

Standing Committee on Legislative Offices

7:35 a.m.

[Chairman: Mr. Hierath]

THE CHAIRMAN: I think I'll call the meeting to order this morning. I'd like to welcome Peter Valentine and Don Neufeld from the Auditor General's office.

The agenda is on the front page of your binder. I would like to have a motion to accept the agenda this morning, if possible. Frank. All those in favour? Carried.

The minutes under tab 3 are the December 19 meeting. I'm sure you've all gone through them. Are there any errors or omissions? If not, would someone like to approve the minutes of the December 19 meeting? Gary Severtson. Any discussion? All those in favour? Opposed? Carried.

Our item 4 today is with regard to the creation of a position of Deputy Auditor General. Under tab 4 you will see a letter from Peter Valentine to myself. Maybe I will turn the meeting over to Peter to explain a little further some of the things that have transpired since our December 19 meeting. Peter.

MR. VALENTINE: Thank you, Mr. Chairman. At the December 19 meeting, your committee approved recommendation 3, which is to create the position of Deputy Auditor General, to be classified as a senior official outside the normal classification system with a range of \$90,000 to \$105,000. By a letter dated January 30, I advised you that I had erred in proposing the salary range, and that error occurred as a result of advice I had that wasn't appropriate. The consequence of revisiting the issue brings us together today to request that you revise the recommendation to read:

Create a position of Deputy Auditor General, to be classified under the Management Official Pay Plan as Executive Manager II - Audit, with a salary range equivalent to Salary Range C of the Senior Officials Salary Schedule,

which is currently a minimum of \$66,200 and a maximum of \$98,100.

THE CHAIRMAN: Perhaps I should explain a little bit further. There was consideration given on the senior officials pay scale, and we were concerned that we didn't want the position of Deputy Auditor General to fall into the same class as some of the other officers of the Legislative Assembly.

MR. VALENTINE: You will note, Mr. Chairman, that I emphasize that this order will not place the position on any senior officials listing, but it does set a reference of a range of salary to an existing schedule, and therefore it has the advantage of avoiding repeating orders by the committee in future years and the tabling of such orders in the Assembly.

THE CHAIRMAN: Yes.

Is there any discussion on this?

MR. BRUSEKER: I'm sure I already know the answer to this question, but I'm going to ask it one more time. This will have no additional impact on your budget?

MR. VALENTINE: No.

MR. BRUSEKER: Thank you.

MR. KOWALSKI: Well, I think that decision not to put it coterminous with one of the existing ranges is probably fine for the

protection and integrity of the office of the Auditor General. If it were, I think the obvious then becomes known to everybody. So this is positive, and this is good. This is an advancement over some of the previous correspondence I've seen with respect to this matter.

By going to an executive manager 2 position, which is the highest under the civil service system that we have in the province of Alberta, as I recall, does this mean that there's also an expectation there'll be an automobile provided, that a car goes coterminous with it?

THE CHAIRMAN: No, no.

Any further questions or comments?

MR. SEVERTSON: I guess just a question. By change of position, does that mean the individual gets a raise on that in salary or just that he's in a different range?

MR. VALENTINE: His present salary is in the middle of this range. I have not yet concluded on what should happen to the individual who is filling the position. He has taken on substantially more responsibility since I figured out sort of where I want the office to go. That may in the fullness of time result in recognition of that added responsibility. But at the moment his salary is well within this range. I think the range is appropriate. I bring this to the committee because I think you should be aware of what I'm doing. I bring it to the committee to put a discipline on me, but I'm not here, as you would well understand, to discuss the individual salaries of the 108 or 109 people that work for me.

MR. SEVERTSON: I guess, Mr. Chairman, I asked the question because in our various departments, when we downsized the number of departments to the present number, some of the senior officials there took on extra responsibility and they have been frozen in their salary range since that time too. That's the reason I asked the question. I think one department took in two and a half departments and the deputy stayed in the same range.

MR. VALENTINE: Let me assure you that I will be following the procedures and – I'm looking for a word – the rules and regulations that are adopted and used by the personnel administration office in deciding how our office should run. I will continue to do that. So whatever I do will be within the general guidelines of government. As you're aware, that doesn't necessarily directly affect me. Nonetheless, I'm not ignorant of it, and I'm very conscious of it when I make moves.

THE CHAIRMAN: Roy, you have a question?

MR. BRASSARD: No. I was just going to move that we accept this recommendation.

THE CHAIRMAN: Okay. What we need to do here – in the meeting of December 19, on page 66.95, it was

moved by Mrs. Fritz that the Standing Committee on Legislative Offices accept the Auditor General's Recommendations 1, 2 and 3 as outlined in the Auditor General's letter to the Chairman dated December 15, 1995 as presented.

That motion needs to either – I was hoping Yvonne would be here so she could rescind that motion. However, I think that if we move a new recommendation 3, that would supersede the motion that was made on December 19. So in Mr. Valentine's letter of March 14, under tab 4, you'll see recommendation 3. Roy, if you would like to move that, I think that would suffice.

MR. BRASSARD: Recommendation 3, did you say?

THE CHAIRMAN: Right.

MR. BRASSARD: Well, I move
that the Auditor General be allowed to create a position of Deputy
Auditor General, to be classified . . .

Is this what you're saying?

THE CHAIRMAN: Yes.

