



## Chapter 1

### The Commission and Its Work

*Public service makes many exacting demands. It does not offer large material compensation; often it takes more than it gives. But the truly worthy steward of the public is not affected by this. His ultimate satisfaction always must be a personal sense of a service well done, and done in a spirit of unselfishness. Standards of public service must be measured in this way. The State must expect compliance with these standards because if popular Government is to continue to exist it must in such matters hold its stewards to a stern and uncompromising rectitude. It must be a just but a jealous master. Public Office means serving the public and nobody else.*

— Franklin D. Roosevelt<sup>1</sup>

Service as an elected member in a representative assembly is, and should be, one of the highest callings to which a person can aspire in a democratic society. It is a vocation that is unlike virtually any other. It provides great opportunities for public service and for the possibility of having a direct influence on important issues at the centre of public affairs. Yet it also calls for considerable personal sacrifice and, in some cases, financial sacrifice as well. In short, it requires a special sort of person. Those who offer themselves for public office and who meet the high standards expected of them deserve commendation, not condemnation.

Yet politicians are often not held in high esteem by the public. Many attitude polls dealing with issues of trust and confidence consistently place politicians as a group well below most professional groups and below those that involve service to the public, such as firefighters and the police.<sup>2</sup> It is common to hear and read cynical statements about politicians, ascribing to them, as a group, motives of self-interest rather than public service.

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<sup>1</sup> *The Public Papers and Addresses of Franklin D. Roosevelt* pp. 583-4 (quoted by Tallis, J.A. in *R.v. Berntson*, [2000] SKCA 47 at para.25).

<sup>2</sup> A recent Canada Speaks survey conducted for Sympatico/MSN by Ipsos Reid looked at professions where attributes of “integrity,” “commitment to promises,” and “reliability” were regarded as extremely important

Attitudes of public cynicism and mistrust are reinforced by official reports at the federal level and in other provinces documenting breakdowns in government financial management. Some recent cases involved control problems in job-training programs,<sup>3</sup> lack of monitoring of public spending and fraud,<sup>4</sup> overspending on travel allowances,<sup>5</sup> and the misspending of money meant to be spent on a First Nations treatment centre in Manitoba.<sup>6</sup> Provincial examples can also be given, one of the most notorious being the indictment and conviction of a number of elected members and other officials in Saskatchewan for improper use of, amongst other things, legislative constituency allowances relating to communications.<sup>7</sup>

This province has not been spared similar controversy. We need only refer to the inquiry into the allegations of improper financial activity by the Prime Minister of Newfoundland in 1924,<sup>8</sup> the inquiry into allegations of improper (non-arm's length) leasing of space for government at excessive rents and without public tender in 1972,<sup>9</sup> and an inquiry into allegations of political interference in the tendering practices of government departments in 1981.<sup>10</sup>

Perhaps the high-water mark of cynicism and public mistrust of politicians in this province was described in the *Amulree Commission Report* of 1933:

Politics have come to be regarded as an unclean thing which no self-respecting man should touch; the very word "politician" is virtually a term of abuse which carries with it a suggestion of crookedness and sharp practice. Many of the working people have a contempt for the politician. The so-

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considerations in one's assessment of trustworthiness. Firefighters (93%) were regarded as one of the most trustworthy, while local (12%) and national (7%) politicians were regarded as among the least. A detailed description of "When It Comes to Professions, Whom Do We Trust" can be found online at Ipsos in North America <<http://www.ipsos-na.com/news/pressrelease.cfm?id=3333>>.

<sup>3</sup> See Canada, *Report of the Auditor General, October 2000*, Chapter 11 (HRDC Grants and Contributions Program).

<sup>4</sup> See Canada, *Report of the Auditor General, February 2004*, Chapter 3 (the Sponsorship Program and Advertising Contracts undertaken by Public Works and Government Services Canada). See also, *Report of Commission of Inquiry into the Sponsorship Program and Advertising Activities, Phase 1 Report: Who is Responsible?* (November 2005) and *Phase 2 Report: Restoring Accountability* (February 2006), (Chair: Hon. John H. Gomery) [*Gomery 1* and *Gomery 2*, respectively].

<sup>5</sup> See Canada, Office of the Auditor General, *Report on the Office of the Privacy Commissioner of Canada*, (September 2003).

<sup>6</sup> See Canada, Health Canada, *Audit of Virginia Fontaine Addictions Foundation*, (2002).

<sup>7</sup> The scope of the "scandal" and the court cases that resulted are described in the book by Gerry Jones, *SaskScandal: The Death of Political Idealism in Saskatchewan* (Calgary: Fifth House Ltd., 2000).

<sup>8</sup> See Thomas Hollis-Walker, K.C., "Report on Corruption in the Newfoundland Government" (1924), as printed in the [*St. John's*] *Evening Telegram* (March 21-22, 1924).

<sup>9</sup> Newfoundland, *Report of the Royal Commission to Enquire into the Leasing of Premises for the Use of the Newfoundland Liquor Commission*, (June 1972) (Chair: Hon. Fabian O'Dea).

<sup>10</sup> Newfoundland, *Report of the Commission of Enquiry into Purchasing Procedures of the Department of Public Works and Services*, (March 1981), (Chair: Hon. John W. Mahoney).

called “modernization” of politics, and the introduction into political life of men who sought to make a living out of their political activism, have been responsible for this deplorable state of affairs.”<sup>11</sup>

While it would be overstating the case to say these comments are truly reflective of the level of today’s cynicism and mistrust, there can be no doubt that a certain degree of cynicism and mistrust does exist. These attitudes have likely been fueled by recent events involving allegations of excessive and uncontrolled spending on constituency allowances by certain members of the House of Assembly, and allegations of other improper spending practices in the House in the context of an absence of proper internal controls. Furthermore, it has been said to me on a number of occasions that the way in which these allegations were publicized - without, at the same time, making it clear that other politicians who were not specifically named were not also implicated - has placed all members of the House of Assembly under a cloud of suspicion. This is unfortunate. When matters such as this enter the public domain, there is a tendency to extrapolate from specific events and use them as a basis for a conclusion that the whole political system lacks high ethical standards.

