the briefing note the particular paragraphs where this is referred to.

So on the face of it, on the basis of those two scenarios, there appears to be a conflict. Yes, you knew this on the 15th of March. No, I didn't know it.

Turning briefly to the material that was received this afternoon, there are some aspects of this material which I think may misapprehend the factual issue that's in dispute because the material makes references and leaves the impression that the issue is about what was reported in the media

My understanding -- and I stand to be corrected by Mr. Chivers and I will invite you to ask him about this in a moment -- my understanding of the issue that is in dispute is not what was reported in the media, but what the Conflict Commissioner may have known as a result of having a conversation with a media member, irrespective of what was reported.

So those are two different kinds of factual disputes, and I don't believe there is any factual dispute about what was

reported in the media. I don't think there is any factual dispute about whether what was reported in the media was accurate. That may or may not be the case. And I don't think whether or not the media representation of the interview is accurate is a particularly relevant fact before this committee. So to that extent, I think some of the submissions made on behalf of the Conflict Commissioner may misapprehend the nature of the issues, facts, that are in dispute.

Perhaps at that point, and I have a few other things to mention on this, but I think it might be appropriate to hear from Mr. Chivers as to whether I've correctly characterized the facts that may be in dispute.

CHAIRMAN (Mr. Bell): Okay, thank you. Yes, before we go any further, maybe Mr. Chivers on whether or not the factual dispute is surrounding whether or not the Conflict Commissioner had prior knowledge of an allegation of conflict involving Minister Groenewegen, and this knowledge stemmed from a conversation with a media member. Is that the facts?

MR. CHIVERS: Those are the facts that are in dispute from the point of view of the Minister. Now I should point out that if you look at paragraph 125, and this is the first time this allegation was made, of the Conflict Commissioner's submissions, after referring to the report, the CBC report, the Conflict Commissioner in paragraph 125 states:

The Conflict Commissioner statement above was derived from Mr. Selleck's telephone interview on March 15, 2001. As already indicated in this submission, that interview was general and did not relate to any particular Member or complaint. Any perceived connection of this Conflict Commissioner's remarks with Minister Groenewegen's affairs is the result of the CBC's selective broadcast presentation, not the true context of the March 15, 2001 interview between Mr. Selleck and the Conflict Commissioner, in which she was not aware of any particular allegations, information or evidence, and it was only intimated to her that the CBC was pursuing a story about possible conflict breach by the Minister relating to trust arrangements for her business interests, or directorship issue. (Response of the Conflict of Interest Commissioner, June 29, 2001 and Authority Notice, Vol. I & II, Exhibit #SPC 2-01, 1 of 3)

So I simply draw your attention to that because the Conflict Commissioner purports to allege that the CBC report is inaccurate, and if so, that is another matter that needs to be addressed, and it is part and parcel of the question of what information was conveyed to the Conflict Commissioner during the interview with Mr.... Mr. Selleck. What was she aware of? What was she made aware of?

And she seems to be suggesting that it is the way in which Mr. Selleck has put this together that makes it appear other than it is, according to the Conflict Commissioner.

The difficulty that I am having, Mr. Chair, is, as I've said earlier, it is extremely difficult and it's very uncomfortable for me, as counsel for the Minister, to be faced with two empty seats to my right. There are, in my view, clearly are conflicting versions of the facts. I am not entirely certain as

to how far those conflicts go. I can tell you that they revolve around, in my view, what information was conveyed to the Conflict Commissioner during that interview and how that may have impacted on her subsequent conduct.

Because everything in this issue, the reasonable apprehension of bias, must be viewed through the prism of what was known or not known to the Conflict Commissioner and how she proceeded thereafter to deal with, number 1, her statements to the media, where she never at any time made a statement to the media that perhaps the CBC report had misrepresented her comments or misportrayed or been put together wrong. There's no evidence that...indeed, there is evidence that she went out and, in our submissions, invited a complaint.

There is also the evidence with respect to the email correspondence with Mr. Rowe. These are, in my view, the reality is that in order to make a determination on how you should view these subsequent events, it is necessary to know and get to the bottom of what it was that occurred on March 15th, what was known to the Minister at that point in time.

My representation to you is that there is, in my view, admissible evidence of previous inconsistent statements by the Conflict Commissioner. I believe, and as I say, I am attempting to deal with this as fairly as possible; I have not put the transcript to you. I don't propose to do so today, subject to your direction. Given the objections that have been taken to Ms. Peterson, I don't wish to put her in any more of a difficult position with respect to this, but if I believe, and ordinarily if I was dealing with a body, an adjudicative body that had counsel representing them, then I would make the information available to that counsel and I am quite prepared to do so. There are certainly, in my view, no impropriety in that happening.

As I have indicated, the transcripts are here, certified transcripts. I am prepared to undertake and to forward a certified transcript, not as a result of any legal requirement to do so, but merely as a courtesy to the Conflict Commissioner and her counsel. And I am at your guidance with respect to how that aspect of the matter should be handled, but my position is that the only way you can resolve conflicting fact is by securing evidence.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: I wonder if we could, and I think we should get to the transcript and the tape recording in a moment. If we go back to the issue of whether the committee should hear testimony from witnesses, I wonder if Mr. Chivers could indicate to us those witnesses which, in his view, are necessary to clarify disputes in facts and which facts in dispute, in his view, those witnesses would be of assistance to the committee.

MR. CHIVERS: I can...

CHAIRMAN (Mr. Bell): Mr. Chivers.

MR. CHIVERS: Sorry, Mr. Chairman.

CHAIRMAN (Mr. Bell): Before you embark on that, I am wondering if you could take us through them one at a time and discuss how you feel...what light they might shed on the facts as you see them or as they see them would be relevant to us. So if you could do it one at a time, so that we would have a chance to comment and ask you questions on each witness.

MR. CHIVERS: Right. It's difficult to separate Mr. Bayly. With respect to the March 26th telephone conversation, which is the tape recorded telephone conversation, it's difficult to address Ms. Groenewegen and Mr. Bayly independently, but I'll attempt to do so. Of course, the Minister has knowledge of that telephone conversation. She also has knowledge of the subsequent telephone conversation which is alluded to by the Conflict Commissioner in her representations through her counsel that occurred, I believe, on March 21st, but it is during, of course, at least, it is during the week of March 19th. It is alluded to in the Conflict Commissioner submissions and in the submissions of the Minister.

And it would be my intention to lead evidence from Ms. Groenewegen as to that call. It would be my intention to -- and what led up to it, what caused her to make that call and what steps she took subsequent to it. It would be my intention to lead Ms. Groenewegen to discuss the transcript, the tape recording and to provide evidence with respect to how it came into existence, why it came into existence.

Similarly with Mr. Bayly, who is the party who is directly conversing, I would propose to call Mr. Bayly in respect of that. He would also be alluding to an earlier conversation that he'd had with the Conflict Commissioner before that March 26th telephone call, which in essence led to the call of March 26th being placed to the Conflict Commissioner.

In addition, as there may be a dispute with respect to the conversation which I believe occurred on March 21, there is another witness who may be able to throw some light on that, her name is Wendy Morgan. She is a constituency assistant to Ms. Groenewegen. Her evidence would be solely related to that telephone conversation and steps taken by the Minister subsequent to it.

I, when I advance my request through the Law Clerk, counsel for the committee, also named two other persons as witnesses. Namely, Jack Rowe, suggesting that his attendance should be secured, because I believe Mr. Rowe may be able to throw some light on some of these matters which -- and as I say, my view of the matter is you have to examine the entire sequence of events that occurs after March 26th through what you know, what you find out or what you determine the facts to be with respect to what was known or not known by the Conflict Commissioner on March 15th.

Because it's only after you have ascertained that, that you are in a position to draw inferences, if I can put it that way, from the comments that were made subsequent to that interview on CBC suggesting that the Conflict Commissioner could do nothing without a complaint and then the subsequent communications with -- and I have gone through them in detail in my brief.

I don't wish to belabour it, but the sequence of those e-mails and the fact that the very first e-mail, March 30th, as I view it, Mr. Rowe was chastising the Minister for not doing something on her own and she responds, the Conflict Commissioner, excuse me, chastising the Conflict Commissioner. The Conflict Commissioner's immediate response that same day is "I accept your e-mail as a formal complaint."

In any event, I don't know how much detail you wish me to get into but these matters are, in a sense, inextricably interrelated but they all hinge on the events that occurred on March 15th, March 21st, March 26th and they flow from those events.

The other person who I think is a crucial witness is, of course, the Conflict Commissioner herself. Another potential witness would be Mr. Selleck. I was reluctant to get into that due to...out of respect for the media and the role that they have to play. It's always uncomfortable for a journalist to be the subject to proceedings and I did not suggest that Mr. Selleck should be called as a witness; but, of course, it's a matter within your discretion if you felt that it was necessary to do so.

CHAIRMAN (Mr. Bell): Thank you.

MR. CHIVERS: Does that address it?

CHAIRMAN (Mr. Bell): Yes, it does, Mr. Chivers. I will ask if members have any questions about the specifics relating to any of the potential witnesses, if we do agree to hear from witnesses. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I agree and I think it's important that we hear all pertinent information and certainly the facts are an important part of that. So whatever it takes to get the facts is important. I don't have a question with regard to the specific witnesses. I just want to come back to one comment you had made, Mr. Chivers. That had to do with the admissibility of the tapes. You seem to raise some question as to whether or not they were admissible. Can you expand on that a bit?