MR. BRASSARD:
. . . under the management official pay plan as an executive manager
2, audit, with a salary range equivalent to salary range C of the
senior officials salary schedule, (currently minimum \$66,200 to
maximum \$98,100).

THE CHAIRMAN: Is there any discussion on the motion by Roy?
All those in favour? Opposed? Carried.

The other thing we will need to do, then, is if you leaf through
further to the last page in tab 4, there's an Order AG 4 which we
need to pass in conjunction with the motion. It's basically saying the
same thing in regards to Roy's motion. Is there any discussion on
Order AG 4?

MR. BRUSEKER: Mr. Chairman, would you like someone to move
acceptance . . .

THE CHAIRMAN: Please.

MR. BRUSEKER: . . . of Order AG 4 as presented in our binders
today?

7:45

THE CHAIRMAN: Thank you. Any discussion on that? All those
in favour? Opposed? Carried.

Our next order is number 5 with regards to Mr. Valentine. I'd like
to welcome Keray Henke. Do you want to come up to the table in
case we need your expertise on this one?

Let's see now. I distributed a letter with regards to Productivity
Plus. There was a letter that I got yesterday from Clint Dunford, the
chairman of the Productivity Plus Review Committee. The
submission the Auditor General made needs to come before this
committee today. The Productivity Plus Review Committee has
reviewed, I think, all the departments to date, and the deadline is fast
approaching – by the end of March – for this program for this year.
So I would encourage you to turn to tab 5 along with the current
information from Clint Dunford and a memo from Clint to Jim
Dinning dated February 14.

I will turn it over to you, Peter, and we'll get started on the
discussion on the Productivity Plus submission.

MR. VALENTINE: Thank you, Mr. Chairman. In the materials you
received in the December 19 meeting, the submission in connection
with the Productivity Plus program was made to you. That
submission was prepared based on the format supplied by the
personnel administration office and in accordance with the rules, as
we understood them, of the program. I think two things have
happened in the meantime. First of all, there's been a confirmation
that this committee should look at it and not Mr. Dunford's
committee, albeit he has had the opportunity to look at it and finds
it's within the guidelines his committee is operating under.

The second thing that happened was that there was a Treasury
Board directive limiting the percentage of participation. Now, that
was new to me on March 15. Prior to that I was not aware that that

was in the cards, but having found that out on March 15, we
immediately regrouped and revised our program to the point that 24
individuals out of 106 people that are in the office would receive
awards and the total aggregate amount of the awards would be
approximately \$80,000. So we've provided you with a revised page
7, boldly marked "Revised – March 15, 1996," to reflect that change
as a consequence of the Treasury Board directive.

I'd be happy to answer any questions, and so would Don.

MR. BRASSARD: I just have one question. In your covering letter
of March 15 you mentioned that only 22 of the 40 auditors are
eligible. Are we talking about 24?

MR. VALENTINE: No. Only 22 out of 40 of the opted-out and
excluded portion of our staff complement.

MR. BRASSARD: Oh, okay.

MR. VALENTINE: If you go over the page, you'll see that we have
50 opted-out and excluded personnel out of a total of 106.

MR. BRASSARD: Yeah.

MR. VALENTINE: Part of that's driven because at the end of the
day we're a professional accounting office, an auditing office, and
we are a student training office. We train students in both the CMA
program and the CA program, and if you're in the training business,
to generate the number of people we need to retain over the years,
we have to have a larger student body. So we will have the natural
turnover that any CA firm has.

MR. BRASSARD: Then let me ask one further question, Mr.
Chairman. Given the percentage of personnel that are in that
category that you mentioned, do you see this program as being fair
to those individuals? I mean, there could very well be some
individuals that contribute significantly to your department's
operation during that very brief time.

MR. NEUFELD: Under the program there's a definition of an
eligible employee, and that is taken to mean an employee that was
with us during the years the program applies to, namely 1993-94 and
1994-95. Eighteen of our students came on stream since that time.
They weren't working with us during those years and therefore were
not eligible. The students we have now, or that were students at that
time and have now moved to a manager position, are eligible for the
program. So it's simply that if they were with us during those years,
they're eligible; if they weren't, they're not.

MR. BRASSARD: Okay. Fair enough. Thank you.

MR. VALENTINE: Do you remember when we put the overheads
up here we showed you the rapid turnover we're experiencing with
students and recent CAs at the moment? Well, if we can make that
go away, there will be a larger number of people eligible in here. It's
my goal to make that go away.

MR. BRASSARD: Fair enough. Thank you.

MR. SEVERTSON: I have a comment and a question. You went
from 64 to 24. Were your staff aware of applying for 64 and it had
to go down to 24? Will that cause any problem of morale, or do you
see this as a positive for this program?

MR. VALENTINE: I'm of a mixed mind on this, and I'll be sincere.

When your office is essentially comprised of professionals, there is a greater participation in the effort. When your office is structured with professionals and nonprofessional staff and field staff and whatever, if I took another department – and I won't take one, because it would be an unfair comparison. But if we were in a different business, then I would say perhaps that Productivity Plus would be more narrowly applied.

I believe strongly that this is a step and a goal that should be achieved. I'm prepared to work hard to manage the situation.

MR. SEVERTSON: Fair enough. Thank you.

THE CHAIRMAN: Ken Kowalski next.

MR. KOWALSKI: My question, Mr. Chairman, was essentially asked by my colleague. It had to do with morale. I think it's been responded to.

