Chapter 9

Compensation

[I]f we want good and effective government and decisions that affect our daily lives to be made by competent and well qualified men and women, we must be prepared to pay for it.

— Morgan Commission[1]

Compensation Issues

This chapter examines the current compensation regime for Members of the House of Assembly and makes recommendations with respect to the level of remuneration to be paid during the next General Assembly and the manner in which the remuneration should be provided. It also makes recommendations for the creation of proper mechanisms for the review and setting of remuneration for MHAs in the future.

The Terms of Reference require me to undertake (i) "an independent review and evaluation of the policies and procedures regarding compensation … for members"; (ii) "a comparison of all components of compensation … with that in other provincial and territorial legislatures in Canada"; (iii) "an evaluation of best practices for compensation of members"; and to make (iv) "a determination of whether proper safeguards are in place to ensure accountability and compliance with all rules and guidelines governing payments of all aspects of MHA's compensation."[2]

This mandate extends beyond making recommendations with respect to the *levels* of compensation that should be payable to Members of the House. The *structure* of compensation arrangements is also included. Furthermore, the requirement that there be an evaluation of "policies and procedures" means that the *process* by which compensation is determined must be examined to provide that there are "proper safeguards" in place "to

[1] *Morgan Report*, p 34.
[2] Terms of Reference, Appendix 1.3, paragraph 1(ii) - (iv).

ensure accountability and compliance."

It is also important to note that I am limited to making recommendations with respect to compensation for politicians in their capacity as *Members* of the House. This does not include additional compensation that Members may be entitled to receive in other capacities, such as ministers of the Crown. It does, however, include compensation for additional work that Members might undertake as members of committees of the House and as officers of the House.

Historical Background

I have already noted that the modern era of MHA compensation dates from the implementation of the Morgan Commission recommendations in 1989. The Morgan Commission was the result of an amendment to the *Internal Economy Commission Act* in 1988[3] that made provision for the mandatory appointment by the Speaker, within 60 days after a general election, of an independent commission to inquire into and report on "indemnities, allowances and salaries to be paid to members of the House of Assembly." As I outlined previously, the recommendations in the resulting report were to be "final and binding"[4] and the Speaker was required to "cause the recommendations to be implemented as soon as possible." This amendment was important because (i) it set up a formal periodic review process for MHA compensation; (ii) the process was to be independent of MHA self-interest; and (iii) it was to be final and binding, not just simply a set of recommendations that could be ignored or rejected in favour of some other more lucrative arrangement.

The Morgan Commission set MHA remuneration, effective May 25, 1989, at an "indemnity" of $35,000 and a "non-taxable allowance" of $17,500. In so doing, the Commission (i) "rejected, as no longer valid, the proposition that the scale of remuneration should not be so large as to be of itself an inducement for a person to enter political life"[5] and (ii) concluded that compensation should be based on the assumption that "the current role of a member of the legislature has become a full-time assignment."[6]

The Commission also recommended that both the indemnity and the non-taxable allowance be increased on January 1 of each year by the amount of the increase in the preceding year in the Executive Pay Plan.[7] Although not explicitly stated, it is clear that this automatic annual revision was intended to operate only until the next general election, when, in accordance with the legislation, a new commission would have had to be set up to re-examine the whole compensation package.

---

[3] S.N.L. 1988 c. 7 adding s. 13 as an additional section to R.S.N. 1970, c. 181.
[4] Ss. 13(5).
[5] *Morgan Report*, p. 11.
[6] P. 13.
[7] Recommendation 5, p. 15.

As matters transpired, however, as part of a governmental economic restraint program instituted in the early 1990s, Members' indemnities and non-taxable allowances were cut back for the 1993-94 fiscal year,[8] and the mandatory appointment of a new commission to review Members' compensation was done away with, in favour of a discretionary mechanism whereby the House of Assembly (instead of the Speaker) could, as and when it chose to do so, appoint a commission.[9] As matters turned out, that discretion was never exercised. Accordingly, the automatic increases stipulated by the Morgan Commission continued to apply,[10] as varied by subsequent legislation enacted in 1998,[11] allowing for increases in the years 1998-2001 equivalent to "salaries paid to employees of the government of the province."

In 1999, further amendments to the *Internal Economy Commission Act* were made to the provision for an independent commission, eliminating the "final and binding" aspect of a commission's report[12] and providing instead that the Internal Economy Commission could make such changes in a report's recommendations as it considered "appropriate." As well, the Commission was given specific authority to make its own changes to the Members' compensation package, even without the appointment of a review commission, in the following terms[13]:

> 14. The commission may make rules respecting indemnities … and salaries to be paid to members … of the House of Assembly.

The "rules" contemplated by this section were not regarded as subordinate legislation to which the filing, publication and effectiveness provisions of the *Statues and Subordinate Legislation Act*[14] applied. Accordingly, they were not required, on adoption, to be published in the *Newfoundland and Labrador Gazette* - or anywhere else, for that matter.[15] This had significant implications for the transparency of IEC decision-making. The lack of a rigorous publishing regime like that surrounding subordinate legislation contributed to the lax reporting practices that the IEC employed.

Thus, within the space of a little over 10 years, the concept of a periodic review of Members' compensation by an independent body that would result in binding decisions was

---

[8] S.N.L. 1993, c. 7, s. 1.
[9] S.N.L. 1993, c. 26, amending s. 13(1) of the Internal Economy Commission Act.
[10] Except in the fiscal year 1994-95, in that year the Internal Economy Commission ordered a reduction in indemnities and non-taxable allowances. Report of the Commission of Internal Economy for the Fiscal Year April 1, 1995 to March 31, 1996.
[11] S.N.L. 1998, c. 17.
[12] S.N.L. 1999, c. 14, s. 2, amending ss. 13(4) of the *Internal Economy Commission Act.*
[13] S.N.L. 1999, c. 14, s. 3.
[14] R.S.N.L. 1990, c. S-22, ss. 10, 11.
[15] The basic salary increases made from time to time were however reported in the annual report of the Speaker to the House of Assembly, but, as we have seen, the tabling of those reports was delayed often by as much as two years. By the time the information on a salary increase became public, therefore, it was "old news" and the Members would have already been in receipt of the increased salary for some time.

chipped away at until, by 1999, the power to make changes in MHA indemnities and non-taxable allowances became vested in the Internal Economy Commission, a body composed of members of the House who were given the discretion to change Members' compensation when and as they saw fit,[16] by rules that were not subject to publication, as was the case for ordinary subordinate legislation. While it is true that subsection 5(8) of the *Internal Economy Commission Act* initially provided that "all decisions of the commission shall be a matter of public record," and that they were to be tabled in the House within two weeks after the beginning of a new session of the House, that reporting provision was itself amended[17] to require tabling only within six *months* of the commencement of a new session.

Accordingly, in and after 1999, a decision to change Members' compensation could be made, without independent guidance, by the Internal Economy Commission sitting in private, and could be in effect, with Members drawing their new salaries, for six months (or even longer if the decision was made when the House was not sitting and a new session of the House was not held for some time) before any public notice of the change would have to be made. In fact, as is noted elsewhere in this report, the notification to the House of such matters was often delayed well beyond the six-month period as contemplated by the legislation, and in some cases was given so late as to be effectively meaningless. As well, as we have seen, the reports when tabled were often inaccurate and, by obtuse language, sometimes masked the true import of the IEC's decisions.

During the period from 1989 to 2006, changes were, in fact, periodically made to Members' indemnities and non-taxable allowances. They are summarized in Chart 9.1. MHA remuneration has increased by 38% over the 17 years that have elapsed since the Morgan Commission Recommendations were implemented.

[16] They were subject, of course, to the requirements of legislative budgetary appropriation if there was no source of unspent funds in the existing House of Assembly budget that could be re-directed from other budgetary sub-heads to the head of Allowances and Indemnities.
[17] S.N.L. 1994, c. 9, s. 1; S.N.L. 1999, c. 14, s. 1.

Chart 9.1

Increases in MHA Remuneration from 1989-2006[18]

Fiscal Year	Indemnity	Non-Taxable Allowance	Total
1989-1990	$35,000	$17,500	$52,500
1990-1991	35,875	17,937	53,812
1991-1992	38,028	19,014	57,042
1992-1993	38,028	19,014	57,042
1993-1994	36,317	18,159	54,476
1994-1995	37,629	18,815	56,444
1995-1996	37,624	18,812	56,436
1996-1997	38,028	19,014	57,042
1997-1998	38,028	19,014	57,042
1998-1999	38,788	19,394	58,182
1999-2000	39,565	19,783	59,348
2000-2001	40,758	20,379	61,137
2001-2002	42,796	21,398	64,194
2002-2003	44,962	22,481	67,443
2003-2004	46,086	23,043	69,129
2004-2005	47,240	23,620	70,860
2005-2006	47,240	23,620	70,860
2006-2007	48,260	24,130	72,390

The Current Compensation Regime

As of April 1, 2007, a Member of the House of Assembly is entitled to receive a rate of annual compensation, payable bi-weekly, broken down into two components:

an "Indemnity" of	$48,657; and
a "Non-taxable Allowance" of	$24,328.[19]

The indemnity portion is treated as taxable income in a Member's hands, as income

[18] Information prepared from Commission of Internal Economy reports from 1989-2006 and confirmed by the Chief Financial Officer of the House of Assembly. It reflects earnings of MHAs in each of the respective fiscal years. When increases occurred part way through a fiscal year, the impact has been reflected in Chart 9.1 on a pro-rata basis.

[19] These annual rates became effective from July 1, 2006 and remain in effect until June 30, 2007. An increase of 3% in both rates is scheduled to take effect from July 1, 2007, which will bring them up to $50,117, in the case of the sessional indemnity and $25,058 for the non-taxable allowance.

from an office,[20] and is subject to income taxation at the rate applicable to that Member. As such, it is treated the same as employment income received by any resident of the province.

The description of a Member's compensation as an "indemnity," rather than using a more commonly understood term such as "salary," is confusing to the public. It implies that there is something different about it, when, in fact, its purpose is now to compensate a Member for the time and effort devoted to work and constitutes taxable income like any other citizen's.

The non-taxable portion is, as the term implies, not subject to tax in the Member's hands. The *Income Tax Act*[21] exempts from income tax for tax purposes of "an elected member of a provincial legislative assembly … an allowance … for expenses incident to the discharge of the member's duties in that capacity," provided the amount of the allowance does not exceed half of the member's salary, indemnity or other remuneration payable to him or her as a member. Receipt of any portion of such an allowance in excess of 50% will attract tax.

In Newfoundland and Labrador, the non-taxable allowance payable to Members has been set at the maximum (50%) permitted under the *Income Tax Act*. This is in contra-distinction to a number of other provinces and territories[22] where the non-taxable portion varies between 1.5% and 43.7% of the taxable portion. In four provinces[23] there is a trend away from using non-taxable allowances altogether. Only two provinces and one territory[24] continue to set the non-taxable allowance at 50% of the basic indemnity.

The use of a "non-taxable allowance" as part of a Member's compensation is also confusing, and makes comparison of the true value of the Member's total compensation package with incomes of other employment groups difficult or, at least, not easily transparent. Furthermore, it makes comparison with the compensation levels of Members of other legislatures in Canada difficult because the degree to which such allowances are paid varies significantly across the country.

Since the introduction of constituency allowances to reimburse MHAs for expenses related to their duties as members, it appears that the non-taxable allowance has come to be regarded as just another way of providing employment income to a Member. It is necessary, therefore, to convert the value of the non-taxable allowance into an equivalent value of taxable income to make comparisons with other legislative compensation schemes possible,

---

[20] *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, ss. 5(1).
[21] Ibid., s. 81(2). See also IT Bulletin IT 266 (November 10, 1975) and Income Tax Ruling 2000-0048324 (October 16, 2000).
[22] Nunavut (1.5%), Northwest Territories (7.7%-12.0%, depending on commuting distance), Quebec (17.7%), Prince Edward Island (32.7%) and Yukon (43.7%, for Members within Whitehorse).
[23] Ontario, British Columbia, Manitoba and Saskatchewan (recommended June 2006).
[24] New Brunswick, Alberta and Yukon (for Members outside Whitehorse and Members of the Executive Council).

and to give members of the public a clear understanding of what Members make in relation to their own incomes. Accordingly, the non-taxable allowance must be "grossed up" by the applicable income taxation rate to yield an equivalent of taxable income. Of course, each Member's tax circumstances may be different. In applying the gross-up for the purposes of this report, I have assumed that the only other income received by the Member is the Member's "indemnity," and that the Member is entitled to no special deductions other than personal ones.

