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**Official Report  
of Debates  
(Hansard)**

**Wednesday 8 May 2013**

**Journal  
des débats  
(Hansard)**

**Mercredi 8 mai 2013**

**Standing Committee on  
Regulations and Private Bills**

**Comité permanent des  
règlements et des projets  
de loi d'intérêt privé**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE  
ON REGULATIONS  
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES  
RÈGLEMENTS ET DES PROJETS DE LOI  
D'INTÉRÊT PRIVÉ**

Wednesday 8 May 2013

Mercredi 8 mai 2013

*The committee met at 0900 in committee room 1.*

**DRAFT REPORT ON REGULATIONS**

**The Chair (Mr. Peter Tabuns):** Committee comes to order. We have one item: consideration of the draft report on regulations 2011.

At our last meeting, we left off at page 13. Mr. Walker, you had raised questions about regulations that we had previously brought to the attention of ministries in cases where ministries had agreed to make changes but, as of the date of this report, we had not yet seen those changes. My suggestion to the committee is that we go through each of the regulations that have been reported on, and where there has not been action as either promised or agreed, we make a decision as to what step we take. Is that good for the committee?

**Mr. Randy Hillier:** Seems fine.

**The Chair (Mr. Peter Tabuns):** Okay. On page 13, "Regulations Reported in First Report 2010," regulation 90/08 (General), made under the Assessment Act: When you go to current status, it says, "As of the time of writing, the ministry has not amended s. 2 of O.Reg. 282/98 to include either property class." Just note that the ministry's response was that it intended to amend the regulation to that end. Could I have a comment from the researcher on this?

**Ms. Karen Hindle:** As you can see in your packages that you received this morning, we were able to track down the original letter which we had sent to the ministry, but we don't have the initial reply. I guess because it's a few years old, we're going to need some additional time to track down the letters. However, the ministry's response to the recommendation section is based on that report. The first report of 2010 is what was summarized as the ministry's position. Counsel for the committee went back and took a look at the regulation in order to determine whether or not any action has been taken. As of the time that this report was written, no action had yet been taken; no amendment had been made.

**The Chair (Mr. Peter Tabuns):** The committee is free to make recommendations. Mr. Walker, you brought this up initially. You may have other thoughts, but it occurs to me that you could move a motion that we send a communication to the ministry pointing out that they had agreed to amend as had been recommended, that the

amendment has not been made and that we want a report back on the amendment within a specified period of time.

**Mr. Bill Walker:** I would offer such a motion.

**The Chair (Mr. Peter Tabuns):** Okay. Mr. Koch, do you need that in writing, or do you have enough?

**The Clerk Pro Tem (Mr. Katch Koch):** If the members are okay; if the members want something in writing, we can have something drawn up.

**The Chair (Mr. Peter Tabuns):** If you're okay with that? Time period, 120 days?

**Mr. Bill Walker:** Sure.

**The Chair (Mr. Peter Tabuns):** All those in favour? Opposed? Carried.

The next item, then, is Ontario Reg. 338/09 (General) made under the Nutrient Management Act, 2002, (amending O.Reg. 267/03). The ministry response to the recommendation: "In its initial response to the committee's letter, the ministry stated that the purpose of s. 8.3(1) was not to create an exemption from part V of the Environmental Protection Act, but rather to set out the technical requirements for such an exemption."

Current status: "As of the time of writing, the phrase 'is exempt from' in s. 8.3(1) has not been amended."

Do you have comment, Researcher?

**Ms. Karen Hindle:** This is an instance where the ministry took the position that the regulation need not be amended. Unlike the regulation that we just discussed, the Assessment Act, where the ministry agreed that changes needed to be made, this is an example where the ministry disagreed with counsel for the committee and felt that the language in the regulation was sufficient. We put the current status just to advise you and ultimately, I guess, the public that that phrase has not been amended. However, this is not an instance the ministry committed to doing something and has not followed through.

**The Chair (Mr. Peter Tabuns):** Sorry, in this one?

**Ms. Karen Hindle:** Yes. The Nutrient Management Act.

**The Chair (Mr. Peter Tabuns):** Right, okay.

**Mr. Bill Walker:** Chair, may I ask a point of privilege?

**The Chair (Mr. Peter Tabuns):** Mr. Walker?

**Mr. Bill Walker:** So they're suggesting they do not need—could I have your view on whether you believe that or you agree with it?