MR. VALENTINE: I might tell you, Ken, that my second job is vice-president of stroking. I do that every day.

MR. KOWALSKI: We all do that.

MR. VALENTINE: Yeah.

MR. KOWALSKI: Some of us have located it in an office; some of us have 30,000 spread all over the place.

MR. VALENTINE: Exactly.

MR. BRASSARD: And some of us need to be stroked every so often.

THE CHAIRMAN: Frank, do you have a comment or question?

MR. BRUSEKER: Just a question on the chart on page 7 there. As I look at that, I guess the question that springs to mind is: you have a much higher percentage of management folks getting a much higher percentage of the dollars that are being awarded through the Productivity Plus awards, \$60,000 going to 15 people and only \$20,000 going to nine people. Now, I'm sure that reflects in part the salary ranges of the individuals involved, but . . .

MR. VALENTINE: No, Frank. Go back to the statement in the penultimate paragraph in the letter. In the second sentence, only 81 of our current employees were with us for those years. So it's 81 out of 106. All of a sudden we're down to a maximum of 81 that it would apply to.

MR. NEUFELD: Can I respond?

MR. VALENTINE: Yeah.

MR. NEUFELD: Frank, this distribution of awards is 75 percent management and 25 percent opted out and excluded. Our actual payroll profile is approximately two-thirds management and one-third opted out and excluded. The reason for the difference between the two-thirds/one-third and the 75/25 is the students we talked about earlier who are on staff. We're paying them, but they're not eligible for the program because they weren't employed by us during the years the program applies to.

MR. VALENTINE: As long as we take in seven or eight students every year and they enter a program that will take one and a half to

three years to complete, we will have that turnover. So we are never going to have all the people in the store eligible for this program if it continues. We are always going to be dealing with something in the order of 70 to 80 percent of the people in the store.

MR. BRUSEKER: I appreciate that. What I would suggest is that were I one of those people who were coming in and starting out and were I to see this kind of a distribution of awards, I guess along the lines of the question asked by Mr. Severtson, I might find it somewhat disheartening to think that the majority of the dollars and the majority of the awards are going to management.

7:55

MR. VALENTINE: That's a fair comment, but you would also be aware that entry level salaries straight out of college are low, modest, and as a student performs and learns, the increments rise fairly quickly as they come to meet the uniform examinations and qualify. When they qualify, their salaries have reached the competitive qualification level. It's at that point, then, that we can put them into the management pay plan of the government. Earlier than that they're effectively students and they're running along on a pay scale that is very much in competition with the private sector. It's after that that we have our problems, as was demonstrated in the slides Don prepared and showed to you on a previous occasion. If you'd like those slides again, I'll recirculate them to you.

MR. NEUFELD: Frank, can I try it another way? We took the current salaries of all the employees on staff who had been with us during '93-94, '94-95 and applied a percentage – it turned out to be 6.81 percent – to all the salaries, both management and opted out and excluded. This represents an exact distribution based on the exact salaries percentagewise. There's no adjustment towards management. It's a straight percentage across the board. That's exactly the way the numbers fell out.

MR. BRUSEKER: Mr. Chairman, in closing, I just wanted to raise it. Obviously the Auditor General has given it some consideration, and I leave it in his hands.

MR. VALENTINE: Quite frankly, I could make a very strong argument for those organizations that have a high percentage of professional staff involved, and there are other examples: that the percentage of people eligible for the award should be higher. But having said that, the fact of the matter is it's 30 percent, so that's something we have to live with. I don't want to pass by the opportunity to try to make this thing work. That's why we're here.

THE CHAIRMAN: Any further discussion?

MR. SEVERTSON: If there's no more discussion, I'd like to move that the Standing Committee on Legislative Offices accept the Auditor General's submission under the 1995-96 Productivity Plus program for a maximum of 24 awards, not to exceed \$80,000 in total.

THE CHAIRMAN: You've all heard the motion. All those in favour? Opposed? Carried.

Thank you, Peter and Don, and thank you, Keray, for being available.

[The committee recessed from 7:58 a.m. to 8:01 a.m.]

THE CHAIRMAN: Okay. I think we'll call the meeting back to order. I'd like to welcome Harley Johnson to the meeting this morning.

Under item 6 the issue this morning is Yukon, and you have some material under tab 6 in your binder, gentlemen. I think maybe I'll start off by asking Harley to say a few words about where things are at with regards to Yukon and so on.

MR. JOHNSON: Thanks, Ron. It's been quite a process of going back and forward. I've tried to keep up to speed as much as possible, because there have been some glitches in the system, as there always are, or concerns for glitches in the system whenever you're trying to do something that's innovative. You know that you're stepping on new ground; therefore, you have to chase it all down.

To start with, on FIGA, Federal and Intergovernmental Affairs, because of intergovernmental contracts there's a requirement under the Government Organization Act to ensure that they're involved, and the minister must sign off on it. However, we now have a legal opinion supported by FIGA that we are outside the FIGA requirements for the Government Organization Act because, as a leg. officer, I report to the Leg. Assembly through this particular committee. I have that in writing, should that ever crop up from FIGA. So that's just letting you know where we're standing with the FIGA side.

