# Chapter 4

# Failures

*[I]nstitutional autonomy also has a dark side,*
*in that legislatures and legislators can too easily see themselves*
*as above the law or beyond the reach of*
*ordinary ethical considerations.*

— Maureen Mancuso, et al[1]

**Why Look at the Past?**

As this inquiry's investigation and research proceeded, the troublesome findings of the Auditor General released over the past six months and our own assessment of the events that occurred since 1989 inevitably caused us to pose questions as to what was the root cause of the types of problems that had been identified, and when were signs of difficulty evident had one chosen, or been able, to look for them.

In examining the past, my purpose is not to assign blame or responsibility to particular individuals nor to make specific findings on what precisely happened with respect to the administration of constituency allowances and of finances in the House. It is sufficient for present purposes to record that the reports of the Auditor General and our own investigations disclose that the environment in which the House administration operated was such that the *types* of problems that have been identified - excessive spending, double-claim payments and improper purchases, to name the most obvious - *could* easily have occurred.

It is because these problems could have occurred that it is necessary to examine the past to enable systemic deficiencies to be identified. To fulfill the mandate of recommending a best practices approach for the future, I am compelled, where possible, to identify weaknesses and inadequacies of the past that need to be remedied.

[1] Mancuso, Maureen; Atkinson, Michael M.; Blais, Andre; Greene, Ian; & Nevitte, Neil; *"A Question of Ethics: Canadians Speak Out"* (Don Mills: Oxford University Press, rev ed. 2006), p. 24.

**When Did Problems Begin to Occur?**

Before proceeding to an assessment of the specific deficiencies in House administration, it is useful, I believe, to address the timing of their origins. The following observations can be made at the outset:

- The Auditor General has provided no evidence of excess expenditure claims on constituency allowances prior to 1997-98;

- While there were some excess claims identified in 1998-99 to 2000-01 (totaling in the order of $16,000 to $80,000 a year), the level of excess claims jumped in 2001-02 to $248,000, peaked at over $480,000 in 2003-04 and then declined significantly;

- The reporting discrepancy between the expenditures on constituency allowances reported in the annual IEC Reports to the House of Assembly, and the amounts recorded in the constituency allowances account reflected in Government's official public accounts, appears to have commenced in 1998-99, increased significantly in 2001-02 and peaked in 2003-04;

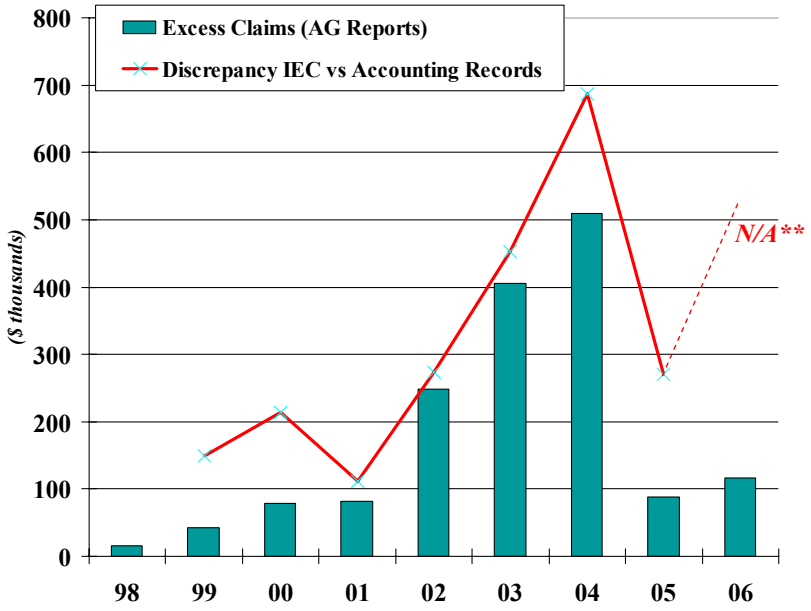
- In March of 2000, the Auditor General had decided to commence a legislative audit of the House of Assembly, but was ultimately prevented from doing so after the House quickly changed the IEC Act in May 2000; and

- In the summer of 2000, the IEC issued a policy, pursuant to the May legislative changes, which effectively required the Comptroller General to make payments on behalf of the House of Assembly with no access to supporting documentation.

The escalation in questionable expenditures with respect to constituency allowances, the events surrounding the legislative changes, the disruption of the audit process, and the cessation of provision of documentation to the Comptroller General appear to have coincided. In short, various indicators suggest that the difficulties with MHA claims may have started as early as 1998-99; certain administrative and audit dimensions became prominent in 2000-01; and the excess MHA claims peaked in 2003-04. This is illustrated in Chart 4.1:

**Chart 4.1**

**Discrepancy Trend**
**Excess Claims* v. Reporting Discrepancy (IEC Report v. Gov't. Accounts)**
*Fiscal Years Ended March 31, 1998 to 2005-06*




**As reported by the Auditor General June 2006 and December 2006*

*** The IEC Report for 2005-06 had not been tabled as of the writing of this report, but the expenditures recorded in the government's accounts exceeded the level that might have been expected, based on the approved maximum allowances, by over $500,000 in total.*

**Source:** Prepared by Commission staff, based on reports of the Auditor General, IEC Reports & data provided by the Chief Financial Officer of the House from government's accounting system.

With respect to questionable payments to suppliers, the Auditor General's report pertaining to those matters indicates that the significant questionable payments commenced in the 1999-2000 fiscal year and escalated through to December 2005.

## The Root Cause of the Problem: Systemic Failure

Throughout its consultations and research, the Commission repeatedly heard the questions: "How could such things happen?"; "Surely, over time, there must have been signals?"; "Why were they missed?"; "Were there no controls, checks and balances?"

While recognizing that, at the end of the day, problems of improper spending of public

money would not have occurred if the individuals involved had acted with propriety and with due regard to their individual responsibilities in the system, it cannot be said that there was a single incident or event that spawned the difficulties or created the environment that could have allowed such questionable practises. I am completely satisfied that the current difficulties and challenges confronting the House of Assembly in the administration of its affairs are symptomatic of a broad-based systemic failure. A confluence of factors, which were allowed to occur because of weaknesses in the system of House administration and in attitudes towards that administration's responsibilities, served to create an environment where protection of the public interest - which should always be the prime concern - was often lost sight of and subordinated to other concerns.

I have identified a multiplicity of concerns that span the full range of the financial, management, administrative and governance dimensions of the House of Assembly. While these concerns vary in nature and degree of importance, they all merit consideration. I have grouped them into ten broad categories, which I consider comprise the critical elements of the systemic failure in the administration of the Legislature of this province over the past ten years:

1) an improper reliance on the notion of *legislative independence* as a justification for implementing unsafe financial practices;

2) a broad failure in *management responsibility and accountability*;

3) serious deficiencies in *front line administrative practices*;

4) a number of *notable inappropriate decisions* made by the Internal Economy Commission;

5) a failure to place any degree of importance on the fundamental values of *governance, accountability and transparency*;

6) a failure of the *central control agencies of government* to assert sufficiently their authority in financial matters;

7) the implementation of an *ineffective audit process*;

8) *inaction by the Public Accounts Committee*;

9) the creation of an *ever-weakening legislative framework*; and

10) an inappropriate *"tone at the top."*

As summarized below, my observations and conclusions in respect of each of these dimensions underline the broad-based systemic nature of the difficulties. I stress again that the principal focus is not to attribute blame, but to identify those areas that require attention to

move the administration of our House of Assembly forward, and to chart a course toward best practices.

It must also be acknowledged, however, that a number of the deficiencies identified have been, or are in the course of being, addressed. My objective at this stage is to comprehend the extent of the failures and then to identify the additional remedies required (beyond what is now in place) so as to remove, or at least minimize, the potential for a recurrence of past difficulties.

Before proceeding to discuss the ten dimensions of failure in detail, it should be noted that some of the events that are symptomatic of particular failures are also relevant in discussing other failures. In that sense, they have a multi-dimensional impact. I make no apology for the overlap in the ensuing discussion. The interconnectedness of the events that led to systemic failure needs to be emphasized to demonstrate how the pernicious nature of a lack of vigilance in even one area can undermine fundamental values and standards in others as well.

**The Abuse of Legislative Independence**

It is important to address at the outset the crucial dimension of House of Assembly administration - legislative independence. In many respects, this fundamental concept adds perspective to some of the individual concerns that will be subsequently addressed.[2]

The principle of parliamentary supremacy and the independence of the legislature from the executive branch of government has been repeatedly highlighted as a fundamental reason why the operational practices, policies and controls of the House did not correspond with those generally applicable throughout government. Until recently, this principle was applied in a manner that deemed the House of Assembly to be:

- exempt from the extensive and generally applicable financial policies and controls concerning the management and administration of public money as set out in the financial manual established by Treasury Board under the authority of the *Financial Administration Act*;

- exempt from the purchasing policies, procedures, and controls as prescribed by purchasing and public tendering legislation; and

- exempt from some of the reporting, expenditure monitoring and analytical review processes of Treasury Board.

[2] See the discussion of the basis of the value of legislative independence under the heading “Autonomy” in Chapter 2 (Values).

Furthermore, the notion of independence was used in 2000 to help rationalize the passage of legislation to permit the appointment of an external auditor, rather than the Auditor General, to scrutinize the accounts of the House of Assembly. At that time, the same principle was also used to support the legislative change which gave the IEC the authority to determine the type of documentation to be provided to the Comptroller General to support requests for payment of public money from the accounts of the House.

I am not convinced that the doctrine of legislative autonomy necessitates the exemption of the legislature from the application of comprehensive, generally applicable financial policies and control mechanisms, audit processes and documentary support for disbursement of public money. Nonetheless, even if it could be said that the independence principle could justify the exemption of the House of Assembly from government's financial policy and control framework, it was incumbent upon the IEC to institute and adhere to alternative policies to compensate for the control mechanisms of the executive branch it chose not to apply. It does not justify leaving a void.

The IEC manifestly failed to implement alternative financial control mechanisms to fill the gap left by its refusal to apply the executive's policies. Accordingly, actions taken in the so-called interest of protecting legislative autonomy and enhancing accountability effectively led to the abuse of the notion of legislative independence. The following outcomes illustrate this reality:

### *(i) Financial Policy and Internal Control Vacuum*

The House deemed itself to be exempt from the general government financial policy framework and outside the requirement to follow the public tendering process without putting in place any adequate alternative control systems. At best, this environment contributed to an absence of clarity, consistency and control. At worst, it created an environment conducive to irregularities and potentially fraudulent activity.

### *(ii) Audit Process Disrupted*

The Auditor General's plans to conduct a legislative audit of the House of Assembly in 2000 were disrupted by legislative amendment and subsequent IEC actions. The legislative changes were purportedly aimed at enhancing accountability and required the IEC to direct that an audit of the House be conducted annually. Despite the legislated requirement, there was a prolonged audit hiatus from 2000 to 2003.

### *(iii) Comptroller General Rendered Ineffective*

The legislative amendments in 2000 provided the IEC with authority to establish policies respecting the documentation to be provided to the office of the Comptroller General to support payments of MHA expenses. The IEC immediately directed that the Comptroller

General have *no access* to documentation related to payments made for MHA allowances. One would not infer from reading the legislation that denial of access to all documentation in relation to payments to MHAs was the intent of the amendment to the *IEC Act* in 2000. This effectively eliminated any form of review or compliance testing of MHA expense claims by the Comptroller General.

### *(iv) IEC a Power Onto Itself*

From 2000 to 2004, the IEC rejected all external scrutiny of its financial administration, including the Comptroller General, Treasury Board, the Auditor General and, for a number of years, any form of external audit. Within the framework of legislative independence as employed in the House of Assembly, there was minimal external access to information and, consequently, minimal likelihood its decisions and activities would be challenged - a situation reinforced by a lack of meaningful public disclosure.

To the extent that the administration of the House of Assembly exempted itself from fundamental control mechanisms and audit processes in the name of legislative independence, and then failed to implement appropriate compensating controls and audit processes immediately, it abused the notion of legislative independence.

This picture did begin to change in 2004, and I am convinced there has been significant progress in recent months. The policy void is now very much in course of being addressed. The Auditor General has been reinstated as auditor of the accounts of the House, and the Comptroller General now has access to all documentation. *But, as important as these developments are, they could all be legally undone tomorrow. The legislative framework, particularly the Internal Economy Commission Act, which failed to prevent a series of problematic circumstances in the past, remains unchanged.*

## Failure in Management Responsibility and Accountability

The review of the management and administration operations of the House of Assembly over the past several years highlighted a number of challenges and concerns. The House of Assembly management/administrative unit was small. Though its scope of activity had increased with the addition of various statutory offices, constraints prevalent throughout government with successive rounds of "cutbacks" and "freezes" were equally prevalent in the House. Segregation of duties was a major challenge. Administrative personnel indicated that, despite pleas for additional resources, they were repeatedly challenged to "make do" with what they had.

In addition to shouldering executive responsibility for the financial management of the House as its administrative "permanent head," the Clerk of the House of Assembly also was expected to bear broad responsibilities with respect to oversight and management of the parliamentary processes and legislative activities of the House. Within this complex parliamentary/administrative mandate of the Clerk, it appears that, until recently, almost the

entire weight of ongoing financial management and administrative duties had been delegated to the Director of Financial Operations, with the Clerk focusing on the parliamentary side of his functions. In retrospect, the level of delegation appears to have been beyond the level of prudence and, in some respects, contributed to a lack of segregation of duties at the most senior administrative level.

Against this general background, there are a number of specific observations to be made with respect to the management of the affairs of the House. I raise these not to attribute responsibility for the past, but to highlight areas to be addressed as we contemplate best practices for the future:

### *(i) Inadequate Senior Management Scrutiny of Finances*

There was no ongoing top level due diligence review of the financial affairs of the House. Executive management and the IEC did not require regular financial reports and analyses of budgetary variances. I was told that when expenditure overruns occurred, the focus was concentrated on finding compensating savings elsewhere in the budget, rather than ensuring there was a full understanding of the root cause of the problem. For example, successive expenditure overruns in the Allowances and Assistance Account did not trigger a detailed review by the Clerk, the IEC or Treasury Board. It is now clear that, over a prolonged period, substantial payments beyond the allowed maximums were reflected in budget variances, if anyone chose to look, and were processed and covered by funds transfers. One cannot determine the extent to which irregularities might have been identified or prevented by different management processes. Nonetheless, budgetary variances were not challenged, variance analysis was not required or reviewed by senior management or the IEC, and signals of potential difficulty were missed.

