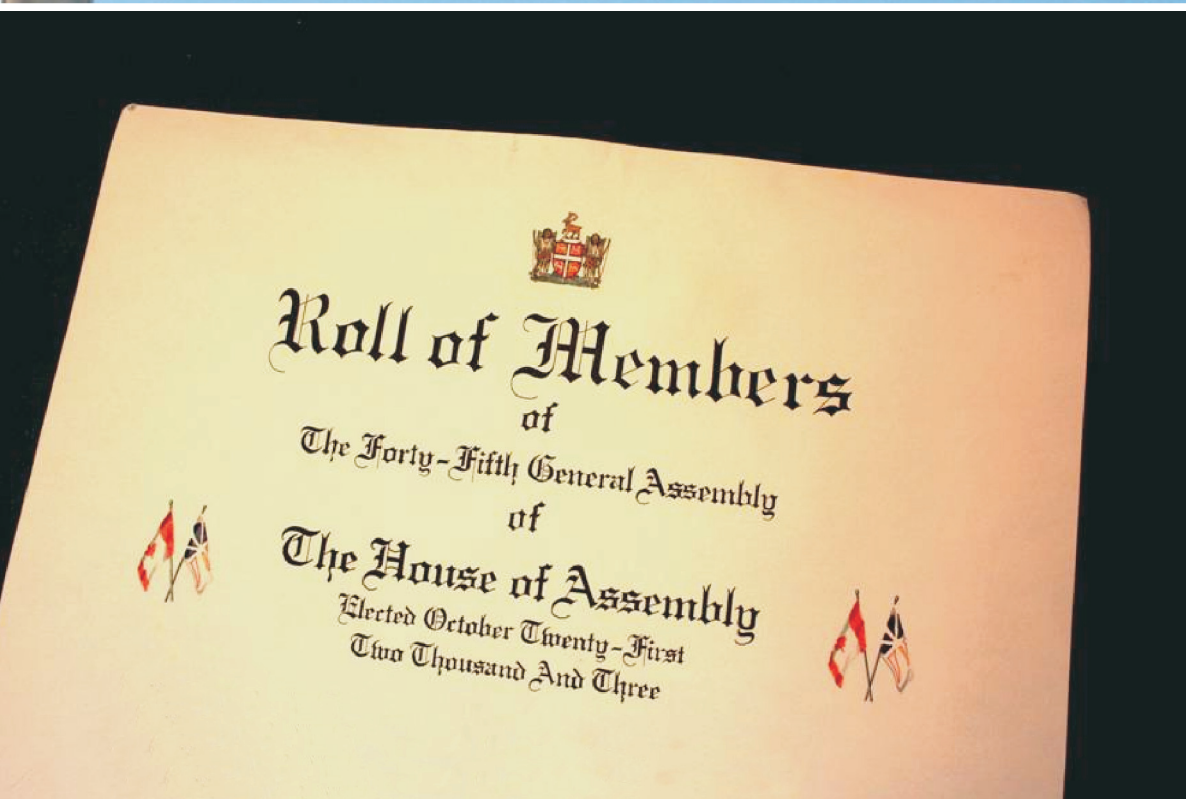


Rebuilding Confidence

Report of the Review Commission
on Constituency Allowances
and Related Matters

Hon. J. Derek Green
Commissioner
May 2007



MEMBERS OF THE HOUSE OF ASSEMBLY
SPEAKER'S OFFICES
CLERK'S OFFICES

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Hon. J. Derek Green, Commissioner

May 2007

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Hon. J. Derek Green, Commissioner

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Derek Green
Commissioner

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Chapter 1

The Commission and Its Work

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

— Franklin D. Roosevelt¹

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

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

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

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

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

This province has not been spared similar controversy. We need only refer to the inquiry into the allegations of improper financial activity by the Prime Minister of Newfoundland in 1924,⁸ the inquiry into allegations of improper (non-arm's length) leasing of space for government at excessive rents and without public tender in 1972,⁹ and an inquiry into allegations of political interference in the tendering practices of government departments in 1981.¹⁰

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appointment of the Commission in Context

During the two-week period between June 22, 2006, and July 4, 2006, the Auditor General for the province of Newfoundland and Labrador issued four reports¹² pursuant to

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

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

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

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

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

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

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

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

¹³ S.N.L. 1991, c. 22, as amended.

On June 26, 2006, in the context of a news release¹⁴ and press conference relating to what was described as a “commitment to strengthen rules governing [the] House of Assembly” and to “strengthen accountability” “in light of recent findings of the Auditor General into the finances of the House of Assembly,” the Premier announced, amongst other things, that he had appointed me to undertake a review of constituency allowances, salary levels and pension benefits of members of the House of Assembly. He was quoted as saying that “recent events” had underscored the need for such a review. He further indicated that I would be asked for an opinion as to “the appropriate manner in which to preserve the democratic requirement to have an autonomous legislature, while also guaranteeing accountability.” He was also quoted as saying that the review would be on a “go-forward” basis and would not include a review of the Auditor General’s findings. It was not to constitute a “judicial inquiry or commission”; instead it was to include an “evaluation of best practices.”

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

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

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

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

¹⁴ The text of the press release can be found at Appendix 1.1.

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

¹⁶ R.S.N.L. 1990, c. P-38.

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

Legality and Appropriateness of the Appointment

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

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

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

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

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

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

¹⁸ R.S.N.L. 1990, c. I-14.

¹⁹ See Chapter 2 (Values) under the heading "Autonomy".

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

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

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

Even if it could, however, be considered an "agency" or otherwise part of "government," it has been suggested that, given the separation of powers between the legislature and the executive, the executive would have no legal competence to direct and order officials of the separate legislative branch to cooperate with the Commission. In such circumstances, the Commission would have to resort to its subpoena powers to compel such cooperation. Additionally, an analogy might be made with the limits, resulting from the constitutional division of powers, of a *provincially* appointed commission to compel federal officials to testify and produce documents²⁰ within provincial competence. It might be argued, following this analogy, that a commission appointed by the executive to inquire into matters relating to the legislative branch would equally be limited in its legal ability to compel attendance of persons associated with the legislative branch or, for that matter, to compel any persons to testify and produce documents in relation to matters within the separate, legislative, branch. In such circumstances, issues of parliamentary privilege might well arise.²¹

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

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

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

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

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

It was suggested to me that the manner of my appointment, by the executive instead of the House, did not sufficiently respect the role of the legislative branch and that any inquiry into matters pertaining to remuneration of members of the House ought to be conducted under terms set by the House and ought to report to the House or at least to the Speaker or the Commission of Internal Economy²³ (hereinafter sometimes referred to as the “IEC” or “Internal Economy Commission”). With respect to those who hold a contrary view, I do not see any reason why the Executive could not, apart from the power in section 13, require a separate review of matters pertaining to house remuneration to better inform itself on such matters. The provision in section 13 is not expressed in exclusive terms. I note as well that the House, for whatever reason, has not exercised the power in section 13, or its earlier equivalent, since 1989 - a hiatus of 18 years.

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

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

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

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

Scope of the Terms of Reference

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

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

In addition, I was authorized to:

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

This latter item was a reference to the report of the Auditor General issued on June 27, 2006, described above²⁴ as relating to the allegations that over two and a half million dollars had been paid to three interrelated companies in circumstances of poor or non-existent internal control in the House, and that money had been paid to a company in circumstances of a potential conflict of interest.

²⁴ See footnote 12 above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant Events Subsequent to Appointment of the Commission

In the months following the appointment of the Commission, the Auditor General issued a number of other reports²⁵ related to financial matters in the House of Assembly. In public comments made in reaction to the allegations in those reports, the Premier, other political leaders and the Speaker all expressed the hope and expectation that the issues raised by those allegations would also be dealt with as part of the inquiry report.

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

²⁵ The reports are referred to in detail in footnote 12.

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

On January 8, 2007, two further reports were issued by the Auditor General alleging that two other sitting MHAs had submitted duplicate claims against their constituency allowances and had received payments twice for the same expenditures. In one case, it was alleged that this had happened 20 times over three years for a total of \$3,720; in the other case, it was alleged it had occurred 38 times over four years, totaling \$3,818.²⁶ These allegations potentially raised a new issue, inasmuch as the notion of “double billing” had not received any public comment up to that time. It is, however, clearly relevant to the issue of both the standards to be expected of members of the House with respect to use of public funds and also to the adequacy of financial controls in the House administration. The Commission staff and I were already aware of the potential for this type of activity to occur in the financial environment under examination, and we were already addressing the implications of this type of behaviour. In fact, as will be seen later in this report, I believe that the problem of double billing, and of its sister, double payment, is a much bigger problem than might be indicated by the description of the matters in the two reports in question, and that the issue has to be addressed from a government-wide perspective.²⁷

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

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

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

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

²⁸ R.S.N.L. 1990, c. F-8.

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

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

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

Administrative Organization of the Commission

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

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

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

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

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

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

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

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

I submitted a budget covering Commission operations in the amount of \$601,236.³⁰ The bulk of that amount related to consultants' fees. As a sitting judge, I am prohibited by section 55 of the *Judges Act*³¹ from claiming any compensation for the time I spent on commission work.

Operational Methodology

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

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

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

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

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

³¹ R.S.C. 1985, c. J-1, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

Structure of This Report

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

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

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

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

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

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

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

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

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



Chapter 2

Values

[G]iven the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe.

— Hon. Claire L’Heureux-Dubé¹

The Terms of Reference require me to conduct my analysis of the subject matter of the inquiry through the prism of a number of fundamental concepts affecting the position of the legislative branch of government in our constitutional system. I am required, for example, to make recommendations that would ensure that the *accountability* and *compliance* practices employed in the House of Assembly are appropriate. I am also authorized, in making my recommendations, to take into account opportunities to enhance *accountability* and *transparency* of MHA expenditures, but without undermining the *autonomy* of the legislature.

It is important, therefore, for there to be a better understanding of these fundamental concepts - and a number of others that are inextricably connected with them - before embarking on a detailed analysis of the subject matter of the review.

This chapter will also briefly examine recent trends relating to governance within both the executive and legislative branches of government and consider to what extent those trends are reflective of the values, principles and concepts that have been discussed. It is important to be alert to these trends, as well as trends in governance in other areas, like the corporate sector, insofar as they may inform the present study in the development of recommendations for reform.

¹ *R. v. Hinchey*, [1996] 3 S.C.R. 1128 at para.18.

Autonomy

The notion of legislative autonomy, or legislative independence, is important in the context of this review, not only because it affects the scope of the review, but also because, as will become apparent later, it has been used as a justification for decisions that were made that severely affected the accountability of the legislature and weakened the financial controls that were employed over House expenditure.

What is usually meant by the use of the phrase “autonomy of the legislature” in the context of political institutions is the political and legal status of the legislature under the doctrine of the *separation of powers*, buttressed by the doctrine of the *supremacy of parliament*.

The doctrine of *separation of powers* has been stated to be an “essential feature” of our constitution.² The Supreme Court of Canada has described it thus:

There is in Canada a separation of powers among the three branches of government - the legislative, the executive and the judiciary. In broad terms, the role of the judiciary is, of course, to interpret and apply the law; the role of the legislature is to decide upon and enunciate policy; the role of the executive is to administer and implement that policy.³

The essence of the notion of the separation of powers is that the three basic governmental functions (legislative, executive and judicial) should be exercised by three separate organs of the state - the legislature (the law-maker), the executive (the law administrator) and the courts (the law adjudicator) - and that, ideally, the separation and performance of these functions in and by different bodies should act as a check on the power of the other, thereby reducing the possibility of tyrannical exercise of absolute political power by one person or body. In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*,⁴ the rationale for separation was expressed thus:

It is fundamental to the working of government as a whole that all these parts [i.e. the Crown, the executive, the legislature and the courts] play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.⁵

The doctrine of *supremacy of parliament* (derived from English constitutional history from the time of the enactment of the Bill of Rights in 1689) is that the legislative organ of

² *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, per Major J. at para. 52.

³ *Fraser v. Canada (Public Service Staff Relations Board)*, [1985] 2 S.C.R. 45, per Dickson C.J. at para. 39. See also *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 at para. 138-139.

⁴ [1993] 1 S.C.R. 319.

⁵ Per McLachlin J. at p. 389.

government, as representative of the people, is the superior organ of government because at the end of the day the legislature can, subject to certain constitutional limitations, pass laws nullifying the actions of the executive and the courts.

In relation to the executive, the legislature is also supreme because the executive, through the convention of *ministerial responsibility*, is accountable to the legislature for its actions. Ministers of the Crown can be made to answer for the proper functioning of their respective departments through examination before legislative committees and during question period in the House. Ultimately, through the convention of *collective responsibilities*, the whole of the executive branch of government is accountable to the legislature in the sense that it must maintain the confidence of the House in order for it to survive in office.

From these dual notions of separation and superiority it follows, it is said, that the executive should not be able to tell the legislature what to do. The legislature is supreme within its own sphere - master in its own house, as it were.

In fact, however, institutions of government are interconnected in the constitution. It is necessary, therefore, to examine the idea of legislative autonomy more closely to determine how it might apply to the issues that are at stake in this review.

It is a truism to say that, in a constitutional democracy, no organ of government is completely autonomous in the dictionary sense of being completely “a self-governing community.”⁶ The functioning of any organ, be it the legislature, the executive or the judiciary, is constrained by the constitution, which sets out, either explicitly or implicitly, the nature of the powers each may and may not exercise and the rules that govern their interrelationship.

Parliamentary supremacy in Canada is limited by our federal constitution, which limits, by the division of subject matter of legislative powers between federal and provincial legislative bodies,⁷ the extent to which any particular legislature may exercise its law-making mandate. Furthermore, the power of any legislative body in Canada is limited by constitutional norms such as those in the *Canadian Charter of Rights and Freedoms* and in constitutional principles of general application.⁸

The doctrine of separation of powers has had a long history in political theory. It finds expression in the writings of Aristotle, Locke, Blackstone and Montesquieu, among others.⁹ The modern concept of the doctrine is usually regarded as stemming from

⁶ *Concise Oxford Dictionary*, 4th ed., s.v. “autonomous.”

⁷ *Constitution Act, 1867*, ss. 91, 92.

⁸ See *Simpson v. MacMillan Bloedel Limited v. Simpson*, [1995] 4 S.C.R. 725, per Lamer C.J. at para. 15.

⁹ See Aristotle, *Politics*, (Connecticut: Easton Press, 1964), Book 4, Chapter 14; John Locke, *Two Treatises of Government*, (London: Abraham & Churchill, 1698), Book 2, Chapter 12, paragraphs 143-144; William

Montesquieu's writings. It was his theorizing that influenced the formulation of the separation of the legislative, executive and judicial powers in the United States constitution. He felt that, as a defense against tyranny and the protection of political liberty, the power of the state should not be aggregated in one body but should, instead, be divided amongst three branches, which should act independently of each other in carrying out their respective roles. Each would then act as a check on the other and, in theory, one branch could not be called to account by any other.¹⁰

Montesquieu formulated his theories based on what he believed to be the way the English constitution functioned at the time. As has been pointed out by others since,¹¹ there has never been a true separation of powers in parliamentary systems based on the English model.¹² The operation of responsible government, with the Cabinet being responsible to the legislature, precludes it. It is this interconnection between the executive and the legislature that also weakens the notion of supremacy of parliament in practice. It leads, in fact, to a situation where the executive in many practical respects controls the legislature.

As the Supreme Court of Canada observed in *Wells v. Newfoundland*:

The separation of powers is not a rigid and absolute structure. The Court should not be blind to the reality of Canadian governance that, except in certain rare cases, the executive frequently and *de facto* controls the legislature.¹³

Blackstone, *Commentaries on the Laws of England*, (Oxford: Clarendon Press, 1765), Book 1, Chapter 2; and Baron de Montesquieu, *The Spirit of Laws*, (Dublin: Ewing and Faulkner, 1751), Volume 1, Chapter 7.

¹⁰ *The Spirit of Laws*, (Dublin: Ewing and Faulkner, 1751), Volume 1, Chapter 7: "In every government there are three sorts of power: the legislative; the executive; ... and [the judicial]... When the executive and legislative powers are united in the same person, or in the same body of magistracy, there can be then no liberty."

¹¹ See e.g. Geoffrey Marshall, *Constitutional Theory* (Oxford: Clarendon Press, 1971), Chapter 5.

¹² See *Reference Re Secession of Quebec* [1998] 2 S.C.R.217 at para.15 "...The Canadian Constitution does not insist on a strict separation of powers" [emphasis added]; and *Douglas Kwantlen Faculty Association v. Douglas College* [1990] 3 S.C.R. 570 per LaForest, J. at para.53: "while in broad terms, such a separation of powers does exist ... it is not under our system of government rigidly defined" [emphasis added] Professor Peter Hogg goes farther and states in *Constitutional Law of Canada*, 4th ed. (looseleaf), p. 7-24: There is no general "separation of powers" in the Constitution Act, 1867. The Act does not separate the legislature, executive and judicial functions and insist that each branch of government exercise only "its own" function. As between the legislative and executive branches any separation of powers would make little sense in a system of responsible government." Bagehot's classical description of the "efficient secret of the English Constitution" stresses the "close union the nearly complete fusion, of the legislative and executive power. No doubt by the traditional theory, as it exists in all the books, the goodness of our Constitution lies in the entire separation of the legislative and executive authorities, but in truth its merit consists in their singular approximation. The connecting link [between the executive and parliament] is the Cabinet." W. Bagehot, *The English Constitution* (1867) (London: Fontana, 1993) p. 67-68.

¹³ [1999] 3. S.C.R. 199, per Major J. at para.54.

This *de facto* control of the legislature by the executive occurs because:

on a practical level ... the same individuals control both the executive and legislative branches of government. As this Court observed in *Attorney General of Quebec v. Blaikie* [1981] 1 S.C.R. 312 at p. 320:

There is a considerable degree of integration between the legislature and the Government. ... [I]t is the Government which, through its majority, does in practice control the operations of the elected branch of the legislature on a day to day basis.

Similarly, in *Reference Re Canada Assistance Plan* [1991] 2 S.C.R. 525...at p. 547:

[T]he true executive power lies in the Cabinet. And since the Cabinet controls the government, there is in practice a degree of overlap among the terms “government,” “Cabinet” and “executive.” ... In practice, the bulk of new legislation is initiated by government.¹⁴

This last point - that the bulk of new legislation is initiated by the executive - is underlined especially when it comes to financial matters. Constitutionally, “money bills”¹⁵ may only be introduced into the legislature by or with the consent of the executive.¹⁶

One of the manifestations of autonomy in the legislative context is the doctrine of *parliamentary privilege*.¹⁷ This doctrine refers to “the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and the provincial legislative assemblies, and by each Member individually, without which they could not discharge their functions.”¹⁸ Parliamentary privilege encompasses a wide variety of disparate matters¹⁹ as they pertain to Members individually and to the assembly collectively. For individual Members, it includes freedom of speech without being called to account in the courts in respect of proceedings in, but not outside, the assembly; freedom not to answer to court subpoenas when the assembly is in session; exemption from jury duty; and freedom from obstruction, interference, intimidation and molestation, including intimidation by the

¹⁴ *Wells v. Newfoundland* at para. 53. See also *Reference Re Canada Assistance Plan* at para. 39.

¹⁵ “Money bills” are bills that provide for the appropriation of public money for expenditure purposes by agencies of government.

¹⁶ *Constitution Act, 1867*, Ss. 54, 90; *Newfoundland Act*, Sch., Term 3.

¹⁷ See, *Canada (House of Commons) v. Vaid*, [2005] S.C.C. 30 at para. 21: “Parliamentary privilege ... is one of the ways in which the fundamental constitutional separation of powers is respected ... Each of the branches of the State is vouchsafed a measure of autonomy from the others.”

¹⁸ *Vaid*, para. 29, item 2. In Newfoundland and Labrador, the *House of Assembly Act* R.S.N.L. 1990, c. H-10, s. 19 provides that the House and its members “hold, enjoy and exercise those and singular privileges, immunities and powers that are now held, enjoyed and exercised by the House of Commons of the Parliament of Canada and by the members of that House of Commons.”

¹⁹ A number of examples are given in *Vaid*, para. 29, item 11.

Speaker. The privileges of the House as a collectivity include the right of the House to discipline Members (censure, reprimand, summoning to the Bar of the House, imprisonment and expulsion); the authority to maintain the attendance and service of its Members; the power to exclude strangers from the precincts; the right to institute inquiries; the right to administer oaths to witnesses; and the right to publish papers containing defamatory material.

When properly invoked, the effect of the privilege is to insulate the person or the institution invoking it from interference from either the executive or the courts. It becomes a matter for the legislature, and for the legislature alone, to deal with and regulate the matters that fall within the parliamentary privilege umbrella.²⁰ In this regard, therefore, the application of parliamentary privilege *does* reflect a separation between the legislature and the executive with respect to certain functions.

In a sense, parliamentary privilege, properly invoked, amounts to an exemption from the general law. However, the mere claiming of the privilege does not necessarily provide the shield. In *Canada (House of Commons) v. Vaid*,²¹ Binnie J. quoted from a United Kingdom parliamentary report, with approval, to the effect that parliamentary privilege “does not embrace and protect activities of *individuals*, whether members or non-members, simply because they take place within the precincts of Parliament;” and he stressed that “legislative bodies ... do not constitute enclaves shielded from the ordinary law of the land.”²² The ability to invoke the privilege depends on whether the immunity claimed is *necessary for the legislators to do their legislative work*. “The concept of necessity,” conceded Binnie J., is to be construed broadly as including what the “dignity and efficiency of the House” require, but it is generally regarded as having to be related to the legislature’s “legislative and deliberative functions, and the legislative assembly’s work in holding the government to account ...”²³

In *Vaid*, Binnie J. stated that:

The idea of necessity is ... linked to the autonomy required by legislative assemblies and their members to do their job.²⁴

He also pointed out that the references to “dignity” and “efficiency,” as encompassed within the concept of necessity,

²⁰ See for example the recent decision of Orsborn, J. of the Newfoundland and Labrador Supreme Court in *March v. Hodder et al*, 2007 NLSCTD holding that parliamentary privilege precluded the justiciability of a claim by the Citizens Representative, an officer of the House of Assembly, claiming that he had been denied due process in the manner in which the House purported to dismiss him from his office.

²¹ [2005] S.C.C. 30.

²² *Vaid*, para. 29, Item 1.

²³ *Vaid*, para. 41.

²⁴ *Vaid*, para. 29, Item 4.

[a]re also linked to autonomy. A legislative assembly without control over its own procedure would, said Lord Ellenborough C.J. almost two centuries ago, “sink into utter contempt and inefficiency” (*Burden v. Abbott* (1811), 14 East 1, 104 E.R. 501, at p. 559). Inefficiency would result from the delay and uncertainty that would inevitably accompany external intervention. Autonomy is therefore not conferred on Parliamentarians merely as a sign of respect but because such autonomy from outsiders is *necessary* [emphasis added] to enable Parliament and its members to get their job done.²⁵

Parliamentary privilege and legislative autonomy are thus clearly linked. Both privilege and autonomy are supported by the same justification. They must be grounded on the notion of the necessity of the assembly and its Members to perform their functions effectively. It is the *purpose* of parliamentary privilege or the claim to autonomy that governs - and limits - their proper application. In discussing the role of the courts in these areas, the Supreme Court in *Vaid* observed that “a claim of privilege does not immunize from the ordinary law the consequences of conduct by Parliament or its officers and employees that *exceeds the necessary scope of the category of privilege*.”²⁶

Legislative autonomy is not, therefore, some ritualistic incantation that can be invoked unthinkingly to justify reclusive and unfettered action for any purpose whatsoever. When it is invoked properly, it will find a justification in the idea that there is a necessity to exclude outside interference to enable the legislature and its Members to function effectively and properly.²⁷ To invoke it in other circumstances to justify insulating the legislature from external interference is to invoke it improperly. For example, independence and autonomy, in the abstract, do not justify exemptions from accountability, particularly in the financial field. How can it be said, as a general proposition, that legislative autonomy entitles Members of the assembly to avoid accounting for their stewardship of public money? While there might be individual instances where being required to disclose particular financial transactions could be said to interfere with a Member doing his or her job freely and unimpeded (such as where disclosure might expose the name of a constituent in a sensitive personal matter), it does not follow from this that, as a blanket proposition, a Member should have no responsibility to account at all.

There are dangers associated with any type of thinking that places emphasis on separation and independence. It can have a tendency to lead to a “we-they” attitude - a bunker mentality, as it were. When the notion of separation becomes defensive, i.e., to repel interference in protection of self-interest, or if it is used unthinkingly as a knee-jerk reaction without keeping in mind what is its underlying purpose, it can be misused. That purpose is, as I have stated, to ensure that the functioning of the legislative branch in its legitimate activities in the public interest, without any outside influence, is not impeded. It is not

²⁵ *Vaid*, para. 29, Item 7.

²⁶ *Vaid*, para. 29, Item 11 [emphasis added].

²⁷ *Vaid*, para. 20, referring to “the need for its legislative activities to proceed unimpeded by any external body or institution” and eschewing “potential interference by outsiders in the direction of the House”.

sufficient simply to mouth the mantra of legislative autonomy in a defensive way, to repel interference in protection of self-interest, without always seeking to ground it in its fundamental purpose. If insistence on legislative autonomy cannot be justified in that way, reliance on it is an abuse.

There is a second danger in focusing on autonomy and separation - the creation of a “club-like” atmosphere with its own sense of morality. This may lead to an overriding sense of loyalty, a feeling of obligation to protect the group to the detriment of the public interest. One group of observers has described the situation as follows:

There is a powerful sense of cohesion among politicians and especially legislators. They share a large number of rather exclusive experiences: in effect they all belong to the same club. And since this club makes the rules for everyone, it remains strongly in favour of policing its own members with no interference from anyone else. There is a suspicion on the part of legislators that no one “outside” really understands what they go through and in part this is correct. But this insularity and collegiality can be invoked to protect the legislature and members who have apparently misbehaved from outside scrutiny or punishment. Legislatures must have a high degree of autonomy at the institutional level if they are to make the hard choices that are often required in government. But this institutional autonomy also has a dark side, in that legislatures and legislators can too easily see themselves as above the law or beyond the reach of ordinary ethical restrictions.²⁸

These two dangers, working in tandem, can easily lead, I would suggest, to a tendency to play the “autonomy card” inappropriately, in self-interest, out of a sense of loyalty to the group and without necessarily justifying the assertion in terms of its necessity in the circumstances to promote its proper purpose.

The result of this analysis is that the legislative branch of government does not, and cannot, have complete autonomy from the other branches of government, particularly the executive branch. In reality, too much can be made of the notion of legislative autonomy in practical terms. It can be invoked and relied on for improper purposes and thereby be counterproductive to other notions, such as accountability and transparency.

Nevertheless, legislative autonomy operating within its proper sphere is a vitally important value to be preserved and observed. It provides the foundation on which Members of the House can operate to do their jobs as legislators effectively, free from external impediment, especially from the executive. It is particularly important as support for the work of opposition members facing a government majority dominated by the executive. It is

²⁸Mancuso, Maureen; Atkinson, Michael M.; Blais, André; Greene, Ian; & Neviite, Neil; “*A Question of Ethics: Canadians Speak Out*” (Don Mills: Oxford University Press, rev ed. 2006), p. 24.

often the only trump card an opposition member has to enable him or her to resist domination by an aggressive government, by allowing the opposition to carve out an area of activity which the government's majority control of the legislature cannot touch. The challenge facing this inquiry is to devise a system that preserves and enhances legislative autonomy in its proper area of operation which at the same time does not allow it to become an instrument of improper application and hence an instrument of abuse.

The Rule of Law

The notion of the rule of law is central to the Canadian system of government. It is recognized as “a fundamental principle of our constitution”²⁹ and is enshrined in the preamble to the *Canadian Charter of Rights and Freedoms*.³⁰

The idea behind the concept is that people are governed by law alone and not by the arbitrary or discretionary decisions of government. No category of citizen, not only the governed but also the governors, is exempt from obeying the law, as established by mechanisms that are constitutionally recognized and accepted. The concept is also used in the broader political sense of a preference for community order rather than anarchy, and in the notion that law should be expressed in such a way that people are able to be guided by it. It was described thus by the Supreme Court of Canada in *Reference re: Manitoba Language Rights*:

[T]he rule of law ... must mean at least two things. First, that the law is supreme over officials of government as well as private individuals and thereby preclusive of arbitrary power ... Second, the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. Law and order are indispensable elements of civilized life ... As John Locke once said, “A Government without laws is, I suppose, a mystery in politics, inconceivable to human capacity and inconsistent with human society.”³¹

The notion of the rule of law is a unifying constitutional principle that cuts across the doctrine of separation of powers. It applies to the legislative as well as the executive branches of government. As the Supreme Court of Canada noted in *Canada (House of Commons) v. Vaid*, “[l]egislative bodies created by the Constitution Act, 1867 do not constitute enclaves shielded from the ordinary law of the land.”³² The doctrine of parliamentary privilege operates within this overarching umbrella. In *Vaid*, the Supreme Court enunciated the idea that unless a particular privilege could be demonstrated to have existed at the time of Confederation, its recognition would have to depend on the ability of

²⁹ *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721 at para. 59. See also *Roncarelli v. Duplessis* [1959] S.C.R. 121, per Rand J. at para. 142 (“a fundamental postulate of our constitutional structure”).

³⁰ *Constitution Act, 1982*, Part I, Preamble.

³¹ *Reference, re: Manitoba Language Rights*, [1985] 1 S.C.R. 721 at para. 64.

³² *R. v. Vaid*, [2005] SCC 30 at para. 29, Item 1.

the claimant to demonstrate that its recognition was “necessary” to enable the legislature to perform its work effectively. If the existence and scope of a privilege have not been authoritatively determined, the court:

[W]ill be required ... to test the claim against the doctrine of necessity, which is the foundation of all parliamentary privilege ... [I]n order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which the privilege is claimed is so closely and directly connected with the fulfillment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly’s work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their legislative work with dignity and efficiency.³³

Even under the doctrine of parliamentary privilege, therefore, a legislative Member or the legislature itself is regarded as bound by the law of the land and, unless the person or body seeking immunity from that law can justify the immunity according to the concept of “necessity,” the general notion of legislative autonomy cannot be used to claim exemption from the rule of law. One cannot, in asserting legislative autonomy, take it upon oneself to avoid the law. Thus, to take an example - the removal of the Auditor General from auditing the House of Assembly - that has been the subject of some public discussion, and will be discussed at some length later in this report: the fact that the Commission of Internal Economy was successful in using legislative autonomy as one of the reasons for barring the Auditor General from the House does not then justify it in not complying with the amended legislative provision that nevertheless required that “an audit” by *someone* be completed. Just because success was achieved in repelling outside influence, the acquisition of power, internally, to regulate the audit process did not mean that the IEC was a law unto itself and could ignore with impunity the obligation of having an audit performed. The legislative branch is still bound by the general requirements respecting protection of public money.

Indeed, this is as it should be. The people who make laws of general application should surely be expected to apply them to themselves. As law-makers, they should be on the front line of scrutiny as to the application of the rule of law. If they are seen as making laws that do not apply to themselves - so that they are “above the law,” so to speak - then others in society might well legitimately ask, “If not them, why us?”

I asserted above that the notion of legislative autonomy is not necessarily incompatible with notions of accountability, provided the underlying rationale for autonomy is not undermined. One can go further and say that legislative autonomy without accountability is inconsistent with the rule of law.

³³ *Vaid*, paras. 40 and 46.

Trust

Trust is an important feature of human relations, both between individuals and between and among social groups. It also figures prominently in the political context, at the heart of the relationship between citizens and those who represent them. Trust affects how people think and feel about politicians and, by extension, politics and political institutions generally.

While trust, in the political context, is probably engendered and maintained by a variety of factors, including economic and social well-being, cultural attitudes, historical experience and political tradition, it is fair to say that its continued maintenance is also hindered and placed in jeopardy by perceptions of political corruption or other indications that the politicians in positions of authority are not acting with the public good in mind. This is because the placement of trust in an individual or institution is rarely made unconditionally. “Trust rests on the belief that the individuals, groups or institutions are worth the reliance assigned to them.”³⁴ When the trust is regarded as having been betrayed, it can lead to a reassessment of the relationship.³⁵

Trust must exist not only in the political institutions themselves but also in the actors who operate within those institutions. Widespread mistrust of the individuals as a group can lead to mistrust in the institution. It is for that reason that our democratic system cannot function effectively without a minimal level of trust by the populace in our politicians. To operate, democratic governments need consent based on trust because, in the end, they cannot rely on force to get citizens to comply with their will or to enable them to remain in office.

This fundamental notion of trust as underlying the effective functioning of our political system has led to the description of politicians as being charged with *trust obligations*. For example, Franklin D. Roosevelt, when governor of New York, observed that “the stewardship of public officers is a serious and sacred trust.” This observation was noted and approved by Justice Tallis, writing for the majority in *R. v. Berntson*³⁶ - one of the cases arising out of the constituency allowance “scandal” in Saskatchewan - when he observed that

[a] heavy trust and responsibility is placed in the hands of those holding public office or employ. The public are entitled to expect persons in such positions to observe the “honour” system that they have put in place when it

³⁴ Jean Crete, Rejean Pelletier and Jerome Couture, “Political Trust in Canada: What Matters: Politics or Economics?” (Delivered at the annual meeting of the CPSA, York University, Toronto, June 1-4, 2006) online: Canadian Political Science Association < <http://www.cpsa-acsp.ca/papers-2006/Crete.pdf> >.

³⁵ As noted in Chapter 1, footnote 29, editorials and opinion pieces aired and written in early 2007 in this province have suggested that, as a result of breaches of public trust evidenced by the constituency allowance “scandal,” none of the current Members of the House of Assembly should be returned in the next election.

³⁶ [2000] SKCA 47.

comes to the expenditure of public funds for various allowances ... [T]he integrity of the system of allowances of members of the Legislative Assembly depends entirely on the honesty and personal integrity of each individual member.³⁷

The notion of the politician as a “trustee” permeates political discourse and even finds its way into the criminal law. Specific offences exist that criminalize behaviour that is found to be a breach of trust by public officials.³⁸

It probably cannot be said that the position of an elected Member constitutes, generally, an office of trustee, in the technical private law sense of a recognized jural relationship, in which the requirements of the three certainties of intention, subject matter and objects are present.³⁹ Yet there are those, like Roosevelt, who have suggested that the political position of an elected Member exhibits fiduciary characteristics which, of course, are a defining characteristic of trust relationships.

Fundamental to a fiduciary relationship is the notion of putting someone else’s interests ahead of one’s own. As McLachlin J. said in *Norberg v. Wynrib*, “The fiduciary obligation has trust, not self-interest, at its core.”⁴⁰ Few would dispute that elected politicians are expected to sublimate self-interest in the work they do on behalf of constituents.

While no one theory is universally accepted as the basis of the existence of a fiduciary obligation, the notion of having a power to affect the interests of another who is peculiarly able, by virtue of vulnerability or other circumstances, to be affected by those actions, is central.⁴¹ One theorist, J.C. Shepherd, suggests a theory based on the notion of “transfer of an encumbered power”:

A fiduciary relationship exists whenever any person acquires a power of any type on condition that he also receive with it a duty to utilize that power in

³⁷ *R. v. Berntson*, at paras. 24 - 25.

³⁸ *Criminal Code of Canada*, R.S.C. 1985, c. C-46. s. 122.

³⁹ See Waters, *Law of Trusts in Canada* (Toronto: Carswell, 1974), p. 99.

⁴⁰ [1992] 2 S.C.R. 224. See also *Canadian Aero Service Ltd. v. O’Malley* [1974] S.C.R. 592 at para. 606, where it is observed that the fiduciary obligation is an obligation which “betokens loyalty, good faith and avoidance of a conflict of duty and self-interest.”

⁴¹ In *Frame v. Smith*, [1987] 2 S.C.R. 99 (affirmed in *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574) Wilson J. stated, three general characteristics of a fiduciary relationship at paras. 40-42 : (i) the fiduciary has scope for the exercise of some discretion or power; (ii) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests; and (iii) the beneficiary is particularly vulnerable or at the mercy of the fiduciary holding the discretion or power. While some (e.g. Sopinka J. in *Lac Minerals*) say that the third characteristic, vulnerability, must be present in all cases, others (e.g. LaForest J. in *Lac*) say that vulnerability is a “relevant consideration” though not a necessary ingredient.

the best interests of another, and the recipient uses that power.⁴²

Of interest in the present context is that the notion of an encumbered power in the private law context was developed by Shepherd using broader notions from political philosophy as one of his bases. He refers to the social contract theory of John Locke as encompassing the idea of an encumbered power as a central feature of his political theory. Locke described the legislative power as a “fiduciary power to act for certain ends” and asserted: “For all Power given with trust for the attaining of an end, being limited to that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited and the Power devolve into the hands of those that gave it.”⁴³ In so doing, Locke relied on the notion of fiduciary obligation flowing from the concept of a trust to argue for limits on governmental power.

This theory of constitutional government, calling for restraint by public authority, has been adapted by some to argue for treating individual public offices as having a fiduciary character. For example, commentators in the United States, in describing the standard of impeachment of the President under the U.S. Constitution as a fiduciary standard, interpret Locke’s theory as the basis for encumbering public office with fiduciary obligations:

Officials would not enjoy power as a personal right but would hold it subject to a burden; the Government’s power should be encumbered with a trust to act on behalf of the beneficiaries - all those who had created government by social contract ... The public delegates power to their representatives so that they may act for society’s benefit; neither the executive nor the legislators can use that power arbitrarily or exceed the limits imposed by the fiduciary obligations of the public trust ... Like a trustee of private property, an officeholder has no right to assert private “dominion” over the power he holds; his use of property must be limited to such acts as will benefit those who gave him his power.⁴⁴

The idea of adapting trust and fiduciary concepts from private law into the public sphere has been utilized in other, disparate areas; for example, in recognizing a fiduciary relationship between the Crown and aboriginal communities,⁴⁵ and in describing the duty of a municipal authority to its taxpayers as analogous to that of trustees of the property of others.⁴⁶

⁴² J.C. Shepherd, *The Law of Fiduciaries*, (Toronto: Carswell, 1981), p. 96.

⁴³ John Locke, *Two Treatises of Government*, (London: Abraham & Churchill, 1698), Book II, Chapter XIII, para. 149.

⁴⁴ E. Mary Rogers and Stephen B. Young, “Public Office as a Public Trust: A Suggestion that Impeachment for High Crimes and Misdemeanors Implies a Fiduciary Standard,” (1974), 63 *Georgetown Law Journal* 1025 at 1026.

⁴⁵ See *Guerin v. Canada*, [1984] 2 S.C.R. 335.

⁴⁶ See *Roberts v. Hopwood*, [1925] A.C. 578 (H.L.), per Lord Atkinson: “A body charged with the administration for definite purposes of funds contributed in whole or in part by persons other than the members of that body owes ... a duty to those latter persons to conduct that administration in a fairly business-like

This is not to say that these usages can be easily adapted to envelop the position of an MHA with strictly fiduciary characteristics⁴⁷ in all aspects of his or her work. For present purposes, it is not necessary to do so. It is sufficient to recognize that elected representatives, in carrying out their duties, are entrusted with power to commit and spend public funds through, for example, the use of constituency allowances, and that in so doing they are not using their own property. Furthermore, MHAs have, by the nature of the arrangements that are put in place to assist them in performing their duties, the ability to spend public money in ways that are not easily discernable to observers unless special steps are taken to make their actions transparent. The people who elect them must, to a certain degree, have faith in, or “trust,” their elected representatives to act responsibly. In that sense, they are vulnerable by-standers. While this may not bring an MHA strictly within the list of characteristics of a fiduciary in the private law of equity, there are nevertheless fiduciary-like characteristics present. In a different context, it has been said by one commentator that an “equitable duty arises from the concept of public authority as a form of public trust, and the corresponding obligation on public officials to discharge this authority reasonably, fairly, and in the public interest.”⁴⁸

Shepherd points out that the transfer of power from a beneficiary to the fiduciary can occur in a number of ways, but it is the fact of the transfer of encumbered power and the position that results that give rise to the fiduciary obligation. For example, the duty of loyalty that is part of the fiduciary obligation is derived from the law itself, not from the specific type of legal transaction that effects the transfer. He observes:

We can also transfer powers to a person by appointing or electing him to offices which carry with them a decision-making role. When we elect a person to the position of director of a corporation, we clothe him with certain powers, not flowing from any contract (except in the most extended sense), but from the legal and practical realities of the office of corporate director. Similarly, when we elect representatives to government, although there is some form of social contract there, the actual investiture of powers is the result of placing someone in the office, the office having the powers already attached by virtue of the social contract.⁴⁹

It is sufficient for present purposes to conclude that there are analogies to be drawn between a person in a recognized trust or fiduciary relationship and persons in elected

manner, with reasonable care, skill, and caution, and with a due and alert regard to the interest of those contributors ... Towards these latter persons the body stands somewhat in the position of trustees ...”