Item 2 that I have is the motion in the briefing materials that I supplied you, Ron, which I'm assuming have been passed out. As it relates to the supplemental financial situation, I had two separate financial opinions on whether this was needed or not. I put it in just to be on the safe side. I now have a letter from the Auditor General's office indicating that that particular motion is not necessary, that in fact under the current expenditure refund process the moneys can be brought straight back in to offset directly my salaries, and then that can be used for whatever is required within my office to accommodate this particular request. That makes an awful lot of difference in terms of accounting procedure. So the Auditor General has now signed off on it, and the Auditor General's office also confirmed with Treasury that this is an appropriate process for this. So that's the second part of it out of the way.

The third part. If in fact this committee and the Leg. Assembly through this committee accept entering into an agreement with Yukon, we are going to require, though, a change in legislation to the Ombudsman Act, specifically section 3(1), where it states that I am not allowed as Ombudsman to hold any office for profit or trust outside of my role of Ombudsman. Again, different pointers and different legal opinions suggested different things: that we could get around this particular section by having this an extension of my current role. That was still a legitimate argument until the issue of access to information, protection of privacy, and the conflicts commission came into play, where it can't be an extension of a role that I do not hold here in Alberta. So that argument went out the window. I then took it back to the Attorney General's office and now have an opinion from the Deputy Attorney General that it does require, in his opinion, a change to the Act. In my letter to Ron of February 28, 1996 – I'm assuming again that it has been given around. Do you have that letter?

MR. SEVERTSON: Yes. It's the first one here.

MR. JOHNSON: The Deputy Attorney General specifically stated to bring in line with all the other leg. officers the first set of wordings:

The Ombudsman may not be a member of the Legislative Assembly and shall not engage in any occupation for reward outside the duties of his office.

I accept where the Deputy Attorney General is coming from and in principle accept what he is trying to say, but in my own opinion, I think the Ombudsman has to be cautious, whether it's me or my

successor or whoever holds this position after I leave, that they don't become too strung out in terms of functions they accept. It's very easy to do. I've turned down already this spring four separate requests to be involved in international events as a presenter, as a co-ordinator, as a reviewer of human rights legislation, mostly in the eastern European region, the former U.S.S.R. states. I could not do it. You could get so involved in doing it and getting committed without realizing your time frame. Before the Ombudsman got involved in any of those activities, I think the Legislative Assembly and this committee should approve those.

So the second set of wording I'm suggesting is that we keep in the concept of trust and profit, unless it's with the written consent of this particular committee acting on behalf of the Legislative Assembly. I'm suggesting the wording be "The Ombudsman may not be a member of the Legislative Assembly," period, the second portion being that "The Ombudsman shall not hold any office of trust or profit, other than his office of Ombudsman, without the written consent" of this particular committee. Now, that is assuming that the contract and the agreement that has been circulated as a draft is acceptable to this committee. Of course, Earl is here to comment specifically on the contract. I think he has some wording concerns or wording changes that he's going to recommend. So on that basis, Ron, would you like to deal with each individual's as you go, or do you wish to jump into the contract and then see where it leads?

THE CHAIRMAN: What's the wish of the committee? They are connected fairly closely. I don't know whether we can separate the two. I guess what I would like to do is get from the committee a sense of whether we would want to go ahead and change the wording of the Act to allow you to do this, and we'll get into the contract and what your perception of it would be.

MR. JOHNSON: If I could give one caution. If we do run with it, if we do accept that we still want to proceed with this – we've agreed to it in principle only, not in practice, and we haven't signed any agreement, of course – has this committee made the requirement that it come back to this committee for final approval? The change in legislation could be done under the miscellaneous statutes amendment Act, in the opinion of the Deputy Attorney General, but you all know that requires an agreement. I would request that if it is going to be accepted, it has to be a quick agreement, because miscellaneous statutes amendments are being basically put forward very soon and we need all parties in the Legislative Assembly to accept it in advance. So there's going to have to be an agreement on this. Then there's going to have to be a push from the committee and acceptance from all committee members to ensure it gets through their individual caucuses.

THE CHAIRMAN: Okay. I have four people on a speaking list here. First I have Frank, then Ken, then Roy, and then Gary.

MR. BRUSEKER: Thank you, Mr. Chairman. I want to go back to the motion of your letter of February 28 regarding the change in legislation that is required. I guess I would start by saying that I would feel more comfortable with an amendment dealing with the issue of duties, as you first alluded to, rather than opening it up more, as I see the amendment as you have it before us. You mention that you would have additional duties as the Ombudsman for Yukon over and above what you have here as the Ombudsman in Alberta, which is what created the problem. But I'm wondering if there would not be some mechanism to broaden the description of duties to include those additional duties that come from Yukon that would not necessarily impact the legislation as greatly as this proposes. I guess my concern is that by changing it the way you have proposed,

it opens the door wider than it needs to be.

MR. JOHNSON: I can understand where you're coming from. I would have some concern because my job description is the Act. I don't have a job description beyond the Act. Therefore, to give me duties, it has to be basically within the Act. Would you suggest, then, a change to the duties in the Act to actually include the word "Yukon" or another jurisdiction to keep it very specific?

MR. BRUSEKER: Speaking personally, Mr. Chairman, I think I would prefer to do that and even maybe so much as to say "Yukon for a period of a one-year contract" or whatever contract is finally agreed upon. Add it perhaps that way rather than broadening the details.

MR. JOHNSON: Maybe I'll turn it over to Earl from a legalistic standpoint.

MR. BRUSEKER: Sure.