**Ms. Karen Hindle:** Well, ultimately, the committee isn't able to force the ministry to make the change. In our

letters—as you can see, there is a copy of our original letter which is sent to Michael Brady—we highlight what we perceive to be a particular problem with a regulation, and then it is up to the ministry to reply.

Now, there are instances like the one with the Assessment Act where the ministry agrees that a problem has arisen, but in the event that the ministry disagrees, the committee's hands are tied, in a sense. We can make a recommendation, but we can't force the ministry to change its position.

**Mr. Bill Walker:** I guess my question is more to the point that they suggest that there should be a technical requirement for such an exemption, and then they're suggesting that they don't believe that there is a need for an exemption, but did they do the technical clarification? From your perspective from a legal side, have we got that covered clearly so that if a layperson was reading it, they know that that technical ability is there? Because if not, then I think what we should be doing is, again, sending back to the minister—getting that we can't tell them they have to change, but we're still concerned that the action they said they would do is not complete. This is 2010 again, so we're three years out, and nothing has happened.

**Ms. Karen Hindle:** I can't speak to your specific question; I would have to look into it. But I will say that generally the committee will only make a report on a regulation where it has disagreed with the ministry's assessment. So there are instances; for instance, this year there were, I believe, 15 letters that were sent out, but in counsel's view, there were only four that were worth pursuing or mentioning in the report. In the first report of 2011, this was an instance where the committee felt that, despite the response from the ministry, they still disagreed.

Now, I'm happy to go back and take a look at the regulation, and once I am able to get my hands on the response from the ministry, to provide you with more of an opinion than that, but that typically is how the reports are structured. My sense would be, without actually going into the regulation itself, that there was nonetheless something—

**Mr. Bill Walker:** They have not completed yet, and we should be pursuing it.

**The Chair (Mr. Peter Tabuns):** Mr. Walker, do you have a motion?

**Mr. Randy Hillier:** I've just read—I don't see the response from—

**Ms. Karen Hindle:** No, this is an instance where the replies and the letters are quite old, so you will find, as we go through the dates, that we do have the replies, but we are trying to track down the replies from the ministry. Once we have them, we will provide copies to committee members.

**Mr. Randy Hillier:** Okay. All these are just the correspondence from the legislative committee, not the replies back from them?

**Ms. Karen Hindle:** No, just the first three only include our letters to the ministries and not the reply. With

the exception of those three, the others can include the correspondence back and forth between the ministries and the committee.

**The Chair (Mr. Peter Tabuns):** Your question is satisfied?

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Peter Tabuns):** Mr. Walker.

**Mr. Bill Walker:** Chair, if I could just maybe ask a question before a motion: Are you more comfortable having more research before we put a motion on the table to pursue this further?

**Ms. Karen Hindle:** I would.

**Mr. Bill Walker:** I will defer making a motion until we've had further correspondence from the legislative branch, and we'll go forward, but the intent would be that we move forward with some action.

**The Chair (Mr. Peter Tabuns):** Okay. Then O.Reg. 273/08 (Adoption Information Disclosure): The ministry, if I understand this correctly, didn't feel that any change was needed, and so as of the time of this writing, no amendment had been made.

Do you have further comment on this one?

**Ms. Karen Hindle:** No. I think that this is a similar situation to the regulation that we just discussed where the ministry disagreed with counsel and ultimately the committee, that no changes needed to be made, so they never pursued any.

Mr. Walker, if you would like, we would be happy to go back and undergo the same sort of research and provide the committee with additional information about that so that the committee can make a decision as to whether or not to pursue the issue.

**0910**

**Mr. Bill Walker:** That would be fine with me.

**The Chair (Mr. Peter Tabuns):** As I go through ones that are left outstanding, next on page 20, Ontario Reg. 21/10 (General), under the Condominium Act, 1998, amending Ontario Reg. 48/01: The ministry responded that it is currently engaged in a review of the Condominium Act and that its regs may need to be changed. As of the day of this writing, the reg has not been amended.

Do you want to comment?