MR. CHIVERS: The reason that I have addressed that is admissibility is always an issue in any form of adjudication. And relevance and weight are considerations, but there are sometimes technical objections that can be raised to the admissibility of evidence. I elected to proceed rather carefully with this because I anticipated that there may be some...some issues. I do not believe that there's any valid objection that can be taken to the admissibility of this testimony. Certainly the viva voce testimony, but I submit also the documentary testimony as admissible before you.

In one of her early letters, in fact I believe it was in the letter on July 6th, I, in my letter to the Law Clerk, I gave notice that I would seek to ask the committee to secure the attendance of...of Mrs. Groenewegen, Mr. Bayly, Wendy Morgan and Mr. Rowe, and the Conflict Commissioner. I believe it was in the letter in response to that letter, which was copied, as all of my correspondence has been, to the Conflict Commissioner's counsel, that she raised an issue with respect to other points.

I took that to be an issue with respect to whether or not the evidence of the tape recording would be admissible. I have no further information from the counsel for the Conflict Commissioner as to what position that she wishes to take in respect of that.

But I believe, and throughout these proceedings I have attempted to analogize, where possible, to rules of evidence and rules of court, because I believe that rules of evidence have a rational basis. And although I am fully aware that your committee is not bound by rules of evidence and can receive the information it wishes and can rely on the information it wishes, it has always been my opinion in the 30 years I have appeared before tribunals, that the interests of fairness and justice are best served where, to the extent possible and it is not always possible to do so, but to the extent possible, you at least pay attention to the rules of evidence and the reasons why they exist.

And that is why I simply did not do, as the Conflict of Interest Commissioner's counsel suggested, why didn't I just put it in

my original materials and get it in that way, then put it before you and confront you with a fait accompli, and then have possibly an objection saying well, that wasn't admissible or relevant and therefore you have to disregard it. It is impossible to do so, of course, once you have seen it. So that is the way I have proceeded and I am prepared to proceed in that way. I believe that is the sensible way in which to proceed to deal with this information.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson, maybe you can help us here further, and maybe specifically speak to the admissibility of the tape recording.

MS. PETERSON: The question of admissibility, I think, should be dealt with at a separate time because the committee is not, and I don't think Mr. Chivers would disagree with me and I don't think the Conflict Commissioner's lawyers would disagree with me at this point, the question of admissibility is not something that you have to deal with today.

That may be raised as an issue and it affects you in this way. If a transcript is to be provided of that telephone conversation, that transcript I am suggesting should not be before the committee at this point in time, in the event that questions about whether it is properly admissible evidence are raised, and we don't know that, or whether they will be raised at this point.

So the question you have to deal with at this point is:

1. Are witnesses going to assist you? and
2. Should the transcript be provided of this telephone conversation, be provided to the Conflict Commissioner's counsel and to your counsel.

On the witness issue, this committee has the ability to summons or invite witnesses to attend before it for any issue that it feels it would be assisted by testimony of witnesses.

Clearly, when there is a conflict in facts, you can't really resolve that conflict without witnesses giving you testimony about what they saw or heard or did on a particular day. But let me say something else. Even if there was not a conflict in the facts, if you felt as a committee it was of assistance to you to hear a witness, you could nonetheless do so. It's a, it's a general ability you have that you can exercise how you see fit in terms of assisting you to come to the decisions that you need to come to.

With respect to the individuals that Mr. Chivers has indicated, they all seem to play key points at various junctures, and it seems obvious to me that they would not hurt the committee. They could assist the committee in terms of providing a clear picture.

What those witnesses may ultimately say may be the same or different than what Mr. Chivers expects them to say. You will only know that when you actually hear from the witnesses. You may wish to call Mr. Selleck as well. On the basis of what Mr. Chivers has indicated, he was directly involved at a time which appears to be a critical point in the evolution of events, and he may have something to offer.

On the transcript, Mr. Chivers has offered to make a copy of that transcript available to counsel for the Conflict Commissioner. I think that's an advisable step to take at this stage. I think an advisable step and the normal step would also be to provide a copy to your counsel, myself, on the understanding that it is not disclosed to the committee until

the admissibility of it is either agreed to or dealt with as a separate question.

CHAIRMAN (Mr. Bell): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. I was wondering if Ms. Peterson could just elaborate on a point touched on by Mr. Chivers in terms of the rules of the proceedings in terms of evidence. Mr. Chivers recognized the fact that the rules of evidence within formal legal proceedings are set and there are steps. However, this committee at some point has some other latitude and will be required to, in their good sense and judgment after hearing information, make decisions. If Ms. Peterson could speak to the latitude and necessity, or the ability for us to do that, should we deem it the most appropriate course of action. Thank you.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Mr. Chivers is correct in that. Submission to this committee, like other tribunals that are charged with making decisions or recommendations, are not bound by the strict rules of evidence as courts are. Those rules of evidence can be relaxed in any given situation as a committee or a tribunal sees fit. They should be relaxed for a reason and not arbitrarily, but they do not -- you can make decisions as a committee that are other than the application of the strict rules of evidence.

CHAIRMAN (Mr. Bell): Mr. Miltenberger, anything further?

MR. MILTENBERGER: Mr. Chairman, I would just -- are we taking questions on should we look at witnesses, or is that still to come, or can we...?

CHAIRMAN (Mr. Bell): No, we can deal with that if you want. Continue.

MR. MILTENBERGER: Thank you, Mr. Chairman. Based on information that I have been privy to and that I have read and had a chance to look at, and listening to the comments from Mr. Chivers and Ms. Peterson and reading the letter from Conflict Commissioner's counsel, clearly it's pretty evident that there is a dispute over the facts. I also considered the tape to be a critical piece of evidence, and for a number of reasons, which at some point I will get into in some detail, but that particular piece opens many doors and many questions for me in terms of this whole process and what has transpired to date.

I don't have any argument with the witnesses, which are the key ones, except possibly Miss Morgan. I would have to relook at the -- whether it would be absolutely necessary in which -- whether she would provide any information that is critical to the debate...not to the debate, but to the proceedings.

I also -- I also think once again that Mr. Selleck is probably one of the key pieces, or one of the key players, in this. The issue of the press, I suppose, is a bridge we have to cross, but very clearly, for me, it would be a question of clarifying things that have transpired and not necessarily wanting him to maybe impugn his journalistic integrity or privilege with clients or people he's working with, but he is -- he is a key piece. I would take some slight perverse pleasure in having the press before us to speak -- to speak to issue. It is not an opportunity that happens very often, and one that should be done judiciously, but nonetheless, it is not without some slight enjoyment at the thought.

So, Mr. Chairman, those are just my comments on this particular critical issue, but I don't think we have a choice at this point. This whole process has evolved in a way that none of us have ever anticipated when things were initially first started. And we may be breaking new ground and we may be setting new precedent, but for me as a...sitting on this committee, is very difficult to make sense of the facts without actually trying to hear at this point from the people.

Initially, I was very reluctant to consider witnesses, but when it comes down to two parties having two perspectives and we are listening to legal counsel put forward and defend their particular clients, I don't think we have any choice. My own position at this point is I think we have to take that next step. Thank you.

CHAIRMAN (Mr. Bell): Thank you. Mr. Roland then, to whether or not this committee should hear evidence.

MR. ROLAND: Thank you, Mr. Chairman. I see it as when this meeting was called, this date was set some time ago, and the material that was sent up to me, as I went through the material, I felt there was enough there to make a decision based on what was presented from both parties. Upon coming here and seeing that there is some new items or issues that have come to rise as we have sat down here with the information presented, I am reluctant in a sense of saying that we need to go to witnesses. There is information here, people of the Territories, tax dollars are being spent to prolong this in that sense.

But, saying that, with this last bit of information, that directly draws into question submissions made to this committee that we would, I believe it is our duty now to ensure that the submission made is an accurate one. It is very unfortunate, I mean, I have had my eyes open and I thought the political realm of our work can become quite muddied as you do your work on behalf of the residents. But, in what I have read and, and what has transpired to date, I must say that is a whole new arena in the muddying of waters, as they say, when it comes to the legal jurisdiction.

And, and I think people are saying it is time to make a decision. But in light of this new evidence, I think it is something we need to proceed on, and in fact I think it is our responsibility in a sense to ensure that the Conflict of Interest Commissioner has the transcripts of the tape that she can make reference to and be prepared to defend because that is the question that will come up, I believe.

On that as well, I think once it is decided if that evidence will be used in this forum, that as well I would request that besides transcripts, we would hear the actual tape in this forum when it is decided that it would proceed. Thank you.

CHAIRMAN (Mr. Bell): Thank you. I think I have heard from enough members to take that we have agreement that evidence should be heard. Go ahead.

MR. LAFFERTY: Thank you, Mr. Bell. I am a late addition to this committee here -- well, I started with the Board of Management and just by reading some of the things I was able to read with the short time that I was here and the new information that we received, I agree with my colleagues that we should maybe listen to the witnesses and maybe sit another time to deal with this.

CHAIRMAN (Mr. Bell): Thank you, Mr. Lafferty. If we have agreement then that we will hear evidence, could we get some...could I get some sort of indication as to whether or not we feel a copy of the transcript should be forwarded to

both the Conflict Commissioner and to our counsel? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, two issues. The one that you've just raised, I think as laid out, it should. I commend the Minister and her counsel for offering up the tape. It's what the Conflict Commissioner asked for. I'd just like to touch base on, if we are going to look at witnesses, is it necessary -- I haven't been convinced just on -- is it necessary to call Miss Morgan? Will she add anything to the debate that won't be addressed by some of the other issues? That would be my only question.

CHAIRMAN (Mr. Bell): Thank you. Maybe at this time, Mr. Chivers, then you can speak to the relevance of calling Miss Morgan.