⁴⁷ In *Tito v. Waddell (No. 2)*, [1977] 3 All E.R. 129 (Ch. D.), Megarry V.C. pointed out that “Many a man may be in a position of trust without being a trustee in the equitable sense.” See the discussion generally of this and related issues in Lorne Sossin, “Public Fiduciary Obligations, Political Trusts, and the Equitable Duty of Reasonableness in Administrative Law,” 66 Sask L. Rev. 129.

⁴⁸ Sossin, footnote 47, p. 129.

⁴⁹ Shepherd, footnote 42, p. 99.

political office. The duties that are commonly associated with trust or fiduciary relationships - not to engage in self-dealing; not to place oneself in a position where one's duty and interest may conflict; to preserve the property in respect of which the fiduciary has been entrusted with stewardship; to account for that stewardship; and to provide requested documentation, full information and explanations about the manner in which the fiduciary has acted (in other words, to be transparent) - are commonly what we expect of our politicians. Acting according to such standards is what we expect of persons of integrity. Thus, trust is intimately bound up with integrity. That is why we seek integrity from our politicians.⁵⁰ As Tallis J.A. said in *R. v. Berntson*, “[p]rotecting the integrity of government is crucial to the proper functioning of a democratic system.”⁵¹ A proper system of controls within the legislative branch of government should therefore be built on expectations that Members of the House will exhibit and adhere to fiduciary-like standards.

The two fiduciary duties last mentioned in the preceding paragraph - the duty to account and the duty to provide information - now lead us to discussions of *accountability* and *transparency*. Confidence and trust in our leaders come from the assurance that they are *accountable* for what they do. However, not only must the system operate properly, it must be *seen* to operate properly. That provides a justification for a general requirement of *transparency*.

Accountability

In recent years, notions of “accountability” have increasingly been the subject of public discourse. Comments such as the following, delivered in conjunction with the Massey Lectures in 2001 are often heard:

Public accountability is a fundamental right of citizens in a democratic polity. Without accountability, democracy does not work: there is no constraint on the arbitrary exercise of authority. But accountability is difficult to construct and enforce, even in democratic systems of responsible government ... What accountability means, how it is constructed, and what measures are important are part of a much larger conversation about values and purposes. To ignore accountability, or to dismiss it as a technical problem best left to the experts, is to miss one of the most important conversations of post-industrial society.⁵²

Of course, accountability means different things in different contexts. The notion surfaces in discourse respecting virtually all aspects of life - from holding persons accountable in the criminal and civil courts, to holding corporate directors accountable for

⁵⁰ See *R. v. Hinchey*, [1996] 3 S.C.R. 1128 per L’Heureux-Dube at para. 14: “our democratic system would have great difficulty functioning efficiently if its integrity was constantly in question.”

⁵¹ *R. v. Berntson* [2000] SKCA 47 at para. 25.

⁵² Janice Gross Stein, *The Cult of Efficiency* (Toronto: Anansi, 2001), p.139.

their roles in corporate governance, to holding athletes accountable for engaging in unacceptable use of performance-enhancing drugs, to holding professionals accountable for failing to meet the standards of their profession, to holding judges accountable for their conduct.

In the political sphere, accountability is used in a variety of senses, depending on context. It can be discussed in terms of the relationship between elected and non-elected officials; between elected officials and the electorate; between elected officials and/or the government collectively, on the one side, and government agencies and institutions that create and purport to enforce standards of behaviour on the other.

Traditionally, accountability in the context of the elected assembly was thought of primarily as *ministerial responsibility*⁵³ - the idea that ministers are responsible to the assembly for the activities, particularly the stewardship, of the department of government for which they are responsible and can be called to account by questions in the House and before parliamentary committees. The ultimate sanction was resignation. Another concept of accountability in the traditional sense is *accountability to the electorate*. Not infrequently, we hear politicians, when confronted with accusations of impropriety, proclaiming that the ultimate judge of their actions will be the voters at the next election, as if that is a sufficient defense to the accusation in the meantime.

Certainly, one cannot minimize the continuing importance of these notions of accountability. Political life has, however, moved on from these ideas. Accountability is now entering public discourse in many other ways. There is a general expectation, both within government and among the public, that more is needed to ensure propriety of public officials. Accountability is perhaps one of the most written-about concepts in public administration literature in Canada today. One of the most respected commentators on accountability is Paul Thomas. Rather than seeing it as an amorphous concept, he narrows it down to the idea of a process or relationship. In a recent publication, he says:

Often it is used synonymously, and incorrectly in my opinion, with other terms like responsibility, responsiveness, transparency and fairness. I favour restricting the use of the term accountability to describe a formal, authoritative relationship governed by a process.⁵⁴

Thomas sees the accountability relationship as comprising four components. The first is the assignment of delegated responsibilities to others by a person or body in authority, generally with performance standards or expectations attached. The second is the obligation

⁵³ C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), p. 227: "Nothing could be simpler than the theory of parliamentary accountability. Its essence is ministerial responsibility."

⁵⁴ Paul Thomas, "Control, Trust, Performance and Accountability: The Changing Meaning of Four Key Administrative Variables," (Presented to the Professional Planning Exchange – Symposium 2004, Ottawa, May 27-28, 2004), p. 19, online: Performance and Planning Exchange <http://www.ppx.ca/symposium/2004-_symArchivePresentations/ContTrustPerfAccount.pdf>.

to answer for performance or non-performance by those persons or bodies assigned such responsibilities. The third is that the responsible persons or bodies must be given the authority, resources and control over events to be realistically able to achieve the outcomes desired. An important fourth, and last, aspect Thomas mentions is the requirement that the authoritative party in the accountability relationship must have the will and the capacity to obtain information and to monitor performance.⁵⁵

The idea of the rule of law also underlies, and provides a rationale for, the notion of accountability in government. In the *Patriation Reference*, the Supreme Court of Canada noted that the concept of the rule of law entails the notion of “executive accountability to legal authority.”⁵⁶ The very idea of government officials being subject to the law and being thereby limited in the use of arbitrary power means that they must account for their activities, particularly their financial activities.

The stress on accountability in the public sector serves at least two purposes: it provides a focus on mechanisms to achieve *efficiency* in the expenditure of public funds in the delivery of government programs, and it also emphasizes the *responsibility* of public officials to act properly in the public interest. It is this second aspect of accountability with which I am most concerned. By holding officials accountable for what they do, by exposing their activities to the light of public scrutiny, and by providing a measure against which their actions can be judged, citizens can receive some measure of assurance that officials who are placed in a position of power and influence are employing their power and influence for the public good; in short, they can have a degree of *confidence* that the system is working as it should.

Contributing to this increased stress on public accountability, or perhaps as a result of it, notions of accountability are increasingly receiving emphasis in legislative policy. In the province of Newfoundland and Labrador, we have seen, for example, the recent enactment of the *Transparency and Accountability Act*.⁵⁷ Of interest in the present context is that portions of the *Act* have been made applicable to the House of Assembly, thus recognizing that the notion of accountability is not something that should be regarded as foreign to the legislative branch of government.

Acknowledgment of the application of the notion of accountability to the legislature does not mean that the rules of accountability should be the same throughout government. For example, although notions of judicial independence underpin the position of the judicial branch of government, the judiciary is nevertheless accountable for (i) its substantive decisions by the appeal process, with decisions being ultimately subject to reversal by

⁵⁵ Thomas, p. 20.

⁵⁶ *Manitoba (Attorney General) v. Canada (Attorney General)*; *Canada (Attorney General) v. Newfoundland (Attorney General)*; *Quebec (Attorney General) v. Canada (Attorney General)*, [1980] 1 S.C.R. 753 at paras. 805-806.

⁵⁷ S.N.L. 2004, c. T-8.1. For a brief discussion of this *Act*'s scope, see below under the heading “Transparency.”

legislation or the application of the “notwithstanding clause” in the Constitution; (ii) conduct by the discipline process administered by the Canadian Judicial Council or its provincial equivalents; (iii) financial stewardship of funds that come into its possession, by means of the audit process; and (iv) subjecting its processes to public scrutiny through a general open-courtroom policy.

Just as the rules of accountability for the judiciary are modified and applied to take account of its unique position and the values on which it is based, so also should the rules of accountability for the legislative branch be tailored to meet its special position. The fact that the position of the legislative branch is different from the executive branch does not mean that accountability is unattainable or that it should not be applied at all. Legislative independence is no justification, in itself, for not developing and applying appropriate mechanisms of accountability.

There can be no doubt that many of the traditional notions of parliamentary accountability do not work well within the legislative branch. Ministerial responsibility, for example, depends for its effectiveness on an active opposition, one that can probe the actions of government within the acceptable bounds of political partisanship. When the legislative branch is dealing with financial matters impacting on Members *qua* Members - matters such as salaries and proper spending of allowances, for example - there is no natural opposition. All Members of the legislature may have similar interests and may be tempted, out of self-interest, not to “rock the boat.” There are not the same checks and balances that exist in a system that normally pits opposing interests against each other. There is considerably less likelihood, therefore, that political partisanship will result in criticism of decisions made to benefit all Members. It is all the more important, therefore, that the governing bodies of the legislature (in Newfoundland and Labrador, the Commission of Internal Economy) have other accountability mechanisms built in.

While legislative autonomy might mandate that the legislature not be accountable to the executive branch, there is no reason why high standards of accountability and responsibility to the people of the province in the conduct of all parliamentary matters should not be applied by the legislature to itself and its Members, along with mechanisms for ensuring that those standards are publicly enforced.

Transparency

Transparency is the foundation upon which *accountability* of public officials is built. It implies openness and a willingness to accept public scrutiny. Openness and the potential for scrutiny are also the antidote for suspicion and mistrust. When meetings are open to the media and the public, and when financial records and reports can be reviewed and discussed in public, there is less opportunity for public officials to abuse the system out of self-interest or even to neglect their duties. Transparency thus increases confidence and trust in our democratic system.

Governments, especially their executive branches, are increasingly responding to demands for greater openness in the way in which they make decisions and in the manner in which they do business. Such initiatives as access to information regimes, whereby members of the public can gain access to a wide variety of information in the custody and control of government officials and agencies, are examples of attempts to make government more open.⁵⁸ Building on the principle that all government information should be accessible unless an exception can be justified on good policy grounds, governments are going further and actually publishing broad categories of information of their own motion, by means of formalized “publication schemes,”⁵⁹ rather than waiting for individual requests for access.

The term “transparency” is slowly working its way into the actual lexicon of government. For example, in this province it finds its way into the title of the *Transparency and Accountability Act*,⁶⁰ with the long title describing it as an Act “to enhance the transparency and accountability of the government and government entities to the people of the province.” The legislation, which is declared to have precedence over other legislation in case of conflict, attempts to achieve transparency by imposing obligations on government entities to prepare strategic, business or activity plans setting out broad strategic objectives for government programs, and to publish those plans, followed by the preparation of annual reports comparing actual results with the projected results. The plans and reports are required to be made public not only by tabling in the House of Assembly, but also by “other effective methods, including electronically.”⁶¹ The *Act*, amongst other things, also requires all government departments and public bodies to report financial information in a manner consistent with generally accepted accounting principles. Non-compliance with the requirements for preparation and publication of plans and reports requires a public statement giving reasons for non-compliance. Care is taken to ensure that the information in a plan or report “is in a form and language that is as precise and as readily understandable as practicable.”⁶²

Although not initially made applicable to the legislative branch, the House of Assembly has subsequently been brought under the umbrella of much of the *Transparency and Accountability Act*.⁶³ This is important because it signals, in this province, at least, an intent to make the same broad principles of transparency and openness that apply to the executive apply to the legislative branch as well.⁶⁴

⁵⁸ For examples of such initiatives in Newfoundland and Labrador, see the *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1.

⁵⁹ An example is found in the *Freedom of Information (Scotland) Act 2002* A.S.P. 2002, c. 13.

⁶⁰ S.N.L. 2004, c. T-8.1.

⁶¹ See, Ss. 5(7), 6(7), 7(7) and 9(10).

⁶² Ss. 17(1).

⁶³ See *Internal Economy Commission Act*, R.S.N. 1990, c. I-14 (as amended by S.N.L. 2004, c. 41, s. 1), ss. 9.1.

⁶⁴ I recognize that a number of the provisions in the *Act*, such as the requirement in ss. 19(4) permitting the Treasury Board to direct a public body to make its books and financial records available to the Comptroller General for review, are specifically excluded in their application to the House of Assembly.

The acceptance of the principle that government should generally operate in an atmosphere of transparency has important implications. It sets up a presumption of transparency as the default position whenever the resolution of an issue as to whether to disclose or not to disclose is unclear. While all would grant that there are circumstances where it would not be in the public interest to permit disclosure or publication of certain types of sensitive or personal information, every time secrecy or withholding from public scrutiny is advocated, the proponent of secrecy should bear the burden of justifying why the principle of transparency should be compromised. This approach should also apply to claims to protect information on the grounds of parliamentary privilege. It thus provides a further argument for saying that “the party who seeks to rely on the immunity provided by parliamentary privilege has the onus of establishing its existence.”⁶⁵

Compliance and Controls

The Terms of Reference require an assessment of whether *compliance* practices in the House of Assembly are appropriate. Compliance presupposes a regime of standards against which performance can be judged. It is those standards that determine the extent and nature of the *controls* that must be in place to ensure compliance.

“Control” is a concept with many facets. The Auditor General of Canada has commented:

Control is both restricting and enabling, an apparent paradox. It is restricting in that it protects against unwanted events such as waste, lapses or probity, or non-compliance with authority. It is enabling in that it helps ensure that objectives are achieved and provides the boundaries within which public servants can take decisions. Control provides the context in which empowerment can be created.⁶⁶

In the context of the MHA constituency allowance issues, the focus inevitably will be on the restricting aspect of control, particularly financial control, rather than its enabling aspects.

Financial control, in the restrictive sense, means following procedures that are meant to ensure economy, efficiency and probity. It includes several matters: clearly defined roles and responsibilities; segregation of duties among commitment of funds, signification of acceptable work completed, and authorization of payment; a clear set of rules for delegation of authority and an authority structure to accompany it; the provision of required information; the establishment of performance standards; and an evaluation mechanism. In

⁶⁵ *Canada (House of Commons) v. Vaid*, [2005] S.C.C. 30, per Binnie J. at para. 29, item 8.

⁶⁶ Canada, Auditor General of Canada, *1992 Annual Report*, Chapter 4, “Change and Control in Federal Government”; online: < <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/ch9204e.html> >.

the broadest sense, financial control means the promotion of performance and achievement while avoiding unwanted events like lapses in quality, unproductive uses of resources and law-breaking.

At its highest level, financial control in the Canadian system of government means parliamentary control. The elected assembly is the ultimate source of control, and financial control is simply a means whereby parliamentary control can be accomplished. The basic principles of parliamentary control are constitutionally mandated.⁶⁷ Essentially, the rules are that the government has the sole authority to initiate financial business; that the elected house (where there is a bicameral legislature) dominates in financial business; and that all public revenue and expenditures and borrowing must be authorized by parliament in legislative form. In that way, what the government intends to do is subject to the legislature's scrutiny, through the examination and debate over the budget (the "estimates"). The government's performance with respect to carrying out legislatively authorized spending is also subject to scrutiny: through comprehensive audit processes, subsequent questions and debate in the legislative chamber, and examination by parliamentary committees, especially the Public Accounts Committee. As we have seen, however, the executive's dominance of the legislature through political majorities often makes parliamentary control ineffective in practice.

At a more mundane level, control means the detailed mechanisms that are put in place to ensure that at every step of the spending process decisions are made in the public interest and that public money is prudently used and not misappropriated. It is at this level that accountants talk of *internal control* - the variety of procedures, like segregation of duties, that provide checks on the ability of persons in the system to abuse their stewardship. The role of the central paymaster, the Comptroller General, is vitally important; it is that office, together with a cabinet committee often known as the "Treasury Board," that develops detailed policies and procedures for implementation of individual spending decisions, including the documentation and authorizations that must be provided before a specific transaction can be completed. Test-checking, through internal audit procedures, provides additional assurance that the system is operating effectively.

A comprehensive audit of the public accounts, conducted by an independent auditor, is vital to ensure that money was spent in accordance with proper procedures, in the way government said it was going to spend it, and that the spending achieved the results intended. In the public sphere, it is often regarded as insufficient to limit the examination to a determination as to whether the financial statements fairly reflect the government's operations in accordance with generally accepted accounting principles; comprehensive, or legislative, auditing goes further - to express opinions on whether there has been compliance with all proper legislative and regulatory spending authorities.⁶⁸ This examination achieves a

⁶⁷ *Constitution Act, 1867*, Ss. 53, 54, 102 and 106. These sections of the *Act* are applicable to the federal parliament; they are made applicable to the legislatures of the four original founding provinces by s. 90, and to the province of Newfoundland and Labrador by the *Newfoundland Act*, Sch., item 3.

⁶⁸For the mandate of such audits in this province, see *Auditor General Act*, S.N.L. 1991, c. 22, ss. 12(2). For a

degree of *transparency* in government because the report is made public; as a result, a measure of *accountability* can be achieved through scrutiny by the legislature's Public Accounts Committee, and through public reaction at the ballot box.

The achievement of compliance through control can occur not only formally, but also informally. Formal control occurs through the external imposition of standards and the provision of specific regulatory procedures with associated enforcement mechanisms. Some examples have already been given. Informal controls, on the other hand, are those that cause persons to alter their behaviour voluntarily because of well-understood expectations that motivate them to comply with certain standards, out of a sense of moral obligation or a fear of exposure to censure if the behaviour were to be publicly known. In other words, the person exercises *self-control*. Compliance with a system of informal controls depends in large measure on *transparency*, so that with the accompanying realization that financial activities will be subject to public scrutiny, persons will be motivated to meet expectations of good financial management.

Because formal controls are conceived as being imposed from without, this potentially raises questions as to conflict with the concept of an *autonomous legislature*. It may be said, for example, that the idea of controls imposed by the executive over the way in which the legislative branch conducts its business is a fundamental violation of the legislative-executive divide. That is why, it is said, the legislative branch must reject any attempt on the part of the executive to impose its policies of financial control on the legislature. This line of reasoning sometimes leads to the further argument that, once external formal controls are rejected, the only thing left to operate within the legislature is informal, or self, control.

In reality, respecting legislative autonomy does not lead to having to choose between formal and informal control. There is no reason why the legislative branch, acting autonomously, could not decide on its own motion to adopt formal policies of good financial control used by the executive, but perhaps modifying them to account for some of the special peculiarities characteristic of the legislative branch. It must be remembered that both the legislative and executive branches ultimately spend public money from the same source, the Consolidated Revenue Fund. It stands to reason that principles of good financial management should apply to the control of public spending no matter who is doing the spending. It does not follow, therefore, that a refusal to be bound by formal controls used by the executive necessarily leads to the conclusion that all that can be expected of the actors in the legislative branch is self-control. The legislative branch can, and should, develop its own set of financial controls, either by adopting those of the executive or by modifying them to adapt to any special circumstances of administration in the legislature.

more detailed discussion of the different types of audits and their scope, see Chapter 8 (Audits) under the heading "Government Audits - What Are They and Why Are They Carried Out?"

In the end, having a reliable set of controls over public spending, controls that can be seen to be working and enforceable, enhances *accountability* and *trust* in our public institutions.

Interrelationship of Fundamental Values and Concepts

The themes of legislative autonomy, the rule of law, trust, accountability, transparency, and control are all engaged in the subject matter of this inquiry. The intersection of these themes, and the degree to which the ideas underlying them were properly observed, go to the heart of the culture of public stewardship - that hard-to-define idea of a shared culture of prudence and probity, as well as a pride and confidence in, and a desire to promote and preserve, our democratic system.

The notion of autonomy does not mean that the legislative branch can choose to be accountable or not. The obligation of accountability is an overarching requirement of democracy. The notion of autonomy does not make accountability optional. The obligation to account arises independently of the concept of the legislature as an independently functioning entity. It arises because of the necessary fact that in a democratic society no body has arbitrary or unfettered or dictatorial powers; and that whenever a body or official is entrusted with power, it must be wielded in the public good. There must be a means to ensure that that occurs, and that people have confidence that it occurs, thereby maintaining trust in our institutions.

Trends in Institutional Reform and Innovation in Executive and Legislative Branches⁶⁹

The values, fundamental principles and concepts of autonomy, the rule of law, political trust, accountability, transparency and control have provided justifications and the bases for a variety of reforms in the executive and legislative branches of government. They have the potential, however, of playing out, in practical terms, in different ways. Occasionally, when applied to concrete situations, they may appear to work at cross-purposes to each other. But what may first appear to be an inconsistency of principle may, on closer analysis, not really be so.

An example is the assertion of legislative autonomy in 2000 as one of the rationales given for excluding audit scrutiny of the accounts of the House of Assembly by the Auditor General, and of excluding pre-audit and internal audit scrutiny of House documents by the

⁶⁹ This portion of the report is based largely on “Members’ Compensation in the Newfoundland and Labrador House of Assembly: Issues and Opportunities,” a research paper prepared for the Commission by Dr. Christopher Dunn.

Comptroller General.⁷⁰ While it is true that, as matters developed, the effect of those actions was to work against the notions of accountability and transparency, that need not have been the case. The flexing by the House of its autonomy muscles could equally have been accompanied by the adoption and implementation by the House or its management board, the Commission of Internal Economy, of their own policies relating to proper controls, accountability and disclosure. In other words, autonomy on the one hand, and accountability and transparency on the other, can co-exist. It simply requires an institutional culture, and a will on the part of those in positions of responsibility, to be alert to ensure that consideration and commitment are given to *each* value when any political action is taken. To acknowledge and give effect to one value does not necessarily mean that one has to jettison another.

If we are to make recommendations about best practices to follow in the Newfoundland and Labrador context, it is useful to consider how the values, fundamental principles and concepts that have been earlier discussed are being reflected in developments in executive and legislative governance generally. While the focus of this inquiry is on legislative, as opposed to executive, practices, there may be trends in the executive branch of government which may be instructive and capable of adaptation in the legislative realm as well - a cross-fertilization of ideas, as it were. I will briefly discuss some of the broad trends in the executive branch first, followed by a discussion of trends more specific to legislatures.

Innovation in the Executive Branch

Revenue and expenditure policy-making in the executive government of Westminster systems nationally and worldwide has seen both continuity and innovation. The continuity can be found in continuing concern with collective decision-making. Innovations can be found in disclosure, consultation and expenditure budget models.

(i) Institutionalization

Beginning around the 1960s (or, in the case of Saskatchewan, the 1940s), the institutionalized, or highly structured, cabinet came to replace the unaided, or departmental/unstructured, cabinet in Canada. This cabinet, Stefan Dupré said, had “various combinations of formal committee structures, established central agencies and budgeting and management techniques [combined] ... to emphasize shared knowledge, collegial decision making, and the formulation of government-wide priorities and objectives.”⁷¹ There were now “central agency ministers” who reflected the collective concerns of cabinet and “special interest ministers” who continued the older pattern of special-interest politics. Later writers

⁷⁰ This matter will be discussed in considerable detail in Chapter 3 (Background).

⁷¹ J. Stefan Dupré, “Reflections on the Workability of Executive Federalism,” in Richard Simeon, ed., *Intergovernmental Relations*, Vol. 63, Research Studies for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985) p. 4.

elaborated upon these themes, emphasizing additional implications of the institutionalization phenomenon. Institutionalization was seen as involving alternative channels of policy advice for cabinet and committees, extensive cabinet-level analysis, more cabinet staff, collective and collegial budgeting, and comprehensive and long-term planning.⁷²

One of the results of this trend was to concentrate control of decision-making in central agencies of government. In this province, this trend is exemplified by the move towards the centralization of all information technology functions in one office, with government-wide, rather than merely departmental-wide, responsibilities. A similar trend is evident in proposals to centralize all human resource functions in much the same way. In terms of *financial* controls, however, an opposite trend is evident; there appears to be, in this province, in any event, a movement toward decentralization - the shifting of responsibility for the financial control and accountability functions away from central control agencies like the Office of the Comptroller General to senior officials in individual departments. I will be commenting on the implications of this trend on accountability later in this report.⁷³ It is sufficient at this stage to record the existence of the trend.

(ii) Increased Disclosure

Providing more information to concerned citizens is an innovation for Canadian finance ministers and departments. Increasingly, policy papers, staff research papers and tax expenditure accounts are being published along with budget addresses. These are designed to reveal the government's economic reasoning to the public and, of course, to garner political support in the process. Public finance specialists laud the act of publishing.

In Newfoundland and Labrador, some of the most notable regular papers, for example, are *The Economy*, *The Economic Review*, *Demographic Reports* and sectoral economic branch reports.

(iii) Consultation

Consultation is still another innovation in federal and provincial policy and budget preparation. The Federal Department of Finance was a forerunner in Canada in budget outreach activities, and several provincial governments followed. Beginning in the 1990s, Newfoundland and Labrador finance ministers undertook pre-budget consultations with

⁷² Christopher Dunn, *The Institutionalized Cabinet: Governing the Western Provinces*, (Montreal and Kingston: McGill-Queen's University Press, 1995), Chapter 1.

⁷³ See Chapter 12 under the heading "Delegation of Authority and Effective Control of Public Money."

publicly funded bodies. Occasionally, this province institutionalized consultation in tripartite economic advisory councils. Public hearings on its economic and social plans have also had some budget implications.

(iv) Expenditure Budget Models

Yet another innovation in financial policy-making is the use of *expenditure budget models*. Each federal and provincial government has followed a unique path in determining how to build the expenditure plan and how to aggregate information for political decision-makers. The models have varied over the years, but the general trend has been to emphasize programs and program units, rather than responsibility centres, and to demonstrate a government-wide concern with planning. The budget process has become tightly integrated with the planning framework.

(v) Accounting officers

The post of *accounting officer* is a way of promoting the accountability of senior permanent officers of the executive branch. The United Kingdom has had accounting officers for about a century,⁷⁴ and the Government of Canada has recently enacted legislation to introduce them into the federal service.⁷⁵ The idea has gained currency in the last few decades in Canada, especially since it was recommended, in so many words, in the 1979 Lambert Committee Report.⁷⁶ Essentially, accounting officers are deputy ministers or equivalents who are held to account before parliamentary committees for the exercise of powers that are directly assigned or delegated to them by legislation. Several parliamentary⁷⁷ and academic sources have since made similar recommendations calling for direct deputy accountability. This arrangement changes the reigning practice of most of Canadian administrative history, which has always maintained that the deputy should report to Parliament through the minister, and that the deputy would have no independent

⁷⁴For a review of their modern responsibilities, see the Treasury website, online: Government Accounting 2000 < http://www.government-accounting.gov.uk/current/content/ga_04_1.htm >.

⁷⁵ *Federal Accountability Act*, S.C. 2006, c. 9

⁷⁶Royal Commission on Financial Management and Accountability, *Final Report*, (Ottawa: March 1979), (Commissioner: Allen Thomas Lambert).

⁷⁷See Special Committee on Reform of the House of Commons, *Third Report*, (Ottawa, 1985), (Chair: Hon. James McGrath); House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10th Report, (Ottawa: May 2005); Donald Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament*, (Toronto: University of Toronto Press, 2003); Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform*, (Ottawa: Canada School of Public Service, 2005); C. E. S. Franks, "Ministerial and Deputy Ministerial Responsibility and Accountability in Canada," (Submission to the House of Commons Standing Committee on Public Accounts), January 11, 2005.

observations to offer other than those that were in support of his or her minister.

(vi) Freedom of Information

Freedom of information (or, as it has been called in Canada, “access to information”) legislation is an idea whose time came long ago, but continues to be expanded in its scope. Information access laws were passed as early as 1776 in Sweden and have continued to be implemented and refined up to the present day in other jurisdictions worldwide.⁷⁸ Some of the most notable in recent times include the United Kingdom and Scotland, who enacted legislation in 2000-2001 (but only implemented it in 2005). All are quite extensive in their coverage. In Canada, the scope of the *Access to Information Act* has been expanded recently by the *Federal Accountability Act*’s inclusion of officers of Parliament, Crown corporations, and foundations created under federal statute.

The spirit of openness may be even more pressed by the UK example; the scope of the UK *Freedom of Information Act*, says one comparative observer of this field,

[i]s somewhat wider than the others; and contrary to the other Information Commissioners and Ombudsmen considered, the U.K. Commissioner has a specific legislative duty to actively promote the legislation. Other key advantages unique to the U.K. scheme include a complementary Code of Practice, linked to but not part of the legislation, which governs the obligations of government officials to keep records, and the presence of an independent Information Commissioner with order-making power and the ability to prosecute for offences under the access legislation.⁷⁹

The present pattern in Canada may be informed by these innovations.

(vii) Public Tendering

The general practice in the executive branch of government at the federal and provincial levels with respect to government procurement is to insist on competitive

⁷⁸ Some other examples of jurisdictions that have followed this trend are Finland (1951), the United States (1966), Australia (1982), New Zealand (1982), Canada (1983), Newfoundland and Labrador (1990) and Ireland (1997).

⁷⁹Kristen Douglas, “Access to Information Legislation in Canada and Four Other Countries,” (April 6, 2006), online: Parliament of Canada - Library, <<http://www.parl.gc.ca/information/library/PRBpubs/prb0608-e.htm>>, pp. 20-21.

tendering of contracts for goods and services involving the public sector and other public bodies. This is usually expressed in public tendering legislation. Hardly an innovation, it nevertheless often seems like one when the spirit of public tendering is violated by some infrequent episode.

The province of Newfoundland and Labrador has had specific public tendering legislation, as well as legislated purchasing controls, since the early 1970s. The principles underlying such legislation are well accepted within the executive branch of government. Such principles are, of course, equally applicable to all systems involved in the spending of public money; yet there appears to be considerable controversy as to their acceptance and application within the legislative branch of government.⁸⁰

(viii) Whistleblower Policies

The Government of Canada,⁸¹ as well as some provincial governments⁸² and other jurisdictions, have legislatively adopted policies designed to encourage internal enforcement of ethical behaviour by providing mechanisms whereby public servants can, without fear of reprisal, disclose others' improper or unethical behaviour of which they are aware; and by providing procedures whereby those disclosures can be investigated by independent legislative officers, often called "integrity commissioners," and remedial action taken. The philosophy behind such legislation is well summed up in the preamble to the original federal legislation:

Confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings.

These developments follow a trend that has existed in the corporate sector for a longer period of time. They demonstrate how developments in governance-promotion ideas in the private sector can sometimes fuel reforms in the public domain.

⁸⁰ The province's *Public Tender Act*, R.S.N.L. 1990, c. P-45 only applies to a "government funded body" as that phrase is defined in s. 2(b) of the *Act*. Like many definitions in provincial legislation, it is not completely clear whether or not it applies to the House of Assembly. The definition is not self-contained - it "includes" a variety of entities. None of them self-evidently apply to the House. This report will attend to this deficiency.

⁸¹ See e.g. *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 as amended by *The Federal Accountability Act*, S.C. 2006, c. 9, Ss. 194-226.

⁸² For example, *The Public Interest Disclosure (Whistleblower Protection) Act*, S.M. 2006, c. 35.

Innovation in the Legislative Branch

There have been innovation and reform in the legislative branches of Canada and elsewhere as well. In fact, it is possible to say that the degree of innovation in legislative branches is one of the background stories of the modern state, since it has gone largely unreported, or understated.

(i) Growing Independence

Despite the fact that there is already a substantial amount of independence displayed by legislatures, there is a movement toward increasing the quantum. One tendency in recent years is to have the internal management of the legislature run by a board that has representatives of all parties on it, rather than just the government side, as was historically the practice. Multi-party representation increases the likelihood that the legislature will take stands independent of government in its self-direction, especially if, as in some legislatures, there is party parity on the board. Another sign of growing independence is the practice of having the Speaker chosen by a vote of the whole legislature, rather than leaving the effective choice to the first minister. The House of Commons first elected its Speaker in 1986, and all the legislatures have followed suit.

(ii) Structural Independence for Officers of the Legislature.

Officers of the legislature are neutral officials performing tasks central to the public interest and to the operation of the legislature as a collective body, in a way that is above politics. Their neutrality and independence are enhanced by the fact that they report to the legislature and not to the executive. In recent years, their independent status has increased. Regard what Graham White, a former Ontario Clerk of the provincial legislature and a noted comparative legislature expert, says about appointment independence.

A small but nonetheless significant sign of movement toward legislative independence is the growing recourse to legislative committees for the appointment of neutral legislative officials such as the clerk, the ombudsman, and the provincial auditor. In several legislatures, all-party committees now make the effective decisions on such key appointments (though a motion and vote in the House is usually necessary to formalize the decision). Until recently, cabinet decided on these important staffing matters, and while care was usually taken to avoid partisan or political taint, transferring this task to a legislative committee, with representation from both sides of the House, clearly enhances legislative autonomy.⁸³

⁸³Graham White, "Evaluating Provincial and Territorial Legislatures," in Christopher Dunn, ed., *Provinces: Canadian Provincial Politics* (Peterborough: Broadview Press, 2006), p. 265.

Other forms of independence are enjoyed by statutory officers such as ombudsmen. The offices are usually created and supported by their own legislation, and the head of the office is called, and treated as, an “officer of the legislature.” Such officers are often allowed to hire their own staff and regulate their own workplace, provided they report directly to the legislature and not through a minister. They often have a fixed, non-renewable term; have a committee of the legislature involved in overseeing their office; have a reasonable salary, objectively set; and involve the legislature in setting the officer’s budget.

(iii) Professionalization

Increased professionalization is the rough analogue for institutionalization in the executive branch. Professionalization is the provision of structural, financial and staff supports that allow for legislators to perform their work effectively and in an informed fashion.⁸⁴ As Graham White says, the pattern of the past was that the legislatures were not very professional.

Among the indicators of legislative professionalization are adequate levels of pay, based on the presumption that elected life is a full-time calling; sufficient professional staff support, research facilities, and the like; and legislative sessions of reasonable duration. All of this may seem unexceptional, yet just two or three decades ago, all provincial legislatures lacked even the rudiments of professionalization. Members were badly paid, requiring them to hold virtually full-time jobs while serving in the legislature.

This was possible because the legislature was only in session a few weeks each year. If they were lucky, members might share a cramped office in the legislative building while the House was sitting and have access to a pool of stenographers to type their letters. Beyond that, members had virtually no staff resources or facilities to assist them in their duties.⁸⁵

While the pattern has changed in the direction of more professionalization, there is still room for improvement. White notes that pay levels have increased, but many Members across Canada take pay cuts in comparison with rates in their former professions; research and staff provisions are generous, but mostly in Ontario and Quebec legislatures; and throughout the country, the legislative sessions have shrunk rather than expanded in length.

⁸⁴Gary Moncrief, “Professionalism and Careerism in Canadian Provincial Assemblies: Comparisons to U.S. State Legislatures” (1994) *17 Legislative Studies Quarterly*. Vol. 19, No. 1 (Feb., 1994), pp. 33-48.

⁸⁵ Graham White, footnote 82, pp. 265-266.

(iv) Access to Information

In recent years, a movement is growing to apply the logic of freedom of information legislation - which is now widely accepted in the executive branch - to the legislatures themselves. In most cases, the operative logic - buttressed by notions of the rule of law - is that if legislators are going to impose requirements on society, they should be willing, with appropriate safeguards in place, to have such requirements apply to themselves as well. Westminster-style legislatures are a case in point, with Canada as an outlier:

Unlike Canada, all the jurisdictions ... [UK, Ireland, and Australia] include their Parliaments under their freedom of information regimes. In each case there is protection for documents the release of which would infringe parliamentary privilege, or for the confidential papers of a parliamentarian. In the United Kingdom, there are absolute exemptions for materials that must be protected to avoid "an infringement of the privileges of either House of Parliament" or that would interfere in the deliberations of Parliament, the responsibility of ministers or the conduct of public affairs. In Ireland, a similar exemption covers opinion and advice relating to the proceedings of the Oireachtas (Parliament): the Freedom Of Information Act excludes records given to a member of the government or a minister of state for use by him or her or for the purposes of proceedings in either House of the Oireachtas (including a committee of either House), including briefings provided in relation to oral and written Parliamentary Questions. In Australia, an absolute exemption prevents the release of documents the disclosure of which would constitute a breach of parliamentary privilege.⁸⁶

Scotland is another notable example of a robust freedom of information system applying to legislatures. The *Freedom of Information (Scotland) Act 2002* establishes a statutory right to recorded information of any age held by all Scottish public authorities, which includes the Scottish Parliament and its Scottish Parliament Corporate Body (the equivalent of this province's Commission of Internal Economy). It excludes information held by the Parliament or the Scottish Parliament Corporate Body on behalf of members and their staff. Information that is already publicly available by other means does not have to be provided again in response to a freedom of information request. In 2005, the first year of its operation, a total of 327 access requests were received, and the total staff time spent on responding to them was 4,957 hours.⁸⁷

⁸⁶ Kristen Douglas, footnote 79, p. 21.

⁸⁷ Information provided to Dr. Christopher Dunn by the Scottish Parliament Corporate Body (September 2006).

(v) *Disclosure of Members' Allowances*

One of the interesting developments that is at work in the United Kingdom in the area of access to information in the legislative branch of government involves the disclosure of Members' allowances. Policy-makers have realized that the labour-intensive work of responding to freedom of information requests could be offset somewhat by offering the same sorts of information on a regular basis as part of a "publications program." Much of the publications program is on-line, so this makes the process even more economical. The UK freedom of information legislation not only offers a statutory right to request information from "public authorities" (which includes both Houses of Parliament), but it also specifies that it is "the duty of every public authority ... to adopt and maintain a scheme which relates to the publication of information by the authority."⁸⁸

Acting in the spirit of the *Act*, the House of Lords and the Commons decided to provide additional information on Members' allowances. For example, the Commons publishes the annual totals for each Member for a variety of expenditures relating to Members' allowances, such as certain living, travel, staffing, stationery, information technology and incidental expenses.⁸⁹ Similar information is provided by the Scottish Parliament, except that it publishes the information on a quarterly basis, which increases its currency.

(vi) *Greater Emphasis on Integrity: Codes of Conduct*

Several national parliaments around the world, including those of Canada, the United Kingdom, and the United States, and several regional assemblies, including Ontario and Alberta, have instituted formal codes of conduct for their legislators. The bodies or institutions used to investigate and sanction the lawmakers include independent commissioners, parliamentary committees, parliamentary commissioners, the Speaker and the courts.⁹⁰

This emphasis on adopting formal codes of conduct for legislators is reflective of a more broad-ranging focus on developing a variety of mechanisms designed to promote integrity in government across the executive and legislative branches through transparency and accountability. These mechanisms include some of the measures earlier discussed, such as freedom of information legislation, whistleblower protection, greater professionalization,

⁸⁸*Freedom of Information Act 2000*, c. 36, s. 19.

⁸⁹United Kingdom, House of Commons Library, "Parliamentary Pay and Allowances," (Research Paper 05/42), (June 9, 2005), online: UK Parliament - House of Commons <<http://www.parliament.uk/commons/lib/research/rp2005/rp05-042.pdf>>.

⁹⁰Rick Stapenhurst and Riccardo Pelizzo, "Legislative Ethics and Codes of Conduct," (World Bank Institute - Series on Contemporary Issues in Parliamentary Development), (2004), online: The World Bank <http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Legislative_Ethics_and_Codes_of_Conduct.pdf>.

and automatic disclosure of certain types of information. In fact, some commentators, referring to the wide variety of recent initiatives being undertaken at the federal level in Canada, have argued that “Ottawa’s many ethics initiatives now constitute an ‘ethics program’ ... a collection of interrelated activities directed towards a common goal ... a desire to improve the integrity of government and the most important political processes connected to it.”⁹¹

(vii) Standing Advisory Committee on Ethics.

Legislative institutions in some countries have created standing advisory bodies to promote ongoing ethical behaviour. One such body is the Committee on Standards in Public Life in the United Kingdom. For this purpose, persons in public life encompass “ministers, civil servants and advisors; Members of Parliament and UK Members of the European Parliament; members and senior officers of [certain government service agencies]; non-ministerial office-holders; members and senior officers of other bodies discharging publicly-funded functions; elected members and senior officers of local authorities.”⁹² The Committee also deals with issues relating to political party funding. In many ways, it is like a standing commission of inquiry.

This Committee is an independent advisory non-departmental public body (NDPB). It is a standing committee. This is important, because unlike committees created for a special purpose, such as those that examined electoral reform or the House of Lords, the Committee is able to review and justify its actions after it has reported. For example, when the Committee makes recommendations, its permanent character means that it can continue to press for their implementation. It can also answer and clarify queries and review and assess the progress of its own recommendations ... its permanence is one explanation of the notable success of the Committee on Standards in Public Life.⁹³

This emphasis on use of a standing committee of the legislature to assume responsibility for standards of conduct can be viewed as a signal of an intent of the legislative branch to be proactive in a direct way in addressing integrity issues in public life.

