

9:08 a.m.

Wednesday, October 20, 1993

[Chairman: Mr. Day]

MR. CHAIRMAN: Ladies and gentlemen, please forgive the tardy start. I'll call the meeting to order and thank everybody for being here. We'll arrange these microphones before us so that our words can be preserved for posterity. We thank the folks from *Hansard* for making this available.

Can I ask for approval of the agenda?

MR. BRASSARD: I so move, Mr. Chairman.

MR. CHAIRMAN: Okay. Thank you.

All in favour of the agenda as presented? Thank you.

Appointment of Deputy Chairman is the next item. There's no gigantic salary increase, extra vehicles, or anything that goes with that, but it seems to be appropriate that someone is in that place.

Do we have a motion? Okay. Bonnie's hand and then Frank's.

MRS. LAING: I move that Halvar Jonson be the deputy chairman. He was on the previous Parliamentary Reform Committee and I feel would bring some continuity and experience to the position.

MR. CHAIRMAN: Okay. A motion on the table from Bonnie Laing for that discussion. Hearing or seeing no discussion, I'll call for the question. All in favour of Halvar Jonson as deputy? Opposed, if any? Halvar is opposed. You're voting against? Is it a matter of if nominated, I will not run?

MR. JONSON: Just a little levity early in the morning.

MR. CHAIRMAN: If nominated, I will not run; if elected, I will not serve.

So you will receive that endorsement, then, Halvar?

MR. JONSON: Thank you.

MR. CHAIRMAN: We appreciate that. Let the record show, then, that Halvar Jonson has been appointed deputy chairman.

You had a chance to look at the draft budget estimates. Any discussion on the budget? We've tried to make it lean and mean, which I know is what everybody's looking for, so it's I think fairly bare bones there. Grant.

MR. MITCHELL: Mr. Chairman, I'm a little concerned about the designation of five out-of-session meetings. What that does is limit this process at best to the three issues that were presented it by the Legislative Assembly, although my understanding was that those three issues aren't exhaustible and that we could consider other things. In fact, we have a number of other reform issues that we believe are of importance and require consideration, so I don't know how you want to address that. In a sense, the moment we approve this budget, we are saying a great deal about the mandate of this committee; i.e., its limits.

MR. CHAIRMAN: I appreciate what you're saying about other items. I know there's a desire, too, from all members to be looking at some of the bigger elements of reform.

Any other comments on this? Okay. Halvar and Gary.

MR. JONSON: I think, though, in looking at it in terms of the time that we're at in the fiscal year, Mr. Chairman - we're in

session; we're likely to be here for a few days yet. When you consider the period over Christmas and then the busy time that we'll also have in the new year, I think we will be doing well to be able to sit down for five out-of-session meetings and continue with the business before the end of this fiscal year. We can at a future date consider what we would want to put in by way of plans for next year, but I think we're going to be strapped to find the time in our busy schedules and get down to the work for five meetings in addition to those in session.

MR. MITCHELL: Yeah, I can certainly accept that. What I think you're clarifying and I think the Chairman did as well and what's really important to us is that this group can go beyond the three issues that were outlined: sub justice, minority reports, and the Public Accounts Committee.

MR. CHAIRMAN: Yeah, that feeling is there. I'm actually looking forward, as I think all members are, to some great strides in terms of reform, ways that we can all see things working better. So I think with that intent stated and recorded, we can proceed. I appreciate your raising it, Grant.

Okay. Could we have approval, then, for the draft budget as presented?

MRS. HEWES: I'll move the budget, Mr. Chairman.

MR. CHAIRMAN: Moved by Bettie. All in favour? Opposed, if any? Thank you.

Sub justice rule. The challenge is always before us to just get all the reading done that we need to do on everything that comes before us. I'm assuming that we've had some opportunity to do that, and I'm prepared to open discussion on item 5. There is a requirement for us, as you know, in our mandate to present a recommendation of some sort to the Legislature by November 1 and then the 15th and December 1, I believe, respectively with points 5, 6, and 7. Having said that, can we open discussion on point 5?

MRS. HEWES: Mr. Chairman, just a general question. In the last committee we had a great many submissions. The new members of the committee haven't had a look at those, as I understand it. I was trying to recall, and flipped through them yesterday, whether or not many of those dealt with some of these items. Most of them, as I recall, dealt with the items that were in the ad, but I think it would be worthwhile if we reviewed those submissions, brought forward the items that had been commented on by our publics that we haven't yet dealt with through our House leaders. There were quite a few very good ideas in those.

DR. McNEIL: I believe the previous committee identified something like 35 issues upon which there was some information developed. They had 8 priority issues on which we did an amount of research. As well, we had all the submissions. I think there are 110 submissions that are still there. My interpretation of the mandate of this committee would be after dealing with the three specific issues that were identified, that would probably be the point at which you'd go back and look at the previous information that's available.

MRS. HEWES: My point, Mr. Chairman, is that some of those submissions may have dealt with some of these three things. Many of the items have now been put in our Standing Orders and so on, so we can ignore them, so to speak. I think it would be worth our while to review those and perhaps even get back in

touch with some of the people who submitted to us. I would hate to think that a lot of people in the general public believed that this committee was going to create reform and that we're ignoring their ideas.

MR. CHAIRMAN: Okay. Halvar, can you remember: were there some dealing with these three here?

MR. JONSON: Well, Mr. Chairman, I did take it upon myself after the – I won't say demise – hiatus as far as the previous committee was concerned to look through the submissions and sort of compile my own summary. I think we should double-check perhaps, but the sub judice issue did not figure prominently at all in the public submissions that came in. I don't know if David has had a chance to assess that.

DR. McNEIL: I would agree. I didn't go through them in detail, but sub judice, to my recollection, was not a part of any of those submissions.

MR. JONSON: Certainly not specifically. Maybe you could draw something out in a general sense, but it was way, way down in terms of prominence. I don't think those submissions would help us on this particular issue, others certainly but not on this one.

MR. CHAIRMAN: Then if it's agreeable, we'll move along with the discussion here. Bettie's remarks are valid in terms of we should be familiar, and before our next meeting we'll have something for everyone, if they don't have it now, so we can be familiar with what the public has put in. We need to be guided by that clearly.

Gary.

