



Chapter 13

Renewal

The only guide to a man is his conscience; the only shield to his memory is the rectitude and sincerity of his actions.

— Winston Churchill¹

We know that failure to be sensitive to ethical issues in an institution ... makes future failures more likely - it creates a low “ethical tone” - and the contrary is true when there is sensitivity to ethical issues.

—Margaret Somerville²

The recommendations in this report range over an area that is certainly much broader than the specific reforms of the rules governing the circumstances under which constituency allowances, salaries and pensions may be claimed by Members of the House of Assembly. Given the nature of the problem presented and the related weaknesses that have been identified, it was inevitable that the scope of the report would have to be expanded in order to complete meaningful analysis. If the recommendations in this report are adopted, I believe they have the potential of leading to a renewal in our legislative process and practices.

As a result of the allegations contained in the various reports of the Auditor General over the past ten months, and the ensuing public discussion and commentary, public confidence in MHAs and, to some degree, in the political system itself, has been shaken. No simple reform of a set of technical rules can, in itself, be expected to address these fundamental problems. The system must, of course, operate in a way that public funds will be protected. It is important as well, however, that members of the electorate be *assured* that the system operates as intended by government and as understood by the public. Once

¹ Dominique Enright (ed.), *The Wicked Wit of Winston Churchill* (London: Michael O’Mara Books Limited, 2001), p. 62.

² Margaret Somerville, *The Ethical Imagination: Journeys of the Human Spirit* (Toronto: Anansi, 2006), p. 63).

confidence is shattered, it is very difficult to rebuild. Nevertheless, it is only when that assurance is present will public confidence in the system have a potential of being restored. For this report to have any lasting impact, therefore, it must address the broader issue of *rebuilding public confidence*.

As the Commission staff and I embarked on our work, it quickly became obvious that the weaknesses in the system detected upon investigation of the administration of constituency allowances could not be addressed, as I already have noted, simply by formulating a new set of rules in isolation. The problems associated with the administration of constituency allowances could not be understood, let alone solved, except by examining the complete system in which they existed. The thrust of our recommendations thus had to address *institutional renewal*. This led to consideration of reform of the *structure* of the legislative branch, its *administration* and its detailed *policies*.

Inevitably, this research led to a consideration of the interrelation between the role that the legislative branch plays in the control of public funds and the role that the executive plays. Despite the importance of notions of legislative autonomy, the structure of our system does not permit the two branches of government to operate (with apologies to Hugh MacLennan) as “two solitudes” in financial matters. Both branches of government are involved with the same pot of public money, which all comes from the same source - taxpayers. It is not unreasonable to expect that the legislative branch should be accountable at least to the same standard applicable to the executive branch. Accordingly, the role of executive policies relating to control of public funds through the operation of the *Financial Administration Act* entered the scope of my review. That led to a consideration of the role of the Comptroller General - the person having “complete control over the administration of the Consolidated Revenue Fund” (which is as much the source of funding for the legislature as it is for the executive).³ The ability of his office to monitor and control potentially unauthorized expenditure within the legislative branch thus was engaged. In the end, it became difficult even to keep our focus strictly within the arena of the House of Assembly.

I mention this process of analysis, which resulted in the Commission examining matters in ever-widening circles of inquiry, simply to emphasize that even to approach a solution to the specific problem, the reach had to be expansive if it was to have any hope of being effective. In short, the solution to the narrow issue that precipitated this inquiry in the first place ultimately rests with *systemic reform*. This is so not only because entity level changes are necessary to make the specific reforms effective, but also because that is the only way in which the public can be assured that the chances that the problems of the past will recur are minimized. It is essential to have their confidence in the system restored. Systemic reform is therefore the key to both solving the specific problems *and* restoring public confidence.

The sometimes broad-ranging recommendations in this report are therefore designed

³ *Financial Administration Act*, R.S.N.L. 1990, c. F-8, ss. 20(1).

to achieve this dual objective. I believe that there is a need for substantial legislative, regulatory and administrative reform. Too often, content is lost between general recommendations in a report and the resulting legislation purporting to implement these recommendations if the people making the recommendations are not also involved in the linguistic expression of the actual legislation and regulations. The Commission staff and I have therefore taken considerable time, with the assistance of the office of the Legislative Counsel, to put many of our recommendations into the form of draft legislation, regulations and policies. Doing this has, in fact, been one of the causes of the delay in submitting this report.⁴ Nevertheless, I believe that in the end the process will be beneficial, as the final document will illustrate how we envisage the new structure.