**Ms. Karen Hindle:** Yes, Mr. Chair. You will find in your package the letter which was originally sent by the legislative research service on behalf of the committee as well as the ministry's reply. Now, this is an interesting case in that the ministry agreed that there was a problem with the regulation; however, as you may know, the ministry is undergoing a substantial revision of the Condominium Act.

**The Chair (Mr. Peter Tabuns):** Right.

**Ms. Karen Hindle:** So they asked the committee whether or not they would consider putting this aside until the new legislation was passed, with, my understanding is, the intention that then they would draft new regulations to accompany the new act.

Now, as of this time, my understanding is that the new legislation has not passed, so there are no new regulations. The problem with the current regulation still

stands. The ministry has agreed that they will address it; however, it has not yet been addressed.

**The Chair (Mr. Peter Tabuns):** Mr. Walker, did you want to move a motion—in light of the fact that the legislation has not been revised and this problem still exists—that we want the ministry to reconsider our initial concerns and come back to us?

**Mr. Bill Walker:** Yes, please.

**The Chair (Mr. Peter Tabuns):** Moved by Mr. Walker. Any discussion? All those in favour? Opposed? Carried.

The next one down is Ontario Reg. 348/10 (General), amending Ontario Reg 573/99, and 349/10, fees, under the Apprenticeship and Certification Act.

The ministry responded by letter on August 22 that it supported the recommendation and would propose that the minister remake the French-language version. The current status as of the time of writing: Ontario Reg. 573/99 has not been remade.

**Ms. Karen Hindle:** In your packages, you will find a copy of the original letter which counsel sent to the ministry and its original reply. Then, at the back of the package, you will find a letter directed to the Clerk of the committee dated August 22, 2012, and it reads in the last paragraph, “I am pleased to inform you that the Ministry of Training, Colleges and Universities supports the recommendation and will propose that the minister remake the French-language version of the above-noted regulation as a minister’s regulation.”

In this case, just to provide you with some background, this was an instance where the regulation was made by the wrong person. I believe in this case what happened was that the Lieutenant Governor in Council made the regulation when it should have been the minister. As of the time of our preparing this draft report, no changes—the regulation had not been remade.

**The Chair (Mr. Peter Tabuns):** Is there anyone who would like to move a motion on this?

**Mr. Bill Walker:** Well, similarly, I think we re-address the minister or whoever to correct the glitch and have that acted upon appropriately.

**The Chair (Mr. Peter Tabuns):** Okay. Any discussion? All those in favour? Opposed? Carried.

The next is Ontario Reg. 79/10 (General), under the Long-Term Care Homes Act, 2007. The ministry responded that there is no strict rule against sub-delegation. “In view of your continuing concerns, however, we will continue to review this issue with the ministry clients when changes to this act or regulation are being contemplated.”

So as of the date of this writing, the reg had not been amended.

**Ms. Karen Hindle:** You will find this particular regulation in your last stapled package. The way that counsel for the committee works is that typically, we try to send letters to the ministries that address all of our individual issues. So you will notice that on page 2 of the letter, we raise our concerns with Ontario regulation 79/10. You will find a copy of the reply further down,

and ultimately a letter that was sent by the ministry to the Clerk advising that they would continue—not committing to actually changing the regulation, but that they would continue to monitor.

**The Chair (Mr. Peter Tabuns):** Any further questions for research? Is there any motion that anyone wants to propose on this? Mr. Walker.

**Mr. Bill Walker:** At the risk of being a pain, could you just clarify—I hadn’t had time to look it up, obviously, because I just stepped away from the table—is the monitoring enough? Did we ask them to make a change in this case and they didn’t do anything? If that’s the case, then again, I’m back to my same old principle. If you’re saying that you’re going to do it, then let’s get on with it. If there’s not a recommendation from the committee to say you’re changing something and they’re monitoring, I’m okay with that.

**Ms. Karen Hindle:** My understanding is that the committee made a recommendation that the ministry should at least reconsider their position. The ministry came back and did not commit to making a change. Rather, they said—and you can find it at the bottom of the last letter in that package—“[a]s there is no strict rule against subdelegation, it continues to be our position that subsection 295(2) of O.Reg. 79/10 is valid. In view of your continuing concerns, however, we will continue” to monitor “this issue with the ministry clients when changes to this act or regulation are being contemplated.”