⁹¹ John Langford and Allan Tupper, “How Ottawa Does Business: Ethics as a Government Program,” Bruce Doern ed, *How Ottawa Spends, 2006-2007/In From the Cold: The Tory Rise and the Liberal Demise* (Montreal & Kingston: McGill-Queen’s University Press, 2006), at pp. 116-117.

⁹² United Kingdom, Committee on Standards in Public Life, *First Report*, 1995 (Nolan Report).

⁹³ Justin Fisher, “Regulating Politics: The Committee on Standards in Public Life,” in Justin Fisher, David Denver and John Benyon, eds., *Central Debates in British Politics* (Harlow, England: Pearson Longman, 2003), p. 391.

Innovation in Other Governance Institutions

It must be clear from the previous discussion relating to accountability that concern for making institutions and those who direct or have influence within them accountable for their stewardship, particularly in the financial sphere, is not limited to the areas of public administration. The corporate world, particularly in respect of publicly traded corporations, has for a long time operated within an elaborate scheme, through statute and developed case law, as well as through the role of securities regulators, designed to impose standards of governance on those in control of corporations to protect shareholders and others from financial mismanagement.

In the aftermath of recent corporate scandals such as those involving Enron and Worldcom, a much greater emphasis has been placed on ensuring that standards of corporate governance are effective in achieving their purpose. The wide-ranging regulatory reforms that were adopted by the Securities and Exchange Commission pursuant to the *Sarbanes-Oxley Act* in the United States demonstrate this increased concern. Similar reforms were adopted by the Ontario Securities Commission, the Toronto Stock Exchange and other securities regulators in Canada. These reforms deal with, among other matters, enhancing director independence and due diligence, developing improved standards of corporate behaviour through codes of ethics and other measures, and improving accountability of senior management for the effectiveness of their financial reporting systems. Things have changed in corporate governance as well.

While the ultimate landscape of corporate governance flowing from these developments may not yet be settled - and, indeed, there may be some retreat from current positions as a result of initial reactive overkill - there can be no doubt that the reforms of recent years have had, and will continue to have, a profound impact on notions of accountability in the corporate sector. Indeed, their influence can be seen extending into other areas, such as the not-for-profit sector, which has also seen calls for increased governance standards and adoption of clearer and more comprehensive ethical guidelines for board members.⁹⁴

Any consideration of reform in the public sphere cannot ignore these developments in the corporate world. To the extent to which the approaches taken there are applicable to issues of governance in the public sector, they must be considered. As will be evident in the rest of this report, I have in fact borrowed ideas from corporate law and practice in certain areas and have adapted them to current purposes.

⁹⁴ See Donald J. Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 3rd edition (Toronto & Vancouver: Butterworths, 2002). See particularly Chapter 6.

The Smaller World of Institutional Reform: the House of Assembly

The world of the House of Assembly is a relatively small one. There are only 48 Members. The staff of the House numbers only about a hundred, but this includes the political staff serving the Members and the staff of the independent statutory officers of the House. The core administrative staff serving the legislature at the time of the appointment of this inquiry were the Clerk, the Clerk Assistant, the Chief Financial Officer,⁹⁵ and the executive officer of the Public Accounts Committee. The budget of the House is small by the standards of the executive government.

Yet though the House is a small world, it has given rise to large issues. They cannot be satisfactorily dealt with in isolation. That is why, in formulating recommendations for improvement in the legislative branch generally, and in attempting to rectify identified problems specifically, it is important to keep in mind the important values and principles identified in this chapter and, as well, to be aware of the trends in institutional reform that seem to be reflective of those values and principles.

As we now move to a discussion of the results of my inquiry's investigations and the articulation of what I believe are the deficiencies in the current financial and governance systems of the House, it will be useful, I believe, to ask at every point how the autonomy of the legislature can be preserved in a manner that its fundamental purposes will not be compromised. It is equally important to ask at the same time how we can ensure that transparency and accountability are promoted and that proper controls over the spending of public money are in place - all with a view to ensuring proper governance, so that public trust and confidence in the integrity of the system and in the persons, both elected and non-elected, who perform in it can be restored. In so doing, we must draw upon the experiences of others.

More specifically, as I have proceeded with my analysis of the issues presented, I have had constantly to ask myself - and I believe the reader should also be asking - such questions as:

- Is the principle of legislative independence inconsistent with principles of good financial management?
- Do the values of financial management need bolstering in the House?
- How can the principle of legislative independence be preserved while at the same time ensuring that accountability for the spending of public money within the legislative branch is achieved?

⁹⁵ The position of Chief Financial Officer was newly created shortly before the appointment of this commission of inquiry. The position chiefly responsible for financial matters in the House prior to the creation of the new CFO position was the Director of Financial Operations.

- How can sufficient levels of transparency be achieved within the House without affecting doctrines of parliamentary privilege and legislative autonomy?
- To what degree should the behaviour of Members of the House of Assembly be self-regulated or governed by enforceable rules?
- Is it desirable that standards of budgeting, consultation and financial controls operative within the executive branch of government be applicable within the legislative branch? If so, should they be imposed from without or adopted from within?
- What reforms or innovations can return citizens' trust in the legislature?

With these general contextual questions in mind, we will now turn to a description of events over the past eighteen years that, in my view, touch significantly on the issues of autonomy, legality, trust, accountability, transparency and control that I have discussed.



Chapter 3

Background

*I want to throw open the windows of the church so that we
can see out and the people can see in.*

— Pope John XXIII¹

Overall Perspective

The focus of this inquiry is meant to be forward-looking - concentrated on finding and recommending a course of best practices for the future administration of the House of Assembly. Yet in order to reach the point where I could feel at all comfortable in recommending a policy direction and framework to guide future administration, it was imperative that the broadest possible perspective on the evolution of the state of affairs in the administration of the legislature be obtained. This part of the report, therefore, focuses on the evaluation of the legislative and administrative framework that has governed members' indemnities and allowances, as well as financial monitoring and control of spending in the House since the implementation in 1989 of the recommendations in the Morgan Report.² It is a history that spans 18 years.

There are definite indications that all is not well with the administration of the House. The series of reports issued by the Auditor General is prominent and painful evidence of that. These reports allege a number of specific difficulties, irregularities, and improprieties in the administration of the legislature over a period of several years. While my terms of reference require that I consider the issues raised by the Auditor General, they also require that I examine:

whether proper safeguards are in place to ensure accountability and

¹ John XXIII, addressing clergy at the beginning of the Vatican II Council.

² Newfoundland, *The Report of the Commission on Remuneration to Members of the House of Assembly*, (September 18, 1989) p. 19 (Chair: Dr. M.O. Morgan) [Morgan Report].

compliance with all rules and guidelines governing payments of all aspects of MHA compensation and constituency allowances.³

I am further requested:

to undertake an independent review and evaluation of the policies and procedures for control of the types of expenditures reviewed by the Auditor General in his report, “Payments made by the House of Assembly to Certain Suppliers.”⁴

And, in addition, I am asked:

to bring forward recommendations that would ensure accountability and compliance practices employed in the House of Assembly meet or exceed the best in the country.⁵

It is unrealistic to contemplate prescribing a series of meaningful recommendations or remedies to guide the future administration of the House in the absence of a comprehensive grasp of the operational and financial framework as it currently exists. The current system is the product of a number of significant developments since 1989 that have fundamentally altered the underpinnings of the compensation and control structures that were originally envisaged in the Morgan Report. As a result of my review, I am firmly of the opinion that many of the weaknesses that were evident in the system when this inquiry was instituted are traceable to these post-1989 events. Accordingly, it is vitally important to explore, to the extent practicable, the manner in which the current operational and administrative circumstances have evolved over the years; how policies have changed; and how the policies have been applied (or not applied) in different circumstances. Ultimately, this background review establishes the context in which proposals for reform can be made.

The background review that follows encompasses three main dimensions:

- *Organizational Framework of the Legislature*

This is a brief overview of the organizational structure of the administration of the legislature and the nature of the activities which fall within its scope. In particular, this overview illustrates how the scope and complexity of the administration of the legislature has evolved in recent years with the addition of various “statutory offices.”⁶

³ Terms of Reference for Appendix 1.2, item 1(iv).

⁴ Terms of Reference, item 2.

⁵ Terms of Reference, item 4.

⁶ “Statutory offices” are those special offices whose heads are denominated “officers” of the legislature and that are set up by separate legislation to perform special mandates requiring a degree of independence from the executive branch of the government. At present there are six such offices: Auditor General, Chief Electoral

- *Financial Framework and Budgetary Trends*

This section explains the financial framework of the House of Assembly and endeavours to place the various components of the budget in perspective. As well, it examines the historical trends in the key budgetary components and where budgetary variances have been concentrated over the years. In this regard, it highlights the relative significance of the payments to MHAs in the budget of the House. It identifies various transparency concerns, as well as a distinct pattern of budgetary overruns on constituency allowances. From the outset, the general research conducted by the Commission staff in these areas detected symptoms of difficulty.

- *Evolution of Administrative Practices*

This rather extensive historical review traces the evolution of administrative practices in the House of Assembly from 1989, when the report of the Morgan Commission was tabled, to January of 2007. Within this time frame, I have broken the review down into four periods or “policy eras,” which appeared to represent a reasonable basis for analysis. Each of these four periods seemed to be characterized by an operational style or policy emphasis that was different from the others. In each policy era, I have presented a synopsis from three perspectives, reflective of the scope of my terms of reference: i) MHA compensation and allowances; ii) the general administrative environment; and iii) the audit perspective.

It is my view that this background analysis adds an important broader context to the recent findings of the Auditor General. It illustrates various evolving symptoms of difficulty within the House of Assembly over a number of years. It illustrates the pervasive and multi-dimensional nature of the issues. Accordingly, it defines some of the most crucial areas that require corrective action and, therefore, reveals an array of crucial considerations for the design of a recommended series of reforms.

Organizational Framework of the Legislature

The organizational framework of the House of the Assembly today is, in many respects, reflective of the fundamental principles of parliamentary supremacy and the independence of the legislative branch of government from the executive branch. As noted in Chapter 2, the executive and legislature constitute two of the three branches of government (the third being the judicial branch).⁷ For many purposes, they are treated as separate and distinct and governed by different rules.

Officer, Commissioner for Members’ Interests, Information and Privacy Commission, Child and Youth Advocate, and Citizens’ Representative.

⁷ See Chapter 2 (Values) under the heading “Autonomy”.

The financial and administrative affairs of the House are overseen by the Commission of Internal Economy, constituted by special legislation.⁸ The IEC, essentially, is a special type of committee of the House composed of seven MHAs, including the Speaker, who chairs the Commission. The senior permanent staff person responsible for the ongoing administration of the legislature is the Clerk of the House of Assembly.

It is worth noting that in the case of a department of the executive branch of government, the operational affairs are administered on a daily basis by a staff under the guidance and direction of a Deputy Minister (the “permanent head” of the department). The Deputy Minister takes overall policy direction from the Minister. The most substantive decisions and questions, with broader policy implications, are referred by the Minister to Cabinet. The financial affairs of government are overseen from a policy perspective by a committee of Cabinet known as the Treasury Board. Like the IEC, it is constituted by legislation.⁹

In the case of the House of Assembly administration (setting aside the “statutory offices” for the moment), the permanent head responsible for the management and administration of the staff, and the day-to-day operational affairs, is the Clerk of the House of Assembly. The Clerk reports to and takes direction from the Speaker in relation to policy matters and the more significant decisions. The Speaker, however, takes his or her overall guidance and direction in management and administration from the IEC, not Cabinet. In parliamentary matters, within the House of Assembly proper, he is supreme and takes direction from nobody except the will of the House.

An overly simplistic analogy of the administration of the legislature with that of the executive branch of government, therefore, would suggest that, in the case of the legislature, the IEC could be regarded as comparable to Cabinet; with the Speaker’s role paralleling that of a Minister, and the Clerk’s role being comparable to that of a Deputy Minister. However, the analogy is somewhat imperfect since the IEC is first and foremost a legislative committee of the House of Assembly, whereas the Cabinet constitutes the Executive Council appointed by the Lieutenant-Governor on the advice of the Premier to administer the executive branch of government.¹⁰

Nonetheless, it is important to understand the relative roles and rankings of the IEC, the Speaker and the Clerk. It is particularly significant to note that in relation to the House of Assembly, the IEC is the senior decision-making body, accountable only to the legislature itself.

The administrative framework of the House of Assembly is composed of two distinct

⁸ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, as amended.

⁹ *Financial Administration Act*, R.S.N.L. 1990, c. F-8, as amended, Part I [*hereafter at times referred to as FAA*].

¹⁰ In fact, later in this report, I will suggest that there are better analogies for the IEC than that of Cabinet.

types of activities:

- a) *The direct administration of the House of Assembly*, which deals with the operation of the legislature and its related functions, including the administration of financial matters involving MHAs. The House administration includes the office of the Clerk, the Assistant Clerk responsible for parliamentary matters, the Chief Financial Officer and the administrative staff of the House, the Sergeant-at-Arms, the Legislative Library, Hansard and Information-Management Services, and Broadcast Services;¹¹ and
- b) *The administration of the statutory offices*, which deals with the operation of the independently constituted “offices” of the House. These include the offices of the Auditor General, the Chief Electoral Officer, the Citizens’ Representative, the Child and Youth Advocate, the Privacy Commissioner and the Commissioner for Members’ Interests. While the statutory offices, in many respects, operate autonomously, the IEC has overall responsibility for the approval of the respective budgets for inclusion in the annual budget submitted to the House of Assembly. As well, in practice, the administrative staff of the House provide varying degrees of administrative support to most of the statutory offices.

I was told there is no formal organizational chart showing the overall administrative framework of the House. In this regard, I was repeatedly reminded that there is uncertainty as to the scope of responsibility that the Clerk and the Chief Financial Officer of the House are expected to undertake in respect of the administrative affairs of the statutory offices. Each of these six offices has its own titular head charged with full responsibility for its respective programs. With the possible exception of the office of the Auditor General, there appears to be a sound rationale for the overall *administrative* functions of each statutory office to be under guidance of the office of the Clerk, supported, of course, by the Chief Financial Officer of the House. This will be discussed in subsequent sections of the report.¹²

For now it is sufficient to note that the roles are presently not clearly articulated, and there are differing views as to what those roles are.

In order to illustrate the administrative framework, the inquiry staff prepared a conceptual chart, Chart 3.1 which, in so far as possible, depicts our understanding of the organizational structure. This Chart reflects the IEC and the Speaker as having the senior levels of overall responsibility, reporting, of course, to the full House. As well, it illustrates the two distinct types of activity as described previously. In the case of House of Assembly operations, the solid lines depict the organizational reporting relationships to the Clerk and ultimately the IEC. In the case of the statutory offices, the solid lines are meant to indicate that each statutory office has a direct reporting relationship to the IEC. The grey area of

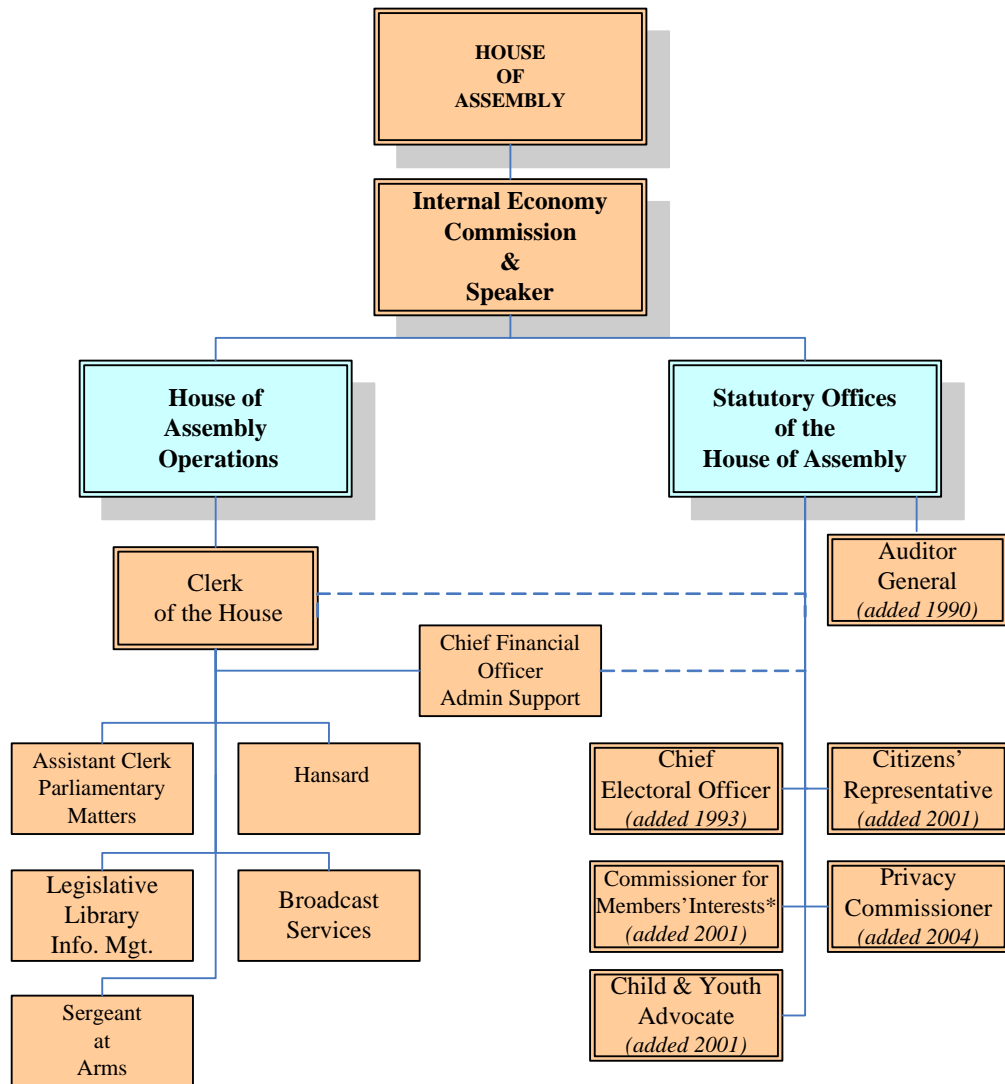
¹¹ Later in this report, in discussing legislative and regulatory frameworks, I will be recommending that these activities be referred to collectively as the “House of Assembly Service.” See Recommendation No. 38(3).

¹² See Chapter 6 (Structure), under the heading “Relationship Between House Administration and the Statutory Offices.”

responsibility, related to the administrative role of the Clerk and the Chief Financial Officer in relation to the statutory offices, is depicted by dotted lines. In relation to the office of the Auditor General, while there may be some uncertainty in this area, the chart implies no day-to-day administrative involvement of the House of Assembly staff in the affairs of that office.

Chart 3.1

Administrative Framework of the Legislature¹³



**This position is generally held by the Chief Electoral Officer and there is no separate staff supporting this role.*

The chart indicates that the statutory office component of the House of Assembly has expanded over the years, with the addition of the various statutory offices. The weight of increased responsibility that this placed upon the administrative arm of the House of Assembly was emphasized by the former Clerk of the House in a submission to me

¹³ Chart prepared for illustrative purposes by the research staff of the review commission.

immediately prior to his retirement in August 2006. He pointed out that five of the six existing offices either had been created, or had their budgeting and other administrative functions brought under the aegis of the IEC, since 1993. He described the change as follows:

Suddenly the Commission, the Speaker, and the Clerk were responsible for a larger budget and for independent House Officers who did not report to the Executive Branch but were responsible in their financial affairs to the Speaker and the Commission of Internal Economy. I might add that the law regarding the Clerk and his responsibilities has not changed since these added responsibilities have come my way, in fact the current law is a creature of the 19th Century.¹⁴

The budget for the operations of the House of Assembly and the statutory offices is included in the annual estimates of the province under a separate “head” of expenditure entitled “Legislature.” The evolution of the organizational structure to support the activities of the House of Assembly is, to a degree, reflected in the historical expenditure patterns of the legislature. Total expenditures of the legislature have increased from just over \$7 million in 1988-89 to \$15.4 million in 2005-06 - an increase of approximately 120%. It is most significant to note that the ongoing expenditures on the direct operations of the House of Assembly have increased by over 176%, or \$ 7.1 million, since the 1988-89 fiscal year, the year immediately prior to the report of the Morgan Commission, which materially altered MHA compensation arrangements.

In a more recent context, expenditures of the legislature increased by some 25% since 2001-02, reflecting the addition of the offices of the Child and Youth Advocate, the Citizens’ Representative, and the Privacy Commissioner. These additional agencies have added further complexity to the administration of the legislative branch of government and have expanded the annual budget by some \$1.3 million.

In addition, the ongoing operation of the office of the Chief Electoral Officer adds an element of volatility not present in the other aspects of the administration of the House of Assembly . While the ongoing cost of this office in a non-election year is in the order of \$0.7 million, during a year when a provincial election is held, the costs can spike up to the order of \$3 million to cover the administrative costs of conducting the provincial election. Expenditure provisions to cover election expenses in the past have not always been budgeted, due to uncertainty as to when an election may be called. From time to time there have been special warrants issued in election years to cover substantial unbudgeted election expenses.

Before embarking upon a detailed review of the evolution of the administrative

¹⁴ Letter from the Clerk of the House of Assembly to the Hon. Derek Green, Commissioner (August 29, 2006).

processes and matters related to Members' allowances, it is useful to attempt to put the budget, and the historical expenditure patterns of its various components, into perspective.

Financial Framework and Budgetary Trends

Total expenditures of the legislature (\$15.4 million) constituted just 0.3% of government's total expenses of \$5.2 billion in 2005-06. Accordingly, when viewed in the larger context, it might be said that the budget for the House of Assembly is relatively immaterial in terms of the overall financial picture of the province, a point that was made to this Commission by representatives of both the Auditor General and various departments in the executive branch of government.

Nonetheless, the budget of the legislature is larger than the individual budgets of the Department of Fisheries and Aquaculture, the Department of Labrador and Aboriginal Affairs and the Department of Business. Viewed in absolute terms, therefore, at over \$15 million, the Legislature does involve a sizeable commitment of public funds. This is fitting, in some regards, as it is the focus of representative and responsible government.

The expenditures of the legislature may be broken down into two broad categories, which correspond with the overall administrative framework outlined previously. In 2005-06, this breakdown was as follows:

- a) the direct operations of the House of Assembly (\$11.1million - 72.2%)
- b) Statutory Offices (\$4.3 million - 27.8%)

A further breakdown of the legislature's expenditures, showing the relative size of the expenditures of the respective statutory offices, is illustrated in Chart 3.2, which follows:

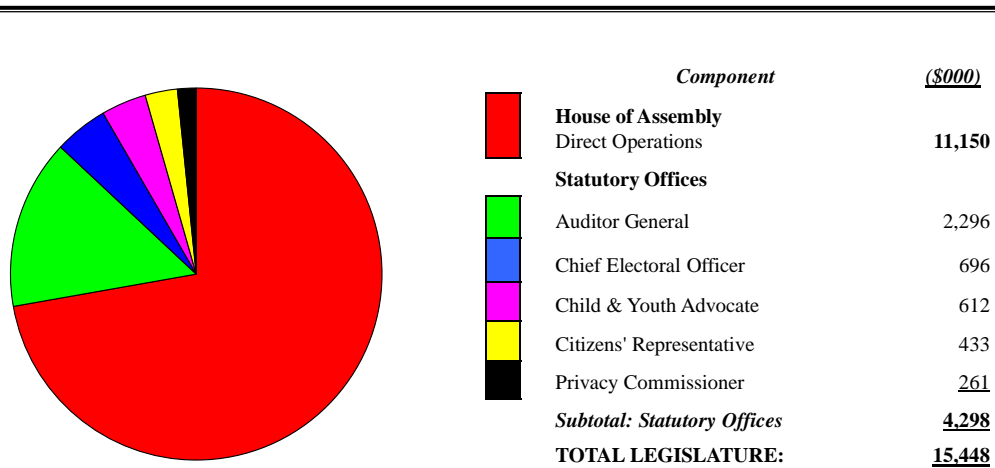
An analysis of expenditure trends indicates that, while the overall level of actual expenditures relative to budget has been reasonably on track, this overall picture masks a pattern of savings in certain expenditure components that have offset consecutive budgetary overruns in other areas.

Chart 3.2

Legislature Expenditure Profile

Major Expenditure Components

Actual Expenditures for the Fiscal Year Ended March 31, 2006



*Note: Totals may not tie directly to the Public Accounts due to rounding.
There is no separate budgetary allocation for the Commissioner for Members' Interests. This function is currently carried out by the Chief Electoral Officer.*

Source: Public Accounts prepared by Office of the Comptroller General, Department of Finance, Government of Newfoundland and Labrador.

(i) Indications of Favourable Budgetary Performance – Overall Perspective

An examination of the public accounts of the province for the ten years ending March 31, 2006, indicates that total spending under the legislative head of expenditure was significantly over budget in two years, 1997-98 and 1998-99, apparently due to preparations for, and the conduct of, the January 1999 election. However, apart from those two years, the legislature's actual expenditures came in below budget in five of the other eight years. Furthermore, the actual expenditures have come in below budget in three of the last five years.¹⁵

In recent years, when there were expenditures in excess of the original overall budget for the legislature, they were relatively small, amounting to some \$200,000 each year - less than 2% of the total legislative budget, which ranged from \$12 to more than \$15 million. Conversely, in three of the last five years, there were net savings ranging from approximately

¹⁵ Throughout this analysis, unless otherwise specified, reference to "budget" or "budgeted expenditures" relates to the original budgetary allocations for a given fiscal year as contained in the "Estimates" presented to the House as supplementary information to the annual budget in respect of that year. It should not be confused with the "amended budget" reflected in the Public Accounts, and which might include transfers and/or special warrant allocations approved during the year.

\$280,000 to \$400,000. The bottom-line budgetary results overall, therefore, portray the impression of an expenditure pattern for the legislature very much in line with budgetary targets.

However, a drill-down analysis¹⁶ into the major components of the budget of the legislature reveals that there are distinctly different trends in variances amongst the principal components of the legislature's operations - expenditure overruns in certain accounts were largely offset by savings in other areas:

- The expenditure component encompassing the direct operations of the House of Assembly has regularly exceeded budget;
- Collectively, the statutory offices have generally come in below budget (except for the expenditure spikes associated with election costs reflected from time to time in the office of the Chief Electoral Officer).

The differing trends are illustrated in Chart 3.3, which compares the trend in net budgetary variances from the original budget for the operations of the House of Assembly with the aggregate budgetary results of the statutory offices from 1999-00 to 2005-06. This analysis encompasses the last seven years only and thereby excludes the distortions in 1997-98 and 1998-99, when there were overruns in the order of \$1.5 million in the Office of the Chief Electoral Officer apparently related to unanticipated or unbudgeted election expenses.

Additional drill-down analysis indicates that within the House of Assembly accounts, the unfavorable budgetary variances in recent years are concentrated within the actual House Operations segment of expenditures, as opposed to administrative support, Hansard, the Legislative Library and other services. In fact, the following results of our research ultimately indicate that expenditures in excess of the original budget have been principally concentrated in the accounts pertaining to MHAs' allowances and assistance.

¹⁶ Drill-down analysis involves a more in-depth examination of the budgetary and expenditure trends within the individual segments which comprise an expenditure component.

Chart 3.3

House of Assembly v. Statutory Offices
Variances = Actual Expenditures v. Original Budget
Fiscal Years Ended March 31, 2000 to 2006

(\$000)

Favourable (Unfavourable) Variances¹⁷

Year	House of Assembly	Statutory Offices	Net Variance
1999-00	(250)	415	165
2000-01	(21)	(46)	(67)
2001-02	(113)	(96)	(210)
2002-03	(115)	521	406
2003-04*	(786)	1,065	279
2004-05	(405)	696	291
2005-06	(636)	439	(197)

** Election year - the House of Assembly reported expenditures in excess of the original budget amounts, which may be partially attributable to MHA turnover. However, the office of the Chief Electoral Officer (included in Statutory Offices) actually recorded total expenses significantly below the original budget level.*

Source: Public Accounts prepared by Office of the Comptroller General, Department of Finance, Government of Newfoundland and Labrador.

(ii) Expenditure Overruns in the House of Assembly

The House of Assembly group of budgetary accounts (exclusive of the statutory offices) constitutes some 72.2% of the budget of the legislature. Within this group of expenditures, activities categorized as House Operations constitute the dominant expenditure component, while administrative support, Hansard, the Broadcast Centre, the Legislative Library and other cost components represent much smaller proportions of the expenditure base, as illustrated in Chart 3.4.

In 2005-06, the accounts encompassing House Operations totalled \$8.8 million (or 79%) of the House of Assembly component of the legislature's budget, while \$2.3 million (21%) was expended to provide the remaining support services to the House.

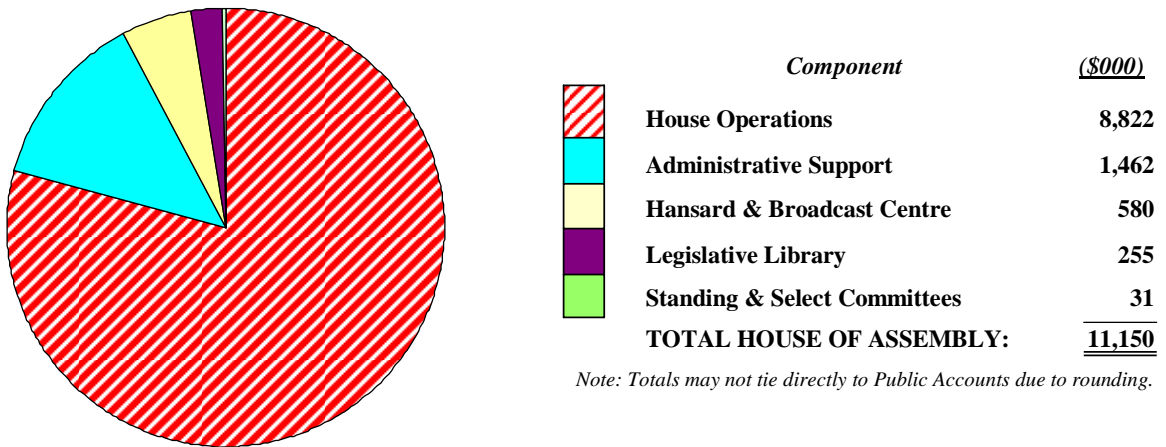
¹⁷ "Favourable variances" are amounts by which actual expenditures were less than budget. "Unfavourable variances" are the amounts by which actual expenditures exceeded budget.

Chart 3.4

House of Assembly Expenditure Profile

Expenditure Components

Fiscal Year Ended March 31 2006



Source: Public Accounts prepared by office of the Comptroller General, Department of Finance, government of Newfoundland and Labrador

The historical budgetary results in respect of these accounts indicate that, in recent years, there have consistently been expenditures in excess of the original budgets in the accounts grouped under House Operations, while budgetary savings have generally been recorded in the accounts of other support services to the House. See Chart 3.5.

In the larger picture, therefore, if one were to focus solely on the overall numbers, the combination of favourable variances in the various statutory offices in most years (as previously highlighted in Chart 3.3), coupled with consistently positive expenditure results in the support services to the legislature (as noted in Chart 3.5), have largely masked consecutively negative budgetary results in “House Operations.”

Chart 3.5

House Operations v. Other Services
Variations => Actual Expenditures v. Original Budget
Fiscal Years Ended March 31, 2000 to 2006

(\$000)
Favourable (Unfavourable) Variations

Year	House Operations	Other Services*	Net Variance
1999-00	(287)	37	(250)
2000-01	(185)	164	(21)
2001-02	(441)	327	(114)
2002-03	(263)	148	(115)
2003-04	(1,031)	246	(785)
2004-05	(468)	63	(405)
2005-06	(782)	146	(636)

* *Administrative support, Hansard and broadcast centre, legislative library, standing and select committee expenses.*

Source: Public Accounts prepared by Office of the Comptroller General, Department of Finance, Government of Newfoundland and Labrador.

(iii) Expenditure Overruns Within the House Operations Accounts

A drill-down into the spending patterns within House Operations highlights both the significance of the MHA Allowances and Assistance accounts and a consistent pattern of overspending the original budgetary allocations.

Within the House Operations expenditure component, two accounts comprise upwards of 90% of the total expenditures:

- *Allowances and Assistance* (\$5.6 million in 2005-06): This is the largest account in the House of Assembly; in fact, it is the largest account under the legislature's head of expenditure and is more than double the entire budget of the office of the Auditor General.

In many respects, the title of this account could be regarded as a misnomer. This account might more appropriately be entitled "Members' Salaries and Allowances," since it comprises a mixture of salary-like expenditures and funds for the reimbursement of MHA expenses. Substantially all of this account is composed of the MHAs' Sessional Indemnity (salaries), the MHAs' Non-taxable Allowances, as

well as the Constituency Allowances of MHAs.

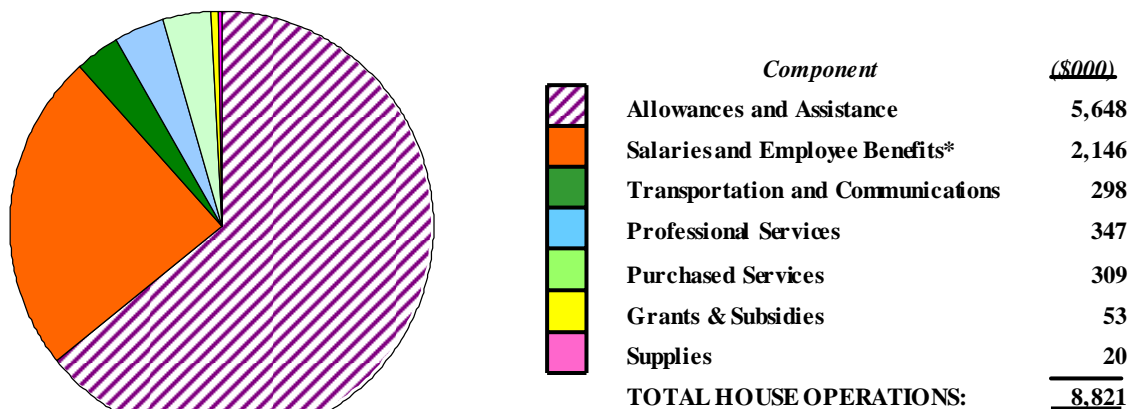
- *Salaries* (\$2.1 million in 2005-06): This account covers the political support staff salaries and benefits (temporary or contractual) for the people who directly support and assist the MHAs of all parties. Also, it covers any severance payments in respect of political staff.

The financial profile of the House Operations group of accounts is clearly dominated by these two main expenditure components, as illustrated in Chart 3.6:¹⁸

Chart 3.6

“House Operations” Expenditure Profile Expenditure Components

Fiscal Year ended March 31 2006



Note: Totals may not tie directly to the Public Accounts due to rounding.

**Employee benefits added to the salary account. These are salaries and benefits of employees of the House. MHA remuneration is reflected in allowances and assistance.*

Source: Public Accounts prepared by office of the Comptroller General, Department of Finance, government of Newfoundland and Labrador

The prominent pattern of expenditures in excess of the original budget in the MHAs’ Allowances and Assistance account is clearly evident from Chart 3.7. Consecutive overruns in the much smaller Purchased Services account, and some volatility in the budgetary results

¹⁸ It should be noted that a separate account entitled “Professional Services” was included for the first time in 2005-06 apparently to accommodate various costs associated with the Turner Inquiry.

for salaries and benefits and in the other expenditure components, are also depicted in the chart:

Chart 3.7

Allowances and Assistance v. Various Expense Categories
Budgetary Variances => Actual Expenditures v. Original Budget
Fiscal Years Ended March 31, 2000 to 2006

(\$000)

Year	Allowances & Assistance	Salaries & Benefits	Trans. & Comm.	Purchased Services	Other Expenses
1999-00	(530)	265	(9)	4	(16)
2000-01	(313)	154	(20)	(6)	1
2001-02	(384)	90	(28)	(59)	(61)
2002-03	(390)	3	75	(31)	80
2003-04	(347)	(737)*	81	(109)	82
2004-05	(479)	(53)	84	(64)	45
2005-06	(557)	105	52	(94)	(287)**

* Likely related primarily to personnel changes and associated severance costs due to the change in government in November 2003.

** Includes a number of accounts and reflects unbudgeted expenses of \$347,000 for professional services primarily related to the Turner Inquiry.

Source: Public Accounts prepared by Office of the Comptroller General, Department of Finance, Government of Newfoundland and Labrador.

The consistent trend in expenditures in excess of the original budget in the Allowances and Assistance account (MHAs' salaries and allowances) for the last seven years is quite pronounced - ranging up to approximately \$0.5 million in the two most recent fiscal years. Significant, successive and negative budgetary variances on the Allowances and Assistance account stand in stark contrast against the impression of generally favourable budgetary performance conveyed by the summary of the legislature's overall financial picture, as highlighted at the outset of this chapter.

It appears from the research and consultations conducted as part of this review that this pattern of sizable budgetary variances on the Allowances and Assistance account went largely unchallenged over the years. The overruns were most often covered by transfers of funds from other accounts under the legislature's head of expenditure.¹⁹

¹⁹ Since the statutory offices of the House of Assembly all come under the legislature's head of expenditure, along with House Operations, funds could be, and were, transferred amongst the various operating units and offices during the course of a fiscal year - from activities where there were countervailing savings, to areas where the budgetary allocation was deemed to be insufficient.

Based on the foregoing, and given the nature of events that have given rise to the appointment of this Commission, it is appropriate to examine the components of the Allowances and Assistance account, to explore further the origin of the expenditure overruns.

(iv) “Allowances and Assistance” Account - Key Components

At \$5.6 million, the Allowances and Assistance account is the largest single account under the legislature’s head of expenditure - more than 36% of the total expenditures of the legislature in 2005-06. As noted previously, it substantially comprises three principal elements:

- sessional indemnities
- non-taxable allowances, and
- constituency allowances

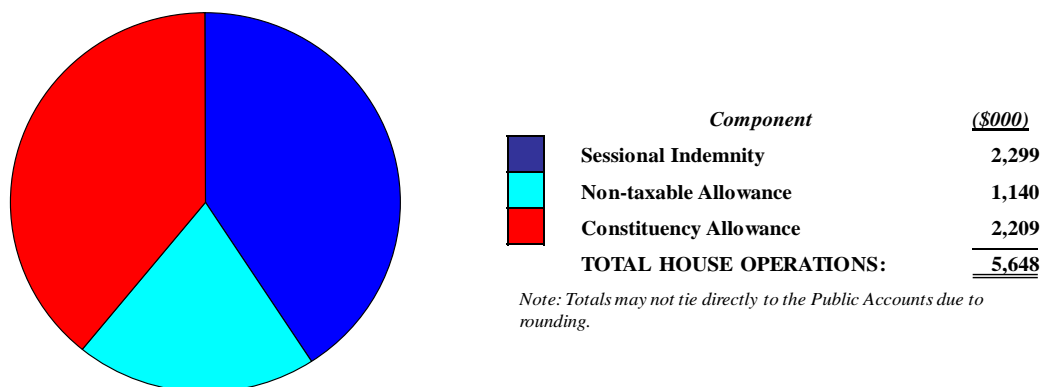
The *sessional indemnities and the non-taxable allowances* together are generally regarded as the salaries of the MHAs. One would expect that these two components of the Allowances and Assistance account would be amongst the easiest to budget with accuracy. There is a fixed number of positions (48 MHAs), and all are paid the same in terms of both sessional indemnity and non-taxable allowances. Annual increases follow a prescribed pattern: general increases in recent years have paralleled adjustments to the executive pay plan in government. Also, the non-taxable allowance follows a set formula equivalent to 50% of the sessional indemnity. These two elements amounted to some \$3.4 million in fiscal 2005-06 - over 60% of the Allowances and Assistance account.

In relation to the *constituency allowances* component, again the number of MHAs is fixed, and while allowances vary significantly by constituency, there is, however, a prescribed maximum for each district, which should facilitate reasonable budgetary projections of the maximum expenditures in a given fiscal year. There can be some turnover due to resignations, but, apart from election years, turnover is usually limited and not of the nature expected to cause material expenditure overruns. Expenditures charged to the constituency allowances component accounted for approximately 39% of the *actual* expenditures from the Allowances and Assistance account during 2005-06.

The three components of the Allowances and Assistance account are not budgeted separately in the estimates tabled in the legislature. Therefore, there is no direct public record of the budgetary trends for each of the individual segments. However, a breakdown was obtained from internal government records, as set out in Chart 3.8:

Chart 3.8

Components of the “Allowances and Assistance” Account
Sessional Indemnity - Non-taxable Allowance - Constituency Allowances
Actual Expenditures during the Fiscal Year Ended March 31, 2006



Source: Public Accounts prepared by the office of the Comptroller General, Department of Finance, government of Newfoundland and Labrador, and data provided by the CFO House of Assembly from the Summary Trial Balance for the fiscal year ended March 31, 2006.