I am convinced that legislation should mandate the requirement that the senior management of House take ownership of its financial affairs and underline the accountability obligations of the Clerk in terms of financial management and control. The weight of these obligations should not be capable of being delegated. This is not to say that the Clerk must do the actual work of financial administration himself or herself. It means, however, that ultimate responsibility for putting in place appropriate systems to ensure that proper financial management procedures and policies are applied must remain on the Clerk's shoulders at all times.

### *(ii) Minimal Scrutiny of the Funds Transfer Process*

Overruns on various budgetary sub-heads of expenditure were routinely accommodated by transfers from other accounts in which there were countervailing savings, either directly within the operations of the House or from one of the statutory offices. The House of

Assembly management purported to exercise full authority to process the transfers, in many cases without prior Treasury Board review. I was told that oversight responsibility for transfers was essentially delegated to the Director of Financial Operations.[3] It appears that neither senior management nor the IEC required detailed analysis, nor did they challenge the nature of expenditure overruns that gave rise to the requirement for transfers in the first place.[4]

In retrospect, it is easy to see that such analysis and focused review might have deterred or identified certain irregularities. Until the Clerk and the IEC are, by legislation, clearly made responsible and accountable for transfers of public monies to and from the sub-head amounts voted by the Legislature, the same lack of scrutiny that occurred could occur again.

### *(iii) Failure to Ensure a Timely and Orderly Audit Process*

The audit void in 2000-01 and the inappropriate delays in the audit process in subsequent years stand out as fundamental failures of governance in the House of Assembly. There is nothing in the applicable legislation that places on the Clerk of the House of Assembly a direct responsibility to ensure that annual audits are conducted in a timely fashion.

While I recognize that the legislated obligation currently rests with the IEC, there should be a role for the Clerk as the permanent head of the legislative branch to ensure that the IEC addresses its formal obligations to cause audits to be completed in a timely and appropriate fashion, that compliance with the audit requirements are reported to the full House, and that any findings of the audit process are addressed appropriately and expeditiously.

### *(iv) Inadequate Record-Keeping Data Access and Security Controls*

Expenditures of individual MHAs were not maintained electronically in separate accounts or sub-accounts in the government's financial management system. Consequently, payments were not controlled relative to the respective allowed maximum for each member. One person maintained a spread sheet on MHA allowances on a personal computer. Reports were not regularly generated in either written or electronic format for the MHAs or the Clerk. There was inadequate security of the information and no backup data maintained. Ultimately, important historical data in this regard were destroyed.

The constituency allowance expenditures of individual MHAs could, and should, have been maintained and controlled separately (with payments capped at the respective stipulated

[3] In fact, although ss. 28(1) of the *Financial Administration Act* provides that a department may "with the prior consent of [Treasury] Board" make transfers, in Directive 97-07 the Treasury Board has delegated authority to Deputy Ministers of departments to make transfers themselves in certain cases.

[4] The Director of Financial Operations has emphasized to me that all transfers were discussed with the Clerk prior to implementation.

maximums) on government's financial management system. As a result of this failure, management and the MHAs unnecessarily, and perhaps unknowingly, tolerated an inadequate and inappropriate arrangement. The systems capability was available, but the Comptroller General indicated that it was the responsibility of the individual "department" (in this case the administration of the House) to decide the format in which it wished to record its expenditures at this level.

There is no proper reason why constituency allowance expenditures of MHAs should not be maintained, controlled and reported individually on government's financial systems with controls that prevent payments beyond the respective maximum.

I am pleased to have been advised that this process has been now addressed and has been implemented.

### *(v) No Reporting to MHAs on Constituency Allowance Status*

There were no reports provided to MHAs on the status of their constituency allowances. Only one individual in the administration of the House of Assembly had access to this data. I was told that MHAs would ask that official and then be provided with an oral indication of his or her expenditures relative to the approved maximum. Often, this information would be countermanded with new figures without any reason being given. There was no confidence in the accuracy of the figures provided.

There is no legitimate reason why management of the House of Assembly should not be required to provide regular written statements to individual MHAs on the status of their constituency allowance expenditures relative to their approved maximum.

I have been advised that progress is currently being made in this regard, but I have also heard complaints, as recently as December 2006, from some individual MHAs that the information is still not forthcoming on a regular basis. Consideration should also be given to providing MHAs with direct electronic access to the data pertaining to their accounts.

### *(vi) No MHA Information Manual*

Over the years, there was no comprehensive MHA manual developed by the administration on behalf of the IEC to serve as a guide for understanding MHAs' compensation arrangements, entitlements, obligations and limitations. There was no clear articulation of what the rules were.

One of the MHAs I interviewed told the story - not unique, according to him - of how, following his initial election, he arrived at Confederation Building in St. John's without any real idea of what was expected of him. No one was able, or took the time, to explain to him how the House administration worked, how claims for expenditure should be made and what procedures he should follow in carrying out his duties. Eventually, a more experienced

colleague told him simply to speak to the Director of Financial Operations of the House and that "he would take care of you." He says he was reassured by that individual that he should submit his claims to him and that he would check to make sure he was within limits.

Not only was it inadequate to place "instruction" (if that is what it could be called) on such important matters in the hands of an official who, because of the absence of anything written, could, for all anybody knew, be telling different things to different people, it was highly inappropriate to allow MHAs effectively to be encouraged to place reliance on such an official and thereby diminish their sense of their own responsibility to ensure that they did nothing that would have the effect of misusing public money. The IEC failed to show leadership in this area by not causing, on a priority basis, proper guidance materials to be prepared for the continuing use of MHAs and for the specific orientation of new MHAs.

The absence of a key instrument (such as a manual) of guidance and support for MHAs is therefore a significant deficiency. It appears the IEC gave direction to the administration of the House of Assembly to develop a manual in 2004, but through lack of priority attention or lack of resources, or both, more than two years later such a manual still does not exist in a form suitable for distribution and use.

### *(vii) Inappropriate Delegation of Authority*

The relatively small size of the staff and the need to strive for appropriate segregation of duties appear to have led management to delegate "signing authority" (authority to approve, electronically, the release of funds) to an individual in one of the statutory offices of the Legislature who was not involved in the day-to-day operations of the House of Assembly, and not located in the same building. The result was that this individual was able to, and did, routinely, at the request of the Director of Financial Operations, approve for payment numerous claims and other invoices without having access to any documentation to verify the validity or correctness of the claims or the appropriateness of the invoices being approved.

It was a failure of management to have allowed such a situation to exist. It is a violation of all good financial management and control practices.

### *(viii) Failure to Address Tax Consequences of Allowances Without Receipts*

The non-taxable allowance that each MHA receives (at almost 50% of the sessional indemnity) is based upon the maximum permitted under the federal *Income Tax Act*.[5] Allowing a situation to exist whereby the maximum is exceeded in a given year will result in the individual MHA potentially facing an incremental (and unexpected) tax liability. I have

[5] R.S.C. 1985, c. 1 (5th Supp.). For further discussion of non-taxable allowances, see Chapter 9 (Compensation) under the heading "The Role of Non-Taxable Allowances."

found no evidence that these tax consequences were explored by management at the time non-receipted tax allowances (such as the use of non-receipted "discretionary" allowances prior to their purported discontinuance in 2004 and certain special payments made to MHAs in 2004 and likely also in 2002 and 2003, as described in Chapter 3) were approved. In my view, this is a failure on the part of the IEC to serve the members of the House properly.

### *(ix) No Orderly Record of Assets and Leased Equipment*

The House of Assembly, of necessity, requires a range of assets (furniture, computers, fax machines, copiers, communications and other equipment) in a number of locations to support the activities of the MHAs and all aspects of House operations. Some of this furniture and equipment is purchased and some leased. There were indications that control functions in this regard were lacking. Management indicated it was unable to locate various assets, particularly leased equipment, nor was it able to identify the rationale for some of the equipment leases. Not having clear guidelines on the acquisition of assets and the lease of equipment and on the maintenance of appropriate records, inventories, and tracking systems is an example of a failure on the part of House management to observe basic levels of financial management and control.

These concerns are in fact symptomatic of a broader document control and records management deficiency in the House of Assembly. This is discussed in greater detail later in this chapter when I deal with governance, accountability and transparency.

A "best practices" approach requires that a series of measures be put in place to ensure that the management of the House and the IEC have the necessary knowledge and understanding of the policy requirements and financial affairs of the House, take ownership of them, and take responsibility, and be held accountable, for addressing inadequacies.

## Deficiencies in Front Line Administrative Practices

In many respects, the difficulties identified with respect to front line administrative practices flow from the absence of basic financial policies and guidelines, as well as some of the other previously identified management deficiencies. In particular, the deficiencies underline difficulties associated with the segregation of duties in the House of Assembly. It is nonetheless important to review some examples of the issues identified to gain an appreciation of the practical weaknesses in the administrative practices:

### *(i) Inadequate Document Review*

Clerical personnel in the House administration indicated that the volume of claims at times was quite considerable and that they would sense pressure by MHAs to process and approve claims quickly. The claims were often significant, complex, and necessitating a time consuming review; nevertheless, staff admitted to processing some claims without the appropriate review of the documentation.

### *(ii) An "Upside-Down" Process*

MHA claims were sometimes approved by the senior financial administrative person first, and then passed to the subordinate for verification and approval (with the indication that the supervisor had been through it and it was "OK"). The normal, and appropriate, process - accepted under any theory of proper financial control - should have been to have the initial front line review conducted at the first clerical level and then have the claim move up for supervisory assessment.

### *(iii) Claims Signed Twice by Same Individual*

Numerous MHA claims appear to have been signed and initialed twice by the same staff member, indicating review for mathematical accuracy, appropriate documentary support and compliance with the rules.[6] In such cases there was no evidence of any detailed review and verification of the documentation by a second staff person. This amounted to a fundamental absence of segregation of duties, amounting to a violation of basic accounting principles of internal control.

### *(iv) Claims Prepared and Approved by Staff*

The Commission staff was told of instances where a senior staff member, in an effort to be of assistance to MHAs, would periodically prepare the original claim for constituency allowance expenditures on behalf of an MHA, and present it to the MHA for signature. (In some instances, the MHA would sign the claim form in blank before it had been filled out.) The same official would then sign it as approved for payment. In some instances such claims may have also been signed twice by the same staff member.

Not only does this inappropriately de-emphasize the notion that the MHA must take responsibility for his or her own claims, but it also creates almost an improper level of dependency by the MHA on a system that was inherently weak in terms of internal controls.

### *(v) Flawed Electronic Payment Authorization Process*

By virtue of the *Financial Administration Act*, the Comptroller General retains fundamental control over the actual disbursement of public monies. Regardless of the paper trail and documentation, no payment is released by the Comptroller General without the approval of two authorized signing officers, executed through electronic means on the government's financial system. However, as has been noted, there were instances when staff in

[6] See Exhibit 4.1 on page 4-25, for examples of claim forms that appear to have been verified and certified for payment by the same individual.

the House of Assembly would provide such approval, in the interest of expediting payments, without reviewing the supporting documentation.

Furthermore, as noted earlier, an individual who was "off-site," but had been granted electronic signing authority, indicated that this person was regularly asked to authorize payments with no access to the documentation and no knowledge of the transaction other than the senior official of the House had indicated it was in order for processing.

In the case of MHA constituency allowances, because only one person was said to have access to the balances of the respective MHAs, others approving MHA claims were not in a position to determine whether or not there were sufficient funds remaining within a respective MHA's approved allocation to justify approval for payment.

Administrative personnel, who were not in a position to review documentation and did not have knowledge of the nature or rationale for the specific expenditure, were improperly authorized to release such payments. Furthermore, individuals who were delegated signing or payment release authority either did not clearly understand, or did not care, that they had an obligation not to release public funds until they were satisfied that they understood the nature of the expenditure, that it was appropriate in accordance with existing policies, and was consistent with the purpose of the expenditure allocation to which it is being charged.

### *(vi) Lack of Clarity and Consistency*

In the absence of clearly documented rules, policies and guidelines, House staff frequently found themselves unsure as to what was an acceptable expenditure and what was not. In this regard, some of the House staff expressed discomfort that the rules from time to time were applied inconsistently, leading to unfairness and inequities.

The absence of definitive rules and guidelines for staff to apply in a consistent and fair manner surfaced in virtually all aspects of the review of House of Assembly administration. As the body with the statutory authority to make rules concerning entitlement by MHAs to claim against their constituency allowances, the IEC's failure to do so contributed to the sense of confusion and uncertainty that existed in the House administration. It was clearly a major deficiency.

### *(vii) Double Billing and Double Payments*

A number of instances of *double billing* and *double payments* of MHA expense items have been identified by the Auditor General. There is a fundamental distinction between the two functions - billing and payment. The onus with respect to the billing function rests squarely with the MHA. To the extent there was double billing, the responsibility must be attributable to the MHA and, potentially, to inadequate record keeping by the MHA.

While I recognize that anyone can make the occasional error, it has to be recognized -

as will be stressed in Chapter 5 - that fundamentally the MHA bears the ultimate responsibility not to seek reimbursement from Government twice for the same expense. Given the comments made in the media in recent months that attempted to explain instances of double billing on the basis of failures of the House administration to detect the practice and that it was appropriate for MHAs to rely on them to do so, I am not convinced that all MHAs acknowledge their role and responsibility in the process. Failure to do so indicates the existence of a lack of a culture of responsibility in this area.

Double payments, on the other hand, do highlight flawed administrative policies, procedures and control systems manifested in (as already noted) the lack of a requirement for original receipts to justify expenses, the processing of claims without detailed review, the absence of clear policies and the total lack of any form of compliance testing. The issue of double payments is complex, because detection after the fact is an extremely time-consuming and costly process that is potentially disproportionate to the problem.