On this basis, the equivalent taxable salary payable to a Member of the House of Assembly of Newfoundland and Labrador effective from July 1, 2006 is $90,946. In order to put this equivalent valuation of an MHA's salary in perspective, the Commission examined a number of comparisons with the incomes of others in the economy as a whole, the incomes of elected officials in other Canadian jurisdictions, and the incomes of senior management in the provincial public service.[25]

1. *Overall Provincial and National Comparisons - Median and Average Income*: The current salary equivalent for MHAs in Newfoundland and Labrador at $90,946 as outlined above, far exceeds the 2005 provincial median family income of $39,400 and the 2005 average family unit income in the province of $51,500.[26] It is also far greater than the 2005 Canadian median family income of $48,800 and Canadian average family income of $62,700[27] in that year.

   According to Statistics Canada, in 2005, approximately 97% of individuals in Newfoundland and Labrador earned less than the current tax adjusted salary base of MHAs, while an estimated 3% earned more.[28] Similarly, on a national basis, approximately 95% of individuals in Canada earned less in 2005 than the current tax adjusted salary levels of this province's MHAs, while an estimated 5% earned more.[29]

2. *Inter-provincial/territorial Comparisons*: The basic income level of MHAs in Newfoundland and Labrador currently ranks fifth highest among the 13 provincial and territorial jurisdictions in Canada, ranking behind Ontario ($110,775), Nova Scotia ($107,074), Quebec ($106,684) and the Northwest

[25] I acknowledge that any such statistical comparisons have limitations and that economists, statisticians and others will disagree on the relevance and appropriateness of various individual indicators as benchmarks for such an assessment. I also note the difficulties associated with using dated information in making such comparisons. Unfortunately, current statistical data is not always available to the extent one would wish. However, my purpose is not to reach conclusions based on any one statistical indicator, nor to imply precise differentials between MHAs in Newfoundland and any particular group or general indicator. Rather, it is to provide an overall sense of perspective on where MHA remuneration in Newfoundland and Labrador stands generally in reference to a number of indicators.
[26] Canada, Statistics Canada, Income Trends in Canada, CD-ROM 1980-2005.
[27] Ibid.
[28] Ibid
[29] Ibid

Territories ($104,536) and ahead of all other provincial and territorial legislatures including financially better off jurisdictions like Alberta ($83, 023) and British Columbia ($76,100)[30] and less well-off ones like New Brunswick ($79,508). A complete comparison is set out in Chart 9.2.

3. *Provincial Public Sector Management Comparisons:* The MHA income comparison level at $90,946, is below the average salary, as of February 2007, of an Assistant Deputy Minister in Newfoundland and Labrador ($100,254) but higher than some of the lower paid ADMs (in the order of $80,000).[31]

In making the second comparison, as depicted in Chart 9.2, it must be recognized that in some provinces Members also have access to extra income from service on House committees. With the sole exception of service on the Public Accounts Committee, Members in Newfoundland and Labrador do not receive extra income for committee work. However, I do not consider this a significant factor, as the amount of time spent by this province's committees has not been very onerous in recent years. In addition, not all Members of the House sit on these committees. The size and meeting frequency of standing committees is depicted in Chart 9.3. If one were to reduce MHA compensation by a nominal amount for committee work to reflect their remuneration entitlement for service other than on House committees, the amount of the reduction would not be significant. The Newfoundland and Labrador MHA's ranking, in relation to the remuneration in other jurisdictions, would not change significantly, if at all. For present comparative purposes, therefore, the fact that there is no additional income from committee membership can be disregarded. If, at some future time, committee work becomes a more significant part of a Member's job, then the issue can be revisited.

---

[30] In April 2007, a *Report of the Independent Commission to Review MLA Compensation* (Sue Paish, Q.C., Chair) recommended that British Columbia's MLA's salaries be increased from $76,100 to $98,000 effective April 1, 2007. As of the writing of this report, the recommendations have not yet been brought into force. At least one political party in B.C. has indicated that it will oppose the increase. See online: http://www.cbc.ca/canada/british-columbia/story/2007/05/02/bc-mla-pay.html. I have noted with interest that, with respect to the inter-jurisdictional comparison of other members' salaries relied on in the B.C. report: (i) it misstated the level of the current Newfoundland and Labrador indemnity and non-taxable allowance; (ii) although in a research document prepared for the Commission, an attempt was made to "estimate" the taxable equivalent of non-taxable allowances in other jurisdictions, the actual comparison table in the report itself made no adjustment, when comparing salaries, to take account of the special treatment of tax-free allowances paid in some, but not all, jurisdictions; (iii) the comparison included in salary totals for some jurisdictions (Quebec, Northwest Territories, Alberta, Newfoundland and Labrador, New Brunswick and Prince Edward Island) the amount of tax-free allowances at face value without tax gross up; and (iv) the comparison did not include in salary totals for some other jurisdictions (Nova Scotia and Nunavut) the amount of tax-free allowances at all. It appears that the B.C. Commission's comparisons were inconsistently applied.

[31] In comparing the basic income entitlement of an MHA to average earnings of other groups such as ADMs, it is worth noting, as will be explained later in this chapter, that 75% of MHAs receive additional remuneration, beyond the basic level, in respect of ministerial and other assigned legislative duties. Furthermore, in terms of total compensation, due consideration has to be given to MHA pension entitlements which surpass those in the public service. See Chapter 11 (Pensions).

Chart 9.2

Member Indemnity and Non-Taxable Allowance Comparisons (2006)

Jurisdiction	Indemnity (A)	Tax Free Expense Allowance (B)	Grossed Up Tax Free Allowance* (C)	Total (A+C)	Rank
Ontario[32]	110,775	-	-	110,775	1
Nova Scotia	79,500	12,000	27,574	107,074	2
Quebec	80,464	14,234	26,220	106,684	3
North West Territories	87,572				
(1) Within Commuting Distance		6,784	10,978	98,550	4
(2) Beyond Commuting Distance and Members of Executive Council		10,483	104,536	104,536	
Newfoundland and Labrador**	**48,657**	**24,328**	**42,289**	**90,946**	**5**
Alberta	47,496	23,748	35,527	83,023	6
Saskatchewan	80,500	-	-	80,500	7
New Brunswick	43,955	21,978	35,553	79,508	8
British Columbia	76,100[33]	-	-	76,100	9
Manitoba	73,512	-	-	73,512	10
Nunavut	68,543	1,000	1,409	69,952	11
Yukon	38,183				
(1) Within Whitehorse		16,669	$24,398	62,581	12
(2) Outside Whitehorse and Members of Executive Council		19,091	27,943	66,126	
Prince Edward Island	$36,689	$12,000	$18,739	$55,432	13

*Based on 2006 federal, provincial and territorial personal income tax rates.
**Annual rates effective July 1, 2006.
Source: Comparisons and calculations made by Commission staff based on material supplied by provincial and territorial jurisdictions.

[32] On December 21, 2006, An Act to amend the *Legislative Assembly Act*, the *MPPs Pension Act, 1996* and the *Executive Council Act* received Royal Assent. It states that "[e]very member of the Assembly shall be paid an annual salary in an amount equal to 75 percent of the annual sessional allowance paid to members of the House of Commons under part IV of the Parliament of Canada Act … [and] … For greater certainty, whenever the annual sessional allowance paid to members of the House of Commons under that Act changes, a corresponding change shall be made to the annual salary of every member of the Assembly." A change in salary was processed effective December 21, 2006. On April 1, 2007, the House of Commons changed their salary levels, so Ontario will be processing a change for their members, effective the same date.
[33] This number may change. See footnote 30.

Chart 9.3

Standing Committees* of the House of Assembly
Size and Meeting Frequency[34]
2004 - 2006**

Standing Orders Committee	***Public Accounts Committee******
(8 members)	(7 members)
2004: 0	2004: 4 days
2005: 1 day	2005: 7 days
2006: 0	2006: 6 days
Resource Committee	***Social Services Committee***
(7 members)	(7 members)
2004: 6 days	2004: 5 days
2005: 6 days	2005: 6 days
2006: 6 days	2006: 5 days
Government Services Committee	***Privileges & Elections Committee***
(7 members)	(Not appointed)
2004: 4 days	
2005: 3 days	
2006: 4 days	

* Appointed pursuant to *Standing Orders of the House of Assembly*, Standing Order 65.
** Activity in 2006 is in relation to the Spring session of the House only.
*** In addition to meetings, the Public Accounts Committee also held public hearings, as follows: 2004 - 0; 2005 - 1 day; 2006 - 1 day

While the primary focus of the foregoing analysis was on basic MHA compensation, it should be noted that 36 current Members of the 48-Member House receive additional income for service as Ministerial Officers of the Crown, House Leaders, Party Whips, Parliamentary Secretaries and Committee Chairs.[35] The details are outlined in Chart 9.4.

[34] Information provided by Office of the Speaker, House of Assembly.
[35] This data was collected as of Friday, April 20, 2007 and confirmed by the Chief Financial Officer of the House of Assembly. Of the 36 positions, only 17 are paid by the House of Assembly. Normally it would be 18 paid by the House of Assembly but currently one MHA is filling two roles; if a Member holds more than one position, he or she receives the salary for the higher position only.

Chart 9.4

Ministerial and Office-Holder Salaries 2006[36] (Additional to MHA Remuneration)

Premier	$70,300
Ministers (14)	50,968
Parliamentary Secretaries (4)	25,484
Parliamentary Assistant	25,484
Leader of the Opposition	50,968
Opposition House Leader	25,482
Deputy Opposition House Leader	17,397
Leader - Recognized Third Party	17,832
Speaker	50,968
Deputy Speaker/Chair of Committees	25,482
Deputy Chair of Committees	12,741
Party Whips (2)	12,741
Caucus Chairs (2)	12,741
Chair, Public Accounts Committee	12,741
Vice-Chair, Public Accounts Committee	9,740
Public Accounts Committee Members (5)	7,354
Chairs of Standing Committees	Per Diem
Vice-Chairs of Standing Committee	Per Diem[37]

Only 25% of the Members of the House are, in fact, limited to accessing their indemnity and non-taxable allowance as the only source of income resulting from their political activities.[38] The majority of these individuals are opposition Members. Thus, the issue of striking the appropriate base level of compensation for Members is most acute for non-government Members. This is reflected in the results of the survey of MHAs conducted by the Commission: while viewed as a group, 69% of all MHAs either "moderately" or "strongly" agreed with the proposition, "I find the overall level of compensation to MHAs to be reasonable";[39] when this result is broken down into government and opposition Members, the percentage of government Members agreeing rose to 74%, while the percentage for opposition Members dropped to 50%.

[36] Information provided by the Office of the Speaker, House of Assembly.

[37] Every Standing Committee has one Chair and one Vice-Chair. The Chairs and Vice-Chairs of Standing Committees do not receive a salary, but are paid a per diem per sitting day as follows: Chairperson - $100 per sitting day up to an annual maximum of $3,000; Vice-Chairperson - $75.00 per sitting day up to an annual maximum of $2,250. Members do not receive a per diem. However, it should be noted that Chairs and Vice-Chairs of Standing Committees receive this per diem only if they are not receiving extra remuneration.

[38] As of April 20, 2007, there were only 12 Members without any other salary outside the sessional indemnity and tax-free allowance.

[39] See Appendix 1.6, Question 32.

Anticipated Changes in Current Salary Base

The calculations of gross-up, to yield an equivalent of taxable income for comparison purposes, of the non-taxable allowance component of MHA compensation, were made using the existing income tax rates applied to the current annual amount of the non-taxable allowance.

In dealing with a grossed-up value on a go-forward basis, however, two impending events have to be taken into consideration.

The first relates to the recently-announced personal income tax changes in the provincial budget delivered in the House on April 26, 2007. As of July 1, 2007 provincial tax rates will be reduced. Any gross-up of the non-taxable allowance portion of MHA compensation calculated at the tax rates applicable at the writing of this report will overstate the amount to which MHAs will be entitled, expressed on a grossed-up basis, as of July 1. While MHAs, like any other citizen, should be able to benefit from the lower tax rates applicable to the taxable portion (i.e. the indemnity) of their compensation package, they would in effect, receive a windfall if the value of their *non-taxable* allowance were to be paid to them on the basis of a grossed-up amount using today's tax rates, yet were only to be taxed on the basis of the lower rates in effect from and after July 1, 2007.

It is unlikely that the recommendations in this report respecting MHA compensation, if accepted, would be made effective before July 1. It is important, therefore, to state the equivalent level of MHA total compensation on a grossed-up basis as of July 1, 2007 in a manner that will not involve any individual advantage to MHAs as a result of the impending tax changes beyond what other citizens will receive.

The second impending event relates to the fact that as of July 1, 2007. Members are scheduled, under the existing regime, to receive in the normal course, an increase in their indemnity and non-taxable allowance of 3%, making them $50,117 and $25,058 respectively as of that date. The base amount of the non-taxable allowance that will have to be grossed-up to a taxable equivalent as of July 1, 2007 will have to be the larger amount of $25,058 rather than the existing amount of $24,328.

In addressing these matters, the intent is to ensure that the take-home pay of an MHA under the proposed regime as of July 1, 2007 (if they were paid on a fully-taxed basis) will be the equivalent of the take-home pay of MHAs under the current structure.