MR. EVANIEW: I guess if you made a specific amendment like that, you're going to end up changing the Act almost on an annual basis to sort of fit with Mr. Johnson's additional duties. This all arose because we looked at section 3(1) and realized that the only office he can hold is the office of the Ombudsman, and it was even our view that if he were appointed the Ombudsman of Yukon, that was running afoul of 3(1). So even for him to be the Ombudsman of Yukon, I think, required a change. I know there are some additional duties.

We've looked at both of these amendments. I think they both work legally. The second one, as Mr. Johnson has proposed, does give the standing committee some power through approval or disapproval of additional duties. I think it would be difficult to put in legislation specifically the duties here in Yukon.

8:11

THE CHAIRMAN: Okay.

MR. KOWALSKI: Mr. Chairman, this section of the briefing section opens with a March 13, 1996, statement. Was that made? Has there been a statement made in the Yukon Legislature that we're proceeding with this?

MR. JOHNSON: In the Yukon Legislature. Yes.

MR. KOWALSKI: Yet much of what we've talked about this morning is if this goes forward.

MR. JOHNSON: Likewise the statement was made in Yukon, with the agreement of the opposition, that it was still to be finalized if at the March 20 meeting here, which is this morning's meeting, it was acceptable. There was pressure in the Yukon to make that statement, and I understand the pressures. I asked that it be held back, but they had internal pressures that had to push things through.

MR. KOWALSKI: Mr. Johnson, if you're having a subjective difficulty in making a decision as to where you should go and where you should participate and whether or not you should speak here, there, or whatever and you've had to turn these down, how can you find time to spend a week a month working on this project?

MR. JOHNSON: I could in fact do the other functions, or some of those other functions, had this not been in place.

MR. KOWALSKI: So you've got a free week a month in your time schedule. Is that what you're saying?

MR. JOHNSON: No. I'm not saying that.

MR. KOWALSKI: Well, help me understand this.

MR. JOHNSON: I can cover off for up to a week a month without detracting from the services we provide here in Alberta. We have not done it a week a month in the past. Where I'm coming from in that, Ken, is to ensure that we understand this committee should be directing what I should be involved in beyond the role of the Ombudsman.

MR. KOWALSKI: Great. And that is your role: a full-time job.

MR. JOHNSON: Yeah. Absolutely. There's no question about it.

It's very easy to get enticed into these things. The year before last when I went to Russia, I went on my own time. But there are four separate requests this year from the United Nations alone to be involved, and I've turned them all down because I just don't have the time, especially if this comes into play.

MR. KOWALSKI: So, Mr. Chairman, how then do we deal with an interesting statement. Have we ever asked the question: do we want this to happen or not to happen? We're dealing with building blocks here right now, but when does the question should this proceed or not proceed come to the table?

THE CHAIRMAN: Right today.

MR. KOWALSKI: We've had that discussion?

THE CHAIRMAN: In December we had . . .

MR. BRASSARD: Discussion of the intent, that's for sure.

MR. KOWALSKI: Oh.

MR. JOHNSON: It was an agreement in principle, as I understand, Mr. Chairman.

MR. KOWALSKI: Then we'll proceed with this.

THE CHAIRMAN: Right.

MR. KOWALSKI: So nothing on the table was: is it more advantageous to Alberta and the Alberta advantage in maximizing the opportunities of Alberta to have our own Ombudsman working in, say, Bulgaria on civil rights legislation as opposed to working in Yukon? Was that part of the discussion? Obviously it wasn't.

THE CHAIRMAN: No.

MR. JOHNSON: It's just that an Ombudsman could get enticed into doing things, and I think this committee should have some control over it.

MR. KOWALSKI: It might work to the benefit of the Alberta advantage . . .

MR. JOHNSON: Exactly.

MR. KOWALSKI: . . . when we deal with our trading partners.

MR. JOHNSON: Yeah. We did the same with Bophuthatswana with Bob Clark going over, and I spent time with him.

THE CHAIRMAN: So, Ken, at the meeting in December there was a motion by . . .

MR. KOWALSKI: In principle.

THE CHAIRMAN: . . . Gary Dickson in principle to explore the contracting-out services.

MR. KOWALSKI: Well, Mr. Chairman, I don't see any difficulty with making minor amendments to legislation that basically make it very clear that the Ombudsman cannot hold any other office for whatever purposes, in which lawyers should deal for us rather than committee members, without the consent of the legislative committee. But the job, number one, is to the people of Alberta. That has to be. If the Ombudsman comes back in six months or a year from now and says, "I'm overwhelmed" and we have to give him additional money to deal with his issues in Alberta, then something will have to give.

MR. JOHNSON: If I can respond to that, the budget process we've established in getting up to this point is on a cost-neutral basis. There will be no cost back to this committee or no cost to the Alberta taxpayer. I have in place three people who are capable of sitting in my stead in any absences, and because of the financial arrangement we've made, they will be compensated for making that. Finally, all decisions will still be mine.

MR. KOWALSKI: And would there be additional benefit to the Ombudsman, financial benefit?

MR. JOHNSON: No, there can't be. This committee establishes my remuneration, period, and has done so.

MR. BRASSARD: Well, my comments were along the same lines as Ken's in that I would assume that the contract you're going to have with Yukon is going to enable you sufficient funds to replace you while you're away . . .

MR. JOHNSON: Yes.

MR. BRASSARD: . . . for that week. So it's a matter of establishing priorities within your own schedule to make sure that week can be handled by your replacement.

