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Wednesday 17 November 2010

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des débats
(Hansard)**

Mercredi 17 novembre 2010

**Standing Committee on
the Legislative Assembly**

Legislative reviews

**Comité permanent de
l'Assemblée législative**

Examens législatifs

Chair: Bas Balkissoon
Clerk: Tonia Grannum

Président : Bas Balkissoon
Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Wednesday 17 November 2010

Mercredi 17 novembre 2010

The committee met at 1304 in room 228.

LEGISLATIVE REVIEWS

The Chair (Mr. Bas Balkissoon): We'll call the meeting to order of the Standing Committee on the Legislative Assembly. We have in front of us a referral from the Speaker: "Ontario statutory requirements that mandate future reviews by legislative committees."

As committee has requested, we have the Speaker and the Clerk of the Legislative Assembly. Welcome, and thanks for being here. I don't know if you have any opening remarks before we get into questions from the committee.

The Speaker (Hon. Steve Peters): Thanks, Mr. Chair. I will begin the presentation, and then I will turn it over to the Clerk for her part of the presentation. Thank you very much for the opportunity to appear before the committee today.

Just to refresh the committee's memory on the issue, I thought it would be helpful to provide some background and my reasoning for making the referral to the committee.

You will recall that on April 19 of this year, I delivered a ruling in response to a point of privilege raised by the member for Whitby–Oshawa. The thrust of the member's argument was a provision in the Local Health System Integration Act, 2006, requiring a comprehensive review of the act within three to four years after its passage. The act further provided that a committee of the Legislature should conduct a review and report its findings to the assembly no later than one year after the start of the review.

The deadline for the commencement of the review was to be March 28, 2010. This deadline passed without the matter being referred to a committee, and thus put the House in a position of non-compliance with the statute. This is essentially the situation that the member for Whitby–Oshawa brought to the attention of the Speaker on March 30.

While I did not find that in this instance a prima facie case of privilege existed, I did express some serious concern with the state of affairs that the House found itself in.

I also noted in my ruling that this is not the only instance of a statutorily required parliamentary follow-up

measure, nor is it the first instance of non-compliance by the House.

I have to admit I find it somewhat puzzling that such provisions are included in legislation at all. Indeed, using the LHIN legislation as an example, the House has the ability at any time to instruct one of its committees to conduct such a review.

However, I'm not naive about or unacquainted with the reasons for including these kinds of provisions. In some cases, it may be a show of good faith on the part of the government, a kind of guarantee that they will undertake some follow-up action to address the concerns that may have been raised with the legislation at committee. In others, it might be the result of pressure by the opposition to provide some reassurances that there will be an opportunity to assess the act or any component of it.

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While I have some issues with the wisdom of inserting parliamentary review provisions in legislation, I am resigned to the fact that they will likely continue. I also recognize that this committee may not feel that it's within its scope to insist that such provisions be prohibited.

However, in the case of the Local Health System Integration Act, 2006, the House did find itself in a position of being in violation of a statutory requirement. Furthermore, this is not the first time it has happened. As I referenced in my April ruling, the statutorily required review of a report of the Ontario Commodity Futures Act advisory committee has, to this day, gone unfulfilled.

Such statutory non-compliance could give rise to exactly the kind of complaint raised by the member from Whitby–Oshawa last spring. This is my primary concern on behalf of all members. I believe it is at least poor practice for the House to be out of step with a statute.

My reasons for making this referral to committee are really twofold. First, I would ask the committee to consider among its recommendations one that cautions against statutory provisions that concern House proceedings except in legislation that is directly related to it, such as the Legislative Assembly Act. Failing that, it would seem to me that it would make sense that, at the very least, when such a provision is determined to be absolutely necessary, the Clerk be consulted on its wording so that all of the procedural implications are clearly understood.

Secondly, I would request that the committee give some consideration to recommending an amendment to

the standing orders that provides for a set of procedures for responding to such provisions. For example, consideration might be given to the automatic inclusion on the orders and notices paper of statutory orders that prompt the House to respond in a timely fashion. Alternatively, it might make some sense to have a standing order requirement for the government to place a motion on the order paper with a certain time frame of the provision required by the statute or to authorize the Speaker to give notice of such an order to ensure its consideration by the House.

Your deliberations may well result in the development of other solutions to this problem. Mr. Chair, whatever you ultimately determine, I believe it is a concern that is worthy of serious consideration. As I noted in my letter to you, Mr. Chair, the Clerk and her procedural colleagues are willing and able to provide you with whatever assistance you may require as you consider this issue.

Thank you for the invitation and the opportunity to appear before you today. I would now like to turn it over to the Clerk.

The Clerk of the Assembly (Ms. Deborah Deller):

Thank you. I'm just going to go into a little bit more detail about some of those provisions that occur in some of the legislation and some of the problems we've had in the areas where there has been non-compliance.

What I'd like to stress at the outset, though, is that we're not addressing here the legislation relating to LHINs. That is but one example of a situation where you've got a provision in an act that tries to require some future review by a committee or somehow by an arm of Parliament.

There is no prohibition against these kinds of provisions being included in acts. It's perfectly within the authority of the House to include such a provision in a bill and pass it into law if it chooses. The House has an opportunity to pronounce itself on that provision during committee or in the House during debate.

There are lots of examples of these kinds of provisions in legislation. They're not new, although I would say they are relatively recent, and they are not a phenomenon of this current Parliament. These kinds of provisions have been included in legislation in previous Parliaments as well, and in previous Parliaments, on occasion, the House has found itself in non-compliance. So that's the starting point: This isn't something that has not occurred before.

If you review the chart that you've been given, you'll note that the assembly has not consistently complied with some of the provisions in the act. For example, if you look at page 5, you'll notice—the Speaker mentioned the Commodity Futures Act. In that act, there's a provision that a select or standing committee of the Legislative Assembly be appointed to review or hear the opinions of interested persons and make recommendations on amendments to the act. The session prorogued before the committee could undertake the review, and the House authorization for such a review has, to this day, not occurred.

On page 6, the Employee Share Ownership Plan Act makes some provisions for committee reviews. A com-

mittee did not conduct a review within the time frame that was set out in the act in section 27.

The Employment Equity Act, 1993: No committee conducted a review during the time frame that was set out in the provision in the act. So once again, the House found itself in non-compliance.