Taking account of these two factors, commission staff have calculated the taxable equivalent of MHA compensation as of July 1, 2007 to be $92,580.

Terminology: Indemnity or Salary

As noted, Members' compensation has traditionally been called an "indemnity." It reflected, at least in part, the notion that election as a Member was regarded as a public

service that was primarily the prerogative of the well-to-do, who could afford to devote a portion of their time to affairs of state while at the same time continuing to earn income from their other occupations. In the United Kingdom, Members of Parliament received no payment at all until 1911.[40] The role of the Members of Parliament of Canada in days past was described by C.E.S. Franks as follows:

> In those days the workload of parliament was comfortable and prestigious. An elected MP was an important man … Sessions lasted two or three months. The member had an established business which did not suffer in his absence and to which he could return if he was defeated. When he left parliament he suffered no financial disaster. He simply lost the privileges of a first-class and very interesting club. The issues in politics were not complicated, and a member through his own knowledge and experience could usefully argue for or against policies.[41]

In this context, payments to elected representatives were not intended as full or proper compensation for services rendered to the public but rather, at the most, as a means of reimbursing them, at least in part, with respect to the loss of opportunities to earn other income during the time devoted to public affairs.[42]

The situation today is very different. The House of Assembly in Newfoundland and Labrador is no longer made up of the well-to-do. The decision to become an elected politician often entails abandoning a career that the person may not be able to return to when the political career is over. The work can easily become a full-time occupation. The issues are much more complex and require research and preparation to enable decisions to be made and positions taken on an informed basis. In short, to use the words of Franks, citizens now need "a full-time representative, an efficient professional, rather then the dilettante in politics, the distinguished local amateur."[43]

One of the motivations for making payments to elected representatives for their service was to make it more likely that the political system would not remain the private preserve of the independently wealthy, who could afford to dabble in the affairs of state without worrying about having to rely on the income from the activity to provide basic living support. By opening up the political system to others of lesser means, it then became necessary to ensure that reasonable compensation be paid so as not to deter such persons from offering themselves for public service. The notion of *indemnifying against* loss incurred from the public sacrifice associated with devoting time to political affairs thus changed to a notion of *compensation for* the effort expended in doing a job that entailed proper representation.

---

[40] Rogers and Walters, see p. 64. In Canada, the Members of the first Dominion Parliament were paid $600 R. MacGregor Dawson, *The Government of Canada*, 4th ed., (Toronto: University of Toronto Press, 1964), p. 365.
[41] C.E.S Franks, *The Parliament of Canada*, p. 80.
[42] Dawson, p. 365.
[43] Franks, *The Parliament of Canada*, p. 81.

The use of the term "indemnity" is no longer appropriate. It does not properly reflect the nature of the payments made to elected representatives and, as such, it is confusing to the public. The compensation paid to MHAs should therefore be described in a manner that is properly reflective of its true nature.

Accordingly, I recommend:

Recommendation No. 55

Remuneration paid to Members of the House of Assembly should henceforth be denominated as "salary" rather than "indemnity."

The Role of Non-Taxable Allowances

As noted previously, the MHA compensation package in this province consists, in part, of a "non-taxable" allowance. At the present time, it is regarded simply as another means of providing personal income to the Member. There are no conditions attached to its use. It does not have to be used to defray costs associated with the Member's job as an MHA. The Member can spend it as he or she sees fit on personal expenditure. It is paid to the Member in periodic payments, just as the indemnity portion of the compensation package is paid. Furthermore, it is included in the salary base used for calculating the pension to which a Member will be entitled on retirement from the House.

This is not the way non-taxable allowances were originally intended to be used. I have already noted that the concept of a non-taxable allowance is derived from the special provision in the *Income Tax Act* that allows up to 50% of a Member's salary or indemnity to be paid as a non-taxable allowance "for expenses incident to the member's discharge of the member's duties *in that capacity*" [emphasis added]. Income tax bulletins and rulings issued in relation to the interpretation of the applicable section of the *Act* reinforce the idea that the purpose of allowing a non-taxable, non-accountable payment to a member was to recognize that the nature of a politician's work often requires him or her to expend money associated with political activity that would be hard to account for. A politician is often expected, when attending a community event, to buy raffle tickets or food or beverages for those with whom he or she is associating. While all people may to a greater or lesser extent be faced with such spending pressures from time to time, the nature of the politician's work is such, so it is argued, that the politician will be exposed to them in much greater numbers than the average person and, because of the high profile of the politician, it is often more difficult to decline to make the expenditure. In these circumstances it was considered reasonable to allow a certain amount of non-accountable payments to be made to the politician without being taxed to defray these expenses "incident to the member's discharge of the member's duties."

Notwithstanding the philosophy behind allowing certain payments to be made to MHAs without attracting tax, it is clear that over time the non-taxable allowance has mutated

in the minds of MHAs into simply a salary supplement. The best demonstration of this is the fact that, notwithstanding the payment of the non-taxable allowance pursuant to the *Income Tax Act*, MHAs were, until 2004, allowed an *additional* and separate "discretionary non-accountable allowance" as part of the general allowance package that could be used for such expenditures. Even following 2004, Members have been entitled to claim against their constituency allowance expenditures by way of donations and other discretionary payments to community groups (provided they could be backed up by receipts). From this, one can conclude that the non-taxable allowance is no longer regarded as necessary for its original purpose.[44]

From the strong representations made by many current MHAs that their allowance package should continue to allow these types of expenditures to be reimbursed[45] (and in some cases that the pre-2004, non-accountable discretionary allowance ought also to be reinstituted), it is clear that Members continue to regard their "non-taxable allowance" as simply another form of salary, not to be available solely to help them to defray the cost of work-related activities that would otherwise be difficult to account for.

Given the fact that the non-taxable allowance is now regarded - and, in fact, is used - as simply a salary supplement, it is, in my view, appropriate to treat and call it as such. It might be argued that all or a part of the non-taxable allowance ought to be retained with an admonition that it be used for its intended purpose only (and thereby provide a further justification for not permitting any other discretionary and non-accountable spending out of a Member's constituency allowance). As well, I have noted the observation in the recent review of Members' compensation in Saskatchewan that the elimination of the non-taxable allowance may put pressure on the IEC to extend the categories of expenses that may be claimed by MHAs under their constituency allowances to include (or in Newfoundland and Labrador's case, reinstate) these types of expenses.[46]

Nevertheless, I have, on reflection, decided to recommend that the non-taxable allowance be done away with. In recent years, a number of jurisdictions, such as Saskatchewan and Ontario, have done away with the non-taxable allowance and adjusted

---

[44] I note that while the non-taxable allowance in this province was established at the maximum level permitted under the *Income Tax Act* (50% of the sessional indemnity), it can be argued that this maximum was in fact exceeded for several years. During the period from 1996 to 2004, MHAs received a portion of their constituency allowances as reimbursement for discretionary expenses with no requirement for receipts. Apart from the incremental year-end payments highlighted earlier, these annual allowance payments, were over and above the non-taxable allowance, were made without any documentary support and ranged from $2,000 in 1996 to $4,800 plus HST by 2000. This practice continued until March 2004. The incremental year-end payments to MHAs highlighted in Chapters 3 and 4 raise further questions related to the effective quantum of non-taxable allowances available to MHAs and compliance with the limitations of the *Income Tax Act* during this period.

[45] In the survey of MHAs administered by inquiry staff, 75% of respondents either strongly or moderately agreed with the statement, "The structure of MHA compensation should include tax-free allowances." See Appendix 1.6 (Survey Results), Question 27.

[46] Saskatchewan, *Report of the Independent Review Committee on MLA Indemnity*, June 2006, Chair: (Arthur Wakabayashi), p. 12.

their elected representatives' salaries by the equivalent of taxable income.[47] Furthermore, if the non-taxable allowance were to be retained and restricted to the use contemplated under the income tax legislation, it would mean that effectively MHAs would be experiencing a salary reduction. It may well have been the case that levels of salary increase in past years would have been greater if the non-taxable allowance had not been regarded as part of the general salary compensation package. As well, in Chapter 10, I will be recommending that many of the types of expenditures that formerly were intended to be covered by a non-accountable allowance no longer be paid from public funds, and that Members should, if motivated to make such expenditures, pay them from their own money as do other citizens. There should not, therefore, be the same pressure to create new categories of non-taxable, non-accountable allowances in the future.

Notwithstanding considerable MHA opposition to the idea,[48] I am of the view that the MHA *salary* should therefore be treated as encompassing both the old indemnity and the non-taxable allowance. To ensure transparency, the non-taxable allowance should be grossed up to the equivalent of taxable income so that the MHA will receive, net in his or her pocket, essentially the same amount after tax as before. In that way, the amount received by Members can be easily compared by members of the public with their own levels of income and the incomes of others.

It must be emphasized that although the resulting number will, in absolute terms, be higher than the current combined indemnity and non-taxable allowance presently being paid, this does not represent a net, "in pocket" increase for MHAs (other than the 3% increase already scheduled as of July 1, 2007). It merely provides for the payment to them of income that is fully taxable, with the intent that their take-home pay after tax would be equivalent to take-home pay they would receive under the current structure.

[47]Nova Scotia, its recent review commission recommended doing away with the non-taxable allowance and grossing up the equivalent to a taxable amount, but then the government promptly added a new $12,000 tax- free expense allowance, thereby negating the intent of the recommendation.

[48] In the survey of MHAs conducted by commission staff, consensus was high on the tax-free issue. Joining the "strongly" and "moderately" categories together, 75% of respondents agreed with the statement that "The structure of MHA compensation should include tax-free allowances." See Appendix 1.6 (Survey Results), Item 27.

I am therefore prepared to recommend:

Recommendation No. 56

(1) The Member's non-taxable allowance should be eliminated;

(2) No further non-taxable allowance should be permitted to be created by the House of Assembly Management Commission or the House of Assembly unless the rationale for its re-introduction has first been re-examined and recommended by an independent commission; and

(3) The salary of a Member of the House of Assembly should as of July 1, 2007, be adjusted to a taxable amount of $92,580, representing the amount of the existing indemnity plus a taxable amount equivalent to an after-tax value of the existing non-taxable allowance.

One incidental effect of adjusting Members' salaries in this way is the impact it will have on Members' pensions. Presently, the amount of a Member's pension entitlement is calculated by reference to the aggregate of the Member's indemnity and the non-taxable allowance. Unless the terms of the pension plan are changed, the effect of the grossing up of the non-taxable allowance will be to create a significantly higher base for calculation of the pension. The result will be that the level of Members' pensions will automatically increase. This effect was noticed when the non-taxable allowance was done away with in the House of Commons; as a result, changes to the pension rules had to be made to rectify this unintended effect. In Chapter 11, I express the view that the *existing* pension plan is overly generous and too costly. Any change that will flow from adjusting Members' salaries by grossing up the non-taxable allowance would only make this criticism more pronounced. I have therefore concluded that Members should not be entitled to a pension windfall resulting from the adjustments I will be recommending with respect to the manner of payment of MHA compensation.

As a result, I commissioned an analysis of the pension plan's terms to determine what adjustments would have to be made to ensure that the effect of adjusting Member's salaries to create one taxable amount would be neutral in its impact on the level of Members' pension entitlements. The report of the actuary is included in Appendix 9.1. The actuary points out that the present arrangement is achieved by stipulating in a directive issued under section 2(g) of the *Members of the House of Assembly Retiring Allowances Act*[49] that the pensionable salary of a Member is to be calculated as the highest amount of any one sessional indemnity received by the Member in a calendar year, plus 50% of that amount

[49] S.N.L. 2005, c. M-6.1.

"being the amount of the tax-free allowance payable" to the Member. The actuary has calculated that the impact of replacing the tax-free allowance with an increased taxable salary can be kept neutral if the pensionable salary is henceforth defined as 81.2% of the new salary of $92,580.

I am therefore prepared to recommend:

Recommendation No. 57

(1) The MHA pension plan rules should be adjusted to ensure that the effect of the restructuring of the MHA salary component of Members' compensation not result in any increase in the pension entitlement of any Member; and

(2) The* Members of the House of Assembly Retiring Allowances Act *and the directives issued thereunder should be accordingly amended, effective July 1, 2007, to provide that the pensionable salary of a Member for the purposes of section 2(g) of the* Act *shall be 81.2% of the highest amount of one salary received by a Member in any calendar year.

A further incidental effect of adjusting Members' salaries to combine the original indemnity plus the non-taxable allowance into a grossed-up fully taxable amount will be that the province's overall salary expense for MHA compensation will be increased by the amount of the gross-up. This will be unavoidable. However, the amount of the actual impact will be reduced by the additional provincial income tax revenue that will be received by the province on the taxable portion resulting from the gross-up. Commission staff have estimated that the net increase to the province's salary bill, after taking account of additional income tax receipts, will be approximately $480,000.