The focus must be on the establishment of policies aimed at avoidance as opposed to detection after the fact. In this regard, the requirement for original documentation, the assurance of detailed claim review (and not the inadequate review process of the past) and the introduction of routine compliance testing are crucially important.

I am pleased to see that this aspect of control is in course of being addressed by the IEC in recent months.

I must emphasize that a proper control process within the House of Assembly alone will not necessarily avoid double payments of expenses for MHAs in all instances. This is particularly so where MHAs are also cabinet ministers and have access to a ministerial expense account. Claims in one's capacity as an MHA are processed by the House of Assembly administration, as already explained. Ministerial expense claims, on the other hand, are processed by the administrative mechanisms of the respective department of government that the minister heads. Furthermore, where ministers hold more than one portfolio, they have the ability to submit claims to more than one department.

The Commission's research in this area indicates that there is no process in place to ensure that expenses charged by a minister to his or her department have not also been charged to his or her MHA constituency allowance. Neither is there a control to ensure that receipted expenses have not been charged in one place for the same time period that per diem allowances have been charged in another. It is obvious that the potential for duplication is present.

This, in my view, is a fundamental flaw in the government-wide system of administering and controlling politicians' expense claims. No matter what reforms may be put in place within the House of Assembly to reduce the risk of double payment within the MHA constituency allowance claim system, there will still remain the not insignificant possibility that double payment may still occur because of the failure at the present time to cross-check constituency allowance claims made by ministers with the claims they make against their separately administered departmental expense allowance. The potential for improper spending

of public money in this area across the whole of government is - and has been - greater than the potential within the House alone. Yet nothing is, so far as I am aware, being done about it.

In my view, there should be a full investigation of the extent of double billing and double payments, if any, in this area of cross-over between constituency allowance claims and departmental claims. Regardless of whether any actual examples of double billing or payment are found, there should nevertheless be appropriate cross-over controls instituted, including a requirement for the submission of original bills and receipts by ministers, to ensure that the potential for it to happen in the future is eliminated. It may be that consideration will ultimately have to be given to having all expense claims vetted and approved by one central agency. I do not believe that notions of legislative autonomy should stand in the way of finding a financially responsible way of protecting the public treasury from improper use of public funds. The purposes of maintaining legislative autonomy, especially the purpose of ensuring that the work of the legislative branch will not be impeded or improperly interfered with, will not be subverted by requiring imposition of responsible financial management.

### *(viii) Lack of Compliance Testing*

The potential impact of the specific deficiencies identified in this review is more pronounced than it might otherwise be due to the absence of any form of compliance testing or internal audit review process. Administrative management of the House of Assembly indicated that their resource base was stretched to the extent that they were unable to conduct the appropriate front line review and analysis, much less provide any form of follow-up testing. The IEC has recently addressed this situation to a degree, and has authorized additional staff and an internal audit function for the House of Assembly.

I am not at all convinced that this addresses the issue appropriately, particularly in the context of the control concerns mentioned above related to MHA/Ministerial payments that cross over into departmental expense accounts.

In theory, the internal audit function should be performed as an intrinsic part of the Comptroller General performing his or her job of controlling public spending. As I noted in Chapter 3, the Comptroller General is charged with responsibility of ensuring that all public money forming part of the Consolidated Revenue Fund is not paid out where there is no legislative appropriation or where the payment is in excess of an appropriation. The internal audit process is one means whereby he or she may discharge that duty. That duty should extend across the executive - legislative divide, because both branches of government must ensure that public money is spent responsibly. It makes little sense for the House to set up its own internal audit capability for its purposes and for the executive to maintain a separate internal audit function for the executive branch. That would involve a duplication of resources. It would be far better to have one satisfactorily resourced internal audit capability that could work throughout both branches.

The problem with this theory is that, at present, the internal audit capability of the Comptroller General's office is seriously compromised by lack of resources. The Auditor

General commented on this serious state of affairs in his report on his audit of the financial statements of the province for the year ended March 31, 2006. He stated:

> The internal audit function in Government is not sufficiently resourced to adequately perform the duties expected of a modern and effective internal audit function. Internal audit is currently comprised of 3 positions, a decrease of 18 from the 21 positions in 1991.
>
> An internal audit function is an integral part of an effective internal control system. Without such a system, including the presence of an internal audit function, instances of the following may go undetected:
>
> - public money not being appropriately collected and disbursed;
> - non-compliance with legislation and/or government policies;
> - lack of safeguarding and accounting for the Province's assets; and
> - accounting and management control weaknesses.[7]

In my view, this is a very serious problem affecting not only the House of Assembly but Government as a whole. There is very little possibility, with the present level of resources, for there to be any effective internal audit process in government generally. I understand that the sorts of problems resulting from lack of compliance testing that are evident in the House administration may be equally present throughout Government, but the potential scale of the problems is infinitesimally greater. This is a situation that must be remedied for the sake of maintaining the integrity of government control systems. When this is done, there will be no sufficient reason for the Comptroller General's internal auditors not performing that function for the House as well.

### *(ix) Resource Shortages*

Concerns related to inadequate staffing levels, as a result of government's overall financial restraints, were a recurring source of complaint and frustration from staff and management throughout the consultation process. While the Commission staff did not undertake any workload measurement, it was quite clear that staffing constraints had presented practical challenges, both in terms of addressing the day-to-day requirements and affecting the ability to segregate duties properly and maintain a proper control framework.

In the context of internal controls, the clearest evidence of the definitive impact of fiscal restraint on staffing levels is the one mentioned above, where the central internal audit function of government was virtually wiped out.

---

[7] Office of the Auditor General, *Report to the House of Assembly on the Audit of the Financial Statements of the Province of Newfoundland and Labrador for the Year Ended March 31, 2006*, (December 13, 2006), p. 61.

Ironically, I must note that, even if the Comptroller General had not been denied access to the documents of the House prior to 2004, there likely would have been no significant increase in the level of compliance testing since the resources were not in place to carry out the function. In fact, the Comptroller General had access to the accounts of the House since 2004, and no excess claims were detected.

I am satisfied that the deficiencies in the front-line administrative practices in the House were exacerbated by the lack of proper levels of human resources. I am also satisfied that a fully functional central internal audit operation in the Office of the Comptroller General is an imperative element in the financial management framework.

To summarize at this point: the examples outlined above indicate that the policy void, management deficiencies, legislative changes and staffing challenges together combined to produce very practical, extensive and, now, quite obvious deficiencies in front line administration of the House of Assembly. Some corrective action has been taken in recent months, but, here again, more extensive legislative direction, policy guidance and ongoing management leadership is required.

**Notable Inappropriate Decisions**

Certain specific decisions and policies of the IEC over the years stand out as problematic in the context of strict notions of good governance, accountability and transparency.

***(i) The HST "Top-Up"***

The stipulated constituency allowance maximums allocated to each MHA, as set out in the IEC reports, were interpreted by the House administration, following consultation with the Comptroller General, as being exclusive of HST. Accordingly, a member became entitled to claim against his or her allowance exclusive of what was paid by way of HST on each expenditure, and then claim the HST in addition to the allowance instead of charging what he or she paid against the allowance itself. This effectively provided up to a 14% increase (15% prior to July 1, 2006) over the maximum an MHA was entitled to claim, as set out in the rules, the schedules and the amounts reported in the House in the Speaker's annual reports. The rules make no mention of this. Yet it is only by "rules" that the IEC was authorized, after an amendment to the *Internal Economy Commission Act* in 1996, to make changes in constituency allowances.[8] It will be recalled that prior to this amendment the IEC did not have the power to make changes in allowances except in response to a Morgan-type commission's

[8] S.N.L. 1996, c. 10, s. 1. This provision was amended in 1999 to give broader powers to the IEC to make changes to the compensation and allowance regime generally, but any such changes had to be made by exercising the Commission's rule-making power. See S.N.L. 1999, c. 14, s. 3.

recommendations. Notwithstanding having been granted this power to alter the allowance scheme, the practice was not publicly disclosed. The addition of the HST "top-up" was not included in the *Members' Travel and Constituency Rules, 1996* passed by the Commission, nor in any other rules, for that matter.

In effect, therefore, by this indirect means, the IEC gave MHAs an increase in the amounts they could claim by way of their constituency allowances. Yet when the actual expenditures and the maximum were reported in the Speaker's annual report to the House, HST was generally excluded, thus giving the impression that the maximum claimable - and actually claimed - by each MHA was as much as 14% lower that it really was.

This practice adopted by the IEC arguably provides for an unauthorized increase in the approved level of expenditures and understates actual expenses; the IEC reports therefore misled the House of Assembly and the public. I could find no documented general authority approving this treatment.

### *(ii) Discretionary Allowances*

A discretionary component of constituency allowances requiring no receipts was introduced in fiscal year 1996-97. It was initially set at $2,000 and had some timing limitations on drawdown. By 2000 it had progressed to $4,800 (plus HST, or $5,520). It was totally unaccountable, with no limitation on drawdown. This policy was diametrically opposed to the principle emphasized by the Morgan Report, which stressed the need to account for expenses to preserve the "confidence of the electorate."

While the IEC had legal authority, under the 1996 amendments referred to in the preceding paragraph to institute a discretionary allowance, it is nevertheless significant that the IEC was prepared to cast aside a fundamental principle of accountability underpinning the Morgan report in favour of other less principled considerations, such as administrative convenience. It is also worth noting that, having jettisoned the principle, the IEC was then prepared to allow the amount of the discretionary allowance to inch upwards over time.

This underscores the point that, once principle is cast aside in favour of other considerations, the path to weakening controls becomes a "slippery slope," especially where broadly conferred decision making power is conferred on the decision maker - as it was on the IEC after 1996 - and that decision making power is capable of being exercised in relative obscurity without clear accountability mechanisms.

I recognize, of course, that the policy on discretionary allowances was rescinded on March 31, 2004. Thereafter, all constituency allowance claims were required to be supported by receipts for actual expenditure; but, as I discuss below, the actions of the IEC in succeeding weeks were contrary to this renewed accountability focus.

It should also not be forgotten that, without some restrictions built into the system, there is nothing to stop the IEC under the existing legislative regime from reversing itself

tomorrow and reinstituting another discretionary unaccountable spending regime.

### *(iii) Indications of Special Payments (Unreported and Unverified)*

In Chapter 3 I explained that the external auditors who audited the House of Assembly accounts for 2001-02 and 2002-03 indicated to me that during their audit they had identified a difference in attempting to reconcile actual expenditures on constituency allowances to the expected levels in both years. They were initially unable to reconcile why actual expenditures exceeded their expected levels by in excess of $100,000 each year. Their audit files indicate that in both cases the difference had ultimately been "explained" by the staff of the House. I was told that the explanation indicated that additional payments were approved for MHAs late in each year, beyond the stipulated maximums, because there was "extra money" left in the overall budget of the House. The auditors indicated that staff of the House of Assembly had shown them documentation to support this explanation, but did not provide them with copies. I was unable to obtain copies from House records that clearly document these alleged decisions.

House of Assembly staff also seemed to recall this type of incremental year end payment happening from time to time in the past, but could not pinpoint the instances (apart from one in 2004, which I will discuss in the next section.)

There are, however, IEC minutes dated March 6, 2002, and February 26, 2003, both of which direct that MHA constituency allowances be adjusted, but no specifics are provided in the minutes. The minute of March 6, 2002, simply reads:

> The Commission directed the Clerk to adjust the Members' Constituency Allowances for the 2001-02 fiscal year in accordance with a proposal on file with the Clerk.

A copy of the "proposal" could not be found in the records of the Clerk or, for that matter, in any other records in the House administration.

The documentary record dealing with the following year is also obtuse. On February 19, 2003, the IEC directed the Clerk "to look at all the House of Assembly accounts in order to determine and report back to the Commission on any possible savings to be achieved with respect to these other accounts during the remainder of this fiscal year." It turns out, however, that this was not simply a cost-saving exercise. A memorandum dated February 20, 2003, from the Director of Financial Operations to the Clerk, refers to the February 19 direction to "see if any savings could be achieved *to benefit the MHA allowances* [emphasis added]." This intent would not have been apparent from the minute in the public record.

The memo from the Director of Financial Operations proceeds to identify potential savings that could be transferred. It then goes on to observe that, if this were accomplished, the total sum could then be "given to the allowance vote in the amount of $3500 - $4000 per member."

The minute of the IEC meeting of February 26, 2003, merely cryptically records:

> The Commission by order approved additional allocations to the Members' Constituency Allowances for the 2002-03 fiscal year.

There is nothing to indicate the ultimate amount of the "additional allocations." Again, management was unable to specifically recall or locate any further supporting documentation. We were furthermore unable, without knowing the exact amount of the payment to each MHA, to ascertain from the accounts maintained by the Comptroller General whether cheques were in fact cut and cashed in favour of any member.

Accordingly, I am unable to say with certainty that payments were in fact made to each MHA. However, I can say on the basis that: (i) the intent to make additional payments was present, (ii) steps were taken to identify funds that could be used for the purpose, (iii) members of the House staff recall in general terms (with regrettably short memories for detail) that such payments were made from time to time, and (iv) no one denied that it happened, a strong inference can be drawn that additional payments in the fiscal years 2001-02 and 2002-03 were made to at least some MHAs. Whether some individuals refused to accept such payments could not be ascertained.

This situation underlines in stark terms the inadequacy of record keeping in the administration of the House and the lack of transparency in reporting by the IEC. It raises serious questions about the motivations of those involved and suggests a deliberate attempt to obfuscate and cloak what was happening.

I remain concerned that I was unable to get to the root of this issue and identify a plausible explanation for these events, nor identify with precision the amounts that were involved or who received them. The issue is important to resolve in order to determine, after identifying the details, whether there was proper authorization for the payments, whether they were appropriate in the circumstances, whether they amounted to taxable non-accountable payments and whether they should be repaid.

### *(iv) Special Payment – (Unreported, but Verified)*

As was noted in Chapter 3, on May 12, 2004, the IEC passed a minute which "approved a proposal relating to Members' Constituency Allowances for the 2003-04 fiscal year," which had ended March 31, 2004. As in the case of the previous two years mentioned above, there was no further public disclosure of this decision. However, the minutes of the executive committee of the IEC (which are not tabled in the House nor otherwise disclosed) reveal that an amount of $2,500, plus HST ($2,875 in total) was in fact authorized to be paid to each MHA.