(v) Longer-Term Budgetary Trends in Allowances and Assistance

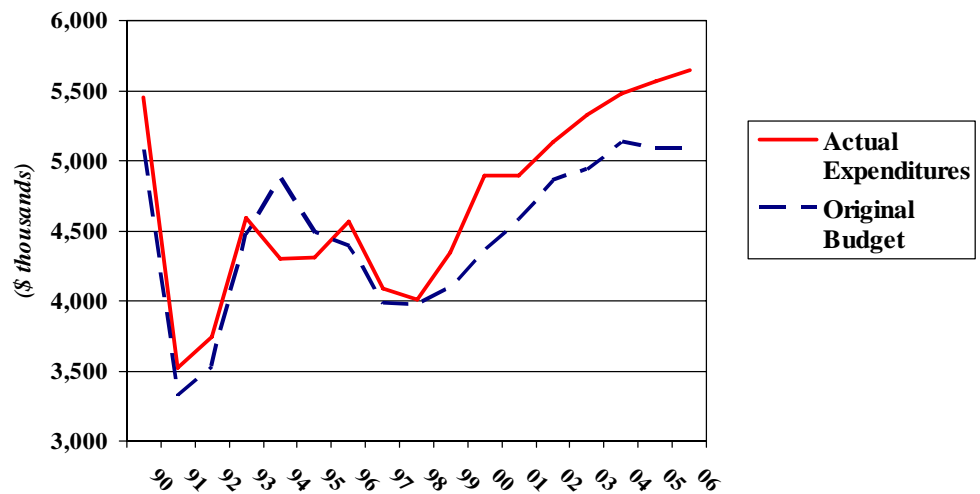
Previously, I highlighted a negative trend in the aggregate budgetary variances on allowances and assistance dating back to 1999-2000 (Chart 3.7). This limited analysis raised the question as to when the trend actually commenced.

In this regard, we conducted a review of the budgetary results on the Allowances and Assistance account over a longer period, going back to fiscal 1989-90. This analysis, which is summarized in Chart 3.9, suggests that the trend commenced around the 1998-99 fiscal year, and that the pattern of expenditure overruns has been relatively consistent for the past eight years.²⁰

²⁰ The relatively high level of expenditures recorded in 1989-90 coincided with a change of government and the transition to the revised payment arrangements flowing from the Morgan Report.

Chart 3.9

Allowances and Assistance
Variance Trend: Original Budget vs. Actual Expenditures
Fiscal Years ended March 31, 1990 to 2006



Source: Public Accounts prepared by the office of the Comptroller General, Department of Finance government of Newfoundland and Labrador.

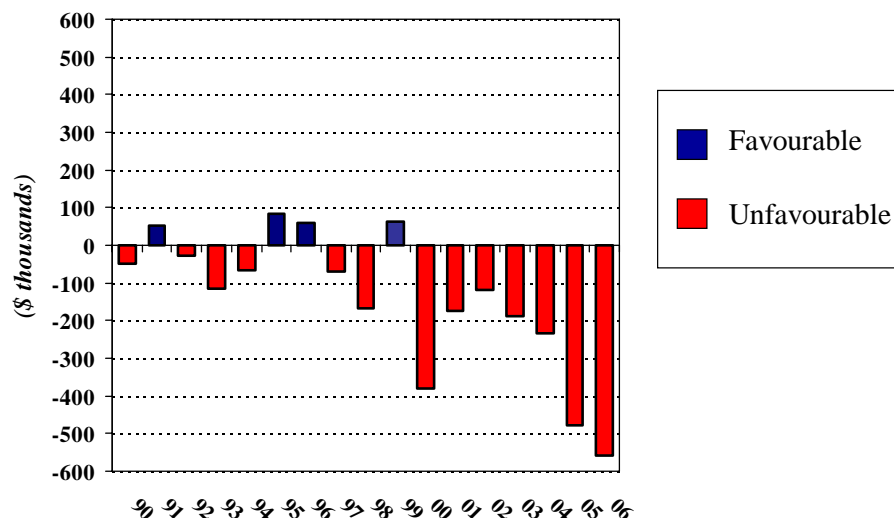
In attempting to understand when the signals of expenditure overruns might have emerged each year, the Commission examined the trends in “revised” estimates for the Allowances and Assistance account.

As the budget is prepared each year for the succeeding year, departments and agencies of government are requested to provide the latest up-to-date estimate of expenditures to the end of the fiscal year that is then drawing to a close. These projections are meant to incorporate actual experience and unforeseen events, both positive and negative, to give the best possible assessment of the financial results for the year about to end. These “revised estimates” are then included in the new budget to provide an indication of budgetary performance for the year about to end. In addition, they serve as a reference point to add perspective to the proposed budgetary allocations for the coming year. They are meant to reflect the actual experience for the first nine or ten months of the year and up-to-date projections for the final two or three months.

The historical analysis indicates that the revised estimates were a reasonably good indicator of the actual expenditures on the Allowances and Assistance account for most years up to the late 1990s. However, since 1998-99, the revised estimates have become less reliable, and actual expenditures have consistently exceeded the revised estimates. Chart 3.10 illustrates the “actual” vs. “revised” expenditure variance trend that is apparent from this analysis.

Chart 3.10

Allowances and Assistance
Variance - Actual Expenditures v Revised Estimates
Fiscal Years Ended March 31, 1990 to 2006



Source: Public Accounts prepared by the office of the Comptroller General, Department of Finance, government of Newfoundland and Labrador, and the Annual Departmental Estimates prepared by the Treasury Board.

No conclusion can be drawn from this analysis other than that, for the last number of years, the “revised” expenditure projections for the MHAs’ Allowances and Assistance account, reported in the estimates tabled in the House with the budget, have underestimated the amount that was actually spent. The extent of the difference has been most pronounced in 2004-05 and 2005-06, when the ultimate variances from the revised estimates reported to the House were in the order of \$500,000.

One might question the significance or relevance of this analysis at this stage. In many respects, it is noted to point out a signal from the early stages of our research. It is brought forward to note that, in recent years, the provincial budget, tabled just two to three weeks before the end of a fiscal year, contained estimates for this account, in relation to the year just ending, that were subsequently proven to underestimate significantly the actual expenditures. For example, the 2006 budget, tabled on March 30, 2006, indicated that the “revised estimate” of expenditures for the Allowances and Assistance account for the fiscal year ending March 31, 2006, was \$5,090,800 - right on budget. The *actual* results turned out to be quite different. The public accounts subsequently indicated that actual expenditures for 2005-06 totaled \$5,648,119 - an overrun of \$557,319, or 10.9%.

I was unable to obtain definitive explanations for the apparent trend commencing in the late 1990s, when ultimate expenditures on allowances and assistance began to substantially exceed “revised” estimates published in the budget documents. In fact, it was

suggested that perhaps relatively little attention is paid to analyzing the revised estimates of this type of account at budget time. I was told that from the Treasury Board's staff perspective, the variances did not stand out as being "material" in the context of the overall financial position of the province. Furthermore, I was reminded that Treasury Board had been repeatedly sent the message that a representative of the executive branch of government, it was not within their mandate to become involved with analyzing or challenging the budgetary position of the House of Assembly.

Based on the consultations, I conjectured that there might be a range of hypothetical explanations that could account for the pattern:

- a) lack of attention to the process by management - a tendency to treat "revised estimates" as unimportant, thereby devoting minimal effort to analyzing expenditures to date and projecting commitments to year-end;
- b) unbudgeted MHA allowance payments - approved by the IEC late in the fiscal year, after the cut-off date for the submission of revised estimates;
- c) unexpected expenditures or expense claims - submitted by MHAs late in the fiscal year (or subsequent to year-end) but within the permitted time frame before the "financial close" of the year;
- d) correction of misallocations - expenditures inappropriately directed to other accounts during the year that were adjusted at year end, resulting in increases in allowances and assistance late in the year;
- e) unadjusted errors - i.e., items charged to the Allowance and Assistance account late in the year that did not belong there, but were not adjusted; or
- f) an attempt to minimize the profile of expenditure overruns - ensuring they would not appear in the published budget estimates that are debated in the House, leaving them to be reported in the Public Accounts, which are tabled several months after the end of the fiscal year.

It must be emphasized that the above represents a list of hypothetical explanations only. There may be other reasons. It was nonetheless interesting to note that a category of expenditures with clearly stipulated criteria (a fixed number of members, with common and relatively fixed remuneration rates for two large components, and stipulated maximums for the remaining component constituency allowances) had demonstrated such a pattern of consistently negative variances from the "revised" estimates.

(vi) The Allowances and Assistance Account Structure

I previously indicated that the Allowances and Assistance account comprises over 36% of the total expenditures of the legislature and is by far the largest single account within

the entire financial framework of the legislature.

With the pronounced and consistently negative variances between the original budget and the actual expenditures over the past several years, it would have been most useful to continue with the “drill-down” variance analysis into the components of the Allowances and Assistance account. However, the account is not broken down into its various component elements for budgetary purposes. Each of the three main components of this single account, at \$1.1 to \$2.3 million, on a stand-alone basis, would rank amongst the largest accounts in the legislature - yet they are ‘lumped together’ with no separate public budgetary disclosure.²¹

MHA “constituency allowances” does not constitute a separate subhead or sub-division of expenditure in the publicly disclosed annual estimates of the legislature or in the published Public Accounts. Accordingly, in the key financial documents of government, there is no clear direct disclosure, to the House of Assembly or to the public of: i) the size of the constituency allowance budget, ii) the extent of budgetary increases relative to prior years, iii) the extent of variances from budget, or iv) the trends in multi-year variances from budget.

These issues raise important questions related to transparency in the context of expenditures of public funds made in relation to MHAs.

The Commission staff sought alternate means to assess the trends in sessional indemnities, non-taxable allowances and constituency allowances. In the absence of formal budgetary data, the staff initiated a simple mathematical analysis of expenditures, based on the applicable rules for each of the key categories. Then, these “expectations” were compared with the best available data on actual expenditures that could be extracted from the public accounts.

(vii) Expenditure Trends - Sessional Indemnities and Non-Taxable Allowances

The sessional indemnities and the non-taxable allowances are equal for all 48 MHAs. For 2005-06, the MHA annual sessional indemnity was set at \$47,240, and the non-taxable allowance, at 50% of the sessional indemnity, was \$23,620. Accordingly, the combined entitlement of \$70,860 per MHA, multiplied by the number of MHAs (48), yields an “expected” aggregate annual expenditure of approximately \$3.4 million in respect of these salary-type entitlements of MHAs for 2005-06.²²

Information extracted from the public accounts of the province indicate that the

²¹ I note that there are over 70 other separate accounts in the published estimates of the legislature that range in size from less than \$1,000 to \$2.3 million.

²² Data provided by the Chief Financial Officer of the House of Assembly, “House Operations, Allowances and Assistance 2005-06” listing of MHAs’ constituency allowances, indemnity, and non-taxable allowances 2005-06.

actual payments charged to the two sub-accounts in relation to sessional indemnities and non-taxable allowances in 2005-06 totaled approximately \$3,439,000²³- substantially in line with what would be expected through applying the simple arithmetic outlined above.

A similar analysis in respect of the sessional indemnity and non-taxable allowances for prior years, dating back to 1998-99, indicated a range of outcomes in terms of variances from the expected overall expenditure level. The analysis indicates that

- i) in four of the eight years (including 2005-06), actual expenditures were very much in line with expectations;
- ii) in 1999-00 and 2000-01, actual expenditures exceeded the Commission's calculated expectations by \$100,000 to \$150,000;
- iii) in 2003-04, an election year, actual expenditures recorded in government's accounts came in some \$450,000 below expectations (which on review by staff of the Commission appears to have been related to posting errors); and
- iv) in 2004-05, actual payments exceeded the calculated expectation level by some \$250,000.

While there were indications of posting errors or things charged inappropriately to this account, there was no direct indication of overpayments to MHAs for sessional indemnities and non-taxable allowances. Furthermore, there was no indication from this rudimentary analysis of a distinct trend of expenditure overruns. However, the analysis of the "constituency allowance" component of the Allowances and Assistance account yielded somewhat different results.

(viii) Expenditure Trends - Constituency Allowances

Unlike sessional indemnities and non-taxable allowances, which are equal for all MHAs, constituency allowances vary significantly by constituency. Nonetheless, there is a prescribed maximum for each district established by the IEC. Accordingly, we sought to ascertain the total expenditure that might reasonably be expected to be incurred in 2005-06, based on the prescribed maximum for each district, and then compared it to the actual amount recorded in government's accounts.

This resulted in an expected aggregate expenditure level of \$1,704,700 for the fiscal

²³ "Summary Trial Balance, Period: Adj-06, Activity Element: 410 LEG-HOA-House Operations", extracted from the accounting system of the government of Newfoundland and Labrador and provided to the Commission by the Chief Financial Officer of the House of Assembly.

year ended March 31, 2006.²⁴

Information extracted from the public accounts of the province indicates that the actual payments charged to the account that is meant to comprise MHA constituency allowances on government's financial system totaled approximately \$2,209,500 - *significantly out-of-line* with what would be expected through applying the simple arithmetic outlined above.²⁵ The variance amounts to approximately \$500,000, or 29.6%, over the level that might be expected, given the approved levels of constituency allowances.

As noted previously, the Public Accounts of the province for 2005-06 indicate that the \$5,090,800 amount budgeted for the Allowances and Assistance account was ultimately exceeded by some \$557,000. Given that the sessional indemnity and non-taxable allowances components appeared to be virtually on track, almost the entire variance appears to be attributable to expenditures charged (rightly or wrongly) to "constituency allowances" - a variance of over \$500,000 on an expenditure component that has a calculated approved maximum of \$1.7 million.

The significant variance in actual expenditures on constituency allowances from the expected levels in 2005-06 underlined the necessity to explore the available historical data more fully to ascertain whether or not there was any evidence of a pattern in prior years. The absence of published budgetary estimates and public accounts at this level of detail led the Commission to focus on other sources of information on MHA constituency allowances, most notably, the annual reports of the Commission of Internal Economy, as well as internal breakdowns of these accounts as maintained on government's accounting system.

Each year the Speaker tables in the House a report of the Commission of Internal Economy (IEC Report) for the previous fiscal year, which includes, among other things: i) minutes of the IEC meetings for the year, ii) sessional indemnity and non-taxable allowance rates for the year, and iii) a listing of the total amount of constituency allowances paid to each MHA during the year, compared with the maximum permitted for each district, respectively, in accordance with the IEC's established policies.²⁶

A review of these IEC reports dating back to 1990 indicates that in no case were excess payments reported by the IEC. In every year, the total payment made to each MHA was reported as equal to or less than the prescribed maximum.

²⁴ Chief Financial Officer of the House of Assembly, "House Operations, Allowances and Assistance 2005-06" listing of MHAs' constituency allowances, indemnity, and non-taxable allowances 2005-06.

²⁵ "Summary Trial Balance, Period: Adj-06, Activity Element: 410 LEG-HOA-House Operations", extracted from the accounting system of the government of Newfoundland and Labrador and provided to the Commission by the Chief Financial Officer of the House of Assembly.

²⁶ Section 5(8) of the *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14 mandates that all decisions of the IEC shall be tabled by the Speaker annually. The IEC Reports referred to herein are the documents tabled by the Speaker in respect of that requirement.

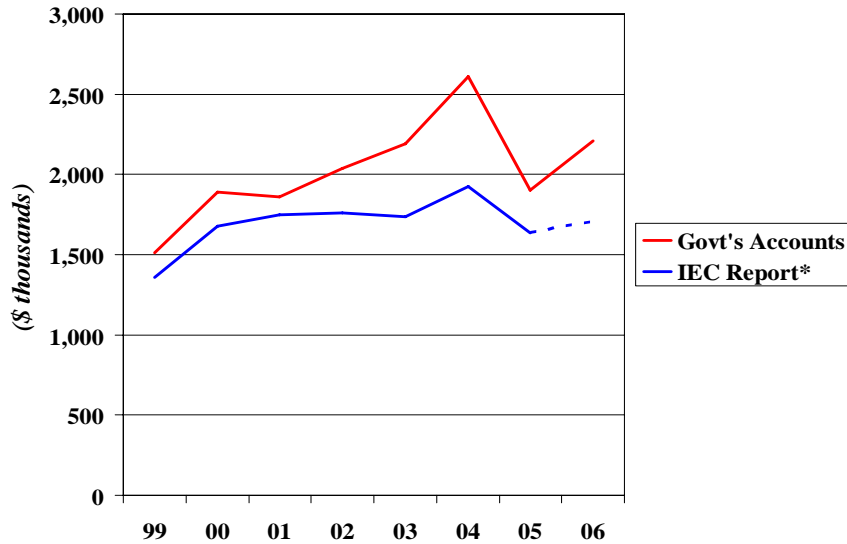
I found it unusual that the schedules of annual constituency allowance payments to MHAs (Schedule C) contained in the IEC reports for the past several years were not totaled. Nonetheless, I requested that the totals be provided by the staff of the House of Assembly for each year. Accordingly, while a published budget was not available, it is possible, from the IEC reports, to calculate expected maximum expenditures each year based on the maximum allowed constituency allowances for each district, and to compare it with the total amount actually charged against the respective MHA's allowance on the government accounting system.

In addition to the information contained in the IEC reports, financial systems maintained by the Comptroller General record the actual payments made by government in respect of constituency allowances, even though the breakdown is not publicly reported.

Through this background analysis, I found that the total of the constituency allowance payments, based on the reports the IEC tabled in the House, did not agree with the totals of the expenditures charged to the related sub-account in government's financial system maintained by the Comptroller General and, accordingly, reflected in the public accounts. Payment records on the government system consistently reflect a higher level of expenditures. I must emphasize that the existence of this discrepancy, in itself, does not mean that MHAs necessarily received more than their entitlement. What it does indicate is that the total of the expenditures charged to the "MHAs' Constituency/Other Allowances" sub-account on government's financial management system exceeded the total of the MHA constituency allowances reported as being paid in the IEC Report. While it certainly appears that the intent of this account was essentially to cover MHA constituency allowances, (since there are no other significant allowances), it may well be that expenditures unrelated to MHAs were inappropriately charged to this account and contributed to the discrepancy. The discrepancy between the totals paid out through this account, as recorded on government's financial system maintained by the Comptroller General, and the total amounts reported to the House of Assembly by the IEC for the respective fiscal years, is illustrated in Chart 3.11.

Chart 3.11

Constituency Allowance Reporting Discrepancy
Government's Accounting Records exceed IEC Reports to House*
Fiscal Years ended March 31, 1999 – 2006



Source: Chief Financial Officer of the House of Assembly, based on data from the Comptroller General, Department of Finance, government of Newfoundland and Labrador, and reports of the Internal Economy Commission.

* For 2005-06, the official IEC report had not been tabled as of the preparation of this chart - the amount reflected in the dotted line for that year is the total of the approved maximum for all MHA allowances.

During the seven fiscal years commencing 1998-99 and ending 2004-05, the actual aggregate annual expenditures recorded in the public accounts in respect of constituency allowances exceeded the amounts reported in the IEC reports to the House of Assembly by amounts ranging from \$112,000 to \$687,000, as reflected in Chart 3.12.

Chart 3.12

Constituency Allowance Reporting Discrepancy

Totals from Government's Accounting System v. IEC Reports

Fiscal Year Ended March 31, 1999 to 2006

(\$000)				
Year	Gov't Accounts*	IEC Report**	Discrepancy	
			\$	%
1998-99	1,535	1,360	175	12.9
1999-00	1,888	1,675	213	12.7
2000-01	1,858	1,746	112	6.4
2001-02	2,035	1,762	273	15.5
2002-03	2,190	1,738	452	26.0
2003-04	2,611	1,924	687	35.7
2004-05	1,904	1,633	271	16.6
2005-06**	2,209	1,705	504	29.6

* These totals reflect the expenditures recorded on government's accounting system and the amounts which are ultimately reflected in the Public Accounts for the respective fiscal year.

**For 2005-06, the official IEC report had not been tabled as of the preparation of this chart - the number reflected is the total of the approved maximum.

Source: Chief Financial Officer of the House of Assembly, based on data from the Comptroller General, Department of Finance, government of Newfoundland and Labrador, and reports of the Internal Economy Commission.

In relation to the expenditures reflected in the public accounts as highlighted in Chart 3.12, the office of the Comptroller General has placed a caveat on the numbers and urged the research staff of this Commission not to use them to reach definitive conclusions. In that regard, we have been told that there *may* be certain charges reflected in this constituency allowance sub-account and accordingly reflected in the Allowance and Assistance account in the public accounts, that were posted in error and/or may not represent payments made in respect of MHAs' allowances.²⁷ I acknowledge the concerns of the Comptroller General.

Accordingly, I would stress that I have not concluded, nor should anyone conclude, that this analysis implies that all or even a substantial number of MHAs were paid allowances in excess of those reported in the IEC reports. Nevertheless, I must highlight the fact that there is a significant discrepancy, for whatever reason, between the aggregate of the

²⁷ I have been told by House administrative staff that a number of substantial coding errors have been identified which would have caused items that were not appropriate to be included in this account. In addition, recent reports of the Auditor General have indicated that overpayments to four MHAs and one former MHA, and inappropriate payments to certain suppliers may have been charged to this account. I would also point out that there are indications that actual payments made to a number of MHAs may have been less than their allowed maximums.

amounts recorded in the Public Accounts in the account that is meant to encompass MHA constituency allowances and the totals of the amounts reported by the IEC as being paid to MHAs for constituency allowances. The differences are not marginal or incidental.

In this regard, I must emphasize that I have not reached any conclusions based on this data alone. This analysis is meant to portray the picture as it emerged in our review of the available data and is meant to provide a financial perspective for the more substantive chronology that follows.

(ix) Summary

The foregoing is essentially a basic, and some might even say narrow, financial analysis, based primarily on raw historical quantitative data, as opposed to personal interviews, consultations and extensive documentary research. This analysis is meant to lay the groundwork for an understanding of: the basic financial structure of the legislature, the relative orders of magnitude of various expenditure components, the type of data that is reported (and the type that is not), indications of various trends and potential signals and points of interest to be further explored.

This preliminary financial analysis has shown that the overall indications of relatively steady expenditure performance, as indicated by the global results of the legislative head of expenditure over the years, by no means convey the complete picture. The drill-down analysis of the major expenditure components indicates various areas where there has been a pattern of successive savings. However, the analysis also indicates that there are areas where there have been *consistent expenditure overruns*, by far the most prominent of which is in the Allowances and Assistance account. Most notable, perhaps, is the indication that there has been a *consistent pattern of relatively significant overruns related to constituency allowances*.

Some of the signals noted in this review of the financial background data gain greater relevance in the course of the in-depth review of the evolution of administrative policy and practices in the House of Assembly that follows.

Evolution of Administrative Policies and Practices

In order to establish a meaningful perspective on the evolution of the administrative environment in the House of Assembly in recent years, it is necessary to begin with the Morgan Commission. That commission, chaired by Dr. M.O. Morgan, former President of Memorial University, was appointed effective June 19, 1989, by the Speaker of the House of Assembly.²⁸ The origin and mandate of that commission were briefly summarized in its

²⁸ The other members of the Commission were Gonzo Gillingham, Garfield A. Pynn and Elizabeth M. Duff

report as follows:

The Internal Economy Commission Act was amended in 1988 by the House of Assembly to provide for the appointment of a Commission by the Speaker to make an inquiry and a report respecting the indemnities, allowances and salaries to be paid to Members of the House of Assembly. The Commissioners are given under the Act “all the powers, privileges and immunities to persons appointed as Commissioners under the Public Enquiries Act.” They are required to report to the Speaker within ninety days following their appointment and their recommendations are “final and binding.”²⁹

The intent of the legislative amendment in 1988 and this independent review process was to introduce a new approach to address MHA compensation and reimbursement arrangements. The recommendations of the Morgan Commission did provide for substantial changes, and Dr. Morgan set out the overall context of his recommendations in his concluding commentary as follows:

We have been reminded during this review of the outmoded nature of how legislators in Canada are compensated. It is however virtually impossible for any one legislature to change it. What is required is a united and co-orderly effort to develop a new system based upon payment for services rendered and reimbursement of actual expenses incurred. For our part we are aware of the increase in the cost of our House of Assembly as a consequence of our recommendations. But if we want good and efficient 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.³⁰

It has been more than 17 years since the Morgan Report was tabled. There have been many substantive changes since then, and it is relevant to review how the arrangements have been modified and, as well, the manner in which the administrative policies and procedures have evolved.

In reviewing the chronology of House of Assembly administration since 1989, I believe that the evolution of policies and practices can best be examined in the context of four distinct periods. These periods generally coincide with the tenure of successive government administrations.

- *The Morgan Era: 1989-1996*: This period comprises the implementation of the Morgan recommendations, the interpretation and refinement of the recommendations

(Secretary).

²⁹ *Morgan Report*, p. 1.

³⁰ *Ibid*, pp. 33-34.

and an apparent focus on adhering to the principles enunciated by Morgan;

- *The “Policy Shift” Era: 1996-2001:* During this period, there were a number of individual policy decisions which, in the aggregate, constituted a substantial policy shift away from the fundamentals of the Morgan Report, and indeed away from the principles previously set out in the *Internal Economy Commission Act*;
- *The “Hold-the-line” Era 2001-2003:* In this three-year period, the policy framework was not altered to any material degree, and the administration functioned on the basis of the principles established in the previous era; and
- *The “Refocusing” Era 2003-2007:* This is the current period during, which attention again became focused on addressing policy considerations and fundamental principles, as well as on strengthening administrative practices.

Given my mandate, and within this unfolding chronology, I believe there are three important dimensions to be examined in exploring the evolution of the administrative environment in the House of Assembly: (i) MHA compensation and allowances; (ii) the general administrative environment in the House; and (iii) the audit perspective. The examination of each era in the context of these three dimensions provides considerable insight into the evolution of policy; the response of the administration to the interrelationship of a broad range of factors; and the emerging signals of weakness that culminated with the reports of the Auditor General in the period from June 2006 to January 2007.

The Morgan Era: 1989-1996

This period saw the implementation of the Morgan report and the associated significant changes in the approach to MHA compensation and the policies and procedures for the reimbursement of Members’ expenses.

Although during this period the administrative organization and policy framework of the legislature endured successive periods of restraint, there was no apparent fundamental change of direction in the financial administration of the House. Furthermore, throughout this period, financial statement audits of the House were conducted by the Auditor General on the same basis as they had been undertaken historically in the province – as part of the general audit of the complete accounts of the province.

A review of each of the compensation, administration and audit dimensions of the House of Assembly in this period establishes the base from which matters evolved in subsequent eras.

(i) MHA Compensation and Allowances

The report of the Morgan Commission was, in many respects, a milestone in the

evolution of the administration of the legislature in this province. It resulted in a substantial increase in the budgetary allocation of the legislature. It set out a new compensation structure for MHAs, cancelled the previous, long-standing district allowance arrangement and added new complexities to the compensation and expense reimbursement arrangements for MHAs. It set out the MHA salary framework of sessional indemnities and non-taxable allowances, which, subject to periodic freezes as well as percentage adjustments up and down, remains in place today.

While Morgan set out various principles to govern the re-imburement of MHAs for their expenses, the report delegated to the Commission of Internal Economy the responsibility to establish the more specific policies and administrative guidelines, and, in addition, the IEC was to establish maximums in relation to a number of categories of MHAs' expenses.

The IEC responded to the challenge and established various parameters for the stipulated MHA expense components, including travel, accommodation, and meals (with parameters related to number of trips and differing guidelines related to whether or not the House was in session), as well as other constituency expenses which included office, communications and discretionary expenses.

Upon the implementation of the Morgan recommendations, this latter component of MHA expenses was characterized by the IEC as an “accountable constituency allowance.”³¹ It must be emphasized that Morgan had recommended that receipts or other documentary support be provided for *all* expenses, except for certain per diems and mileage claims. In this regard Morgan highlighted the fundamental requirement of accountability:

Though honesty cannot be legislated, exposure to the attempt to defraud should be reduced to the minimum possible. Receipts should be required, and if no receipts are submitted for certain types of expenditure, some form of verification should be provided. For what is at issue is not the honesty of the individual member, even though sometimes the odd case of false claims may occur, but the confidence of the electorate.³²

The initial rules established by the IEC in 1990 for the “accountable constituency allowance” set the maximum for all members at \$7,500 a year. Within that total it established maximums related to each of three components: a) office-related expenses (\$5,000), b) non-partisan advertising and promotion-type expenses (\$1,000), and c) discretionary spending by a Member (\$1,500). The rules permitted transfers from a) to b) or c), up to a maximum of \$1,000, with the prior approval of the Speaker. Furniture and equipment valued at \$500 or more was to be the property of the House of Assembly, but was

³¹ Newfoundland and Labrador, Speaker of the House of Assembly, *Report of the Commission of Internal Economy for the Fiscal Year January 17, 1990-December 6, 1990*, p. 4. This constituency allowance is based upon Recommendation 17 in the Morgan Report.

³² *Morgan Report*, p. 19.

to be depreciated over three years and thereafter would become the property of the Member. The rules clearly stipulated that receipts were required for expenditures in all categories. The rules also stipulated the maximum number of trips allowed for travel, the intra-district maximum expense that could be charged, as well as per diem rates.

As noted earlier in this report, the *Internal Economy Commission Act* requires that each year the Speaker table, in the House of Assembly, a report of the Internal Economy Commission outlining the IEC's decisions for the prior year.³³ As developed, the form of the report provides a schedule that summarizes the actual expenses of each MHA according to various categories, and, in relation to constituency allowances, provides a comparison with the maximum permitted.

The Morgan report had provided general directions on various elements of expense policy, but it was necessary to define the more specific rules of application. Subsequent to the initial decisions implementing Morgan, the IEC modified the rules, guidelines, and expense limitations as the years unfolded. The changes were often made in relation to considerations raised concerning: the widely varied constituency demographics and associated service cost differences, changing economic circumstances, as well as administrative difficulty and convenience. Some of the changes and adjustments noted during this first period include:

- In 1992, the IEC ordered that the three components of the \$7,500 constituency allowance (office, advertising and promotion, and discretionary expenses) be combined into one account. The allowance remained "accountable," with receipts required.
- In 1993-94, the IEC ordered that the accounts for travel to and from the constituency, and the account for travel within the constituency, be combined with the accountable constituency allowance account "as long as there is no increase in the total amount of budgetary entitlements."
- In 1994-95, consistent with government's overall restraint program, the IEC ordered a reduction in MHA sessional indemnities and non-taxable allowances.

Throughout this period, and at various points in succeeding periods, there was an overriding emphasis on fiscal restraint.

(ii) General Administrative Environment

The staff of the House of Assembly stressed that the introduction of the Morgan report in 1990 added considerable complexity to the administration of Members'

³³ R.S.N.L. 1990, c. I-14, ss. 5(3).

compensation and allowances. I was told that despite repeated requests for additional resources to administer the new policies, none were approved. Furthermore, administrative responsibility for the Office of the Chief Electoral Officer was brought under the ambit of the House of Assembly in the 1993-94 fiscal year. Staffing levels within the administrative core of the House of Assembly remained unchanged. Apart from the Clerk, who was effectively the permanent head of the legislative staff with oversight responsibilities, financial and administrative functions of the House were centered around one person, the Director of Administration (later re-designated the Director of Financial Operations).

The overall management of the affairs of the House of Assembly, of course, was the responsibility of the Commission of Internal Economy. The *Internal Economy Commission Act* empowered the IEC to review and approve the annual estimates of expenditure of the House and its agencies prior to their submission for inclusion in the provincial budget. The IEC was also responsible for the expenditure of monies voted by the legislature for expenditure by the House. While it was not required to do so, the IEC would periodically request that various administrative matters coming before it (i.e., budgetary proposals, staffing and/or organizational matters) be analyzed by the Treasury Board Secretariat. That analysis would then be reviewed by the IEC before it made its decision.

While there appears to have been general deference by the executive to the principle of legislative independence during this era, there were times when the IEC took issue with Treasury Board's approach to various matters, particularly in relation to restraint measures. Periodically, the IEC felt it necessary to remind Treasury Board formally that the executive branch had no authority to encroach on the affairs of the House. Accordingly, financial and administrative decisions were not subject to Treasury Board approval or review.

During this era, the Comptroller General had full access to all financial documentation in respect of the disbursement of public funds from the accounts of the legislature. Internal audit and compliance staff of the Comptroller General could review transactions of the House of Assembly and test for compliance with policies. In short, while the House and the IEC were understood to have the authority to make management and policy decisions, independent of Treasury Board or Cabinet, various elements of this overall financial control framework of government were deemed to apply to the House of Assembly.

Regular financial reports, quarterly budgetary performance reviews and variance analyses, were not provided to the IEC for review. I understand that overseeing such matters was essentially left to the Director of Administration of the House of Assembly. The Clerk very much relied upon the Director of Administration to monitor financial performance and did not generally get involved in the financial overseer role. His concentration, as in all the eras to be discussed, was on the legislative policies, programs, and parliamentary practices related to the functioning of the House.

Internal audit and compliance resources became so limited by fiscal restraint in the latter years of this era that it appears the accounts of the House actually received limited scrutiny. I was told that strained resources were inclined to be dedicated to areas of more material financial significance. Nonetheless, the Comptroller General, in principle, had full

access to financial documentation in the House, and the House of Assembly staff knew he had the authority to review any and all transactions.

(iii) Audits of the House of Assembly

During this period, the accounts of the House of Assembly were subject to regular audit by the Auditor General, similar to the accounts of the executive branch of government, as part of the annual financial statement audit of the Public Accounts of the Province. The Auditor General had full access to the financial records, and all documentation related to the activities of the House, as did the Comptroller General. It must be noted that the scope of the audits undertaken historically, and through this era, was relatively limited, focused essentially on ensuring that the balances reflected in the financial statements were materially correct in the context of government as a whole.³⁴

While no separate audits of the House had been undertaken throughout this period, management letters were issued from time to time by the Auditor General to draw the Clerk's attention to various potential control issues and administrative concerns. In particular, concerns had been expressed relating to: i) the lack of segregation of duties, ii) errors in the calculation of severance pay and vacation pay accruals, iii) the lack of detail and explanation in relation to the annual estimates, amounting to failure to comply with Treasury Board guidelines; iv) failure to meet deadlines for submission of accounting information. While the Clerk responded that they would look into these matters, he emphasized the practical difficulties encountered by the House administration due to the small size of the legislature staff and staff shortages. He indicated that these constraints limited their ability to address some of the issues. It appears that there were no significant administrative changes or additional resources provided in response to these concerns.

The Policy-Shift Era: 1996-2001

I have termed the next period the "policy-shift era" because it was characterized by material change in all three dimensions of the House of Assembly environment encompassed by my analysis:

- The policy framework governing MHA compensation and allowances was significantly altered through a series of incremental changes. Legislation was changed to facilitate the policy changes. Additional authority was granted to the IEC, rules were changed, and allowances were enhanced. Key MHA

³⁴ See Chapter 8 for a more complete discussion of the various types of audits. At this point, it is important to note that the financial statement type of audit that had historically been undertaken in respect of the House of Assembly was in the context of government as a whole, and much less comprehensive in scope than the detailed review encompassed by a "legislative" audit.

compensation and reimbursement parameters were altered to move away from, and in some respects abandon, the thrust of the Morgan Commission and the legislation under which it was appointed.

- The administrative environment changed simultaneously with the legislative changes to reflect the increased authority and autonomy of the IEC. There was a dominant emphasis on the independence of the legislature. Administrative relationships were altered to reinforce the separation of the legislature from the administrative framework of the executive branch of government. The office of the Comptroller General was shut out of any meaningful involvement in financial compliance functions of the House. These changes effectively placed the full weight of authority, and the full burden of responsibility, for financial control on the administration of the House.
- The audit relationship with the Auditor General was virtually severed through legislative change and subsequent actions of the IEC. Furthermore, the IEC failed to comply with its newly legislated audit obligations.

The review that follows illustrates the numerous dimensions of change during this era, which, in the aggregate, comprises the pronounced policy shift. The review also notes discrepancies in the records of the IEC during this era. In addition, as I attempted to gain an appreciation for the individual IEC decisions and the underlying rationale for them, I found the IEC minutes to be unclear in some instances, and virtually meaningless in others. I also found instances where there were effectively two sets of minutes related to the proceedings of the IEC.

(i) MHA Compensation and Allowances

Following the election of 1996, it appears that the new administration immediately became focused on the overall fiscal challenges confronting government. While the existing framework for MHA compensation remained in place for the balance of 1995-96 fiscal year, the IEC targeted a budgetary reduction of some \$200,000 in the “Members’ district travel account” for the 1996-97 fiscal year. In this regard, the IEC ordered that this reduction be achieved through the introduction of a new “block funding” arrangement.³⁵ While I could find no clear definition of the “block funding” concept, it appears the principle involves the allocation of a single-level maximum sum for each MHA to cover a broad range of categories of constituency expenses, as opposed to the previous concept where there were stipulated limitations for individual expense categories. The block funding amount varied by constituency as a reflection of the location, size and varying demographic characteristics of the constituencies. Legislation was introduced to facilitate the introduction of the new block

³⁵ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1996 to March 31, 1997*, p. 10, May 29, meeting at minute 2; p. 12, June 12 meeting at minute 6.

funding arrangement.

The new rules in 1996 introduced a “maximum allowed” amount for each Member by constituency. The individual maximums (or funding blocks) were set out by district in a Schedule C to the IEC annual report to the House. The maximum allowable amounts as of March 31, 1997, ranged from \$8,000 for some of the St. John’s constituencies, to \$63,600 for two of the Labrador constituencies.

Further amendments to the Morgan recommendations dealt with applicable rates for meals and accommodation under various circumstances related to when the House was in session and when it was not, as well as re-imburement arrangements for MHAs traveling on constituency business. One of the most significant rule changes in 1996 read as follows:

8. (1) Each Member shall be entitled to claim \$2,000 each year, without receipts, for miscellaneous expenses, not exceeding \$75.00 a day.³⁶

Although these expenses would represent a charge against the maximum allowable expenses (the block funds) prescribed for the respective districts, the introduction of this category of miscellaneous “expenses without receipts” was a fundamental departure from one of the principles enunciated in the Morgan report.

In 1997-98, the IEC minutes indicate that on a number of occasions individual members had expressed concern over the level of the allowance established for their respective constituencies. Accordingly, a sub-committee of the IEC was set up to review the experience with the new block funding expense allotments and to realign some constituency amounts for 1998-99. Some adjustments were made, but the fundamental rules remained as set out in 1996.

The IEC did, however, approve a one-time-increase in the MHAs’ constituency allowances in respect of the 1997-98 fiscal year, which was reflected in the IEC minutes tabled in the House as follows:

In order to recognize additional expenses which will be incurred by Members who will be canvassing their constituents regarding the Calgary Declaration, the Commission ordered that \$1,500 be added to the constituency and travel allowances of each Member of the House for this fiscal year only.³⁷

The official minutes of the IEC, which provided additional information beyond that provided in the tabled minutes, read as follows:

³⁶ *Report of the Internal Economy Commission for the Fiscal Year April 1, 1996 to March 31, 1997*, Schedule B at p. 26.

³⁷ *Report of the Internal Economy Commission for the Fiscal Year April 1, 1997 to March 31, 1998*, p. 6, October 22 meeting at minute 2.

This money will be allotted on the basis that \$500 be added to each Member's allowable discretionary account for a total of \$2,500 and the remainder \$1,000 be added to each Member's regular accommodations travel and constituency allowances for the fiscal year. The Commission ordered that the appropriate rules be amended accordingly for this fiscal year.³⁸

It does not appear that this incremental \$1,500 was reflected in the maximum allowed allowances as reported in Schedule C of the Report of the Commission of Internal Economy for the 1997-1998 fiscal year.

In 1998-99, further concerns of individual members were reviewed by a sub-committee of the IEC and, following this review, the allowances for seven districts were adjusted upward. In September of 1998, the IEC additionally approved a proposed amendment to the *Internal Economy Commission Act* to provide for the implementation of salary increases to MHAs, effective April 1, 1998, to correspond with those granted to management employees of Government.

It should be noted that there was a specific provision in section 13 of the *Internal Economy Commission Act* at this time that established a process for the review of MHA compensation:

13. (1) The House of Assembly may by resolution appoint, upon those terms and conditions that are set out in the resolution, an independent commission of not more than 3 persons to conduct an inquiry and prepare a report respecting the indemnities, allowances and salaries to be paid to members of the House of Assembly.³⁹

A general election was held in February of 1999, but, consistent with the pattern following all elections since the Morgan Commission, an independent commission was not appointed to review salaries and allowances of MHAs. In this regard, the Clerk of the House provided me the following explanation of the manner in which this issue was addressed over the years:

It was believed given the financial situation, that an independent commission looking at Members' salaries and expenses could mean that the salaries and expenses may be increased or it could also mean that the salaries and expenses may be reduced. Again, after the 1996, 1999, and 2003 General Elections there was a reluctance to strike a new independent commission of inquiry to study Members' salaries and expenses even though advice given

³⁸ Newfoundland, "Official Minutes of the Internal Economy Commission," October 22, 1997 meeting, signed by the Clerk of the House of Assembly.