MR. CHIVERS: Mr. Chair, members of the committee, it would be my intention to confine the evidence as far as possible, but at the same time, it may be necessary to call this witness to deal with the events of what I believe are March 21st and the telephone call that was placed to the Conflict Commissioner on that date, and subsequent actions by Minister Groenewegen. The testimony, I expect, would be very brief.

CHAIRMAN (Mr. Bell): Thank you. So among other things, you believe that she'll be able to establish that this conversation did take place on the 21st?

MR. CHIVERS: I believe she can.

CHAIRMAN (Mr. Bell): Thank you. Any other questions, Mr. Handley?

HON. JOE HANDLEY: Just for clarification. I haven't been through this kind of process before, but are we, and as I said earlier, I don't have a problem with the witnesses that you've identified here. I am assuming that you've identified them because they have something to add to the facts. I think we have an obligation to hear what's going to add to those facts.

But just a question, and I don't have any other thoughts, but...on this issue, but are we limiting, are we limited to only the witnesses that were listed here? Or is there, as we go through this and we may find new information -- I have no idea what it may be, but can we -- we can call in other witnesses, I assume? It is just a question.

I guess with regard to the tapes, I honestly feel that, and I don't know the rules of evidence and how you do that, but I believe that that is a key piece of evidence that at some point has to be considered. We can't dismiss that one.

Just a question that we can -- we are not limited to this list that Mr. Chivers has given us here.

MR. CHIVERS: Can I just say that it was not my intention in any way to limit the committee, and ordinarily I would not have two empty seats to my right here and presumably there may be a possibility that they have witnesses they believe should be called. Certainly it is not my intention to, by listing those potential people, to suggest that that is necessarily exhaustive.

CHAIRMAN (Mr. Bell): Thank you, Mr. Chivers. I would agree that this is the time when we are going to deal with evidence and whether or not witnesses would be before us and who they would be. It's unfortunate that the other counsel is not here. They are not. Maybe, Ms. Peterson, if you could speak to whether or not if other matters arise, we can call on other witnesses if we see fit.

MS. PETERSON: Thank you, Mr. Chairman. Yes, you have that authority to issue that invitation during the currency that this committee continues to have its mandate. The only issue that arises from that is the reasonable availability of someone that you may wish to have before you. In other words, there may be a question of whether someone could be held in contempt if you issue short process inviting them to attend and they are unable to attend, whether that's a contentious act or not might be in question, but your ability to invite them is not in question at all.

Mr. Chivers has quite rightly and I think fairly pointed out that the Conflict of Interest Commissioner, once, if this committee makes a decision to hear from witnesses, may have witnesses that she wishes to offer to the committee to clarify certain facts or add other facts that she is of the view are important to the committee. We can't deal with that as completely as I would like to today, but I would like to suggest to you that I would be in touch with them on those points and deal with them as between counsel with Mr. Chivers. Not with a view to expanding the witness list without reason, but to ascertain whether there are witnesses which the Conflict of Interest Commissioner feels ought to be considered by the committee. Those would be my comments.

CHAIRMAN (Mr. Bell): Thank you. Is that okay, Mr. Handley?

HON. JOE HANDLEY: That's fine.

CHAIRMAN (Mr. Bell): Okay. Maybe there is a possibility that statutory declarations might be issued or used in some manner if simple things need to be clarified, such as when a date of a phone conversation took place, and therefore, we wouldn't need to expand the witness list so that it gets sort of beyond control. Ms. Peterson.

MS. PETERSON: That's a possibility. For simple matters of that nature, they can either be done by a specific agreement between counsel that certain events occurred on certain dates or by agreement that a sworn statement be placed before the committee attesting to that. Those are all possibilities which I would explore with counsel to see if they are agreeable.

CHAIRMAN (Mr. Bell): Okay. Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, I was just going to make the point that I think it's important to leave the door open for the Language Commissioner to have an opportunity to...Sorry. What did I say?

SOME COMMITTEE MEMBERS: Language.

MR. MILTENBERGER: Sorry.

-- Interjection

-- Laughter

The Conflict Commissioner has the opportunity to offer up names as well for consideration, so I think the matter has been addressed, but I just concur and I think it is important to do that, given the nature of the proceedings to date. We want to keep it as open and inclusive as possible.

CHAIRMAN (Mr. Bell): Thank you. I think we have agreement that the committee feels it should hear evidence from witnesses. The committee also feels that a copy of the transcript of the conversation should be forwarded to the Conflict Commissioner's counsel and also to our counsel. If

there is anything further on this matter, we should discuss it now before we move on. Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. I think since that we have basically decided to hear from witnesses that those witnesses will be informed that the door, as stated earlier by Mr. Miltenberger, becomes open as to questions and the process since this whole event is taking place. They might not just be near to the specific issue of a day, a time, and the day of a phone call, but involvement in the process. Thank you.

CHAIRMAN (Mr. Bell): Okay, thank you. Is it the direction of the committee to invite the following people to provide evidence -- Jane Groenewegen, Carol Roberts, John Bayly, Jack Rowe, Wendy Morgan and Lee Selleck? Agreed?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Agreed. Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. And I guess we have opened the door as well for the Conflict of Interest Commissioner to add to that if she feels necessary?

CHAIRMAN (Mr. Bell): Yes, I agree, we'll have our counsel approach her to see if that will be necessary. And I think witnesses will understand that when they testify before us, will be examined and cross-examined, and I think we will keep the questions relevant, but it does open various doors. Anything further on this matter before we move on? Mr. Chivers.

MR. CHIVERS: There is one further matter that hasn't been looked at explicitly. It's raised in the Law Clerk's briefing note at page 11. Beginning at the top of the page, one, two, the third paragraph, that is the question of process with respect to how the committee desires to conduct its affairs. I can make the observation in other proceedings that I have been involved in.

The approach usually is that the witnesses are the witnesses of the committee or tribunal and their evidence is led, at first instance, through the counsel to the tribunal. Certainly that was the procedure that was followed in the Morin inquiry, but you are masters of your own procedure and I am content to broach it either way. Whether the witnesses would be called by the committee, but for example, Mr. Bayly and Ms. Groenewegen, the other persons I have mentioned would be my witnesses and I would call them and examine them and then they would be cross-examined. The other alternative...And similarly on the other side.

The difficulty I have with that process is the Conflict Commissioner, who I believe I need the ability to cross-examine in the circumstances here because there is a conflict with respect to certain facts. Therefore, my preference in that regard would be that the evidence of the Conflict Commissioner either be led through the Law Clerk or by the counsel for the Conflict Commissioner and similarly with Mr. Rowe.

These are persons who are adverse in interest and therefore I think the evidence should be led by either the Law Clerk or counsel for the Conflict Commissioner. Particularly with respect to Mr. Rowe it would seem to be particularly important and appropriate that it would be the Law Clerk that would lead that evidence and perhaps with Mr. Selleck as well.

CHAIRMAN (Mr. Bell): Thank you, Mr. Chivers. Maybe Ms. Peterson, you can advise us how you feel the treatment of witnesses should be conducted and whether or not the witnesses should be the witnesses of this committee.

MS. PETERSON: Thank you, Mr. Chairman. No matter who asks questions first of the witness, they will always be witnesses of the committee as opposed to any of the parties. Because of the unusual circumstance that the Conflict Commissioner would find herself in, and that would be a very difficult and awkward position to be called by Mr. Chivers, which would normally put her in a position by being cross-examined by her own counsel, which is not tenable and Mr. Chivers has properly pointed out the awkwardness of that situation.

Similarly, I think it is a good idea to approach the process of witnesses as the same for every witness. In other words, do not do some witnesses one way and other witnesses another way. The reason for that is if new witnesses come forward, then you have to make -- which camp do those witnesses go in? How are we going to treat them?

I think perhaps the better course of action given that and the possibility of further witnesses on behalf of the Conflict of Interest Commissioner, would be for the witnesses to be led in chief by committee counsel, namely myself, which would then allow each party the possibility of asking questions, after that evidence has been led in chief.

The other advantage to committee counsel leading the witnesses in the first instance is, and with no disrespect to any counsel involved, there's more likelihood or a better opportunity of that evidence being led in an entirely neutral fashion as opposed to being directed to emphasize certain points as opposed to others. Those points can be emphasized in counsel then questioning the witnesses, and it's not that that should occur, not occur rather, it's rather that at the first instance, a less partisan recitation of the facts is probably the better course of action.

CHAIRMAN (Mr. Bell): Okay. Can I hear from members of the committee as to whether or not they feel the witnesses should be led by committee counsel? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, the committee has just made a decision to in fact call witnesses, so I think it is incumbent to follow through on that direction and the process. I agree that I think they should be coming to this forum as witnesses to the committee to help us make sense, to answer questions, to clarify issues so that we can speak to the issue of bias, and giving both parties full opportunity to their cross-examination and speak to the issues. Then I think we should do that.

There is no dispute, at least at this point, over the witnesses. There is not a list that we've picked from. These are basically all the key players, so I don't think there is any perception that we have excluded testimony. We have no role other than to try to ascertain the facts, so I think it is important that they are committee witnesses and they are led in chief by counsel committee, or the counsel to the committee, so that we can in fact maintain that perception and that reality in terms of the process and why they are here. Thank you.

CHAIRMAN (Mr. Bell): Thank you. Any other members? Mr. Handley.

HON. JOE HANDLEY: I agree.

CHAIRMAN (Mr. Bell): Okay. I think I've heard enough from members to agree that witnesses will be led by committee counsel, will be witnesses of the committee. Anything further, Mr. Chivers, on this matter?

MR. CHIVERS: Nothing further on that matter, sir.

CHAIRMAN (Mr. Bell): Thank you. I think we will move on then -- sorry, Mr. Miltenberger.