MR. FRIEDEL: Just for clarification on that, though, that wouldn't presume that we would carry over with issues that the previous committee dealt with. I'd like to think we're a committee with our own concerns. If there are issues that were raised previously that have significance, that's okay, but I don't think we should consider those as priorities on an agenda.

MR. MITCHELL: I don't disagree entirely with the sentiment of that. We are a body with our own mandate and so on. But I don't want to disregard, as Bettie has emphasized, what has gone before. If we did emphasize what the member is talking about, then it seems to me it puts even a greater onus on the need for yet another round of public hearings. Clearly reform is a grass-roots issue that many, many people in Alberta are concerned about. While we're all busy, it seems to me that if we're launching off yet again to recreate, we've got lots of new issues we'd like to see dealt with. We do have a concern that the way the original public hearings were structured was somewhat limited to a certain set of issues that were outlined in the ads. You could see that the submissions were really focused on those particular issues. This does raise again the issue of public hearings and how we would approach the public of Alberta.

MR. FRIEDEL: Well, I have no problems with it for information, to be aware of those things, particularly those of us who were not here before, as long as they're not put on the agenda as priority items.

MR. CHAIRMAN: I think what we're hearing is a dual sensitivity. We can probably all acknowledge that this committee will have its own identity, but clearly when the public has spoken on

an issue, they've spoken on it, and we have to take that into consideration. So I think there's a balance that we strive for there. Clint.

MR. DUNFORD: Well, I see a chain link developing here that I'm not quite so sure about. To use a visual analogy, I think it's two boxcars perhaps and that we have a boxcar to deal with which is the motion as I understand it and to get those out of the road. Then the recommendation coming from here might be then to extend things and get involved in public hearings and that type of thing. I would certainly encourage that approach. I'm just not sure as I sit and listen that one follows directly from the other. I think there has to be something happening between that.

MR. BRUSEKER: Part 2 of the motion says that we'll "consider the current functioning status of the Assembly and review ways of making it more responsive." The first part of the motion talks about three very specific items, but then part 2 really I think throws the door open for us to discuss both old issues that have been on the table before and new issues that we would like to have on the table. So I think we do have the flexibility.

MR. DUNFORD: Where are you reading from?

MR. CHAIRMAN: In the initial motion there, Clint, it does talk about these three items. We need to deal with them, and then it opens up.

MRS. HEWES: Mr. Chairman, I'm okay with that, and I appreciate the comments we argue in committee. But the last committee just kind of came to an abrupt end. We had gone to the public. We had invited submissions. I think many of those were dealt with at the beginning of this session, and I'm grateful for that. But if I were a member of the public from the town of Mundare who'd put in half a dozen or more ideas, I would not want to think they were simply trashed because the committee ended. I think there were some good ideas, and we should give credit to them.

MR. FRIEDEL: Just on that point again, I agree that there was probably valuable input, but as a new member of the committee who wasn't involved in the hearings or the submissions, I don't think it's fair to myself or other new members to have to vote or to make recommendations because we wouldn't have that background.

9:18

DR. McNEIL: It might be useful just to understand what happened with the previous committee, the point that they reached. There were I think 34 or 35 issues identified, and then there was a priority put on about eight issues. The staff did some research on each of those eight issues, and at the same time there was advertising placed in the papers for submissions. There were 110 submissions put into the committee, and I don't think the committee ever dealt specifically with any of those submissions. So right now all there is is the data that was developed on these eight topics that the committee gave priority to plus the 110 submissions, and that's all that's there in terms of information. There were really no particular decisions or recommendations that that committee made. So that's where the situation is at with respect to the previous committee.

MRS. KAMUCHIK: If I may add, there were no public hearings held either. Although that idea was considered, it still didn't happen. Input from the public was invited through the ad on these

eight major topics, although the ad did say it did not restrict people to submit only on those eight topics. Those were the 110 submissions that were received. So there may be other issues out there in those submissions that were also addressed.

MR. FRIEDEL: I have no problems with that, then, as long as it's just information.

MR. JONSON: Mr. Chairman, first of all, we clearly have three items to deal with and we have deadlines pursuant to those, so I think that has to be our first priority. Perhaps for those of us who were on the committee before and the new members we could request that we receive a summary report on the previous submissions, and I'd like to see two parts to it. One, I would like to see what I would refer to as a progress report. In other words, we have as an Assembly acted to a very significant degree on a number of the issues that were before the previous committee, so I think we need a progress report. Then we also need to see what's left over and what those submissions said about those, and then we can go from there as a new committee.

MR. CHAIRMAN: Are members comfortable with that request for information?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Okay. David, could that be attended to? Thank you.

Okay. Then proceeding on sub judice, we'll open discussion on this. Frank. I'm hearing no discussion.

MR. BRUSEKER: I guess it's such a difficult issue that I'm not quite sure where to begin with it. I flipped immediately to section 3 entitled "Problems," and I guess the question that in my understanding is really the crux of the issue is: how does the Chair become sufficiently informed to make a determination as to whether or not a matter is sub judice? Because I think that's really where the issue lies. The Chair has to be aware of the problem or if there is indeed a problem, and then the other issue is simply knowing if it's in a court process of some type.

Then I think the other issue is the whole matter of pending. Is it actually a court case that's actively going on now or in the imminent future, within a day or two, or is it a statement that has been filed and this could go on for 10, 15 years, as some court cases do? Those are the difficult areas. So I thought I would try to start with a question and say: is there any way of this Legislature, this House getting a listing or a docket of court cases that are occurring at least in the province of Alberta?

MR. CHAIRMAN: Could I make a comment? I usually make a bold assumption that we have opportunity to read, but I also recognize the incredible time constraints we're under. So I wonder at this point and given Frank's question if we can have Frank give us an overview not just of what's here but what isn't here.

Would that be helpful, Frank?

MR. BRUSEKER: Sure.

MR. WORK: I'll try to cover those things, but I'll make it brief. The rule in some form exists almost in every parliamentary jurisdiction. The basic idea of the rule is that it is possible for the Legislature in the course of their deliberations to prejudice to a significant extent a case that is before the courts. The greatest

potential for harm is probably in criminal situations obviously, for example, the 17 year old who killed the police officer in Calgary that's coming for trial. In fact, there's an application to boot him up to adult court. Now, clearly a debate on that specific case could be quite prejudicial to the young man. You have to keep in mind that this is the Legislative Assembly, and it does carry a lot of weight. What's reported from here does influence people. The basic rationale for the rule is to avoid that situation. Criminal proceedings are probably the clearest example of potential for harm. As you move away from that into civil proceedings, obviously you start getting into some very gray areas, and that's a question that a lot of Assemblies have wrestled with.