The focus of this report is to recommend a system that is more likely to give assurance that the sort of activities typified by the recent allegations could not occur, or at least that opportunities for their occurrence will be significantly minimized. It is intended to emphasize institutional renewal. That being stated, the overarching purpose of this report - in addition to providing specific recommendations on MHA compensation and on financial controls - is to address broader concerns: to attempt, through specific recommendations: (i) to maintain and, where warranted, rebuild public confidence in our political system; and (ii) to create an attitudinal environment - a culture, as it were - in which those operating in the system, both MHAs and officials, will be supported and thereby encouraged to discharge their public trust responsibly and ethically.

### **Appointment of the Commission in Context**

During the two-week period between June 22, 2006, and July 4, 2006, the Auditor General for the province of Newfoundland and Labrador issued four reports<sup>12</sup> pursuant to

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<sup>11</sup> United Kingdom, Newfoundland Royal Commission, *1933, Report*, Cmd. 4480 (London: His Majesty’s Stationary Office, 1934) at p. 86. The Commission also observed that the attitudes toward politicians discouraged participation in the political process: “This is not due to lack of public spirit but to the personal abuse to which candidates are subjected and to the feeling that, if elected, they would be suspected of corrupt dealings” (p. 86).

<sup>12</sup> *Report of the Auditor General to the House of Assembly on Excess Constituency Allowance Claims by Mr. Edward J. Byrne, MHA*, (June 22, 2006); *Report of the Auditor General to the House of Assembly on Payments made by the House of Assembly to Certain Suppliers*, (June 27, 2006); *Report of the Auditor General of the House of Assembly on Excess Constituency Allowance Claims by Mr. Randy Collins, MHA*, (July 4, 2006); *Report of the Auditor General of the House of Assembly on Excess Constituency Allowance Claims by Mr. Wally Andersen, MHA*, (July 4, 2006); *Report of the Auditor General of the House of Assembly on Excess Constituency Allowance Claims by Mr. James Walsh, Former MHA*, (July 4, 2006). Subsequently, on

section 15 of the *Auditor General Act*<sup>13</sup> in which he raised questions concerning the possible misuse of constituency allowances by three members and one former member of the House of Assembly. In essence, he alleged that the individuals concerned had, during certain recent years, made claims, and received reimbursement, for sums far in excess of the amounts to which they had been entitled.

A further report, again made pursuant to section 15, was issued by the Auditor General during this same period. He alleged that certain payments, totaling \$ 2,651,644 over the period from April 1998 to December 2005 had been made from funds allocated to the House of Assembly for the purchase of a variety of items, including pins, fridge magnets, key chains and rings, many of which could not be accounted for. These purchases, he said, appeared to have been made from three companies, which appeared to be interrelated. He alleged, among other things, that there was a lack of control over purchases related to the finances of the House.

In the same report, the Auditor General alleged that additional payments totaling \$170,401 were made during the period from April 2001 to December 2005 to a company in which the Director of Financial Operations of the House at the relevant time, or his spouse, had an interest. The Auditor General expressed concern about a possible conflict of interest with respect to these transactions, and noted that a significant portion of the payments were approved without seeing any original documentation.

Shortly prior to the publication of his written reports, the Premier had been notified orally as to the substance of the impending reports and, as a result, held a news conference on June 21, 2006, in which he indicated, amongst other things, that steps were being undertaken to conduct an investigation into the subject matter of the issues raised.

As a result of the issuance of these reports, the issues raised by the Auditor General were referred to the Department of Justice and then to the Royal Newfoundland Constabulary to conduct a police investigation. As of the writing of this report, no criminal charges have been laid.

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December 5, 2006, the Auditor General issued supplementary reports in respect of the three named MHAs and the former MHA alleging that additional amounts in excess of the constituency allowances to which those individuals were entitled were reimbursed. As well, a further report in respect of another sitting MHA was also issued: *Report of the Auditor General to the House of Assembly on Excess Constituency Allowance Claims by Mr. Percy Barrett, MHA*, (December 5, 2006). A month later, two further reports were issued in which two more sitting MHAs were alleged to have “double billed” their constituency allowance by submitting a number of duplicate claims: *Report of the Auditor General to the House of Assembly on Double Billing by Ms. Kathy Goudie, MHA*, (January 8, 2007); and *Report of the Auditor General to the House of Assembly on Double Billing by Mr. John Hickey, MHA*, (January 8, 2007). Finally, in *Report of the Auditor General to the House of Assembly on Report on Reviews of Departments and Crown Agencies*, (January 31, 2007), the Auditor General expressed concerns about the lack of controls in the House of Assembly and criticized certain other payments made to 46 of the 48 MHAs in the House as being inappropriate and unauthorized.

<sup>13</sup> S.N.L. 1991, c. 22, as amended.

On June 26, 2006, in the context of a news release<sup>14</sup> and press conference relating to what was described as a “commitment to strengthen rules governing [the] House of Assembly” and to “strengthen accountability” “in light of recent findings of the Auditor General into the finances of the House of Assembly,” the Premier announced, amongst other things, that he had appointed me to undertake a review of constituency allowances, salary levels and pension benefits of members of the House of Assembly. He was quoted as saying that “recent events” had underscored the need for such a review. He further indicated that I would be asked for an opinion as to “the appropriate manner in which to preserve the democratic requirement to have an autonomous legislature, while also guaranteeing accountability.” He was also quoted as saying that the review would be on a “go-forward” basis and would not include a review of the Auditor General’s findings. It was not to constitute a “judicial inquiry or commission”; instead it was to include an “evaluation of best practices.”