MR. MILTENBERGER: I have one process question. The issue of time. Is that a function of this particular instance or is that something that we will deal with, trying to nail down an approximate time? Is that something we would do later, or call of the chair, or how do we want to...

CHAIRMAN (Mr. Bell): Thank you Mr. Miltenberger. I think we will deal with timing and to timing before we wrap up and we will be coming to that. The next matter seems to be, maybe Mr. Chivers you can speak to this first, there was some suggestion I think by yourself in a submission that some matters be dealt with in camera at some point. Failing that, obviously everything would be in public. I am wondering if you can speak to that.

MR. CHIVERS: Mr. Chairman, in subsequent correspondence I abandoned that request. I had originally posed it as I thought that it might be a fairer process for the Conflict Commissioner. However, it was spurned by Conflict Commissioner's counsel and therefore I make no request that this be conducted in camera. If that is the committee's wish, I will be guided by the committee's direction. I will leave that to the committee.

CHAIRMAN (Mr. Bell): Thank you Mr. Chivers. Then if it is off the table, it is off the table. I think that it will be our understanding from the outset that the entirety of this proceeding would be in public. Is that the way that members believe that this should remain?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Agreed. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I am just wondering whether we want to retain the ability to be able to hear why something might be better heard in camera and have some flexibility there? Again, I have no particular example in mind. I was just thinking something may come up and there may be a good argument presented why it should be in camera rather than to say everything is open here.

CHAIRMAN (Mr. Bell): I agree. Maybe we will hear from Ms. Peterson. I don't think we need to give that away. But Ms. Peterson if you could.

MS. PETERSON: Thank you, Mr. Chairman. It is always possible for counsel or a witness to make a request of the committee that certain aspects of the proceedings be conducted in camera. The committee may wish to deal with it in this way. Namely that by default the proceedings would be public and the committee would consider any request or application for in camera aspects of it at the time it's made.

CHAIRMAN (Mr. Bell): We are in agreement then. We will entertain any such requests, if in fact they are made, at that time. Next, I have nothing further on our list of issues that I see in front of me. There was -- sorry. Ms. Peterson.

MS. PETERSON: I think the committee, and you may wish to hear from Mr. Chivers on this point, the committee may wish to deal with the issue of the sealing and production of

the Conflict Commissioner's report, which has been raised by Mr. Chivers and which is opposed by the Conflict Commissioner's counsel.

CHAIRMAN (Mr. Bell): Thank you. Maybe, Mr. Chivers, if you are prepared to speak to this point and explain why you feel why it would be important to have this, in fact, happen.

MR. CHIVERS: Yes, sir. At some point during the, I believe it was the Board of Management procedures, an issue arose with respect to the Conflict Commissioner's report and what stage it was at. And the Conflict Commissioner indicated that her report addressed the concerns raised in the Minister's April 25th application to her.

The reason I made that suggestion in my letter to the Law Clerk and through the Law Clerk to the committee is that, in my view, that also could be pertinent. That part of the report could be pertinent evidence for this committee because if the Conflict Commissioner has actually done as she has indicated that she has done, then she has addressed in that report the very matters that you are going to be considering. It seems to me that that is a potentially critical piece of evidence.

Now, I have had the opportunity to view the briefing note. That, by the way, was my rationalization for the request. I was not seeking to secure anything other than that portion of it because I think it's only that portion of the report which would be relevant to these proceedings. The Law Clerk has raised some questions. I am not sure that I am in a position to provide you with an answer with respect to the statutory requirements.

It seems to me, however, that the committee in its, in the Legislative Assembly motion constituting it, has broad powers. It does seem to me in considering all aspects of the application and having access to persons, papers, records, et cetera, and conducting such hearings and meetings, et cetera, that the committee may well have power to require the production of that. What I would like to see happen here is to see that secured, to see it frozen.

My concern here is that there is information that has been reduced to writing, presumably, and that information addresses the very issues of fact that we will be addressing, I believe. I am going to leave it with the committee and I will abide by your determination on it, but that is my rationalization for the request that I put forward.

CHAIRMAN (Mr. Bell): Thank you, Mr. Chivers. Maybe, Ms. Peterson, you could speak to the two issues then. First, whether or not we have the power, the authority, to do so and then also if, in fact, it would make any sense or be helpful to this committee to take that course of action.

MS. PETERSON: Thank you, Mr. Chairman. I think there is serious doubt as to whether the committee has that authority. While it has the authority to compel the production of persons, papers and records, that authority is granted within the mandate given by the Assembly as a whole. So while the Assembly has said you can compel documents in such way as you see fit, the Assembly also went on to give a specific instruction about that report. So I am not sure that you can take the general power and then apply it over top of a document that the Assembly as a whole has already given specific instruction to.

But let's consider the issue in this way, and I understand the point Mr. Chivers is trying to make is that a portion of that report, not the determination as to whether or not there

would be an inquiry, but a portion of that report deals with the request for recusal and we were advised by the Conflict Commissioner earlier on that her reasons for not doing so, for not excusing herself are set out in that report and that may be important for this committee at some point in time.

There is, however, the possibility that that evidence can be established during the course of examination of the Conflict Commissioner as a witness. Were these reasons reduced to writing and, if so, do you have that portion of them that would assist the committee in viewing the reasons that you crafted at that point in time?

Part of the request in securing that part of the document right now, or the document as a whole and paying attention to only that part of it, underlying that request is certain concerns, and I am not convinced that you've heard sufficient persuasive reasons why those concerns might be justified. Namely that there is some danger or prejudice in the report not being secured at this stage -- what is being protected? I am not convinced that you have heard something persuasive on that point.

CHAIRMAN (Mr. Bell): Mr. Chivers, I will allow you to respond if you feel there is some danger in not securing this report.

MR. CHIVERS: I have nothing further to add in that regard.

CHAIRMAN (Mr. Bell): Thank you. Anything from members on this issue? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, I am somewhat concerned about this request. To actually take a report of the Conflict Commissioner resulting from a complaint being laid, I think takes us over the line in terms of what kind of information that we should have access to. She has done a report that is sitting there waiting the determination of this committee and I, as well upon reading this, question, are there any implicit concerns, what is being implied in terms of the need to secure this document?

I see it at least implicitly questioning once again the integrity of the Conflict Commissioner and maybe implying that somehow, given all that has transpired, she may decide to rewrite her report. I am not suggesting that is what she has done, but when I see this request I have that concern that that's what is underlying this request, and I don't have those concerns.

Besides, at this point in the process, it would seem to be somewhat of a moot point, that the report has been done now for many, many weeks, and at this point it would be almost like locking the barn door after the horse has run away, if that was a concern. So I, personally, I haven't been convinced by Mr. Chivers' argument that this is necessary or in fact that we have the authority, which I think is even a more fundamental concern. Thank you.

CHAIRMAN (Mr. Bell): Okay, is there anything further from members on this issue? Maybe, Mr. Chivers, if you would like to respond as to whether or not anything is being implied by this request. I will give you that opportunity.

MR. CHIVERS: Nothing is being implied by the request. As I say, it is a source of, potentially, a source of evidence, but as I indicated earlier, I don't intend to proceed there.

CHAIRMAN (Mr. Bell): Thank you. Then maybe at this time I will ask if we have agreement that we will not ask the

commissioner to seal her investigation report and deliver it at this time, at least, and we will move on. Agreed?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. And also, in addition, to ask her to continue to hold it as was required by the motion in the House. Agreed. The next issue that I think we have to deal with is timing from here. Maybe I will ask Ms. Peterson to at least address that issue as to what might be a reasonable amount of time -- Sorry, both for the Conflict Commissioner's counsel to be able to prepare for these witnesses and also what would be reasonable to ask, reasonable time frame to ask witnesses to appear in. Thank you.

MS. PETERSON: Thank you, Mr. Chairman. I am taking it as, and I think perhaps that this should be clarified, that on the basis of all of the other issues that we have dealt with today, the sense of the committee is that we would not proceed any further today on substantive issues. We are going to hear from witnesses, we are going to call them, and give people an opportunity to prepare for that process. That underlies all of this and I assume I am correct in that and just kind of confirming that for the record.

CHAIRMAN (Mr. Bell): Thank you. I think we are in agreement and that we will report back to the House on the 23rd with a recommendation that outlines that and also, I guess, ask for a continuing mandate from there. Ms. Peterson.

MS. PETERSON: So, as to timing, I think there are some real important aspects to timing. Timing is always difficult because it's dependent on the availability of individuals and we are making certain assumptions at this point in terms of the availability of witnesses and counsel for the Conflict Commissioner. And you should hear from Mr. Chivers as well in terms of his availability.

That being said, the issues that are before this committee are difficult ones and delicate ones in terms of the reputations of a number of individuals that, that have to be considered. And for that reason, the sooner this committee can deal with the questions, the better.

In addition, on the issue of the public expenditure of funds, to the extent that this committee can come together and do its work in conjunction with other functions of Members for the Assembly, would assist in deferring some of the costs associated with bringing members in for the purpose of hearing matters and fulfilling your mandate.

So as soon as possible after the 23rd of July would be a reasonable time to try and come back together to deal with these matters. It's a short time frame, but it's a time frame that would allow individuals, if they roll up their sleeves and get busy with things, to be ready for matters. So the 24th or 25th of July, that time frame is not beyond a reasonable time to prepare.

In terms of the time that you may require to finish this matter, given that you will hear from witnesses, you should set aside two to three days. You may not need all of that time. You may be able to do it in less than that time. I'd be surprised if you could.