In this case, they never actually committed to making a change, but rather, in the event that the legislation or the regulation as a whole is being amended, that they would consult about the issue.

**Mr. Bill Walker:** I guess my question is, from the committee’s perspective—because I don’t recall this one—if we thought it was an issue at the time, and the issue hasn’t gone away, what we’re doing is going in circles and saying, “Well, we have an issue, but I guess we’ll just turn our heads and let it roll.”

**Ms. Karen Hindle:** You’re right, Mr. Walker. The difficulty in this situation is that the committee can’t force the ministry to make the change. The option is open to the committee if they want to re-recommend that the ministry take a look again at this issue, and, depending on the language used, the committee can be more forceful. But in the end, it’s up to the ministry to decide whether or not to pursue the recommended course of action.

**Mr. Bill Walker:** My personal perspective would be that we do re-send the letter asking them to reconsider. We are concerned—whether we want to use language to the effect that they’re in violation of their own governance, and I don’t know this one well enough to know if that’s the case, but I’ll maybe ask Mr. Koch if that’s the case, if we believe that there is something that they’re violating, and ask from that perspective that they review.

**The Clerk Pro Tem (Mr. Katch Koch):** If it is the will of the committee, we will re-write them. As the researchers had expressed, at the end of the day, it is—

**Mr. Bill Walker:** Up to them.

**The Clerk Pro Tem (Mr. Katch Koch):** Up to them, yes.

**Mr. Bill Walker:** Yes, I agree.

**The Clerk Pro Tem (Mr. Katch Koch):** But if the committee feels strongly about re-writing the ministry, we will do that.

**Mr. Bill Walker:** It just seems to me if we don't, we're not doing our job. If there's something out there that we've recommended that could be a betterment—I mean, unless they can give us a very valid, black-and-white, “We will not do this because X, Y, Z,” to just say, “I'm going to continue to review” to me is just a perpetual loop of nothing getting done.

**The Chair (Mr. Peter Tabuns):** Mr. Walker, are you proposing a resolution?

**Mr. Bill Walker:** I will put a motion on the floor to re-recommend, Chair. Thank you.

**The Chair (Mr. Peter Tabuns):** And that a letter be sent to the ministry and we be informed of the response. I assume you want a time frame on that.

**Mr. Bill Walker:** Yes, please: 120 days is fine. Thank you.

**The Chair (Mr. Peter Tabuns):** Any further discussion? Mr. Vanthof.

**Mr. John Vanthof:** I would like to add something to the effect—because they agreed to monitor. Well, “monitor” is also an action item. If they have been monitoring this, have they got a reason why they don't want to do it?

0920

**The Chair (Mr. Peter Tabuns):** Yes. I'll take that as an amendment. Is there any further discussion, then, on the resolution, as amended?

All those in favour? Opposed? Carried.

Ministry of Health and Long-Term Care: I'll leave you to read this one out.

**Ms. Karen Hindle:** All right. This regulation is dealt with in the same package as the last one, and you will find it under number 5, which is 451/10—

**Mr. Randy Hillier:** Page 5?

**Ms. Karen Hindle:** No, sorry. Under the “Re:” line, it's number 5. I will find the page reference. It is on page 6 of our original letter.

**Mr. Bill Walker:** Which package are we on?

**Ms. Karen Hindle:** It's the same package that we were looking at just a few minutes ago. It's on page 6 of that package.

As committee members may recall, this is the regulation where the committee raised the possibility that the regulation violated section 11(d) of the charter, which guarantees the presumption of innocence.

In this case, what was occurring was that the regulation provides that a former member is not eligible for reinstatement if they have been subject to a criminal court proceeding. The problem that was raised by the committee is that it doesn't provide specifically that the person was convicted; rather, anybody who is brought before a court of law could potentially be ineligible for reinstatement, under this particular provision.

The ministry wrote back, as you can see in the next letter, and you will find it on page 4 of their letter. Essentially, they—

**Mr. Bill Walker:** Sorry. I think I'm lost, and Rod's lost. Can you just tell us which package you're in? Because I don't see a letter.