9:28

Our standing order, which is set out in the material – and this goes to Mr. Bruseker's question to some extent. If you get a chance at some point to look at the other standing orders that are there, ours is fairly broad. Okay? Ours says "pending in a court." Now, some jurisdictions – British Columbia, I believe – have narrowed that somewhat. They've said: set down for trial. As Mr. Bruseker said, it is possible for a lawsuit, a civil lawsuit in particular, to drag on for quite a while with all the procedural things that happen. Some jurisdictions have narrowed that and said: we won't consider it sub until it's been set down for trial. Ours does say "pending," and I have a law dictionary definition of "pending," if anyone's interested.

The other reason for the rule that you might want to bear in mind is that in parliamentary jurisdictions in Canada we don't have a clear separation of powers like they do in the United States, where the courts are quite distinct and constitutionally separate and the executive is distinct and separate and the Legislature is distinct and separate. Because we don't have that clear separation, it more or less comes down to agreement that the various players will try not to tread on each other's toes, and the sub judice rule, as well as protecting against prejudice, is a way of the parliament respecting the right of the courts to do their job. That's the other aspect of it.

Now, referring back to our standing order, you'll note that it is again broad. The first part says "pending in a court," and the second part says "that is before any quasi-judicial, administrative or investigative body constituted by the Assembly." Again, that's a little broader than some places have used. Some places have used the term "court of record" – okay? – in place of that. What that would mean is – I wrote a bunch of them down for Alberta. A court of record would be like an inquiry set up under the inquiries Act, where the commissioners have powers in court of record, Labour Relations Board arbitrations, binding arbitration situations, Planning Board situations. Those would be courts of record, and that is possibly a little more restrictive than what we have now.

The next point in terms of the enforcement of the rule – and this goes again to what Mr. Bruseker asked. Because there are so many courts now, so many courts of record, so many judicial and quasi-judicial bodies, it is virtually impossible to have from any one source a list of cases pending. I know Mr. Germain would have a lot of experience with this as well. He may want to say something. I mean, Queen's Bench has a tremendous docket of cases happening. A lot of them never come to trial. Provincial Court is overwhelmed these days, and then you get into the quasi-judicial bodies. It's probably impossible to keep an ongoing, up-to-date listing of what's happening in front of all those bodies.

The way it's had to work in places like, for example, Ottawa is that it works sort of like a point of order, and everyone is more or less expected to enforce the sub judice rule. If someone asks a

question and a minister or another member is aware of a case, then they would raise it sort of like a point of order. "Mr. Speaker, there's a case pending on this." In *Beauchesne* the onus is placed on the person who proposes the question, if he or she is aware, to exercise restraint in how the question's worded, and the onus is placed on the person answering the question, if they're aware, to say, "Well, I don't feel I should answer because there is a case." Then like any other point of order it's up to the Speaker. Don't forget now, looking back at our standing order, that the test is: "where any person may be prejudiced in such matter." It's not just enough that the thing is before the court; there has to be a possibility of prejudice there. It's usually held that the Speaker is the final arbiter of that. While everyone tries to keep up on what's happening and what may be before the courts, you pretty well have to use the collective knowledge of the Assembly to enforce that, and then the Speaker makes the final judgment.

MR. CHAIRMAN: Okay. Thanks, Frank.
I have Roy and Gary.

MR. BRASSARD: Well, just briefly, in taking up what Frank said, it seems that there are two very distinct issues before us. One is criminal and one is civil. In B.C. the distinction is made very clearly that they are different. In Ontario they refer to almost any matter that is pending or before a court with a judge for a judicial determination or a quasi-judicial body. I guess where I'm coming from, the more I read this, is the level of prejudice that is brought to the issue, and that's really what the question is. Who knows the ramification of unjustly influencing a civil suit? If something that is said in the Legislature prejudices my case that I feel very strongly about and I end up killing myself, it's just as valid as if we were dealing with a civil matter. I think it rests solely on the level of prejudice that is brought to the Legislature that has to be determined. I don't know how the Speaker in this case would judge that level of prejudice. I suppose he'd have to rely on his assistants. If we start picking and choosing what we are going to allow as sub judice rulings without determining just what level of prejudice is brought to that determination, then I think we're spinning our wheels.

I'm not uncomfortable with the way it is, but I would like some indication of the level of prejudice that would influence unjustly a matter before the courts. That's a judgmental thing on behalf of the Speaker.

MR. CHAIRMAN: Gary.

MR. FRIEDEL: Yeah. I'm, I guess, concerned about some of the things that would make the definitions fuzzy, and I have one right off the bat. As a matter of fact, the report we have before us says that "it is not clear when a matter is 'pending'." Is there a physical act that makes a situation pending before a court? Does something actually happen before a judge?

MR. WORK: Well, I had a legal definition of "pending." I suppose it's pending as soon as pleadings are filed, as soon as someone issues a statement of claim in the very broadest sense. Again, a lot of people issue statements of claim, especially in civil actions, for a lot of reasons. I keep glancing at Mr. Germain, who I know is a litigator.

MR. CHAIRMAN: Are you allowed to call him that publicly?

MR. WORK: Well, he might not want me to. You litigator, you.

Sometimes people will file a statement of claim simply to preserve a position, never really intending to press on with a suit. In the broadest sense it's pending, I suppose, as soon as that's been filed with a clerk of the court.

MR. CHAIRMAN: Does that help with that definition, Gary?
9:38

MR. FRIEDEL: It takes a little bit of the fuzziness off it, I guess.

MR. CHAIRMAN: Grant.

MR. MITCHELL: I agree with Roy that clearly the level of prejudice is always going to be a factor. I think the only way to deal with that is to leave it to the Speaker's judgment.

I agree with Gary's concern with fuzziness of definition, and I would argue that Alberta's is perhaps one of the fuzziest and that there are definitions used elsewhere in the country that are considerably more specific without limiting the area of judgment that's left to the Speaker.