Subsequently, on July 20, 2006, the Lieutenant-Governor in Council approved and promulgated the official terms of reference of the review that I had been asked to undertake.<sup>15</sup>

Between the time of the original announcement of the review and the settling of the detailed terms of reference, a decision had been taken that, notwithstanding the initially-stated position that the review would not constitute a judicial inquiry or commission, I should, in fact, be invested with the requisite authority of a commissioner under the *Public Inquiries Act*<sup>16</sup> to ensure that I would have the power to subpoena witnesses and to require production of documents in the event that I did not receive full voluntary cooperation from those I needed to consult within the subject matter of my terms of reference.

Accordingly, by a separate Order in Council issued on the same date as the issuance of the terms of reference, I was also appointed a Commissioner under the Great Seal of the Province with inquiry subpoena power.<sup>17</sup>

The official commencement of my work, therefore, dates from July 20, 2006. For ease of reference, I designated the name of the Commission as the “Review Commission on Constituency Allowances and Related Matters.”

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<sup>14</sup> The text of the press release can be found at Appendix 1.1.

<sup>15</sup> Order in Council O.C. 2006-296. The Terms of Reference are contained in the Proclamation published in *The Newfoundland and Labrador Gazette*, 2006.xx1.331-3. By subsequent Orders in Council, the time for preparing and submitting the report was extended. The original Terms of Reference and the subsequent amendments are reproduced in Appendix 1.2.

<sup>16</sup> R.S.N.L. 1990, c. P-38.

<sup>17</sup> O.C. 2006-297. See Appendix 1.2 and *N.L. Gaz.*, 2006.xxx1. 331-3.

## Legality and Appropriateness of the Appointment

Concerns were expressed by a number of persons with whom I consulted about the manner in which the Review Commission had been appointed.

These concerns essentially took two forms. The first contained the suggestion that the appointment and operation of the Review Commission constituted a violation of the principle of the separation of powers between the legislative and executive branches of government. The second - a variation of the first - was based on an argument that the only proper investigative body that should inquire into the indemnities, allowances and salaries to be paid to members of the House of Assembly was a commission constituted under section 13 of the *Internal Economy Commission Act*,<sup>18</sup> which the Review Commission manifestly was not.

I do not believe that either of these concerns has any merit in the context of the way in which the Review Commission has operated.

The first concern is based on the notion of the autonomy of the legislative branch of government from the executive branch, stemming from the separation of powers doctrine and the doctrine of parliamentary supremacy. The concern is that the executive, which purported to appoint me, determine my terms of reference and invest me with inquiry powers, is not constitutionally or legally entitled to cause an inquiry to be undertaken of matters that are within the sphere of another (in this case, the legislative) branch of government. I discuss the notion of legislative autonomy in some detail later in this report.<sup>19</sup> It is sufficient to state here that, in the democratic system of responsible government in which we operate, the legislature and the executive do not function in watertight compartments.

The Lieutenant-Governor in Council, as the initiator of most legislation, has an interest in having studies undertaken that might inform it better of legislative reforms that it might wish to propose to the Legislature, even those that might impact on the legislative branch of government itself. My Commission tasks me with developing recommendations; my report is not binding on the Government or the Legislature. I do not see, therefore, any difficulty in the executive appointing a commission to study a subject, within provincial legislative competence, that might ultimately lead to recommendations that could impact on the legislative branch, since the *actual* impact will depend upon the normal legislative processes with respect to the acceptance of any proposed reforms.

The issue of the separation of the executive and the legislature presents itself in somewhat starker form, however, when one considers, not the actual *appointment* by the executive of a commission to study matters pertaining to the legislative branch, but the *scope*

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<sup>18</sup> R.S.N.L. 1990, c. I-14.

<sup>19</sup> See Chapter 2 (Values) under the heading "Autonomy".

of the powers and the *manner* of exercise of those powers in the course of the Commission's work. My Terms of Reference contain the following directive:

All Ministers and officials of the Government of Newfoundland and Labrador, and its agencies, are to provide the Chief Justice with their complete and unreserved cooperation in all aspects of this review.

The Legislature, as a separate branch of Government, could not be considered an "agency" of government any more than the separate judicial branch could be.

Even if it could, however, be considered an "agency" or otherwise part of "government," it has been suggested that, given the separation of powers between the legislature and the executive, the executive would have no legal competence to direct and order officials of the separate legislative branch to cooperate with the Commission. In such circumstances, the Commission would have to resort to its subpoena powers to compel such cooperation. Additionally, an analogy might be made with the limits, resulting from the constitutional division of powers, of a *provincially* appointed commission to compel federal officials to testify and produce documents<sup>20</sup> within provincial competence. It might be argued, following this analogy, that a commission appointed by the executive to inquire into matters relating to the legislative branch would equally be limited in its legal ability to compel attendance of persons associated with the legislative branch or, for that matter, to compel any persons to testify and produce documents in relation to matters within the separate, legislative, branch. In such circumstances, issues of parliamentary privilege might well arise.<sup>21</sup>

While I am not sure that, for this purpose, an analogy can effectively be drawn between the federal-provincial division of powers and the executive-legislative separation of powers within provincial competence,<sup>22</sup> it is not necessary for me to decide this issue because, as matters developed, I did not consider it necessary to exercise my subpoena power.

The second concern about the manner of my appointment was based on the existence of the power in section 13 of the *Internal Economy Commission Act*. That section authorizes the House of Assembly by resolution to appoint an independent commission to conduct an inquiry and prepare a report "respecting the indemnities, allowances and salaries to be paid to members of the House of Assembly."

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<sup>20</sup> See *Quebec (Attorney General) v. Canada (Attorney General)* [1979] S.C.R. 218.

<sup>21</sup> See *Gagliano v. Canada (Attorney General)*, [2005] 3 F.C.R. 555; appeal dismissed on grounds of mootness, (2006) 268 D.L.R. (4th) 190 (F.C.A.).

<sup>22</sup> I note also that the *Public Service Commission Act* R.S.N.L. 1990, c. P-43, ss. 2(k)(iii), as amended, wraps the House of Assembly establishment into the public service, thereby reinforcing the notion that executive-legislative separation is, for many purposes, not complete.