Perhaps more than any IEC decision that I examined, this event underlines the potential sensitivity of IEC decisions, and how lack of timely and clear disclosure denied the public the

opportunity to hold Members accountable. The decision raises numerous public policy considerations, especially when viewed in context:

(i) On March 1, 2004, the IEC had launched a renewed focus on "Accountability and its Relevance to Constituency Allowances" based on a memorandum prepared by the Speaker;

(ii) On the same date, the IEC had ordered a 5% reduction in members' constituency allowances, effective April 1, 2004;

(iii) On March 31, 2004, the IEC revoked the previous entitlement of MHAs to claim a portion of their constituency allowance expenditures without receipts and, in an otherwise unaccountable manner; it directed that all such expenditures be "*reimbursed only on the basis of receipts*" [emphasis added];

(iv) On April 1, 2004, the provincial public service went on strike in response to a wage freeze announced by the Government, which cited dire economic circumstances facing the province;

(v) On May 4, 2004, the *Public Services Resumption and Continuation Act*[9] came into force ordering employees back to work and legislating a wage freeze. Public servants were to receive no increases for the first two years of their contract;

(vi) Government's financial accounts for the 2003-04 fiscal year had been kept open to May 20, 2004 (beyond the normal April 30 cut-off), because of the public service strike. That meant that payments made up to the cut-off date could be retroactively included in the accounts for the fiscal year that ended on March 31, 2004;

(vii) On May 12, 2004, the IEC approved a special payment of $2,500 + HST ($2,875) to MHAs beyond the established maximums of their constituency allowance limits. These payments could be claimed without being supported by *any* receipts for actual expenditures incurred and were to be paid in respect of the fiscal year just ended. The claims were back-dated and payments were processed by the May 20 cut-off date and charged to the 2003-04 fiscal year. Exhibit 4.1 provides examples of the MHAs claim documentation to support this payment;

(viii) The decision to accept claims for these special payments was directly contrary to the policy approved by the IEC only six weeks earlier that all claims against a member's constituency allowance must be supported by receipts;

[9] S.N.L. 2004, c. P-44.1.

(ix) *There was no disclosure at the time*. The IEC report for fiscal 2003-04 tabled on December 13, 2004, contained no reference to the payment in the appended minutes, since the decision was approved after the end of fiscal 2003-04;

(x) An opaque minute dated May 12, 2004, appeared in the IEC *Report for Fiscal 2004-05*, which was tabled in the House on May 17, 2006 over two years after the decision was made and the money expended. That minute merely outlined that approval of a "proposal" relating to Members' allowances had been given. It was impossible to determine from that minute that payments of $2,875 each had been made to MHAs;

(xi) The IEC's annual report to the House actually misstated the information respecting the maximums that each MHA was allowed to claim against his or her constituency allowance because the extra payments that had been authorized were not added to the maximums. A person reading the report would therefore be misled as to the maximum amount to which any MHA had access;

(xii) The existence of the payment authorization and the amount was stated in the minutes of the "executive committee" of the IEC, but these minutes are not disclosed in the annual report of the IEC to the House nor to the public in any other manner. One is tempted to draw the conclusion that the minutes that were prepared for public consumption were "sanitized" to delete specific information about the transaction;[10]

(xiii) The annual report of the IEC to the House for the fiscal year 2003-04 clearly announced that there was to be a 5% reduction in Members' constituency allowances commencing April 1, 2004.[11] Persons reading this report would have been left with the impression that MHAs had their payments reduced; yet the failure to announce with similar clarity six weeks later that they became entitled to receive an additional $2,875, thereby negating much of the previous reduction, and the fact that the report of that "decision," as oblique as it was, was not made until the annual report a year later than the one in which the reduction was announced, only compounded the misleading nature of what was happening; and

(xiv) The first public revelation of the details of the decision was made by the Auditor General in his report tabled January 31, 2007.

[10] As was noted in Chapter 3, footnote 161, a staff member of the House of Assembly emphasized to me that the IEC had on occasion orally directed that additional payments to MHAs were not to be reflected in the year-end reports.

[11] *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 2.

**Exhibit 4.1**

## 2004 Year-End Discretionary Payments
## Edited* Examples of Claim Forms

Name
Address

House of Assembly
Commission of Internal Economy
Members Constituency Expense Claim

Period of Expense May 17/04 to May 17/04 Mail

| DATES | PER DIEM HOUSE CLOSED | PER DIEM HOUSE OPEN | TRAVEL EXPENSES | OTHER | DISCRETIONARY | |
|---|---|---|---|---|---|---|
| May 17/04 | | | | $2875.00 | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | | | | $2875 | | |

I certify that this claim is in accordance with Rules of the Commission of Internal Economy of the House of Assembly.

Members Signature

Claim verified; arithmetically correct; within the maximum limit and rules of the Commission.

Clerk

Certified for payment from the Consolidated Revenue Fund for submission to the Office of Comptroller General.

Clerk of the House of Assembly (or designate)

Date 17 May 2004

Amount $2875.00 (Total HST included $_____)

---

Name:
Address:

House of Assembly
Commission of Internal Economy
Members Constituency Expense Claim

Period of Expense May 12, 2004 To May 12, 2004 Mail 3/4

| DATES | PER DIEM HOUSE CLOSED | PER DIEM HOUSE CLOSED | TRAVEL EXPENSES | OTHER | DISCRETIONARY |
|---|---|---|---|---|---|
| May 12 | | | | | $2,500.00 |
| | | | | | $375.00 (HST) |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total | | | | | $2,875.00 |

I certify that this claim is in accordance with Rules of the Commission of Internal Economy of the House of Assembly.

Members Signature

Claim verified; arithmetically correct; within the maximum Limit and rules of the Commission.

Clerk

Certified for payment from the Consolidated Revenue Fund for submission to the Office of Comptroller General.

Clerk of the House of Assembly (or designate)

Date: May 12, 2004

Amount:$ $2,875.00 (Total HST included $ _____)

** Members' names and signatures deleted.*

A number of justifications have been put forward to explain why the decision was made to authorize the payments. It is worth briefly examining each of these.

First, it has been said that the payments were necessary because Members had incurred expenses in excess of their existing allowance maximums and it would have been unfair to expect them to pay legitimate constituency-related expenses out of their own pockets. I reject this argument. If that was the intent, Members could have been required, in accordance with the recently adopted policy, to submit proof of expenditures as support for the claims they were making. The fact that they were required to submit nothing more than a request for payment of the full amount, without any support, belies this as a legitimate justification.

Secondly, it has been said that expenses were particularly heavy in the 2003-04 fiscal year because of the election in the fall of 2003 and therefore it was reasonable to provide additional constituency expense support in such circumstances. I reject this as an explanation also. It is inappropriate to use one's constituency allowance in support of re-election. If election expenses had in fact been charged to constituency allowances, that could not justify allocating further public money to top up the deficit.

Thirdly, it has been said that making such year-end special payments had been "common practice" in recent years. The implicit argument here is that because it was done previously, apparently without complaint, there was a precedent that could be cited in justification. Of course, the "practice" of making payments in previous years had not been disclosed either, and therefore had not been subjected to the judgment of public scrutiny. In these circumstances, one cannot rely on a precedent that has not received any public acceptance. In any event, if precedent were the real justification, then disclosure of what was being done and relating it back to previous analogous events would have been expected. The fact that the decision was expressed in a way that prevented understanding of what was happening belies the legitimacy of this justification.

Fourthly, it has been suggested that the idea of ensuring that any unspent amounts in a budget category is spent before year end, to prevent lapse of the funds, is commonplace throughout Government and that what happened here is essentially the same. That is not so. The extent of funds available for constituency allowances is defined by the maximums available to each MHA for drawdown. Here, the argument is that members had already spent their maximums and needed more. Accordingly, there was no surplus money available to be spent within the subdivision of expenditure available for constituency allowances. It would have to be taken from some other source. Ultimately, as the Public Accounts indicate, the allowances and assistance account budget for 2003-2004 was overspent by some $347,000.

Fifthly, it has been said that MHAs who did not participate in the decision of the IEC were entitled to assume that the IEC (which included the Minister of Finance) was acting properly, and that if it deemed the payment appropriate, they should not be faulted for relying on it. There is some merit in the idea of proper reliance on IEC propriety, but that presupposes that the IEC is seen to be acting appropriately within the bounds of its authority. The argument can be carried too far. If, for example, MHAs had been properly informed (and I do not know that they were so informed) of the decision the IEC had made six weeks previously

to require all future constituency allowance claims to be accompanied by receipts, would it not be reasonable to expect that MHAs, being now invited to submit a claim for a flat amount without any backup receipts, would question what was going on? In the end, the responsibility rests on individual MHAs to decide to make a claim and to accept payment. The notion of reliance on the IEC does not, I would suggest, entitle MHAs to abandon independent judgment and conscience and to accept whatever is offered to them.

Sixthly, it has been suggested that a lump sum was appropriately offered to every Member so as to treat all Members fairly. This underlines a fundamentally inappropriate understanding of the role of constituency allowances. It is based on a flawed theory of entitlement. MHAs are *not* entitled to payment of money from the public purse as of right on the basis that the payment has been earned; rather, they are only entitled to payment on the basis of justified reimbursement of expenses legitimately incurred. Fairness to each Member therefore, does not require equal payments to everyone, whether they had incurred legitimate expenses or not. Instead, fairness only requires that all expenses properly related to constituency business be reimbursed according to their individual circumstance - a situation that will inevitably lead to differing amounts being paid to different MHAs. In fact, it is clear that some MHAs had not exceeded their existing constituency allowance limit by the end of the year. For those individuals, there was no need whatsoever to make an additional payment to them. The fact that such payment was made equally to all is simply not justifiable when measured against the legitimate purpose of reimbursement from public money.

Seventhly, it has been suggested that the reason why the $2,875 was offered without backup documentation was that some MHAs had destroyed their receipts believing (based on advice from the IEC, which was later countermanded by the Comptroller General) that they could not claim in May for expenses incurred before the March 31 fiscal year-end. It would have been unfair in such circumstances, it was suggested, to require receipts. I reject this argument also. In the first place, I find it hard to accept that MHAs would engage in such cavalier practices and destroy documentation such as credit card receipts so quickly when prudent record-keeping for purposes unrelated to making constituency allowances claims would normally require retention for much longer periods. In the second place, it does not in any event justify not requiring receipts from *any* member even though they all may not have destroyed their receipts. In the third place, for those that had, in fact, destroyed their records, special arrangements could have been made for *those* people, if, in an individual case, it was felt that an MHA would be unfairly prejudiced if he or she would have been prevented from making a legitimate claim. In the special circumstance (if that was what it was deemed to be) affidavits of verification might have been exceptionally accepted instead of original receipts. The fact that some members may have destroyed their receipts did not, therefore, justify a waiver of backup documentation for all members, thereby turning the payment into a discretionary one.

It also has been said by a number of persons connected with the IEC decision that, although the relationship between the approval of the $2,875 payment to MHAs and the positions taken by the government during the public sector strike opposing any increased payments to government employees is now apparent with the benefit of hindsight, those making the decisions did not make a connection between the two events at the time the

payment to MHAs was authorized. I accept that hindsight can often throw a stark clarity on matters that were murky at the time and thereby lead to inferences of sinister behaviour that may not in fact have been present. Nevertheless, I do find it difficult to accept the suggestion that *no one* connected with the IEC adverted to the connection between the MHA payment and the strike. It had, after all, ended a mere eight days prior to the IEC decision when the Minister of Finance, who had been intimately involved in the positions taken by the Government relative to the strike, was on the IEC and had participated in the decision. If I were sitting in a court of law assessing, as sworn evidence, the information I have been presented with, I would not have too much difficulty in drawing the inference that the issue *must* have been present in the minds of at least *some* of the participants in the decision. After all, the moment the fact of the $2,875 payment was made public by the Auditor General at the end of January 2007, union leaders, members of the media and public commentators almost immediately saw the connection between the two events. I do not believe that members of the IEC, as a group, are more obtuse in their thinking and reasoning ability than these other persons.

I therefore reject all explanations that have been advanced in justification for or in explanation of these payments. What, then, are we left with? What has occurred is an inappropriate decision to make unjustifiable payments to MHAs in excess of the maximum amounts allocated for constituency expenses,[12] in violation of the IEC's own policy of not accepting claims without receipts, which was accomplished in a manner that was the very antithesis of openness and transparency. The unaccountable nature of the payment, in the sense that it could be obtained by simply making a written request on a claim form without any specific justification, means that no matter how the payment was actually characterized by the IEC, it was effectively a year-end salary bonus voted to themselves and their colleagues in the House.

The payments may also not have been legally authorized. Section 14 of the *Internal Economy Commission Act* provides that the Commission may make "rules" respecting indemnities, allowances and salaries paid to members of the House. This is the only authority conferred by the Act on the IEC to authorize the payment of money to MHAs in these circumstances. Section 7 of the Act, which provides that all amounts of money voted by the Legislature shall be paid out of the Consolidated Revenue Fund on the "order" of the Commission, is not sufficient authority because the decision was not simply to pay a certain amount of money. It also made changes to policy matters (manner of making claims, non-use of receipts, etc.) "respecting … allowances … to be paid to members" within section 14, and therefore may well have had to be authorized by rule. Accordingly, the authorization for making payments to Members beyond what had already been provided for could arguably only be exercised by invoking the Commission's rule-making power. The Commission, advised by

[12] It should be noted, however, that although the intent was to authorize payment of an amount in excess of the maximum amount otherwise *allowable*, there was at least one MHA – the member for Humber East - (and as many as 16 others) who had not reached the maximum in *actual expenditures* up to that time. In such a case, upon receiving the $2,875 the MHA was still within the maximum that had originally been allotted. In other words, such MHAs did not actually receive more for their constituency allowance than had been originally allotted.

the Clerk, would have known about this methodology because it exercised it when adopting the *Members' Travel and Constituency Rules, 1996*, when amendments to the legislation were adopted that first conferred rule-making power on the Commission.