*Interjection.*

**Interjection:** Which pile?

**Mr. Bill Walker:** Yes, there are a lot of piles here. There's a lot of paper here today. I just want to make sure I'm following—

*Interjections.*

**Mr. Bill Walker:** This is the one. There we go. That's why, because when you were in the last package, I was in a different one. I apologize.

**Ms. Karen Hindle:** No problem.

*Interjection.*

**Mr. Bill Walker:** Page 6—

**Ms. Karen Hindle:** Yes, you will find it on page 6—

*Interjection.*

**Ms. Karen Hindle:** No, that's not the right letter.

*Interjection.*

**Ms. Karen Hindle:** No. If you look on the front page of this package, it's dated April 18, 2011.

**Mr. Bill Walker:** Oh, page 6.

**Ms. Karen Hindle:** If it's the right package, if you look on page 6, you will find the reference to O.Reg. 451/10 under the Pharmacy Act.

**Mr. Bill Walker:** Thank you. I'm now on the right package.

**Ms. Karen Hindle:** Mr. Jackson, I can provide you with another copy.

*Interjection.*

**Mr. Bill Walker:** A lot of paper. Thank you very much.

**Ms. Karen Hindle:** So, as noted on page 6 of our original letter, counsel on behalf of the committee raised a concern with respect to reinstatement of former members of the Ontario College of Pharmacists.

Section 24, which is at issue here, provides that a former member would be ineligible for reinstatement if he or she—and it lists a number of different circumstances. In particular, it provides under 24(3)(b) that the member “was, at the time he or she ceased to be a member or at any time since, the subject of a proceeding in respect of,” and these proceedings deal with criminal offences as well as drug offences and an offence dealing with the practise of pharmacy.

Counsel, on behalf of the committee, raised the issue that this provision potentially violated section 11(d) of the charter in that it didn't provide that a former member would only be ineligible for reinstatement in the event that they were convicted, not simply subject to a proceeding, and/or that an individual who had received a pardon would also be ineligible for reinstatement.

If you go on to the letter that was sent by the ministry in reply, if you look at page 4 of that letter, you will find the reply from the ministry. The ministry takes the position that the section does not contravene section

11(d) of the charter and that, in fact, it's simply a policy decision of the college.

The committee, when preparing its 2012 report—and any of the members who were here last year would know that it was deemed to be of sufficient concern that the committee decided to pursue the issue. If you keep going in the package, you will find another reply from the ministry directly to the committee.

**The Chair (Mr. Peter Tabuns):** On the Pharmacy Act?

**Ms. Karen Hindle:** Yes. If you look at the second page of that letter, it restates its position that section 11(d) of the charter does not apply in this case and that any consideration by the college of a former member's charges is a policy choice of the college and that the charter has essentially no role to play here.

In this case, the particular section at issue has not been amended, and that, in my opinion, reflects the position of the ministry that there's nothing wrong with it.

**The Chair (Mr. Peter Tabuns):** Thank you. Any questions for the researcher? Mr. Hillier.

**Mr. Randy Hillier:** I don't know if it's a question for the researcher, but I've read the ministry response. It's pretty circular. Maybe I will ask a question of research. The response from the ministry seems absolutely ridiculous, the way I'm reading it—that you cannot be reinstated if you have had a charge, even if you've been acquitted, but you can apply for a new licence. I don't know what the difference in costs or procedures is between a reinstatement and a new applicant. Then they also say that it only applies while the charges are in place, but that's not what the regulation says at all.

**The Chair (Mr. Peter Tabuns):** Yes, Mr. Hillier?

**Mr. Randy Hillier:** Have you got a different view of my reading of that?

**Ms. Karen Hindle:** Well, I would have to go back and look at the regulation and in particular the ministry's response in more detail, but it's my understanding that the committee looked at the response last year, the original response. My understanding, looking at the further response that was sent to the committee after it met and after the report was prepared, is essentially it's a reiteration of its previous position that it sent to counsel, and that the committee continued to have a problem, despite the ministry's position that it didn't violate the charter and that it was essentially a policy choice.

If you would like me to look into more detail as to whether or not the ministry's arguments make sense, I'd be happy to. At this stage, though, I would need more time before giving you an opinion on that issue.