It was suggested to me that the manner of my appointment, by the executive instead of the House, did not sufficiently respect the role of the legislative branch and that any inquiry into matters pertaining to remuneration of members of the House ought to be conducted under terms set by the House and ought to report to the House or at least to the Speaker or the Commission of Internal Economy<sup>23</sup> (hereinafter sometimes referred to as the “IEC” or “Internal Economy Commission”). With respect to those who hold a contrary view, I do not see any reason why the Executive could not, apart from the power in section 13, require a separate review of matters pertaining to house remuneration to better inform itself on such matters. The provision in section 13 is not expressed in exclusive terms. I note as well that the House, for whatever reason, has not exercised the power in section 13, or its earlier equivalent, since 1989 - a hiatus of 18 years.

More importantly, in the present context, it is obvious that the appointment of the current review did not take place in the normal course. Its impetus arose from a very specific public event that resulted in a tailored response designed to deal with the matters of public concern that were presented. As will be apparent from the ensuing discussion on the scope of the terms of reference, there is obvious overlap between the scope of my inquiry and the subject matter of a section 13 commission, but there is not complete congruence. The scope of my inquiry of necessity must extend well beyond a simple analysis and report on whether there should, in the normal course, be any changes in the level and type of MHA remuneration and allowances. For example, I am specifically required to inquire into policies and procedures for control of certain types of expenditures in the House; as well, I am also charged with examining compensation generally, in the context of devising a better system to ensure that specific problems allegedly associated in the past with respect to administration of constituency allowances and other matters can be eliminated or, at least, minimized. Much of that aspect of the inquiry could not be undertaken under the umbrella of a section 13 inquiry.

The inquiry that I have been asked to undertake, therefore, has a different focus and scope and could not be accommodated within the confines of a commission appointed under section 13. Nevertheless, I recognize that a substantial number of the recommendations in this report do relate to “indemnities, allowances and salaries to be paid to members of the House of Assembly,” and that the Speaker and the Internal Economy Commission, charged with the administration of the House, have a vital interest in being fully apprised of the nature of my inquiry and the recommendations flowing from it. I should record, at this point, that I have received full cooperation and assistance from the Internal Economy Commission, the Speaker, the former Clerk and other officials in the Office of the Speaker with respect to my review.

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<sup>23</sup> The Commission of Internal Economy, commonly referred to as the Internal Economy Commission or IEC, is the statutory body charged by section 5 of the *Internal Economy Commission Act* with responsibility for “all matters of financial and administrative policy affecting the House of Assembly, its offices and staff.”



It is appropriate, therefore, that at the time I deliver this report to the Lieutenant-Governor in Council, that the Speaker's Office be provided with a copy as well. In that way, the respect that is due to the House as a separate branch of government will be recognized. My terms of reference, after all, require that in carrying out my mandate I do so "without undermining the autonomy of the legislature and its elected members."

### **Scope of the Terms of Reference**

The terms of reference authorized me to undertake "an independent *review and evaluation of the policies and procedures* regarding compensation and constituency allowances for Members." Included in the review were the following: [emphasis mine]

- (i) an assessment of ... constituency allowances to determine if they are the most *effective and efficient vehicle* to reimburse MHAs for expenses incurred during the normal execution of their duties;
- (ii) *a comparison of all components of compensation ...* including, but not limited to indemnities, allowances and pensions, with that in other provincial and territorial legislatures in Canada;
- (iii) *an evaluation of best practices for compensation* of members of legislatures in other provinces and territories; and
- (iv) a determination of *whether proper safeguards are in place to ensure accountability and compliance* with all rules and guidelines governing payments of all aspects of MHA compensation and constituency allowances.

In addition, I was authorized to:

undertake an independent *review and evaluation of the policies and procedures for control* of the types of expenditures reviewed by the Auditor General in his report *Payments Made by the House of Assembly to Certain Suppliers*.

This latter item was a reference to the report of the Auditor General issued on June 27, 2006, described above<sup>24</sup> as relating to the allegations that over two and a half million dollars had been paid to three interrelated companies in circumstances of poor or non-existent internal control in the House, and that money had been paid to a company in circumstances of a potential conflict of interest.

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<sup>24</sup> See footnote 12 above.

With respect to the review and evaluation of policies and procedures relating to internal control, as well as policies and procedures relating to MHA compensation, I was expressly authorized to include within the review and evaluation any “matter that is *necessarily incidental*” to such matters.

I was further authorized to “develop recommendations *on policies and practices*” generally, “resulting from the review and evaluation.” I interpret this to mean that I may make recommendations on policies and practices on any matters that appear to be indicated from the more specific review and evaluations previously mentioned, “but pertaining only to House of Assembly operations.”

Finally, I was authorized to make recommendations “that would *ensure accountability and compliance practices employed in the House ... meet or exceed the best in the country,*” but with the limitation that the “opportunities to enhance accountability and transparency of MHA expenditures” must be found “*without undermining the autonomy of the legislature and its elected members.*”

This is a broad mandate. Although focusing initially on matters that could be said to be a direct response to the matters raised in the Auditor General’s reports (i.e., the proper use of constituency allowances and proper controls on spending practices relating to suppliers of items to the House), the terms go further and require, in progressively widening circles of inquiry, a focus on:

- the effectiveness and efficiency of using constituency allowances as a means of reimbursement of MHAs for their expenses;
- all aspects of MHA compensation, including indemnities, allowances and pensions;
- “best practices” with respect to determining and paying compensation for MHAs;
- safeguards to ensure accountability and compliance with respect to payments to MHAs;
- general policies and procedures with respect to compensation and constituency allowances to MHAs;
- policies and procedures for control of the “types” of expenditures mentioned in the Auditor General’s report of June 27, 2006;
- all “matters incidental thereto”;
- financial policies and practices in the House, generally; and

- accountability, transparency and compliance practices in the House generally.

The last six items, at least, extend beyond the scope that would normally be contemplated in a review by a commission constituted under section 13 of the *Internal Economy Commission Act*.