In the interests of rationalizing a confusing and non-transparent current compensation structure, I believe that the extra cost is worth it. Other provinces appear also to have rationalized their payment structure in the same way to ensure that the compensation paid to MHAs is clear and intelligible. It is a best practice.

The Job of a Member of the House

In approaching the question of what should be a proper level of remuneration payable to a Member of the House of Assembly, it becomes important to have an appreciation of the nature and extent of the work involved.

Much of the work performed by an MHA (and certainly its extent) is generally not seen or appreciated by the general public. There are many misconceptions as to what an MHA does, or is expected to do, to "earn" not only his or her salary, but also the continued

approbation of those who elected him or her. For some, it is assumed that the work centres around debate in the legislative chamber. For these people, the fact that a Member may not be in the House on a given day may signal a serious breach of faith with the electorate, calling for censure. The fact that the House sits only a small fraction of the time during the year may signal that the job is not very onerous and is not deserving of high remuneration. On the other hand, there are those who believe that an elected representative, to be truly a "servant of the people," must be available in the district at all times, interacting with the electors and always advocating for policies and programs that have local benefit. For these people, the absence of visibility of the Member whenever a local issue arises - or even the absence of the Member from a local community function or event - is a signal of dereliction of duty, again attracting criticism.[50] For some, there is a sense of "ownership" of the MHA and a feeling of entitlement to be able to call on the Member at any time to act on their behalf, regardless of the extent of the demands being made simultaneously by other constituents.

There is, of course, no written job description of what an MHA is expected to do. The truth is that the functions (and expectations) of an elected representative are multifarious - and in many respects open-ended. As I noted in Chapter 1, it is a job that is unlike virtually any other. In the words of the Morgan Commission, "a legislator is *sui generis*."[51] This, of course, makes comparison with any other employment group, for the purpose of setting an appropriate salary level, very difficult.

Judged solely by reference to the formal work of the legislature, the work of the MHA would not seem to be particularly onerous. Chart 9.5 outlines the number of sitting days and nights of the House since 1989.

[50] Consider the admonitions of Edmund Burke in the 18th century: "It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs [his constituents]; and above all, ever, in all cases, to prefer their interest to his own" [quoted in Franks, *The Parliament of Canada*, p. 57].
[51] *Morgan Report*, p. 10.

Chart 9.5

House of Assembly Day and Night Sittings
1989-2006

40th General Assembly	
1989	57 days
41st General Assembly	
1990	94 days (18 nights)
1991	90 days (15 nights)
1992	91 days (4 nights)
1993	19 days (2 nights)
42nd General Assembly	
1993	39 days (7 nights)
1994	83 days (14 nights)
1995	81 days (13 nights)
43rd General Assembly	
1996	58 days (10 nights)
1997	55 days (7 nights)
1998	62 days (4 nights)
44th General Assembly	
1999	53 days (8 nights)
2000	34 days
2001	52 days (6 nights)
2002	50 days (10 nights)
2003	23 days (3 nights)
45th General Assembly	
2004	60 days (14 nights)
2005	47 days (11 nights)
2006	42 days (10 nights)

Source: Office of the Speaker

It can be seen from Chart 9.5 that, if anything, the amount of time being spent in the legislative chamber has been decreasing in recent years. As well, I have already noted that the amount of time spent in formal meetings and hearings held by House committees in this province is very small. From my cross-country review, it appears that committee systems in some other jurisdictions are much more active than here, and more days are spent actually sitting in the legislature.

Focusing just on the Member's House-related work does, however, give a very misleading picture of the scope of an MHA's activities. One cannot underestimate the importance of the constituency-related work that a Member also engages in. Seeking to influence government policies and to develop programs that will be of benefit to the Member's district involves considerable time in the district meeting with constituents, as well as significant time in the capital dealing with government officials whom they must lobby. MHAs also undertake advocacy work for individual constituents before such entities

as labour standards boards, employment tribunals and pension appeal boards.

Although there is no clearly defined limit to what an MHA is expected to do, it can be said that the job of an MHA does centre around a number of core functions.[52] They include (i) *legislating and deliberating* - not only sitting in the legislative chamber, but also serving on committees and participating in caucus activities, as well as doing all the research and preparation that often accompanies those participations; (ii) *representing* the Member's constituency as a whole by advocating, both in the House and to government, policies and programs that would be of benefit to the particular district, after communicating with his or her constituents to understand their needs and concerns and to get feedback with respect to the impact of government policies on them; (iii) *advocating* for individual constituents or community groups to government, or before government agencies and tribunals, and otherwise assisting them in obtaining information and cutting through government "red tape" to advance their particular interests.

The work of the MHA in the time of Responsible Government in Newfoundland and the expectations placed upon him or her were graphically described by S.J.R. Noel[53]:

> Since the only effective unit of administration was the electoral district, the individual district member of the House of Assembly had acquired the critical function of intermediary between the government at St. John's and the people of his district. In the legislature, he was the guardian and spokesman of local interests, the sole liaison between the governors and the governed. In addition, he was customarily expected to perform a multitude of local duties that made him for practical purposes, an unofficial mayor and councillors rolled into one; and at the same time he was looked upon by his constituents as the provider of free legal advice and other welfare services of every kind. As a former governor [Governor Williams] disapprovingly observed:
>
> > They regard their member as one who has to look after their personal interests in every detail. He must be ready to watch over them when they are ill and get them free medical treatment; he must get them free tickets for the seal fishery [that is, a berth on a sealing ship], employment on the railways, free passes from place to place, billets for their sons and daughters, and must even strive to sell their fish above market price at the bidding of any ignorant or mischievous agitator. In fine, there is nothing too ridiculous for electors to expect of their member, and the failure in any single case may send back a

[52] See the generic descriptions of the functions of elected representatives in other jurisdictions in C.E.S. Franks, *The Parliament of Canada,* pp. 87 - 110; Rogers and Walters, pp. 92-93.
[53] S.J.R. Noel, *Politics in Newfoundland,* (Toronto: University of Toronto Press, 1971), p. 20.

> constituent to the outport to which he belongs, to become the centre of a clique resolved to displace the member from his seat in parliament.[54]

While the focus may not be regarded today as parochial as in the times Noel was describing, there are still affinities. As government at the municipal level has increased over time, the role of the MHA with respect to dealing with purely local matters has correspondingly diminished, particularly in urban ridings like St. John's. Nevertheless, it is still true that in a significant portion of the province a large part of the MHA's time is, or can be, still spent helping constituents with local problems. Although the modern welfare state has decreased the need of the politician as intermediary, that role has not moved completely to the sidelines. Many problems experienced by constituents do, in fact, involve interacting with government institutions at the provincial level in any event. In carrying out these functions, the MHA acts variously as ombudsman, social worker, legal advocate and even father-confessor.

The position of Member of the House of Assembly is, in principle, open to every citizen of voting age who can convince a plurality of electors of an electoral district to elect him or her to this important office. Its importance has recently been described in these words: "There are many ways to serve our country and our province but there is no finer way than to be a member of this House."[55] Yet the job does not require a formal skill set. It is not a condition of election that the potential Member possess a degree in political science or a certificate in public administration or financial management. Arguably, that is one of its strengths - drawing people from differing backgrounds and life experiences to meld their varying talents into a truly representative and cosmopolitan institution.

In years past, the legislature was made up primarily of businessmen and professionals, particularly lawyers. That demographic has changed. From an analysis of the occupations engaged in by current members before they were elected, we can now see that 27 Members (out of 48) had post-secondary education, nine had a diploma or trade, and seven had attended Masters-level university programs. The biggest occupational group was the teaching profession, followed by municipal politicians or administrators, and then business persons, office managers and executive assistants. Very few members had previously been engaged in primary industries like fishing or mining, or activities that could be said to have a particularly rural orientation. It may or may not be significant that the two largest groups (teachers and municipal politicians and administrators), constituting 36% of the total occupations represented, potentially have access to separate pensions from those occupations. The full breakdown of previous occupations is displayed in Chart 9.6.

Regardless of the composition of today's legislature or of the changing nature of the

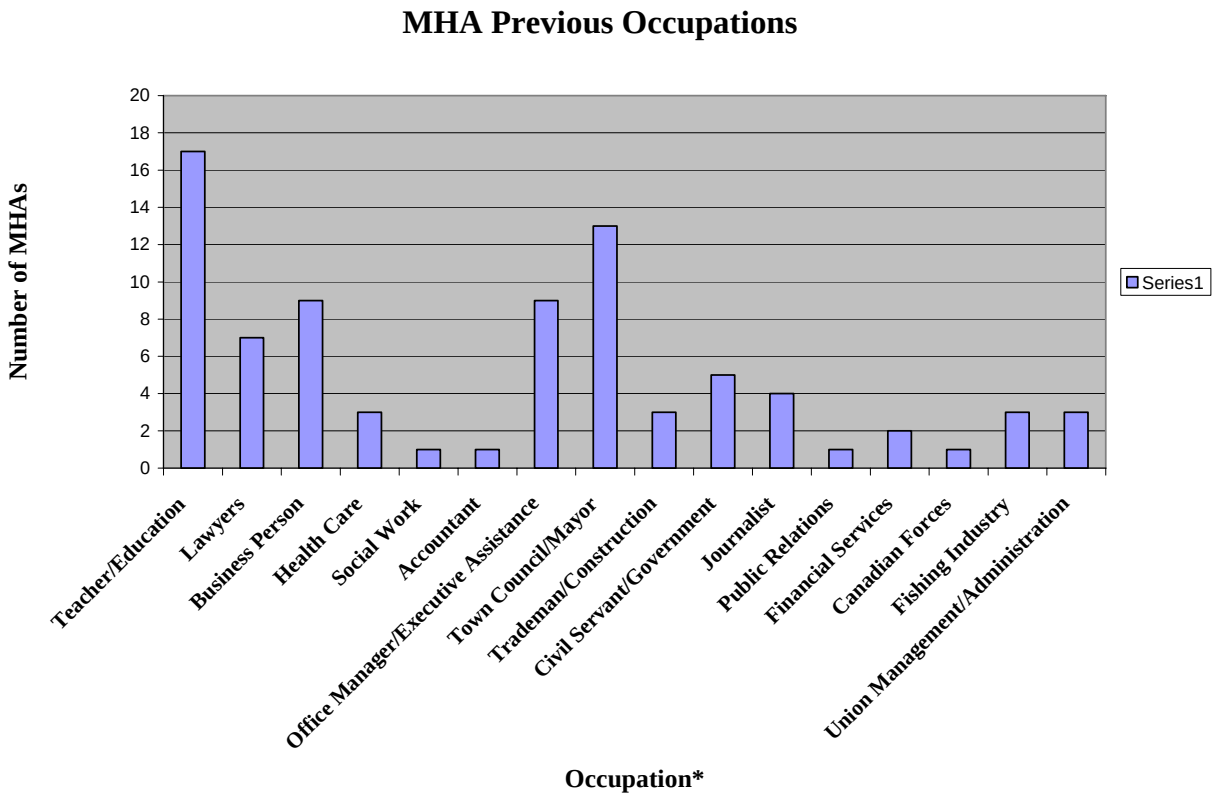
---

[54] Sir Ralph Williams, *How I Became a Governor* (London, 1913), pp. 412-413 (as quoted in Noel, p. 20).

[55] His Honour, the Honourable Edward Roberts, ONL, QC, "Speech from the Throne, 2007: Personal Reflections," delivered at the Fourth Session of the 45th General Assembly, April 24, 2007.

type of activities for which the politician is responsible, it can be said that the work is very demanding and time-consuming. There are no clearly defined outer boundaries. It can, in fact, be all-consuming. It certainly cannot be described as a "9 to 5" or "40 hour a week" job.

Chart 9.6



* Members with more than one previous occupation were counted more than once.
Source: Internal Commission research.

During the course of this inquiry, I was told that the job of a politician continues to involve countless examples of dispensation of largesse in the local community. In the normal course of the year, he or she may be expected to provide hospitality, including rounds of drinks at community events; to contribute to sponsorship of individuals or groups, especially cultural or sports groups who are traveling to compete away; to give donations; to buy raffle tickets; to buy and provide, often with constituency allowances, gifts or trinkets for constituents or visitors; to furnish items or services, including clothing and food, for constituents; and to buy local artwork, including paintings, prints, sculptures and crafts.

In Chapter 10, I argue that the spending of public money in such ways is no longer appropriate and that the role of an MHA should not include, and should not be expected by the public to include, such matters. Such spending supports the unacceptable notion that the politician's success is tied to buying support with favours. This demeans the role of the elected representative and reinforces the inappropriate view that the standards of the

politician are not based on ethical principle.

Throughout this report, there has been an emphasis on institutional reform as well as on measures to encourage and support both individual and collective responsibility on the part of our elected representatives - in essence, a reform of environment, attitude and culture. Within this new milieu should operate a new kind of politician, one who is a professional and who sees his or her job as a vocation. Professions are occupations whose practitioners are highly specialized, are committed to ethical codes, and value serving the public over any other considerations. Vocations are callings.