One of the things that I find particularly appealing – this is in Canada in particular – in the House of Commons and the United Kingdom and British Columbia, for example, is the distinction between criminal and civil, because I think it starts to address the issue of pending in a way that gives some guidance to the Speaker. The sub judice question, I would argue, should arise at the point that the charges are laid, although that doesn't mean that no question could be asked. That's when you get into level of prejudice and the Speaker's consideration of that. It distinguishes that from civil matters, which I think are more subject to an early invoking of pending. That is to say that one side in an issue could easily submit a statement of claim without ever considering taking it to court simply to stymie what could be talked about in the Legislature. You can imagine that in any number of issues, the Gainers' issues for example.

What I'm saying is that I would like to see criminal and civil split. I think one of the fundamental principles upon which all of this deliberation has to be based is the discretion of the Speaker, which comes with the ability for the Legislature to advise and recommend and debate not with the Speaker but before the Speaker some of the ramifications on a given issue. Then within the distinction between criminal and civil we should be able to specify the point at which a harder look for sub judice is required: charges being laid in the one case and some step along the way in a civil case. A possibility, for example, on that would be that a trial is actually laid down, but maybe that's even too restrictive.

MR. WORK: Well, certainly British Columbia uses the latter to set down for trial in civil matters.

MR. CHAIRMAN: I had Halvar and Bettie.

MR. JONSON: Since reference, Mr. Chairman, has been made to the House of Commons, I'm assuming it is quite clear with respect to criminal cases. In the summary that is here it says, "In civil cases the convention . . ." – I assume going back to the one on criminal cases – ". . . does not apply until the [case] has reached trial stage." In the case of the House of Commons it seems to me that there have been some rulings – perhaps it's case by case – by the Speaker on civil cases where he has restricted the debate quite severely. Do we have any further information on that?

MR. WORK: Yeah. Actually, there are some passages from *Beauchesne* that are in the materials, about two pages from the

very end of the materials there. Most of these are various rulings – it's referenced to *Beauchesne* at the very top – starting with 505 through 511 or so, and those were all rulings of the various Speakers in the House of Commons.

DR. McNEIL: Mr. Chairman, just in terms of that question, I think you have to get into individual rulings. In 507 the individual rulings would be a function of the Speaker's judgment as to whether or not a particular case is prejudiced in a civil case. The necessary condition is that the case is set down for trial, but that's not a sufficient condition in terms of whether or not the situation would be prejudiced by a discussion in the House. Individual cases would deal with that issue of discretion and what criteria did the Speaker make judgments upon in terms of that discretion. We could research some of those cases, if you will.

MR. JONSON: I guess that's my point, though, Mr. Chairman. That is that we may be able to improve the parameters with respect to the sub judice rule, but I think we also have to acknowledge that by the very nature of what we're dealing with here it has to be accepted that the Speaker will have to rule in that particular individual's best judgment. That's a reality that's there. We can work to improve, but we cannot find an ideal where everything is defined on something like this. There's going to have to be that judgment of the Speaker. Otherwise, I guess you wouldn't need him.

MR. WORK: Mr. Chairman, if I may. We do have an article on the sub judice convention in the Canadian House of Commons. It's from 1976. It's not terribly long, if the committee would like copies of that made.

MR. CHAIRMAN: That would be helpful. I'm just kind of keeping a running note – and I know Dr. McNeil is too – on some of these items that are coming up in terms of requests for information. That would be helpful also.

Bettie.

MRS. HEWES: B.C. seems to have the most clearly defined regulations in the list here of what the various provinces and territories do. I haven't been able to find out when they put that into practise. Do we have any information from B.C. or any other province, Mr. Chairman, Frank, any evaluation or assessment of how well it works?

DR. McNEIL: Yeah. I did the research in B.C., and that material is really summarized from a book called *Parliamentary Practice in British Columbia*, which was written by the present Clerk. They are using the British House of Commons rules, fundamentally. My discussion with him indicated that they don't have a particular difficulty in dealing with the sub judice convention in their case, because it's not written as a rule in their Standing Orders. In following the guidelines in that book and the British rules, it comes down to discretion of the Speaker. Once all those other hurdles have been passed, as to is it at trial in the case of a civil case, then it's the Speaker's judgment, if somebody raises a point of order, on whether or not something's sub judice.

MRS. HEWES: But it appears to be working reasonably well then?

DR. McNEIL: Yes. When I discussed it with the Clerk, he expressed no concerns about its application there.

MRS. HEWES: On the same note, Mr. Chairman, from other provinces do we have any hard data on their practice and what it's revealed, whether they have incurred difficulties in Speakers' judgments? We don't have any?

DR. McNEIL: Well, as I said, I didn't speak to any of the Speakers, but a number of jurisdictions for the most part try to leave it up to the House. If somebody, either the member asking the question or, typically, the minister responding to the question – if that minister indicates the issue is sub judice and the member wants to raise a point of order on that, then it's up to the Speaker to decide. In a lot of instances they defer to the minister, and if the minister is indicating that it's sub judice, then they leave it at that.

MR. CHAIRMAN: Grant was next, but before going on, for the purpose of clarification, Gary's raised the question in terms of fuzziness. I don't know if that's a legal term. Under B.C. you've got: "Civil Matter – from time matter set down for trial." So could I get clarification, just as we move on, since one member has voiced something on the B.C. model. If I say to Bettie, "I am going to sue you," and in fact file some kind of application, is that setting it down for trial or is that not setting it down for trial? That's filing?

9:48

MR. WORK: No, that's just filing. There are any number of steps that could happen before a trial date is actually set. Normally in a civil case you file your pleadings, you do discovery of documents, where the two sides trade documents. That process can result in certain court applications if one party doesn't turn over documents that the other party thinks they should. There could be an application to the court on that. So it's still not down for trial, but it is before a judge. Then there would be examinations for discovery, where the sides interrogate each other. There could be court applications arise out of that process: so and so won't answer a question, and they appeal to the master in chambers. There could be any number of procedural motions made in the interim, and then finally it would actually get set down for trial. There could be a lot of activity before a firm trial date is actually struck with the court, where you know that on this day a judge is going to become possessed of the matter.

MR. CHAIRMAN: So all those items you just described, then, would go under pending?