CHAIRMAN (Mr. Bell): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, I just thought it would be beneficial, since it is a public meeting, if you could just

elaborate a bit on a comment you made in passing, that there's going to be a need for us as well as we look at witnesses, to go back to the Legislature on the 23rd, since our shelf life as a committee expires on the 23rd, I believe, for us to be able to conclude the proceedings we've initiated. Thank you.

CHAIRMAN (Mr. Bell): Certainly I'll, before I ask Mr. Chivers about agreeable dates, we will report back to the Assembly on the 23rd, is my understanding, there is agreement to do that, and suggest that we were unable to deal with the substantive bias issues at this point due to the fact that counsel was not available for the Conflict Commissioner here today and, additionally, that there wasn't enough time in any event for counsel for the Conflict Commissioner to prepare for the witnesses. So with that in mind, we've had to extend the dates. We are looking at the 23rd, 4th, sorry 24th, 5th and 6th, potentially, and we will ask the Assembly to extend our mandate to accommodate that. Mr. Handley.

HON. JOE HANDLEY: If I understand this right, we won't know, though, until the 23rd, whether we are just sitting for one day, two days, three days, so it just seems a little bit awkward here. How do we call witnesses to come on the 24th and 25th when we may not get approval? I think we may need to get unanimous consent to just sit for one day. We won't know that until the 23rd.

CHAIRMAN (Mr. Bell): Maybe I can ask Mr. Hamilton to advise us on this.

CLERK OF THE COMMITTEE (Mr. Hamilton): Thank you, Mr. Chairman. Again, the chairman is correct. The committee would have to make a report because you are to report, as your terms of reference says, shall report to the Assembly with its findings and recommendations no later than July 23rd. So you are not able to complete your findings with recommendations for July 23rd. So you will need to seek a further mandate and time to deal with your report and perhaps come back with a new date that you will be able to conclude your findings with recommendations.

Mr. Handley is correct. You would need, as our rules provide if we are to only sit for one day, then we would need unanimous consent to obviously receive the report of the committee, if you want to call it an interim report, which then would require probably a recommendation in that report to sit longer, to extend your term. So if that was all to be dealt with in one day, certainly our House procedures require a number of unanimous consents to allow that report to be received, to be debated and to be approved. So, Mr. Handley, is correct there is no guarantees that that would happen in that one day. Perhaps due to the nature of this committee, there may be accommodations made to ensure that happens.

CHAIRMAN (Mr. Bell): Thank you. Then can we go ahead and schedule witnesses not knowing if we will receive that unanimous consent? Can we do it on the provision that we get unanimous consent and if we don't, we will deal with that when and if that happens?

CLERK OF THE COMMITTEE (Mr. Hamilton): Mr. Chairman, it would certainly be awkward. You can go ahead and schedule your witnesses and invite your witnesses to appear on some of those days, depending on how the scheduling is going because you still have to go through the various submissions that were on the list for today. So whether they would be on the 24th or probably not until the 25th or 26th before you would be requiring witnesses, I am not sure how the process would go. You could invite and then the House would then determine and if they can't, then

the hearing will not go ahead on those days. So you could potentially have witnesses here and counsel and then still not be able to proceed.

CHAIRMAN (Mr. Bell): Mr. Handley.

HON. JOE HANDLEY: I guess I don't want to keep throwing roadblocks up, what seems like roadblocks, but this is a question I guess to the Law Clerk. Is meeting on the 24th and 25th, if that is our decision, is that a reasonable time for witnesses or I am thinking more of the Conflict Commissioner to have her witnesses here, identified and here, or would she then say I can't get them here for those dates, so therefore you can't do it anyway? I guess I go back to Mr. Chivers' comment about a pattern of avoidance. If she wants to slow things down, could we just say "Look, you have been given enough time," or is this reasonable?

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. It is very tight. There is no question about it. Depending on the commitments of counsel and the Conflict Commissioner, who herself may have commitments to other responsibilities, we don't know that and it is quite possible that they would say "We simply can't do that within the time available."

So I am not sure what to suggest. There's a tremendous advantage in conducting this particular hearing, or any hearing, and the difficulties that we encountered in scheduling this date are some clue on that. People are very busy, members in particular, and achieving a date is difficult. So if we adjourn without a date, and then we have to canvas for the possibility of getting a date, that becomes time-consuming and difficult.

There's no doubt that it would be safer and more certain to set it farther ahead. You may be looking at some time in August or September for that purpose.

I think your concern is a valid one, Mr. Handley. It's a very tight time frame. It's quite possible that the Conflict Commissioner or her counsel or other witnesses might say "I'm not available on that date" or "I can't be prepared on that date."

CHAIRMAN (Mr. Bell): Okay. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I'd suggest, and I don't know if this is too complicated, but that we try for the 24th and 25th, but recognize that we may get stopped pretty quick if people feel it is not reasonable. Then if we can't, I'd like to suggest we proceed by sometime in August, even if it does mean -- it's easy for me to say I guess, I live in Yellowknife, but unless we hold hearings in Inuvik or something -- that we proceed as expeditiously as we can, not drag it out anymore than we need to.

CHAIRMAN (Mr. Bell): I agree. Mr. Miltenberger, do you still have something on this?

MR. MILTENBERGER: I was going to try to be a little more precise, but I agree that we should have a plan B. We should try to do it on the 24th and 25th, but let's have a fall-back plan B that we can -- a date, not just -- if we just leave it open and try to nail it down, we will never get it done. So we can -- and I know that there's commitments already. There's big conferences, there is the things that I don't know if people can get out of in terms of obligations during the last few weeks of summer. So, I would like to get it done as well, but I think we have to work around some of those realities, but if

we can try to pick a plan B here, date, it's neither or then, and if we do it on the 24th so much the better.

CHAIRMAN (Mr. Bell): Thank you. Can I ask Mr. Chivers to speak to dates then, if we were to look at the 24th, 5th and 6th as our first choice.

MR. CHIVERS: Let me begin by stating that I concur with the sentiments expressed by Mr. Handley and Mr. Miltenberger. I have assigned this matter a very, very high priority and I bent over backwards to attempt to commit myself to getting this completed within the original time frames of the committee. That unfortunately is not going to be possible. I will continue to cooperate with the committee, and as well with my client, Ms. Groenewegen, endeavour to arrive at dates that can be where the hearing can take place as soon as possible.

I just want to say to the committee, I mean I am of the view that the best approach is to attempt to find mutually agreeable dates, but in the event that mutually agreeable dates are not possible, then it may be necessary for the committee to fix the dates and tell people to be here. That is not desirable, but it may be necessary.

CHAIRMAN (Mr. Bell): Thank you. I think that we have some agreement that we would try for the 24th, 5th, 6th, something like that as our first plan, and if that fails then we will look for further dates, and ask the Law Clerk to canvass the counsel for the other two parties to see if we can come up with something that is mutually agreeable, as well as members. Mr. Miltenberger, to that.

MR. MILTENBERGER: Mr. Chairman, looking at the calendar, personally I would like to suggest, given the importance of this issue, and if we can get agreement, could we look at, if necessary, working on, say Friday and Saturday just to resolve this? If it means getting it done as opposed to trying to pick a date in August or September. That way we could allow ourselves the full three days just in case of the House. I know that it is not everybody's first choice to do that, but at least it would allow us to get the work done. Because it is so close, if we have to move just because of one or two days, I am prepared to give up a Saturday or Sunday to do this. It is a suggestion. It is so close to the...

CHAIRMAN (Mr. Bell): Thank you, Mike, Mr. Miltenberger, I am not sure if we can make that commitment given that we don't know that this would be enough time for witnesses to be prepared and those kinds of things. But let's try, at least first, for the 24th, 5th and 6th and we can then instruct the Law Clerk to deal with Mr. Chivers and counsel for Ms. Roberts and see if we can come up with something that's mutually agreeable, preferably early in August so that we can get this taken care of.

Again, I guess, if we cannot find agreement between the parties, we will have to make a determination ourselves and then just go from there. Is there anything further on any of these issues or any other issues that we need to speak to here today before we adjourn? I will ask Mr. Chivers if he has anything further.

MR. CHIVERS: Nothing further.

CHAIRMAN (Mr. Bell): Ms. Peterson, is there anything you would like to add?

MS. PETERSON: I don't have anything further, sir.

CHAIRMAN (Mr. Bell): Members? Okay. Then we will report to the House on the 23rd and ask our mandate to continue. This hearing is adjourned until the 24th of July potentially. I would like to thank everyone for coming here today. Thank you.

-- ADJOURNMENT

The committee adjourned at 5:46 p.m.

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Northwest Territories Legislative Assembly

Special Committee on Conflict Process

Conduct of the Public Hearing

Sunday, July 22, 2001

VERBATIM TRANSCRIPT

Special Committee on Conflict Process

Chairman

Mr. Brendan Bell, MLA for Yellowknife South

Members of the Committee

Mr. Floyd Roland
MLA for Inuvik Boot Lake

Mr. Leon Lafferty
MLA for North Slave

Honourable Joe Handley
MLA for Weledeh

Mr. Michael Miltenberger
MLA for Thebacha

Witnesses

Honourable Jane Groenewegen, Applicant

Legislative Assembly Staff

Mr. David Hamilton, Committee Clerk

Ms. Katherine Peterson, Q.C., Law Clerk

Mr. Andrew Stewart, Assistant Clerk

Mr. Corey McLachlan, Assistant Clerk

SPECIAL COMMITTEE ON CONFLICT PROCESS**Conduct of the Public Hearing****Sunday, July 22, 2001****Yellowknife, Northwest Territories**

CHAIRMAN (Mr. Bell): Welcome everybody to the July 22nd public meeting of the Special Committee on Conflict Process. Since our last public meeting a few things have happened that I thought that we should get up to date on first. I will ask Katherine to go into that in some detail. Initially I would like to just lay out generally where we left off and where we are now.