³⁹ *Internal Economy Commission Act*, R.S.N.L. c. 1-14, ss. 13(1). It is noted as well that this section was amended in 1993, prior to which the Act stipulated that the speaker was required to appoint an independent commission within six days of a general election.

by my office was to proceed based on experience with some of the problems associated with the rules and their interpretation during that time. Although the original Morgan Commission Report was final and binding on the House and Members, this provision was struck from the law in 1999.⁴⁰

This change was significant. It meant that assessment by a sub-committee of the IEC composed of MHAs was substituted for an independent and objective assessment of MHA salaries and allowances. Immediately, following the 1999 election, a new sub-committee of the IEC was established to again review the constituency and travel allowances of Members.

Fiscal year 1999-2000 was a period of fundamental change in both the levels of, and the policies governing, MHA expense reimbursement, as well as certain other benefit arrangements:

- Constituency allowances were increased three times;
- The level of allowances claimable without receipts (discretionary allowances) was increased twice;
- Furniture and equipment guidelines were relaxed;
- The MHA severance policy was enhanced; and
- Salaries for various parliamentary positions were enhanced.

A more detailed examination of these developments adds perspective to the extent of the changes in this era:

(a) Successive Increases in Constituency Allowances

There were effectively three rounds of increases in MHA constituency allowances in the 1999-2000 fiscal year, as follows:

- On May 5, 1999, the report of the IEC sub-committee appointed following the 1999 election was received and approved. It provided increases in the allowed maximum for Members' constituency and travel allowances for the 1999-2000 year. The amounts recommended by the sub-committee at that time encompassed substantial increases of varying amounts depending on the district. This schedule was included in the official minutes of the IEC, but *not* disclosed with the minutes contained in the IEC report. No rationale for the wide range of adjustments was provided.

⁴⁰ Letter from the Clerk of the House of Assembly to the Hon. Derek Green, Commissioner, (August 29, 2006).

- On December 15, 1999, the IEC ordered a further increase of 4% (rounded to the nearest \$100) in each Member's allowance "to recognize the increase in the travel per diems throughout the public service."⁴¹
- On March 22, 2000, the IEC approved a further increase of \$2,000 in Members' constituency and travel allowances for the 1999-2000 fiscal year. This increase was also based on recommendations from a sub-committee of the IEC. The minutes of the sub-committee indicate that the increase of \$2,000 was intended to "partly offset the general increase in travel expenses and partially mirror the increase in per diem and mileage allowances approved for public servants."⁴² The minutes contained in the IEC report for 1999-2000 do not outline the approval of the \$2,000 increase as such, but they do append a revised schedule of allowances, dated March 22, 2000, applicable for the 1999-2000 fiscal year, as well as the forthcoming 2000-2001 fiscal year. This schedule does reflect the \$2,000 increase as well as the increases approved earlier in the year.

While the IEC report for 1999-2000 does provide a schedule of allowances (Schedule C), it does not clearly disclose the magnitude of the increases approved on May 5, 1999, nor the size of the increase in March 2000, nor the combined impact of the three increases approved during the year. In this regard, it is necessary to calculate the increases by comparing schedules in the 1999-2000 IEC report with the respective schedules from reports of prior years.

The total of the March 22, 2000, Schedule C included in the IEC report is incorrect. It indicates the revised total of the allowed expenses for all districts, after the three increases, is \$1,529,000. The correct total for the March 22, 2000, schedule is \$1,692,000.

The series of increases approved in 1999-2000, combined with the increases in various individual constituency allowances approved in 1998-99, resulted in a significant increase in the overall allowance structure that had been in effect as of March 31, 1998. In the aggregate, over the two-year period from the end of fiscal 1997-98 to 1999-2000, the increases in constituency allowances averaged 33.6%, with a combined annual impact of some \$425,000 on the annual budget of the House.

Chart 3.13 illustrates the change in the allowances for each of the districts from the rates applicable in the 1997-98 fiscal year to the rates finally applicable for 1999-2000.

⁴¹ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000*, p. 12, December 15 meeting at minute 2.

⁴² Newfoundland, Sub-committee of the Commission of Internal Economy, *Meeting and Minutes*, (March 16, 2000). The sub-committee was struck to review Members' constituency and travel allowances for the 1999-2000 and 2000-20001 fiscal years.

Chart 3.13

Constituency Allowance Increases

Comparison of Fiscal 1997-98 & 1999-2000 – Two-Year Increase

District	1997-98	1999-2000	Increases - 2 years	
			\$\$	%
Baie Verte	40,000	46,200	6,200	15.5%
Bay of Islands	22,000	43,600	21,600	98.2%
Bellevue	33,500	38,400	4,900	14.6%
Bonavista North	26,000	38,400	12,400	47.7%
Bonavista South	33,500	38,400	4,900	14.6%
Burgeo & Lapoile	47,500	55,100	7,600	16.0%
Burin Placentia West	33,000	37,900	4,900	14.8%
Cape St. Francis	11,500	18,600	7,100	61.7%
Carbonear - Hr Grace	18,000	33,200	15,200	84.4%
Cartwright - L'anse au Claire	61,000	69,600	8,600	14.1%
C. Bay East / Bell Island	24,500	29,100	4,600	18.8%
Conception Bay South	14,500	19,700	5,200	35.9%
Exploits	22,000	38,400	16,400	74.5%
Ferryland	27,000	33,200	6,200	23.0%
Fortune Bay/ Cape LaHune	39,700	55,100	15,400	38.8%
Gander	19,500	33,200	13,700	70.3%
Grand Bank	21,000	38,400	17,400	82.9%
Grand Falls - Buchans	30,000	38,400	8,400	28.0%
Hr Main - Whitbourne	24,500	29,100	4,600	18.8%
Humber East	30,500	40,500	10,000	32.8%
Humber Valley	40,000	46,200	6,200	15.5%
Humber West	26,000	39,500	13,500	51.9%
Kilbride	11,500	15,000	3,500	30.4%
Labrador West	47,500	56,100	8,600	18.1%
Lake Melville	30,000	53,000	23,000	76.7%
Lewisporte	33,500	38,400	4,900	14.6%
Mount Pearl	8,500	14,500	6,000	70.6%
Placentia St. Mary's	27,000	31,200	4,200	15.6%
Port au Port	38,500	44,700	6,200	16.1%
Port de Grave	18,500	31,200	12,700	68.6%
St. Barbe	22,500	46,200	23,700	105.3%
St. George's - Stephenville	28,500	46,200	17,700	62.1%
St. John's Centre	8,500	14,500	6,000	70.6%
St. John's East	11,000	14,500	3,500	31.8%
St John's North	8,500	14,500	6,000	70.6%
St. John's South	11,000	14,500	3,500	31.8%
St. John's West	11,000	14,500	3,500	31.8%
Signal Hill Quidi Vidi	11,000	14,500	3,500	31.8%
Terra Nova	33,500	38,400	4,900	14.6%
The Straits & White Bay North	35,500	46,200	10,700	30.1%
Topsail	12,000	16,100	4,100	34.2%
Torngat Mountains	61,000	85,200	24,200	39.7%
Trinity Bay de Verde	28,500	34,300	5,800	20.4%
Trinity North	31,500	37,400	5,900	18.7%
Twillingate & Fogo	34,000	39,000	5,000	14.7%
Virginia Waters	11,000	14,500	3,500	31.8%
Waterford Valley	11,000	14,500	3,500	31.8%
Windsor Springdale	37,000	43,100	6,100	16.5%
TOTAL	1,267,200	1,692,400	425,200	33.6%

(b) Payment of Allowances Without Receipts

The amount of the “discretionary allowance,” which represented that component of the constituency allowance that could be claimed without receipts, was increased twice

during 1999-2000. On May 5, 1999, the discretionary component was increased from the \$2,000 level introduced in 1996 to \$3,600, with a \$300 monthly maximum; and then on March 22, 2000, the IEC again increased the limit from \$3,600 to \$4,800, with no monthly limitation.

(c) Relaxed Furniture and Equipment Guidelines

Under the Morgan recommendations, furniture and equipment purchased from the constituency allowances, with a value of \$500 or more, was treated as the property of the House, but was subject to depreciation over three years and thereafter became the property of the Member. On June 23, 1999, the IEC raised the guideline to \$1000. Accordingly, any furniture and equipment purchased with the allowances, with a value up to \$1000, would automatically become the property of the Member.

(d) Enhanced Severance Benefit

Under the Morgan recommendations, a Member of the legislature was entitled to a separation allowance upon termination after seven years of service, based on 5% per year of the indemnity and non-taxable allowance for each year of service to a maximum of 50%. The IEC reviewed that policy in the context of the practices in other jurisdictions in Canada.

On June 23, 1999, the IEC revoked the existing policy and substituted a policy that removed the seven-year qualification period, and provided severance pay calculated at one month for each year of service to members who cease to be members for any reason. Minimum severance was set at three months' pay and the maximum at twelve months' pay.

(e) Increased Salaries and Benefits for Parliamentary Positions

On June 1, 1999, the IEC approved increases in the sessional indemnities and non-taxable allowances to correspond with the increases approved for the public service effective September 1, 1999, September 1, 2000, and May 1, 2001. These increases were also applied to the additional salaries of the various parliamentary office holders, including the Speaker, Deputy Speaker, Deputy Chairperson of Committees, Leader of the Opposition, Official Opposition House Leader, Chairperson and Members of the Public Accounts Committee, and the Party Whips.

Then, on June 23, 1999, the IEC established various salaried positions: Parliamentary Secretary to the Leader of the Opposition, Leader of a parliamentary group (at \$14,500 each), and two caucus Chairs (at \$10,000 each). Also, at that same meeting, the IEC approved further increases in the salaries to the Party Whips, as well as for the chair, vice-chair and members of the Public Accounts Committee. The IEC further directed that these salaries be included for pension purposes under the MHA pension plan.

(f) The Impact of the “HST Factor”

I was told that the prescribed allowance limits set out in the MHA guidelines were deemed by the IEC and House of Assembly staff to be exclusive of HST. In other words MHAs were allowed to claim the amounts prescribed as the maximum in the guidelines, plus HST (15% at that time). For example, an MHA with a maximum allowance of \$20,000 could effectively submit claims totaling \$23,000, inclusive of HST of which only \$20,000 would be charged against the constituency allowance.

The same approach was applied to claiming the discretionary allowance. Accordingly, \$5,520 could be claimed by each MHA, with no receipts; while the MHA would be paid \$5,520, only \$4,800 would be charged against the MHA’s constituency allowance.⁴³ Because there is no way of knowing whether, in spending the discretionary allowance, expenditures in fact attracted HST (e.g., donations), the effective result of this arrangement was that MHAs who spent all of their discretionary allowance would be able to access an additional \$720 without any accountability or disclosure.

(g) Discrepancy in IEC Minutes

In endeavouring to understand the various decisions of the IEC, I discovered that there were effectively two sets of minutes prepared to record the proceedings of the IEC: (i) minutes which appeared to be prepared immediately following the respective IEC meetings and signed by the Clerk, which this report refers to as the “official” minutes; and (ii) the minutes included in a schedule (Schedule A) to the IEC reports tabled in the House of Assembly, which are frequently referred to as the “tabled” minutes.

In relation to the severance pay changes in 1999-2000, the official IEC minutes of May 5, 1999, indicate that the Clerk was directed to prepare draft changes to the *Internal Economy Commission Act* “which would resolve the problem of the Commission’s inability to change the severance provisions under Recommendation 16 of the Morgan Commission Report.”⁴⁴ This minute, initiating the legislative change and its purpose was *not included* in the minutes tabled in the House. However, the tabled minutes of a subsequent IEC meeting on May 19, 1999, did indicate that the Commission reviewed a draft Bill to amend the IEC Act, but the publicly disclosed minutes did not state the purpose of the amendment:

The Members of the Commission reviewed a draft Bill to amend the *Internal Economy Commission Act*. The draft Bill on file with the Clerk will be

⁴³ While I do not wish to imply that this approach to HST started at this time (it is not clear when it started), it is nevertheless, an important factor to be noted in terms of understanding the overall entitlement of, as well as the full context of, the discretionary component.

⁴⁴ “Official Minutes of the Internal Economy Commission”, May 5, 1999 meeting at minute 3, signed by the Clerk of the House of Assembly.

introduced by the Government House Leader in the House of Assembly.⁴⁵

This is not the only point at which the tabled minutes of the IEC were found to be at variance with the official minutes.⁴⁶ On February 9, 2000, the official minutes of the IEC indicate that the Commission by order approved an amendment to the allowances and assistance vote in the draft budget estimates for the 2000-2001 fiscal year that had been previously submitted to Treasury Board:

To increase the vote by \$250,000 in order to cover pending political severance packages as a result of resignations during the fiscal year.⁴⁷

This decision was not reflected in the tabled minutes of the IEC included in Schedule A of the IEC Report to the House of Assembly for the fiscal year 1999-2000. It is noted that other amendments to the estimates approved at that same meeting, and involving lesser amounts, were reflected in the report tabled to the House. It is worth noting that whenever there were discrepancies between the official minutes and the minutes tabled in the House, they often related to financial matters pertaining to MHAs, and the publicly tabled minutes contained less information than the private internal minutes.

(h) Legislation to Accommodate Policy Shift

The substantive changes in the allowances outlined above were instituted without the appointment of an independent commission under section 13 of the *Internal Economy Commission Act*. It is worth noting, however, that the Act was amended very expeditiously in a number of ways to facilitate the new allowance arrangements. On May 26, 1999, Bill 19, "An Act to Amend the Internal Economy Act," received quick passage by the House, the day before the session adjourned. While the previous changes to the Act in 1996 had empowered the IEC to make rules varying the salaries and allowances arising from the Morgan report, Bill 19 in 1999 deleted all reference to Morgan and removed the stipulation in the previous section 13 that recommendations of such independent commissions would be binding. The IEC was provided the authority to implement the recommendations of such a commission with or without changes. The Bill further added a new section 14, which provided the IEC with unlimited scope to make rules respecting indemnities, allowances and

⁴⁵ *Report of the Commission of Internal Economy for fiscal year April 1, 1999 to March 31, 2000*, p. 6, May 19, 1999 meeting, minute 2.

⁴⁶ Following inquiries by the staff of this Commission in respect of discrepancies between the minutes contained in the IEC reports and the official IEC Minutes maintained by the Clerk, the Speaker requested a review of the minutes to be undertaken by legal counsel to the IEC to determine the extent of the discrepancies. This review revealed a number of other discrepancies dating back to 1996 and served to reinforce the seriousness of the issue identified by this Commission.

⁴⁷ "Official Minutes of the Internal Economy Commission", February 9, 2000, meeting at minute 4, signed by the Clerk of the House of Assembly. (This portion of the minute on this item was not included in the public minutes included in Schedule A of the *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000*).

salaries of Members.

The IEC and the House effectively determined that certain provisions of the Morgan report, which by this time were 10 years old, were dated. As the Government House Leader said in the House, those provisions

do not enable us as an IEC to see that members are given the kind of resources they need to carry on their duties ...

... it is not the intent ... of any of us in this House to see that the salaries - there is a general salary increase for members, and I think we would all pledge ourselves to see that indeed, if there was a general salary increase to be given to members, that it should be given only as a result of legislation that was brought to this House or by means of another commission.⁴⁸

It appears that there was unanimous support for the Bill and further, in the brief discussion of these amendments in the House, the need for ongoing transparency was repeatedly emphasized:

The other thing, of course, you have to keep in mind is that the IEC reports to this House in any case. That lends transparency to whatever is going on.⁴⁹

(i) Delayed and Incomplete Reporting to the House of Assembly

One further amendment included in Bill 19 related to a revision to subsection 5(8) of the *Internal Economy Commission Act*. Previously, that section had required that the decisions of the IEC (as reflected in the annual IEC report) would be tabled within *six weeks* of the end of the fiscal year if the House were sitting. The amendment extended the reporting time frame to six months. The subsection was revised to read as follows:

5. (8) All decisions of the commission shall be a matter of public record and those decisions shall be tabled by the speaker no later than 6 months after the end of the fiscal year if the House of Assembly is sitting, or, if the House of Assembly is not sitting, then not later than 30 days after the House of Assembly next sits.⁵⁰

Before this amendment, the IEC report for the fiscal year 1998-99 would have been due to be tabled by May 15, 1999, given that the House was sitting. The extension

⁴⁸ Newfoundland, House of Assembly Proceedings (Hansard), XLIV.30 (May 26, 1999) at p.1121 (Government House Leader).

⁴⁹ Ibid., at p.1122 (Government House Leader).

⁵⁰ R.S.N.L. 1990, c. I-14, ss. 5(8).

amendment effectively put the time frame off until the fall sitting of the legislature. In fact, the IEC Report for 1998-99 was not tabled until May 20, 2000, 14 months after the end of the fiscal year. The report for the subsequent year, 1999-2000, was tabled on May 8, 2001, again almost 14 months after the end of the fiscal year. Decisions taken early in a fiscal year were effectively two years old before being tabled in the House.

The annual *Report of the Internal Economy Commission* to the House contains, in standard language, an introductory section that outlines the legislated framework under which the IEC purported to operate. It refers to the *Internal Economy Commission Act*, and reviews the structure, powers and processes of the IEC as set out in that Act. It also summarizes the background of the Morgan report in 1989, discusses the binding effect of the recommendations, and notes that significant changes flowed from them. In every year since 1996, the reports have made reference to the 1996 amendments to the Act:

In June 1996, the *Internal Economy Commission Act* was amended to empower the Commission [IEC] to vary the recommendations of the Morgan Commission Report so that the Commission could change the travel and constituency allowances of Members in order to reflect a substantial reduction on these accounts under the Legislative Head of Expenditure. The main difference between these new rules and the former relate to the provision of block funding for members of the House.⁵¹

The introductory section of the IEC report for fiscal 1999-2000 indicates that the Act was amended on May 27, 1999, to empower the IEC to make rules respecting indemnities, allowances and salaries to be paid to MHAs and staff. It does not refer to the removal of the provision relating to the binding effect of Morgan and subsequent independent commissions.⁵²

I have noted, however, that the reference to the 1999 amendment was not repeated in the introductory section of the 2000-2001 report, nor the reports for subsequent years, even though the older legislative references to the 1990 statutes and the 1996 amendment are repeated, as is the reference to the 1989 Morgan report. Furthermore, the discussion in the lead-in to the IEC Report for 2000-2001, and the reports for subsequent years, makes no reference to certain further legislative amendments of May 2000. As will be explained in the next section of this report, these unmentioned amendments effectively: i) empowered the IEC to determine the nature of documentation to be supplied to the Comptroller General in support of the payment of public money, ii) resulted in the exclusion of the Auditor General from auditing the affairs of the House of Assembly, and iii) established the requirement for an annual audit of the House under the direction of the IEC by an auditor appointed by the IEC.

⁵¹ *Report of the Internal Economy Commission for the Fiscal Years April 1, 1996 to March 31, 1997 and subsequent years.*

⁵² *Report of the Internal Economy Commission for the Fiscal Years April 1, 1999 to March 31, 2000.*

These types of issues send signals of concern as to the adequacy of the IEC's reporting and disclosure in its reports to the House of Assembly. They also lead one to question the validity of the assertion of the Government House Leader in the House on May 26, 1999, quoted earlier that the process "lends transparency to whatever is going on." These matters will be addressed further in the course of this report.

(ii) Audits of the House of Assembly

The policy shift in constituency allowances and the associated legislative framework in the later part of fiscal 1999-2000 and into 2000-01 was accompanied by a fundamental change in respect of the House of Assembly's relationships with both the Auditor General and the Comptroller General.

I indicated in my review of the Morgan era that the Auditor General had historically audited the accounts of the House of Assembly as part of the overall financial audit of the accounts of the province. That practice continued through to the audit of the 1998-99 fiscal year. From time to time, the Auditor General would draw the attention of the administration of the House to various deficiencies and provide recommendations for improvement. Notably, in a letter dated December 15, 1999, concerning the audit for the 1998-99 fiscal year, the Auditor General stated: "No significant matters came to my attention during the audit."⁵³

The audits historically conducted by the Auditor General in relation to the House of Assembly were essentially "financial audits," which concentrated on the overall accuracy of the larger amounts to provide assurance that the overall financial statements of government were essentially correct in all "material respects."⁵⁴ There was limited sample testing with respect to Members' allowances, individual transactions or payments to individual members of the House of Assembly, or payments to individual suppliers.

(a) The Auditor General's Planned Audit in 2000

With the evolution of audit practice generally through the 1990s, the Auditor General began to conduct a series of "legislative audits" in various aspects of government's activities. These audits were meant to be more comprehensive in nature than the traditional financial statement audit. In many respects the legislative audit was designed to be a form of program audit. I was informed that, from the commencement of this audit approach in the early

⁵³ Letter from the Auditor General to the Clerk of the House of Assembly (December 15, 1999).

⁵⁴ An explanation of the nature and scope of "financial audits" and "legislative audits" in context with various other types of audits is provided in Chapter 8 under the heading "Government Audits: What Are They and Why Are They Done?"

1990s, the Auditor General had expected to cover all programs within the government framework over a 12-year cycle.

Under this initial round of legislative audits, the Auditor General's review of the House of Assembly programs, particularly allowances and expenses for members of the House of Assembly, had been initially planned to commence in 1996. However, this plan was postponed and then, subsequently, on February 11, 2000, the Auditor General wrote the Clerk to indicate her intention to proceed with the review:

You may recall that during 1996, staff from my Office commenced a review of allowances and expenses for members of the House of Assembly and Ministers of the Crown. Shortly after our work began I contacted you advising that I had postponed the review because of other audit commitments at that time ...

I am now planning to continue on with this review during the current year.⁵⁵

The IEC considered the Auditor General's plan in this regard on March 2, 2000, and directed the Clerk to advise the Auditor General that

until such time as the experiences of the other jurisdictions in Canada were studied and the general parliamentary law on the subject was considered by the Commission, it would be inappropriate for the Auditor General to review the Members' Allowances and expenses.⁵⁶

This prompted a response from the Auditor General. She outlined the authority of the Auditor General to access documents and records under the *Auditor General Act* as well as the *Financial Administration Act*. In her letter to the Speaker dated March 10, 2000, she emphasized that historically the Auditor General had access to the records pertaining to Member's allowances:

Government has, for decades, provided the Auditor General with access to all payments made out of the Consolidated Revenue Fund, including the allowances paid to Members of the House of Assembly. All of these payments can be audited directly from my office, and I routinely select payments from the Consolidated Revenue Fund for audit, including the allowances of the Members of the House of Assembly.⁵⁷

This response was considered by the IEC at a meeting on March 15, 2000, along with research information provided by the Clerk. The Clerk's memo summarizing his research

⁵⁵ Letter from the Auditor General to the Clerk of the House of Assembly (February 11, 2000).

⁵⁶ "Official Minutes of the Internal Economy Commission," March 2, 2000 meeting at minute 1 signed by the Clerk of House of Assembly.

⁵⁷ Letter from the Auditor General to the Speaker of the House of Assembly, (March 10, 2000).

indicated varying practices, but confirmed that seven Canadian jurisdictions permitted the audit of Members' accounts by their Auditors General and that most of this group were audited on a regular basis. In two other jurisdictions, while the research indicated the Auditor General may conduct an audit, the option had not been exercised.⁵⁸

The Clerk's memo to the IEC concludes as follows:

Where does this lead us? For the past 50 years the accounts of the House of Assembly, as part of the public accounts of the Province have been subject to an attest audit of the Auditor General's office. The Auditor General has complete access to all the records of the Comptroller General's Office. She may audit any financial transaction of the House without seeking the permission of the House and has done so on many occasions.⁵⁹

The IEC again deferred the matter pending receipt of further information from the Clerk. At that same meeting the IEC also directed that:

the Secretary of Treasury Board be asked to segregate the functions of the Comptroller General's Office so that Members' expense claims and the House accounts be handled differently from the other accounts of the Executive Branch of Government. *The Commission agreed that the audit and pre-audit functions will continue to apply to Members expenses and the other House accounts but that the financial records of the House be segregated from the financial records of the Government of the Province.* The Commission further ordered that the microfilming of the House of Assembly records also be segregated and not be released to anyone without the prior approval of the Commission of Internal Economy.⁶⁰

I have added the emphasis in the above quotation to note that this sentence from the official minutes of the IEC is not included in the tabled minutes of the meeting for this day that were in the IEC Report for the 1999-2000 fiscal year.

The Clerk subsequently outlined the IEC's concerns to the Secretary of Treasury Board and requested that he explore the feasibility of implementing the type of segregation being sought by the IEC. He also confirmed that the IEC had agreed that the pre-audit function and audit functions of the Comptroller General's Office would continue to apply. He further noted the IEC's concerns with security, along with his own observations on security following his visit to the Comptroller General's Office:

⁵⁸ Memorandum (unsigned) from the Clerk of the House of Assembly to the Members of the Commission of Internal Economy, (March 14, 2000).

⁵⁹ Ibid.

⁶⁰ "Official Minutes of the Internal Economy Commission," March 15, 2000 meeting at minute 5, signed by the Clerk of the House of Assembly.

Members of the Commission were also concerned about the security measures in place to protect Members' expense claims. In particular, they were bothered by the possibility that detailed personal information about constituents could be extracted from their constituency expense claims and seen outside the Comptroller General's Office. I was directed to raise this matter with you. Having personally observed the process in the Controller General's Office, I was impressed by the high level of security already in place.⁶¹

(b) IEC Constrained by Legislation

The Secretary of Treasury Board and the Comptroller General questioned whether such an approach would be consistent with the requirements of the *Financial Administration Act* and the *Auditor General Act*. Their conclusion, supported by legal advice obtained in relation to these matters, was that while certain operational measures could be taken to segregate data, the *Financial Administration Act* required that the detailed data be retained by the Comptroller General and made available to the Auditor General upon request. The Secretary of Treasury Board outlined this position in a letter to the Clerk dated April 25, 2000:

The Financial Administration Act has specific sections that deal with the payments, record keeping and access to the supporting documentation with respect to payments made from the Consolidated Revenue Fund. In fact, section 25 requires the Comptroller General to forward a statement of all issues of public money out of the Consolidated Revenue Fund, together with supporting accounts at those times the Auditor General may reasonably require. The proper detailed records must also be maintained under section 27 of that act. Under section 58, the Comptroller General is also required to prepare the Public Accounts including the Consolidated Revenue Fund accounts which is subject to audit by the Auditor General ...

Under section 25 of the *Financial Administration Act*, the Controller General must provide the Auditor General with the required information and cannot withhold that information notwithstanding the direction of the Commission ...

... Access to the Consolidated Revenue Fund records by the Auditor General, of which the Legislature is part, is provided under the *Auditor General Act* (sections 10, 17, etc.) ...⁶²

⁶¹ Letter from the Clerk of the House of Assembly to the Secretary of the Treasury Board (March 29, 2000).

⁶² Letter from the Secretary to the Treasury Board to the Clerk of the House of Assembly (April 25, 2000).

In short, the Secretary of Treasury Board concluded that the actions requested by the IEC related to the segregation of data could not be taken, as they would contravene the *Financial Administration Act*. The only way the IEC could achieve its objectives would be through legislative amendment.

(c) *Legislative Change*

The next time the matter was discussed at the IEC, following the direction given to Treasury Board on March 21, 2000, was at a meeting on May 9, 2000, when a draft Bill to amend the *Internal Economy Commission Act* was tabled and approved for presentation to the House. Despite extensive questioning and documentary research, I have not been able to establish where the instructions to draft this Bill originated. There is no record of any direction being given by the IEC, the Speaker, or the Cabinet.

The Government House Leader introduced Bill 25, *An Act to Amend the Internal Economy Commission Act*, in the House of Assembly on May 11, 2000, two days after the IEC had approved it. In presenting the Bill, the Government House Leader suggested that some of the laws governing the IEC were outmoded and that the Bill more clearly set out the role and the duties of the IEC. The brief discussion in the House also emphasized the importance of preserving the autonomy of the House of Assembly in relation to the executive branch of government. The debate highlighted the section related to the requirement for an annual audit and the importance of the accountability that the annual audit would provide.

The Bill proceeded with minimal debate and unanimous approval through First Reading, Second Reading, Committee of the Whole and Third Reading on the same day without further amendment.⁶³

These amendments to the IEC Act in May of 2000 were introduced in the context of updating the legislation respecting the financial administration of the House and contributing to improved accountability. Two key changes in the Act related to: (i) granting the IEC authority to determine the nature of documents to be supplied to the Comptroller General, thereby removing the constraint on the IEC's authority that previously existed under the *Financial Administration Act*, and (ii) providing for a mandatory annual audit by an auditor appointed by the IEC:

8. (1) Notwithstanding subsection 25(4) of the *Financial Administration Act*, the commission [IEC] may establish policies respecting the documents to be supplied to the comptroller general where an application is made for an issue of public money to defray the expenses of the House of Assembly ...

⁶³ *House of Assembly Proceedings (Hansard) XLIV. 25 (May 11, 2000).*

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

9. Notwithstanding another Act, the accounts of the House of Assembly shall, under the direction and control of the commission, be audited annually by an auditor appointed by the commission.⁶⁴

(d) *Audit Hiatus - Diminished Controls*

I must emphasize that the newly amended Act did not in itself change the reporting, documentation access and audit processes. Nor did it stipulate that the annual audit would be conducted by someone other than the Auditor General. It merely provided the IEC with the authority to determine the extent to which documents would be provided to the Comptroller General, and it gave the IEC the authority to decide whom it wished to appoint to conduct the Audit.

Clearly, the new Act enabled the IEC to select the Auditor General *or* an auditor from the private sector. However, the amendments appear to have been interpreted differently by the IEC from the outset. The minutes of the IEC for May 16, 2000, contained in the IEC Report for 2000-2001, refer to the amendment in Bill No. 25 as “providing that the accounts of the House of Assembly will be audited by an auditor independent of Government.” The official minutes of that IEC meeting are somewhat more detailed in relation to this issue than those included in the version tabled in the House:

The Members of the Commission of Internal Economy agreed the Speaker would prepare a draft letter to Ms. Elizabeth Marshall C.A., the Auditor General, explaining the necessity of the recent amendments to the Internal Economy Commission Act as contained in Bill No. 25. Among the amendments is a provision that the accounts of the House of Assembly will in future be audited by an auditor independent of Government in the same manner as the accounts of the Auditor General’s Office are audited by an independent outside auditor. The draft letter will express the concerns of the Members of the Commission about the perceived conflict of interest and their desire to ensure that the Auditor General would not be placed in an embarrassing position by having to audit Members’ accounts and expenditures. It was agreed that a draft letter would be presented to the Commission at the next meeting ...

⁶⁴ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, ss. 8 and 9, as amended by S.N.L. 2000, c. 17.

*The Commission by order directed that expenditures of Members of the House of Assembly be sent to the Office of the Comptroller General without attached receipts. The receipts would remain in the Office of the Clerk and be subject to audit by an auditor chosen by the Commission in accordance with section 9 of the Internal Economy Commission Act. The Commission further ordered that the Clerk's Office, in consultation with the Office of the Controller General, design and approve an appropriate form for transmittal of expense claims in accordance with section 8 of the Internal Economy Commission Act. The appropriate form will be placed on file in the Clerk's Office.*⁶⁵

Again, the emphasis in the above quotation indicates the sentences from the official minutes of the IEC that were not included in the minutes of the meeting reflected in the IEC Report for the 2000-2001 fiscal year. While the minutes tabled in the House for the meeting did not reflect all of the detail, they did include a further sentence, not reflected in the official minutes, as follows: "The expense claim forms and receipts would be subject to audit in accordance with section 9 of the *Internal Economy Commission Act*."⁶⁶

On June 19, 2000, even though the IEC directed the Clerk to advertise a request for proposals to audit the accounts of the Auditor General,⁶⁷ there was no call for proposals to audit the accounts of the House of Assembly. In fact, there was no call for proposals made for auditors under the new amendments for two and one half years.

At the same meeting, a draft letter to the Auditor General was tabled for consideration, as contemplated at the previous meeting. The matter was deferred to a future meeting at which all members of the IEC would be in attendance, and to permit review by the Government House Leader.⁶⁸ However, there is no indication in the IEC minutes that it was subsequently considered or whether or not a letter, as contemplated at the May 16 meeting, was ever sent.

From my review of this material, it appears that the practical result of the legislated changes and the policies of the IEC flowing therefrom in May of 2000 was that:

⁶⁵ "Official Minutes of the Internal Economy Commission," May 16, 2000 meeting at minutes 1 and 2, signed by the Clerk of the House of Assembly [emphasis added]. Portions of the minutes on these items, as highlighted, were not included in the minutes found in Schedule A of the *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2000 to March 31, 2001*.

⁶⁶ *Report of the Commission of Internal Economy for the Fiscal year April 1, 2000 to March 31, 2001*, p. 6, May 16, 2000 meeting at minute 2.

⁶⁷ "Official Minutes of the Internal Economy Commission," June 19, 2000 meeting minute 3, signed by the Clerk of the House of Assembly.

⁶⁸ *Ibid.*

- a) The Comptroller General was no longer provided access to any supporting documentation in relation to MHA expenses. Payments were to be made by the Comptroller General at the direction of the House administration, who determined the adequacy of and retained full control over, and sole access to, all supporting documentation required to make payments in relation to members allowances.
- b) The internal audit function of the Comptroller General in relation to the accounts of the House of Assembly was effectively discontinued.⁶⁹
- c) The IEC determined that the Auditor General would not audit the accounts of the House, but failed to appoint an external auditor. Notwithstanding the mandatory requirement for an annual audit under the new Act, the audit cycle was disrupted.

The changes in the 2000-2001 fiscal year represented a significant financial and administrative policy shift that continued to be reflected in various ways in the succeeding years. While at face value the legislative changes may have appeared clear and straightforward, their subsequent implications have been far reaching and, arguably, far from consistent with the notion of increased accountability mentioned by Members when the Bill was discussed on the floor of the House.

(iii) Administration in the House of Assembly

The Policy-Shift era clearly involved numerous moves away from the parameters of the Morgan regime, as outlined previously: the move to block-funding, successive increases in the level of allowances, rule changes to alter various guidelines and enhance benefits, and the introduction of a discretionary allowance component with no receipts. In addition, government introduced a new accounting system in the late 1990s. Undoubtedly, all of these factors brought new administrative challenges to the small administrative unit within the House of Assembly.

The following review of some of the administrative processes provides the flavour of the approach to financial management during this era and may in some respects indicate symptoms of weakness.

(a) The Financial Reporting Process

I was told that there was no reporting process brought in with the block-funding arrangement to provide individual MHAs with regular status reports on the level of actual

⁶⁹ The Comptroller General advised me that these functions were not particularly active at this point due to staffing constraints.

expenditures compared with the maximum allowable expenses under the block-funding arrangement. Neither was this information maintained in a separate account for each member on the central accounting system of government. Rather, I understand that this information was maintained solely on a spreadsheet on the personal computer of the Director of Financial Operations of the House of Assembly, to which no one else had ready access.

The IEC did not regularly review (i.e. on a monthly or quarterly basis) the financial performance of the House of Assembly. It was not provided with, nor to my knowledge did it seek, regular statements of actual expenditures, commitments, and the outlook relative to budgetary levels. I understand that when such information was discussed, it would generally only be toward fiscal year-end, when funds might be getting tight in certain accounts.⁷⁰ Members of the IEC and the Clerk indicated to Commission staff that they felt those responsibilities rested with the Director of Financial Operations, and they felt no obligation to monitor performance throughout the year. There was a sense of confidence that if there was a problem, it would be brought to their attention.

(b) Fund Transfers Near Year-End

It became common practice to transfer monies into the Allowances and Assistance account toward year-end. As an example, in relation to the 1999-2000 fiscal year-end, it was noted that there was a total of six transfers (reflected in Treasury Board Authorities and amendments to Treasury Board Authorities), totaling \$566,000, to increase the funding available to cover expenditures on the Allowances and Assistance account in the period from February 11, 2000, to April 12, 2000.⁷¹ A review of the back-up material for these transfers suggests the funds were required to cover the cost of approved increases in the MHA allowances, as well as the increases in mileage and per diem rates associated with travel in the public service.⁷² The funds were transferred from the Office of the Chief Electoral Officer; the House Operations - Salaries account; Legislative Library - Salaries; Hansard Operations - Salaries; Hansard - Employee Benefits; and Standing and Select Committees - Allowances and Assistance.

A further transfer example relates to the 2000-2001 fiscal year, when transfers totaling \$317,200 were made into the Allowances and Assistance account on March 26 and

⁷⁰ A staff member of the House of Assembly indicated that towards the fiscal year-end it was usual practice for the IEC to request information on the balances in the respective accounts and, in particular, to identify areas where funding was available. I was told that if uncommitted funding was available, the IEC would “describe what course of action to take.” My research identified instances which support this assertion. Frequently, the action taken was to transfer money into the Allowances and Assistance Account from other accounts.

⁷¹ Treasury Board Authorities and amended authorities: TBA D7173 dated February 11, 2000, TBA D7227, dated March 10, 2000, TBA D7249, dated March 17, 2000, replacement TBA D7249 dated March 28, 2000, replacement TBA D7249, dated April 4, 2000 and replacement TBA 7249 dated April 12, 2000.

⁷² This information is contained in an e-mail from Director of Financial Operations for the House of Assembly to the Budget Analyst for the Treasury Board Secretariat (March 16, 2000).

29, 2001.⁷³ In relation to the transfers of funds in March of 2001, the Director of Financial Operations of the House of Assembly outlined the rationale for the increased funding requirements as follows:

[The] Commission of Internal Economy, approved an increase in the Members Constituency Allowance for the year ending March 31, 2001 ... In addition, the Commission approved the charter of helicopters for certain Members to be paid by the House and not against the individual Member's Allowance. Also, it was necessary to fund for three Members over the allocation because of by-elections ...

Members who exhausted their amounts in 99/00 were allowed to be compensated from their 2000/01 budget. Because of this the transfers as requested and approved by the I.E.C. were approved.⁷⁴

It would appear that the carry-over permitted through this increased funding *may* have effectively increased the allowances for certain MHAs beyond the stipulated maximum.

I note that there is no indication as to which allowance increases these transfers were meant to cover, or the amount required to cover the various matters discussed in the explanation. As explained previously, there was an increase of 5% approved in December of 2000; however, it would seem that such an increase could have been accommodated with less than \$100,000. There is no documentation to indicate that a further increase was approved in March of 2001.

(c) *Financial Control Environment*

Key changes to the *Internal Economy Commission Act* in 2000, and the subsequent policy decision made by the IEC to retain all documentation in the House of Assembly, excluding any potential scrutiny by the Comptroller General, removed an important element of financial control. In addition, apart from the changes of 2000, the notion of legislative autonomy continued to be used to exclude Treasury Board, Cabinet and the respective secretariats of the central agencies of the executive branch of government from any involvement in the financial and administrative processes of the House. Treasury Board staff indicated that they viewed their role as facilitators of the IEC wishes, not to question the decisions (even though it appears they sometimes did).

The assertion of the parliamentary doctrine of legislative independence in this context, coupled with the removal of the Comptroller General's access to records, the denial

⁷³ Treasury Board Authorities: TBA D7580 (March 26, 2001) and TBA D7594 (March 29, 2001).

⁷⁴ Memorandum from the Director of Financial Operations for the House of Assembly to the Director of Budgeting for the Treasury Board (March 30, 2001).

of access to the Auditor General, and the failure to appoint auditors (creating an extended audit hiatus) meant that the only eyes to scrutinize the financial affairs of the House were the IEC and the administration that reported to it. The burden of control and accountability was entirely resident within the House.

I recognize that, even prior to the changes in 2000, the Comptroller General had limited *resource capacity* to conduct the compliance and pre-audit role. However, administrative personnel, and to a lesser extent perhaps, the politicians, knew their financial affairs *could* be scrutinized at any time, and likely *would* be from time to time on a test basis, by the Comptroller General or the Auditor General. In the environment after the legislative changes in 2000, they knew they *would not* be subject to such scrutiny. Furthermore, the requirement of a mandatory annual audit, as stipulated in the new legislation, did not appear to be taken seriously by the IEC for a considerable period of time.