MR. JOHNSON: Very similar to when I'm on annual leave right now, Roy.

MR. BRASSARD: Yes. The only question I have along those lines is that I would assume, as Ken has alluded to, that when it became a matter of priorities, if indeed you were scheduled to leave for your week in Yukon and there was something that required your attention here, then you would have to sort that out.

MR. JOHNSON: I would have to sort that out.

MR. BRASSARD: Before you left.

MR. JOHNSON: Before I left or after, and we are still electronically connected.

MR. BRASSARD: Yes, I realize that.

MR. JOHNSON: If there's a letter to be sent to a deputy minister with specific recommendations, I intend to hold that for my signature, not for any person acting in my stead.

MR. BRASSARD: Yeah. But I would just want to develop the comfort level that your priorities would remain with Alberta. I guess that's the bottom line.

MR. JOHNSON: Absolutely. My job there is to assist them develop their office, to go in for one year to get the office procedures, protocols with the different departments up and running, and then they would be advertising for somebody within Yukon. They did not want to start with somebody completely fresh, because we've already got processes in place.

MR. BRASSARD: Mr. Chairman, I see the last part of this recommendation for the miscellaneous statutes amendment Act as giving this committee the ultimate hammer in these kinds of situations. I'm supportive of this direction.

THE CHAIRMAN: Okay.

MR. DICKSON: Let me be accused of 'me too-ism.' I had thought, as Frank Bruseker did, of coming at it in a different way in terms of looking at the specific job description in the statute, but I think in the final analysis that doesn't work. I think it has to be done in a more flexible way, a more open way, and that is as suggested by the Ombudsman.

I recall clearly the discussion we had in December. We canvassed many of the things that have surfaced again. I think I was comfortable with that discussion and the fact that when we discussed it then, there was a feeling that there was a net benefit to this province, not a pecuniary benefit but a benefit in terms of some indirect kinds of ways and the sort of leadership role Mr. Kowalski spoke of. So I'm still of that view. I think the amendment suggested by the Ombudsman does the trick in terms of providing authority and yet retains flexibility. If it hasn't been moved yet, I'd be happy to move the proposed amendment suggested by the Ombudsman, Mr. Chairman.

THE CHAIRMAN: Okay. It's been so moved.

The next person on the speaking list is Gary Severtson.

MR. SEVERTSON: Okay. I want to get on to the suggested amendment. I'd like to hear Earl's opinion, but I was thinking that if we added the last part, "without the written consent of the Select Standing Committee on Legislative Offices," to the first amendment, we would accomplish the same. Would it make any difference?

THE CHAIRMAN: Do you want to comment on that, Earl?

MR. EVANIEW: Well, that's a good point. I guess it's not absolutely clear when it says "outside the duties of his office" whether or not what Mr. Johnson is proposing is something outside his office or another "office of trust or profit." I see in the first amendment: "shall not engage in any occupation for reward outside the duties of his office." I don't know where the Deputy Attorney General is coming from, but he or she must have in their mind that these duties Mr. Johnson is intending to take on in Yukon would fit within the duties of an Ombudsman. It's my understanding that these duties in Yukon are more than just Ombudsman duties. Mr. Johnson could agree or disagree. That's why I don't know if the amendment by the Attorney General that they have proposed really fits with this situation. In the second one, the way it presently reads

is: "The Ombudsman shall not hold any office of trust or profit, other than his office of Ombudsman." Now, with this amendment, the standing committee would be approving that Mr. Johnson could hold another office. If Mr. Johnson takes on the role of the Yukon Ombudsman, that is a different office, not "outside the duties of his office." We were really splitting hairs here. As I said – and Mr. Reynolds concurs – both of those amendments are fine legally. The second one, as Mr. Brassard has said, does give the standing committee some hammer.

8:21

MR. SEVERTSON: That's why I suggested adding on, but I can see it both ways.

MR. JOHNSON: If I could just add one more thing here, Mr. Chairman. The "reward" in item 1 should also be expanded to include "office of trust." That's one of the reasons why I'm going with item 2, so it would be on there.

MR. BRUSEKER: I want to go back to this amendment, because I'm still kind of fuzzy on it. I took out the Act itself and looked at it as it currently is written. It seems to me that if we've proposed both the amendments that are here in the letter of February 28, really all we've done is added the phrase "without the written consent of the Select Standing Committee on Legislative Offices," and the rest of it is just rearranging words that were already there.

MR. JOHNSON: With the exception of the statement that "the Ombudsman may not be a member of the Legislative Assembly." I think that has to stand on its own.

MR. BRUSEKER: But that is in the current section 3(1).

MR. JOHNSON: It's in the current section, but then there's the word "and." I don't know. I would have to bow to Earl's comments on that one.

MR. EVANIEW: Well, Frank, I know that in the past Leg. Counsel said: just get the principle of what you want; we'll worry about the exact wording that's going to be in the Act. Now, as Mr. Johnson's saying that 3(1) should be broken down into two parts, the first, as I understand, will say, "The Ombudsman may not be a member of the Legislative Assembly," period.

MR. BRUSEKER: Okay.

MR. EVANIEW: Then subsection (2): "The Ombudsman shall not hold any office of trust or profit." You're right in the sense that the only change under the second proposal is putting in the exception, "without the written consent." Right now it's our opinion that Mr. Johnson couldn't go up and be the Ombudsman for Yukon. It's prohibited here. Now we're giving him a way of doing it through the approval of this standing committee.