On page 9 is the reference to the local area health network legislation. Then, way down on page 13, in the Securities Act, there is a section in that act, subsection 3.10(3), which says that "after the annual report is laid before the assembly, a standing or select committee of the assembly shall be empowered to review the report...." We have absolutely no record of such a committee review ever taking place, even though it is required by that legislation.

In addition, there are some cases where the House hasn't complied because it simply can't. The best example of that is in the Members' Integrity Act. If you take a look at page 10, you'll note that in that act, there's some provisions for a response from the House when the Integrity Commissioner tables a report that finds a member in violation of the act. There is a requirement that the House respond within 30 days of that report being tabled. In some instances, because of the timing of the tabling of the report, it has been impossible for the House to comply with the legislation. For example, if the Integrity Commissioner tables such a report on the last or second-last day of a sitting, then the House may adjourn for the next two months and the 30-day time period has lapsed. Through no fault of the House, it has not been able to comply.

That legislation could very well have been written in a different way, and that may have allowed the House to at least have some ability to comply. Whether they chose to do so or not would be up to the House.

So there are those instances, too, where you have legislation which, because of the way it's written, really prevents the House, even with the best intentions, from complying with the provision.

This is the inconsistency or failure to comply with provisions in legislation that is the source of the Speaker's concern and the reason for his reference to this committee. As the Speaker mentioned, there are a number of ways the committee might address this. The most competent option, I guess, is to consider standing order changes that might help to ensure some level of compliance when these provisions are included in the act.

I have to say that both the Speaker and I have talked about this at length, and, really, our preference is that these kinds of provisions not be included in legislation at all because it does bind future Houses in a way that might not be convenient, I guess, is the word I'm looking for, for future Houses to address. The House has the ability, in any case, to refer a review of legislation or a part of legislation to committee without that review being provided for in legislation.

However, as the Speaker also mentioned, that may not be something this committee would want to recommend. That being the case, there are some potential standing

order changes or amendments that you might want to consider. One is that legislative drafters identify those sections in the bills where there are such provisions and advise the Office of the Clerk or a standing committee—maybe the committee that is considering the bill at clause-by-clause—when they occur, prior to the bills being enacted. Standing order 139 already lists a number of roles and responsibilities for legislative counsel with respect to its relationship to the House and its committees. There could easily be an additional section in that standing order that also requires legislative counsel to identify when these kinds of provisions occur prior to enactment, or even at the drafting stage, so that there can be some input from a procedural office that would ensure that things like those measures in the integrity act wouldn't be written the way they are so that it allows some flexibility for the House in actually complying with the provision of the act.

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It would, in that case, provide the opportunity for it to be reviewed for procedural soundness and it would at least address the non-compliance due to a provision that the House is just unable to comply with.

The second thing that the committee might consider is some kind of a mechanism put in place to ensure that there is sufficient advance notice to the House and/or committee that such a provision exists and that, further, provides the Speaker with an ability to precipitate the review itself, or at least to compel some action to be taken when it's required by statute. Really, this is at the other end.

On the one hand, it might be wise for the Clerk's office, the Speaker and the standing committee of the Legislature to be notified at the drafting stage if such a provision is to be included in a piece of legislation so that we can ensure that it meshes with the procedures of the House. But on the other end, it might also be wise to have some kind of a provision whereby the House itself has a trigger, something that reminds them that the provision exists and that the deadline date for complying with the provision is looming.

The Speaker has already mentioned some possibilities with respect to that. Perhaps such provisions could be listed in the Orders and Notices paper. There could very well be a section in the Orders and Notices paper that lists those kinds of statutory provisions with the deadline date that must be met so that they can be complied with. That way, the House is fully aware of and has time to address those measures that may appear in legislation.

The standing orders could further require that a motion dealing with the provision must appear on the Orders and Notices paper in a certain time frame: maybe six months before the deadline, maybe two weeks before the deadline—whatever the committee thinks is appropriate.

We have lots of instances where there are required notice provisions: Private members' business is one that comes to mind. You, as private members, are required to give two weeks' notice of a bill or resolution that you intend to have debated on a Thursday afternoon. That

same kind of notice provision could be included with respect to these kinds of reviews that are statutorily required in legislation.

Having that kind of a standing order would allow the Speaker to enforce it. The current situation really is that even if it's brought to the Speaker's attention that the House is in non-compliance with a statute, the Speaker has little authority to address the situation or to make it happen.

However you decide is best to deal with the concerns that the Speaker and I have raised today, as the Speaker mentioned, we are at your disposal. If you think the route to go is to consider standing order changes, certainly the Clerk's office staff can draft some options for you to take a look at.

I think it's important for the committee to be aware that the kinds of non-compliance with statutory provisions that we're currently faced with risk offending parliamentary privilege, but whether or not it does offend parliamentary privilege, I don't think anyone in this room, or probably the House, believes that it's a good idea for the House to be in a non-compliance situation with a statute.

So I would hope that you would spend some time considering what you might do to address the concerns, and I'm happy to answer questions.

The Chair (Mr. Bas Balkissoon): Ms. Jones.

Ms. Sylvia Jones: My question is to the Speaker. Speaker Peters, while I appreciate that you have referred this decision to the Legislative Assembly committee, I am still very concerned that we are a committee that is at the whim of the majority, again. So the recommendations that are going to come forward—and I think you've raised some excellent ones related to notice in the standing orders; to me that seems to make the most sense—we will be challenged, as a government legislative committee, to get those recommendations brought forward, I believe. I shouldn't prejudge my fellow members.

When you talk about the provisions that are in some of the existing legislation that provide some reassurances of the intent of the legislation, whether we're talking about the LHINs or the Members' Integrity Act, they are put in very clearly for allowing people the right to review, to see if the existing legislation does do what was intended when they passed it. If we are in a situation where it is put in, but we cannot review it or it sits unreviewed, we're in the same situation all over again. If we cannot come to a consensus in this committee, we're no further ahead.

I guess I'm looking for your guidance on where we go from there.

The Speaker (Hon. Steve Peters): I'm very happy to jump in on this one, because this is a committee, quite honestly, that I wish we could utilize more to assist the Clerk and the Speaker in a non-partisan manner. Whether it was something that I have previously referred to you or this issue, there are a number of other issues that I would love to see this committee take a hard look at. Take a look at petitions, as an example; the increasing use of

regulations where something isn't included in the bill, but it's left to the regs to decide.