The legislation that is being proposed, if enacted, should be brought into force on a date named in the legislation. It would be inappropriate to provide for the legislation to be brought into force on a date to be named by the Lieutenant-Governor in Council because that would effectively give the executive branch control over the reform of the legislative branch. In recognition of legislative autonomy, the legislature itself should determine the effective date for implementation of its own reforms.

Accordingly, I make the following final recommendation:

Recommendation No. 80

- (1) The draft Bill, styled the House of Assembly Accountability, Integrity and Administration Act, as set out in Schedule I to this chapter of this report, should be presented to the House of Assembly as soon as possible for debate and, if thought advisable, enactment;***
- (2) Upon the coming into force of the House of Assembly Accountability, Integrity and Administration Act, the draft set of rules, styled the Members' Resources and Allowances Rules, as set out in Schedule II to this chapter, should be forthwith presented to the House of Assembly Management Commission, as reconstituted under the Act, for adoption in accordance with the Act;***

⁴ If we had had further time, we would have produced as well a draft of the Members' manual which I have recommended be developed. See Recommendation 16.

- (3) *Sufficient resources should be appropriated by the House of Assembly to enable the implementation of the new statutory and regulatory regime to be effected in a timely and efficient manner;*
- (4) *Upon the coming into force of the House of Assembly Accountability, Integrity and Administration Act, the Commission should proceed to cause the appointment of the audit committee of the Commission in accordance with s. 23 of the Act; and*
- (5) *In accordance with s. 35 of the Act, the House should proceed with the adoption of a code of conduct for Members.*

One final comment: as important as systemic reform is, we must not lose sight of the fact that any system comprises, and is operated by, people. In the end, it is the people responsible for the direction and operation of the system who will determine whether it will succeed or fail.

Because of the element of human involvement, successful reform must therefore also include a *reform of attitude*. This includes the creation and maintenance of an institutional culture of responsibility that extends from the MHAs, to the Commission of Internal Economy, to the Speaker, to the Clerk of the House and to the officials in the House administration. That is why I believe that there must be a strong emphasis on both *individual and collective responsibility* within the system. This will be reflected in such matters as codes of conduct, training obligations, specific duties imposed on the Commission of Internal Economy, and accounting officer duties imposed on the Clerk - to mention but a few - all buttressed by the fundamental principles of transparency and accountability.

Transparency and accountability are the building blocks of public confidence. If people are able to see what is going on, and know that there exists a workable means of identifying irregularities and bringing miscreants to account, it will help to reduce “backroom deal” suspicion and cynicism about the political process. But it is not easy. A great deal remains to be done. Witness the cynicism in the following letter to the editor of the *Independent* newspaper as recently as January 26, 2007:

Judge Derek Green’s anticipated report on members’ allowances will be fodder for a short time, but members will continue to feast lavishly on our dime. Parliamentarians make, change, ignore, and bend rules

to fit personal situations.⁵

I suspect that the writer of that comment is not the only one with that point of view. That is why there must be visible checks and balances in the system - checks and balances that are not easy to change but, if changed, are changed in the full light of public scrutiny - if there is to be any hope of rebuilding confidence in the system.

The recognition and acknowledgment of responsibility, and the means of holding people with responsibility to account will lead to changes of attitude. Acknowledgement of the responsibilities of holding public office and positions in the House administration, and the means of holding individuals accountable to these responsibilities is fundamental. Changes in attitude will lead to a culture in which those operating in the system will be supported and encouraged to discharge their public trust responsibly and ethically.

The broader purposes of rejuvenation of public confidence in our political institutions, and of the institutional culture in which our politicians work, cannot be achieved solely as a result of technical implementation of specific institutional reforms, no matter how comprehensive and far-reaching; rather, they depend in the last analysis on the willingness and continual dedication of our leaders to foster and maintain, by example, the high standards expected of those who discharge the critically important and difficult responsibilities of public office.

⁵ Jim Combden, "On the Verge of Political Chaos," (Letter to the Editor), *The Independent* (January 26, 2007), p. 6.