I see what the Deputy Attorney General's doing. I may be wrong, but I think that fits with more current wording with maybe some of the other officers. Am I right that the conflicts of interest commissioner shall not engage in any occupation for reward outside the duties of his office? Then I guess it would be up to the Ombudsman to determine whether or not, when he goes up to Yukon and acts as their Ombudsman and on some of the other roles, that fits within the duties of his office. I'd be concerned that it doesn't. I'd be concerned that acting as the Yukon Ombudsman doesn't fit within the duties of his office. That's my opinion.

MR. BRUSEKER: And for that reason you think we need to have section 3(1) amended.

MR. EVANIEW: Yes. Well, both of them are amendments. Even the Deputy Attorney General – what they're suggesting is: repeal section 3(1) and replace it with that amendment. I mean, if you're asking which of the two I prefer, for the reasons I've given, I prefer the second one.

MR. BRUSEKER: I guess I look at it and I'm wondering: if we left section 3(1) just as it is, who's going to come jumping down his throat saying, "No, you can't do that"? If the committee says, "Mr. Johnson, we want you to be the Ombudsman Yukon," who's going to come jumping down his throat saying, "Wait a minute; you can't do that"? What's the problem?

MR. EVANIEW: That's an excellent point, and that's how this all sort of happened, why we're here or why Mr. Johnson's here requesting an amendment. We asked the question. All right, he goes up and becomes this Yukon Ombudsman, and there's some individual up there that says: "Wait a minute. I've read the Ombudsman Act, and it says he's prevented from holding any office of trust other than the Ombudsman of Alberta. Now he's up here. I'm going to go to court and get some declaration that the Ombudsman isn't following his Act, and as well, I'm going to say that the standing committee also wasn't ancillary to that decision." In addition, this contract will be signed by the Speaker, and as counsel for the Speaker, we're saying, "Mr. Speaker, you don't want to be involved in that, because we have some concerns whether or not Mr. Johnson can take on these duties."

You're right, Frank. No one probably would come out. I mean, there are no penalties for Mr. Johnson not doing this. Nonetheless, that's what the Act says, and we were concerned.

THE CHAIRMAN: I've got to go over to Gary Dickson. Gary's been waiting patiently to make a few comments.

MR. DICKSON: Mr. Chairman, gentlemen, it's been a fascinating discussion, but at the end of the day this committee doesn't write the legislation that comes into the Legislative Assembly. All we can do is make recommendations. Since it's clear that the vehicle we see is the miscellaneous statutes amendment Act and since that is by convention a product of negotiation between representatives of the two caucuses on both sides of the House, my suggestion would be that the focus is on the recommendations we make to the Assembly and that there will be yet potentially some negotiation over the wording that ultimately appears in the miscellaneous statutes amendment Bill.

My suggestion would be that I'd ask for unanimous consent to withdraw the motion that's on the floor and replace it with an alternate motion which would just read: that the Standing Committee on Legislative Offices recommends to the Legislative Assembly that the Ombudsman Act be amended to permit the Ombudsman to hold an office of trust or profit, other than his office as Ombudsman, with the written consent of the Standing Committee on Legislative Offices. It seems to me that puts it in wording that's appropriate to come from a committee to the Legislative Assembly.

First, I'd ask for unanimous consent to withdraw the earlier motion that I had moved, with my intention then to move this other one which puts it in a form that I think is more appropriate.

THE CHAIRMAN: Do you all agree to allow for removal of the first motion by Gary Dickson?

MR. BRASSARD: Before we do, just so I understand, we're basically saying the same thing in different wording. So before I take this off the table, I want to make sure we aren't attempting to change what is in this, because I'm quite comfortable with the parameters of this amendment. Is that . . .

MR. DICKSON: Yes, that is my intention.

MR. BRASSARD: Without having something in front of me that I can see, feel, or touch, I would just . . . Okay. With that vision, I have no problem with it.

THE CHAIRMAN: All agreed on removal of the first motion by Gary Dickson?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

MR. DICKSON: Then, Mr. Chairman, I do move
that the Standing Committee on Legislative Offices recommends to the Legislative Assembly that the Ombudsman Act be amended to permit the Ombudsman to hold an office of trust or profit, other than his office as Ombudsman, with the written consent of the Standing Committee on Legislative Offices.

THE CHAIRMAN: You're both at the same time. I think I'll take Ken and then Frank.

MR. KOWALSKI: The wording you had is that the Ombudsman will be permitted to hold any office of trust or profit? Did you not mean they should not hold any office of trust or profit?

MR. DICKSON: Well, the motion clearly says, "to permit the Ombudsman to hold an office of trust or profit . . . with the written consent." There's a condition precedent. The condition precedent is the written consent of the Legislative Offices Committee. If the condition precedent isn't met, then the opportunity never exists.

MR. KOWALSKI: Yeah. I've got you. Okay.

MR. JOHNSON: You're putting it in positive language as opposed to negative.

MR. DICKSON: If I can, Mr. Chairman, recognizing only that when the legislation goes to be drafted, I'm going to be pressing on behalf of my caucus for the specific wording we've talked about here in the second recommendation from the Ombudsman.

THE CHAIRMAN: Okay.