Some may dispute that politics can be called a profession; nevertheless, I believe that the political class in this province should take on many of the attributes of a profession. There is nothing bad that can come from this development, and much that may be beneficial. I accept that the literature on professionalism is diverse and not all that consistent in describing its essence. There are, however, some generally agreed-upon attributes of professionalism that are useful to consider in the present context:

- Professions involve a high level of education, training, experience and competence on the part of their members;
- Professions usually develop around the central values of society;
- The welfare of society depends to a significant extent on the health of the professions;
- Professions demand a degree of autonomy in decision-making and usually have a degree of self-regulation accorded to them by the state;
- Professions have professional bodies that maintain certification procedures dealing with fitness of members;
- Professions are expected to value service over monetary benefit;
- Professions demand high standards of ethical behaviour of their members, often with reference to codes of conduct;
- Professions sometimes administer discipline to their members that is over and above that accorded by the legal system;
- Professions emphasize the need for continuing education to active members.

Do these characteristics fit the politician? Not perfectly. There are no education thresholds, no certification procedures, and no continuing education. Yet there are other characteristics that do pertain. The accomplished politician possesses a broad body of knowledge acquired, often over a long period of time, often in civil society, and is

recognized for such by the electorate. The welfare of society does to a large extent depend on the uprightness and wisdom of its political class. This is as true for provincial societies as for the national one. Elected assemblies are realms where autonomous judgment and decision-making should be the norm. Increasingly, codes of conduct for legislatures are being adopted and applied as standards against which the actions of politicians are judged. Service to the public is the value that is foremost in the minds of most politicians; in the normal course of things, one does not become rich by entering politics, especially at the provincial level.

There is, therefore, much that links politicians in Westminster-type systems to the professions. I am suggesting that this is not a bad thing. Analogies can and should be drawn with notions of professionalism when describing what is expected of our politicians. That would reinforce the expectation that politicians must maintain high standards of behaviour in all that they do.

Ultimately, politics should be recognized not only as having characteristics of a profession, but also of a vocation. Vocations generally involve three things: a calling, a motivation, and a capacity. A vocation is a life that people, not only the elected ones, feel called to, or even compelled to, live and feel satisfied in. Its motivation is to live a life of service, to foster community, and to share. It means, to paraphrase Max Weber, living *for* politics and not *off* politics.

Accordingly, I recommend:

Recommendation No. 58

For the purposes of determining the appropriate level of remuneration to be paid to a Member of the House of Assembly, the types of supports that should be provided to assist an MHA to carry out his or her functions, and the standards and level of commitment expected from elected representatives, the work should be regarded as the work of a professional.

Full-Time or Part-Time Occupation

The Morgan Commission, as noted, concluded that the current role of an MHA had become "a full-time assignment." I, also, am satisfied that there is certainly enough involved in the diverse responsibilities of Members to occupy the average Member for an amount of time at least equivalent to a normal full-time job. In fact, given the expectations of many constituents, (especially in the rural areas, where municipal authorities often do not exist) that a Member should be available "on demand," it can be said that the "24/7/365" characterization of the MHA's role is not too much of an exaggeration in some cases. The view of the role of an elected representative in Canada as a full-time occupation is also

generally recognized in other jurisdictions.[56]

While it is clear that the work is there to occupy an MHA full-time, if he or she chooses to perform it, it is a different issue as to whether a member should be *required* (beyond the pressure that comes from the fear of not being re-elected) to devote himself or herself exclusively to the job. Morgan had this to say:[57]

> Admittedly, a few may be able to earn supplementary income because of the nature of their profession or occupation, especially but not exclusively, if they reside in the St. John's area. Our recommendation is based on the fact that *to perform efficiently and effectively, a member needs to contribute all of his or her time and efforts to the task.* If there are members who for business or professional reasons cannot devote themselves full-time to their responsibilities, they should be honour bound to inform the Speaker, what proportion of their time they can devote to their duties. Their indemnity and their non-taxable allowance should be pro-rated accordingly. [emphasis added].

This analysis led to the Morgan Commission's Recommendation No. 6:

> 6. That where a member for any reason cannot devote himself or herself full-time to parliamentary and constituency duties, the indemnity and non-taxable allowance of that member be pro-rated by the Internal Economy Commission according to the proportion of time that can be devoted.

Because the recommendations of the Morgan Commission were binding by virtue of s. 13(5) of the *Internal Economy Commission Act* as it then stood, it was arguable that this became a substantive enforceable rule, not merely a general guideline to be observed. Read literally, this admonition meant that failure "for any reason" to devote oneself full-time would trigger proration, even if illness or other events beyond the Member's control were the cause. Furthermore, it applied to availability for constituency work, not only to attendance in the House when it was in session.

Nevertheless, the Internal Economy Commission in 1990 "summarized and reduced to point form" the Morgan recommendation and added an additional interpretation,[58] so that in its first report issued following receipt of the recommendations, and in annual reports

---

[56] See *e.g.* C.E.S. Franks, *The Parliament of Canada*, pp. 80-82; Saskatchewan, *Report of the Independent Review Committee on MLA Indemnity*, pp. 3, 5; Nova Scotia, *Report of Commission of Inquiry on the Remuneration of Elected Provincial Officials*, (September, 2006), p. 11. In the survey of MHAs conducted by commission staff, 86% of respondents indicated they either strongly or moderately agreed with the statement that "All candidates should run for election on the expectation that they become full-time members." See Appendix 1.6 (Survey Results), Item 28.

[57] *Morgan Report*, p. 13.

[58] Official Minutes of the Internal Economy Commission," February 2, 1990, minutes 2 and 3.

thereafter, the stated position became the following[59]:

> Every member shall be deemed to be a full-time member unless the Speaker is advised otherwise by the member. Where a member cannot devote himself/herself full-time to parliamentary and constituency duties, the indemnity and non-taxable allowance of that member shall be pro-rated by the Internal Economy Commission to the proportion of time that can be devoted. Where it appears that a member who had not advised the Speaker had become engaged in a full-time occupation, the Speaker will communicate with the member to clarify his or her intention.

Notably, this re-interpretation of the Morgan position toned down the notion of unavailability "for any reason." More importantly, it enunciated a presumption that the Member was working full-time unless he or she otherwise advised the Speaker. The Speaker was not required to be proactive in noting attendance either in or outside the House; reliance was to be placed on the honour of the individual Member. And even when the Speaker became aware of other activity, it was only where it appeared that the Member was engaged in another "full-time" occupation (i.e., was totally abdicating his or her responsibilities as a Member) that he was required to "clarify" the matter with the Member. It is likely that this duty of clarification was intended to apply to any situation where the Member was engaging in *any* amount of other activity, but it has been reproduced in the Commission's annual reports without amendment for 16 years. As a result, the scope of the obligation to work full-time on MHA business certainly became toned down and was arguably confusing in its application. Certainly, I was made aware of a number of circumstances where current Members are engaging in other occupations, such as the practice of law. Neither the Members themselves nor the Speaker appeared concerned that this practice was a violation of the "full-time" requirement.

Perhaps this is because the admonition, even in its harsher form as recommended by Morgan, begs the question as to what is "full-time." Does it mean simply the equivalent of a normal (say, 40-hour) work week, leaving the Member a life outside of politics, or does it encompass availability "on demand" for constituents at any time? If the latter, is the Member even entitled to a vacation or any time off? There are, in fact, no legislative or administrative rules stipulating that an MHA is entitled to any particular amount of vacation time or sick leave. As well, there have been no clear guidelines issued by the Internal Economy Commission on the question as to what "full-time" generally means in the context of an MHA's work.

Some limited guidance may be obtained from subsection 27(4) of the *House of Assembly Act,*[60] which provides as follows:

---

[59] *Report of the Commission of Internal Economy for the Fiscal Year January 17, 1990 to December 6, 1990.*
[60] R.S.N.L. 1990, c. H-10.

(4) Nothing in this Part shall be interpreted or applied to prevent a member who is not a minister from

(a) engaging in employment or in the practice of a profession;

(b) carrying on a business; or

(c) being a director, a partner, or holding an office, other than an office a member may not hold under this Act, so long as the member, notwithstanding the activity, is able to fulfil the member's obligations under this Part.

The "Part" referred to in subsection 27(4) is Part II of the *Act* dealing with conflict of interest. The subsection is directed to ensuring that merely engaging in employment or professional, business or office-holding activities would not *in itself* be regarded as a conflict of interest and hence a violation of the *Act*. As such, it has limited application to the broader question under discussion. Nevertheless, it is obvious that it *does* contemplate that Members would in some circumstances engage in outside activities (subject always to the overriding limitation that he or she always be "able to fulfil the member's obligations" under Part II relating to conflict of interest).

If one can tease an underlying legislative policy from this subsection, and extrapolate into the broader arena, it is that the life of an MHA does contemplate other non-political activities; and where there is a conflict between those other activities and the Member's duties, the test for determining whether the Member is properly fulfilling those duties is not a quantitative one (i.e., not defined by reference to numbers of days or weeks, vacation entitlement, etc.) but a qualitative one (i.e., to use the words of ss. 27(4), "… so long as the member, notwithstanding the activity, is able to fulfil the member's obligations …").

The issue under discussion is not theoretical. In the 1970s, a Member attended university full-time outside of Canada for the better part of a year. In the 1980s a Member continued to act as a deputy mayor of a municipality. More recently, since my appointment, two issues have entered the public domain relating, respectively, to certain Members who were allegedly "moonlighting" by carrying on the practice of law[61] and a Member who allegedly was unavailable to deal with a public issue in her district because she had been working outside the province as a nurse.[62]

[61] Ivan Morgan, "Moonlighting MHAs: Should MHAs Who Hold Down a Second Job Be Docked Pay?", *The Independent, (*August 6, 2006), p. __.

[62] Jamie Baker, "Goudie Under Fire: MHA Dodges Suggestion She Has Been Working Out of Province"; and Michael Rigler, "Residents Want Their MHA: Businessman Says Goudie's Job Not the Issue, Her Presence Is," The [St. John's] Telegram, (November 17, 2006).

The latter case provides a useful set of circumstances that highlight some of the issues in the current discussion. I must emphasize that in stating the circumstances as I understand them, I am not asserting their accuracy. Nevertheless, the circumstances as reported provide a concrete backdrop for a theoretical discussion of the issues. The facts, as I understand them are:

> A Member whose occupation prior to being elected was a registered nurse left the province for several weeks, ostensibly during "vacation time," to work in another part of Canada for a sufficient number of hours to maintain her certification as a nurse. Apparently, a registered nurse is liable to lose her or his right to practice if ongoing practical work experience is not maintained. While she was away, an issue in her district involving the shutdown of a bridge arose, and persons seeking her help were unable to contact her. Signs of protest reading "Lost: One MHA" were erected in the area. Calls for her resignation were made on an open-line radio show. Suggestions were made by some that she should resign if she could not work full-time for her constituents and that she did not notify the Speaker of the House in advance of her plans. It is assumed, for the purposes of this discussion, that she was paid while working as a nurse and that she was continuing to receive her income as an MHA.

This example raises the question of just how available a Member should be expected to be. Are there not legitimate reasons for unavailability at times? A reasonable vacation? Taking time off to ensure that one's professional certification is not lost, thereby preserving the potential for a productive life of employment after politics? How does one measure what is reasonable in any of these circumstances?

What can be said, in my opinion, is that it is *not* reasonable to assert, as some appear to have done, that a Member *must* be available on demand for every issue that arises, no matter when and in what circumstances it occurs. In fact, I have been told during the course of this inquiry that some Members have even received phone calls on Christmas Day, when sitting down to Christmas dinner with the family, demanding some action be taken forthwith. Obviously, the conscientious MHA will always want to be in the forefront of any significant public issue affecting his or her constituents. However, reasonable people would recognize, I am sure, that sometimes events will occur when, for a variety of legitimate reasons, the Member is just not able to respond in a manner that is regarded as adequate.

The fact that that occurs does not *ipso facto* mean that the Member is not working "full-time" in the interests of constituents or is neglecting his or her responsibilities as an MHA. In fact, the nature of our parliamentary system is such that there are many circumstances where persons like ministers of the Crown, parliamentary assistants, the Leader of the Opposition and the Speaker - who are all elected Members of the House - are, because of their other duties, not able to devote "full-time" attention to their *constituency* responsibilities. Yet, that is, and must be, accepted in our system.

In my view, it is not unreasonable for a person like the professional mentioned in the

foregoing example to take a modest period of time off (perhaps equivalent to a reasonable vacation) to engage in continuing professional certification activities. It is expecting too much, I believe, for constituents to insist that a professional who offers himself or herself for public office must be prepared to sacrifice the ability to maintain a professional designation that might be needed when the Member leaves public life. Having said that, one would expect that an MHA who anticipates being unavailable (or at least more difficult to contact) for a period of time would give public notice of that fact (as well as notify the Speaker) and provide information as to how messages could be gotten to him or her in an emergency, or at least give the name and contact information of the applicable constituency assistant.