At the last public meeting it came to light that we were going to need to hear evidence in order to clarify some of the details that were in dispute. In order to do so we were going to have to give counsel for both parties adequate time to prepare. This meant that we were not going to be able to conclude as we had hoped with a final report with our recommendations to the Assembly on the 23rd. So we were going to look to schedule witnesses initially the 24th, 25th, and 26th and then go to the House and ask for an extended mandate in order to conclude. In discussing with witnesses their availability, we did send notices out to the witnesses after the last public meeting. Several witnesses indicated that they would not be able to attend. Additionally counsel for Conflict Commissioner, it was found, would be unavailable till the 24th, 25th, and 26th due to prior commitments.

So we knew that we would have to come back to the House and ask for an extended mandate and come up with some agreeable dates, possibly later in August.

On the 18th of July we received correspondence from Mr. Chivers who is counsel for Mrs. Groenewegen and the substance of that correspondence was a formal request to withdraw the application citing the additional costs involved as process became more protracted. It also indicated what they saw as a continued pattern of avoidance by the Conflict Commissioner and her counsel, so they were asking, requesting that the application of bias be withdrawn. However, they were still alleging that they believe bias was present in this case but it just did not seem to be worthwhile to continue.

On the 20th of July, counsel for the Conflict Commissioner responded to this issue, and we had asked them to respond to the request to withdraw and also presented additional submissions on bias and process. We will get to that.

The Conflict Commissioner, in her response, did indicate concern about the integrity of the office and personal attacks that she felt she had been under. She also had concerns about some of the evidence and context surrounding the evidence, specifically the tape recording of the conversation between Mr. Bayly and herself.

We have received a final piece of correspondence. These three pieces of correspondence will be public record and available for everybody, if they haven't become already, from Mr. Chivers, again further responding to the Conflict Commissioner's last letter.

So with that, I am going to ask Ms. Peterson to -- to bring us up to date on detail and where we need to go from here in

order to -- to get to the preparation of a report for the Assembly tomorrow. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. As you indicated, after the July 12th meeting notices were sent out to the various witnesses requesting or inviting their attendance at the hearing, tentatively scheduled for the 24th to the 26th of July. These witnesses included the Minister, the Conflict of Interest Commissioner, Jack Rowe, Wendy Morgan, John Bayly, and -- am I missing someone? I think that's -- I think that's -- and Lee Selleck, sorry.

As you indicated, some witnesses were not available for those dates and counsel for the Conflict Commissioner indicated that they were not available. Because of their unavailability, the Conflict Commissioner would accordingly not attend on those dates, or not be able to.

So we were in the process of looking at a different schedule with a view to requesting an extended mandate from the Legislative Assembly when the request to withdraw the application came in from Mr. Chivers.

The other matters that have been dealt with since the last meeting, I understand that the Speaker has continued to try and resolve the issue of the contract for legal services with the Conflict Commissioner's legal counsel. As far as I am aware, as at today's date those issues remain unresolved or not completed.

As well, dealing with the tape recording itself took up some time between the last meeting. It was initially agreed by counsel that the tape recording itself would be turned over to myself as Law Clerk. There is a disagreement between the parties as to what portion of that tape recording ought to be reproduced, whether all of it ought to be reproduced or whether the March 26th telephone conversation only. Each of the Minister and the Conflict Commissioner have put forward positions on this and that issue remains unresolved at the moment. The tape rests with essentially the committee until -- unless and until it's needed and -- and until those issues, with respect to what part or parts of it should be reproduced, are resolved.

So the committee has some decisions to make at this point in terms of its report to the House tomorrow. It obviously has to report that it has been unable to conclude its original mandate and it may wish to consider recommending some options to the House. Those options, I think, could include the following:

The committee could recommend that the matter go no further from this point on, in light of the request on behalf of the Minister that the application be withdrawn. If that did in fact occur, after resolution in the House, the investigation report of the Conflict Commissioner would be delivered to the Speaker in the normal course and any action or not as the case may be, arising from that investigation report would go forward.

The committee could recommend that the issue of allegation of bias or related issues go forward in any event of the

request on behalf of the Minister. The House is not bound by that request and can make its own determinations as to what it thinks is the appropriate action.

If the committee is mandated in that fashion, it will have to deal with a number of issues such as whether the investigation report is tabled, what happens with the tape recording, and scheduling issues as well.

Finally, the committee could recommend to the House that while the bias issue not go forward, there are other issues which ought to receive the attention of a special committee in some reconstituted form with a revised mandate and the committee would have to articulate that to some degree in order to have a reasonable discussion on it in the House.

So I think those are the options which I think the committee has to consider today with a view to reporting to the House when it opens tomorrow. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Any questions from members, specifically to the options? Mr. Miltenberger.

MR. MILTENBERGER: Mr. Chairman, just a question in terms of process. I know we have some discussion to do here and I have some comments I would like to make, but as we have to prepare a report given our short shelf life that is left, I would like to suggest that the Legislature should be privy to that first. That as a committee once we wrap up our discussion, we should take the time to map out our report so that we can get it ready for tomorrow morning. I believe that should be done -- that final part should be done in camera so that the Legislature will in fact receive that firsthand from us and not by way of hearing about it in the media.

CHAIRMAN (Mr. Bell): Okay. Are we agreed then that at the conclusion of this meeting that we will retire to pen the report?

SOME COMMITTEE MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Mr. Roland.

MR. ROLAND: Just for clarification, that is after we have gone through the meeting, and at that time we will, when we want to go and do some finalization, that is the portion that we will go in camera with?

CHAIRMAN (Mr. Bell): That is correct.

MR. ROLAND: Okay.

CHAIRMAN (Mr. Bell): Okay. Two options. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I guess, having read the previous information that was provided to us earlier on and having read the Minister's lawyer's letter and also the Conflict Commissioner's letter to you as chairman, I guess I have to say I am concerned that there has been an allegation of bias that has been made. It does not strike me as being a bias that is unique to this particular situation from the evidence that I have seen or heard, but it is more of a general nature as to how the Commissioner is carrying on her responsibility.

I guess I still have a problem that that issue is still out there. When I read the letters, no one is saying, "No, I don't believe that a bias exists" or the Commissioner is not saying that it is fine. The cloud is still out there over the Commissioner's office.

I have a concern about the first option, which is just to conclude this and then carry on as if nothing happened. There is a -- this is going to be something that's worn by the Commissioner for as long as she is in office here. I am just saying that I have difficulty just saying okay, let's just forget it now, and carry on from there. I think it is going to make it very difficult for the Commissioner to carry on her responsibilities if she were to continue. I assume that she will in the future. I am just not sure how we could just -- just let it drop and say now things are back to normal. We all have to work together. It would be very difficult to just dismiss it and try to forget it ever happened.

There is still -- I guess the bottom line to me is there is still the bias issue out there, or the allegation of bias. We have to deal with that.

CHAIRMAN (Mr. Bell): Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Listening to the three options that we have before us, one would -- as I first went through this, sort of look at saying well, if the bias has been pulled -- request for -- or basically saying remove the request for this committee to stand, in a sense, that we can go in that direction and move forward.

But as I have reviewed what has been put before us to date, there's been a lot of serious issues raised as to the conduct of our statutory officer as well as the process used to date and the information that has come to light. Even in the letter that has been sent in by Mr. Chivers, the Minister remains convinced that it is on the merits of her application, mainly for the reason of the time and cost that this is taking up, that there is a reason to pull this.

Initially, again, I would agree with the statement that this is costing a lot of money. As I have given this some thought, the fact that we have spent money and would stop this in its tracks, so to speak, without a conclusion, I do not know how people would feel about that. One, I know there is those that say, "Get on with it, the decision is made." The other side is, "You spent so much already and you have done nothing at the end of this because this what we will be doing." That, combined with the information we have received, I think there is merits to look at what will happen from here and how we will put a report together, because the House is going to deal with this. They have to deal with this as a mandate with them tomorrow, as I understand it.

I think that we do need to look at the options that are before us and, how do we really clear the air? And I agree with some of the statements, Mr. Handley's statements. I will leave it at that.

CHAIRMAN (Mr. Bell): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Mr. Chairman, I, as well, agree that this is a matter that has gone too far to just be dropped, that there are significant issues out there and for me, I have some very specific questions that I think need to be answered. A lot of it centres around the tape and the contents of the tape, the issue of bias, as Mr. Handley indicated, but it also the tape -- all of it I think is critical. You just cannot walk away, and it raises in my mind a significant number of ethical and moral questions. While it may not be illegal by the letter of the law it is, in my opinion, definitely unethical and immoral to secretly and surreptitiously over the tape and it poses the question, in my mind, under whose authority it was done.

Was the Principal Secretary acting on his own? Why was the Deputy Premier sitting quietly in the room? I understand that she, in fact, ended up with the tape. I also know and have concerns that during this process the Premier and the Chief of Staff also approached some of our senior staff in an attempt to influence the process, which I think is very inappropriate. I have questions that I think have to be answered in that regard.

It poses fundamental questions to me as an MLA in terms of the conduct of this government. As an MLA, what assurances do I have that this is not a standard practice, or any of our constituents dealing with government, when this kind of conduct is going on? I can appreciate to a certain extent the concern raised by the Conflict Commissioner in terms of the attack on the office, the process, herself. It was a very vigorous defensive that was raised, similar in my mind to the O.J. Simpson kind of defence. So I have a tremendous amount of questions, very fundamental questions about how we operate as a government; what is Cabinet doing, or some of Cabinet, and we all, as Mr. Handley indicated, work together. I think it is really important that we clear the air on this.