MR. WORK: Well, arguably in our rule they would all be pending. Yeah. Actually, since you raise it, the *Black's Law Dictionary* definition of pending is: "an action or suit is 'pending' from its inception until the rendition of final judgment." That's quite broad, because from the time you take out a statement of claim until the court has finally ruled on it is quite broad.

MR. CHAIRMAN: Okay. Thanks for that clarification and information.

Grant.

MR. MITCHELL: I think the B.C. model has quite a bit to recommend, provided that it's in the context of: at every stage the Speaker having the prerogative of exercising judgment. Because even once a trial is set, for example, in a civil case, there are certainly all kinds of questions, all kinds of debate that could go on around that issue that wouldn't prejudice the case. One of the really critical elements of the B.C. model, I think, answers one of

the problem questions that's raised in our briefing, which is: when in doubt, which way do you rule? B.C. says, "Where there is doubt, the Speaker should rule in favour of the debate and against the sub judice convention." I think that's a very important element of whatever definition we would come to, making your job that much more important, Stan.

MR. JONSON: Mr. Chairman, I certainly don't want to take the discussion off topic, but I was just wanting to suggest that we have these three key issues. What I would like to see us do is to make sure that we have time today to go through the three of them and identify any additional information that we need on those issues, because we are running on time lines, so that when we come back to them, we can move ahead to some type of recommendations, decisions. I just make that suggestion now lest we didn't get to 5 and 6.

MR. CHAIRMAN: Right. I appreciate that suggestion. As a matter of fact, before your hand went up, I had sensed that the discussion was winding down a bit. There's been a request for some additional information, so I'm wondering if we can get that to our members before the next meeting without it having to go through a formalized process of a motion. There's been a suggestion from Grant Mitchell that there's some favouritism, at least on his part and maybe others', on the B.C. approach, so if we can just make a mental note of that and give consideration to the information that'll be coming to us over the next few days before our next meeting. I think we've gotten some questions answered on the sub judice at this point and maybe can come to a decision. Also, I'm acknowledging that, representing our various caucuses, there might be some discussion wanted there, too, and brought our way before we come back.

So if people are comfortable with that, we'll move to the next item, which is Feasibility of Minority Reports. Would you like a quick rundown from Frank on this one also? Seeing overwhelming approval for that, do you want to give us a . . .

Our Sergeant-at-Arms had asked a question: are these meetings public? Everything's in *Hansard*. Is there any difficulty with that? Because we're all-party, there always is somebody outside the door here. He just wanted to make sure that if somebody came wandering through and wanted to sit in on this exhilarating session, there wouldn't be a problem here. Okay.

MR. WORK: I'll say a couple of things, and then I may defer to Dr. McNeil or Mrs. Kamuchik, who did most of the compilation of this.

The philosophical question I would suggest you keep in mind in this area relates to how clear and how unequivocal you wish the decisions to be, particularly of committees, obviously, because that's when it will primarily apply. In terms of dynamics in a committee, there is a case for saying that when the committee has to reach a consensus, it puts an added onus on the committee members to strive for a consensus. I guess in a sense you could say that's part of the parliamentary process. The idea of compromise, debate, finely tuning things so you can reach as broad a consensus as possible is to some extent the essence of parliamentary democracy. So there is a school of thought that says that when there's no minority report allowed, when the committee has to make one report, there is more pressure put on the members to reach this consensus. There is another school of thought which says that can lead to a tyranny of the majority over the minority in that, you know, it is possible for the majority on the committee to just enforce their view, and the minority report gives the

opportunity for the other side to be heard. I guess those are the two opposing philosophical schools of thought that operate on this.

The other philosophical issue is: what exactly does a minority report do in terms of the larger picture? When a committee reports back to the Assembly, it's usually because the Assembly is looking for some advice, some information, or some recommendations from the committee. Now, what would you have the Assembly do with a minority report? How does that relate to the advice that the Assembly is being given? Is it simply a way for the minority in the committee to have their say, or does it have a role in the ensuing larger debate in the Assembly? If it doesn't have a role per se, then I suppose one could question its usefulness. Since the same members who are on the committee obviously can raise the same issues in the overall debate in the Assembly as a whole, do you need the minority report there? Again, the countervailing argument to that is that the minority, having argued a position in committee, should be allowed to put their position before the House.

So those are the philosophical issues. I won't go into the specific cases because I didn't compile the material you have before you.

MR. BRASSARD: I see quite a difference, obviously, between a minority report and a dissenting opinion, and I really don't have as much difficulty with one as I do with the other. I do believe that a minority report gives a person a platform, an opportunity to be a hero to a specific group of people while not losing the day, so to speak. I can sit in this room, file a minority report, and appeal to a number of people yet know that the rest of the people in this room are going to carry the day anyway, and I can go along it. So I get the best of two worlds, and I don't see that that's the purpose of most of the reports from committees. I think they are there to reach consensus.

However, if I do have philosophical or moral or whatever differences with the report, I should be able to express that in some way. So I see an addendum, something attached to allow me a dissenting opinion on a specific part of that report, as valid. I see a distinction between the two, and whereas I oppose minority reports, I don't have any difficulty with a dissenting opinion on a specific part of that report.

9:58

MR. CHAIRMAN: Adam and Clint.

MR. GERMAIN: I subscribe to the school that it's easier to understand something if you have the two points of view. If there is a dichotomy of views, if they're both expressed, then you have them on both sides of the spectrum. It seems to me that in this so-called era of openness, allowing minority reports would add to the integrity of the committee structure and would add to the fullness of the report back of the debate. I would like to see us go forward with committee reports, with two provisos though. One is that the subject matter of the minority report would have to have been debated or raised at the committee so that someone can't sit in the weeds and then come forward with their minority report out of the blue, as it were. Secondly, there would have to have been a notice of that desire to write a minority report given before the committee finished any formal trappings that it had to see if there could be some movement towards a central position. Recognizing that what happens to these reports, as I understand it, is that they end up getting filed, read, and then a further debate on them, it seems to me that having both points of view would be very helpful, and it would be helpful for all of our members.

MR. CHAIRMAN: Thanks, Adam.
Clint, then Gary.