The question remains as to what should happen if the MHA receives additional payment for the activities engaged in. Should the Member continue to accept the salary as an MHA when he or she will not be available to perform the associated duties? There is no clear answer to this question. It depends, in the last analysis, on the degree to which the Member might be unable to perform the constituency duties. If the time involved is a relatively short period, and the MHA makes arrangements to continue to be in touch with the district and give direction to the constituency assistant, I do not consider it necessary to make any salary adjustment. On the other hand, if the absence is for an extended period of time, stretching into months, and the Member is completely unable to attend to constituency duties during that time, then a Member of good conscience should, I think, be prepared to forgo drawing a Member's salary for that period. The test should be a qualitative one: does the Member's absence prevent the Member from being able to fulfil his or her constituency duties in a substantially material way? Of course, it also goes without saying that there will also come a point when inability to attend to constituency duties resulting from an extended absence, without any reasonable prospect of a return in the near future, might well call for the resignation of the Member from the House.

I am therefore prepared to recommend:

Recommendation No. 59

(1) It should be a legislative requirement that when the House of Assembly is not sitting, a Member should devote his or her time primarily to the discharge of his or her duties and responsibilities as a Member, making reasonable allowances for such matters as personal and family commitments, the need for some rest and vacation time, and ministerial and parliamentary assistant's duties, if any;

(2) Where the Speaker becomes aware of circumstances that indicate that a Member may not be devoting his or her time primarily to discharge of his or her duties as a Member, the Speaker should be required to refer the matter to the appropriate House committee for investigation and report to the House; and

(3) To eliminate confusion on the point, the legislation should also state that a Member,* qua *Member, is not prohibited from carrying on a business or engaging in other employment or a profession, provided that the nature of the business, work or profession is such that it does not prevent him or her from attendance in the House when it is in session and from devoting time primarily to the discharge of his or her duties as a Member when the House is not in session.

With respect to attendance in the House when it is in session, that aspect of the Member's duties is governed by *Standing Order 19* of the House, which ordains that "every Member is bound to attend the service of the House, unless leave of absence has been given to him or her." This is similar to *Standing Order 15* of the House of Commons, as it existed prior to 1994, and the standing orders in some other provincial assemblies. No specific penalty is stipulated for violation of this Order, except possibly the censure of the Privileges & Elections Committee (which at the moment has not been constituted). This lack of specific consequence is in contra-distinction to the requirements in some other jurisdictions, such as Nova Scotia,[63] Saskatchewan and British Columbia, which stipulate that absences from the House will result in a reduction of the Member's indemnity for each day of absence (in British Columbia, beyond ten days) and provide (in the case of Nova Scotia) for vacating of the Member's seat in the case of long absences.

If the House is to have a rule, as in *Standing Order 19,* that there is an obligation to attend the sittings of the House, then there should be visible consequences if the rule is breached. Other Canadian jurisdictions have taken this step, and I see no reason why Newfoundland and Labrador should not be equally as conscientious. I recognize that there is a danger that an enforceable attendance rule may feed into the simplistic notion that the only obligation of an MHA, when the House is sitting, is to attend the House, and that failure to do so, even for a short time, should be regarded as a dereliction of duty. The obligations of a Member are, of course, much more multi-faceted than that. There are many situations when a Member will be legitimately absent from the House. Personal circumstances such as illness or bereavement are obvious examples. There will also be circumstances where the Member may be absent from the chamber, but within the precincts of the House, attending to constituency business or committee and caucus work. Any obligation to attend the House should obviously recognize these exceptions.

[63] See Nova Scotia, Office of the Legislative Counsel, *Rules and forms for Procedure of the House of Assembly*, (adopted May 26, 1980), as subsequently amended; *Legislative Assembly and Executive Council Act*, s.s. 2005, c. L-11.2, ss. 68(1), and more specifically, Saskatchewan, Board of Internal Economy, *Directive Number 21 – Annual Indemnity and Allowances*; *Legislative Assembly Allowances and Pension Act*, R.S.B.C. 1996, c. 257, s. 10.

I therefore recommend:

Recommendation No. 60

(1) There should be a clearly stated legislative requirement that, except for special circumstances, a Member is required to attend the House on each day when it sits;

(2) Exceptions to the requirement of daily attendance at sittings of the House should include:

- ***(a) Sickness;***
- ***(b) Serious illness of the Member's family;***
- ***(c) Bereavement;***
- ***(d) Attendance at committee meetings or the House of Assembly Management Commission or its related business;***
- ***(e) Attendance at caucus or constituency business where the Member remains within the precincts of the House as defined in the* House of Assembly Act*;***
- ***(f) Attendance to ministerial duties;***
- ***(g) Attendance to duties as premier or leader of the opposition; or***
- ***(h) Other exceptional circumstances approved by the Speaker.***

(3) Where a Member is absent from the House without acceptable reason, he or she should face a deduction of $200 a day from salary for each day of absence;

(4) A Member should be required to file a declaration with the Speaker annually, detailing any absences and the reasons therefore; and

(5) Failure to file the declaration should result in withholding of payment of any further salary until the filing is completed; and where unexplained absences are disclosed, the appropriate deductions should be made from the Member's future salary payments.

Principles Applicable to Setting Levels of Members' Compensation

The history of setting appropriate levels of Members' salaries in recent times in Canada has reflected a tension between the desire to improve the chances that it will be financially possible for most persons to be able to serve (i.e., so that service as an MHA will not be the preserve of only the wealthy or financially independent) and, at the same time, ensure that the people who offer themselves do so for the proper motives (i.e., out of a desire to serve the public rather than to obtain a salary that is greater than they could expect to

receive from any other occupation). If the salary level is set too low, only the financially independent or the part-timer will be attracted. On the other hand, if the salary is set too high, there is a risk that persons will be motivated out of self-interest, rather than public service, to offer themselves.

This conflict is well expressed by C.E.S. Franks in his book *The Parliament of Canada*:

> The two sides in the battle over the remuneration of members are clearly drawn. On the one side opposed to increases are those who feel that a person ought not to profit from public service, and that to make the position of MP as rewarding to comparable positions elsewhere would make the position attractive as a source of financial gain and early, generous pensions. This reasoning is partly traceable to the British tradition of the gentleman-amateur, where the MP receives small financial reward, and his role is one of service, rather than that of salaried employment … On the side favouring increases are those, such as the commissions that have examined members' pay and benefits, who feel that adequate remuneration is necessary to attract good MPs; that MPs should not suffer financially from service in parliament; and that there is conclusive evidence that inadequate remuneration causes hardship.
>
> Incomes policy, wages, and salaries are among the most contested and challenging aspects of the modern economy and society. MPs are far from being in the best-rewarded category, but their pay and benefits are among the most visible and as such are subjected to public discussion. MPs are in the difficult position of having to decide on and defend their own pay raises, unlike most other wage-earners. The arguments of the two sides are irreconcilable.[64]

The Morgan Commission also engaged in a discussion of these two "irreconcilable" points of view and observed that the two extreme positions ought to be avoided, if possible. Morgan wrote:

> Those favouring low compensation support the view that it increases the likelihood of limiting public service to those willing and able to make sacrifices in order to promote the welfare of the body politic. They appear to be afraid that a high compensation will attract "inferior" persons who are incapable of holding well paid jobs in the market place. These writers really seem to regard membership in the legislature as the prerogative of the independently rich and to associate ability and a public spirit with inherited

[64] C.E.S.Franks, *The Parliament of Canada*, pp. 84-85.

or earned wealth and with membership in the "upper class."

> Those who favour a high compensation stress the fact that the expense involved in seeking election and the cost of serving as a Member of the Legislature for an extended period beyond home base will deter capable persons who lack an independent or a supplementary income from seeking election. They argue that failure to provide such promising potential candidates with adequate and reasonable compensation will not discourage persons with inferior qualities and motives from trying to enter the political arena. They also point out that members of a Legislature who lack an adequate income to support their family in a reasonable manner become exposed to the temptation of serving, for their personal benefit, the objectives of the Executive Branch or of outside vested interests at the expense of their obligations and responsibilities to the Legislative Branch. They conclude that in a modern democratic society provisions should be made to attract into public service competent individuals from a broad range of professions and occupations, irrespective of their social or financial background.[65]

The Morgan Commission argued for "a new approach" and came down on the side of developing a compensation package that would "lure capable and competent men and women into the political arena."[66] In so doing, the Commission rejected, as no longer valid, the proposition that compensation should be held low so that it would not motivate people to enter political life for other than reasons of public service. It opted, in other words, for a level of compensation that would make it financially possible for a broader range of individuals to be able to serve. If that meant, in individual cases, that some elected members would end up being paid more than they otherwise could have expected to be paid in other employment, so be it.

There is a consensus, I believe, that the more important principle is that "compensation arrangements in place should not act as a deterrent to those considering entering or staying in provincial public life."[67]

In the course of my consultations, it was represented to me that although the compensation scheme now seems adequate - not an impediment to those of lesser financial means from serving in the House - it still does not adequately address the situation of those of higher incomes, such as professionals, who will not have access to any continuing source of income, such as from investments, while serving, and who, effectively, have to give up their professional income in favour of a lesser income as a condition of serving as a Member. It was suggested to me that service as an MHA has been a source of financial hardship to a

---

[65] *Morgan Report*, pp. 5-6.
[66] Ibid., p. 9.
[67] Ontario, *Report of the Honourable Coulter A. Osborne Integrity Commissioner Re: MPP Compensation Reform Act (Arm's Length Process), 2001,* (Toronto: Office of Integrity Commissioner, December 7, 2006), para. 26.

number of Members, who have had to readjust their lifestyle for this reason. I was told, as well, of at least one case where a Member has had to sell some of his personal assets in order to generate enough funds to make ends meet. As a result, it was suggested, professionals and other high-income earners without continuing sources of other income are increasingly reluctant to run for office because of the negative impact on their income levels and disruption of career paths. Certainly, a comparison of today's occupational characteristics of the House, as disclosed in Chart 9.6 above, with those of, say, thirty or forty years ago, would appear to bear that out.

There is no easy answer to this problem short of establishing a substantially higher compensation level for all MHAs simply to meet these exceptional cases, or introducing a variable compensation scheme depending on the financial circumstances of each individual Member.[68] In the current climate, I do not believe that either of these alternatives would be acceptable. The best that can be strived for is to attempt to establish and maintain a level of income that enables Members to live in "reasonable comfort,"[69] given the demands made upon Members generally, but without reference to their personal finances in individual cases.

The problem of setting a fair and reasonable level of compensation for Members of the House is compounded by the fact that, as I have noted previously, the "job" of the MHA is difficult to categorize, and is not easily compared to the jobs other people do. It has been said, for example, that:

> The work that MPs do is roughly comparable to that done by middle-upper level professionals. MPs work long hours and have many demands and pressures on them that most people do not face.[70]

But is a job comparison alone a sufficient basis for setting elected Members' salaries? Does not proper compensation go beyond the matter of being fair to individual Members and ensuring that proper people are attracted to public service? It must also extend to the fundamental issue of ensuring that the effectiveness and integrity of the legislature as an institution are preserved. On the other hand, Members' compensation must, in the last analysis, be generally consistent with public expectations, and "public expectations may in

---

[68] The idea of providing differing levels of income depending on the past income levels of Members (say, the average income, other than from investments or other continuing sources of income, declared on the Member's last three tax returns) would certainly not be regarded as acceptable, since it would involve paying different amounts to different people for performing the same job. It could not be justified on a "compensation" theory of payment. Interestingly, it could possibly be justified on the traditional "indemnity" theory - indemnifying the Member against the "loss of income sustained in sacrificing time, energy and talents in the public service" (per Dawson, 1964, p. 365). It would also eliminate the concern of setting general compensation levels too high, and thereby attracting persons who would be motivated to offer themselves out of a desire for personal gain rather than public service.

[69] Canada, Report of the *Commission to Review Allowances of Members of Parliament* (Ottawa: Supply and Services, 1989), p. xviii.

[70] Canada, Commission to Review Allowances of Members of Parliament, *Supporting Democracy*, (Ottawa: Supply and Services, 1998) Vol 2 Research Paper No. 1, p. 13.

fact require that [Members] be paid less than a fair amount."[71]

Various commissions and review committees over the years have attempted to articulate a number of principles that should be taken into account in setting fair and reasonable compensation levels for elected representatives.[72] I have reviewed a number of them. Based on that review, as well as the submissions that have been made to me and my own consideration of the issues, I offer the following list of principles that should be borne in mind when embarking on this difficult task. I should also note that, in some respects, giving full reign to one principle may work against the achievement of another. In the end, a compromise must be achieved.