Those are some of the fundamental questions I think the Legislature has to look at answering. This is not just a simple situation of, well, they made a tape and we'll just forget about it. This is a very significant issue in my mind and it is up to us to recommend, hopefully, that the Legislature take a look at this in whatever forum they choose.

But very clearly, there is questions of bias as well as of conduct that has been taken, or undertaken, in some corners of this whole process, I think that have now been brought to light that have to be addressed. Thank you.

CHAIRMAN (Mr. Bell): Mr. Lafferty.

MR. LAFFERTY: Thank you. I also agree that we've gone too far to stop right now and not conclude our mandate for the special committee. I think there are too many things that have come up since the committee has been established, and that we need answers. In order to get answers, I think we do have to go back to the House and get some directions and to go through with this, because right now, we have to deal with -- all of us individually have to deal with the Conflict of Interest Commissioner. As long as there's a cloud over her head, we can't be comfortable in dealing with her, so we have to clear all this up as soon as we can. Thank you, Mr. Bell.

CHAIRMAN (Mr. Bell): Thank you, Mr. Lafferty. I think we are all in agreement that it's probably in the best interests of all Members and the public for this committee to go back in the House and ask for an extended mandate. I don't think that we would -- we'd be best served by abandoning the process at this point. There are a lot of questions to be answered. There are -- if there was, and there is, a formal request to withdraw the application of bias, there is certainly no withdrawal of the allegation of bias and I think, as you've indicated, Mr. Lafferty, there is a cloud over this. I think it's critical that the -- the public be confident that the office of the Conflict Commissioner, and Members be confident that the office of the Conflict Commissioner, is above reproach.

And I think it's in our best interest to try to get to the bottom of this and clear this up one way or another. So I would hope that, in sitting down to deal with our report, we will talk about how we can go to the House and ask for an extended mandate in order to clear this up. Any further questions or

comments on options and process from this point? Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. I guess, again, looking at as we would sit down to put paper to pen as it comes to putting -- establishing a report that would go back to the House, definitely there are some options there that need to be put forward, but as well, I guess a question to yourself or to our staff is, what I have found in a lot of the correspondence that we've received is quite cutting at times, regarding one side versus the other. It has become adversarial just in statements that have been put to paper. So would that be included in how we would put a report together and try to put some clarity into it, as I think, as individuals have access to these documents, and reading those documents, usually they say a picture is worth 10,000 words. Well, we have 10,000 words without the picture and they are quite cutting and to the point in some cases, which further draws a cloud over the process and the people.

-- Interjection

So if that is a sign of things to come...

-- Laughter

...we are in trouble. Just some clarification there.

CHAIRMAN (Mr. Bell): That is something that we can discuss, I guess, and I will ask Ms. Peterson to comment on that. It is my feeling that we want to go forward and ask for an extension of the existing bias mandate. A lot of these things will be likely addressed in continuing the process as we have embarked on it already, and continuing the same process. The fact that a lot of the correspondence was not friendly between the two counsels and many allegations were made, I think, can be best taken care of and cleared up when we determine and come back to the House with a recommendation to the key point as to whether or not we feel there was bias in this case. Ms. Peterson.

MS. PETERSON: The only thing I could add to that, Mr. Chairman, I mean the committee does have the benefit of experienced counsel acting for the Minister and for the Conflict Commissioner. However a lot of the material -- there has been a lot of material, in my view, that has been penned for public consumption which doesn't really assist the committee in coming to grips with some of the issues that are squarely before it.

And in terms of encouraging a different approach to that, I think that it's a legitimate thing for the committee to look at and consider the extent to which they have been assisted or not, as the case may be, by the various material that has been provided to them, if they feel that the material could be of a different or better quality, to indicate that. There is nothing wrong with that.

CHAIRMAN (Mr. Bell): Thank you, Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Just one other issue for contemplation tonight, or this evening, is the issue of now that there is a request to withdraw the application of bias, the issue of the report becomes relevant and I think that is one of the considerations we have to undertake for the Legislature tomorrow. I think Ms. Peterson mentioned that, but I think it is one of our options. I think that is a significant change in dynamics and what should happen with the report, which as we've been told, is sitting there waiting to be tabled. Thank you.

CHAIRMAN (Mr. Bell): No, you are right on that and maybe we will ask Ms. Peterson for some discussion to lay out some of the options before us in this regard. I do know that Mr. Chivers has previously asked for at least part of the report, and specifically the part that would answer to the bias question, to be tabled or to be presented to committee. Maybe we can talk about the report, and since there has been a request to withdraw the application if we do go forward and pursue not the application but the allegation of bias, does that mean at this point then it would make sense to table the report? Ms. Peterson.

MS. PETERSON: The House has a number of options in dealing with that. It can continue to direct the Conflict Commissioner to hold her report pending an outcome of the matter, which has been the stance taken to date, or it can consider asking the Conflict Commissioner to deliver her report to the Speaker.

You are quite right in indicating that Mr. Chivers, when he was last before this committee, indicated that initially the first part of the report might be evidence which the committee, at that stage of its considerations, might want to have before it, because it apparently contained the reasons why the Conflict Commissioner declined to recuse herself from this particular investigation. The report in and of itself can sometimes be an indication of bias or absence of bias. It very seldom is the determinative factor all by itself. There is usually a combination of factors that goes into that question.

So one of the things that the committee may wish to consider is whether having that report come forward at this stage actually assists in dealing with the bias allegations. It might have some value in that respect. It certainly, according to what the Conflict Commissioner has said to date, contains reasons why she did not step aside to begin with, and that might be something that is important for the committee to think about, or at least that portion of the report. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Ms. Peterson, as you have indicated, the report likely is not conclusive as to whether or not there was bias in this issue regardless of what it recommends. It can either recommend that there is no conflict or it can recommend that this go to a sole inquiry. In the second event, if it did recommend a sole inquiry and we have this ongoing process and we are now looking at the allegation of bias, how would we deal with that?

MS. PETERSON: That situation is a little bit more complex. I think that you would not want an inquiry to get underway, if that was recommended, because if ultimately there was bias found in the investigation, all of that inquiry process is for naught at that stage, because you have to look at having the investigation done again from the get-go. You don't have -- you don't know what all of those options are going to be like until you look at the bias issue in some detail. You don't know where that course of inquiry is going to take you.

Normally, under the legislation, once an investigation report is delivered to the Speaker, the Speaker is required to table it and a sole adjudicator is appointed, I believe by motion of the Assembly, to deal with any inquiry. I think the House would want to carefully consider not going that far with matters while this committee, if it's re-mandated or has a renewed mandate, is still looking at the bias issue.

CHAIRMAN (Mr. Bell): Members, any other questions or issues that you'd like to raise? Mr. Miltenberger and then Mr. Handley.

MR. MILTENBERGER: Thank you, Mr. Chairman. Mr. Chairman, I think the -- I mean, the report is, at this point, fairly critical to how things are going to unfold, if in fact as indicated, it comes back and there is no conflict then I would think the issue of bias would become something of almost a moot point, or not as pressing.

But there are still other issues at hand to be dealt with, but we don't know. We haven't had the benefit of seeing what's in the report. So for me, I think it's critical for somehow that us, the Legislature, this committee, if it continues to exist, to have access to whatever the contents are of the report. I mean it's -- we have to discuss that tonight, but we want to be able to move ahead finally with all the information in our hands. How do we do that? And without that piece, it's very difficult. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Miltenberger. Mr. Handley.

HON. JOE HANDLEY: Mr. Chairman, I think I was going to say essentially the same thing, that we need -- it seems that we need to have that piece. I don't see the real downside of holding it back or recommending that it be held back. It could very well be, provide, good evidence. My feeling would be let's recommend that it be tabled.

CHAIRMAN (Mr. Bell): Okay. Thank you, Mr. Handley. Anything further? Mr. Roland.

MR. ROLAND: Thank you, Mr. Chairman. Just, I guess, as we consider the aspect of the report is -- can tend to whether intended or not, skew what the recommendation would be or the report would be of the House. I mean, the focus would then go to that, and the question then would be, why proceed in that sense? But I do agree at the same time, and maybe more information on that -- but I know Mr. Chivers, in the previous correspondence to this committee, has requested that it be locked up, a portion of it be locked up because it had, he felt, direct bearing on their case of bias. With that in mind, use it as evidence and I think that it would play a role in our deliberations if given the mandate from the House. There's a lot of things that come into play, I guess.

CHAIRMAN (Mr. Bell): Thank you. It is quite possible that some of the, at least the initial portion of the report, can possibly help to resolve some of the -- the issues around the -- the conflict between facts and the disputed facts, specifically to the -- hopefully to the telephone conversation, as to whether or not the Conflict Commissioner had prior knowledge of a complaint. Mr. Lafferty, anything further?

MR. LAFFERTY: Thank you. I agree with my colleagues. One of the first correspondence we had, we did receive from the Commissioner, did say in there that all parties might approve of what the report might reveal. So I think the report should be tabled and we can use that.

CHAIRMAN (Mr. Bell): Okay, thank you. Mr. Handley.

HON. JOE HANDLEY: If you are finished with that one, Mr. Chairman, I have another question that I wanted to raise and it has bothered me a bit. I think in each of the main pieces of correspondence I have seen from the Commissioner, she has always raised this issue that her lawyers have not been able to appear, will not appear, because of this outstanding issue with her account for the services provided so far. Saying they haven't been paid since April, and so on. Can we get an explanation of where we are at with that?

CHAIRMAN (Mr. Bell): Maybe Ms. Peterson, if you could speak to whether or not the Conflict Commissioner's invoices have been paid, or Mr. Hamilton, and specifically when the invoices were received. Thank you.