I'll be very honest, as someone going out this door: Until we around this table, collectively, of all stripes, are prepared to take this place back to who it belongs to, 107 members, it doesn't belong to somebody sitting in a corner office—and I mean a corner office, whether it's the government or the two opposition parties. Until we collectively take this place back, we are always going to be at the whim of the control of the centre. I'm sure I'll probably pay some price for some of the Hansard, but I'm quite comfortable, as somebody going out the door in this place, to say some of these things.

My job as Speaker is to ensure that the minority has the right to be heard in a majority, and I am certainly conscious of that in the chamber. But I think we need to decide what is best for us as members and how do we best do our job. Part of the reason I'm here is because, as the Clerk pointed out, there is little authority to address issues like this by the Speaker, and when the Speaker is asked to address these issues, I'm doing that on behalf of all of us. I'm not doing it on behalf of the government side or the opposition side; my job is to ensure that the rights and the privileges that each and every one of us enjoy as elected members, whether we're in government or not, are enforced. When I find myself in a position like this, where I can't deal with that, I have no choice but to refer it to the committee.

I honestly hope, to the honourable member from Dufferin-Caledon, that you will take a hard look at this and look at it in a manner that is in the best interests of all members. As the Clerk pointed out, I think it's important that—this isn't something that has just suddenly happened with this government. There are examples that have been cited here that go back 25 years, so it's all governments that have added these provisions. But I'll be honest: I think that this committee could, if you could ever make the recommendation to change the standing orders, to create this as a committee—I'll apologize for maybe going on a little bit—if you want to look at a committee that did an awesome, excellent job, it was the Select Committee on Mental Health. That was a committee where none of you were sitting here around this table being whipped or having notes sent in from behind me here to you. It was a committee that genuinely worked to try to find some consensus and some common ground on an issue that's extremely important. We don't do enough of that around this place. This is a committee that I think could.

Sorry for a bit of a rant there, but I've had the opportunity—I sat four years in opposition, I sat as a minister for four years and I've had the privilege to serve as Speaker, so I've been granted this rare opportunity to have a different perspective on how the House operates. Honestly, to answer your question, I hope that you will take away any of the partisanship and the politics and use this committee for what it is. It's the Standing Committee on the Legislative Assembly. This is a committee that is

of importance to all of us, and it doesn't matter what side of the House we sit on.

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Ms. Sylvia Jones: I'll take your compliment, because I was a member of that Select Committee on Mental Health and Addictions, but you have reinforced the issue of, if we cannot come to a consensus here and make some decisions that actually will improve so that we are in compliance—because the reality is, the Legislative Assembly is not in compliance right now. There are outstanding pieces of legislation that we are simply not doing, and collectively—I'll come back to the LHIN legislation because that's the one that initiated all this. This was passed by the current government; a piece of legislation that, by your majority, you passed, and you're not even respecting what's in there.

I'm very concerned that we're going to go through this whole process and have a report come forward that says, "No, it's good. It's been like this for 25 years. We'll just keep plugging along and good luck with it." Where does that leave us? Does that mean that opposition members, as individuals, have to take the Legislative Assembly to the courts? Because that is one of the repercussions, and it seems bizarre to me that we would have to do that when we are actually members of the assembly. I will leave it at that.

The Chair (Mr. Bas Balkissoon): Madam Clerk, you had comments?

The Clerk of the Assembly (Ms. Deborah Deller): Yes, if I may. There was no intent here—and I don't think it's wise to go down the road of blaming in any way this or any other government for these issues of non-compliance, because in some instances, the blame is circumstance.

Ms. Sylvia Jones: But not in this situation.

The Clerk of the Assembly (Ms. Deborah Deller): The agenda of the House may not have allowed for circumstances with respect to—the outside agency, in a certain case, may have changed. There can be all kinds of reasons, as I mentioned, for the non-compliance occurring.

I guess in some ways, even though I've been here as long as I have, I continue to be a little bit naive and hopeful that you can put aside the partisanship and look at what the issue is and then deal specifically with that issue to try and resolve it for future Parliaments, for the future Legislative Assembly, so that you don't find yourself in this kind of a situation again.

The Chair (Mr. Bas Balkissoon): Further questions and comments? Mr. Naqvi.

Mr. Yasir Naqvi: Thank you, Speaker and Clerk, for being here today and making your submissions.

I think it's not wise to speculate as to the outcome of the deliberations of this committee. I am quite confident and hopeful that—this is a very important and serious issue that you have brought to our attention—we will work together in a collaborative fashion and come up with some good ideas and recommendations that will move forward the issue that we are faced with.

I'm far more optimistic as to how we can really work together, because it is an important issue and it gives us, as members of this committee and members of the House, an opportunity to come up with some good ideas. I think that's why one of the things I will be asking for is that we need to really canvass the map out there and see what solutions are out there, and what we can best understand from other practices in other Houses, not only in Canada but maybe in other like jurisdictions as well so that we do sort of look outside the box and come up with some really concrete ideas for the House.

I have to tell you, I had the opportunity two years ago to sit on one such review for PHIPA, the personal health information act, which is referenced. It was a great review. I had a really good time. I was a new member. All three parties worked very collaboratively, and it was a good review. A good report came out and I think the government then pursued some of the changes.

These reviews do have a useful purpose to them and can result in improving the legislation before it.

I understand the point being raised by the Speaker and the Clerk that perhaps putting in a provision requiring reviews is not necessary because standing orders allow for them. However, they do provide, at times, a useful purpose.

I had a question. Both the Speaker and the Clerk talked about the authority already existing. What provision in the standing order rules are we looking at that gives that automatic authority for review of any legislation, if requested?

The Clerk of the Assembly (Ms. Deborah Deller): At any time, a motion can be considered by the House that sends a matter to a committee to review. We've done it on several occasions. It's a motion that's put before the House, that a certain matter be sent to a committee for consideration. It's debated and voted on like any other motion, and then the committee is instructed to go ahead and conduct that review.

Mr. Yasir Naqvi: Forgive my ignorance of the rules completely, but does that motion have to come by one of the recognized parties, or can any member put forward that motion? Does it only have to come when, for example, opposition parties have opposition days so that they can put a motion?