Here we have a decision to expend public money that was:

- contrary to general IEC policy;
- potentially legally unauthorized;
- reported in such a way that the significance of what was happening would not be apparent; and
- with respect to the obscure reporting that did occur, effectively misleading.

If such an event were to have occurred in the corporate world, where a chief executive officer, chairman of the board of directors or the board of directors themselves had authorized such actions and then participated in the issuance of an annual report or management information circular to the shareholders that failed to disclose material information and was effectively misleading, I have little doubt that the chief executive officer, the chair and members of the board would be subject to severe criticism.

While the analogy between the Commission of Internal Economy and a corporate board of directors is not perfect, one nevertheless has to ask whether the corporate and public worlds in these circumstances should not be held to similar standards of compliance with law and policy and with disclosure and transparency. The IEC is, after all, the steward of public funds and its duty is to "act on all matters of financial policy affecting the House of Assembly."[13] The IEC is a servant of the House and must be accountable at least to the House.

These events that I have described illustrate, as in the case of the HST interpretation and the other possible year-end payments in previous years, that rules and policies were applied to benefit MHAs in a manner not generally applicable throughout government. They indicate interpretations that effectively increased payments to MHAs beyond the indicated maximums reported to the House, and beyond what an objective reader of the rules might reasonably expect.

The examples also indicate a totally inadequate system of record-keeping in the House. Not only is it impossible to determine the substance of certain decisions from the published IEC minutes, but the documentary record cannot be easily or effectively reconstructed by a review of the files of the House.

In the case of the special payments in 2004, the situation also reflects actions of the IEC which were diametrically opposed to a very specific IEC policy decision in March of that year, as well as a newly stated overall governance policy thrust of the IEC. Approval of the special payments also ran contrary to the larger public policy thrust of fiscal restraint and

[13] *Internal Economy Commission Act*, R.S.N.L 1990, c. I-14, ss. 5(1).

freezes on public sector compensation that government had imposed. Some might chose to dispute this point, but the fact remains that these special payments were approved by, and made to, the elected officials at a very sensitive, highly charged time in the history of public sector employee relations in Newfoundland and Labrador. Yet, there was absolutely no disclosure at the time.

These specific examples are further symptoms that have reinforced my broad-based concern with respect to accountability, transparency and overall governance in the administration of the affairs of the House of Assembly.

**Lack of Commitment to Governance, Transparency and Accountability**

*The Internal Economy Commission Act* assigns a number of important responsibilities and authorities to the IEC, including:

- responsibility to act on all matters of financial and administrative policy affecting the House of Assembly;[14]

- responsibility to publicly disclose all decisions of the IEC;[15]

- authority to order payments from the approved estimates to defray the expenses of the House of Assembly;[16]

- authority to make policies concerning the documentation to be provided to the Comptroller General in support of payments (which effectively enabled the IEC to override the normal requirements of the Financial Administration Act concerning access to documentation);[17]

- responsibility to appoint an auditor and to ensure that the accounts of the House are audited annually;[18] and

- authority to make rules respecting Members' indemnities, allowances and salaries.[19]

One can infer from this list that the IEC is intended to have quite an extensive governance role. In fact, it could hardly be otherwise. Someone has to be responsible for the

[14] Ss. 5(2).
[15] Ss. 5(8).
[16] S. 7.
[17] S. 8.
[18] S. 9.
[19] S. 14.

proper control over, and expenditure of, public funds in the legislative branch. So long as the legislature is to operate independently as a separate branch of government, it must take responsibility for the stewardship of its operations and act accordingly. The IEC is the mechanism chosen to ensure that the responsibility is fulfilled.

I have previously outlined weaknesses with respect to: the lack of financial and administrative policies, the disruption of the audit process, the denial of documentation to the Comptroller General, deficiencies in administrative practices, as well as lack of guidance with respect to the rules related to Members' allowances, and troublesome interpretations and decisions in respect of those rules. The broad responsibilities of the IEC, the Speaker and the Clerk of the House encompass all of these areas.

My assessment of the governance practices of those charged with oversight responsibility revealed a number of important areas requiring attention. They range from the need to strengthen the *modus operandi* of the IEC, to the need to ensure that those charged with governance responsibilities have an appropriate understanding of their respective roles, to the need to address a range of fundamental inadequacies in the governance practices of the IEC and the administration - particularly those related to public disclosure, transparency and accountability.

This list of concerns with respect to the governance dimension reinforces the broader motion of systemic failure.

### *(i) Unstructured IEC Operations*

In my view, the IEC has operated in a relatively unstructured manner over the years. IEC members indicated that meetings would not be held regularly, and it was often difficult to schedule meetings due to the extensive commitments of the Cabinet Ministers on the IEC. It was suggested as well that the flow of the meetings would frequently be dominated by the Cabinet Ministers present. Furthermore, the effectiveness of the IEC as a collaborative decision making body was considerably hampered by members allowing partisan political differences to spill over from other arenas.

In the past, agendas and briefing materials had not been circulated in advance and minutes were not circulated following meetings. Members of the IEC indicated they would only see minutes as much as a year or so after the fact, when they were incorporated in a report for tabling in the House. By that time it was difficult to remember what had occurred at the various meetings many months before. I recognize that there has been a noticeable improvement in some areas of late, and that the IEC meeting process has become somewhat more structured. However, there is still room for improvement. Most importantly, the legislative framework has not changed. Accordingly, in the absence of more prescriptive legislative guidance on the structure, role, and operational processes of the IEC, the *modus operandi* could revert to the relatively loose and inappropriate operational style of the past.

### *(ii) Inadequate IEC Oversight*

The IEC did not generally concern itself with the oversight of the administrative affairs of the House of Assembly. As elected officials, the members of the IEC generally felt it was not their role to challenge the judgment, guidance or figures presented by the full-time administrative personnel. For the most part, the IEC left such matters to the Clerk and his staff, in whom they placed their full confidence and trust.

Although the IEC would review and approve the budget each year, through my consultation process I was told that the IEC was not provided with regular financial reports and there was no regular review or monitoring of financial performance relative to budget by the IEC throughout the year. For example, despite substantial budgetary variances in its largest account, the Allowances and Assistance Account over several years, it appears that the IEC did not seek a detailed review and analysis to explain the budgetary overruns.

The IEC was not involved in examining transfers of funds between accounts in a substantive way. Although the IEC might be informed on the overall budgetary status of House finances towards year-end when funds might be short in some accounts, or when funds were being sought to provide additional allowances for MHAs, there was no strategy developed to determine how the available funds could best be deployed.

The IEC did not regularly review the status of constituency allowance payments to MHAs relative to the respective maximums permitted. Through the course of a year, such matters were left entirely in the hands of the administrative staff.

The IEC did review the annual report (with its listing of actual constituency allowance expenditures and allowed maximums) before it was tabled in the House, but this was generally months after the end of the fiscal year. Notwithstanding such a review, the IEC was prepared to authorize the tabling of the reports that included minutes that did not clearly disclose the substance of all decisions and inaccurate information on allowance payments.

There is no doubt in my mind that the IEC's oversight role should be more clearly articulated and that steps must be taken to ensure that members of the IEC have a full understanding of their responsibilities in this regard.

### *(iii) No Orientation Nor Guidance for IEC Members*

Members of the IEC are not provided with a comprehensive orientation process or any formal guidance on their duties, responsibilities and overall governance role. The simple notion of "blind faith" in the administrative staff, as was suggested in our consultation process, does not suffice. The proper analogy is not with that of a cabinet; rather, the better analogy is with a board of directors of a publicly traded corporation. Members of the IEC and the Clerk should be expected to take ownership of the responsibilities prescribed in the legislation. In this regard it is important that a thorough orientation process be put in place for IEC members to ensure that they clearly understand their obligations, the policies, the rules and the

procedures.

IEC members should not be expected to audit the work of the staff, or to perform the more direct accountability functions of the Clerk; however, they have a responsibility to perform an ongoing "due diligence" role. For example, they should satisfy themselves, to the best of their capability that: the affairs of the House are being administered with integrity, and prudent management practices are being followed; that appropriate policies and controls are in place; that appropriate records are maintained; that they understand the financial and budgetary position of the House and that they monitor it on a regular basis; that any deviation from plan is explained and understood; that appropriate guidance is provided to enable Members to carry out their functions effectively; and that all IEC decisions, as well as important financial information on the operations of the House, are clearly and accurately disclosed to the House of Assembly and the public on a timely basis.

### *(iv) No Code of Conduct*

There is no clearly articulated code of conduct in place for IEC members, nor the staff of the House. This issue raises broad policy dimensions related to the overall tone of the operating environment of the House of Assembly. I will discuss these concepts at some length later in my report. I raise it here, however, because it underlines the context of an important specific observation.

I was made aware of an alleged relationship between a senior staff member and a supplier, which was known amongst the staff of the House of Assembly and by some MHAs. The Auditor General, in his June 27, 2006 report entitled *Payments Made by the House of Assembly to Certain Suppliers* also identified various concerns in this regard. Yet it appears that the operating culture was such that this relationship was not regarded as sufficiently inappropriate to take aggressive preventative action. At one point, government's conflict of interest rules were not deemed to apply to House of Assembly staff. In January, 2004, as a result of an initiative by the Speaker, I understand it was determined that the conflict of interest rules should be applied. Accordingly, steps were taken to address it by the issuance of a memorandum from the Clerk pointing out the inappropriateness of that type of activity. However, it appears there was no concerted follow-up by senior management or the IEC to determine whether the identified conflict had generated any irregularities in the past and whether the relationship had, in fact, been ended.

There is clearly a requirement for a code of conduct that articulates such things as: ethical standards and appropriate patterns of behavior; unacceptable business practices and inappropriate business relationships; the rights and obligations of personnel not to authorize payments which they do not understand, or which they feel are an inappropriate disbursement based on the purpose for which they were voted by the House; and the recourse available to those who feel uncomfortable about possible violations of the code.

### *(v) IEC Deliberations Not Public*

Historically, IEC meetings have not been conducted in public. The only disclosure of its confidential deliberations is provided through the Reports of the Internal Economy Commission, which are tabled in the House of Assembly by the Speaker on an annual basis usually months and sometimes years after the end of the fiscal year concerned.

This process is not consistent with the concept of transparency, since by the time the information is made available it is seriously dated, a factor which imposes a practical limitation on adherence to the principle of accountability. This dimension becomes more problematic when examined in the context of the nature of the decisions taken by the IEC and the inadequacies and misleading nature of the information contained in some of the IEC reports. It is difficult to hold members accountable for their decisions when one is ignorant of their decisions and the rationale for them.

Against this background, and in accordance with the general notions of transparency and accountability, there is a strong case to be made for the deliberations of the IEC to be open to the public. I will address this issue more extensively in a subsequent section of this report.

### *(vi) Two Sets of IEC Minutes*

Documentation provided by the administrative staff of the House indicates that the minutes tabled in the House did not in all cases correspond with the official minutes maintained in the Clerk's office.

Initially, I was only provided with the "minutes" that were appended to the annual IEC Reports. It was only months later that I learned that, in fact, another, different set of minutes existed.

In comparing the contents of both sets of minutes over the years I noted: cases where the tabled minutes appear to have been edited to delete certain references; other cases where the nature of the decision as reported was revised somewhat from the official version of the minutes maintained by the Clerk; and other cases where minutes were deleted entirely in the version that was tabled in the House.

Clearly, there should be only one set of minutes of the IEC's deliberations. The minutes should be prepared and circulated immediately to IEC members, and then finalized at the next IEC meeting to constitute part of the ongoing formal record of this parliamentary body. Those official unaltered minutes should be reported to the House.

### *(vii) Substance of Important IEC Decisions Not Disclosed*

I have already identified a number of incidents where the substance of particular decisions related to MHA compensation were not included in the IEC minutes, and therefore

not publicly disclosed. It is impossible for a reader of such minutes to determine the amount of the adjustment, whether payments were actually made and, if made, who received them.

Subsection 5(8) of the *Internal Economy Commission Act* provides that "all *decisions* of the commission shall be a matter of *public record* [emphasis added]." The purpose of such a requirement is to facilitate public understanding of the decisions of the commission and to enable those decisions to be subjected to scrutiny and, if appropriate, criticism and comment. A record that describes a "decision" in a manner that effectively masks the true nature of it does not comply with this subsection. Compliance with form is not enough; the substance must be disclosed. Otherwise the purpose of the provision would be frustrated. Accordingly, all IEC minutes should articulate all decisions in a manner that provides full, clear and meaningful disclosure.

The failure of the Speaker and the IEC to ensure meaningful disclosure of the substance of all IEC decisions in the minutes and in the annual report to the House amounts, in my view, is a contravention of subsection 5(8) of the *Internal Economy Commission Act*.

### *(viii) Records Management Deficiencies*

In a number of instances, the minutes of the IEC refer to decisions of the IEC that require reference to a proposal, letter, or information on file with the Clerk. In some cases, these documents could not be located. An example is the decision, previously discussed, of the IEC to authorize extra payments to MHAs in relation to their constituency allowances in March of 2002. Another example is the fact that the letter of engagement of the external auditors, after the Auditor General was removed from the House in 2000, could not be located, nor could the representation letter signed by management related to the audit.

Assuming they were in fact created at some point, their inability to be located, not only with ease, but after a lengthy search, highlights serious deficiencies in the records management of the Clerk's office.

The records management function of the House of Assembly must be addressed to ensure that important documents are retained, properly filed and secured.

### *(ix) Inaccurate and Misleading Reports*

It is obvious from what has already been said that the annual reports of the IEC that were required to be tabled in the legislature were inaccurate and misleading in a number of respects. Amongst the most notable examples were:

(i) They did not reflect the special year-end payments, beyond the established maximums, authorized by the IEC for MHAs as outlined previously

(ii) The reports understated expenditures of certain MHAs relative to the amounts of actual payments recorded on government's financial management system, specifically in relation to the five MHAs named by the Auditor General as having exceeded their maximum allowances, and overstated the expenditures of others who had not used all of their maximum allowances; and

(iii) The reports do not include the HST portion of the amounts paid to MHAs as part of their constituency allowances. Accordingly, many, if not all, of the actual amounts recorded and the maximums allowed for each MHA were understated in the sense that uninformed readers would be misled as to the total amounts spent from public funds for constituency related work.