Extrapolating from these details, it can be said that the three overarching considerations governing the scope of my review are:

- (i) the development of policies and procedures governing compensation and expense reimbursement of MHAs, not just the establishment of amounts or levels of those items;
- (ii) the development of policies and procedures for the control of spending in the House; and
- (iii) the development of mechanisms for ensuring accountability, transparency and compliance.

Nevertheless, within these broad areas there are certain limitations to the inquiry. They include:

- (i) a focus on the legislative branch of government, not the executive; and
- (ii) recommendations to be made concerning accountability and transparency must not “undermine” the autonomy of the Legislature and its Members.

The first limitation, stated in its simplicity, is obvious. I must respect the separation of the legislative and executive branches and confine my examination to matters pertaining to the former. In practice, however, this has caused some problems. For example (as will become apparent later in this report), there is a considerable interrelationship between reimbursement of expenses by Members *per se* and reimbursement of expenses by Members who are also cabinet ministers. A number of anomalies, leading to unfairness to some Members, exist. While it is within my mandate to comment on the lack of effectiveness and efficiency with respect to how the current regime of reimbursement operates with respect to members, the solution to development of “best practices” does not lie wholly within my mandate, where the achievement of that goal would involve making changes to executive reimbursement policy as well as to policies in the legislative branch.

Another example of legislative-executive overlap involves financial policy. To the extent that it may be appropriate to consider recommending that financial control policies applicable to the executive branch be applied to the legislature, the requirement that I consider “best practices” would inevitably lead to passing judgment on the efficacy of those executive financial policies, something that is technically outside my mandate.

Yet another example is of a much more general nature. Notions of accountability and transparency are concepts that stretch across all aspects of government, both executive and legislative. It is difficult to recommend draft legislation that operates as a patchwork with respect to certain aspects of these fundamental concepts, but not to others. There is much to be said for adopting legislation that deals with such matters comprehensively and with clarity of application in all aspects of government. For example: a number of recommendations I will be making respecting good governance practice (such as matters dealing with access to information, the implementation of whistleblower policies, and the imposition of accounting officer obligations on senior House officials) are drawn from examples that exist in the executive branch of the government service in other jurisdictions. They do not exist in the executive branch in this province. I believe they are appropriate for implementation in the legislative branch. They may well be appropriate for the executive as well, as is evidenced from their application to the executive in other jurisdictions. Yet my mandate precludes my recommending this adoption in those areas, even though the philosophical basis for adoption of such measures throughout the rest of government is arguably the same. To recommend comprehensive legislative reform - even though arguably appropriate - would involve straying outside my mandate.

Because of these interrelationships between matters strictly within the legislative sphere (and within my mandate) and matters that impact on the executive (and outside my mandate), it has been difficult to decide how far to go with some of the recommendations. Reliance on the clause in the terms of reference that authorized me to include within the review any matter that is “necessarily incidental” to the rest of the subject matter is of some help. Where, to be complete and comprehensive in my review of matters within the House of Assembly that I am otherwise authorized to inquire into, it is necessary to comment on related matters within the executive sphere, I have done so. But, unless making recommendations for change to matters within the purview of the executive is necessary to making my other recommendations effective, I have limited my comments on matters pertaining to the executive to noting anomalies, inconsistencies and difficulties, and recommending that they be looked at further from a more comprehensive point of view, rather than making specific recommendations for change in those areas.

The second general limitation on my mandate is also important. The concept of the legislature as a branch of government independent from the executive is universally and jealously guarded by members and senior officials of legislatures throughout Canada. It has been used to justify the legislative branch’s adoption of separate accounting and financial control systems and separate personnel policies, and to claim that the legislature is not subject to budgetary policies imposed by the executive.

It is important to note, however, that my mandate requires that any recommendations I make not *undermine* legislative autonomy. It does not say that the recommendations cannot *affect* legislative autonomy. The limits, therefore, only kick in where I conclude that the recommended changes are so fundamental as to place the very notion of independence in jeopardy. This distinction is important, especially when considering the appropriateness of recommendations concerning the adoption by the legislature of financial systems presently being used by the executive.

A further limitation on the scope of my review, although not expressly stated in the terms of reference, is necessarily inherent in the nature of the focus of the review that I am directed to undertake. There is nothing in my mandate that requires that I inquire into, make findings with respect to, or express opinions on, the specific allegations made by the Auditor General against the individuals named in the reports issued by him. The focus of the inquiry I have been asked to undertake is on improving the current system: identifying best practices and recommending policies and procedures that will ensure that the House of Assembly operations will be accountable and transparent. As the Premier said in his press release announcing the creation of the Commission, the review is intended to be on a “go-forward” basis. It is to be prospective, rather than retrospective.

I have not considered it appropriate, therefore, to examine whether the individuals named in the Auditor General’s reports in fact did what it was alleged they did. Findings on those matters are not necessary for me to discharge the mandate with which I have been entrusted. That is not to say, however, that the Auditor General’s reports are irrelevant to my review. Insofar as they point out *systemic* deficiencies that *could* (but not necessarily did) lead to the types of abuses as alleged, they are a good starting point for the analysis that I must undertake in identifying existing generic problems that would lead to recommendations for reform.

How, then, does this analysis of the scope of my terms of reference translate into the actual work plan for my review?

The first thing to note is that, in order to design a system based on best practices, it is fundamental to know what the nature of the existing problem is. There would be little point in developing a system based on a theoretical legislature. Any recommendations, to be meaningful, must be based on the reality of the local situation. Indeed, the terms of reference require an assessment of the existing system of constituency allowances to determine whether it is “the most effective and efficient vehicle” for reimbursement of MHA expenses.

As well, one cannot lose sight of the fact that the appointment of this review occurred in a particular context - concern over allegations about the possibility of abuses with respect to the use of constituency allowances and their administration under the control of the Internal Economy Commission and officials of the House, and concern over the perceived inadequacies of internal financial controls over spending within the House. Context informs interpretation. Any recommendations I make surely would have to address the types of concerns that prompted the appointment of the review in the first place. To do that effectively, we need to know the strengths and weaknesses of the current system, how that system developed, and the rationale for its current structure.