The Clerk of the Assembly (Ms. Deborah Deller): No, opposition days and private members' business are really—when you pass a motion in those scenarios, it's really just an expression of an opinion of the House; it doesn't order the House to do something. A motion to order the House to do something is typically a government motion that is put on the order paper.

Committees consider matters in a number of ways: A bill can be referred to a committee; a committee can consider a matter that arises out of its mandate, as set out in the standing orders; or a committee can consider something that has been referred to it by the House. The way the House does that is by a substantive motion, typically a government motion in the House.

Mr. Yasir Naqvi: Okay.

The Chair (Mr. Bas Balkissoon): Ms. Van Bommel.

Mrs. Maria Van Bommel: I think, pretty much on the same vein that MPP Naqvi has gone—I'm intrigued by the concept of just simply not allowing those kinds of provisions to be put into the legislation. We have all these outstanding items here that we've talked about. There's quite an extensive list here, actually, of things that are still outstanding. Do we have to deal with them first? Do we wipe them off the slate?

Interjection.

Mrs. Maria Van Bommel: I'd like to know what does become of them. Personally, I was kind of surprised to hear Sylvia say what she did. She set a tone I hadn't expected, because I've worked with her. I was surprised at the comment. We've been through the select committee. But I'd like to see this become something that is going to assist all parties in the future. This is not just about one item of legislation and all this stuff.

I am curious to know: If we were to go the route and just simply say, "No more of these kinds of provisions"—and as you said, there are, in the standing orders, the procedures for getting it done anyway if somebody needs it done. What happens to these? Do they just continue to be outstanding?

The Clerk of the Assembly (Ms. Deborah Deller): Yes, because these would have been in place prior to the House determining that it wasn't going to—

Mrs. Maria Van Bommel: So they go into limbo.

The Clerk of the Assembly (Ms. Deborah Deller): Yes, much as they, in some cases, are already.

Mrs. Maria Van Bommel: They already are, aren't they? Yes. The reality is that they are already in limbo. It's true.

The Clerk of the Assembly (Ms. Deborah Deller): The other option is that at any time, you can take a look—the act—

Mrs. Maria Van Bommel: So under the standing orders, we could bring them forward again?

The Clerk of the Assembly (Ms. Deborah Deller): The act with respect to health networks is probably a good example, because in that case, what happened was that the House passed legislation that amended that provision in the act. The other option, of course, is to go back and amend the provisions in the act that have not been complied with.

So there are options open to the House to deal with these.

Mrs. Maria Van Bommel: So it is possible to go to a point where there would be no outstanding—I can imagine what kind of work that would be. But it is possible to then go to a point where we no longer allow for that kind of provision in legislation, and we would deal with those outstanding by going back and—

The Clerk of the Assembly (Ms. Deborah Deller): Yes. It's possible—

Mrs. Maria Van Bommel: —having some kind of omnibus bill that does this.

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The Clerk of the Assembly (Ms. Deborah Deller): I'd go back to Mr. Naqvi's point, though, where frequently these provisions are put into legislation in order to trigger the review happening. It is all very well for us to sit here and say that the House has that power anyway to do it without legislative authority, and they do, but I think the reasons that there is a tendency to put them in legislation is so that it reminds the House that they had agreed to have that kind of review within a certain time frame.

Mrs. Maria Van Bommel: Thank you.

The Chair (Mr. Bas Balkissoon): Mr. Sergio?

Mr. Mario Sergio: I think the question now is: Where are we going from here?

I can sympathize that we are here because of the point of privilege that has been made by Ms. Elliott on the LHINs issue, but I think both the Clerk and the Speaker have brought to light the type of malaise that has been existing for a long time.

The advice the Speaker is giving us is that it would be beneficial to see something that would be beneficial to all the parties, because today it's one and tomorrow it could be another.

The advice of the Clerk, in taking perhaps a good look at changing the standing orders, is another matter. I think this would warrant a nice, comprehensive review of the standing orders, which govern the House.

I think the Speaker did mention that he's had problems himself as to who has the power. That's why we are here today. The power exists already to refer a particular issue to a committee, but I think it's how we are going to do it and try and eliminate some of the pitfalls that exist and, if you will, maybe—I wouldn't call it abused, but they have been protracting for a long time. Maybe we can find a common way to deal with that, eliminate that and, if you will, bring some more transparency to our own standing orders, because once the standing order is done, it governs everybody. I think it would warrant having a good, comprehensive look. Maybe this committee or others can delve into the standing orders and, at the same time, deal with this particular issue.

I don't feel that we have anything to go on today as to making a particular decision. I have no idea if our speaker on our side has some ideas, but I would take the advice of the Speaker when he says that this matter is important and should be considered further. I think it should be considered much further, in much more detail and in much deeper detail as well.

I appreciate the Clerk and the Speaker being here today. There are people who have been around the chamber for a number of years and have seen a number of issues that would merit being referred to the committee for consideration. I would like to see this one looked into and studied by the committee. I have no idea where else we can get some more information that could assist the committee in making some recommendations and at the same time in looking at the complete standing orders of the House.

The Chair (Mr. Bas Balkissoon): Mr. Prue.

Mr. Michael Prue: A couple of things: Maria, you raised the issue—and I am intrigued by the idea, too, of not putting it in, but this would be a very simple thing for an omnibus bill. You have 12 or 15 acts and you just put them all down. I don't think it would engender a whole lot of debate within the House, and the government would have to bring it forward. Should we come to that conclusion, that's a very simple remedy to deal with all of those outstanding bills that are problematic.

In the future, it may be a good idea to limit—although I would be reluctant to totally limit the authority of the House, I have to state at the outset, without having heard everything, because sometimes you need the trigger—but I would allow the trigger perhaps only once, not onward and onward. Some of the bills say, "Every two years, you shall review." Perhaps once, to make sure that the legislation is right, particularly on a contentious piece.

The second thing, to follow up on what Mario had to say: We have about 12 weeks left of committee time—that would be my best guess—in this Parliament. It might be a little bit longer. I see about three weeks before we break for Christmas. I would be shocked if we come back after Family Day; I think it would be more likely sometime in March, after March break. We will be here maybe till May, maybe not, and that will be this Parliament. That's my reading of the tea leaves. We have about 12 weeks to deal with this and I think we should deal with it now as opposed to not dealing with it now, because whoever comes back in the next Parliament may have diametrically opposed views. We can have much more soft and congenial views because we will impose this on the next Parliament—probably not on this one. Therefore, the recommendation that we make and the recommendation that's carried out in the next 12 or so weeks that we sit will perhaps bind the next Parliament and do them a great service.