In addition, the numbers for constituency allowance payments for the last several years were not totaled, which meant that the reader was denied an overall indication of the total level of expenditures, therefore making it more difficult to reconcile other records of government.

The reporting inaccuracies in the constituency allowance expenditure data in the annual reports to the legislature represent a prominent failure in the financial control and disclosure processes and, accordingly, in the transparency and accountability obligations of the IEC. Steps must be taken to ensure this does not recur.

### *(x) Incomplete, Inaccurate or Misleading Reporting to the House of Assembly*

The existence of payment discrepancies might well have been detected had the IEC records been reconciled with Government's financial management system, or had the Office of the Comptroller General been required to confirm that the data collected for inclusion in the annual reports of the IEC corresponded with the amounts reflected in government's financial management system.

At best, there was a lack of diligence and scrutiny applied to the accounts reconciliation process and the accuracy of the disclosure provided to the House of Assembly. At worst, one might conclude that there was a deliberate intent to mislead. The absence of due diligence in ensuring accuracy of financial reporting is a major deficiency. There must be a mandatory requirement for such diligence. This requirement, and the assignment of the associated accountability, should be clearly articulated in the future.

### *(xi) Absence of Timely Disclosure*

Because all IEC meetings are held in private, the only potential for disclosure of the IEC's deliberations is through the annual report of the IEC. Successive legislative amendments have permitted longer and longer delays in the tabling of the IEC reports and thereby delayed the disclosure of the IEC's activities.

In 1989, the reports were required to be tabled by the Speaker "no later than two

weeks" after the beginning of a new session of the House.[20] In 1994, the tabling obligation was extended to "6 weeks after the end of the fiscal year if the House is sitting or, if the House is not sitting then not later than 30 days after the House next sits."[21] Still later, in 1999, the period was further extended to *six months* from the fiscal year end if the House was then sitting.[22] It is important to appreciate the significance of this last extension. The House never sits for as long as six months in a sitting; accordingly, the tabling of the report does not have to be made - even though it may be ready - during the spring sitting of the House that occurs within six months of the fiscal year-end. Scrutiny of its contents can be put off until the following sitting of the House when its contents are no longer current.

In fact, I am not convinced that even these extended deadlines were always observed. The prime example of inadequacy in this regard is the year-end allowance adjustment approved by the IEC for the fiscal year 2003-04 in May 2004 which I previously outlined. It was only reported by the IEC in an obscure reference in the minutes for the 2004-05 fiscal year, which were tabled in May 2006, amounting to "disclosure" *two years after the fact*, and then involving a misleading and inaccurate expenditure summary.

The notion of transparency implies the provision of full and plain disclosure in a meaningful understandable form on a timely basis. The passage of extended periods of time detracts from the focus and relevance of matters and seriously jeopardizes the practical achievement of accountability. When the information provided is both late and inaccurate, the problem becomes one of public deception.

### *(xii) No Certification of Compliance and Accuracy*

Following the amendment to the *Internal Economy Commission Act* in 2000 that gave the IEC the authority to choose its own auditor of the House accounts, three years passed before the first audits were actually initiated. Even then the audits, which should have been completed within three months, were not completed for almost two years. In the case of the fiscal year 2000-01, no audit was ever initiated. There has now been an audit void for over six years.

Furthermore, I have already noted that, contrary to the legislated disclosure requirements, not all decisions of the IEC have been effectively or accurately disclosed for "the public record," and that some of the financial data included in the schedules to the annual reports are incorrect. These matters were not addressed by the IEC or the administration in its public reporting processes. There is no formal process requiring the Clerk, the Speaker or the IEC to certify that the IEC has complied with its obligations in respect of the audit and that the controls were adequate. In this regard, the contrast between the lax requirements in the House

[20] *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, ss. 5(8).
[21] S.N.L. 1994, c. 9, s. 1.
[22] S.N.L. 1999, c. 14, s. 1.

and the very stringent requirements that now apply in other areas, such as to publicly traded companies, is quite striking.

Over the years, the House and the IEC have repeatedly emphasized a commitment to the imperatives of transparency and accountability. Yet, as the forgoing indicates, there is reason for concern with respect to the manner in which the IEC and the administration of the House has handled its important obligations with respect to: compliance, reporting and public disclosure.

The reporting deficiencies identified are substantial and must be rectified for future reporting. In this regard a formal certification process to confirm compliance with prescribed legislative obligations, as well as the accuracy and completeness of the data, is indicated.

**Ineffectiveness of Central Control Functions in Government**

The *Financial Administration Act* (*FAA*) is the legislation that prescribes the overall framework for the administration of the financial affairs of the Government of Newfoundland and Labrador.[23] It deals with the control over the appropriation and spending of all "public money."[24] Because the FAA requires all public money to be held and administered from one consolidated revenue fund, it is inevitable that it must have at least some application to those portions of public money that may be appropriated for use of the legislative branch.

The *FAA* establishes the Treasury Board as a committee of the Executive Council to act on, amongst other things, all matters relating to the financial management of the province and administrative policy in the public service.[25] It can prescribe the manner and form in which the accounts of the province are to be kept, how estimates of revenue and expenditure must be prepared and the manner in which the public accounts are prepared.[26] The Treasury Board also has specific authority to direct those persons managing public money (in this case, the IEC or the Clerk of the House) to keep the books, records and accounts in the manner it chooses to prescribe.[27]

The staff of Treasury Board monitors the ongoing expenditure patterns and budgetary trends across Government.[28] In this regard they require the submission of monthly financial reports from all departments showing actual expenditure patterns compared with budget,

[23] *Financial Administration Act*, R.S.N.L. 1990, c. F-8 (*FAA*).
[24] S. 2(1) (m) defines "public money" expansively as "all money received, held or collected for or on behalf of the province by the minister [of Finance] or other public officer in his or her official capacity or a person authorized to receive, hold or collect the money" and includes all provincial revenues, borrowed money and money paid to the province for a special purpose.
[25] *FAA*, ss. 6(a) and (b).
[26] *FAA*, ss. 7(1) (a) – (c).
[27] *FAA*, ss. 7(1) (d).
[28] Under the current organizational framework of the executive branch of the government, the Treasury Board staff is now effectively the Budget Division of the Department of Finance.

explaining budgetary variances and providing an outlook for expenditures to the end of the fiscal year. Treasury Board staff also oversees the preparation of the annual estimates of all departments, analyses their budgetary requests and makes recommendations with respect to the proposed budgetary allocations for the coming year.

The *FAA* also makes provision for the appointment of a Comptroller General to provide a central financial oversight and control function in respect of the disbursement of public monies on behalf of the government.[29] He or she has "free access" to the books, accounts, files, documents and other records of a "department." The Comptroller General also has broad control responsibilities in relation to the type of documentation that supports the disbursement of public funds. Subsection 25(4) of the *FAA*, an important provision, states:

> Every application of a department for an issue of public money to defray the expenses of the services coming under its control shall be in the form, accompanied by the documents and certified in the manner that the comptroller general may require.

When the *Internal Economy Commission Act* was amended in 2000 to allow for the Commission to establish policies respecting documents to be supplied to the comptroller general, thereby effectively controlling the flow of documentation into the government financial management system in support of MHA constituency allowance claims, the operation of subsection 25(4) of the *FAA* was expressly excluded from application to the House.[30] Conflicting legal opinions have been expressed over the years as to the degree to which the language of the *FAA* in other aspects has application to the House. This legal uncertainty, coupled with the aggressive assertion of independence by the IEC after the adoption of the 2000 amendments, has led to reluctance on the part of the staff of Treasury Board and the Comptroller General's Office to attempt to impose financial policies in the executive branch to the legislature. This absence of scrutiny may have resulted in potential signs of difficulty being missed.

Notwithstanding the legal uncertainty that has been expressed, there is no doubt, in my opinion, that certain of the provisions dealing with general control of "public money," where obligations are expressed in an open-ended fashion without reference to a "department" of Government, can and do apply to the control of spending in the House. Since all public money (including the part that is spent on the House) forms one pot of money in the Consolidated Revenue Fund, and since the Comptroller General has overall control of spending of that money, it follows that he or she has a role, to play in respect of spending of House-allocated money. The difficulty is to define the limits of that role, given the special provisions in the *Internal Economy Commission Act* and the penumbra of uncertainty surrounding the principle of legislative autonomy.

---

[29] *FAA*, ss. 20 (1) and (3) (*FAA*).
[30] *Internal Economy Commission Act*, S.N.L. 2000, c. 17, s. 2.

Following the 2000 amendments to the Act, the Comptroller General sought legal advice as to whether he was required to make payments to MHAs without detailed supporting documentation. He was told that his authority in that regard had been limited.

While it is true that subsection 25(4) of the *FAA* had been expressly excluded, the ability of the IEC to control the flow of documentary information to the Comptroller General still depends on the proper operation of section 8 of the *Internal Economy Commission Act*. That section authorizes the commission to "establish policies respecting the documents to be supplied to the Comptroller General where an application is made for an issue of public money…" Subsection (2), however, provides:

> Where the commission establishes policies under subsection (1), documents supplied to the comptroller general that conform to those policies shall be considered to fulfil all of the requirements of the Financial Administration Act respecting the provision of documents in support of an issue of public money.

Before the IEC can exempt itself from the operation of the *FAA*, it must *"establish policies"* respecting the documentation to be supplied and the documents supplied that "conform to those policies" only then are deemed to fulfill the requirements of the *FAA*. It is arguable that section 8 contemplates that there must be some level of documentation supplied, and that it is policies in relation to that level of documentation that must be adopted. A decision to supply nothing may not constitute a "policy." In other words, a "policy" not to have a real policy may not be regarded as a policy at all.

I make this observation, not to assert a definitive legal position on the point, but to emphasize that there was room for argument that the Comptroller General could have continued to have a role in this area and that Treasury Board, with its authority to direct those persons receiving, managing or disbursing public money "to keep those books records and accounts that the board considers necessary," might also have been able to continue to assert some control over record-keeping. It is regrettable that the uncertainty of the legality of the situation and the assertion of legislative autonomy by the IEC led to the "hands off" approach I mentioned earlier.

The framework of the *FAA* implies a multiplicity of broad central controls that one might anticipate would have detected signals or prevented at least some of the broad range of irregularities previously outlined had they been applied to the financial administration of the House. Unfortunately, they were not.

I am of the view that there is a distinction to be drawn between the independence of the Legislature as it relates to decision making powers as opposed to how it relates to the application of financial controls. While the IEC should have the power to make operational decisions without interference from Treasury Board or the executive branch generally, the independence principle does not necessitate that the legislature be outside the generally applicable financial monitoring and internal control function that apply to protection of public funds and enunciate good management practices.

The House and the IEC used the authority of the legislature to override certain long-standing central financial controls in respect of expenditures by the House of Assembly. I can find no legitimate rationale to support this legislative action and accordingly conclude that the authority granted to the IEC under section 8 of the IEC Act should be rescinded and the provisions of the FAA should generally apply to the House.

Before leaving the subject of the application of the general financial controls in the *FAA* to the House, there are a number of other specific matters to be touched on.

### *(i) Inappropriate Account Structure in the Estimates*

Under section 23 of the *FAA*, Treasury Board determines the manner in which the estimates of expenditure are to be prepared - that is, the structure of the accounts for inclusion in the annual budget of the Province. This essentially determines the manner in which accounts are ultimately recorded and formally reported in the public accounts.

The Allowances and Assistance Account in the estimates is not only the largest account in the legislature's head of expenditure; it is a mixture of two distinctly different types of expenditures: (i) an MHA salary component (sessional indemnities and non-taxable allowances - the same amount for all for 48 MHAs - amounting to basic compensation with no claim requirements); and (ii) reimbursable expenses (constituency allowances) significantly different for a number of MHAs with a series of rules and claim requirements. I have already noted that the overruns in the Allowances and Assistance Account were predominately concentrated in the constituency allowances component.

The combination of these different categories of expenditures into one account in the estimates effectively masked the significance of the constituency allowance variance and the consistently troublesome trend of excessive spending over the years. For example, the budgetary overrun on Allowances and Assistance in 2005-06 amounted to some $550,000 on a base of $5.1 million, or almost 11%. However, the overrun was largely recorded in the constituency allowance component, which has a base of some $1.7 million. Accordingly, the real variance amounts to an overrun of some 30% on constituency allowances. Viewed in this way, anyone paying attention to it would have greater cause for concern.

I am satisfied that the account structure of the legislature masked the true significance of the troublesome constituency allowance trend. In fact, the estimates and the public accounts do not even report an amount for constituency allowances. The publicly reported account structure should be revised in the future to subdivide the Allowances and Assistance Account in such a manner that constituency allowances are budgeted and reported separately from MHA salary compensation. Furthermore, the titles of the accounts should be clearly indicative of the nature of the expenditures in each case. Such a structure in the last number of years might have sent more meaningful signals of expenditure trends that were not as prominent in the existing format.

### *(ii) Inappropriate Internal Records and Accounts*

The House of Assembly administration did not establish separate constituency allowance accounts for each MHA. It could have done so on government's financial management system and then controlled them individually based on the approved maximum allowable amounts for each respective constituency. The "off-system" spread sheet approach followed by the administration of the House was inappropriate and afforded no means of direct monitoring or control. Furthermore, it provided only one person with access to the data and there were no controls as to the accuracy of the data.

Although the Office of the Comptroller General had no access to any documentation respecting the expenditures on these accounts and so could not monitor the appropriateness or extent of expenditures, I have noted that Treasury Board does have the power, under section 7(1) (d) of the *FAA* to "direct a person receiving, managing, or disbursing public money to keep those books, records and accounts that the board considers necessary." The Comptroller General sought legal advice as to the applicability of this section to the House of Assembly and the response he received was not at all definitive on the issue. The Office of the Comptroller General indicated to the Commission that it is generally accepted practice to allow the various departments of government to determine the manner in which they wish to control expenditures below the level voted in the estimates by the House.