MR. DUNFORD: Well, I kind of look at it from where Roy is coming from but in the other context of the two-edged sword. I'm concerned about the tyranny of the majority, and rather than seeing the hero that Roy described, I'd see it the other way. I would see that the majority would come into a room with a position and would stand steadfastly to that position and tell the minority, "If you don't like it, write your minority report." I guess I'm a victim of my experience, and that is in labour relations. I made a lot of money because of employers saying, "If you don't like it, grieve the damn thing," and of course it would end up in arbitration and stuff like that. I kind of like what I heard Adam say, but I guess I'm sitting here feeling that I'm not sure a minority report gets away from that tyranny of the majority.

MR. CHAIRMAN: I've got Gary and Bonnie. Halvar, did you have your hand up?

MR. JONSON: I just have a comment when it's my turn.

MR. CHAIRMAN: Go ahead, Gary.

MR. FRIEDEL: I think by the very nature of our Legislature we start out in an adversarial kind of position. I think we could almost make the point that in a lot of these all-party committees you could literally design your report without ever sitting down to a meeting if you're going to be too open with the minority report situation. By the same token, I think we can also set rules that are so restrictive that there is no point in going to the meetings, and I think we have to be careful that we allow a certain amount of flexibility and discretion to the committee. I think we also have to recognize that there are different approaches to different topics. You know, some of the committees can in very short order become fairly co-operative and come up with something productive, and there are other issues that we likely never will come to consensus on because of the type of issue.

I agree with what Roy said about the dissenting opinion. The New Brunswick model is fairly interesting in that it does allow the committee the discretion to deal with that, that a committee that is working fairly well together could have a dissenting report. I do have concerns about the full minority report because - I guess it's part of the basic concept - there seems to be less onus on the committee, then, to work toward a common purpose.

MR. CHAIRMAN: Okay.
Bonnie.

MRS. LAING: Thank you, Mr. Chairman. I agree quite a bit with what Gary's saying. When we do ask a committee to study an issue, we're expecting to have a decision come back. Again, you have to have compromise. You have to work together. You have to give a little, get a little to reach that kind of common goal. But if there's a minority report hanging out there, where's the onus on you to try and reach that accommodation? I mean, that could be an escape hatch if the committee says, "Well, if we can't get together, then we'll just do our own minority report." I'm thinking of a situation where we actually had five minority reports filed, which didn't help anyone, and another venue had to be taken to achieve the results.

So I really would like to see that the minority report not be allowed in full force but again allow notice of dissenting view or a little postscript or whatever to the report indicating that on some

issues certain individuals had a problem reaching that consensus. That gives accommodation for the opposing view but still, I think, is putting the onus on the committee to reach the compromise or the decision that we're asking them to do.

MR. CHAIRMAN: Thanks, Bonnie.
We've got Halvar and Grant.

MR. JONSON: Mr. Chairman, I see this somewhat in two categories, dealing, first of all, with legislative committees such as the one we're sitting on right now. In this particular case the Legislative Assembly creates a committee of itself. Therefore, there must be some purpose in doing that, and that is that the Assembly wants the benefit of members of all parties getting together and coming to a recommendation to bring back to the full Assembly. Now, if the purpose of the Assembly's motion is as I think it is, to get a set of recommendations, one set of recommendations, for the whole Assembly to consider, that seems to me logical. But if you go to the trouble of bringing people of all parties together to work on a project, and then once the project is done the potential is there just to go back to your lines that you were on before, why do it? Why not just debate it in the Assembly and come to a decision?

I see it somewhat differently though, Mr. Chairman, when the Assembly appoints another group of people outside of its own membership to some task. There I can see the need for dissenting opinions and minority reports. But when it comes to all-party committees such as this one, the purpose must fundamentally be, I think, to come together to discuss, to come up with recommendations. If we're not committed to doing that when we start the exercise, why bother? Because then we can always go back and debate it in the Assembly where we can line up in our categories or free votes or whatever it is.

MR. CHAIRMAN: Grant, Frank.

MR. MITCHELL: If there is cynicism about the political process on the part of many Albertans - and I think we would all agree that there is - a large contributor to that cynicism is a feeling on the part of people in this province that they aren't heard in institutions like this, this being perhaps one of the most important institutions in which they should be heard. So if we put a committee report in that context, what we have to understand is that we're not just speaking for ourselves; we're speaking for many, many Albertans. That significance is enhanced by virtue of the fact that we don't structure committees on unimportant issues; we structure committees on particularly important issues, on issues that Albertans particularly want to be heard. So if we allow a subcommittee or a committee to explore an issue and then only report on it one given view that's been expressed by Albertans or sensed by politicians about what Albertans believe, we are really slamming the doors on in many cases a huge portion of Albertans, on their views. That I think is a travesty, and that contributes to the cynicism and limits what it is that we can in fact do as a committee.

10:08

Let me give you an example. I'll use one that's federal so it's not as sensitive perhaps, the GST. Say the government had gone out and done a hearing on the GST. Well, there was clearly not a majority of Canadians in support of the GST. So if you had done a report on that that excluded the expression in some detail of dissenting views, then you would really have done a disservice to Canadians, to Albertans, and to the people who ultimately in the

Parliament had to make that decision, because they wouldn't have been able to see the detailed debate in the various sides. The dissenting opinion idea I think diminishes and debases that whole idea of other people with other views because what it does is it puts the dissenter only in the role of being negative: "I disagree." It doesn't allow a dissenter representing a good chunk of a society, maybe 49 percent of a society, to say, "This is a legitimate view, that 49 percent." It isn't just a negative view, and it isn't motivated just by negative thoughts. It is motivated by positive concern for this province or this society in some way. I think therefore it isn't unreasonable. It's maybe uncomfortable, but it certainly isn't unreasonable. In fact, it's quite reasonable and I think quite necessary to have the ability to present an open, somewhat extensive minority report.

MR. BRUSEKER: I really like the idea of a committee reaching consensus. However, that's not necessarily reality. I think we have to have a mechanism that allows other opinions to come forward, and I think that mechanism has to be more than simply a footnote someplace that says, "Oh, by the way, we didn't have unanimous agreement on it." I mean, in any body whenever you get three people together it's very rare you're going to get unanimous agreement on anything. Of course, the bigger the committee, the more likely you're going to have someone dissenting somewhere along the way. So just a footnote that there was some dissension I don't think does it. I think it has to be broader. Whether you call it a minority report or whatever you want to call, that I don't think really matters. I think the issue has to be that somewhere within the report that is published – if the document is 100 pages long, there has to be a place at the end to append five or 10 pages and say, "Here are the differing viewpoints and the issues." Whether you call it dissenting opinion or whether you call it minority report is irrelevant, in my opinion. I think there has to be an allowance.