- Compensation should be sufficiently high to have a reasonable prospect of attracting good, competent and qualified people from a wide variety of backgrounds, but not so high as to be *the* major inducement for seeking office;

- The level of compensation should enable the average MHA to raise a family and live in relative comfort, but not in luxury;

- The level of compensation should be sufficient to enable the MHA to act as an autonomous representative, not beholding to the executive branch of government, and free to concentrate time and attention to constituency issues and parliamentary duties;

- MHAs should not become wealthy or profit excessively as a result of their public service;

- Compensation for MHAs should not be seen by the public as being significantly out of step with general economic trends especially when other people in the province are suffering financial hardship;

- The level of compensation should recognize that the work is a full-time job and involves weekend and night work, long-distance travel, family separation and required attendance at public events and ceremonial occasions;

- Any increase in the level of compensation should be respectful of general economic conditions, the interests of taxpayers and the costs to the public treasury.

---

[71] Ibid.

[72] See, *e.g.* Saskatchewan, *Report of the Independent Review Committee on MLA Indemnity*; Nova Scotia, *Report of the Commission of Inquiry on the Remuneration of Elected Provincial Officials*, (September 2006); Nova Scotia, *Report of the Commission of Inquiry on Remuneration of Elected Provincial Officials*, (December 2003); Ontario, *Report of the Honourable Coulter A. Osborne Integrity Commissioner Re: MPP Compensation Reform Act (Arm's Length Process), 2001*, Canada, Commission to Review Allowances of Members of Parliament, *Supporting Democracy*.

The last principle raises the question of the degree to which current provincial economic conditions, as well as the general fiscal capacity of the province, should be a factor in setting MHA compensation levels. On the one hand, it must be remembered that for our democratic system to operate, its core functions must continue to function effectively, regardless of the economic conditions facing the province. The executive must still be able to govern. The courts must still be able to resolve disputes and enforce basic societal rights. And the legislature must be able to respond to public issues by exercising the law-making function. In short, the three branches of government *must* be able to continue to function if society is to be held together. It is therefore possible to make a case, just as it was made in Chapter 6 respecting the provision of sufficient resources for the House,[73] that compensation levels should be set according to principle, regardless of difficult economic conditions. Arguably, it is in the toughest of times when we most desperately need to attract good, competent and qualified individuals to become involved in the public affairs of the province.

On the other hand, politicians are expected to lead by example. They cannot be too far out of step with public expectations or they may undermine and ultimately destroy their own credibility or the confidence of the electorate. As noted earlier, public expectations may in fact require that Members be paid less than what would otherwise be considered to be a fair amount. The argument for ensuring that the three branches of government continue to function applies, I would suggest, with greater vigour to the provision of functional resources to enable others within the system to carry out their jobs - in the case of MHAs, the provision of adequate *allowances* - rather than to the level of *compensation* actually paid to those persons for the work they do.

In the end, prevailing economic conditions in the province cannot be ignored when setting MHA salary levels.

Future Salary Levels

Some have suggested that it is not only difficult, but also effectively impossible, to equate an MHA's role with any occupational or professional group. While that may be true when comparing the actual tasks that are performed, it may nevertheless be possible to engage in a generic analysis of the functional characteristics of the role that might lend itself to comparison with the characteristics of other types of occupations. Certainly, professional management analysts are able to compare disparate jobs for the purpose of developing fair and consistent wage categories by focusing on such things as required knowledge and skills, levels of responsibility, numbers of persons supervised and the degree of supervision required, impact on policy formulation, hours worked and budgetary responsibilities. Based on such criteria, among others, comparisons can be made.

[73] See under the heading "Resources of the House."

Even within such an analytical framework, however, it may still be difficult to compare an MHA's job with others' fairly. It may be that the typical comparators operate differently and should have different emphases. For example, an MHA is responsible for, in the sense of "supervising," very few people, yet, in another sense, is responsible for the thousands of individuals in his or her district in a very different way than, say, a civil servant is responsible to the public he or she serves.

I did not consider it possible, in the time available and given the other aspects of my inquiry, to commission a management analysis to enable comparisons to be made of the MHA's role with occupations in the private and public sectors. It is something, however, that future review commissions may consider appropriate to undertake.

For present purposes, I have considered a comparison with existing compensation levels of elected representatives in other provincial and territorial legislatures to be the fairest method of setting Newfoundland and Labrador MHA compensation for the immediate future. I will be recommending that another review take place following the next election, or at least during the next General Assembly. It is at that point (assuming the other recommendations in this report will have been adopted, creating, it is to be hoped, a different structural and attitudinal environment in the House) that a better visualization of the "new MHA" will be possible and a further assessment of appropriate salary levels for the longer term can be undertaken.

As was noted in Chart 9.2, Newfoundland and Labrador ranks fifth amongst the 13 provincial and territorial legislatures in terms of salary levels. That is not bad for a province that perennially ranks last among provinces in a number of important economic indicators. Two of the four jurisdictions ranking ahead of this province are Ontario and Quebec, the nation's two largest provinces. The other two are the Northwest Territories and (as a result of recent adjustments) Nova Scotia.

When Nova Scotia recently reassessed its compensation levels, its review commission placed greatest emphasis on population and geography when comparing with other provinces. It eliminated Ontario and Quebec for that reason and concentrated primarily on what it considered to be a "peer group" closest in population size and geographic proximity and faced with similar social and fiscal challenges: Saskatchewan, Manitoba and the other Atlantic provinces. In my view, this is an appropriate method of comparison for Newfoundland and Labrador as well.

The comparative charts developed by the Nova Scotia commission highlighted the fact that Newfoundland and Labrador paid the highest level of compensation within that peer group. It is not without significance, I think, that even though Nova Scotia's review commission referred to Nova Scotia generally as the "leader in the region," it did not recommend a salary level equal to or greater than that paid in Newfoundland and Labrador. In fact, reading between the lines of the report, one might be forgiven for concluding that the Commission regarded this province's level of compensation as excessive or aberrant. The Nova Scotia commission recommended a salary of $79,500, which, on its face, was still considerably less than the equivalent grossed up Newfoundland and Labrador amount,

according to the charted figures used by the commission.[74]

From my consultations with existing MHAs, I do not sense a strong point of view that salaries are in need of a major overhaul at the present time. I have noted previously that in the written survey sent to all MHAs, 69% either moderately or strongly agreed with the proposition "I find the overall level of compensation to MHAs to be reasonable."[75] From the small number of public submissions received, the view was that, if anything, MHAs are overpaid rather than underpaid.

Taking all of these things into consideration, especially the relatively high level of compensation presently payable when compared with other jurisdictions, I am of the view that the level of compensation for Newfoundland and Labrador MHAs remains adequate at present levels and that there is no basis for recommending an increase at this time.

There remains the question as to whether there should be some mechanism put in place to provide for regular cost-of-living increases in salary levels until the next major review can be undertaken. At present, the MHA salaries increase annually according to increases in the executive pay plan with government. One of the difficulties associated with such an adjustment mechanism is that government has control over the executive pay increases and may be considered to be in conflict of interest in setting those levels as it also indirectly affects the amount that MHAs themselves will receive.

Other adjustment mechanisms that could be employed include adjustments according to the consumer price index or average weekly earning indices. The Saskatchewan Independent Review Committee on MLA Indemnity, which reported in June 2006, examined the pros and cons of these various indices and concluded that the consumer price index was the right adjustment mechanism for that province.

It does not follow, of course, that there should necessarily be *any* annual adjustment to MHA compensation by reference to an automatic mechanism such as the consumer price index. That is a policy issue that should be considered by each subsequent review of MHA compensation in this province. It might well be, for example, that future salary levels would be recommended to be set for the whole of a General Assembly; in other words, it might be decided that for the ensuing four years, the salary levels would be set to take account of anticipated increases in the cost of living; or already are sufficiently high, so that no increase for those years is needed; or that salary levels be increased by a pre-determined amount each year or each couple of years. Those are matters that should be considered each time a basic

[74] It subsequently became apparent that although it was not specifically recommended or even addressed by the Nova Scotia Review Commission, Nova Scotia MLAs have also been granted entitlement to a $12,000 non-taxable allowance on top of the $79,500 recommended by the Commission. A true comparison with Nova Scotia now requires the addition of a grossed-up amount reflecting the additional $12,000, as has been done in Chart 9.2. That is why Nova Scotia now ranks third in the country for MLAs' salaries, and can now arguably be said to be the aberrant province in the five-province comparison.

[75] Appendix 1.6 (Survey Results), Item 32.

review of compensation is undertaken.

All that needs to be considered at the present time, therefore, is what should happen between now and the next review. I am satisfied that, notwithstanding questions as to the appropriateness of the current adjustment mechanism and given the relatively short time that will be involved before another review will be undertaken, the present arrangement should be allowed to continue. Little will be gained by implementing a new system that may itself have to be dismantled as a result of the next review.

Although I will not be recommending any changes to the salary levels of other official positions in the House, there is one salary issue that must nevertheless be commented on. That relates to the Public Accounts Committee. I have already noted that the chair, vice-chair and members of the PAC receive a fixed salary - the only members of a House committee to do so - in recognition of the important role they are anticipated to play in guiding the Committee in its important function of calling the government to account for its financial stewardship.

I have previously commented on the lack of apparent activity on the part of the PAC in carrying out its expected role. The Morgan Commission, as well, had previously expressed concern about the same thing. Morgan recognized that, as a result of its recommendations, a new approach was being taken to financial matters relating to the House, and additional burdens were being imposed on members of the PAC. The Commission, therefore, recommended an increase in the allowances to the members of that Committee and suggested that the Commission of Internal Economy keep the allowances under periodic review as circumstances changed. The following annual payments were recommended by the Morgan Commission for members of the PAC: chairman - $8,000; vice-chairman - $6,000; and member - $4,000.[76] Those amounts have increased over time.[77]

The payment of special compensation to members of the Public Accounts Committee was predicated on the expectation that the Committee would be an active committee and would take steps to fulfill its role conscientiously. If the recommendations of this report are adopted, the PAC will have an even greater role to play in examining the accounts of the House and the reports of the House of Assembly Management Commission. It is reasonable to expect that if the members of the Committee, especially the chair and vice-chair, are to be paid extra for their anticipated role, they should perform it. If not, the practice of paying them extra should be discontinued.

---

[76] *Morgan Report*, pp. 25-27.

[77] *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1998 to March 31, 1999.* See "Members' Rules, 1996" on p. 17.

Accordingly, I recommend:

Recommendation No. 61

(1) Subject to paragraph (2), there should be no increase in the level of remuneration paid to Members of the House of Assembly until a review of salary levels is conducted during the next General Assembly;

(2) Interim cost-of-living adjustments to the basic level of remuneration of Members may, until the review of salary levels during the next General Assembly, continue to be made on an annual basis based on annual changes in the executive pay plan of government;

(3) The issue of continuing on a go-forward basis, and, if advisable, the type and manner of interim, annual cost-of-living adjustments to basic levels of remuneration between general salary level reviews, should be referred to the next salary review committee for consideration and recommendation; and

(4) Unless the Public Accounts Committee actively engages in the types of activities recommended in this report, the next salary review committee should give consideration to recommending elimination of the special salary supplement now paid to the chair, vice-chair and members of the Public Accounts Committee and replacing it with a per diem attendance payment similar to that paid to other committee members.

Severance

The Morgan Commission recognized that members may have difficulty resuming their occupation after several years in politics. The practice of paying severance to members of the public service and of the House of Assembly, when their term of service is voluntarily terminated, was established prior to the Morgan review. The Morgan Commission approved this practice and recommended that when a Member of the House was terminated after at least seven years of service he or she should receive a separation allowance of 5%, per year, of the indemnity and non-taxable allowance for each year of service up to a maximum of 50%.[78]

The severance policy as set by the Morgan Commission was revoked by the

[78] *Morgan Report*, pp. 30-31, Recommendation 16.

Commission of Internal Economy in 1999. They substituted the following:

> Members who were Members immediately before an election are eligible for severance pay when they cease to be Members for any reasons. Severance is calculated at one month's current basic indemnity[79] for each year of service and prorated for part of the year's service. Minimum severance is three months pay; maximum is 12 months pay. Office holders of the House including the Deputy Speaker, Opposition Leader, the Whips, etc. shall be paid severance in accordance with the same rules that apply to Cabinet Members when they leave office.[80]

This is an aspect of Members' compensation that I did not examine in any detail. I received no substantive submissions from Members or from the public on the adequacy or appropriateness of the present severance arrangements. Accordingly, it is an area that should be left for consideration by a subsequent review committee.