Hindsight suggests that in circumstances where the Comptroller General did not have access to documentary support for expenditures, and where there was a pattern of expenditure overruns (quite apart from the fact that the Auditor General had raised concerns and was directed to cease and desist), the Comptroller General's Office might have explored the control mechanisms, if any, that were in place, and pursued such further control mechanisms at its disposal. Further, Treasury Board might have examined and conducted an analysis of the variances to determine if corrective measures were required.

Regardless of the situation that occurred in the past, however, there should certainly be clarification of the proper role of the Comptroller General and Treasury Board in relation to the legislative branch in the future. The policy framework should clearly reinforce the principle that the Comptroller General has access to all documentation. The current IEC discretion to deny access should be removed. In addition, it should be clear that the Comptroller General and Treasury Board have the power, and are expected, to intervene and prescribe the manner in which accounts are to be kept in any circumstance where they feel that appropriate accounting and controls are lacking.

I would point out that through the course of this aspect of our research, it was suggested that, over the years, government has moved away from a control framework that emphasized central control functions to a more decentralized approach that delegates more autonomy and accountability to the management of the line departments. Accordingly, we were told that the limited scope and intervention of the central control functions of government, observed in relation to the affairs of the House of Assembly, was in many respects no different from the practice which prevails throughout the executive branch of government. This decentralized approach, coupled with the various restraint programs, has

resulted in reduced staffing levels in Treasury Board and the Office of the Comptroller General. In this regard, while it appears there is a rationale for more proactive central control functions right across government (in fact, the *Financial Administration Act* in my view requires it), the people working in these core elements of financial management contend that today they do not have the resource capability to carry out such a mandate. This raises concerns that I will discuss in a broader context in Chapter 12.

### *(iii) Lack of an Effective Internal Audit Process*

At various points I have made reference to the exclusion of the Comptroller General from involvement in the financial affairs of the House, as well as the resource constraints which have seriously limited the internal audit capability of that office. However, it is also appropriate to consider the results of the internal audit process when it *was applied* to the House in recent years.

In Chapter 3 I explained that in 2004, at the invitation of the Clerk of the House of Assembly, the Professional Services and Internal Audit Division of the Office of the Comptroller General reviewed the guidelines for the payment of constituency allowances as well as the administrative procedures in the House relating to the payment of claims. It is difficult to assess from these relatively brief reports the intensity of the concerns raised by the findings. It is clear, however, that a number of recommendations were made with respect to improving procedures on a go-forward basis. It is equally clear that there was no focused attention directed toward addressing these recommendations on a timely basis, and that no definitive changes in administrative processes were instituted prior to the release of the Auditor General's findings in the summer of 2006 - some 18 months later.

It might be argued that this internal audit process detected some troublesome signals. Yet, if problems of a serious nature were identified, sufficient alarm bells were not sounded. There was no timely action taken by the House administration to change procedures and no incremental, analytical, investigatory or control mechanisms were activated by the Comptroller General or Treasury Board as a result of the process. (I do acknowledge that consideration was being given at this time to adding a new CFO position in the House.) Nevertheless, whatever the reason, there was no timely action taken in response to the internal audit reports. Accordingly, the process was essentially ineffective.

I believe that the internal audit process can play an important role in the control framework, but, to be effective, there must be an obligation on the administration of the House to address findings and recommendations on a timely basis. In addition, the office of the Comptroller General must follow up to satisfy itself that appropriate action is being instituted to address deficiencies. In cases where the concerns remain, the Comptroller General should conduct such further analyses and investigations as deemed appropriate and, when necessary, sound the alarm with Treasury Board.

**An Ineffective Audit Process**

Any discussion of the audit process as it pertained to the House of Assembly must take place in the light of the following disturbing events:

i) the disruption of the audit process following the legislative amendments in 2000;

ii) the failure to appoint an auditor for the 2000-01 fiscal year;

iii) the excessive delay in the appointment of external auditors following the legislative change and the delays in finalizing those audits;

iv) the failure of the external audits of 2001-02 and 2002-03 to identify any difficulties or irregularities; and

v) the extent of the difficulties identified in the series of reports tabled by the Auditor General in recent months.

There is, of course, no means to evaluate the actual impact of the absence of an audit process from the House of Assembly for an extended period, or the signals it sent. Nonetheless, the IEC and the House of Assembly itself must ultimately be held accountable for the consequences of the audit disruption. The IEC, the administration of the House and the auditors themselves bear varying degrees of responsibility for the delays in finalizing the audits once they had been initiated.

The unacceptable delays and the troublesome findings that resulted from the audit process raise a number of issues that must be addressed in contemplating an audit approach that avoids the failures of the past

***(i) Disruption of the Audit Process***

The disruption of the audit process of the House of Assembly in 2000 is most troublesome. The actions of the IEC in supporting the proposed amendments giving it the authority to chose an auditor other than the Auditor General and its subsequent decision to exclude the Auditor General from the House leads to the inference that the IEC consciously disrupted the Auditor General's planned legislative audit process when it was apparent that the Auditor General had concerns. The IEC provided no effective alternative means to have those concerns explored. If anything, it took steps to prevent them from being explored.

The issue of concern is not the parliamentary policy question of who should conduct an audit - the Auditor General or an external auditor. It is the fact that the IEC moved to bar the Auditor General, denied access to information and then failed in its obligation to appoint an auditor for three years (and, in the case of 2000-01, the void still remains). The IEC then failed to ensure, after finally engaging external auditors, that the audit mandate was

sufficiently comprehensive or that the audits were completed on a timely basis. The time frame for completion of the audits extended beyond any reasonable parameters. The motivation for this audit disruption and the virtual abdication of responsibility for this important governance function is not known.

In the future, the IEC should be held accountable for ensuring that: not only is an auditor appointed on a timely basis, but that the audit is completed in an appropriate fashion within a stipulated time frame; that identified areas of concern or risk are explored through the course of the audit; and that the findings of the audit process are addressed reasonably and promptly.

### *(ii) Audit Process Ineffective*

The audits eventually conducted by a private accounting firm for 2001-02 and 2002-03 did not detect the difficulties identified by the Auditor General over the past several months. In listing these items below, I am not suggesting that they should have necessarily been identified and addressed by the external auditor. As noted in Chapter 3, there was confusion over the scope of the audit and what it was intended to cover. The Commission staff have, however, noted that, whatever the reason, the audits did not express concern over:

i) any apparent weaknesses in, or absences of documented financial management, purchasing, and commitment control policies;

ii) weaknesses in internal controls and the lack of segregation of duties;

iii) inadequate documentation or payment approval processes;

iv) the lack of separate MHA accounts to control constituency allowances expenditures to the approved maximum;

v) the fact that the only records to monitor constituency allowance or payments were "off-system," or on a computer spread-sheet that could only be accessed by one individual; and

vi) offsite payment authorizations by an individual with no access to documentation.

In addition, I have noted that, as a result of discussions between the Commission staff and representatives of the external auditors, there was:

vii) no testing to check that payments to MHAs were within the approved maximum;

viii) no communication to the Speaker or the Clerk to underline the fact that the financial statements for 2000-01 had not been audited, even though this was a

continuing violation of section 9 of the *Internal Economy Commission Act* (and even though the 2001-02 audit indicated there were no comparative numbers for 2000-01);

ix) no observation that an openly acknowledged relationship between a person in a senior financial position and a supplier was an apparent conflict-of-interest;

x) no testing process for the detection of potentially fraudulent activity; and

xi) no meeting with representatives of the Office of the Comptroller General, who essentially maintain the accounts, to review their processes and obtain their perspective on policies and controls.

It is true that a reconciliation process for constituency allowances undertaken by the external auditors did identify a difference which, if pursued, might have led to exposure of a serious issue. However, an explanation was provided by House of Assembly staff that was deemed acceptable, and the question was considered resolved. No documentation supporting the explanation has been produced from the records of either the House or the external auditors that would confirm the explanation given.

In short, the external audits did not reveal anything that the auditors felt merited comment in a management letter to the Clerk or the Speaker. While the numbers in the financial statements in themselves might be correct, one may conclude that a financial statement audit does not effectively meet the needs of the House of Assembly from a number of perspectives. Given what has subsequently surfaced, the lack of any audit findings in these circumstances is a source of concern. It is not clear whether the inadequacy resides entirely with the scope of the audit or with the processes employed. The problems, after all, were not confined to one isolated area; they were multi-dimensional.

Nonetheless, the audit scope and process in the future must be clearly designed with the objective of ensuring that such deficiencies could not escape the audit process.

### *(iii) Audit Scope Questioned*

The audits of the House of Assembly for 2001-02 to 2002-03 were "financial statement" audits, not "legislative" or "compliance" audits; nor were they "forensic audits." They were focused purely on the financial statements with materiality threshold[31] of some $125,000, based on the size of the overall expenditure base of the House of Assembly. While this may be consistent with normal auditing practice for "financial statement" audits of

[31] "Materiality threshold" means a level of discrepancy in figures that is regarded as sufficiently significant, given the nature and size of the audit, if in the light of surrounding circumstances, it is probable that the decision of a person who is relying on the financial statements, and who has a reasonable knowledge of business and economic activities, will be changed or influenced by such misstatement or the aggregate of all misstatements.

operations of this size, the audit scope and process followed proved to be inadequate to address the key risk areas within the operation of the House of Assembly. Serious difficulties within the financial affairs of the House were obviously not detected. Yet, based on the materiality level chosen, it can be said that the audited financial statements produced by the external auditors are "materially" correct in the sense that the total overall expenditures may be accurate and the amounts recorded in each major account may fairly represent the amounts that were ultimately charged to each of the respective accounts.

To the extent this assertion of material correctness is valid, I must conclude that the financial statement audit process as applied was not sufficient to detect the serious circumstances prevalent in the House of Assembly. Whether a financial statement audit process should have detected some of the signals of difficulty is a matter on which auditors and accountants may disagree. Nonetheless, the restoration of public confidence necessitates that there be no uncertainty as to the future audit scope and mandate and that the audits include appropriate tests to confirm that the problems and deficiencies identified have been corrected with no reasonable possibility of recurrence.

I must stress again that the critical policy considerations do not relate to who conducts the audit, but the scope of the audit that is undertaken, the appropriateness of the processes that are taken through the course of the audit, and the appropriate assignment of accountability to ensure that the audit process is initiated and completed on a timely basis, with the results being communicated and addressed promptly.

**Inaction by Public Accounts Committee**

The Public Accounts Committee (PAC*)* is a Standing Committee of the House of Assembly with a general financial oversight function in relation to the spending of public funds, financial management and control, and legislative accountability.[32] *The Financial Management Handbook* issued by the Office of the Comptroller General summarizes the structure and role of the PAC as follows:

- The Committee is composed of seven members from the elected Members of the House of Assembly. It consists of four members from the governing party and three members from the official opposition party. Ministers do not serve on the Committee;

- The Committee is established as per Standing Orders 65-70;

- The Chairperson is a member of the official opposition party;

[32] I say this based on a general understanding of the functioning of public accounts committees in the Anglo-Canadian parliamentary system. In fact, there are no formal written terms of reference of the *PAC*. The *Standing Orders of the House of Assembly* provides for the establishment of the committee (Order 65(1) (d)) but does not set out its mandate.

- The Vice-Chairperson is a member of the governing party;

- The Committee is to operate in a nonpartisan fashion to hold Government accountable to the House of Assembly for the stewardship of public assets and the spending of public funds. This would include the investigation or review of all past, current, and committed expenditures of Government;

- Under the *Auditor General Act*, the Committee may request the services of the Auditor General's Office to perform specific reviews or tasks;

- Reviews and analyzes initiatives to reform financial management and control structures and processes to ensure that due regard is given to maintaining legislative accountability and enhancing it where possible; and

- Reviews and reports to the House of Assembly on matters such as those reported on in the Auditor General's reports and other issues related to the financial administration of Government.[33]

I understand from information provided by the Office of the Clerk of the House that the PAC generally uses the annual reports of the Auditor General as the basis of its reviews. It selects, by consensus, a number of reported matters to address and then holds public hearings to review them. In this regard, I was advised that the normal process has been for the PAC to meet with the Auditor General after his report is tabled to obtain a briefing on his findings. The Committee then meets in private to decide which matters to review and proceeds to schedule its hearings.

In the overall context of parliamentary independence, one might expect the PAC to exercise an important stewardship role in relation to the expenditures and financial management of the House of Assembly. However, this does not appear to have been the case.

### *(i) PAC Meetings - Infrequent*

There is no set schedule of meetings or agenda for the Public Accounts Committee. The Committee meets when it deems necessary at the call of the Chair or Vice-Chair. In the seven years from 2000 to 2006 the PAC has met an average of about four times a year. I have noted with interest that the Committee only met once in 2001, the year following the amendments to *Internal Economy Commission Act*. Of greater significance is the frequency of

[33] *Financial Management Handbook of the Office of the Comptroller General*, (March 2003), p. 6.

public hearings conducted by the PAC. In this regard, information provided by the staff of the House of Assembly indicates the record of hearings is as follows:

2000 – 5
2001 – None
2002 – 3
2003 – 4
2004 – None
2005 – 1
2006 – 1

There have only been two public hearings in the last three calendar years. Accordingly, it is reasonable to conclude that the PAC has been virtually inactive in terms of public discussion of the fiscal affairs of government in recent years.

It would be reaching beyond my mandate to comment on this schedule in the broad sense. However, it does raise the question of whether or not the PAC can fulfill its important parliamentary financial stewardship role with such a limited number of meetings and the lack of public hearings.

I am convinced nonetheless that there is an important oversight role in relation to the financial affairs of the legislature which could be played by an active PAC.

### *(ii) House of Assembly/IEC Issues - Not Addressed*

At my request, reviews of Hansard and the minutes of the PAC were undertaken by the staff of the House of Assembly for the period from 2000 to the present. That review indicated that the Committee did not address the financial management of the operations of the House of Assembly or the conduct of the IEC at all during this period. It did not at all address issues related to: the Auditor General's concerns over indications of inappropriate spending by MHAs, the exclusion of the Auditor General from the House of Assembly, the denial of the Comptroller General's access to documentation, or the Auditor General's reports from time to time on these matters.