**The Chair (Mr. Peter Tabuns):** Mr. Hillier.

**Mr. Randy Hillier:** No, that's fine. I think that this one we should look at a little deeper; that argument looks circular.

0930

**The Chair (Mr. Peter Tabuns):** Are there any other questions for the researcher in this matter? Are there any motions on this matter? There are none. Okay.

**Mr. Randy Hillier:** Just an understanding that research come back with some further clarification from the—

**The Chair (Mr. Peter Tabuns):** I think if you want that, we can ask simply that research come back with further comment.

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Peter Tabuns):** Does anyone have any difficulty with that? I think it's understood.

Okay. We have completed the review on this report. We're at a stage where we can carry forward on this report, or do you want it held down until we hear a response? Actually, you know what? We're asking for a response within 120 days. I personally believe we need to move forward and approve the report. This, Mr. Walker, was something we raised at the last meeting of the committee.

Are people ready to vote on this report?

**Mr. Randy Hillier:** May I ask—the report will include in it that there are these outstanding items that the committee is continuing to investigate?

**The Chair (Mr. Peter Tabuns):** It can be flagged, if that is the wish of the committee.

**Mr. Randy Hillier:** Yes, I think it would be important for when the report is tabled back to the House that there are still items that need to be addressed.

**The Chair (Mr. Peter Tabuns):** Then that's fine. The report has been amended, and it will be reported in an amended form.

Shall the draft report, as amended, including recommendations, carry? Carried.

Who shall sign off on the final copy of the draft, the Chair or the subcommittee?

*Interjections.*

**The Chair (Mr. Peter Tabuns):** I have opposing views on this.

**Mrs. Donna H. Cansfield:** If I may, Chair, wouldn't the subcommittee sign off and take it back to the committee?

**The Chair (Mr. Peter Tabuns):** Typically, I have signed off on them and taken them to the House the same day.

*Interjection.*

**The Chair (Mr. Peter Tabuns):** Okay. If it goes to the subcommittee, it gets delegated to the three subcommittee members and the Chair to sign off, so three signatures.

I gather that's agreeable to everyone, that it be signed off by the subcommittee? Done.

Upon receipt of the printed report, shall the Chair present the report to the House and move adoption of the recommendations? Agreed? Agreed.

Shall I request that the government table a comprehensive response to the report within 120 calendar days of the presentation of the report to the House, pursuant to standing order 32(d)? Agreed? Done.

I've been asked by the researcher for leeway to correct a few small errors. Before I ask you that, these are typographical errors?

**Ms. Karen Hindle:** Yes. There's one instance where there's a spelling error and another instance where there's a space that's missing.

**The Chair (Mr. Peter Tabuns):** I think we're all agreed.

If the committee is agreed—this time we did not have all the supporting letters, the letter to the ministry and the letter back from the ministry. It has been suggested that we, in future reports, include the correspondence so that members of the committee can see the history of back-and-forth. If everyone's agreeable to that? Do you need that as a formal motion?

**The Clerk Pro Tem (Mr. Katch Koch):** No.

**The Chair (Mr. Peter Tabuns):** No. Fine.

Mr. Hillier?

**Mr. Randy Hillier:** New business. Are you adjourning or are you—

**The Chair (Mr. Peter Tabuns):** That's why I picked up the gavel.

**Mr. Randy Hillier:** That's what I thought.

**The Chair (Mr. Peter Tabuns):** I don't usually wave it around.

**Mr. Randy Hillier:** I just wanted to add: At the last committee meeting I did ask about defining regulatory steps and quantifying them. I'm wondering—we had a brief discussion about that—is research working on that to provide some commentary back or—

**The Chair (Mr. Peter Tabuns):** Research?

**Ms. Karen Hindle:** The research service has been working with the legislative library in order to compile the information that you've requested. At this point, it appears that most other provinces define the term "regulation" under their equivalent of the Legislation Act in a similar way that we do. However, in order to address the component of your question that deals with regulatory steps, we're going to need some additional time in order to put together the information, but it is our intention to provide the committee with a memo or a project outlining the information that we've gathered.

**Mr. Randy Hillier:** Thank you very much.

**The Chair (Mr. Peter Tabuns):** Thank you. Adjourned.

*The committee adjourned at 0936.*









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