(d) Assignment of Administrative Duties

In June of 2000, following the legislative changes, the IEC authorized the realignment of duties and responsibilities of administrative staff of the House of Assembly to recognize “additional duties.” Certain positions were reclassified and re-titled, and certain pay levels were adjusted. However, no additional staff was provided. There was no compliance testing, pre-audit or internal audit function, to replace the role of the Comptroller General. In short, it does not appear that any substantive control mechanisms were added. House of Assembly staff members indicated to the Commission’s research staff that an effort was made to segregate duties and responsibilities, but the small staff complement made it difficult.⁷⁵

I was told that claims from MHAs were frequently reviewed by the Director of Financial Operations in the first instance, and then approved by his assistant, at which point authorization would be provided electronically to process the payments. The claim form requires two signatures in addition to the claimant; however, on many occasions, it appears the claims were signed or initialed twice by the same person. Our research also indicated that on occasion, in an effort to be of assistance to MHAs, a staff member of the House of Assembly would prepare claims on behalf of MHAs and then proceed to process them. In some cases it appears that, to facilitate such processing, the MHA concerned would sign claim forms in blank, leaving it to the staff member to fill in the claim details. This effectively involved a complete downloading of responsibility for claim preparation from the MHA to a person over whom the MHA had no control.

In addition, there were times when a staff member of one of the legislature’s statutory offices, who was physically located in a different building across town, would be asked to provide authorization for payments without the opportunity of reviewing the documentation.

⁷⁵ See Chapter 7 (Controls) for a discussion of the segregation of duties and the control implications.

Various aspects of the foregoing review of the administrative environment at the House of Assembly during this era provide indications of serious control deficiencies that will be more fully discussed in Chapter 4 and Chapter 7. Some of these characteristics were prevalent prior to the “policy-shift” era, but their effects were compounded with the *laissez faire* environment created by the legislative amendments during this era. They also continued on into subsequent years.

The “Hold-the-Line” Era: 2001-2003

The modified constituency allowance structure, which had evolved considerably in the previous period, was not materially altered throughout this period, nor was the legislative framework, the overall policy thrust or the administrative structure altered; hence the “hold-the-line” caption. Nevertheless, my review of this period revealed a number of developments and considerations relevant to my mandate:

- Sessional indemnities and non-taxable allowances were increased;
- There were indications of year-end payments to MHAs or adjustments to constituency allowances beyond the stipulated maximums;
- There was evidence of reporting discrepancies and missing records of IEC decisions;
- The administration of the House appeared to struggle under staffing constraints and there was ongoing evidence of control deficiencies;
- The increased autonomy of the IEC was noticeably evident;
- The Auditor General was formally excluded from the House of Assembly audit process;
- The IEC failed to fulfill its mandated obligations with respect to the annual audit of the accounts of the House;
- There was a prolonged hiatus, after which independent auditors were appointed only for certain years, and an audit void remained in respect of fiscal 2000-01, and possibly 1999-00.

While I have characterized it as a “hold-the-line” era from a policy perspective, it is clear that the various dimensions of the ongoing administration of the affairs of the House in this period are cause for concern and merit further examination.

(i) MHA Compensation and Allowances

(a) Sessional Indemnity and Non-taxable Allowances Increased

On August 27, 2001, the IEC authorized salary increases (sessional indemnity and non-taxable allowances) to parallel the increases that had been negotiated in the latest public sector collective agreements as follows:⁷⁶

<u>Effective dates</u>	<u>Increases</u>
July 1, 2001	5.0%
July 1, 2002	2.5%
January 1, 2003	2.5%
July 1, 2003	2.5%
January 1, 2004	2.5%

Following the 5% across-the-board increase in constituency allowances approved on December 13, 2000 during the “policy shift era,” there was no further general increase in maximum allowed constituency allowances recorded in the allowance schedule (Schedule C of the IEC reports to the House of Assembly) through to the end of this era.

It would appear from the annual IEC reports to the House that the block-funding arrangement and the associated policies instituted in the previous era, including the payments of \$4,800 without receipts with no monthly limitations, virtually remained intact. From time to time, individual members requested increases in their allowances, citing pressures and requirements beyond the levels permitted by their respective allowance maximums. These individual requests were considered by the IEC and generally denied.

(b) Indications of Year-end Payments to MHAs

During this period, my research indicates that the IEC authorized increases in constituency allowances, or “one-time, lump-sum” payments beyond the maximums prescribed, to all MHAs in the final weeks of successive fiscal years. I was told by House of Assembly staff and IEC members that at times, as the year-end approached, if there was “extra money left in the budget,”⁷⁷ the IEC would approve an increase in the MHA allowances.

⁷⁶*Report of the Commission of Internal Economy for the Fiscal Year April 1, 2001- March 31, 2002*, pp. 7-8, August 27 meeting at minute 1.

⁷⁷ I assume that the reference to “budget” in this context means the overall budget of the House of Assembly’s Head of Expenditure, since it seems that the allowances and assistance budget was consistently over-expended.

- 1999-2000: It was explained previously that in 2000 an increase in the constituency allowances of \$2,000 was approved on March 22, 2000, based on the recommendations of a sub-committee of the IEC.⁷⁸ The internal sub-committee minutes of March 16, 2000, clearly indicate the recommended \$2,000 increase. The amount of the increase was not reflected in the reported IEC minutes as such. However, the increase was reflected in the allowed maximum reported for each district in the Schedule C of the IEC report for the fiscal year 1999-2000.⁷⁹ The situation appears to be somewhat different, however, with respect to the following years.
- 2000-01: There is no mention in the IEC minutes of an increase in constituency allowances at the end of this fiscal year (beyond the 5% approved in December 2000). There are no indications that a year-end increase or special payment was granted; however, it was pointed out earlier that transfers totaling more than \$300,000 were made to the Allowances and Assistance account at year-end to cover the cost of increased allowances, among other things. I make no finding in this regard but note that the accounts for the 2000-01 fiscal year have not been audited.
- 2001-02: The minutes of the IEC for March 6, 2002, indicate that an adjustment to the Members Constituency Allowances for the 2001-02 fiscal year was approved, but there is no indication of the amount:

The Commission directed the Clerk to adjust the Members Constituency Allowances for the 2001-02 fiscal year in accordance with a proposal on file with the Clerk.⁸⁰

The proposal is not attached to the IEC report, and the Clerk has been unable to provide it. Accordingly, there is no documentation on the amount of this adjustment, its application, and whether it was to be one-time or recurring.⁸¹

The 2001-02 fiscal year was eventually audited. During the audit process, an initially unexplained expenditure overrun was identified by the auditors in the allowances account. I was told that staff of the House informed the external auditors that the overrun was attributable to “an additional \$2,500 per member.”⁸²

⁷⁸ See under the heading “Successive Increases in Constituency Allowances”

⁷⁹ *Report of the Commission of Internal Economy for Fiscal Year April 1, 1999 to March 31, 2000*, p. 17.

⁸⁰ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2001-March 31, 2002*, p.14, March 6 meeting at minute 7.

⁸¹ A staff member of the House of Assembly indicated to me that when Members were given an increase, the staff was directed to implement the payments and the IEC verbally instructed that the additional payments not be reflected in the year-end report. This was a general comment, and did not specifically identify this particular IEC decision.

⁸² External Auditors’ working papers from the audit of the House of Assembly for the fiscal year ended March

I can not be sure this is correct, or if payments in this amount were actually made to members. The substance of the decision of the Internal Economy Commission to “adjust” members’ allowances, whatever it was, was not reported to the House. I did initiate a number of research activities to ascertain the facts, but to no avail.

Schedule C in the IEC Report for 2001-02 did not reflect a \$2,500 increase in the maximum allowed. Furthermore, the figures reported by the IEC for totals claimed are below the unadjusted maximum allowed and, therefore, appear not to reflect any adjustment.

- 2002-03: Similar evidence of additional year-end payments was noted in February of 2003. The first reference appears in the minutes of the IEC for the meeting held on February 19, 2003, where the Clerk was directed to review the accounts in order to identify “possible savings.”⁸³

Subsequently, on February 20, 2003, the Director of Financial Operations provided to the Clerk a list of potential savings. This memo suggests the IEC was seeking the savings to fund increases in the MHA allowances:

Further to the meeting of the Internal Economy Commission on Wednesday, February 19th, 2003 I am forwarding the following information. The Commission directed me to look at all of the accounts of the House Budget and see if any savings could be achieved to benefit MHA allowances. This I have done and my findings are as follows. I have identified savings of approximately \$260,000. However, due to a number of factors, one being the need to cover the by-election expenses and the other the cost of severance paid to former MHAs and political support staff, this money is spoken for. Therefore, in the House budget there is no savings that can be used for the MHA allowances. I have spoken to officials in Treasury Board and have been advised that there is approximately \$100,000 in the Budget of the Auditor General that can be transferred to the House Budget. In addition, if approved by Treasury Board, \$110,000 can be transferred to the House budget for severance expenditures. If this is approved the \$210,000 can then be given to the allowance vote in the amount of \$3,500 - \$4,000 per member.⁸⁴

Then, according to the minutes, as contained in the IEC report to the House, the IEC

31, 2002.

⁸³ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2002-March 31, 2003*, p. 17, February 19 meeting at minute 8.

⁸⁴ Memorandum from the Director of Financial Operations for the House of Assembly to the Clerk of the House of Assembly (February 20, 2003).

subsequently, on February 26, 2003, “by order approved additional allocations to the members Constituency Allowances for the 2002-03 fiscal year.”⁸⁵

There is no indication of the amount of the additional allocations, to whom they would apply, nor the rationale for the additional amounts. Review of the official minutes of the IEC indicates somewhat different wording, and the source of the proposal, but no specifics:

The proposal from Members of the Commission with respect to the Members Constituency Allowances was approved to the end of the 2002-03 fiscal year.

The Commission further ordered the Clerk and [the Director of Financial Operations] to take appropriate action with respect to this matter.⁸⁶

The 2002-2003 fiscal year was also eventually audited. As happened in respect of the prior year, during the audit process an initially unexplained expenditure overrun was identified in the MHA Allowances and Assistance account. When asked for an explanation, the staff of the House of Assembly informed the external auditors that the overrun was attributable to a decision to provide “an extra 10%” to each member. The auditors’ working papers have a notation that reads as follows:

There was extra money given to the members at the end of 2003 due to extra money in the budget. An extra 10% was given to each member. Recalculated the amount. This is consistent with the prior year in that there was excess money in the budget and they distributed it to the members.⁸⁷

However, I have been unable to obtain any documentation from the Speaker or the Clerk of the House that confirms the amount of any approved increase or to whom it applied.⁸⁸

The substance of the IEC decision, whatever it was, was again not reported to the House. Schedule C (the schedule of allowed and actual constituency allowance payments) in the IEC report for fiscal 2002-03 does not reflect a 10% increase in the maximum allowed expenses. As was the case in the prior year, the totals reported as being claimed are in line with the unadjusted maximum allowed and, therefore, appear not to reflect any increase or special payment. It should be noted that the actual expenditures from the allowances and assistance account in the public accounts of the province (which includes the MHA

⁸⁵ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2002 to March 31, 2003*, p. 18, February 26 meeting at minute 10.

⁸⁶ “*Official Minutes of the Internal Economy Commission*,” February 26, 2003 meeting at minute 10, signed by the Clerk of the House of Assembly.

⁸⁷ External Auditors’ working papers from the audit of the House of Assembly for the fiscal year ended March 31, 2003.

⁸⁸ Because it was not within my mandate, I did not cause a forensic audit - or any audit, for that matter - to be undertaken with respect to payments to individual members.

constituency allowances) exceeded the initially approved budget by some \$384,000 and \$390,000 in the 2001-2002 and 2002-03 fiscal years respectively. These matters will be further discussed later in this chapter in relation to the external audits as well as in Chapter 4.

(c) *Inadequate Reporting*

I am particularly concerned by the lack of information provided in the official minutes of the IEC. Section 5(8) of the *Internal Economy Commission Act* places a requirement on the IEC to report its decisions:

5. (8) All decisions of the commission (IEC) shall be a matter of public record and those decisions shall be tabled by the speaker no later than 6 months after the end of the fiscal year if the House of Assembly is sitting, or, if the House of Assembly is not sitting, then not later than 30 days after the House of Assembly next sits.

The report of the IEC for the fiscal year ended March 31, 2002, was tabled on April 10, 2003, 13 months after the end of the respective fiscal year. Similarly, the IEC's report for the year ended March 31, 2003, was not tabled until May 20, 2004, almost fourteen months after the end of the related fiscal year.

The nature of the IEC's reporting, or lack of reporting, in relation to these matters is problematic. Not only were the minutes tabled so late as to seriously detract from their usefulness and relevance, but the information provided was inadequate, misleading and confusing:

- In both years the IEC failed to report to the House the nature of the year-end adjustments it approved for Members' allowances.
- Schedule C (the MHA constituency allowance payment summary) in the IEC reports for both years indicated that the maximum allowable expenses did not change for the respective constituencies, and, further, that the amounts claimed by MHAs were within the maximum in all cases (which would suggest that even if an increase were granted by the IEC, members did not claim it). For this reason alone, the accuracy of the allowances reported in Schedule C of the IEC reports for both years is suspect. The fact that the total of the expenditures reflected in Schedule C does not reconcile with the total of the amounts recorded on government's accounting system and reflected in the Public Accounts is a further fundamental indicator of inadequate reporting, if not misreporting, by the IEC.

It was suggested that funds were available for additional payments to MHAs because there were savings in the accounts of the House of Assembly. This may not be a fair representation of the situation. The Allowances and Assistance account was effectively overspent. The IEC was only able to authorize additional payments to MHAs by transferring

funds that had been voted by the legislature for other purposes.

This type of practice by the IEC, of approving year-end payments beyond the stipulated guidelines, appears to have carried over into the 2003-04 fiscal year as well. This will be discussed further in the review of the next era

(ii) General Administrative Environment - Overall Observations

As was noted previously, there were some administrative changes following the legislative changes of May 2000. Duties of various staff positions in the administrative structure were shuffled about. Certain titles, classifications and pay-levels were changed, but the overall staff complement did not change. Yet the administrative scope of the House of Assembly was expanded, with the addition of further statutory offices: the Office of the Citizens' Representative, the Office of the Child and Youth Advocate, and the Office of the Information and Privacy Commissioner. While each of these offices operated semi-autonomously, I was told they added further complexity to the role of the core administrative group in the House of Assembly. By 2003-04, they had added a further \$1.3 million to the budget.

Assessing the environment years after the fact, it now appears that the biggest changes did not relate to the organizational structure as such, but in the evolution of virtually absolute financial autonomy within the administrative framework of the IEC. It appears that, with the changes in the *Internal Economy Commission Act* in May 1999 and May 2000, the concept of parliamentary autonomy in Newfoundland and Labrador attained a new level:

- The IEC had been freed from the constraint of being bound by the recommendations of an independent commission in relation to MHA compensation and allowances. Through legislative change, such recommendations were no longer binding on the House. The IEC used its powers to change MHA allowances in material respects, without reference to an independent commission as initially contemplated by the legislation
- The IEC had been provided with the discretion to deny the Comptroller General and the Auditor General access to documentation supporting the expenditure of public monies. It chose to exercise this discretion immediately, yet did not correspondingly act quickly to institute audit accountability. It delayed the appointment of external auditors for over two years. Effectively, the only people with access to the documentation for payments in relation to the MHAs were the very limited and overworked financial staff in the House itself.
- The administration of the House was deemed to be outside the financial policy and control framework of government. For example, government purchasing and tendering policies were not applied. No additional policies, procedures or control mechanisms were put in place to compensate for the exclusion of the Comptroller General's pre-audit and compliance testing role.

- Treasury Board was not involved in analyzing or approving budgets, or monitoring budgetary performance in any meaningful way. Its role, by parliamentary principle, as it was often reminded, was not to question, but to facilitate, the wishes of the legislature, as represented by the IEC.

The administrative environment in the House of Assembly at this time did not reflect a concentration on compliance, transparency and accountability. The focus appeared to be on adjusting the structure and the rules with respect to the financial arrangements of the MHAs. Given the environment, that was able to be done with a minimum of public disclosure.

In assessing the administrative environment of the House of Assembly, I did not have the benefit of an operations audit of the administrative practices at the time. Nor was the information provided to me given under oath through a formal hearing process. Nonetheless, I did have the opportunity to review the reflections on the evolution of the administrative environment provided by a large number of people, including the former Clerk of the House, the Chief Financial Officer, the Director of Financial Operations, the Deputy Director of Financial Operations, the Comptroller General, secretaries of Treasury Board (past and present), Treasury Board analysts, Auditors General (past and present), representatives of the external auditors, Speakers (past and present), various members (past and present) of the IEC, a significant number of MHAs, and others. I also had the opportunity to review a wide range of documents processed by the House administration, including examples of MHA expense claims, transfers of funds, year-end payments, official and tabled IEC minutes, as well as budgetary documents, expenditure records and signing authorities. The messages from this input were not always unanimous and views differed significantly on some issues, but people were eager to express their views and observations.

Based on this considerable input, I feel compelled to share the essence and tone of what I heard and observed through my consultations and research. I must emphasize that I cannot determine exactly when some of these processes, practices, and observations first began to appear. Accordingly, this commentary does not relate to the narrow 2001-2003 time frame, but is provided in an effort to *reflect the general environment described to me as being prevalent in the years leading up to the appointment of this Commission.*⁸⁹ I would urge that they be viewed in that context:

⁸⁹ I must also emphasize that there was no sense of any impropriety expressed to me with respect to the senior staff in the administration of the House prior to the revelations in the Auditor General's reports of June 2006. In that regard, a number of people expressed surprise and shock at the Auditor General's comments. Some indicated "blind faith" and total confidence in the staff. Several MHAs indicated that they did not question matters of an administrative nature; they trusted and relied totally on the staff to guide them, advise them and ensure that they were in compliance with all of the rules of the IEC and the policies of government.

(a) *Resource Constraints*

Despite repeated pleas for additional administrative staff in the House of Assembly to help them cope and adjust to increased responsibility and volume of work, additional resources were not approved. It was noted that the restraint environment had been prevalent for so long it was considered virtually pointless to ask. One staff member commented: “We regarded ourselves as the poor cousins of the executive branch.”

(b) *Delegation*

I was told that the Clerk’s workload and concentration on matters related to the legislative responsibilities of his role were such that the full scope of responsibility for financial administration was essentially delegated to the Director of Financial Operations, whom he trusted implicitly. The Clerk would generally address financial issues only when there was a problem, or at budget time, when a matter was brought to his attention by the Director, and as required in his role as secretary of the IEC. The Clerk was not regularly involved in reviewing or processing documents, financial reporting, budget monitoring or administrative matters.

(c) *Segregation of Duties Difficult*

The small administrative staff made segregation of duties extremely difficult. With the Clerk’s and Clerk Assistant’s concentration on legislative matters, there were really only two people on the staff of the House of Assembly Operations regularly involved in financial administration - the Director of Financial Operations and the Deputy Director of Financial Operations / Research Officer of the Public Accounts Committee. The Director of Financial Operations had been delegated full authority to sign documents for payment on behalf of the Clerk.

(d) *Claims Processing Challenges*

Appropriate review of the constituency allowance claims could be a very complex and time-consuming task. I was told the small administrative unit in the House felt that they just did not have the staff available to do justice to the detailed review and verification that was required. Accordingly, there was the sense that often claims may have been processed without adequate scrutiny.

(e) *Unusual Approval Process*

The constituency allowance claim form in use required two authorized signatures, besides that of the claimant, to verify that the claims were in order. I was told that claims

were frequently reviewed first by the supervisor and then sometimes sent to a subordinate for sign-off before entering on the system. As one staff member put it, “We had the cart before the horse.” I was also told that government’s *Oracle* electronic accounting and payment system requires the involvement of two individuals as a control to provide appropriate segregation of duties: one person to enter the data on the system and a separate person, designated by the Clerk and authorized by the Comptroller General, to review the transaction and authorize the release of payment electronically.

We heard that frequently a staff member would review MHA claims, sign them as being authorized for payment, counter-sign them or request another to counter-sign them, and then authorize payment electronically on the government computer system. We were told as well that sometimes a staff member would actually prepare claims on behalf of MHAs (in an effort to be of assistance), obtain the MHA’s signature, and then the staff member would sign and send it to a subordinate for verification and the electronic release of payment.

(f) Expedited Payment of Claims

We were told that there were times when claims were backlogged or there were pressing needs to expedite payments quickly. It was suggested to us that the second reviewer would be told that everything was in order and he would “let it go,” knowing that he did not have the opportunity to review it in the fashion he considered appropriate. It was also noted that in such cases the person reviewing the claim was the subordinate in the organizational hierarchy. He was being asked by his boss to approve a claim that his supervisor had already approved and signed. Similarly, it was indicated to us that there were occasions when claims would be presented to the subordinate late in the day or just before lunch, in the context that approval was needed quickly.⁹⁰

(g) Double Signing

There was evidence that individual MHA claims would sometimes be signed twice by the same staff member, to verify the validity of the claim and authorize it for payment. In this regard, staff of the Commission reviewed a number of claims that appeared to have been signed or initialed twice by the same person. At one point, it was suggested to us that this should not be a matter of disproportionate concern, given the realities of the small staff complement and the presence of a further electronic control. That control involved the further segregation of duties in the requirement for sign-off electronically by a second authorized person, other than the person entering a transaction on the system, before actual payments could be released. There were indications, however, that this did not prove to be

⁹⁰ This assertion is disputed by the supervisor who indicates that in such cases the initial request would have been made previously, but the subordinate was “either too busy or had something else to do.”

an efficient control, and I was told that payments were sometimes authorized without the person authorizing having viewed the documentation.

(h) Authorization of Payments Electronically - "Sight Unseen"

Due to the volume of the claims and invoices, the small staff and the pressures to meet the service requirements of the House of Assembly and its members, the financial administration personnel had some time ago sought the Clerk's approval to designate an additional person to help with authorizing payments on the system. An administrative officer in one of the statutory offices of the legislature was given authority by the Comptroller General to approve payments electronically on the system and thereby release the funds for payment. The person granted this authority was employed in a statutory office that has its offices in a separate building in another part of the city.

The person to whom the authority outlined above had been granted would get a call indicating that a claim had been entered in the system that required approval. This employee would be informed that it had been reviewed by staff of the House of Assembly and it was in order for payment. The transaction would then be called up on the computer system, where the individual could see the bare basics of the transaction, particularly the payee and the amount, but none of the supporting documentation. In short, it appears that this person was not in a position to verify the claim, its conformity with the rules, and the adequacy of documentation (or even if documentation existed). We were told that if the payment related to the purchase of goods, this individual was not in a position to verify that the purchase was in order and the goods received. However, we were also told that this person, physically remote from the House of Assembly's administrative offices in the Confederation Building, was asked to, and did, release payments in relation to such matters "sight unseen." It was suggested to us that this individual had initially questioned whether there was a rational basis for this process, but the person ultimately complied in an effort to help facilitate the process. "Who was I to question it - if that was the way the House of Assembly wanted it done," was the explanation given.

(i) Inadequate Documentation

I did not initiate an audit of MHA claims, but, through Commission staff research efforts, I did attempt to get an appreciation of the nature of the physical documentation provided in support of MHA claims. In a number of cases, the documentation appeared to be lacking, if not totally inadequate. At least one claim was noted that had been paid with no signature of approval from a staff member of the House of Assembly. Another claim was noted to have been processed with no receipts attached, and the notation "receipts to follow." There were many cases when little explanatory information was provided on the form, and the documentation appeared to be lacking.

(j) No Individual MHA Accounts

Separate accounts were not maintained, as part of the House financial system, for individual MHAs to monitor or control their constituency allowance expenditures individually against the prescribed annual maximum expenditure for their respective constituencies.⁹¹ We were told that individual MHA expenditures were tracked against their respective allowed maximums on a “spreadsheet” maintained by the Director of Financial Operations, who effectively retained sole access to the data. I received a number of indications that neither MHAs nor the Clerk were provided with regular reports on the status of constituency allowance accounts throughout the years.⁹² We were told that when members inquired orally, they would be informed orally of where they stood relative to the maximum allowed. Sometimes the information provided would be countermanded by provision of alternate figures, especially when the initial figures were challenged by the MHA concerned.

As a general overall impression, it is important to highlight that we repeatedly heard how the House of Assembly was different from the rest of Government. There appeared to be a mutual understanding that, when it came to the legislature, the executive branch of Government was to adopt a “hands-off” policy.

(iii) Audits of the House of Assembly

I have already noted that following the changes in the *Internal Economy Commission Act* in May of 2000, the IEC failed to appoint an auditor, despite the requirements of the new Section 9 of that Act. It appears that the IEC procrastinated on the appointment of an external auditor, and for a considerable period of time did not articulate its position to the Auditor General. The Auditor General had identified areas of concern with respect to certain constituency allowance expenditures, but was unable to access the associated documentation. Eventually, several months after the *Act* had been amended, the Auditor General was essentially barred from pursuing the issues she had identified. Given the concerns articulated by the Auditor General one might be forgiven for assuming that the IEC, now charged with audit responsibility, would have been anxious to assume its responsibility for stewardship and would have moved quickly to ensure that public funds were being spent properly. Yet, as the following review indicates, despite its various commitments, including

⁹¹ We received conflicting information on the reason separate accounts were not maintained. Staff of the House indicated that requests for a new system were denied, while the Comptroller General indicated the administration staff of the House had been informed that government’s computer systems could accommodate separate accounts but the staff of the House did not wish to change the system.

⁹² The Director of Financial Operations disputes this assertion and has indicated to me that Members were informed of their balances at the beginning of each year and were provided with updated reports quarterly. He also indicated that some Members, particularly some Ministers, did not want reports in writing or electronically “for fear it would be seen by others.” He emphasized that in his opinion “confidentiality” was the biggest concern with respect to MHA expenses.

public undertakings with respect to the audit process, the IEC effectively disrupted the audit process for over two years, despite the fact that questions had been raised by the Auditor General (which appear to have precipitated amendments in 2000 to the *Internal Economy Commission Act*) about the propriety of certain MHA expense claims.

(a) Auditor General Denied Access

On October 4, 2001, the Auditor General met with the Speaker of the House of Assembly to discuss issues identified during preliminary audit work on MHA constituency allowances, including information on the purchase of artwork and entertainment expenses.⁹³ Then, on October 9, 2001, the Auditor General wrote the Speaker to request access to supporting documentation for disbursements made by the House. She indicated that this information was necessary to enable her to carry out her responsibilities in connection with the audit of the financial statements of the province: to “audit the disbursements of public money” as required under the *Auditor General Act*.

The IEC considered the Auditor General’s request on October 12, 2001, and the official minutes of that meeting indicate that

The Commission directed the Speaker to write the Auditor General to advise her that in the opinion of the Commission, in accordance with the *Internal Economy Commission Act*, the Commission was not obligated to comply with the Auditor General’s request. The Members of the Commission further directed the Clerk to seek, if necessary, an interpretation of Section 9 of the *Internal Economy Commission Act* and its implications with respect to the Auditor General’s powers under sections 11, 12, and 13 of the *Auditor General Act*.⁹⁴

The Speaker complied with this direction from the IEC and wrote the Auditor General on October 23, 2001, indicating that

I have been directed by the Commission to report that in accordance with section 9 of the *Internal Economy Commission Act*, the Commission is not obligated to comply with your request.⁹⁵

While the extracts from the minute and the letter outlined above appear to be totally consistent with one another, I must point out that both are at variance with the tabled minutes for that IEC meeting held on October 12, 2001, as contained in the IEC’s report to the House

⁹³ Newfoundland, *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies, for the year ended March 31, 2001*, p. 13, item 12 (MHA Constituency Allowances).

⁹⁴ “Official Minutes of the Internal Economy Commission,” October 12, 2001 meeting at minute 1, signed by the Clerk of the House of Assembly.

⁹⁵ Letter from the Speaker of the House of Assembly to the Auditor General (October 23, 2001).

of Assembly for the 2001-02 fiscal year (which was tabled on April 10, 2003). The relevant sentence in the publicly reported minutes states:

The Commission directed the Speaker to write the Auditor General to advise her that, in accordance with the *Internal Economy Commission Act*, the Commission will publicly advertise for external auditors of the accounts and financial records of the House of Assembly and its various offices including the Office of the Auditor General.⁹⁶ [emphasis mine]

The Commission staff could find no evidence of a letter to the Auditor General consistent with this direction. Neither has the Commission found any indication that there was an advertisement seeking auditors at this time. Three months later, on January 17, 2002, the IEC met and agreed to advertise for an auditor to audit the accounts of the House:

The Commission by order directed the Clerk to prepare an advertisement for obtaining the services of an auditor to audit the accounts of the House of Assembly pursuant to section 9 of the *Internal Economy Commission Act*.⁹⁷

Two weeks later, the Auditor General tabled her report to the House of Assembly for the 2000-01 fiscal year and explained how she had been denied access to documentation and was “unable to fulfill [her] responsibilities under the *Auditor General Act* and complete [her] audit of payments made to MHAs from public monies.”⁹⁸

In response to the Auditor General’s concerns as set out in that report, the Speaker issued a rather lengthy public statement on February 4, 2002, on behalf of the Commission of Internal Economy, entitled “MHAs Accountable.” Some of the more pointed remarks from that statement include the following:

The Auditor General has left the impression that the *Auditor General Act* and the *Financial Administration Act* have in some way been violated and that there is no accountability for members’ district allowances. This is simply not true. An audit must take place. *The Auditor General Act* has not been violated ...

⁹⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2001-March 31, 2002* p. 8, October 12 meeting at minute 1.

⁹⁷ *Report of the Commission of Internal Economy for fiscal year April 1, 2001-March 31, 2002*, p. 11, January 17 meeting at minute 5.

⁹⁸ *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies, for the year ended March 31, 2001*, p. 14, item 12 (MHA Constituency Allowances).

... Also, the law provides the commission with the authority to set policies with respect to the documents which may be supplied to the Comptroller General. This has been done in compliance with the *Financial Administration Act*.⁹⁹

The law reflects the opinion of all members of the House of Assembly when enacted in 2000 that it is inappropriate for the Auditor General, who is both a servant and an employee of the House of Assembly, to audit her employer which is the House. Under another provision of the *Internal Economy Commission Act*, the Speaker each year tables the list of expenditures of members of the House plus the minutes of the commission and the rules relating to members expenditures. The commission has, since 1990, followed this requirement so that its affairs have always been open, transparent and accountable.

...

Some time ago the Commission of Internal Economy gave instruction that the accounts of the House of Assembly be audited by an auditor following the tabling of the Public Accounts. A public proposal will soon be advertised for the audit of the House of Assembly accounts for the fiscal year 2000-2001.¹⁰⁰

...

Unfortunately, the Commission of Internal Economy was not afforded an opportunity to review the Auditor General's remarks in time to have a response published in her report. Today's statement is the commission's means of setting the record straight and confirming the accountability of the MHAs as set forth in legislation.¹⁰¹

I would simply note that, notwithstanding the direction given by the IEC on January 17, 2002, and the Speaker's public statement on February 4, 2002, indicating that an audit was about to be commenced, a specific audit for the fiscal year 2000-2001 has yet to be initiated.

(b) *Audit Process Delayed*

It appears that no definitive action was taken for months after the Speaker's

⁹⁹This statement did not indicate that the "policy" established by the Commission was that no documentation would be provided to the Comptroller General with respect to MHA expenses.

¹⁰⁰ This Commission would point out that a public proposal for an audit of 2000-01 was not advertised until February 22, 2003. As was subsequently explained, the IEC decided to drop this audit in April 2003. Accordingly, an auditor was never appointed in respect of 2000-01.

¹⁰¹ These quotations were extracted from a press release issued by the Speaker on behalf of the Commission of Internal Economy on February 4, 2002.

statement. In April 2002, the IEC did review a draft proposal to advertise for audit services. This was presumably in response to the earlier decision of the IEC taken in January 2002. A decision was deferred at that time to permit members to consult their caucuses. The next record of the matter surfacing was at the IEC meeting on November 8, 2002. The official minutes, maintained in the Clerk's office, state:

In accordance with section 9 of the *Internal Economy Commission Act*, the Commission by order agreed that the accounts of the House of Assembly be subject to an audit for the fiscal years ending March 31, 2001, March 31, 2002 and March 31, 2003. Subject to further revision by the Clerk and the Comptroller General of a request for proposals documentation, the Commission directed the Clerk to advertise a request for proposals in the Province seeking the services of an auditor.¹⁰²

(c) *Discrepancy in IEC Minutes*

There is a notable discrepancy between the official minutes quoted above and the minute subsequently tabled in the House as part of the IEC report for 2002-03. Notwithstanding the official records of the meeting, minutes tabled in the IEC report refer to ordering the audit of a three-year period starting with the fiscal year ending *March 31, 2002*;¹⁰³ yet the official minutes refer to an audit of a three-year period commencing with the fiscal year ending *March 31, 2001* and covering the periods up to the fiscal year ending *March 31, 2003*.

The official minutes reflect a time period that appears logical because it starts with the April 1, 2000, to March 31, 2001, fiscal year - the year the *Act* was changed and the section requiring the IEC to appoint an auditor was enacted. Nonetheless, the IEC minutes reported to the House reflect a year being skipped. According to those minutes, no audit was to be requested for the fiscal year ending March 31, 2001. I note also that the IEC report including these minutes was not tabled until May 20, 2004.

(d) *Further Delays and Discrepancies*

The delays and discrepancies merit further discussion. While the IEC had, on November 8, 2002, directed that audit proposals be sought, several months passed before the audit process was finally initiated with an advertisement. The draft request for proposals appears to have been revised through subsequent discussion with the Comptroller General.

¹⁰² "Official Minutes of the Internal Economy Commission," November 8, 2002 meeting at minute 2, signed by the Clerk of the House of Assembly.

¹⁰³ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2002 to March 31, 2003*, p. 13, November 8 meeting at minute 2.

The request for proposals, which was not actually advertised until February 2003, covered a five-year period: from the fiscal year ending March 31, 2001, to the fiscal year ending March 31, 2005. (There is no indication of the IEC having provided direction to alter the time frame from the initial three years).

The proposals from various accounting firms were subsequently received and then considered by the IEC at a meeting held on April 9, 2003. While the proponents had responded to the request for audits covering five fiscal years, the IEC directed that the proposals be assessed on the basis of a three-year contract for the fiscal years 2001-02, 2002-03, and 2003-04:

Members of the Commission reviewed the recommendations with respect to the Request for Proposals to audit the accounts of the House of Assembly on file with the Clerk. The Commission directed the Clerk to discuss with the Comptroller General the decision of the Commission that the submissions received from the three accounting firms be assessed on the basis of a three year contract for the following offices and for the following fiscal years:

(a) the House of Assembly for the fiscal years 2001-02, 2002-03 and 2003-04.

...

The Clerk will report back to the Commission.¹⁰⁴

The Clerk subsequently wrote to the firms that had responded to the advertisement indicating that “the Commission has directed me to revise the terms of the proposed contract for the required audits ...” and provided them with the opportunity to submit revised estimates “[b]ased upon the revised audit requirements.”¹⁰⁵ A proposal from an external accounting firm, revised to reflect the shortened time, was ultimately accepted on June 24, 2003.

I have endeavoured to ascertain an explanation for the discrepancies in the various mandate periods: from the official minutes of November 8, 2002, to the minutes tabled in the House, to the advertised periods, to the revised audit terms directed by the IEC in April 2003 and ultimately as reflected in audit arrangements contracted in June 2003. In this regard it has been repeatedly emphasized to me by the offices of the Speaker and the Clerk that the confusion surrounding the mandate periods for these initial audit assignments must have been due to inadvertence: “clerical errors” or “oversight with respect to the audit of the 2000-01 accounts.” Furthermore, I was told that “neither the IEC nor the Speaker made direct or indirect representation ... to change the fiscal years from those contained in the

¹⁰⁴ “Official Minutes of the Internal Economy Commission,” April 9, 2003 meeting at minute 2, signed by the Clerk of the House of Assembly.

¹⁰⁵ Letter from the Clerk of the House of Assembly to External Auditors (May 23, 2003).

Request for Proposals.” As I have indicated, the information to which I have access suggests otherwise:

- *The official minutes* of the IEC for November 8, 2002, indicated that the IEC agreed that an audit be conducted for *three* fiscal years: 2000-01, 2001-02 and 2002-03. The *IEC report* to the House, however, indicated a different three years: 2001-02, 2002-03, 2003-04. (The erroneous IEC report was tabled some 18 months after the meeting. That report, while it is an incorrect reflection of the official record, coincidentally or otherwise, reflects the ultimate outcome following *subsequent IEC decisions*.)
- The advertisement published in February of 2003 requested proposals for *five* fiscal years: 2000-01, 2001-02, 2002-03, 2003-2004 and 2004-05. This was a change from the direction given by the IEC on November 8, 2002. The change from three to five years does not have the appearance of a clerical error.
- All respondents to the advertisement bid on the five-year audit assignment as requested in the advertisement. Then the official minutes of the IEC for April 9, 2003, indicated that the commission directed the submissions be evaluated on the basis of a three-year contract (2001-02, 2002-03 and 2003-04). This was a fundamental change from the advertisement and the request for proposals. This decision effectively dropped the *first* and *last* year from the advertised audit mandate period. This was an officially recorded decision and direction of the IEC.
- The Clerk wrote the respondents consistent with the *direction of the IEC* reflected in the official minutes of April 9, 2003, and requested that the audit proposal be revised to cover the three-year period 2001-02, 2002-03 and 2003-04. The auditors wrote back and changed their proposal accordingly. This was a clearly documented change.

From this sequence of events, and the official record of IEC decisions, I find it difficult to conclude that the 2000-01 audit was simply overlooked due to clerical error and that there was no IEC direction in this regard. On the contrary, the official record and related correspondence indicates that a conscious decision was made by the IEC not to proceed with the audit for 2000-01 (and the audit for 2004-05) after proposals to undertake the respective audits had been received.

More than three years had passed since the *Internal Economy Commission Act* was changed to give the IEC the authority *and responsibility* to appoint an auditor to conduct an annual audit. The disruption of the audit process and the passage of time were articulated by the Auditor General in his report for the fiscal year ended March 31, 2003:

I was informed that this change in the *Act* [the new section 9 of the *IEC Act* providing for the appointment of an auditor] was intended to prevent my Office from completing the audit of expenditures of the House of Assembly.

As a result my Office has not had access to the accounts and records of the House of Assembly since the *Internal Economy Act* was amended. Therefore, the expenditures of the House of Assembly have not been audited for the past four years.¹⁰⁶

The Auditor General went on to list the annual expenditures of the House of Assembly for four fiscal years, from the year ending March 31, 2000, to the year ending March 31, 2003. He indicated that, after excluding the net expenditures of the Office of the Auditor General, “a total of \$39.9 million of net expenditures have not been subject to an annual audit by the Office of the Auditor General.”¹⁰⁷

Notwithstanding the recitation of these warning signals, there did not appear to have been any sense of urgency on the part of the IEC to comply with its statutory duty and have audit work completed.

(e) Audit Void

Quite apart from the delay in initiating the annual audit process as required under the legislation, the IEC’s ultimate appointment of auditors left an audit void in respect of the year 2000-01. This is a direct contravention of the requirement for an annual audit as set out in section 9 of the *Internal Economy Commission Act*. Despite considerable questioning on the matter, I have been unable to ascertain why a decision was made not to audit the fiscal year 2000-01. Furthermore, it appears, based on the Auditor General’s remarks, that since he could not access the documents of the House since May of 2000, the 1999-2000 fiscal year may not have been audited appropriately either.

While not explaining the audit void, the Commission did receive a potential explanation for dropping the 2004-05 fiscal year from the audit plan when the audits were contracted in 2003. In this regard, one member of the IEC at the time suggested that the 2004-05 fiscal year was dropped because, at that time, it was a future period, following an impending election. There was a feeling amongst some members that the current IEC should not contract an audit for a period that would fall within the mandate of the next House of Assembly.

(f) The Audit Approach

The “Request for Proposals to Audit the Accounts of the House of Assembly” (RFP), pursuant to the IEC decision on November 8, 2002, appears to have been published early in

¹⁰⁶ *Report of the Auditor General to the House of Assembly on Reviewing Departments and Crown Agencies for the Fiscal Year ended March 31, 2003*, p. 7, (s.2.1 - Audit of the House).

¹⁰⁷ *Ibid.*

2003. (I was unable to determine from the Clerk's office the specific date of the request nor am I certain that we have the final RFP.) The draft RFP provided to me by the then Clerk and the auditors, which purported to constitute the essence of the final RFP, indicated that the request called for an audit to be performed in accordance with "generally accepted auditing standards," and that the audit would serve three functions:

- a. To support the Auditor General's attest audit opinion on the financial Statements and Public Accounts of the Province.
- b. To provide attest audit assurance relating to the annual statements of expenditure and related revenue and the schedules of assets and liabilities of the House of Assembly.
- ...
- c. In accordance with the provisions of the *Internal Economy Commission Act* to provide a report for the House of Assembly for each year ... including any significant comments which the auditor wished to bring to the attention of the House of Assembly.¹⁰⁸

The RFP also outlined background information on the IEC and its role in relation to the establishment of policies, procedures and funding limits:

The IEC operates and has certain powers pursuant to its *Act*. In particular, the policies, procedures and funding limits for specific MHA allowances, per diems, etc., are set by the IEC. The IEC funding requirements are included in the Consolidated Revenue Fund and the fund is audited by the Auditor General. The IEC forwards payment requests to the Office of the Comptroller General for processing via Government's (Oracle) Financial Management System in the Consolidated Revenue Fund. The detailed documentation supporting those payments resides with the Office of the Clerk of the House of Assembly.¹⁰⁹

In their proposal dated March 14, 2003, the firm ultimately contracted to do the audits emphasized their extensive experience, including in the public sector, as well as their modern risk-based approach. The proposal goes into some detail to explain the emphasis of the firm's proposed audit approach:

Our audit of the accounts of the House will focus on management controls, the overall control framework and the areas of risk ... The approach is based on the concept of understanding how management at the appropriate level

¹⁰⁸ Newfoundland and Labrador, Office of the Clerk of the House of Assembly, "Request for Proposals - Audit of the Accounts of the House of Assembly."