Adam's point that if you have a dissenting viewpoint, you have to give notice to the balance of the committee that you want to give a dissenting report or a minority report or whatever you want to call it: I think notice should be given just by way of courtesy. I think it should be published with the original report, and I think it should all be presented as a package so that people can see both sides of the viewpoint.

Going back to my opening comment about consensus, I think that is the ideal, and I think that's the way we would like to think that committees will work. I think back to, of course, the one that I personally have been the most familiar with, and Stockwell because we spent so much time on it, the boundary issue. Goodness knows we spent enough hours and days debating it. We just weren't going to receive consensus. I think that is a fair comment. What finally happened in that is that a motion was put forward one day and was voted upon and passed. That's how the issue was ultimately resolved, at least to bring it into the Legislature. At that time we had no mechanism for a minority report, and I felt that was a flaw in the process. I felt that there should have been some way to put forward a statement, more than just one or two lines – I'm talking five pages, perhaps, on a 100-page report or whatever it was we had – stating: here are the concerns of opposing members. I think we have to have some kind of vehicle within the report that's produced to recognize that sometimes we just won't get that consensus as much as we may strive for it.

MR. JONSON: Just a couple of points on this. Mr. Chairman, I think we should not confuse the issue of listening to and recording the nature of representation from the public to a committee with what members of the committee want to do in terms of making

recommendations. In all of the parliamentary type committee reports with which I am familiar, the dissenting views that might not be completely captured in the recommendations of the public are well acknowledged and recorded, whether it is in the report itself or in the record that is kept of the meeting's deliberations. If there's a way of improving the way that we catch or report what the public says in a truly democratic sense, an open sense, I think that should be looked at. What we're talking about when we talk about minority reports is that in addition to recording your opposition in debate in *Hansard*, and in voting against it, I guess, if there are recorded votes, we're talking about another dissenting stand-alone statement on the work that the committee has done. I don't think we should confuse the ability of a committee to listen openly and to report the diversity of opinion that they've heard versus what some members of a committee may choose to put forward as the recommendations as a minority to what the majority decided.

MR. BRASSARD: Well, Halvar said much of what I wanted to say. The purpose of putting an issue to a committee generally is to arrive at some resolution or consensus in some form. I would submit that a good report will indeed carry both sides of the issue in the body of the report. I think that would satisfy the issues that Adam expressed.

I do believe that the purpose of the committee is to solidify, to condense all of the issues into a report that presents all sides of the issue, and the final analysis or bottom line will be a consensus of the entire committee. I think we've had experience not that long ago where we had a report by a five-member committee and all five had different opinions, and we were left out in left field without any clear-cut decision. That's not the purpose of turning an issue over to a committee, I submit. So I think that a minority report does fly in the face of that resolution or consensus. While, as I say, I don't have any trouble with dissenting opinions, I feel quite differently about the minority report.

10:18

MRS. HEWES: Mr. Chairman, of course when a committee is struck, there is a hope for a consensus. The notion of the all-party committees is that the committee is given a mandate to do a detailed study on an issue and perhaps seek public input and hopefully put a plan or legislation on the table for the Assembly.

Mr. Chairman, I'd like to go back to the example that's been used. I'm grateful for Halvar's distinction between an all-party committee of the House dealing with an issue before the House and the kind of commission that we struck on the boundaries. I think that was a very revealing exercise, because when that boundaries commission was struck, it of course had the capacity to present minority reports. It had five of them. In fact, it had five separate reports. There was really no report, as I understood it.

I think that revealed to us very dramatically and immediately that the legislation that was given to that boundaries commission to work with was flawed. I think that was obvious. That's why I believe minority reports are important. If you give a select special committee of the House, an all-party committee, a mandate to do something that cannot reach consensus, which is what we did with that boundaries commission, then I think it's absolutely essential that you allow for minority reports to point that out. There is no question in my mind that the legislation and the mandate given to the boundaries commission was an impossible one, and what happened revealed that immediately. We all knew. The actions taken as a result I think were unfortunate, and I expect we're still fooling around with some of the fallout from that.

I would hope that the potential for a minority report would have a more benign effect. It would not be simply that somebody could register in the report, "I don't agree," because while that is helpful, I don't think that really goes far enough. I think the minority report as in the case of the boundaries commission offered options, said: I don't agree exactly, or I don't agree at all, and here's another way of doing it. So the minority report has I think a very positive and benign effect on the potential (a) to reach consensus and (b) to indicate that the mandate perhaps was incorrect to begin with and was an impossible one and (c) to offer an option.

MR. CHAIRMAN: I've got Frank.

MR. BRUSEKER: I think Bettie covered the points I wanted to make, Mr. Chairman.

MR. CHAIRMAN: I think we can see from the discussion there may be some clearer opinions on this one than the sub judge; however, maybe also, in the spirit of consideration and accommodation, we can take this for individual and collective consideration, bring it back to see if we've moved this one along. I think we've heard some good views on both sides of the issue.

Any specific research requested on this one? We've got what happens in other provinces.

MR. BRUSEKER: Just a question, if I may, Mr. Chairman. Ontario, it says, "may include dissenting opinions," but I don't see any reference to minority reports. Do they allow minority reports?

MRS. KAMUCHIK: No.

MR. CHAIRMAN: Okay. Thanks for that clarification.

So let's give this some thought. Maybe there is a way of accommodating the concerns on both sides of this issue.

Under Public Accounts, role and mandate. Frank, we've got nine minutes left. Would you like to take half of one of those?

MRS. KAMUCHIK: All I can say on this one is that this was a survey conducted by the federal Public Accounts Committee. I'm sorry. I have to admit I haven't read this document, so I really didn't want to say anything on it.

MR. CHAIRMAN: Okay.

You've seen the information?

Frank, go ahead.