CLERK OF THE COMMITTEE (Mr. Hamilton): Thank you, Mr. Chairman. The guidance that the Board of Management gave was on May 24th 2001 when at the request of the Conflict of Interest Commissioner, the board approved the engaging of legal counsel in the matter of the application. So the request that came from the Commissioner and the board made that decision on May 24th 2001, not in April as has been reported and as the Conflict of Interest Commissioner indicated in some of her correspondence. The decision to go into and engage legal counsel was made by the board on May 24th.

We had received and started negotiating an agreement, the Speaker's Office with the two legal counsel that the Commissioner has engaged to deal with this application after that date, and we have received two invoices from the legal counsel, Ms. Lovett and Ms. Ross, to date. They go back for service into May. Neither has been processed, of course, because you cannot process them without an official agreement in place.

CHAIRMAN (Mr. Bell): Just to keep it -- to clarify then, I thought that there was indication that there were invoices dated April that had not to date been paid. What are the dates of the invoices that we have received?

CLERK OF THE COMMITTEE (Mr. Hamilton): I apologize to the committee, Mr. Chairman, I don't have those in this particular file, but maybe Ms. Peterson can assist with that.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I think all together, because there was a further invoice last week, I think there may have been three invoices all together that have come in to date. The first of which was received according to my recollection, on the 18th of June.

CHAIRMAN (Mr. Bell): Okay, thank you. So Mr. Handley, it looks and appears as if we are talking about invoices that we have received in mid to late June and that would at least be the first of them, and the others more recently than that. Does that clarify the issue?

HON. JOE HANDLEY: Yeah, I think that clarifies it. These have not been outstanding then since April. It is really into May before we began the discussion on it, so it is not going back as far as the Commissioner suggests. I guess the other piece is, I may be getting outside of the committee's mandate in asking this question, but we are not asking -- it has been suggested I think, and I have seen in correspondence that we are asking her for the names of who she spoke to and how long. We are not asking for that kind of detail as a government, are we? It doesn't go into that kind of detail that we are expecting, are we being fair?

CHAIRMAN (Mr. Bell): Sorry, no, I believe that is not the level of detail that we are requesting and I think Ms. Peterson can probably shed more light on this issue since this committee has not been privy to the negotiations between the Speaker and Ms. Robert's counsel, but Ms. Peterson has been handling that. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. The issue has primarily been involved in the level of detail that should be provided in accounts from the Conflict Commissioner's

lawyer -- lawyers. The Speaker has tried to emphasize in the proposed contracts that the solicitor-client privilege would be protected and that no information would be required in those accounts which would tend to indicate the nature of advice sought or given. In fact that is a specific term of the contract. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you. I think there is also -- I think there was some indication that she felt the Speaker or yourself as counsel to the committee, would be engaging in the taxation, and I don't know if that -- if you could clear that up for us. Who, in fact, would be taxing the account if there was a dispute?

MS. PETERSON: Thank you, Mr. Chairman. The draft that was last sent by the Speaker indicated that if there was any disagreement about a particular item in the lawyers' account, that first of all, that would -- he would attempt to resolve that by discussing the item with counsel to see if it could be resolved by agreement or those discussions could occur by the Law Clerk. If there was no agreement after those discussions, the account would go to the Clerk of the Supreme Court for Taxation, which is normally the process utilized to resolve issues over lawyers' bills or lawyers' statements of account.

CHAIRMAN (Mr. Bell): Okay. Thank you. If there are no further issues, we've had a request from Mrs. Groenewegen to speak to the committee on a point of clarification. It will be up to the committee as to whether or not they're prepared to hear Mrs. Groenewegen speak today to this issue. Can I hear from the committee? Mr. Miltenberger.

MR. MILTENBERGER: Clarification on what, Mr. Speaker? Or Mr. Chairman?

CHAIRMAN (Mr. Bell): That's indeed a good question, but I think we would have to get to hearing from Mrs. Groenewegen in order to determine that. Mr. Roland.

MR. ROLAND: Yes, a question on process again. I know it's been said that it's been rather difficult initially in some cases when dealing with counsel of both the Commissioner, the Conflict Commissioner, and Minister Groenewegen. That when they themselves make direct representation, that sort of -- is that on advice, or is that outside of advice? And then how does that impact on the process that we're going to use? Is that what she'll say here today will remain on record and if mandated again to continue, if that's the House will, will that be part of the substance of what would be material?

CHAIRMAN (Mr. Bell): Ms. Peterson, maybe you could give us some advice. The concern seems to be that this might constitute an additional submission. I wonder if you could speak to that.

MS. PETERSON: It's hard to know what it will be unless you hear it, so it is a bit of a catch-22 there. The other difficulty is if one party has an opportunity to address the committee when the other party doesn't, you can be assured that there'll be some difficulty with that. If the matter deals with -- I mean, the committee can hear from Mrs. Groenewegen, and if it's a matter of submission on something of substance, you can choose to disregard it and you can say so on the record. If it's a point of clarification that assists in the material that is already before you, you can take it into account, and the other parties are not significantly jeopardized by that.

I don't know whether that helps you or not. You may want to hear from Mrs. Groenewegen and then decide whether you

are going to take that into account in some of the larger issues that you have to decide later on today.

CHAIRMAN (Mr. Bell): Okay. Can I get some further guidance on this? I would like to come to a consensus on this point if we could. Mr. Handley.

HON. JOE HANDLEY: Yeah, I, you know, we did, initially, I believe, you did, Mr. Chairman, give some direction we wanted everything to be dealt with through the legal counsel, but that hasn't been followed very well. In fact, the Commissioner has written to you directly most recently here.

I guess I don't have a problem with Ms. Peterson's recommendation that we hear what Mrs. Groenewegen has to say, and then we can decide whether or not we want to consider it or not. But I would hope that it is a matter of either clarification or explanation or something we already have here, not introducing something new.

CHAIRMAN (Mr. Bell): Agreed? Okay. The committee has agreed that we'll hear from Mrs. Groenewegen on a point of clarification and we hope that this does not become a further submission. Mrs. Groenewegen.

HON. JANE GROENEWEGEN: Thank you, Mr. Chairman. Thank you, committee members. The point of clarification has to do with how the report of the Conflict Commissioner on the Rowe complaint might assist you in doing your work. The clarification point I am making is, is there a way that the committee could receive the report without it being tabled? There is a distinctive difference between the committee receiving the report in order to consider the contents of it in the course of doing their work as potential evidence as opposed to the report being tabled. I do not know if there is an avenue to receive that information without the tabling of the report but the way that things have been done as we have gone along so far -- and, for example in the case of the tape which is now in the possession, the original evidence, is in the possession of the Law Clerk.

I guess if the investigation of the bias complaint is going to continue, then obviously I will continue to be involved with counsel. The way that things have been done so far, the precedent has been that where something such as evidence would come into the possession of the committee through the Clerk, but then there would be opportunity to share that and speak to any concerns about that as a course for both counsels.

So I am just wondering, if the report is tabled it is quite significantly different than if it is received by the committee for the purpose of doing your work, and that is all I wanted to seek clarification on. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Ms. Groenewegen. Maybe I will ask Ms. Peterson, it is my understanding that if the Conflict Commissioner presents the report to anybody it has to be initially to the Speaker which automatically, by our statute, triggers the tabling of the report. Maybe Ms. Peterson, you could speak to what other options might be available to us.

MS. PETERSON: Thank you, Mr. Chairman. That is a difficult question. The statute -- we are not operating in a vacuum without a statutory framework here. There is a process that to date, the way we have dealt with it, we have just stopped the process at a particular point, so we could look at issues about what had happened to date.

I think there is a difference between doing that and reconstituting the process different than what is set out in the statute. I am going to have to look more carefully at the statute again, having in mind some various options in terms of dealing with the report as evidence rather than a report.

My concern is that might be a distinction without a difference. It is an investigation report. As an investigation report, it receives certain treatment under the statute. I am not convinced that we have a lot of latitude in terms of how we deal with that, but I will look at it further for you.

CHAIRMAN (Mr. Bell): Okay, I will go to Mr. Miltenberger. I just want to get some indication as to whether or not it will be possible to get further clarification on this issue before we deal with presenting the report in the House tomorrow.

MS. PETERSON: Oh, I think so, yes.

CHAIRMAN (Mr. Bell): Thank you. Mr. Miltenberger.

MR. MILTENBERGER: Thank you, Mr. Chairman. Just two quick things. I guess for a matter of process, should life continue as it is? I would like to know next time if it is clarification being asked for or clarification being provided. Two different things in terms of the work of the committee. I agree that we should try to resolve this issue now that the clarification or request has been made, that we should look into trying to have a recommendation or some direction or suggestion to the Legislature by tomorrow in terms of how we review this. I think it would be very problematic, just off the top, given all we have known about this process and the legal nature, the arms' length relationship of the Conflict Commissioner reporting to the Assembly through the Speaker, for us to somehow interject ourselves in the process. We can talk about that with Ms. Peterson.

I think we should try to nail this down by tomorrow. Thank you.

CHAIRMAN (Mr. Bell): Thank you. As you have alluded to, Mr. Miltenberger, certainly it is something that would be debated in the House, or discussed in the House, likely tomorrow, and will simply be making some sort of recommendation as to whether or not this option would even be feasible. So we will not be making a decision in this regard, but in fact looking at the options before us and allowing the House to make the final decision.

If there is nothing further today, committee members, I would like to thank everybody for their attendance here today, and we will retire in camera and convene in camera in about 15 minutes to pen the report for the Assembly tomorrow. Thank you very much.

-- ADJOURNMENT

The committee adjourned at 3:55 p.m.

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