The starting point for analysis, therefore, must be the existing situation. To know where we are going, we must know where we have been. That of necessity requires looking backwards, not for the purpose of pointing fingers of responsibility at individuals, but for the purpose of understanding the system as a whole and how it works or does not work. It does

not mean that the review is not forward-looking; it simply means that the recommendations for the future must be based on current reality.

I therefore considered it appropriate - indeed, essential - that a separate analysis of the current system of financial control and administrative practices in the House of Assembly, and of how that system came to be - be undertaken as part of the work of the review. This was a larger and more time-consuming task than was first envisioned. It involved looking at, amongst other things:

- the development of the current system of compensation and constituency allowances from the inception of the current regime in 1989;
- the changes in the legislative and administrative regime governing accountability of the House administration that demonstrate weaknesses in internal control of the House; and
- the structure of the existing system and its accounting policies and procedures.

Once a full and proper appreciation was obtained about the current system, its development and rationale and its deficiencies, it was necessary to obtain the input of others as to their perceptions of inadequacy and to compare those perceptions with the reality of what my review found. Against this knowledge base, a comparative review of the systems in other jurisdictions (primarily, but not completely, limited to Canada) in both the areas of identified deficiency, as well as in other areas of best practices in the field generally, had to be undertaken.

The resulting recommendations, it is hoped, reflect workable solutions to the identified deficiencies and areas of concern in the current system, based on what has been adopted or proposed elsewhere and upon the analysis of my review commission staff.

### **Relevant Events Subsequent to Appointment of the Commission**

In the months following the appointment of the Commission, the Auditor General issued a number of other reports<sup>25</sup> related to financial matters in the House of Assembly. In public comments made in reaction to the allegations in those reports, the Premier, other political leaders and the Speaker all expressed the hope and expectation that the issues raised by those allegations would also be dealt with as part of the inquiry report.

On December 6, 2006, the Auditor General issued four supplementary reports respecting the three originally named MHAs and former MHA, in which he alleged that

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<sup>25</sup> The reports are referred to in detail in footnote 12.

those had been reimbursed additional amounts in excess of the constituency allowances to which they were entitled. On the same day, in a separate report, the Auditor General made similar allegations of excessive reimbursement in relation to the constituency allowance of another sitting MHA. In form and substance, these reports cover the same ground and raise the same issues that were discussed in the original reports issued in June 2006. They are, in essence, further examples of the same problem.

On January 8, 2007, two further reports were issued by the Auditor General alleging that two other sitting MHAs had submitted duplicate claims against their constituency allowances and had received payments twice for the same expenditures. In one case, it was alleged that this had happened 20 times over three years for a total of \$3,720; in the other case, it was alleged it had occurred 38 times over four years, totaling \$3,818.<sup>26</sup> These allegations potentially raised a new issue, inasmuch as the notion of “double billing” had not received any public comment up to that time. It is, however, clearly relevant to the issue of both the standards to be expected of members of the House with respect to use of public funds and also to the adequacy of financial controls in the House administration. The Commission staff and I were already aware of the potential for this type of activity to occur in the financial environment under examination, and we were already addressing the implications of this type of behaviour. In fact, as will be seen later in this report, I believe that the problem of double billing, and of its sister, double payment, is a much bigger problem than might be indicated by the description of the matters in the two reports in question, and that the issue has to be addressed from a government-wide perspective.<sup>27</sup>

The Auditor General issued yet another report on January 31, 2007, - his annual report - containing his comments on the financial affairs of the Government generally. A significant portion of the report was devoted to financial matters relating to the House of Assembly. He reiterated his concerns - originally stated in his report of June 27, 2006, - about the absence of proper financial controls in the House administration. In addition, he observed that there had been inaccurate reporting by the Commission of Internal Economy to the House of Assembly on financial matters, and that there had been non-compliance with the *Financial Administration Act*<sup>28</sup> as a result of spending in excess of legislative appropriations.

The Auditor General further observed that there had been payments of \$2,875 purportedly authorized and made to each MHA in 2004 in a manner that had effectively been undisclosed in the public reports of the IEC. It was suggested that the minutes of the IEC had been drafted in a vague manner, which masked or covered up what was really

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<sup>26</sup> In accordance with the Auditor General’s recommendations, the matters in these two reports were referred to the Department of Justice which, in turn, referred the matters to the police for investigation. In the case involving the member for Lake Melville, it was announced on February 9, 2007 that criminal charges would *not* be laid.

<sup>27</sup> See Chapter 5 (Responsibility) under the heading “Systemic Failure as Human Failure”; and Chapter 12 (Signals) under the heading “Claims Processing and Overlapping Claims.”

<sup>28</sup> R.S.N.L. 1990, c. F-8.

happening. He alleged that 46 of the 48 then-sitting MHAs had accepted these payments. This disclosure caused considerable adverse public reaction by many community leaders and in media editorials. It led to widespread condemnation of our political leaders generally and expressions of lack of confidence in a political system that would tolerate what appeared to be a widespread breach of public trust.<sup>29</sup>

The staff of the Commission had been aware for some time of all the issues broached in the Auditor General's report of January 31, including the events surrounding the payments of \$2,850 to each of the 46 MHAs. We had considered that all these matters were well within the terms of reference and I was preparing the report with a view to addressing them. In fact, we were also in the process of addressing other instances of similar payments to MHAs in other years. These matters of special year-end payments raised clear issues respecting transparency, accountability and lack of financial control and could not be ignored. As a result of the very strong public reaction to the revelation of the special 2004 payment, however, it became apparent that public confidence had been severely shaken, not only in the MHAs who had been originally named in earlier reports, but in virtually the whole system.

I agree that the matters discussed in all these additional reports are directly relevant to the scope of my work. I have, accordingly, paid careful attention to the matters covered by them, and have considered these matters in the course of my work in the same manner as I have referred to and considered the original reports that led to the appointment of the Commission.