I don't see that we're going to do anything that's going to force this government at this time to do anything. In that, I agree with Sylvia. It's very difficult. The government is in place, the government is trying to protect itself at this point, leading up to an election, but a new government will come in. That's our 12 weeks. If we're going to change it, we have to do it now and we have to do it with some dispatch.

Last but not least, I couldn't agree with the Speaker more: It is time to take back this House.

Pierre Trudeau once said that 100 metres away or 100 yards away from Parliament Hill, parliamentarians were nobodies. Remember when he said that? We allow ourselves to become those nobodies when all we do is follow the dictates of our government or opposition or third party House leader.

I have said this before, I'll say it again—and I agree with him: We need to allow our committees and our individual members to vote how they see fit without being whipped on every single vote. This committee or any other ones they sit on: It's always the same. I very seldom see anybody break ranks. I've been here for nine

years. Can you give me a single instance in this committee—because I've not been on it that long—that anybody on that side has broken ranks, anybody there has broken ranks or I have broken ranks with myself? I don't see it, but I think we need to start doing that.

If I can indulge just for a minute, I am the Chair of the regulations and private bills committee, and we have tried to work with the Clerk's department within the confines of what we can do to allow members to bring their private members' bills forward. We hold a subcommittee meeting in which to determine which bills that have been passed for second reading can be brought forward for some discussion at committee so that it can be sent back for third reading. To my chagrin—it is perfectly legal; it's what committees are supposed to do—on every single instance, the parliamentary assistant has said that they will not act without the House leader's approval. I think that's a shame, because those bills have been passed by the House and the proponents of those bills want to see something happen with them. I am given to understand and I know that they cannot be ordered for third reading without the House leader's approval, but they won't even go through the committee process, even though they're ordered there. Even though we've got eight members sitting around who have nothing else to do that day, nothing happens with them because somebody says no.

I think it's time we took back our jobs. I don't want to be that nobody 100 metres from this place. I want to say that we had the opportunity, we took the opportunity, we acted on our own initiative and we said the right things. If it's inconvenient to the House leader at some point, they still have the final authority at third reading to bring the bill forward or not. For us to not do our job because we're told not to is a huge and crying shame.

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Having said all of those things, I hope that we use the next 12 weeks wisely and—yes, we use them wisely—that we make the recommendation and that we empower whoever is here next year, whatever government's in power, whichever ones of us are back or not back, whoever's sitting in our place, to be all they can be. To do anything less is to just give up this wonderful institution, which at this point I'm not prepared to do.

The Chair (Mr. Bas Balkissoon): I have a couple more speakers, but the Speaker would like to—

The Speaker (Hon. Steve Peters): I just wanted to say thank you very much on behalf of both the Clerk and I for the opportunity.

Boy, we could refer you other things. You know, I'd love this committee to take a hard look at private members' business. We've all heard stories. We've seen the election literature: "How we're going to enhance the role of the backbencher in this place," and "The backbencher's going to have more authority." Well, take a look, in the 12 weeks, at some of the jurisdictions and how they deal with private members' business so that it's not a whipped vote and you do something good.

Sorry, I can—it may be a little different for me because of the position that I'm in, but I agree with all of you. I think this is a great opportunity to lay some direction out to future governments.

Mr. Mario Sergio: Any recommendations?

The Speaker (Hon. Steve Peters): Do you want that on Hansard? On the record or off the record?

Interjections.

The Chair (Mr. Bas Balkissoon): Mr. Sergio, please let the Chair conduct business.

Before I go to the next three speakers I have on my list, do we need the Speaker and the Clerk to remain, or can we—

Mr. Yasir Naqvi: I have a question.

The Chair (Mr. Bas Balkissoon): You have a question? Okay. Mr. Dickson, do you have a question of the Speaker or the Clerk?

Mr. Joe Dickson: No, I just want to be complimentary towards them. But I do have some questions.

The Clerk of the Assembly (Ms. Deborah Deller): Mr. Chair, we're quite happy to stay.

The Chair (Mr. Bas Balkissoon): You're quite happy to—okay, then I'll go through my list. I just have three.

Mr. Dickson, the floor is yours.

Mr. Joe Dickson: First of all, I think it's an honour to have both the Clerk and the Speaker here. Perhaps with their direction, we can proceed through this a little quicker than normal.

When we talk about outstanding provisions for review and working together, to me, this—and I'm just giving you a broad-brush overview of what I think this is. I haven't adjusted to everything yet, but it appears to be a procedural issue. I guess that's from too many years—you can never have too many years—from 20 or 30 years, probably close to Michael, on school boards, city councils and regional councils. There's just a procedural glitch here that I think could clear up a lot of things, whether we're talking about deadline dates and write-in or Orders and Notices. I've seen it done in the past, and I wonder if the Clerk, with some direction from the Speaker, could put something together that would indicate to us a procedure that, whether it's correspondence or emails, probably through the Clerk's office—and I'm just going back to regional and city days—where there is advance warning of a deadline. It's in print. It goes to the committee Chair, it goes to the committee members. It might be a 90-day notice. It might be a 60-day notice. There's a follow-up, and everything is done in a professional, businesslike manner.

When you see all of those procedures, if you would have the flexibility of reviewing those three levels of government and seeing which procedures work best to keep us out of meetings like today—because I think this is just bureaucracy. It's a simplified trigger. That's all I can call it: It's just a simplified trigger. It makes it all happen.

All of your other points are certainly valid, and I appreciate your comments and input. It means a lot. But I

think, in the broad brush, it's simple. It's procedure, and we need to deal with procedure.

I'm open for any response to that.

The Clerk of the Assembly (Ms. Deborah Deller): I think you're—sorry.

The Chair (Mr. Bas Balkissoon): Mr. Naqvi?

Mr. Joe Dickson: The Speaker was going to—

Mr. Yasir Naqvi: The Clerk.

The Chair (Mr. Bas Balkissoon): Oh, sorry. Go ahead.

The Clerk of the Assembly (Ms. Deborah Deller): I think you're right. It ultimately is a procedural issue. You can debate whether or not these kinds of provisions should or shouldn't appear in legislation. My guess is that they will probably continue to appear in legislation. The issue then is: Is there a procedural way of ensuring that the House somehow responds to those provisions? So you're absolutely right. I think it can be solved with a procedural mechanism; it's just a procedural mechanism that the House is going to have to agree to in some form.