¹⁰⁹ Ibid, see item 11.

exercises control over various transactions and processes. We will focus on monitoring procedures, rather than entrenching ourselves in extensive transaction testing where there is a tendency to lose sight of the overall objective ...

We tailor our procedures to enable us to spend proportionately more time on these higher-risk business issues and less time on matters of lower sensitivity ...

We believe the following considerations to be relevant in your environment and should be part of our audit process:

- Expenditures in compliance with government legislation or acts of the House of Assembly.
 - Expenditures in compliance with government fiscal policies and practices.
 - Expenditures in compliance with approved government estimates as laid out in the provincial budget.
 - Examination of employment contract relating to political positions.
 - Payroll expenditures in compliance with government or House approved pay scales.

... All material financial statement balances and transactions will be subjected to our verification procedures as well as to analytical review. Our plan is based on auditing through testing of internal control processes and performance of certain substantive tests relating to operating activities ...¹¹⁰

Research staff for this inquiry were informed by the external auditors that their ultimate terms of engagement for the audit did not actually include a number of the items listed in the RFP. The auditors indicated that their ultimate assignment changed somewhat from that described in the RFP and was confined to a regular “financial statement” audit.¹¹¹ Unfortunately, as I indicated previously, neither the auditors nor the House of Assembly were able to provide me with a copy of the final engagement letter which established the terms on which the auditors were engaged.

The RFP had requested that the audits be completed within three months of

¹¹⁰ Newfoundland and Labrador, Deloitte & Touche, *The House of Assembly of Newfoundland and Labrador, Proposal to Serve* (St. John’s: Deloitte & Touche, March 14, 2003), pp. 5-6.

¹¹¹ See Chapter 8 for a discussion of the various types of audits.

acceptance of a proposal for years past, and within three months of the end of subsequent fiscal years. The auditors indicated that they would meet that timeline. They also indicated that, depending on the year, their chargeable hours for the assignment would be the equivalent of up to three weeks of audit time.

(g) *First Audits Under the Revised IEC Act*

On June 24, 2003, as noted previously, the auditors were retained to audit the accounts of the House of Assembly based on the revised time frame, which covered the three fiscal years 2001-02, 2002-03 and 2003-04.¹¹² I found it unusual, and disconcerting, that neither the administration of the House of Assembly, nor the auditors, could locate a copy of the signed contract or audit engagement letter.

I understand that the audits were not started until late in the fall of 2003, through agreement with the staff of the House. Apparently, it was also agreed that the first two years (2001-02 and 2002-03) would be done concurrently. While research staff for this Commission were told that there were no significant difficulties encountered, it appears the process was slow. The audited statements for 2001-02 and 2002-03 were dated October 29, 2004, and were not finalized to the extent that they could be delivered to the House until June 30, 2005 - almost two years after the audit contract was awarded.

The audited financial statements, when finally received, were unqualified. No unreconciled audit differences were noted, and there was no management letter issued to indicate any concerns with respect to the appropriateness of financial controls, procedures or the financial management environment. The statements for 2001-02 noted that there was no comparative data because “*the prior year [2000-01] has not been audited,*”¹¹³ - another “red flag” that an audit void existed.

I understand that the auditors commenced the audit for 2003-04 later in 2005, and again delays were encountered. This audit was still not completed in the summer of 2006, when the reports giving rise to this inquiry were issued by the Auditor General. Eventually, the auditor’s engagement for the 2003-04 fiscal year was cancelled by the IEC.

(h) *The Audit Void Remains*

It was five years from the change in the legislation, and the exclusion of the Auditor General from the House of Assembly audit process, until the first audits of the House were completed. Furthermore, notwithstanding section 9 of the Act, which requires an annual

¹¹² Letter from the Clerk of the House of Assembly to Deloitte & Touche (June 24, 2003).

¹¹³ Newfoundland and Labrador, *Financial Statements of the House of Assembly and Statutory Offices, Province of Newfoundland and Labrador, March 31, 2003*, p. 6, See note 3.

audit, and notwithstanding the Speaker's public commitment on February 4, 2002, that the accounts of the House would be audited and that they would shortly call for proposals to audit 2000-01, the IEC decided not to proceed with an audit of the accounts for that fiscal year.

The audit void remains in respect of 2000-01, along with the inherent violation of the *Internal Economy Commission Act*. Despite extensive questioning of IEC members, the Speaker, the Clerk, the staff of the House, and the auditors, and a thorough review of the IEC minutes and related documentation, I have found no plausible explanation for the IEC's failure to carry out its obligations in respect of the audit requirement for 2000-01.

The Refocusing Era: 2004-2006

Following a general election in the fall of 2003, the newly appointed IEC met for the first time on December 16, 2003. At this initial meeting, it was noted that there had not been an independent commission of inquiry to study indemnities and constituency allowances since 1989. Accordingly, the IEC requested the Clerk to prepare a memorandum respecting the appointment of such a commission to make recommendations on appropriate levels of indemnities and allowances during the 45th General Assembly.¹¹⁴ While there were initial indications in the minutes that the concept of an independent commission of inquiry was to be further considered by each caucus, the matter appears not to have been pursued.

The membership of the IEC had changed somewhat pursuant to the outcome of the election. The new Speaker adopted a distinctly different approach to various matters from both an administrative and an overall policy perspective. An Executive Committee of the IEC was established, comprising the Speaker, the Deputy Speaker, the Government House Leader, the Opposition House Leader, as well as the Clerk. This committee began to review matters and make recommendations in advance of meetings of the full IEC.

A significantly different policy thrust to set a new direction in the operation of the IEC was articulated in a confidential memorandum authored by the Speaker and addressed to the Members of the House of Assembly, dated March 1, 2004. In this memorandum, entitled "Accountability and Its Relevance to Members' Constituency Allowances," the Speaker outlined various changes in policies and practices with respect to various aspects of constituency allowances. Most importantly, however, the Speaker set out his overall policy perspective to frame the context in which the changes were being instituted:

In recent years, the public has demanded greater accountability and a high level of transparency in the expenditure of public funds. While this is a principal [*sic*] generic to all public expenditures, it is even more so in

¹¹⁴ "Official Minutes of the Internal Economy Commission," December 16, 2003 meeting at minutes 12 and 13, signed by the Clerk of the House of Assembly.

instances where elected officials have access to taxpayer revenues in the conduct of their offices.

Trust and confidence is fostered where public disclosure and transparency permeates the principles upon which public funds are received and where the expectation of public accountability and disclosure is understood and practiced.

Since assuming the Office of Speaker ... I have become aware of the need for much greater accountability in the rules and practices pertinent to Members' Constituency Allowances.

However, it is not my intent or desire to engage either directly or indirectly in a critique or analysis of the past! My intent is to establish guidelines that can be used in a "go forward" approach.

In addition, I wish to make it quite clear that while I have serious reservations about some of the past practices, there is no intent nor is there any substantive empirical data of which I have knowledge to establish a case for practices that were contrary to the rules.

However, therein lies the fundamentals of the problem. Our rules are rather loosely written and in their implementation, can and have lead [*sic*] to variations in interpretations.¹¹⁵

In this memorandum, the Speaker committed to produce a more detailed set of rules to ensure consistency in the application of policies. In this regard, following review of the memo, the IEC directed the Clerk to prepare a Members' Handbook. In addition, the IEC directed that the Director of Financial Operations provide a monthly statement to each member on the status of the Members' Constituency Allowance. The IEC also agreed that the Members and their staffs should become knowledgeable with respect to the *Conflict of Interest Act* and consult the Speaker or Clerk when in doubt concerning constituency allowance expenditures.

Perhaps one of the most pronounced and high-profile policy changes recommended at that time and adopted by the IEC was the decision that "as of April 1, 2004, the Auditor General would be invited to audit the accounts of the House of Assembly including the Constituency Allowances of Members."¹¹⁶ To this point, the House had still not received an audit for any year since the provisions of the IEC Act had been changed in May of 2000. It

¹¹⁵ Memorandum from the Speaker of the House of Assembly to Members of the House of Assembly, entitled "Accountability and its Relevance to Members' Constituency Allowances," (March 1, 2004).

¹¹⁶ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 17, March 1 meeting at minute 4(8).

appears to have been assumed that the audits for the three years ending March 31, 2004, would be completed by the external auditing firm as previously contracted.

This memo from the Speaker signaled a fundamental change in direction from the *modus operandi* evident in the previous seven or eight years. In some respects, it represented a refocusing on certain principles and policies enunciated in the Morgan report. It is for this reason that I have termed it the “refocusing era.”

A number of developments are noted in respect of this era, which are in tune with this overall policy direction:

- Constituency allowances were reduced for a period in response to fiscal challenges;
- Certain guidelines governing MHA expenses were tightened;
- The respective roles of the Comptroller General and the Auditor General were restored;
- Initiatives were launched to strengthen the financial administration of the House and to provide improved data and assistance to MHAs; and
- The external audit reports for 2001-02 and 2002-03 were received.

There was, however, a range of decisions or occurrences that were inconsistent with the newly emphasized policy direction. Some examples include:

- A special payment to MHAs was approved in 2004 beyond the prescribed limits and guidelines;
- The IEC’s reporting and disclosure practices did not reflect the principles of transparency;
- Progress on strengthening the financial management framework was slow;
- Little progress was made in terms of providing guidance to MHAs; in particular, no Members’ handbook was produced;
- The external audit did not provide insight into the financial management and control environment; and
- The Auditor General issued reports on an array of troublesome findings.

Against this summary overview, it is important to explore the evolution of the various dimensions in this era in more detail.

(i) MHA Compensation and Allowances

(a) Reduced Allowances and Tighter Guidelines

Based on the Speaker's recommendations in his memorandum of March 1, 2004, the IEC approved a number of specific policy changes in respect of constituency allowances:

- Each Member's constituency allowance was to be reduced by 5% effective April 1, 2004.¹¹⁷
- The threshold for capital purchases (furniture and equipment) that could be retained by an MHA was reduced from \$1,000 to \$500. Items costing \$500 or more would be the property of the Crown and be depreciated over three years.¹¹⁸
- All expenditures from Members' Constituency Allowances would require receipts for reimbursement.¹¹⁹

The Speaker had recommended the 5% reduction in constituency allowances effective April 1, 2004, for the 2004-05 fiscal year in the interest of showing concern for the province's fiscal realities. The official minutes of the IEC for March 1, 2004, indicate that, in approving the 5% reduction, the IEC acknowledged the possibility of some reprieve toward the end of the year:

By order, the Commission agreed that there would be a five per cent reduction in Members' Constituency Allowances beginning with the new fiscal year. It was further agreed that if there were savings in other accounts at the end of the next fiscal year that the savings could be considered by the Commission for application to the Members' Constituency Allowances.¹²⁰

¹¹⁷ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 2.

¹¹⁸ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4(3).

¹¹⁹ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 20, March 31, meeting at minute 1. The IEC had decided on March 1, 2004 that the previous discretionary allocation of \$4,800 would be reduced to \$3,000, and paid in equal monthly amounts. However, on March 31, 2004, it was decided that the reimbursement of expenses without receipts would be discontinued entirely - a reversion to the fundamental principle enunciated in the Morgan Report.

¹²⁰ "Official Minutes of the Internal Economy Commission," March 1, 2004 meeting at minute 2, signed by the Clerk of the House of Assembly.

There is no indication that such an adjustment was considered or awarded to the MHAs toward the end of fiscal 2004-05; however, there was an adjustment subsequently approved for 2003-04.

(b) *Special Payments to MHAs*

On May 5, 2004 - the day after the legislation settling a public sector strike became law - someone within the House administration prepared a memorandum entitled "Re: Members Allowances from 2003-04," which read:

At this time there is approximately \$160,000 surplus remaining in the various accounts of the House of Assembly in 2003-04 fiscal year. All invoices for payment for this fiscal year have been or will be paid shortly.

If the Commission approves, the Commission could direct that each Member receive \$1500 plus HST for a total of \$2000 or \$2610 plus HST for a total of \$3000. This money will be charged to the old fiscal year as a discretionary amount for each member and Members will be reimbursed accordingly. However, if this policy is approved, each Member must submit his or her claim by Friday, May 14.¹²¹

On May 11, 2004, the Executive Committee of the IEC met and amongst other things, considered the prospect of recommending the payment of a one-time additional allowance to MHAs in respect of the 2003-04 fiscal year:

The Members agreed to raise with the full Commission the matter of Members Allowances for the 2003-04 fiscal year with the recommendation that the Members be allocated a onetime allowance from the old fiscal year estimates of approximately \$2500 each plus HST.¹²²

These are official minutes of the Executive Committee, signed by the Clerk, that have not been tabled in the House, nor, to my knowledge, were these minutes otherwise publicly disclosed.

This matter was subsequently discussed and approved at a meeting of the IEC on May 12, 2004. The minutes of that meeting make two separate references to it, implying that it was initially discussed with no decision, and then, subsequently, a decision was taken:

¹²¹ Unsigned and unaddressed memorandum provided to the Review Commission by the Speaker of the House from the files of the House with no indication as to its author.

¹²² Newfoundland and Labrador, Executive Committee of the Commission of Internal Economy, *Meeting and Minutes*, May 11, 2004 meeting at minute 2.

2. Members of the Commission discussed matters relating to Members' Allowances for the 2003-04 fiscal year and agreed that the matter would be resolved following consultation with the Minister of Finance and the House Leaders.¹²³

6. The Commission by order approved a proposal relating to Members' Constituency Allowances for the 2003-04 fiscal year. It was agreed that the proposal as submitted be approved for the period ending March 31, 2004.¹²⁴

In the first instance, it might be reasonable to enquire as to how a payment approved in May might get charged back to the prior fiscal year, which ended March 31, 2004. In that regard, it must be noted that, commencing in April 2004, there had been a broad-based strike of provincial public service employees in response to government's announced position that there should be no immediate increase in public sector wages. The strike lasted a month and ended when the legislature enacted the *Public Services Resumption and Continuation Act*,¹²⁵ ordering the employees back to work, legislating a two-year wage freeze for the fiscal years commencing April 1, 2004, and April 1, 2005, and stipulating increases of 2% and 3% respectively for the two subsequent years. That legislation was given Royal Assent on May 4, 2004. Since employees in the public service had been on strike for almost the entire month of April 2004, there was a considerable backlog in the review of documentation and processing of payments related to the fiscal year ended March 31, 2004. Accordingly, the Lieutenant Governor in Council extended to May 20, 2004, the cut-off date for back-charging expenditure to the accounts of the prior fiscal year ended March 31, 2004.

Following the IEC's decision to approve the extra payment on May 12, 2004, 46 MHAs submitted claims for \$2,875 (2,500 + HST), which were effectively back-dated to March 31, 2004.¹²⁶ The claims were quickly processed, with no documentary support for the expenses in most cases.¹²⁷ Cheques were issued to the respective MHAs.

The two references in the May 12, 2004, minutes of the IEC were included in the Report of the Commission of Internal Economy for the fiscal year April 1, 2004, to March 31, 2005 (which was not tabled until May 17, 2006). As is evident from their language, these minutes did not describe the substance of the decision in any way. The amount of the payment was not disclosed; nor was the fact that it was available to all MHAs; nor the fact that it was to be claimed with no receipts. Also, there is no reference to this payment in either Schedule B of that report, which lists the salaries, allowances and guidelines, or Schedule C, which lists the maximum amount allowed for constituency allowances

¹²³ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2004 to March 31, 2005*, p. 6, May 12, 2004 meeting at minute 2.

¹²⁴ *Ibid.*, at minute 6.

¹²⁵ R.S.N.L., c.P-44.1.

¹²⁶ The Member for Topsail and the Member for Humber West did not submit claims for the payment.

¹²⁷ The staff of the Commission reviewed some of the claims, but not all. There was no documentary support provided for any of the claims examined.

compared with the amounts claimed for the 2004-05 fiscal year. It *was*, however, noted that the maximum allowed for each district in Schedule C of that report was adjusted downward from the previous year to reflect the 5% reduction for 2004-05, approved by the IEC on March 1, 2004.

It might be argued that the approval of the payment, coming as it did around year-end raised the question as to which annual report of the IEC (2003-04 or 2004-05) might best reflect it. The fact is *neither report mentioned it*. This special payment, while approved in mid-May 2004, was deemed to be applicable to the 2003-04 fiscal year. Accordingly, it could have been reflected in the IEC report pertaining to that year as a “subsequent event”; yet the Report of the Commission of Internal Economy for that year made no reference to the special payment, either as a subsequent event or in any of the schedules.

As the Commission staff and I considered the implications of these events, the inevitable questions arose: Where did the idea of the payments come from? Who initiated it? As in the case of some other significant questions (Who initiated the Bill to achieve the amendments to the *Internal Economy Commission Act* in 2000? Who proposed and made the decision to dispense with an external audit for fiscal year 2000-01? What was the nature of the adjustment to Members’ constituency allowances approved for 2001-02 on March 6, 2002? What was the nature of the additional allocations to Members’ constituency allowances for 2002-03 approved on February 26, 2003?). Documentation is lacking and memories on these crucial matters are vague.

The memo of May 5, 2004 - which is the first indication of an interest in making the payments in respect of 2003-04 - is not signed nor is the person or body to whom it is directed named. Although the document was only recently found by the Speaker in a file in the House records and provided to me, I have not been able to determine definitely who the author and intended recipients were. It is clear, however, that the author would have to have been someone who was knowledgeable about the accounts and finances of the House. Given the isolation of the House financially from the rest of government, it is very likely that the author was a member of the IEC or the House staff; and given the nature of the subject matter, it is likely that the memo was intended for the use of the IEC.

I am satisfied, however, that no matter how the memo came into existence, one or more persons connected with the IEC were interested in the financial ability of the House accounts to sustain a \$2,000 to \$3,000 discretionary payment to each Member in the aftermath of the public sector strike.

It is hard to accept that the connection with the recently settled strike could not have been present in the thinking of at least some of those considering the possibility of making these payments to MHAs. The memorandum was written only one day after the legislation settling the strike became law. As well, the memo refers to the potential of charging the payment back to “the old fiscal year.” This was only possible at that time of year because the cut-off date for charge-backs had been extended to May 20, *precisely because* of the unsettled situation resulting from the strike.

Regardless of the lack of definitive answers as to the origin of these events, it can be said in summary, that six weeks after the end of the 2003-04 fiscal year, when the March 31, 2004, fiscal year-end closing of the accounts had been delayed due to the impact of a major public sector strike in response to a wage freeze:

- The IEC approved a “one-time allowance” of \$2,875 for all MHAs, completely unrelated to the allowed maximums and the IEC rules;
- The authorization for the payments was made by order without at the same time amending the *Members’ Constituency Allowances Rules, 1996*;
- The nature, amount and application of the special payment was not reported in the IEC reports to the House, and neither, to my knowledge, was it publicly disclosed elsewhere until the report of the Auditor General on January 31, 2007;
- A number of these claims were examined by the research staff of this Commission, and in no case reviewed was there documentary support for the expenses;
- The notion of payments without supporting receipts was contrary to the new policy approved by the IEC only six weeks previously, on March 31, 2004;
- The change in policy on March 31, 2004, requiring receipts, was noted in the 2003-04 IEC annual report in contradistinction to the failure to note in the same report that the one-time payment was authorized without receipts;
- Forty-six MHAs submitted claims for \$2,875 in mid-May effectively back-dated to March 31, 2004, and the claims were made without submitting supporting receipts.

The manner in which this decision was taken and implemented raises two fundamental concerns: it was done contrary to previously adopted principles, and there was no public disclosure. The IEC’s approach to sanctioning this type of payment and failing to report was fundamentally inconsistent with the policy thrust it had initiated in March 2004:

Trust and confidence is fostered where public disclosure and transparency permeates the principles upon which public funds are received and where the expectation of public accountability and disclosure is understood and practiced.¹²⁸

The action was taken in May of 2004 (in relation to 2003-04) when, on March 1, 2004, the IEC had decided to reduce the level of constituency allowances by 5% effective April 1, 2004, to “show concern for the fiscal realities of the province.” In addition, on March 31,

¹²⁸ Memorandum from the Speaker of the House of Assembly to the Members of the House of Assembly, entitled “Accountability and its relevance to Members’ Constituency Allowances,” (March 1, 2004).

2004, the IEC had decided that “all expenditures from the Members’ Constituency Allowances be reimbursed on the basis of receipts.” Accordingly, the manner in which the special payments to MHAs were approved, contrary to the established rules, and without public disclosure at a highly sensitive time during which the legislature had used its powers to freeze the compensation of all public servants, raises questions as to the judgment and prudence exercised by IEC members in approving this payment in the manner it did.

(c) Overall Adjustments to Constituency Allowances and Sessional Indemnities

With respect to the prescribed maximum constituency allowances (setting aside the issue of the special payment) following the 5% reduction in effective April 1, 2004, there was no across-the-board adjustment in allowances in the 2005-06 fiscal year. However, in preparing the budget for the 2006-07 fiscal year, the IEC ordered, on October 31, 2005, that the 5% reduction in Members’ Constituency Allowances, which was instituted effective April 1, 2004, should be reversed in the 2006-07 fiscal year.¹²⁹ Then, on May 15, 2006, the IEC ordered that the sessional indemnities and salaries of Members be increased effective July 1, 2006, by the same percentage as awarded to employees who work for the executive branch.¹³⁰

In June of 2006, the reports of the Auditor General were released, indicating serious concerns with respect to the administration of constituency allowances, payments made to certain MHAs, as well as payments made to certain suppliers. These reports will be addressed in a separate section of this report.

(ii) The Administrative Environment 2004-2006

(a) Changed Direction

In some very important respects, the policy emphasis within the administrative structure of the House of Assembly changed in 2004. This was presaged most notably by the adoption of the framework and policies set out in the Speaker’s policy paper, “Accountability and Its Relevance to Members’ Constituency Allowances,” as previously mentioned. The indications of this change in approach became evident early in 2004 and continued at varying paces through to the end of 2006:

¹²⁹ “Official Minutes of the Internal Economy Commission,” October 31, 2005 meeting at minute 7(a), signed by the Clerk of the House of Assembly.

¹³⁰ “Official Minutes of the Internal Economy Commission,” May 15, 2006 meeting at minute 3, signed by the Clerk of the House of Assembly.

- Tighter guidelines were restored with respect to the purchasing and ownership of furniture and equipment for Members' offices;
- The IEC requested that Members and staff of the House of Assembly become "knowledgeable" with respect to the *Conflict of Interest Act*;
- The IEC invited the Auditor General to audit the accounts of the House, including constituency allowances, as of April 1, 2004;¹³¹
- The IEC revoked the order issued on May 16, 2000, which had effectively denied the Comptroller General access to documentation for payments under Members' Constituency Allowance accounts. Accordingly, the Comptroller General's Office was given access to supporting documents for MHA claims for testing and pre-audit work for all future claims;¹³²
- The IEC directed that a Members' manual be prepared to, among other things, set out clearly all the rules and procedures applicable to expenditures from Members' constituency allowances; and
- The IEC directed that the Director of Financial Operations provide each Member with a monthly written statement showing the status of the Member's Constituency Allowance account and that this process be computerized.¹³³

In addition, during 2004, at the request of the Office of the Clerk of the House of Assembly, the Professional Services and Internal Audit Division of the Comptroller General's Office conducted an assessment "to review the current policy and procedures relating to the Members' Constituency Allowance and to suggest additional guidelines for consideration by the Office of the Clerk." The draft report resulting from this study was dated December 17, 2004, and it contained a range of *suggested guidelines* related to a number of aspects of members' travel expenses, per diem allowances, entertainment expenses and general constituency expenses.¹³⁴

In the course of the foregoing review, the Professional Services and Internal Audit Division also reviewed the "administrative procedures in the Office of the Clerk with respect to the adjudication of Members' claims." In this regard, it prepared a further draft report,

¹³¹ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 17, March 1 meeting at minute 4(8).

¹³² *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2004 to March 31, 2005*, p. 5, April 1 meeting at minute 3.

¹³³ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4(4).

¹³⁴ *Newfoundland and Labrador, Professional Services and Internal Audit Division, "Proposed Guidelines for Members' Constituency Allowances,"* (Draft: For Discussion Purposes Only), (St. John's: Office of the Comptroller General, December 17, 2004).

which indicated: lack of detailed rules and the potential for inconsistent application of policies; lack of a documented policy on what constituted acceptable supporting documentation for expenses; and the absence of a documented policy on “eligible” expenses related to furniture and equipment.¹³⁵ Various recommendations were made with respect to the need to document policies. The report also included some specific recommendations related to documentary support for payments, including the following:

All members’ expenditures should be supported by appropriate proof of payment along with the “original” of the invoice. Credit card receipts/statements alone should not be accepted as they do not provide adequate detail of the expense item. As well this could result in other supporting documents for the same expense being submitted for duplicate payment.¹³⁶

With respect to more general administrative accounting controls, the draft report provided a general commentary before listing a number of recommendations for consideration:

Officials with the Clerk’s office follow normal protocol in the review, approval and data entry of Members’ claims and also financial transactions related to Offices maintained by Officers of the House. As part of our review, the Office of the Clerk had requested that general audit guidelines be provided in the processing of financial transactions.¹³⁷

While this commentary indicates that the office was following “normal protocol in the review, approval and data entry” processes, the draft report goes on to list 15 recommended points for consideration in respect of “internal controls and procedures in the processing of expense claims/transactions,” including:

n) Ensure all transactions are recorded in the correct accounts and that sufficient funds/budget exist in these accounts.

o) Systems reporting should be utilized to monitor financial transactions for all accounts maintained by the Office to enhance financial management.”¹³⁸

The Clerk formally acknowledged receipt of the draft reports, and I was told the Comptroller General met with the Clerk and the Speaker concerning these reports. Yet it appears that no definitive follow-up action was taken on them - by either the administration

¹³⁵ *Newfoundland and Labrador, Professional Services and Internal Audit Division, “A Review of the Constituency Allowance Policy and Procedures for Members of the House of Assembly,”* (Draft: For Discussion Purposes Only), (St. John’s: Office of the Comptroller General, December 17, 2004).

¹³⁶ *Ibid.*, p. 4 at para. B, recommendation 1.

¹³⁷ *Ibid.*, p. 5 at para. D.

¹³⁸ *Ibid.*, p. 6.

of the House or the Office of the Comptroller General.

From an organizational perspective, commencing in December of 2003, the IEC had begun discussing the need to examine the administrative and management framework of the House of Assembly in a broad sense.¹³⁹ The Clerk was asked to explore the retention of consulting services to assist with preparing recommendations on an “administrative and management structure.” However, it appears that no definitive progress was made in this regard in the months following.

Subsequently, in January of 2005, matters related to the administration of the affairs of the House were discussed in a rather different context. The IEC minutes of a meeting with the Auditor General at that time concerning the administration of travel expenses of the Offices of the Citizens’ Representative and the Child and Youth Advocate noted the following:

The Auditor General described matters relating to the accounting procedures in the Clerk’s Office and the need for additional staff which the Commission declared would be a priority item during the forthcoming budgetary discussions.¹⁴⁰

At the subsequent meeting of the IEC in February 2005, the administrative framework of the House was again discussed:

Members of the Commission reviewed the structure of the Clerk’s Office in particular the financial accountability of the House of Assembly and its statutory offices. Direction was given to propose a new office framework for the Clerk’s Office and to provide further details to the Commission regarding the proposal for a chief financial officer.¹⁴¹

Notwithstanding this decision, a considerable period of time passed before it was fully implemented. Eventually, a new position of Chief Financial Officer was approved, advertised and ultimately filled, with effect from May 8, 2006.¹⁴²

(b) Slow Progress on Ongoing Issues

The process of beginning to address the administrative framework of the House of

¹³⁹ “Official Minutes of the Internal Economy Commission,” December 16, 2003 meeting at minute 12, signed by the Clerk of the House of Assembly.

¹⁴⁰ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2004 to March 31, 2005*, p. 14, January 17 meeting at minute 1.

¹⁴¹ *Ibid.*, p. 17, February 10 meeting at minute 12.

¹⁴² “Official Minutes of the Internal Economy Commission,” May 3, 2006 meeting at minute 1, signed by the Clerk of the House of Assembly.

Assembly had taken a considerable amount of time. In the interim, as well, some of the well-intentioned initiatives of the IEC were not implemented.

By the summer of 2006, for example, the Members' manual had still not been prepared. Members had not yet been provided with monthly statements outlining the status of their constituency allowances.¹⁴³ While the Comptroller General was given full access to House of Assembly documentation and the records supporting MHAs' constituency allowance claims, he indicated to this inquiry that he did not have sufficient staff to perform any ongoing internal audit or pre-audit functions. Accordingly, there was no effective change in the claims review procedure.

Members' expenditures were not tracked in individual accounts, on government's accounting system, against their respective prescribed maximum.¹⁴⁴ It also became clear that through to the summer of 2006 there was effectively no compliance testing: nor were there effective controls in place to prevent an individual from being paid in excess of the prescribed maximum for his or her constituency. As long as there were sufficient funds in the global Allowances and Assistance account (which totals over \$5 million), and the claim was approved by administrative staff, it could be paid irrespective of whether the individual MHA was over his or her limit.

The Commission's staff were told that, up to June of 2006, the record of individual MHA expenditures on constituency allowances, relative to the prescribed maximums, as noted previously, continued to be maintained "off-line" on a computer spreadsheet, maintained solely by a single staff member. It appears that there was no back-up copy of this data, and it was also suggested that the original information had been "over written" or destroyed in some cases.

The appointment of a new Chief Financial Officer of the House of Assembly in May of 2006, while long in coming, clearly signaled a definitive step forward in enhancing the administrative capability of the administration of the House. In the summer of 2006, work was commenced on the design and implementation of financial controls, claims policies and guidelines, as well as the reporting framework for MHA allowance statements. Unfortunately, the pace of progress was complicated by the troublesome revelations of the Auditor General in late June and July.

I am very much aware that, notwithstanding the findings of the Auditor General and the ongoing tasks that have been required to respond to those findings, work has continued with the new Chief Financial Officer under the direction of the IEC and a newly appointed Clerk of the House of Assembly. New forms and rules have been put in place. Additional clerical personnel have been added, and it appears that the implementation of the system to

¹⁴³ I understand that since October 2006 this process has been started and Members receive statements regularly.

¹⁴⁴ I understand that this is being done as of October 2006.

provide monthly statements to MHAs is now well advanced, if not up and running.¹⁴⁵

(c) *Transparency and Accountability*

It is evident from the foregoing discussion that, since early 2004, the IEC had begun to adopt a more structured approach to its operations. Meeting agendas were circulated in advance, and minutes were circulated following meetings, rather than a year after the fact with the draft IEC report, as had been the prior practice. However, it is questionable as to whether the IEC has still met the standard of transparency and accountability they had set for themselves in March 2004, when they adopted the Speaker's policy paper. The *Internal Economy Commission Act* stipulates in subsection 5(8) that;

All decisions of the commission shall be a matter of public record and those decisions shall be tabled by the speaker no later than 6 months after the end of the fiscal year if the House of Assembly is sitting, or, if the House of Assembly is not sitting, then not later than 30 days after the House of Assembly next sits.

The IEC minutes are the record of the decisions of the IEC. These minutes have been generally tabled as part of the IEC's annual report to the House 12 to 14 months after the end of the respective fiscal year to which the report relates. This means that, at best, decisions are a year old before they are made public. Furthermore, decisions taken in the first quarter of a given year are almost two years old before they are tabled.

A further dimension of the issue relates to the nature of disclosure contained in the report that is eventually tabled. As is evident from what I have written earlier, in some cases the minutes, as contained in the publicly disclosed IEC report, do not communicate the substance of what was decided; rather than providing transparency, various minutes are decidedly opaque. One of the most significant examples of this type of transparency concern is evident in the treatment of the previously explained special payment approved for all members in May 2004.

I understand that there may be cases, when the IEC is dealing with certain sensitive matters involving personal privacy considerations, where disclosure must be limited. Such concerns do not apply in relation to policy decisions, however, or to decisions of general application made with respect to such matters as the general level of benefits or allowances applicable to all MHAs, or the guidelines for payment of public monies to MHAs.

¹⁴⁵ See Chapter 7(Controls) for further discussion of these very positive developments.

(iii) Audit of the House of Assembly

I have noted previously that, in March 2004, the IEC decisions of 2000 denying both the Auditor General and the Comptroller General access to documentation were rescinded. The Auditor General was invited to audit the accounts of the House, including MHA allowances, commencing with the fiscal year that started April 1, 2004.

The Auditor General first examined the accounts of the Offices of the Citizens' Representative and the Child and Youth Advocate and, in January 2005, provided his observations to the IEC. Concerns raised during these audits were addressed in due course, and I will not delve into them. Subsequently, the Auditor General commenced his review of the more direct operations of the House of Assembly. This review ultimately led to the series of reports tabled in the period from June 2006 to January 2007.

Before turning to the Auditor General's reports on the House, however, it is appropriate for the purpose of context to consider briefly the earlier reports of the external auditors that were actually received in 2005.

(a) The External Audits of 2001-02 and 2002-03

The first two of the three audits for which external auditors were retained in June 2003 (in respect of the 2001-02 and 2002-03 fiscal years) were received by the House in June of 2005. As was noted previously, the auditor's reports in both cases were unqualified.

In reviewing the results of these audits, I have been told that the audit assignment was basically to focus on "attest audit assurances, and financial statement preparation, relating to the annual statements of expenditure and related revenue and the schedules of assets and liabilities of the House of Assembly."¹⁴⁶ I am also very much aware that there is an extensive array of information now available to us that may not have been apparent to the auditors in the course of a routine financial audit. Accordingly, it is important not to lose perspective or take matters out of context with the environment and knowledge base which existed when the audit work was undertaken.

These audits were clearly "financial statement" audits "to support the Auditor General's attest audit opinion on the Financial Statements and Public Accounts of the Province."¹⁴⁷ They were not legislative or compliance audits or investigative audits; nor were they forensic audits, which would have brought into play a different array of analytical

¹⁴⁶ Draft Contract, Schedule A, appended to the letter from Clerk of the House of Assembly to External Auditors, (June 24, 2003), *Re: Request for Proposals - Audit the Accounts of the House of Assembly*. The final signed contract cannot be located. No one has suggested, however, that the final engagement contract differed materially from the draft.

¹⁴⁷ *Ibid.*

and testing procedures and techniques. Furthermore, the auditors have told us that they were not provided with any internal or external indication that there might be any particular concerns or irregularities that should have been focused on; neither were the auditors asked to undertake any specific audit testing.

Some of the observations made through the course of our review of the audit process and the associated documentation and results include the following:

- The auditors determined that the total expenditures on constituency allowances as recorded on the government accounting system did not reconcile with what would have been expected based on the calculations of the maximum allowances and the figures in IEC reports. A difference, beyond the auditors' materiality threshold, was identified by the auditors in both audit years.¹⁴⁸ Staff of the House explained that in both years the difference related to year-end payments to MHAs approved by the IEC because "there was extra money left in the budget." The auditors indicated that they had been shown documentation approving these payments but were not provided with a copy for their files.

The Commission staff and I have still not been able to locate a document in the records of the IEC specifying the amounts so authorized; nor have we been able to verify whether in fact the payments as described to the auditors were actually made to all MHAs, as the auditors did not select any of the items for testing and were unable to provide any further details regarding whether or not these specific payments to MHAs were actually made as indicated. While the IEC may have properly authorized additional payments, the nature and amounts were not disclosed. In fact, to the extent that additional payments were authorized and actually paid, the payment schedules to the IEC reports (Schedule C) for 2001-02 and 2002-03, which had been tabled publicly in the House before the audits were finalized were in error and arguably misleading to the House. As noted above, the auditors indicated that they had identified that the amounts reflected in the publicly tabled IEC reports yielded a total expenditure that was materially less than the expenditures reflected in the public accounts for constituency allowances, but as they believed that they had received adequate explanations, they did not feel it was necessary to inform the IEC of the differences.

- The audit testing performed by the auditors did not include any testing to confirm that payments made to MHAs were in compliance with the maximum allocation for the respective districts as prescribed by the IEC. The auditors are of the opinion that that type of compliance testing was not required, given the nature of the financial audit mandate.

¹⁴⁸ Indicated to the staff of this Commission as \$125,000.

- In the course of sample testing, the auditors examined two claims of one MHA that in the aggregate were greater than the MHA's total allowed annual constituency allowance; but the claims individually appeared to be in order to the auditor, and the auditor did not check against the total annual allowance for the constituency as, again, it was not considered part of the audit mandate.
- The auditors identified potential difficulties associated with the lack of segregation of duties but recognized that this is always a problem in a work environment with a limited number of staff. They indicated to this Commission's research staff that, having examined this issue, they satisfied themselves that adequate, compensating controls were in place. They did not notice any documentation that appeared to them to be signed twice for authorization by the same individual. Also, the auditors indicated that they were unaware that a subordinate was actually signing to approve documents that had been initially signed by that person's supervisor. They were under the impression that both staff members were at the same level.
- During the course of the audit, the auditors did not contact the office of the Comptroller General, who maintained the overall accounting system. I understand that the auditors had been told that the House operated as an autonomous body and that they would be able to obtain all the information they required from the staff of the House.
- The auditors did not issue a management letter outlining any issues of concern requiring management's attention. Nor was there an audit meeting held between the auditors and the staff of the House or the IEC to express any manner of concern arising from the audit. The auditors emphasized that their focus was on conducting a substantive audit for financial statement purposes and not on testing controls. They indicated to the staff of the Commission that the several policies and practices they observed in the administration of the House of Assembly were what they would consider common to find in auditing small organizations.
- A member of the audit team was aware, and, from that individual's observation, people who worked in and around the House of Assembly were aware, that the Director of Financial Operations had a relationship with one of the suppliers of merchandise for the Members. The auditor did not feel this issue to be the kind of thing that merited comment.
- I was told that the auditors did not perform any tests centered around the detection of potentially fraudulent activity. In this regard, I understand as well that the Canadian Institute of Chartered Accountants' (CICA's) standards for testing for fraud were effective with respect to audits of financial statements and other financial information relating to periods ending on or after December 15, 2004. Accordingly, the auditors explained that the current auditing standards and processes were not in effect for the time periods covered by these audits.

Clearly, there were substantive, unanticipated delays through the audit process. The

audited statements were dated October 29, 2004 (15 months after the auditors were engaged), but the actual statements were not delivered until June 2005, almost two years after the auditors were appointed. The auditors informed the Commission that there were delays in gaining access to certain types of information. The staff of the House were said to be very busy. The auditors indicated that material that they might have expected to review electronically was only available in paper form, which led to delays. The auditors indicated that the calculation of annual leave and severance pay entitlements by staff was a protracted, and error-prone process that contributed to the delays. The auditors told us that there was limited use of computers in the business of the House. All these factors undoubtedly contributed to what in the final analysis were excessive delays for a task of this nature.

I believe it is important to review the foregoing audit process, to determine what was identified and what was not. In the final analysis, however, my focus must be on ensuring that we learn from the process and that the audit mandate and process of the future is clearly reflective of the requirements and expectations of the House. In that regard, it may be concluded that it is certainly necessary to clarify the audit mandate in the future and prescribe specific procedures and reporting requirements.

(b) Auditor General's Reports

Pursuant to the decision of the IEC in 2004 to invite the Auditor General to again audit the accounts of the House, he began in January 2006 to focus directly on the financial and administrative operations of the House (in particular, its systems of control) and the administration of constituency allowances of members.

In addition to conducting general audit work, the Auditor General issued the series of reports that have already been identified in the period from June 2006 to January 2007. Those reports, as is now well known, covered the following broad topics: (i) excess constituency allowance claims; (ii) payments made to certain suppliers; (iii) control deficiencies in House Administration; (iv) conflicts of interest issues; (v) double-billing issues; and (vi) disclosure of additional year-end allowance payments. I will deal briefly with each of these topics in turn.

1. Excess Constituency Allowance Claims

In the period from June 22 to July 4, of 2006, the Auditor General submitted four individual reports dealing respectively with the identification of excess constituency allowance claims by three current MHAs and one former MHA.¹⁴⁹ The reports were fairly brief, but they identified the extent of alleged excess allowances claimed in each instance, and provided schedules illustrating the details on the excess claims made by the individuals concerned.