### **Administrative Organization of the Commission**

The terms of reference authorized me to engage consultants in the legal, auditing, public policy, political advice, research and actuarial fields. I took advantage of this authorization in all respects except that of the actuarial consultant. I purchased actuarial services as needed.

I was fortunate to be able to engage the following individuals as staff of the Commission:

John Dawson, LL.B.	Legal Counsel
Christopher Dunn, Ph.D.	Political Advisor
Gail Hamilton, F.C.A	Audit Advisor
David Norris, M.B.A.	Public Policy Advisor
Beth Whalen, LL.B.	Executive Secretary/Researcher

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<sup>29</sup> An example is the radio opinion piece by Craig Westcott aired on the Canadian Broadcasting Corporation's *Morning Show* on February 6, 2007 in which he referred to MHAs collectively as "opportunists, carpetbaggers and glad-handers" and suggested that none of the current MHAs should be returned in the next election.



I am indebted to each of these individuals for the dedicated assistance that each gave to this project. They were able to digest, analyze and report on a vast array of detailed material in a very comprehensible manner in a very short time frame. Without their excellent work, I would not have been able to produce this report in the time available.

As a cost-saving measure, I did not engage any secretarial assistance or lease any specific office or meeting space. With respect to secretarial and research assistance, each of the consultants to the Commission used resources in their respective offices or specific services contracted by them as needed. I would especially like to acknowledge Johna Thompson and Jeanette Brown of Ernst & Young for their assistance in producing our report. I used the services of my legal assistant in the Supreme Court, Ms. Marcella Mulrooney. I am indebted to her for the services she provided over and above her regular secretarial duties.

With respect to meeting space, limited office space in the annex to the courthouse was made available to one of the consultants and, occasionally, meetings of the staff of the Commission were held in a conference room in the courthouse. Other meetings and consultations with third parties were facilitated by use of conference rooms made available in the firms with which the commission consultants were associated. In that regard, I express appreciation to the accounting firm Ernst & Young and the law firm White, Ottenheimer & Baker for accommodating us. As well, a number of consultations with MHAs and officials of the House of Assembly were held in facilities provided by the Speaker's Office and in the caucus rooms of the various political parties. Consultations with government officials often took place in facilities provided by their respective offices. On one occasion, a consultation took place in rented conference facilities in a local hotel.

Because of the way in which the Commission operated, there was no need to call for tenders or requests for proposals for the provision of space, equipment or supplies. Everything was done in-house in the offices of the respective consultants. As far as the consultants themselves were concerned, it was both impractical and inappropriate to call for requests for proposals for their services. The tight time frame for preparation and delivery of the report did not permit the delay associated with preparation, calling and assessing of requests for proposals. It was necessary for the review to commence immediately on finalization of the terms of reference. In any event, the nature of the work and the importance of my working with persons whose professional reputation I knew, and in whom I had confidence, was such that I deemed it a situation that was unsuitable for the calling of a request for proposals. The terms of reference in fact specifically provided that the engagement of consultants was to be made "expeditiously," and government was directed to provide those resources I deemed "necessary."

I submitted a budget covering Commission operations in the amount of \$601,236.<sup>30</sup> The bulk of that amount related to consultants' fees. As a sitting judge, I am prohibited by section 55 of the *Judges Act*<sup>31</sup> from claiming any compensation for the time I spent on commission work.

## **Operational Methodology**

Although, as I have noted, I was constituted a commission of inquiry with subpoena power, I did not deem it necessary to conduct formal hearings where witnesses were compelled to appear and be examined and cross-examined by counsel representing various interests. This was primarily because the focus of the inquiry was not on making findings of fact, or reporting on specific events or individuals in the past or on verifying any of the specific allegations contained in the Auditor General's reports. The review was more focused on research into systemic deficiencies leading to recommendations for improvements to the existing systems of MHA compensation, expense reimbursement and spending practices generally.

The approach I took was to engage in a thorough examination of the existing systems operating in the House of Assembly through a review of the applicable legislation and administrative systems, financial records and other applicable documentation, together with consultations with a wide variety of individuals. Many of the indications of how the system operated were gleaned from the myriad of documents that we have reviewed. Documents, of course, never tell the whole story. However, the non-existence of documents where one would have expected them to exist was also telling. Gaps in the documentary record have been able to be filled in, in most instances, by the extensive interviews and consultations in which we engaged.<sup>32</sup>

With respect to determining best practices that might be relevant to minimizing or eliminating the deficiencies we discovered, we conducted an extensive legislative and regulatory review in each of the provinces and territories of Canada as well as in the United Kingdom. In some cases, certain jurisdictions were visited by me and, in two cases, by staff of the Commission. We also reviewed extensive professional literature in the accounting, auditing, public administration and corporate fields. A list of the major sources we consulted in this regard is contained in the Bibliography at the end of this report.

Because members of the House are directly affected by the recommendations flowing from this inquiry, it was vital that their views be taken into account. In that regard, I specifically sought their input in a number of ways. First, I invited general written

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<sup>30</sup> The original budget submitted was for \$433,720; because the length of the Commission's mandate was extended, the revised figure of \$601,236 was developed. As matters transpired even the extended mandate had to be exceeded. No specific budget was submitted for the work associated with this additional time.

<sup>31</sup> R.S.C. 1985, c. J-1, as amended.