Certainly we can draft out some options with some direction from the committee about which of those options they might like to pursue, and we can do that based on our own experience here and also taking a look at other jurisdictions and other levels of government to see whether or not there's some similar provision elsewhere.

Mr. Joe Dickson: Thank you very much for your help.

The Clerk of the Assembly (Ms. Deborah Deller): In point of fact, there is a kind of a procedural mechanism already in place here on a different kind of issue, and that is, whenever there is a bill that has a provision in it that, say, for example, is intended to raise taxes, legislative counsel is required to inform the Clerk of that provision prior to the bill coming to the assembly. There is already in place a similar kind of provision that allows for that notification, if you like, of a provision's existence.

Mr. Joe Dickson: Thank you.

The Chair (Mr. Bas Balkissoon): Mr. Naqvi.

Mr. Yasir Naqvi: Clerk, I have one question and maybe a request on things you were talking about. The question being: Is this an issue that has been discussed in your professional circles, when you're talking with other clerks and procedural staff? Is this something that's been highlighted in other jurisdictions as well?

The Clerk of the Assembly (Ms. Deborah Deller): I hesitate to answer that because we'll reveal ourselves as geeks, but: this, among other issues, yes. This is one issue. There are others: the issue that you yourselves have grappled with recently, of regulations and the increasing tendency, not just here but in other jurisdictions, for Parliament to pass legislation that is essentially a framework and much of the detail is left to regulation, preventing future Parliaments from, sometimes, being involved in rules that are put in place. So, yes, I would say that there is some discussion about these kinds of

issues, and this one in particular among clerks across the country.

You'll notice that there was a—I think you have, attached to your material, a survey that was done across Canada about whether or not this kind of issue exists elsewhere. Predominantly it does, but you'll notice, just as an example, if you take a look at Manitoba, there's a kind of oblique editorial comment in that response saying, "Governments have been counselled not to insert matters concerning House management or procedure into legislation, but the trend is otherwise." So there are concerns out there in other jurisdictions.

Mr. Yasir Naqvi: Any academic papers written on this topic? Something you can point us to?

The Clerk of the Assembly (Ms. Deborah Deller): Not that I'm aware of. Certainly Peter could probably dig them out, if they exist.

Mr. Peter Sibenik: There's not much in this. There's some information in some of the procedural textbooks like O'Brien and Bosc. There's a little bit of information that's been referred to on page 17 in the notes; the description dealing with the House of Commons.

What I'll do is I'll provide the committee with the full extract from O'Brien and Bosc, and if there are any other materials, I'll have that ready for the next meeting.

Mr. Yasir Naqvi: And I have some requests of research, so I will come back to that as well, but I think that's a good idea.

My other request was that both the Speaker and the Clerk have raised some solutions in absence of, if the committee decides, "Ban these types of provisions," which, I think I'm hearing, that may not be the way we may all be going. But barring that option, there are a few options that have been outlined. I think it would be helpful if the Clerk's office can help us map them out as to what they may look like and where they fit in in the standing orders, because I think what I'm hearing from you is that what we need is a trigger or tickler mechanism where some alarm can go on, a light can go on and some process may kick in for a particular review that is required by the legislation.

It would be helpful, whenever we meet next, in among our research to have that all mapped out and what it looks like so that we can see those options in front of us.

1400

The Clerk of the Assembly (Ms. Deborah Deller): So in the nature of maybe draft amendments to the standing orders?

Mr. Yasir Naqvi: Yeah, and perhaps an explanation as to how you foresee the system actually working. We need to think it through. We write a lot of things, and they sound perfect on paper. We need to make sure that, in practice, they are able to achieve the purpose we are trying to achieve. So I think a bit of a scenario as to how you foresee things working would be helpful as well.

The Clerk of the Assembly (Ms. Deborah Deller): Absolutely.

The Chair (Mr. Bas Balkissoon): Ms. Jones.

Ms. Sylvia Jones: I guess this question would be to the Clerk. Very recently, we had some very substantive changes to the standing orders, but those discussions, those amendments and those recommendations did not come through here. So I guess my first question is: Who made those decisions for the last major changes to the standing orders?

The Clerk of the Assembly (Ms. Deborah Deller): The House did.

Ms. Sylvia Jones: The House leaders, initially, and then it went to the House for sign-off?

The Clerk of the Assembly (Ms. Deborah Deller): Standing order changes are always changes that result from a motion in the House. The motion ends up before the House in a number of ways. Sometimes this committee has generated them itself and made recommendations to the House—this committee or others. Sometimes it can be a unilateral motion put forward by the government itself. Sometimes it can be something that emanates out of House leaders' discussions—any number of ways.

Ms. Sylvia Jones: The last major changes did not actually come out of the Legislative Assembly committee. My question is, if we are able, as a committee, to come to some consensus, it is simply, again, a report that gets tabled in the chamber and then would, ultimately, have to be passed by the majority.

The Clerk of the Assembly (Ms. Deborah Deller): At the end of the day, that's how the House does business.

The Chair (Mr. Bas Balkissoon): Mr. Sergio.

Mr. Mario Sergio: Just a question, Mr. Chairman; maybe two. One on timing: We have maybe three or whatever weeks, and if this committee were to give direction and say "within six months"—I have no idea how much time would be required to look at other jurisdictions and come up with some recommendations for the committee. What kind of span of time are we looking at?

The Clerk of the Assembly (Ms. Deborah Deller): Well, we won't need six months.

Mr. Mario Sergio: More than six months?

The Clerk of the Assembly (Ms. Deborah Deller): No, we wouldn't need six months.

Mr. Mario Sergio: You wouldn't need six months?

The Clerk of the Assembly (Ms. Deborah Deller): No.

Mr. Mario Sergio: Okay.

The Clerk of the Assembly (Ms. Deborah Deller): Certainly, to draft out the kinds of options that we've discussed today will take no time at all. If you give us a couple of weeks, we can do that. In that time, we can also canvass other jurisdictions, come up with whatever academic information might be out there and put together a package for you.

I'm looking at Peter because he's going to be the guy who's doing most of that leg work.

The Chair (Mr. Bas Balkissoon): He's always smiling, so don't worry about him.