There is one area relating to severance, however, that should be specifically addressed. If the recommendations in this report respecting combining the original indemnity plus the non-taxable allowance into a grossed-up taxable amount are accepted, the question will arise as to what should be the base salary to which the existing severance formula should be applied to yield the total severance payment. If the base is the new grossed-up amount, the severance payments will automatically be increased and retiring MHAs will receive, essentially, a windfall. I do not believe this would be appropriate. The rules respecting severance should therefore be forthwith adjusted to ensure that the severance payments, in absolute terms, payable to retiring Members are not increased.

[79] Although the policy refers to the "basic indemnity" as the basis for calculating the severance payment, I have been told by officials of the House that, in practice, the base includes the non-taxable allowance.

[80] *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000,* p. 8, June 23 meeting at minute 3.

I therefore recommend:

Recommendation No. 62

(1) The rules with respect to calculation of severance payments for MHAs should be adjusted to ensure that the amount of severance a retiring MHA will receive will not be greater, in absolute terms as a result of implementation of a fully taxable salary for MHAs, than it would be under the existing payment arrangement of an indemnity plus a non-taxable allowance; and

(2) The manner of calculation of severance payments to Members of the House of Assembly who cease to be Members, and the conditions, if any, to be attached to such payments, should be referred to the review of salary levels to be conducted during the next General Assembly for consideration and recommendation, taking into account, amongst other things:

- ***(a) severance levels in the public service;***
- ***(b) severance arrangements applicable to Members in other Canadian provincial and territorial legislatures; and***
- ***(c) the special impact that leaving public life may have on future employment prospects.***

Future Reviews of Salary and Benefits Levels

The fundamental difficulty with public acceptance of the legitimacy of the current process of setting levels of Members' compensation is that, unlike most other wage earners, MHAs effectively set their own wage levels.

Given public attitudes that often ascribe motivations of self-interest to politicians - fuelled especially by recent events that arguably serve to reinforce the idea expressed in a submission by one former MHA that "when principle and money collide, the latter is often the victor"[81] - the electorate is unlikely to be satisfied with the current system. It effectively gives free reign to MHAs, through the Internal Economy Commission, to pay themselves what they want, subject only to their perceptions of what they believe the electorate will tolerate. As we have seen, the risk of negative reaction from the public was muted considerably by the significant delays in giving any public notice of the decisions of the IEC; and by the fact that, even when notice was given, it was often inaccurate and misleading, or, by obtuse language, masked the true import of what was happening. Such a system was

[81] Quoted in Chapter 10 (Allowances) under the heading "Donations."

tailor-made to generate suspicion and mistrust, leading to an unwillingness of the public to accept the legitimacy of compensation levels set by such a process, even if, objectively considered, the resulting salaries could be said to be reasonable.

Earlier in this chapter, I noted that at the time of the creation of the Morgan Commission, the system of setting MHA salaries was very different. At that time, the process provided for a formal periodic review by an independent body. Because the recommendations were final and binding, the resulting salary could not be rejected by the MHAs or the IEC in favour of some other more lucrative arrangement. As such, the compensation levels were effectively set independently of Member self-interest. In the ten years following the Morgan Commission, this system was denuded of any safeguards against the intrusion of self-interest into the process.

It is time to return to a more principle-based system. The need to rebuild public confidence requires it. As has been stressed many times throughout this report, transparency and accountability are essential to the maintenance of public confidence. A compensation-setting process that is engaged in under a veil of secrecy, by people who make the decision in the context of a conflict of self-interest and public duty, will not pass muster. An independent review process that takes place in the light of public scrutiny is the least that is required. This I believe is also generally recognized by the existing MHAs: in the survey conducted by the inquiry staff, 55% of respondents were of the view that studies of MHA compensation should be conducted by "an arm's length independent commission appointed by statute." Only 19% believed that the review should be undertaken by the IEC as presently constituted.[82]

Of all the Canadian provincial jurisdictions, Newfoundland and Labrador comes the closest to unrestrained and uncontrolled discretionary setting of salary and benefit levels. Many Canadian provincial and territorial jurisdictions provide in their legislation for a periodic review of salary levels by an independent commission.[83] Other jurisdictions do not; however, these jurisdictions do have either legislated or otherwise specified methods for adjustment of Ministers' remuneration.[84] Until recently, Ontario provided for a review of Members' salaries by the Integrity Commissioner at such intervals as he or she decided.[85] In December 2006, the Integrity Commissioner recommended that Ontario Members' salaries be linked to a percentage of the salaries of Members of Parliament.[86] This arrangement has

---

[82] See Appendix 1.6 (Survey Results), Item 12.

[83] Prince Edward Island, *Legislative Assembly* Act, R.S.P.E.I. 1988, c. L-7 s. 46; Manitoba, *Legislative Assembly Act*, C.C.S.M. c. L110 s. 52.7; Nova Scotia, *House of Assembly Act*, R.S.N.S. 1989 (1992 Supp.), c. 1 s.45; Northwest Territories, *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22 s.35 and Nunavut, *Legislative Assembly and Executive Council Act* s. Nu. 2002 c. 5 s. 37.

[84] Quebec, *Conditions of Employment and the Pension Plan of the Members of the National Assembly*, an *Act* respecting the R.S.Q. c. C-52-1; New Brunswick, *Legislative Assembly Act*, R.S.N.B. 1973, c. L-3 ss. 25 and 32; Yukon, *Legislative Assembly Act*, R.S.Y. 2002. c. 136 and Alberta, *Legislative Assembly Act*, R.S.A. 2000, c. L-9.

[85] *Legislative Assembly Act*, R.S.O. 1990, c. L.10, ss. 61(1.1), as amended by S.O. 2001, c. 15, s. 1.

[86] Ontario, *Report of the Honourable Coulter A. Osborne Re: MPP Compensation reform Act (Arm's Length*

now been legislated.[87] In Saskatchewan, provision has been made for the appointment of an independent committee to review Members' salaries, but the Board of Internal Economy may reject the report of the review committee and implement another regime by simply issuing a directive to that effect.[88] As well, the legislation empowered the Board, by further directive, to make subsequent changes to the salary regime before a new review committee was constituted, "in any manner that the board [of Internal Economy] considers appropriate."[89] In 2006, a report of a review committee argued for the need to "depoliticize" the process and recommended that, once the salary level was set following a review, the Board of Internal economy should not be able to change the salary until the next independent review.[90] I have been told that the Saskatchewan Board of Internal Economy has accepted this recommendation and that it is intended that legislation implementing it will be introduced before the next General Assembly.

Aside from the new arrangement that has recently been implemented in Ontario, it can be said that there is a general (but not universal[91]) practice across the country that Members' salaries and benefits should be reviewed periodically by independent review commissions or committees, at least as a prelude to making changes in the salary regime. In some cases, the setting of salary levels is effectively delegated to the review committee, whose recommendations are binding; in others, the recommendations can be varied or rejected by the board of management, but at the least there is provision for regular, independent analysis as a basis for a principled discussion on the issue. Even in Ontario, the process is depoliticized because the setting of salary levels is taken out of the hands of the local politicians.

Of course, the legislation in this province still provides for the possibility of appointment of an independent review commission,[92] but its recommendations are not binding and, most significantly, there is nothing mandating that it be appointed on a regular basis. Indeed, there is no incentive to appoint a commission because the legislation also allows the Commission of Internal Economy to make changes to the salary regime whenever it wants.[93] As I have already noted, experience in this jurisdiction has shown - where no commission has been appointed for over 17 years - that unless there is a requirement that an independent review be undertaken on a regular basis, it will not happen so long as the Members themselves, through the IEC, can set their own salaries in any event.

Even if the recommendations of a review commission are not considered binding, there is certainly merit in providing for an objective analysis of what salaries should be, so

---

Process), 2001, paras. 33 and 34.
[87] S.O. 2006, c. 36, s. 1.
[88] *Legislative Assembly and Executive Council Act*, S.S. 2005, c. L-11.2, s. 65.
[89] Ss. 66(4).
[90] Saskatchewan, *Report of the Independent Review Committee on MLA Indemnity*, (June 2006), pp. 14-15.
[91] The exceptions appear to be Alberta, New Brunswick, Quebec and Yukon.
[92] *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, s. 13.
[93] S. 14.

that subsequent actions in setting the ultimate salary levels can be judged by the public against that independent analysis. In fact, it is the independent analysis, rather then the binding nature of the result, that is the real benefit of a periodic review. There will then be an objective standard against which the decisions of the House in setting Members' salaries and benefits can be judged by the public.

One of the reasons given for removing the "final and binding" requirement of commission recommendations in the Morgan era was that it would preclude the ability of the House to adopt, in a time of fiscal restraint, a more modest salary regime than was recommended. Of course, that cannot be considered an insuperable objection. The House could always pass amending legislation setting a lower salary if it chose to do so. It would also not justify doing away with having a commission of any kind, even one whose recommendations were not to be considered binding. In fact, it is not necessary to make a review commission's recommendations binding in order to ensure that MHAs will not reject the recommendations in favour of a more lucrative arrangement. All that is necessary is to provide in the legislation setting up the review commission that, although the IEC and the House can modify the commission's recommendations, the modification cannot create compensation levels *greater* than those recommended.

I gave consideration to following Ontario's lead and recommending tying the level of MHA salaries to the salaries of Members of Parliament, but in the end I rejected the idea. While such a salary-setting methodology does remove the issue of local self-interest from the process, it substitutes a system that effectively allows another political regime to determine what is appropriate for this province. The integrity of the local salary levels will then depend on the integrity of the salary-setting process at the federal level. That process may not be appropriate to take account of special provincial considerations.[94] As well, a review commission will generally be tasked with making recommendations not only respecting salaries but also respecting allowances, pensions and other benefits. These are matters, especially allowances, that will clearly have to receive provincial consideration and could not be simply tied to a percentage of the federal package. Inasmuch as there will be a role for an independent review of these other matters, it seems to me that a review committee should at the same time give consideration to the whole financial landscape, including the salary component, in the context of what is most appropriate for this province. That is not to say, of course, that a review committee could not recommend a salary that is equivalent to a percentage of a federal MP's salary or the salary of another provincial member. I do not believe it is appropriate, however, to statutorily tie the provincial salary level to a salary level in another jurisdiction for all time.

[94] I agree with the conclusion reached by the Independent Review Committee on MLA Indemnity in Saskatchewan which commented on page 7 of its June 2006 report: "While relating MLA compensation to some external benchmark would depoliticize the process of setting and adjusting MLA salaries, this would not necessarily provide a 'made in Saskatchewan' solution to the problem. The government would not have the flexibility to take into consideration such factors as its economic and fiscal capacity, earnings and wage settlements in the public and private sector, and inter-provincial cost of living comparatives including housing costs".

There is no magic to the choice of how frequent formal periodic reviews should be conducted. Now that, except under special circumstances, an election in this province will be held once every four years,[95] one can plan to have a review once during every General Assembly.[96] Accordingly, the House should be required to appoint a review committee during a session of a General Assembly to review salaries, allowances, severance payments and pensions the Review Committee should report to the House in time to enable it to respond to the recommendations in a subsequent session by amending the applicable legislation, and in time for the House of Assembly Management Commission to amend any applicable allowance rules to have an adjusted regime finalized before the next election. To reduce the perceived influence of self-interest in the process of setting salaries and benefits, the new regime should only become effective following the new election.

Accordingly, I recommend:

Recommendation No. 63

(1) Once during each General Assembly, the House of Assembly should cause an independent committee to conduct an inquiry and prepare a report respecting the salaries, allowances, severance payments and pensions to be paid to Members during the next General Assembly;

(2) The persons appointed to the committee should not be Members of the House and should be regarded as independent persons capable of representing the public interest in ensuring that fair and reasonable remuneration is paid to Members of the House, while at the same time preventing the unnecessary expenditure of public funds;

(3) Before appointments are made to a review committee, the Speaker should first consult with the Government House Leader, the Opposition House Leader, and the leader of any third party having one or more Members in the House and report the results of those consultations to the House;

[95] *House of Assembly Act*, R.S.N.L. 1990, c. H-10, ss. 3(2)

[96] I note without further comment that a recent review commission in British Columbia recommended that a comprehensive review of the B.C. MLA compensation package be undertaken in the first session of every *second* parliament. See British Columbia, *Report of the Independent Commission to Review MLA Compensation* (Sue Paish, Q.C., Chair), April 2007, p.16.

(4) Upon receipt of the report of a review committee, the Speaker should be required to refer the recommendations to the House of Assembly Management Commission for consideration;

(5) The Commission should have the power to modify the review committee's recommendations, but only in a manner that would not exceed the maximum amounts recommended by the committee to be paid;

(6) Upon acceptance or modification of a review committee's recommendations, the Commission should be required to submit the items relating to salaries and other matters that may be necessary to be implemented by legislation to the appropriate minister for the preparation of a Bill to amend applicable legislation accordingly, and place the remaining items on the agenda of a meeting of the Commission for the adoption of appropriate rules implementing those recommendations; and

(7) A review committee should remain constituted after delivering its report for a period of time to enable the Commission to consult with it on matters in the report that may require clarification or amplification.