In theory, the PAC might be expected to perform an effective oversight role in relation to the financial administration of the House and to the IEC's attention to its responsibilities. However, in practice, the PAC was not engaged in this role at all, either with respect to the audit of the House or the IEC's diligence in fulfilling its governance obligations.

### *(iii) Inappropriate Overlapping Membership*

A review of the membership of the PAC and that of the IEC over the years indicates that there is generally some overlap in the membership. There have been occasions when the Chair of the PAC has also been a member of the IEC (as has recently been the case).

These circumstances raise questions of objectivity of MHAs in different parliamentary roles and potentially conflicting responsibilities. In 2000, for example, the Chair of the PAC sat on the IEC through the time when the *Internal Economy Commission Act* was changed and the Auditor General was excluded, and through the three year period when no auditor was appointed.

In summary, the PAC has not been as active as might be expected, given the potential scope of its responsibilities. It has not engaged in any form of critical assessment of the financial operations of the House. Nor has it pursued the Auditor General's comments and concerns related to the audit process despite signals that suggested the need to do so. Some members of the PAC may have been placed in conflicting roles.

Yet I am convinced the PAC should play an important, high-level, financial oversight role over the administration of the House of Assembly and the operations of the IEC. I am satisfied, however, that definitive legislative direction will be required to achieve it.

**An Ever-Weakening Legislative Framework**

The principal element in the legislative framework governing the administration of the House of Assembly is the *Internal Economy Commission Act*. In 1988, that Act was amended to provide for the regular appointment of an independent commission by the Speaker to make binding recommendations concerning the salaries and allowances of MHAs.[34]

As Chapter 3 indicates, the Act has been changed over the years by successive increments to the point where it is questionable whether the initial fundamental principles underlying it remain intact**.** The legislative framework today effectively provides the IEC with complete control over MHA salaries and allowances. The relevant parts of section 13 of the IEC Act now provide that the IEC may implement the recommendations of the independent commission "with or without the changes the … [IEC]…considers appropriate."[35]

The result is that the mandatory requirement to appoint an independent commission at least once a session has been removed. The requirement that the recommendations of an independent commission be binding has been repealed. The IEC now has the power to amend the recommendations of an independent commission as it sees fit. Of course, as noted previously, there has not been an independent commission appointed in the last 18 years.

Even more significant is that, in addition to removing the mandatory requirements relative to independent review, section 14 has been added to the Act, as follows:

[34] R.S.N.L. 1990, I-14, s. 13.
[35] S.N.L. 1999, c. 14, s. 2.

14**.** The commission may make rules respecting indemnities allowances and salaries to be paid to members and staff of the House of Assembly.[36]

This section now gives the IEC *carte blanche* to increase and make other changes to salaries and allowances as it wishes. There is now no incentive to appoint an independent commission to review salaries. Section 14 has effectively been used by the IEC to alter the salaries and allowances of members from time to time without reference to any external review process and in the relative obscurity of private meetings with only a seriously delayed process for reporting on decisions. There are, at present, no effective controls on the ability of the IEC to deal with salaries and allowances of MHAs as it sees fit.

The Morgan Commission was the first and only commission ever appointed under the 1988 amendments to IEC legislation. Today, the principles and structure governing the compensation of MHAs are frequently described as still being based upon the Morgan Report of 1989. This is far from the case. The legislative changes, coupled with subsequent decisions by the IEC, effectively negated many of the principles articulated in the Morgan Report.

### *(i) Expedited Legislative Amendments*

When the IEC wished to change policy, it did so. If such policy was inconsistent with the rules, it changed the rules. If such policy was inconsistent with the legislation, the legislation was amended - and amended expeditiously. Changes to the *Internal Economy Commission Act* tended to be made in the last day or two of a session when efforts seemed to be focused on concluding business in order to close the House. From our review of Hansard, it appears the changes would be made with the pre-approval of all parties, minimal notice, minimal debate in the House and unanimous approval.

The reality is that the normal checks and balances that are inherent in an adversarial parliamentary system do not effectively operate where the subject under discussion directly engages the self-interest of all members regardless of political affiliation. Some mechanism must be found to improve the likelihood that important changes to the legislative framework involving MHA compensation and allowances will receive considered reflective attention in the House and cannot be pushed through without debate in the rush to bring a legislative session to a close.

### *(ii) Legislated Policy Transformation Through Incremental Amendments*

In the aggregate, the incremental changes to the *Internal Economy Commission Act* over the years resulted in a significant policy shift. Yet there was no substantive debate or disclosure on the floor of the House as to the significance and the fundamental consequences

[36]S.N.L. 1999, c.14, s. 3.

of the changes. Important legislative changes seemed to have been treated as incidental or housekeeping in nature.

The sequence of some of the more crucial amendments and their consequences include:

- Amendments in 1996[37] to empower the IEC to vary the recommendations of the Morgan Report. This permitted the introduction of "block-funding" ostensibly to facilitate the realization of savings on MHA related expenditures. It also led to permitting a component of constituency allowance expenditure to be accessed without receipts, an idea inconsistent with the policy thrust of the Morgan Report. Within a few years there were major increases in constituency allowances approved by the IEC without reference to an independent review. Furthermore, these increases in allowances under the new block funding arrangement resulted in a substantial increase in expenditures on Members' Allowances and Assistance, contrary to the notion of savings emphasized in 1996 as the basis for the legislative amendment to facilitate block funding;

- Amendments in 1999[38] to delegate to the IEC the power to make rules concerning benefits applicable to MHAs, and to repeal the subsection that stipulated that the recommendations of the independent commission were to be final and binding. This effectively provided the IEC flexibility to move away from the Morgan policy framework and, without the requirement for an independent commission, to alter the benefit structure as it saw fit. In particular at the time, it removed a constraint on the IEC in addressing the severance pay structure for MHAs. The IEC immediately proceeded to enhance the severance pay arrangements from the levels established in the Morgan report;

- Amendments in 2000[39] to require the IEC to appoint an auditor and, in addition, to provide the IEC with the authority to select and appoint the auditor and to delegate to the IEC the authority to make policies related to the type of data to be provided to the Comptroller General in support of payments. These amendments were brought forth and received the unanimous consent of the House, all in the context of ensuring accountability. As is now very clear, these amendments were used to disrupt the audit process and to deny the Comptroller General, as well as the Auditor General, any access to documentation relating to the expenditure of public monies for the reimbursement of MHAs; and

- Amendments[40] to extend the time frame for the tabling of the IEC reports in the House up to six months after the end of the fiscal year if the House was in session

[37] S.N.L. 1996, c. 10.
[38] S.N.L. 1999, c. 14.
[39] S.N.L. 2000, c. 17.
[40] S.N.L. 1994, c. 9, s. 1; S.N.L 1999, c. 14, s. 1.

or 30 days after the House began its next session. Effectively, this meant that some of the decisions of the IEC, including increases in MHA allowances, would be well over a year old before there would be any form of disclosure.

I have been troubled by the manner in which the amendments to the Act were brought about as well as by the manner in which they were acted upon by the IEC. The process of incremental change to the legislation providing for the stewardship of the House of Assembly demonstrates how a slow "chipping away" at the foundation can lead to wholesale systemic collapse. We all must be vigilant not to let small changes - which, individually, might not be regarded as significant - lead cumulatively to a problem of immense proportions.

### *(iii) The IEC Reports - Preamble Incomplete and Misleading*

The preamble to the IEC Reports tabled in the House each year provides a brief overview of the legislative framework as set out in the *Internal Economy Commission Act*. It also outlines some general background on the Morgan Commission Report and implies it is the underlying basis for MHA compensation. The preamble also reviews the legislative changes in 1996 which, it explains, were instituted in order to reflect a substantial reduction in the accounts under the legislative head of expenditure. The language of the preamble has remained virtually constant across each IEC report.

The current preamble is not only inadequate; it is misleading. There is no reference to a number of the subsequent legislative amendments and their effect as previously outlined. Even though the impact of the changes resulted in increases in overall expenditures on allowances contrary to the purported purpose of the 1996 amendments, they are still being explained as being premised on expenditure reductions.

I fully support the approach of explaining the legislative and policy framework under which the IEC operates in each annual report of the IEC. However, the reports should provide a preamble that plainly describes the overall policy framework as it currently exists. It should "tell it like it is," and not overlook significant changes, thereby implying that the framework continues today as it once was, when it clearly does not.

### *(iv) Lack of Compliance by the IEC - Accountability*

Notwithstanding my concerns with respect to the adequacy of the legislative framework and the manner in which it has been transformed, I am concerned as well with respect to the absence of diligence in complying with the existing requirements of the *Internal Economy Commission Act*, as inadequate as it is. Most notably, the IEC failed with respect to its audit responsibilities under section 9 and its disclosure obligations under section 5(8).

In short, the legislation provides no reporting or certification process or enforcement mechanism to facilitate compliance. There is no prescriptive framework of accountability and no obvious consequences of failure to comply with the requirements of the Act.

I am satisfied that the current legislative framework provides undue and inappropriate discretion to the IEC. It also provides inadequate guidance and direction in respect of the administration of the affairs of the House of Assembly and fails to place, in sufficiently clear terms, governance responsibility and diligence requirements on the persons who serve on the IEC.

**Inappropriate "Tone at the Top"**

My previous comments respecting a failure to pay proper attention to governance issues leads to my final observation on the factors that contributed to what I believe is a systemic failure. More than anything else, the proper observance of stewardship responsibilities requires leadership. The "tone at the top" - to borrow a term from management theory - must support a culture of responsibility, accountability, transparency and high standards of conduct.

I have concluded that those involved with governance of the House over the years did not, as a group, appreciate or acknowledge the significant level of responsibility that had been placed on them. They often did not give to the affairs of the IEC the level of priority it deserved, nor did they regard themselves as having duties of oversight and due diligence that were independent of blind reliance on the administrative staff of the House in financial matters. The situation was also not helped by the emphasis placed on the traditional parliamentary role of the Clerk to the detriment of focus on the managerial and financial aspects of the office, resulting in effective delegation to, and undue reliance on, the Director of Financial Operations in virtually all financial matters.

In recent years in the private sector, particularly for publicly traded companies since the *Enron* collapse, there has been an increasing focus on assessing and securing the commitment of senior executives and members of boards of directors to sound governance principles and high ethical standards. This includes emphasis on due diligence responsibilities to ensure, among other things, that:

- sound management practices and internal controls are in place;
- senior officers and directors take "ownership" of their financial obligations (accountability for their financial results);
- there is compliance with all regulatory requirements;
- appropriate procedures are in place to ensure that all required public disclosures are made accurately, clearly and promptly;
- increasingly stringent audit requirements are met on a timely basis;

- there are no inappropriate relationships with related parties (conflicts of interest);

- there are appropriate policies to encourage a commitment to prudent ethical standards; and

- there are controls and audit processes in place to detect potential fraudulent activity.

It is now increasingly recognized that the "tone" set by top management is one of the most important factors contributing to the integrity of the financial reporting process.[41] The "tone at the top" filters down and sends signals throughout the organization as to the overall corporate culture and ethical standards. In recent years, governments and regulatory bodies have instituted stringent laws and regulatory obligations on the private sector to reinforce focus and commitment to such standards.

The absence of a reasonable commitment to the types of sound governance principles outlined above is deemed to characterize a troublesome "tone at the top," that could convey signals to the balance of the organization that are not supportive of prudent management practices, diligent financial control and high ethical standards. Weaknesses in this regard are believed to heighten the potential for financial mismanagement, misreporting and even fraudulent activity.

I recognize that the Commission of Internal Economy is not in the private sector. It is not bound by corporate governance standards. Nevertheless, I am convinced that the principles of sound governance and the risks associated with abdication of the governance role are nonetheless as valid in the public sector as they are for the corporate sector. In reviewing the background outlined in Chapter 3 and the elements of failure set forth in this chapter, I must conclude that the actions of the legislature and the IEC over the years sent a range of signals which, at best, indicated a lack of concern for governance. At worst, they convey an impression that there were things the IEC wished to conceal, and that it was prepared to openly circumvent normal governance responsibilities. In short, the chronology conveys the impression of a troublesome "tone at the top."

I acknowledge that there was a significant policy shift, initiated by the current Speaker and accepted by the IEC in 2004, explicitly aimed at improved governance. However, as the discussion in this chapter demonstrates, even following the adoption of more progressive principles and financial management, the IEC took certain actions which were inconsistent with prudent governance principles and the spirit, if not the letter, of its own policies. *There is still room for significant improvement.*

---

[41] See Committee of Sponsoring Organizations of the Treadway Commissions, "Internal Control - Integrated Framework Volume," (1992), online: Wiley Publishers <http://www.wiley.com/legacy/products/subject/accounting/accounting>.

**A New Beginning**

As a generalization, I believe that there has to be a fundamental change of attitude, structure and policy with respect to the way in which the House of Assembly administers its affairs, particularly its financial affairs. In short, there has to be a new beginning.

Accordingly, I make the following general recommendations to be fleshed out in detail in the succeeding chapters:

***Recommendation No. 1***

***The existing* Internal Economy Commission Act *should be repealed and be replaced by substantive legislation respecting the effective administration of the House of Assembly, the standards of conduct of elected officials, and their ethical and accountable behaviour.***

***Recommendation No. 2***

***The new legislation should prescribe definitive guidance and requirements which will:***

***(a) establish an administrative framework for the House of Assembly that is transparent and accountable;***

***(b) place responsibility with individual Members to conduct their public and private affairs so as to promote public confidence in the integrity of each Member, while maintaining the dignity and independence of the House of Assembly;***

***(c) promote the equitable treatment of each Member of the House of Assembly;***

***(d) establish clear rules with respect to salary, allowances and resources for elected office holders and to provide for mandatory review at regular intervals;***

***(e) provide for clear and timely disclosure in relation to operations of the House of Assembly establishment, including Members' salaries, pensions, allowances, resources and separation payments that are consistent with the public interest;***

***(f) create an environment for Members in which full-time devotion to one's duties is encouraged*; *and***

> ***(g) establish standards of conduct for Members and for those charged with the responsibility of administration of operations of the House of Assembly establishment.***

So much for the past. In the rest of the report we will look forward.