<sup>32</sup> A list of the persons who were interviewed by the Commission is contained in Appendix 1.3.

submissions from each MHA on any matter within the terms of reference. Secondly, I specifically requested comments from each MHA on specific matters pertaining to his or her district. I was anxious to understand the peculiarities of each constituency as they impacted on the ability of the MHA concerned to service his or her constituents properly. I felt it was especially important to understand the challenges MHAs faced in representing rural and remote districts.<sup>33</sup> Thirdly, we requested that each MHA respond to a detailed survey designed to identify opinions and attitudes on a variety of issues respecting, not only compensation and expense reimbursement, but also the broader issues of fiscal administration and control within the House.<sup>34</sup> Finally, we conducted “round table” discussions with the members of the government and official opposition caucuses, and we held a specific consultation with the leader of the official opposition and the former leader of the third party (who retired during the course of the inquiry) and its newly elected leader.<sup>35</sup>

The three sitting MHAs who were originally named in the Auditor General’s reports would, of course, have received the same requests for comments and survey response that all other MHAs received. I received indications that they had each decided not to make any response. Nevertheless, I made a specific request that they meet with me, not to be questioned on matters specific to the allegations contained in the Auditor General’s reports, but to allow them, as the duly elected representatives of their respective districts, to make general submissions on issues pertaining to what a possible new regime of compensation and expense reimbursement for MHAs might look like, as well to give me information about the challenges that MHAs representing their particular districts faced in providing adequate representation for their constituents. (In two of the three cases, the MHAs concerned represented Labrador districts.)

In response to this formal request, all three MHAs, on legal advice, declined to meet with me. While it is perhaps understandable that they would have been counseled to exercise caution in participating in the proceedings of the Commission in light of the ongoing police investigation, it is nevertheless regrettable that they saw fit not to share their thoughts on the more general aspects of the work of the Commission. As such, I was deprived of potentially valuable information pertaining to the resources needed for elected representatives to properly represent the residents of their particular districts. Having said that, I did not consider their evidence central enough to the work of the Commission to justify the considerable delay that would be involved in constituting a formal hearing process and to require them to appear by subpoena.

A similar circumstance also occurred with respect to the former MHA who was named in one of the Auditor General’s reports.

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<sup>33</sup> A list of MHAs who made written submissions is set out in Appendix 1.4.

<sup>34</sup> A copy of the survey administered to MHAs is contained in Appendix 1.5 and a summary of the results is set out in Appendix 1.6.

<sup>35</sup> A list of the members of the various caucuses who participated in the round-table and opposition leader discussions is contained in Appendix 1.7.

Notwithstanding the refusals to meet with me, however, one of the MHAs concerned did offer to respond to written questions from the Commission. We took up his offer and submitted a number of specific questions about the nature of his district, especially in relation to challenges respecting travel. His responses were very helpful.

As far as the other MHAs who were named in subsequent reports of the Auditor General were concerned, they had already either met with me or had provided me with general written information on the challenges of serving as elected members or subsequently met with me to discuss the issues. This information was also very useful, and I am grateful to have received it.

With the exception of the three sitting and one former MHAs just discussed, I received full and complete cooperation from all other MHAs, as well as from every other individual with whom we consulted. It is worth recording at this point that I was struck by the seriousness with which the members of the House approached the issues under consideration and the general dedication they displayed to the important role they carry out in the political life of this province.

At the end of the day, the purpose of an inquiry such as this is to give assurance to the public that public funds are spent responsibly, and that those in whom public trust is reposed act properly in their dealings with those funds. Input from the public is therefore important. Accordingly, I also sought submissions from individuals or groups on any of the matters covered by the terms of reference. As has been the experience elsewhere,<sup>36</sup> the response was less than overwhelming. Nevertheless, the submissions we did receive, both in writing and by telephone to the Executive Secretary, were worthwhile and illuminating.

## **Structure of This Report**

This report commences, in Chapter 2, with a discussion of the important political and constitutional values and principles that are engaged by a consideration of the specific issues that are identified in the terms of reference. Such fundamental notions as legislative autonomy, accountability, transparency and public trust cut right across the subject matter of the inquiry. It is important, therefore, to have a general understanding of what these concepts mean in this context before proceeding to the specifics. Chapter 2 also attempts to sketch out broad trends in public administration that appear to have been motivated by the operation of these values.

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<sup>36</sup> See, for example, the limited numbers of public responses to recent commissions in Saskatchewan and Nova Scotia: Saskatchewan, Independent Review Committee, *Report of the Independent Review Committee on MLA Indemnity* (Regina: Legislative Assembly of Saskatchewan, June 20, 2006); Nova Scotia, Commission of Inquiry, *Report of the Commission of Inquiry on the Remuneration of Elected Provincial Officials* (Halifax: Nova Scotia House of Assembly, September 2006), pp. 9-10.

Chapters 3 and 4 turn the microscope on what has happened legislatively, administratively and politically over the past decade and a half, with specific reference to identified problems with the administration of constituency allowances in particular and financial administration in the House of Assembly in general. It is important to understand the past to be able to formulate reforms for the future. In the course of this analysis, a number of serious failures of the system are identified. These systemic failures then form the basis for building a set of recommendations for improvements in the system.

With Chapter 5, the report turns its attention to the future, starting first with the need to build a system to foster an enhanced sense of responsibility on the part of the actors in the system - both politicians and officials. It then discusses how the notions of transparency and accountability can translate into a structure that encourages a culture of responsibility and builds public confidence that the legislative institution will be administered and controlled properly and in the public interest.

In Chapters 6 and 7, the report moves to a consideration of more detailed administrative and structural changes in the House administration, including the Commission of Internal Economy and the Office of the Clerk, as well as the types of policies and procedures that should be in place to ensure control over the administration of public assets and funds.

Chapter 8 deals entirely with the audit of the House of Assembly to ensure financial transparency.

The next three chapters (9, 10, and 11) specifically address the levels of, and rules relating to, respectively: compensation, allowances and pensions for MHAs. The recommendations in these chapters are being put forward as the basis for a new compensation regime for elected members.

In Chapter 12, the report deals with a number of discrete issues on which I felt it was important to comment, either because they were raised by persons making submissions or because they presented themselves as important matters that deserved attention in the course of our work. The dimensions of the issues discussed extend beyond the terms of reference. Nevertheless, I deemed it important enough to draw the attention of Government to these matters since they raise, in some cases, important considerations of public policy.

Finally, Chapter 13 presents my concluding comments on the scope of the Commission's work and emphasizes the need for prompt and comprehensive action to achieve systemic reform with the hope that it will assist in achieving the underlying goal of this report - the rebuilding of public confidence.