8:31

MR. BRUSEKER: If I might just add a friendly amendment to that, it would be simply to allow the Ombudsman to serve as Ombudsman for Yukon for a period of – one year are we talking about here? – one year. I think that narrows the focus a little more, because as in Mr. Dickson's original motion, it could be any office, anywhere, anything. I would like to focus it on the specific task for a specific period of time.

MR. BRASSARD: The difficulty I have with that is that I find it too restrictive. I think that before any office is accepted, it must come back before this committee, and to have to revisit this Act to accommodate that every year seems to me to be very cumbersome. As long as we have, as I refer to it, this final hammer that everything

must come before this committee, who are ultimately going to be responsible anyway, then I find what is being proposed too restrictive.

THE CHAIRMAN: Any further comments? Were you actually amending it?

MR. BRUSEKER: Yeah, I'd like to add that as an amendment to Mr. Dickson's motion.

THE CHAIRMAN: Did you record that, Diane?

MRS. SHUMYLA: I have the amendment. Mr. Bruseker wanted to allow the Ombudsman to serve in Yukon for one year.

MR. BRUSEKER: Yes. That's in addition, sort of added to the end of Mr. Dickson's original motion.

THE CHAIRMAN: Okay.

MR. DICKSON: Speaking against the amendment, it seems to me that is unduly restrictive. I think we've come up with a device or at least we're looking at a proposal which allows the maximum degree of flexibility. The check and balance is reposed in this committee, and I'm comfortable with that. It seems to me we're bordering almost on requiring the consent of the whole Legislative Assembly whenever we want to address the suggestion that the Ombudsman should help out in another part of the world in appropriate circumstances. I mean, I appreciate the intention of what Mr. Bruseker's trying to do, but I think it makes it, as Mr. Brassard said, too cumbersome, too awkward, and we'd lose the flexibility we have with the main motion that's currently on the table.

THE CHAIRMAN: Any further discussion? You know, if we are going to get this through under a miscellaneous amendments statute, we do have to have some general comfort level at this table, I suspect.

MR. EVANIEW: I hate to interfere, but maybe just to address Frank's concerns, I'm wondering if there needs to be a second motion in dealing specifically with this particular contract.

THE CHAIRMAN: Yes. You see, the Speaker will be negotiating a contract with Yukon if this legislation amendment passes the Legislature.

MR. BRASSARD: But such a contract would not be part of an amendment.

THE CHAIRMAN: No.

MR. EVANIEW: No. As a matter of fact, we just jump in with the contract. I haven't been involved yet with the contract. I understand this is between Yukon and the Ombudsman's office. But they've asked us now to look at it because the Speaker of the Assembly will be signing on behalf of the Legislative Assembly Office.

I'm going through it, making changes, certainly now because of the opinion received by Mr. Johnson from the Auditor General. Rather than receiving a quarterly fee of so much, what will occur is a reimbursement of expenses, and they'll continue just submitting expenses quarterly. But as I understand, what Mr. Johnson would like to do is have a contract in place so that between now and before there is an amendment to the Ombudsman Act, he can act in an advisory position. We don't see a difficulty in that, of Mr. Johnson

going up on an as-needed basis, giving some general advice, from now until – I haven't even spoken with Mr. Johnson about this – probably June 1 when he is to take on additional duties, the condition precedent being that the Ombudsman Act is amended. So there isn't a final contract yet. I just received this early last week and have retyped it and put in my comments. But just to keep you up to date, that's what's occurring. There would be a contract signed, probably a lot earlier than June 1, to allow Mr. Johnson to do some advisory . . .

MR. JOHNSON: I'm sorry, Mr. Chairman. There's one issue that was raised by Earl that I think should be explained. On the current expenditure refund process that the Auditor General now has given an opinion on, it doesn't matter whether we submit bills for the actual event or they pay us a lump sum in advance, providing that that lump sum in advance is spent within the current fiscal year. It has to be either spent by April 1 or turned back into general revenue, just to clarify this. We tried to get away from the specifics of every time we did a photocopy having to add 5 cents on or 7 cents, whatever it cost us. Now they're going to give us a blanket sum, as long as it's used within the current fiscal year. If not, it's turned back to general revenues of the province.

MR. BRASSARD: I'd like to call the question on the amendment to the motion presented.

THE CHAIRMAN: Good. All those in favour of the amendment put forth by Frank Bruseker? Opposed? Defeated.

MR. BRASSARD: I'd now call the question on the main motion.

THE CHAIRMAN: Is everyone clear what Gary Dickson's motion said? All those in favour? Opposed? Carried.

We've talked about the contract. I don't know whether we've exhausted that discussion or not. I could pass around the memo that I got yesterday from Don Neufeld regarding the funds and how they would be handled, but you know, if there's anything else you want to explain with regards to that part of it . . .

MR. JOHNSON: This is more administrative in nature than it is specific for the committee, in my opinion, in submissions.

THE CHAIRMAN: Right.

MR. BRASSARD: I would move, if necessary, that we leave the contract and contract negotiations up to legal counsel, with the condition that it conform with the intent of the motion that has just been passed, Mr. Chairman.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. If that's in agreement, then I think we're finished. Thank you, Harley.

MR. JOHNSON: Thank you very much.

THE CHAIRMAN: I do require a motion to adjourn.

MR. BRUSEKER: So moved.

THE CHAIRMAN: All those in favour? Carried.

[The committee adjourned at 8:40 a.m.]