The Clerk of the Assembly (Ms. Deborah Deller): I guess something that might be feasible is to have something in your hands before we adjourn for Christmas that you could take a look at over the winter recess. When the House reconvenes again in February—

Mr. Michael Prue: Or March.

The Clerk of the Assembly (Ms. Deborah Deller):—or March, then you've had the information for some time, you've had an ability to go through it, and you're ready to have some discussion on it.

Mr. Mario Sergio: Just one more quick thing. I don't know if it's a question; I'm trying to make it come out as well as I want to say it, Chair.

Following my colleague here, Mr. Dickson, I think we all have that particular background, and the Speaker as well—he has been at the municipal level. Those ideas of timing and giving us more advance notice were orders specifically to the clerk, to the staff. We said, "We want the clerk to report by such and such a date." Those were specific orders and directions by the chair. It could be from the mayor or the council as a whole.

Here, it's a different story because of the political parties, because, if you will, of the political party in power. Unless there are directions from high above to the Clerk or whoever or from the House saying, "Within six months, the Clerk must do this," we will not have what is being suggested here. Unless we address that particular issue and it's carried by the party in power at the present time, unless we direct the Clerk and whoever is responsible to say, "One month prior to this coming due, we want you to bring this to the attention of the legislative committee or the House itself for whatever action the House deems necessary," we will not accomplish that.

It was a different story when we were at the municipal level, because council would direct the clerk and say, "Report to council within such and such a time." We don't have this particular thing here, even though you, Madam Clerk, may say that we already have some power. But if the powers that be say, "No, we don't want to deal with this issue here," well, we're not going to deal with it.

Tell me if I'm wrong. I'm looking for some direction there.

The Speaker (Hon. Steve Peters): I'll do it, because it's a little more political, and the Clerk does have to—

Mr. Mario Sergio: And it's the truth.

The Speaker (Hon. Steve Peters): You're exactly right. Any one of us that sits around this table who came from the municipal level or the school board level, I think that's one of the things that we've all struggled with coming to this place. At least at the municipal level, you'd say it's black, I'd say it's white, you'd find the grey, and you'd get on with it. In this place, we oppose for the sake of opposing or support for the sake of supporting. Not having this ability because we're concerned about getting into cabinet, and if you lock horns with the Premier's office, you're not getting into cabinet, or you're sitting in opposition and hoping that you're

going to be in government, and you don't want to cross horns with the leader, yeah, it's a huge problem.

To Sylvia's point, you could come up with some great options here, but yes, this is going to go to the House leaders. It will go to the government House leader, and if the government House leader puts thumbs down to this, it's not going anywhere, and that's part of the problem with this system.

The Chair (Mr. Bas Balkissoon): I have a couple of questions, just for my understanding.

Madam Clerk, you made an interesting comment about legislation: If it has a cost, legal counsel must indicate something to the Legislative Assembly to that nature or whatever. But I see private members' bills sometimes on the order paper, and I interpret them as having a cost to them, and the bill shouldn't be in front of us for debate. But quite often it's there. How does that happen? Who is the person who is supposed to take responsibility to say that that bill shouldn't be or should be on the order paper for debate?

The Clerk of the Assembly (Ms. Deborah Deller): Okay, well, let me start by saying that just about every bill incurs some kind of cost.

The Chair (Mr. Bas Balkissoon): Okay.

The Clerk of the Assembly (Ms. Deborah Deller): The rule isn't against that. A bill is defined as a money bill if it does one of two things: if it imposes a tax or if it causes a direct—and the key there is “direct”—expenditure from the consolidated revenue fund. Unless it does one of those two things, it is not considered a money bill.

The ultimate decision as to whether something is or is not a money bill rests with the Speaker. At any time, if you as a member believe that a bill has been introduced that imposes a tax or causes an expenditure from consolidated revenue, you can raise that as a point of order.

The Chair (Mr. Bas Balkissoon): But when do you do that? At the time the bill is being debated or when it's introduced?

The Clerk of the Assembly (Ms. Deborah Deller): Once it has been introduced, and you have a copy of it. Once it has been introduced and it appears either on the Internet, or once it's printed.

The Chair (Mr. Bas Balkissoon): So we can raise that issue with the Speaker?

The Clerk of the Assembly (Ms. Deborah Deller): So then you can raise it and say, “I'm looking at this bill”—and it has been done before; there are examples of that that you can see in the record of the House—“and I think it's a money bill.” The Speaker will determine whether it is or is not.

Certainly, we have examples of the Speaker, even in the absence of a point of order being raised, striking a bill from the order paper because it's a money bill.

But cost isn't the issue. It's a very restrictive interpretation. Only those two—

The Chair (Mr. Bas Balkissoon): Now I have a clearer understanding. Okay.

In regard to the issue that's in front of us, I know you gave a couple of suggestions in your opening statement, and one of them would have been a trigger mechanism. It could be six months; it could be one month. I think six months is probably more reasonable, knowing the House schedule and everything else, should the committee decide to go that route.

But do you see, if we adopted that as part of the standing order, that somewhere in the procedure also, it would allow the minister of the day, who's responsible for doing whatever, the opportunity to come back and say, “This is not practical, based on my own ministry's business, and I'm seeking the House's permission to”—

The Clerk of the Assembly (Ms. Deborah Deller): You can write that into such a standing order, and in fact, that sort of provision is found in all kinds of places.

It would be good if that kind of provision was written into the legislation itself when it required this kind of review, not unlike the financial accountability act that we've just dealt with this week, where there was a requirement under that act for the minister to present a financial statement to the House by Monday. But there's a safety mechanism in the same act that allows the Minister of Finance to say, “There are some circumstances that make it impossible for me to make this statement today. I'll make it at a later date.”

The Chair (Mr. Bas Balkissoon): Okay.

The other issue I would raise with regards to the trigger thing, which maybe you need to clarify for me: I can see that if the House is proroguing for elections and because we're going into another session, something is left unfinished. Therefore, if we suggest something, we would have to include, if it was a review of significant government business, that it continue, or the next Parliament take it upon its responsibility to do it. But what would happen if you had proroguing of the House in mid-session just for a throne speech? How do you see those two situations occurring if we did have a trigger mechanism?

I think the whole process that we're here to do is try to close the loop where stuff has fallen on the side.