MR. BRUSEKER: This is a very technical area, if I may offer that suggestion. I'm not sure that's quite the right word, but it's fairly involved. I have been on the Public Accounts Committee for a number of years. I expect that a number of members of this committee here haven't had the opportunity to read through the two documents that have been provided, which are actually very good, and particularly the second one, Guidelines for Public Accounts Committees in Canada. I think if members get a chance to read it, they will find it has a very good overview.

The difficulty, if I may just offer an observation that I've seen with the Public Accounts Committee in the past, is that there doesn't seem to be necessarily a link between what happens in Public Accounts Committee reviewing the previous year's expenditures as compared to the budget process that is used to develop next year's proposed expenditures. While something may occur in the background, it is difficult at least at the Public Accounts Committee level to see any correlation between the two of them.

I would offer a suggestion that it might be worthwhile to ask the past chairman, Barry Pashak, to maybe offer a brief, a submission to our committee. Barry I think was a good chairman of the committee and in fact was fairly active in attending Public Accounts Committee conferences nationally and I think has an insight both from an Alberta standpoint and from a broader standpoint. So I think it might be worthwhile asking him and maybe even the deputy chairman, who I believe was Ron Moore. I'm not sure if you want to do that or not. That might be worthwhile, just asking them to put some thoughts down on paper, to give us a brief. I think Ron Moore also did travel to some of those conventions.

With those comments, I think I should stop there, because I know we are giving it a long time, but it is a fairly technical area, and I think if we're going to get into it, we really need a thorough review of these two documents, and perhaps some insight from those two individuals would be of assistance.

DR. McNEIL: Just the alternative to a brief, in the event that he's not interested in putting together a brief, would be to invite him to the committee meeting.

MR. DUNFORD: Good idea.

MR. FRIEDEL: To invite whom?

DR. McNEIL: To invite the most recent former chairman of the Public Accounts Committee. That's Barry Pashak.

MR. DUNFORD: Could we have a little more about him?

DR. McNEIL: Well, he was the Official Opposition Energy critic, but he was the chairman of the Public Accounts Committee for - what? - the past four years.

MR. BRUSEKER: At least since 1989. I first got on the committee then. He was the New Democrat MLA for Calgary-Forest Lawn.

DR. McNEIL: He attended a number of national and in a number of instances international conferences on the role of Public Accounts Committees.

MR. BRUSEKER: Yeah, I think so.

DR. McNEIL: So he has a pretty good base of knowledge about at least the existing operation of the Alberta Public Accounts Committee and some problems that he would identify from his perspective anyway.

MRS. KAMUCHIK: The previous chairman before that was Ray Martin. If you want to reach someone that's within the city limits, that's also a consideration.

MR. CHAIRMAN: I guess a valid consideration in light of our budget. Barry lives in Calgary, but we could certainly contact him and ask at least at the start for a written submission. The suggestion on Ron Moore also. Ray Martin's been suggested. We could start with those two and see what happens.

MR. BRUSEKER: Why are you twitching, Mr. Chairman?

MR. CHAIRMAN: I'm not; I'm stretching.
Okay; I've got Roy and Gary.

MR. BRASSARD: I would recommend that we ask for a written submission from both the chairman and the vice-chairman. Both of them have been in that position since 1986, I believe, and certainly would be more current than Mr. Martin, although Mr. Martin would be closer. I'd feel more comfortable having a report in front of me before the presentation from either of those gentlemen. A lot of us were on Public Accounts and could bring some to it, but I would like to get their perspective before we sat down publicly and discussed it with them.

MR. CHAIRMAN: Okay.

Other discussion on the Public Accounts? Gary. Sorry.

MR. FRIEDEL: The idea of getting some background information is great. That's what we're here for, I think, and it's the same as we had mentioned in our first discussion, that we're not going to come up with a good recommendation unless we're informed, but I'd like to suggest that the priority would be: what do we want this committee to become? I'm talking now about the Public Accounts Committee. I am the vice-chairman of it, and I guess in all honesty I do have to admit that there is dissenting opinion as to the objective of it, and I think the adversarial role of all-party committees is going to make that kind of a committee very interesting, to say the least. I would suggest that maybe we want to define what should be the actual purpose of that committee rather than the history of it.

MR. DUNFORD: I guess I don't disagree, but, you know, if we don't look at where we've come from, Gary, it's hard to know where we're going. I would certainly feel comfortable with it.

MR. FRIEDEL: No, I wasn't arguing against it.

MR. DUNFORD: Okay.

10:28

MR. FRIEDEL: I was saying use it for information. If the debate is that there were some problems with it, dealing with the past is not going to do anything if we want to perpetuate it. The idea is use it for some information but look at our intended purpose, not the intended purpose of the previous committee.

MR. DUNFORD: Mr. Chairman, I don't want to get into an exchange here. I have not been afforded the benefit of sitting on Public Accounts.

MR. CHAIRMAN: I've also been spared that joy.

MR. DUNFORD: I'll trade you.

MR. FRIEDEL: Any other takers?

MR. CHAIRMAN: Well, we'll put that forward, to contact both Barry Pashak and Ron Moore and ask them for a brief submission. That time line on our reporting isn't quite as pressing as the one on sub judice and then following with the minority reports, so that would give us a bit of a breather time there even though that's coming upon us.

With the agreement of this group, then, we'll have information out to people on their requests for more information. At our next meeting we'll hope to draw some recommendations on sub judice and possibly minority reports.

I do like working within deadlines; they are frustrating but necessary.

If this committee is comfortable as far as a date for the next meeting, I'd suggest sometime next week, but it will be left to myself and the Opposition House Leader and also communication with the Speaker, who of course independently has his calendar.

Gary.

MR. FRIEDEL: Only one suggestion. Both Frank and I sit on the Public Accounts Committee, which conflicts on Wednesday morning.

MR. CHAIRMAN: I appreciate that observation. We'll try and work something out to avoid that for sure. Then you're spared the experience that you could bring to the table from the accounts. We don't want that to happen.

Any other business before we adjourn? Entertain a motion to adjourn. So moved. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Thank you very much. We'll look forward to getting together next week.

In case people don't know, David McNeil, Louise Kamuchik, Diane Shumyla, Frank Work, Kathryn Dawson also join us, and from *Hansard* we have Kate Lamont and Alexandria Hursey. We thank all these folks for helping us to move along.

[The committee adjourned at 10:30 a.m.]