The Clerk of the Assembly (Ms. Deborah Deller): Once again, you've addressed one of the exact problems that I've tried to raise here. If you do it properly, the provision in the legislation itself should allow the House some flexibility because of its calendar, but if you were writing a standing order that provided some kind of trigger mechanism, it could also be written to allow the House some flexibility. You can talk about sessional days as opposed to calendar days, for example.

The Chair (Mr. Bas Balkissoon): The reason I ask this is because, if you look at the way we deal with legislation when it comes to a standing committee after second reading, amendments are moved on the floor. The minister who might be responsible for implementing those reviews and whatever is not here and they can't comment, and the committee sends it to the House. I want to make sure that whatever we do deals with all the issues, because I could see a date being moved that is not

practical, in some cases, or it might be a date that is tied to something else and that something else never happened also.

I just want to make sure that whatever we do here does close the loop properly and it doesn't tie someone's hands so that they're stuck.

The Clerk of the Assembly (Ms. Deborah Deller): Mr. Chair, I guess what I'm envisioning here is that the committee will not necessarily be dealing with legislation. What I presume you will be doing is making a report that will make certain recommendations, and they are recommendations; the House will have the final say on whether to accept them as they are or to amend them, or to not deal with them at all.

The Chair (Mr. Bas Balkissoon): In our research report, there were possible options for dealing with this. I guess one of them was the Clerk of the House. Do you see any problems with the Clerk of the House being responsible for the trigger mechanism, and then everyone else falls in line? It's just to cause the trigger mechanism, not to be responsible—

The Clerk of the Assembly (Ms. Deborah Deller): I don't see a problem, but I have to qualify that by saying that I guess it depends on the mechanism that you decide on.

The Chair (Mr. Bas Balkissoon): Okay. Maybe a simple letter to the minister, saying, "This is due."

The Clerk of the Assembly (Ms. Deborah Deller): It could be.

The Chair (Mr. Bas Balkissoon): Thank you very much.

Are there any other questions for the Clerk and the Speaker before I let them—thanks very much for taking the time.

The Speaker (Hon. Steve Peters): Thank you.

The Chair (Mr. Bas Balkissoon): Now that it's in committees, what would you like to do? Any speakers, suggestions, comments? And I will say that we have about 40 minutes.

Ms. Sylvia Jones: I like the Clerk's suggestion of bringing back to us some options of how we can proceed. I'd like to formally request that they do that, if the rest of the committee supports it.

The Chair (Mr. Bas Balkissoon): Okay.

Ms. Sylvia Jones: Let's look at our options.

The Chair (Mr. Bas Balkissoon): Mr. Prue?

Mr. Michael Prue: Yes, I would agree with that. I would only put a time frame on it, though, and ask that they do it as expeditiously as possible so that we can perhaps have at least one committee meeting to discuss that before we break for Christmas. But, failing that, we can start as soon as we come back in the new year.

The Chair (Mr. Bas Balkissoon): Let me ask our research. Can it come back the week before we break? Do you need two weeks?

The Clerk of the Committee (Ms. Tonia Grannum): December 1?

Mr. Yasir Naqvi: It's possible.

The Clerk of the Committee (Ms. Tonia Grannum): Two weeks from now would be December 1, right? And then, December 8, we could have a meeting.

Mr. Michael Prue: That's what I'm saying: just so that we can hash it out in here. If we need anything else, we can look at it and see if there's anything else we need so that we could really do our work in March, when we come back.

As I say, I think we have a real window here. If we don't seize the window, then come May, it's not going to happen.

The Chair (Mr. Bas Balkissoon): Okay. Research says December 1 is fine to provide us with a draft, and then committee meets on December 8, the following week.

Mr. Michael Prue: Yes.

The Chair (Mr. Bas Balkissoon): Are there any specifics you want to request, other than the suggestions given by the Clerk and the Speaker? I have asked that we get their notes and that they be circulated to all of us so we remember what they said.

Ms. Sylvia Jones: Just one additional one: I found the background on other Legislative Assemblies helpful. I would like some examples, if there are any, of what the provisions are for penalties when it is not happening.

Mr. Peter Sibenik: Yes. It will be a very short response, because there's very little in the way of penalties, and I will explain at the next meeting as to why there are no penalties for these kinds of provisions.

Mr. Yasir Naqvi: Okay, that's great. I just want to go along Sylvia's line. The canvass is helpful, but I found a few things missing. One, the mother country, the House of Commons in the United Kingdom: We have no guidance as to what they do, what the trend is in the UK, how often these types of provisions are used and how they are dealing with it, if at all. That's my beginning point, as to what they're doing.

Similarly, if you can look at Australia—I think you mentioned New South Wales as one example—the Australian House of Commons, and see if we can see what they've been doing and how they've been dealing with these types of situations.

Going to Sylvia's point, what I would like to see in a little bit more detail, in canvassing all other provinces and territories in Canada, is what has been working and what's not. I think it goes to sort of the penalty thing Sylvia was talking about. So a little bit more detail as to what they are doing, what's working, what's not, so that we don't go in a direction—if something's not working, then we don't want to be in that direction, or we'd maybe just be breaking new ground. So a little bit more information on other provinces or territories, along with, of course, the UK and Australia.

I don't know how useful the US may be. I've got "US" written down here, but given it's different—

The Clerk of the Committee (Ms. Tonia Grannum): Very different.

The Chair (Mr. Bas Balkissoon): Totally different.

Mr. Yasir Naqvi: And lastly, literature: You mentioned some of the authoritative work, but are there any articles written here in Canada or other similar Westminster jurisdictions? See if that's of some guidance to us.

Mr. Peter Sibenik: Yes. Thank you.

The Chair (Mr. Bas Balkissoon): Any other comments, suggestions? Everybody's happy with what's been requested?

Okay, the committee is adjourned until December 8. We'll reconvene and we will get a draft from research by December 1.

Mr. Mario Sergio: Can we have that back before the 8th, possibly?

The Chair (Mr. Bas Balkissoon): You're getting it December 1.

Mr. Mario Sergio: Okay.

The Chair (Mr. Bas Balkissoon): You will also get the notes from the Speaker and the Clerk as to their suggestions that they provided to you—all included. Okay?

Mr. Michael Prue: Sounds brilliant.

The Chair (Mr. Bas Balkissoon): Committee adjourned.

The committee adjourned at 1417.

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