¹⁴⁹ See Chapter 1, footnote 12.

The Auditor General subsequently issued supplementary reports in relation to each of the four individuals named earlier in the summer, as well as a report that indicated findings of a similar nature in respect of an additional MHA. Overall, the reports identified issues spanning a period nine years, with differing amounts and differing time periods, depending on the respective individuals.

In all cases, the Auditor General recommended that the Lieutenant-Governor in Council refer the matter of excess constituency allowance claims to the Department of Justice. This reference was made and, as a result, a police investigation was launched and is currently ongoing.

The extent of the excess constituency allowance claims, as reported by the Auditor General in relation to the nine years, amounted to almost \$1.6 million. Chart 3.13 prepared by my inquiry staff, summarizes the data contained in the Auditor General's reports:

Chart 3.13

Summary of Excess Constituency Allowance Claims

(prepared from data provided in the Auditor General's reports June 26, July 4th, and December 5th, 2006)

Claimant	Excess Claims by Year									Total Excess Claims
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	
A ¹⁵⁰	n/a	5,056	5,616	12,144	118,195	128,274	198,368	n/a	n/a	467,653
B	9,496	16,385	22,064	19,699	33,577	46,768	90,459	44,837	61,180	344,465
C	n/a	n/a	11,466	14,387	37,327	88,962	107,299	43,571	55,586	358,598
D		6,904	11,739	9,954	41,805	130,130	98,039	n/a	n/a	298,571
E	6,556	14,136	27,010	25,425	17,526	10,494	16,139	n/a	n/a	117,286
Total	16,052	42,481	77,895	81,609	248,430	404,628	510,304	88,408	116,766	1,586,573

Chart 3.13 indicates that the total annual amount of excess claims ran up to approximately \$400,000 and \$500,000 in the fiscal years 2002-03 and 2003-04 respectively.¹⁵¹

¹⁵⁰ The Claimants are listed in the order in which the respective reports were initially submitted by the Auditor General

¹⁵¹ I note as well that, at the request of the Lieutenant-Governor-in-Council, the Auditor General is currently conducting an audit of the appropriateness of expenses charged by MHAs to their constituency allowances for all of the years dating back to fiscal year 1989-90. This further audit is expected to take several more months to complete.

The reports of the Auditor General on excess constituency allowances offer no observations on how such excess payments could have occurred. However, following the release of the first report on “Excess Constituency Allowance Claims” by an MHA, the Auditor General did issue another report, entitled “Payments Made by the House of Assembly to Certain Suppliers.” This report outlined further specific matters of concern, and provided some general insight into the financial management and control environment observed through the audit processes.

2. Payments Made to Certain Suppliers

The report of the Auditor General issued on June 27, 2006, focused on concerns related to payments made to certain suppliers of the House of Assembly and, in particular, identified:

1. Circumstances surrounding payments totaling \$2,651,644, made from April 1998 to December 2005, to three companies ..., which have led me to question the legitimacy of at least a portion of these payments.
2. Inappropriate payments totaling \$170,401, made during the period April 2001 through to December 2005, to ... a company owned by the former Director of Financial Operations at the House of Assembly, and/or his spouse.¹⁵²

As in the case of the excess constituency allowance findings, the Auditor General indicated his concern that the activities may “involve improper retention or misappropriation of public money or another activity that may constitute an offence under the Criminal Code or another Act.”¹⁵³ Pursuant to his recommendation, matters surrounding the legitimacy of payments to the suppliers were referred to the Department of Justice.

In the same report, the Auditor General also indicated that the three companies to which payments totaling \$2,651,644 had been made appeared to be related.¹⁵⁴ He summarized the nature of the payments to the three companies that were the focus of his concerns:

- Payments to the three companies were indicated as being for the purchase of similar items – many were low value novelty items such as lapel pins, fridge magnets and key chains; however I also identified some more expensive items such as 79 Customized MHA Gold Rings (Newfoundland Coat of Arms) costing \$750 plus HST each ...

¹⁵² *Report of the Auditor General to the House of Assembly on Payments Made by the House of Assembly to Certain Suppliers* (June 27, 2006), p. 1.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, pp. 1-2.

- All officials questioned at the House of Assembly indicated surprise with the significant cost and the extent of the quantities being purchased. One official who was in a position to observe deliveries to the House of Assembly was at a loss to know how the quantity of products could be received without his knowledge.
- ... total payments each year to the three companies has increased dramatically since 1999. For example in just under four years there was a 282% increase in payments to these companies from total payments of \$170,570 for the 12 months ended 31 March 2002 to total payments of \$652,293 for just the nine months ended 31 December 2005.¹⁵⁵

The Auditor General then proceeded to describe certain deficiencies and inadequacies in the financial management and administrative process observed in his audit. I regard this commentary in the report as being broadly symptomatic of the management and control deficiencies that appear to have evolved in the overall administration of the House of Assembly. It therefore bears consideration in the broader context, including, in particular, the administration of constituency allowance payments to MHAs.

3. Control Deficiencies

This heading, while not used by the Auditor General, would seem to be a reasonable manner in which to characterize the findings he outlined in explaining the shortcomings of the administrative processes described in relation to the questionable payments:

- Internal controls relating to purchases were basically non-existent:
 - no segregation of duties - the former Director of Financial Operations ordered goods, indicated receipt of the goods and approved company invoices for payment; and
 - although payment authorization was made on the Government's financial management system, it was most often performed by an official without seeing the original documentation ...
- Contrary to Government rules:
 - no tenders were called and no quotes or other reasonable basis were documented to support prices being charged on company invoices; and
 - purchase orders were not always issued, especially in more recent years ...

¹⁵⁵ Ibid., p. 2.

- In many instances there was inadequate documentation provided on the invoices to support either which member of the House of Assembly the goods were purchased for or whether payments were correctly charged to other parts of the House of Assembly. More than half (52%-\$1,389,324) of the total payments of \$2,651,644 were charged *to various House of Assembly accounts other than constituency allowances for members ...*
- Each year the former Director of Financial Operations indicated he would overwrite the spreadsheets used to record Members' constituency allowance payments. As a result, the audit trail relating to the spreadsheets was effectively eliminated. Although overwriting the spreadsheet files slowed the audit process, by reviewing cancelled cheques and other documentation my staff was able to reconstruct total payments made to and/or on behalf of Members of the House of Assembly relating to their constituency allowances.¹⁵⁶

4. *Conflict of Interest*

In describing payments made to one supplier, the Auditor General identified a potential conflict of interest situation in relation to a staff member and certain MHAs under review as a result of the reports related to excess constituency allowance claims:

I am concerned about a conflict of interest situation identified during the review. In this case, direct payments totaling \$122,398 were made through the House of Assembly during fiscal years 2002 through to 2005 to ... a company owned by the former Director of Financial Operations, and/or his spouse. I note that a significant portion of these payments were approved by persons without seeing the original documentation ...

Furthermore, the Clerk of the House of Assembly indicated that, after writing all staff including the former Director in February 2004 advising that they had a responsibility to disclose any conflict of interest activity, he received written notification from the former Director that business activity between ... [the company] ... and the House of Assembly would cease. However I found that the Director appeared to circumvent this commitment by having ... [the company's] ... transactions go from direct payments recorded in Governments financial management system (FMS) to transactions directly with the various Members of the House of Assembly which were then claimed through their constituency allowance and therefore undetectable through FMS.

¹⁵⁶ Ibid., p. 3.

I note that two Members presently under review had direct purchases totaling \$48,003 from ... [the company] ... during the period April 2004 to December 2005 (i.e. subsequent to the commitment by the former Director).¹⁵⁷

The alleged conflict of interest situation adds a further dimension to the wide spectrum of financial management and control issues that emerged from the Auditor General's reports.

5. *Double Billings*

On January 8, 2007, the Auditor General issued two reports in which he identified situations of alleged "double billing" by two MHAs. The term, "double billing" refers to instances where it is alleged that an MHA had "submitted claims and received reimbursement for items that had already been claimed ... and reimbursed."¹⁵⁸

In both cases, the Auditor General recommended that the matters be referred to the Department of Justice. This was done and, in one case, a decision has been made not to lay any criminal charges. In the other case, the review is still ongoing.

Quite apart from the specifics of these individual situations, the allegations of double billing raise considerations with respect to the onus on the MHA to maintain appropriate records and file claims correctly - to avoid double billing - and the responsibility that resides with the House administration to ensure that payments are only made in compliance with the rules - to avoid double payment.

6. *Disclosure of Additional Allowances*

On January 31, 2007, the Auditor General issued his report entitled *Reviews of Departments and Crown Agencies* for the year ended March 31, 2006. That report reviewed the contents of the other reports issued by his office since the summer of 2006. In addition, it highlighted the IEC's decision on May 12, 2004, to make an additional payment to each MHA of \$2875 (\$2,500 + \$375 HST), which has previously been discussed in this chapter. I was particularly interested in the Auditor General's commentary on it in relation to disclosure considerations:

Minutes of IEC meetings, which are tabled in the House of Assembly as part of the IEC annual report for public examination, are so vague on this matter that it is not possible for the public to know that each Member was to receive an additional allowance of \$2,875.¹⁵⁹

¹⁵⁷ Ibid., pp. 3-4.

¹⁵⁸ *Report of the Auditor General to the House of Assembly on Double Billings* by Ms. Kathy Goudie, MHA (January 8, 2007), p. 1. See also *Report of the Auditor General to the House of Assembly on Double Billings* by Mr. John Hickey, MHA (January 8, 2007)

¹⁵⁹ *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies* for

The Auditor General also commented on the approach to the preparation of the minutes of the IEC as described to him by the former Clerk of the House:

I spoke with the former Clerk of the House of Assembly who advised me that, in prior years, the IEC suggested to him that the IEC minutes should be kept vague on financial matters such as additional allowances to Members.¹⁶⁰

This commentary stands in stark contrast with the emphasis on the principles of transparency and accountability endorsed by the IEC in March of 2004. However, it corresponds with the commentary provided to me by the Director of Financial Operations concerning instructions from the IEC to staff of the House of Assembly in relation to disclosure of additional payments in the year-end IEC reports.¹⁶¹

(c) Overview of the Auditor General's Findings

The examination of the recent findings of the Auditor General in the context of the extensive review in this chapter is as revealing as it is troublesome. In retrospect, the review of the historical context in this chapter, had it been possible to undertake it earlier with openly disclosed information, may have provided early signals of difficulty that evolved into the array of alleged deficiencies highlighted in the Auditor General's reports. In short, the range of alleged difficulties identified can be summarized as encompassing:

- payments to certain MHAs in multiples of the allowed amounts;
- payments to certain MHAs in excess of the amounts reported to the House;
- MHA overpayments not detected by management or the Comptroller General;
- no reconciliation of IEC reports on MHA compensation to financial management system records;
- no internal controls over purchases;
- no segregation of duties in key financial functions;
- blind authorization of payments - without access to supporting documentation;
- no tenders or quotes for purchases;
- no purchase orders and no commitment control process;
- payments made with inadequate (non-existent) documentation;
- no control over data security - no back-up or data access controls;
- audit trail destroyed;

the Year Ended March 31, 2006, (January 31, 2007), Chapter 2.1, part 2, p. 29.

¹⁶⁰ *Ibid.*, p. 29.

¹⁶¹ A staff member of the House of Assembly indicated to me that when members were given an increase, staff were directed to implement the payments and the IEC verbally instructed that the additional payments not be reflected in the year-end report. I note this was a general comment, and it did not specifically identify this particular IEC decision.

- lack of attention to potential conflict of interest prior to 2004;
- indications of ongoing conflict of interest, through processes possibly intended to avoid detection;
- overpayments, and other irregularities, not detected in financial statement audit processes;
- incidents of double billing and double payments; and
- special payments to MHAs not publicly disclosed.

The specific findings of the Auditor General are clearly cause for serious concern. They add further context to my broad-based concerns resulting from this Commission's extensive examination of the evolution of the administrative environment; the legislative framework; the decisions of the IEC; the basic record-keeping and reporting processes in the House; the relationship of the administration of the House to the executive branch; the audit process itself; and the role of independent auditors and the Auditor General in the financial affairs of the House.

I will first of all confront the multi-dimensional failures of the past and then proceed to recommend a range of measures to address them.



Chapter 4

Failures

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

— Maureen Mancuso, et al¹

Why Look at the Past?

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

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

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

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

When Did Problems Begin to Occur?

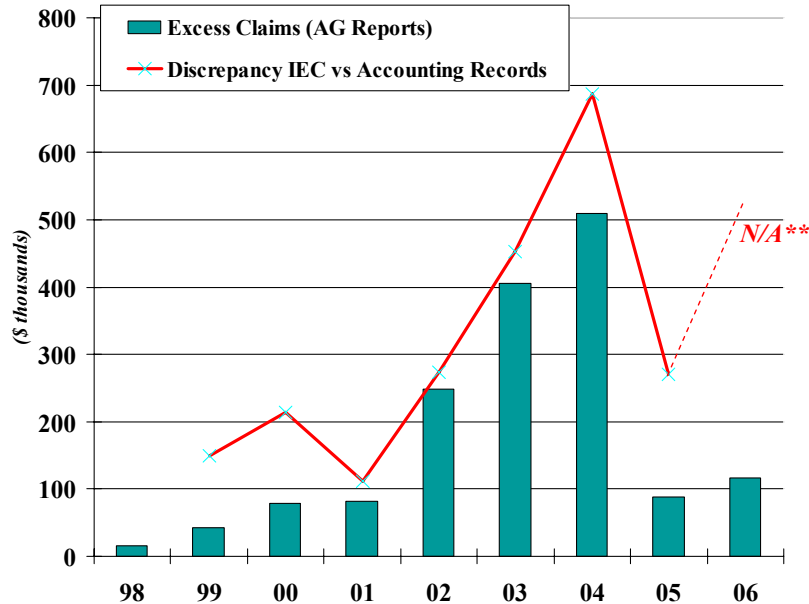
Before proceeding to an assessment of the specific deficiencies in House administration, it is useful, I believe, to address the timing of their origins. The following observations can be made at the outset:

- The Auditor General has provided no evidence of excess expenditure claims on constituency allowances prior to 1997-98;
- While there were some excess claims identified in 1998-99 to 2000-01 (totaling in the order of \$16,000 to \$80,000 a year), the level of excess claims jumped in 2001-02 to \$248,000, peaked at over \$480,000 in 2003-04 and then declined significantly;
- The reporting discrepancy between the expenditures on constituency allowances reported in the annual IEC Reports to the House of Assembly, and the amounts recorded in the constituency allowances account reflected in Government's official public accounts, appears to have commenced in 1998-99, increased significantly in 2001-02 and peaked in 2003-04;
- In March of 2000, the Auditor General had decided to commence a legislative audit of the House of Assembly, but was ultimately prevented from doing so after the House quickly changed the IEC Act in May 2000; and
- In the summer of 2000, the IEC issued a policy, pursuant to the May legislative changes, which effectively required the Comptroller General to make payments on behalf of the House of Assembly with no access to supporting documentation.

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

Chart 4.1

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



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

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

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

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

The Root Cause of the Problem: Systemic Failure

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

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

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

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

- 1) an improper reliance on the notion of *legislative independence* as a justification for implementing unsafe financial practices;
- 2) a broad failure in *management responsibility and accountability*;
- 3) serious deficiencies in *front line administrative practices*;
- 4) a number of *notable inappropriate decisions* made by the Internal Economy Commission;
- 5) a failure to place any degree of importance on the fundamental values of *governance, accountability and transparency*;
- 6) a failure of the *central control agencies of government* to assert sufficiently their authority in financial matters;
- 7) the implementation of an *ineffective audit process*;
- 8) *inaction by the Public Accounts Committee*;
- 9) the creation of an *ever-weakening legislative framework*; and
- 10) an inappropriate "*tone at the top.*"

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

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

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

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

The Abuse of Legislative Independence

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

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

- exempt from the extensive and generally applicable financial policies and controls concerning the management and administration of public money as set out in the financial manual established by Treasury Board under the authority of the *Financial Administration Act*;
- exempt from the purchasing policies, procedures, and controls as prescribed by purchasing and public tendering legislation; and
- exempt from some of the reporting, expenditure monitoring and analytical review processes of Treasury Board.

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

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

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

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

(i) Financial Policy and Internal Control Vacuum

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

(ii) Audit Process Disrupted

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

(iii) Comptroller General Rendered Ineffective

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

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

(iv) IEC a Power Onto Itself

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

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

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

Failure in Management Responsibility and Accountability

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

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

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

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

(i) Inadequate Senior Management Scrutiny of Finances

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

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

(ii) Minimal Scrutiny of the Funds Transfer Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) No Reporting to MHAs on Constituency Allowance Status

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

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

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

(vi) No MHA Information Manual

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

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

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

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

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

(vii) Inappropriate Delegation of Authority

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

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

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

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

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

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

(ix) No Orderly Record of Assets and Leased Equipment

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

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

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

Deficiencies in Front Line Administrative Practices

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

(i) Inadequate Document Review

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

(ii) An “Upside-Down” Process

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

(iii) Claims Signed Twice by Same Individual

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

(iv) Claims Prepared and Approved by Staff

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

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

(v) Flawed Electronic Payment Authorization Process

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

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

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

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

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

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

(vi) Lack of Clarity and Consistency

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

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

(vii) Double Billing and Double Payments

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

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

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

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

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

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

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

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

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

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

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

(viii) Lack of Compliance Testing

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

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

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

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

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

The internal audit function in Government is not sufficiently resourced to adequately perform the duties expected of a modern and effective internal audit function. Internal audit is currently comprised of 3 positions, a decrease of 18 from the 21 positions in 1991.

An internal audit function is an integral part of an effective internal control system. Without such a system, including the presence of an internal audit function, instances of the following may go undetected:

- public money not being appropriately collected and disbursed;
- non-compliance with legislation and/or government policies;
- lack of safeguarding and accounting for the Province's assets; and
- accounting and management control weaknesses.⁷

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

(ix) Resource Shortages

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

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

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

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

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

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

Notable Inappropriate Decisions

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

(i) The HST “Top-Up”

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

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

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

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

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

(ii) Discretionary Allowances

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

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

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

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

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

tomorrow and reinstating another discretionary unaccountable spending regime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) On March 1, 2004, the IEC had launched a renewed focus on “Accountability and its Relevance to Constituency Allowances” based on a memorandum prepared by the Speaker;
- (ii) On the same date, the IEC had ordered a 5% reduction in members’ constituency allowances, effective April 1, 2004;
- (iii) On March 31, 2004, the IEC revoked the previous entitlement of MHAs to claim a portion of their constituency allowance expenditures without receipts and, in an otherwise unaccountable manner; it directed that all such expenditures be “*reimbursed only on the basis of receipts*” [emphasis added];
- (iv) On April 1, 2004, the provincial public service went on strike in response to a wage freeze announced by the Government, which cited dire economic circumstances facing the province;
- (v) On May 4, 2004, the *Public Services Resumption and Continuation Act*⁹ came into force ordering employees back to work and legislating a wage freeze. Public servants were to receive no increases for the first two years of their contract;
- (vi) Government’s financial accounts for the 2003-04 fiscal year had been kept open to May 20, 2004 (beyond the normal April 30 cut-off), because of the public service strike. That meant that payments made up to the cut-off date could be retroactively included in the accounts for the fiscal year that ended on March 31, 2004;
- (vii) On May 12, 2004, the IEC approved a special payment of \$2,500 + HST (\$2,875) to MHAs beyond the established maximums of their constituency allowance limits. These payments could be claimed without being supported by *any* receipts for actual expenditures incurred and were to be paid in respect of the fiscal year just ended. The claims were back-dated and payments were processed by the May 20 cut-off date and charged to the 2003-04 fiscal year. Exhibit 4.1 provides examples of the MHAs claim documentation to support this payment;
- (viii) The decision to accept claims for these special payments was directly contrary to the policy approved by the IEC only six weeks earlier that all claims against a member’s constituency allowance must be supported by receipts;

⁹ S.N.L. 2004, c. P-44.1.

- (ix) *There was no disclosure at the time.* The IEC report for fiscal 2003-04 tabled on December 13, 2004, contained no reference to the payment in the appended minutes, since the decision was approved after the end of fiscal 2003-04;
- (x) An opaque minute dated May 12, 2004, appeared in the *IEC Report for Fiscal 2004-05*, which was tabled in the House on May 17, 2006 over two years after the decision was made and the money expended. That minute merely outlined that approval of a “proposal” relating to Members’ allowances had been given. It was impossible to determine from that minute that payments of \$2,875 each had been made to MHAs;
- (xi) The IEC’s annual report to the House actually misstated the information respecting the maximums that each MHA was allowed to claim against his or her constituency allowance because the extra payments that had been authorized were not added to the maximums. A person reading the report would therefore be misled as to the maximum amount to which any MHA had access;
- (xii) The existence of the payment authorization and the amount was stated in the minutes of the “executive committee” of the IEC, but these minutes are not disclosed in the annual report of the IEC to the House nor to the public in any other manner. One is tempted to draw the conclusion that the minutes that were prepared for public consumption were “sanitized” to delete specific information about the transaction;¹⁰
- (xiii) The annual report of the IEC to the House for the fiscal year 2003-04 clearly announced that there was to be a 5% reduction in Members’ constituency allowances commencing April 1, 2004.¹¹ Persons reading this report would have been left with the impression that MHAs had their payments reduced; yet the failure to announce with similar clarity six weeks later that they became entitled to receive an additional \$2,875, thereby negating much of the previous reduction, and the fact that the report of that “decision,” as oblique as it was, was not made until the annual report a year later than the one in which the reduction was announced, only compounded the misleading nature of what was happening; and
- (xiv) The first public revelation of the details of the decision was made by the Auditor General in his report tabled January 31, 2007.


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

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

Exhibit 4.1

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

Name _____
 Address _____



House of Assembly
 Commission of Internal Economy
 Members Constituency Expense Claim

Period of Expense May 17 2004 to May 17 2004 Maul

DATES	PER DIEM HOUSE CLOSED	PER DIEM HOUSE OPEN	TRAVEL EXPENSES	OTHER	DISCRETIONARY
May 17 2004				\$2875.00	
Total				\$2875	


I certify that this claim is in accordance with Rules of the Commission of Internal Economy of the House of Assembly. Claim verified; arithmetically correct; within the maximum limit and rules of the Commission. Certified for payment from the Consolidated Revenue Fund for submission to the Office of Comptroller General.

Members Signature _____ Clerk _____ Clerk of the House of Assembly (or designate) _____

Date 17 May 2004

Amount: \$ 2875.00 (Total HST included \$ _____)

Name: _____
 Address: _____



House of Assembly
 Commission of Internal Economy
 Members Constituency Expense Claim

Period of Expense May 12, 2004 To May 12, 2004 Maul 344

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

I certify that this claim is in accordance with Rules of the Commission of Internal Economy of the House of Assembly. Claim verified; arithmetically correct; within the maximum limit and rules of the Commission. Certified for payment from the Consolidated Revenue Fund for submission to the Office of Comptroller General.

Members Signature _____ Clerk _____ Clerk of the House of Assembly (or designate) _____

Date: May 12, 2004 Amount: \$ \$2,875.00 (Total HST included \$ _____)

* Members' names and signatures deleted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lack of Commitment to Governance, Transparency and Accountability

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

- responsibility to act on all matters of financial and administrative policy affecting the House of Assembly;¹⁴
- responsibility to publicly disclose all decisions of the IEC;¹⁵
- authority to order payments from the approved estimates to defray the expenses of the House of Assembly;¹⁶
- authority to make policies concerning the documentation to be provided to the Comptroller General in support of payments (which effectively enabled the IEC to override the normal requirements of the Financial Administration Act concerning access to documentation);¹⁷
- responsibility to appoint an auditor and to ensure that the accounts of the House are audited annually;¹⁸ and
- authority to make rules respecting Members' indemnities, allowances and salaries.¹⁹

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

¹⁴ Ss. 5(2).

¹⁵ Ss. 5(8).

¹⁶ S. 7.

¹⁷ S. 8.

¹⁸ S. 9.

¹⁹ S. 14.

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

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

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

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

(i) Unstructured IEC Operations

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

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

(ii) Inadequate IEC Oversight

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

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

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

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

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

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

(iii) No Orientation Nor Guidance for IEC Members

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

procedures.

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

(iv) No Code of Conduct

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

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

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

(v) IEC Deliberations Not Public

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

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

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

(vi) Two Sets of IEC Minutes

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

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

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

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

(vii) Substance of Important IEC Decisions Not Disclosed

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

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

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

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

(viii) Records Management Deficiencies

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

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

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

(ix) Inaccurate and Misleading Reports

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

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

- (ii) The reports understated expenditures of certain MHAs relative to the amounts of actual payments recorded on government's financial management system, specifically in relation to the five MHAs named by the Auditor General as having exceeded their maximum allowances, and overstated the expenditures of others who had not used all of their maximum allowances; and
- (iii) The reports do not include the HST portion of the amounts paid to MHAs as part of their constituency allowances. Accordingly, many, if not all, of the actual amounts recorded and the maximums allowed for each MHA were understated in the sense that uninformed readers would be misled as to the total amounts spent from public funds for constituency related work.

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

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

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

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

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

(xi) Absence of Timely Disclosure

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

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

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

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

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

(xii) No Certification of Compliance and Accuracy

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

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

²⁰ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, ss. 5(8).

²¹ S.N.L. 1994, c. 9, s. 1.

²² S.N.L. 1999, c. 14, s. 1.

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

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

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

Ineffectiveness of Central Control Functions in Government

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

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

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

²³ *Financial Administration Act*, R.S.N.L. 1990, c. F-8 (*FAA*).

²⁴ S. 2(1) (m) defines “public money” expansively as “all money received, held or collected for or on behalf of the province by the minister [of Finance] or other public officer in his or her official capacity or a person authorized to receive, hold or collect the money” and includes all provincial revenues, borrowed money and money paid to the province for a special purpose.

²⁵ *FAA*, ss. 6(a) and (b).

²⁶ *FAA*, ss. 7(1) (a) – (c).

²⁷ *FAA*, ss. 7(1) (d).

²⁸ Under the current organizational framework of the executive branch of the government, the Treasury Board staff is now effectively the Budget Division of the Department of Finance.

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

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

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

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

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

²⁹ *FAA*, ss. 20 (1) and (3) (*FAA*).

³⁰ *Internal Economy Commission Act*, S.N.L. 2000, c. 17, s. 2.

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

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

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

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

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

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

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

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

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

(i) Inappropriate Account Structure in the Estimates

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

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

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

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

(ii) Inappropriate Internal Records and Accounts

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

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

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

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

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

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

(iii) Lack of an Effective Internal Audit Process

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

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

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

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

An Ineffective Audit Process

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

- i) the disruption of the audit process following the legislative amendments in 2000;
- ii) the failure to appoint an auditor for the 2000-01 fiscal year;
- iii) the excessive delay in the appointment of external auditors following the legislative change and the delays in finalizing those audits;
- iv) the failure of the external audits of 2001-02 and 2002-03 to identify any difficulties or irregularities; and
- v) the extent of the difficulties identified in the series of reports tabled by the Auditor General in recent months.

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

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

(i) Disruption of the Audit Process

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

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

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

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

(ii) Audit Process Ineffective

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

- i) any apparent weaknesses in, or absences of documented financial management, purchasing, and commitment control policies;
- ii) weaknesses in internal controls and the lack of segregation of duties;
- iii) inadequate documentation or payment approval processes;
- iv) the lack of separate MHA accounts to control constituency allowances expenditures to the approved maximum;
- v) the fact that the only records to monitor constituency allowance or payments were “off-system,” or on a computer spread-sheet that could only be accessed by one individual; and
- vi) offsite payment authorizations by an individual with no access to documentation.

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

- vii) no testing to check that payments to MHAs were within the approved maximum;
- viii) no communication to the Speaker or the Clerk to underline the fact that the financial statements for 2000-01 had not been audited, even though this was a

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

- ix) no observation that an openly acknowledged relationship between a person in a senior financial position and a supplier was an apparent conflict-of-interest;
- x) no testing process for the detection of potentially fraudulent activity; and
- xi) no meeting with representatives of the Office of the Comptroller General, who essentially maintain the accounts, to review their processes and obtain their perspective on policies and controls.

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

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

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

(iii) Audit Scope Questioned

The audits of the House of Assembly for 2001-02 to 2002-03 were “financial statement” audits, not “legislative” or “compliance” audits; nor were they “forensic audits.” They were focused purely on the financial statements with materiality threshold³¹ of some \$125,000, based on the size of the overall expenditure base of the House of Assembly. While this may be consistent with normal auditing practice for “financial statement” audits of

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

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

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

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

Inaction by Public Accounts Committee

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

- The Committee is composed of seven members from the elected Members of the House of Assembly. It consists of four members from the governing party and three members from the official opposition party. Ministers do not serve on the Committee;
- The Committee is established as per Standing Orders 65-70;
- The Chairperson is a member of the official opposition party;

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

- The Vice-Chairperson is a member of the governing party;
- The Committee is to operate in a nonpartisan fashion to hold Government accountable to the House of Assembly for the stewardship of public assets and the spending of public funds. This would include the investigation or review of all past, current, and committed expenditures of Government;
- Under the *Auditor General Act*, the Committee may request the services of the Auditor General's Office to perform specific reviews or tasks;
- Reviews and analyzes initiatives to reform financial management and control structures and processes to ensure that due regard is given to maintaining legislative accountability and enhancing it where possible; and
- Reviews and reports to the House of Assembly on matters such as those reported on in the Auditor General's reports and other issues related to the financial administration of Government.³³

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

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

(i) PAC Meetings - Infrequent

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

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

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

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

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

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

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

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

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

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

(iii) Inappropriate Overlapping Membership

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

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

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

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

An Ever-Weakening Legislative Framework

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

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

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

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

³⁴ R.S.N.L. 1990, I-14, s. 13.

³⁵ S.N.L. 1999, c. 14, s. 2.

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

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

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

(i) Expedited Legislative Amendments

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

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

(ii) Legislated Policy Transformation Through Incremental Amendments

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

³⁶S.N.L. 1999, c.14, s. 3.

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

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

- Amendments in 1996³⁷ to empower the IEC to vary the recommendations of the Morgan Report. This permitted the introduction of “block-funding” ostensibly to facilitate the realization of savings on MHA related expenditures. It also led to permitting a component of constituency allowance expenditure to be accessed without receipts, an idea inconsistent with the policy thrust of the Morgan Report. Within a few years there were major increases in constituency allowances approved by the IEC without reference to an independent review. Furthermore, these increases in allowances under the new block funding arrangement resulted in a substantial increase in expenditures on Members’ Allowances and Assistance, contrary to the notion of savings emphasized in 1996 as the basis for the legislative amendment to facilitate block funding;
- Amendments in 1999³⁸ to delegate to the IEC the power to make rules concerning benefits applicable to MHAs, and to repeal the subsection that stipulated that the recommendations of the independent commission were to be final and binding. This effectively provided the IEC flexibility to move away from the Morgan policy framework and, without the requirement for an independent commission, to alter the benefit structure as it saw fit. In particular at the time, it removed a constraint on the IEC in addressing the severance pay structure for MHAs. The IEC immediately proceeded to enhance the severance pay arrangements from the levels established in the Morgan report;
- Amendments in 2000³⁹ to require the IEC to appoint an auditor and, in addition, to provide the IEC with the authority to select and appoint the auditor and to delegate to the IEC the authority to make policies related to the type of data to be provided to the Comptroller General in support of payments. These amendments were brought forth and received the unanimous consent of the House, all in the context of ensuring accountability. As is now very clear, these amendments were used to disrupt the audit process and to deny the Comptroller General, as well as the Auditor General, any access to documentation relating to the expenditure of public monies for the reimbursement of MHAs; and
- Amendments⁴⁰ to extend the time frame for the tabling of the IEC reports in the House up to six months after the end of the fiscal year if the House was in session

³⁷ S.N.L. 1996, c. 10.

³⁸ S.N.L. 1999, c. 14.

³⁹ S.N.L. 2000, c. 17.

⁴⁰ S.N.L. 1994, c. 9, s. 1; S.N.L 1999, c. 14, s. 1.

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

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

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

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

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

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

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

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

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

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

Inappropriate “Tone at the Top”

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

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

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

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

- there are no inappropriate relationships with related parties (conflicts of interest);
- there are appropriate policies to encourage a commitment to prudent ethical standards; and
- there are controls and audit processes in place to detect potential fraudulent activity.

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

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

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

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

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

A New Beginning

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

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

Recommendation No. 1

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

Recommendation No. 2

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

- (a) establish an administrative framework for the House of Assembly that is transparent and accountable;***
- (b) place responsibility with individual Members to conduct their public and private affairs so as to promote public confidence in the integrity of each Member, while maintaining the dignity and independence of the House of Assembly;***
- (c) promote the equitable treatment of each Member of the House of Assembly;***
- (d) establish clear rules with respect to salary, allowances and resources for elected office holders and to provide for mandatory review at regular intervals;***
- (e) provide for clear and timely disclosure in relation to operations of the House of Assembly establishment, including Members' salaries, pensions, allowances, resources and separation payments that are consistent with the public interest;***
- (f) create an environment for Members in which full-time devotion to one's duties is encouraged; and***

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

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



Chapter 5

Responsibility

The honor of the political leader, of the leading statesman, ... lies precisely in an exclusive personal responsibility for what he does, a responsibility he cannot and must not reject or transfer.

— Max Weber¹

“Systemic Failure” as “Human Failure”

The election to political office carries with it the acceptance of a leadership role in the community. One of the expectations of leadership is that the leader will be responsible and accountable for what he or she does and will apply himself or herself with diligence to the tasks at hand.

Chapter 4 described the identified problems in the management and financial administration of the House of Assembly as a *systemic failure*. This means that there was a broad, system-wide breakdown, not only in controls and proper decision making, but also in attitudes and sense of responsibility on the part of those in charge.

One of the dangers of describing something as a *systemic failure* is that there is a tendency to “de-personalize” the nature of the problem. We should never forget that a systemic failure is always, at its root, a *failure of people*. It is the actions, inattentions and attitudes of people that will ultimately determine whether a system works or fails. At its most basic, a successful system must have actors who acknowledge and accept responsibility for their role in it. This is certainly true where the actors have been entrusted with authority to control and spend public money. It is not enough simply to refrain from intentionally misappropriating it. There must at all times be a heightened sense of responsibility and appreciation that they are the guardians of the public purse and a willingness to be proactive

¹ Weber, Max, “Politics as a Vocation” [Politik als Beruf], *Gesammelte Politische Schriften* (Muenchen: Dunckerf Humblodt 1921), pp. 296-450. This speech was first given at the university in Munich in 1918, and published the following year by Duncker & Humboldt.

and vigilant to ensure that even inattention to duty or complacency does not contribute to system breakdown.

In this chapter attention will be focused on the need for acceptance of responsibility by MHAs, the Commission of Internal Economy, the Speaker, the Clerk of the House, the staff of the House administration and others, not only in an after-the-fact manner, but in carrying out their ongoing responsibilities on a day-to-day basis. The emphasis will be on the creation of an environment where the need for proactive responsible behavior can be constantly brought home to the actors involved, leading ultimately to the establishment of a culture of duty rather than a culture of self-interest, cursory engagement or dereliction. The basic values of accountability and transparency, amongst others, will be examined with a view to translating them into a structure that enhances a sense of public responsibility and, in so doing, may contribute to building public confidence in the system.

External and Internal Responsibility

One of the themes underlying many of the representations made to me and in many of the explanations for the problems with the existing system of administering compensation and allowances for MHAs, has been the notion of *external fault or responsibility*. This took two forms. When confronted with a demand for an explanation of why certain events occurred as they did, there was a tendency to say either that the problem was a “systemic” one, thereby masking the fact that ultimately it is people who make a system work or not work, or, if compelled to point a finger at an individual, to say that “it’s not me; it is someone else” who is responsible. Sometimes this mutates into an exercise in scapegoating.

A mature political system, like any system, must have clearly demarcated areas of responsibility for the actors within it, together with an ethos that encourages a willingness on the part of those actors to be prepared to live up to the standards expected of them and to acknowledge failures. Without a culture that encourages honest introspection and a willingness to accept the possibility of *internal fault or responsibility* in appropriate cases, there is a risk that deep cynicism and suspicion will develop among those outside the system who hear an assertion of external responsibility that does not appear credible, leading ultimately to an assumption (even where the actor in fact has no personal responsibility) that the person seeming to deflect blame has something to hide. Ultimately this translates into a received wisdom that politicians are not honest in what they say and generally act out of self-interest.

Often, this over-developed tendency to lay responsibility at the feet of some external source involves too simplistic an analysis. This is well-illustrated, I think, by the recent public controversy, mentioned earlier, involving allegations of “double billing” by certain members against their constituency allowances. Public statements by some individuals, both MHAs and members of the public, have suggested that the problem of double billing arose out of poor bookkeeping practices in the House of Assembly. However, too great a focus on the inadequacies of accounting controls in the House masks an important distinction that has been alluded to earlier. The “problem of double billing” is, in reality, two separate

problems: double *billing* and double *payment*. When this distinction is kept in mind, it is clear that responsibility for ensuring that double *billing* does not occur must rest with the MHA concerned. It is the Member who incurs the expense, controls the records of that expense and causes the claim form to be completed. It is up to the Member to maintain proper controls over the record-keeping within his or her constituency office and to instruct any assistant to whom the task is delegated as to the manner in which the claim process should be carried out. If this is done correctly, there would be no issue. It does not take much sophistication to recognize that one ought not to claim for something twice, and that one has to be alert to that possibility inadvertently occurring when individual receipts are being assembled for claim submission.

It is only where the member does not maintain proper records, or does not take the time to check back over previous records against the possibility of submitting a claim twice, or does not instruct an assistant properly, or a mistake is otherwise made, that there is even a possibility that public funds will be spent improperly.

It has been said that MHAs were encouraged to rely upon the administrative staff in the House of Assembly to pick up any mistakes that may have been made. In fact it was suggested that MHAs were lulled into a false sense of security in relying upon the House staff for this purpose. In some cases, claim forms were actually prepared and filled out by House staff using a collection of receipts that may have been deposited on a staff member's desk by an MHA, and using forms that had been signed blank in advance by the member. I do recognize that, depending upon the nature and intensity of the representations that may have been made to MHAs in this regard, it may not have been totally unreasonable for members to take some comfort in the fact that whatever they submitted would be double-checked. Nevertheless, I do not accept the proposition that it was appropriate for MHAs to download their total responsibility on to others. Surely, there remains a responsibility on the part of the MHA to attempt to be as accurate as possible and not to claim something they have not reviewed and agreed with. Otherwise, MHAs would be encouraged to submit claims for all sorts of things without giving any independent judgment as to whether or not the types of claims were within the understood guidelines or not.

Other scenarios may not be quite so simple. For example, it may be said, analogous with the double billing scenario, that MHAs are equally totally responsible for ensuring that their spending does not exceed specified maximums. However, if the systems are not in place to track spending amounts, and Members are encouraged to rely on officials to tell them when they are over their limit, there may be some basis for saying that the responsibility for exceeding allowance maximums might not rest totally with the MHA concerned. Having said that, it seems to me that there is still a residual responsibility on the part of the Member. Clearly, where there are substantial excesses, one would expect the Member to have a general (if not a precise) sense of whether the amount of spending is likely to be over the maximum allowable.

A still more difficult situation is where the issue involves determining whether a particular item of expenditure falls within the types of expenditure that are allowed to be claimed. This is an area where an MHA may have legitimate difficulty in deciding, in a

particular case, whether to make a claim. In close cases, it may not be sufficient to rely on generalized principles. This is clearly a situation which does require clear rules, or a means of getting clear rulings.

At the end of the day, however, the MHA concerned must bear the residual responsibility for any improper expenditure of public funds. In the words of the great political sociologist Max Weber in the epigram at the beginning of this chapter, “the honor of the political leader, of the leading statesman ... lies precisely in an exclusive *personal* responsibility for what he does, a responsibility he cannot and must not reject or transfer.”² It is not sufficient, I would suggest, in cases of doubt to “take a chance” and make a claim, hoping that others will take the responsibility for allowing or disallowing it. In the end, it has to be a matter of judgment and conscience on the part of the MHA, recognizing that what he or she is dealing with is not his or her own money. Prudent stewardship should require erring on the side of not making a claim unless the MHA concerned is satisfied that it is completely legitimate.

This brief discussion underlines the need for clear criteria to be established to assist MHAs in making appropriate decisions with respect to the use of public funds. The establishment of clear criteria, in itself, will go a long way to creating an environment of responsibility.

Accordingly, I recommend:

Recommendation No. 3

A proper regime providing for claims for reimbursement by MHAs for expenditures made in the performance of their constituency duties should:

- (a) place ultimate responsibility on the MHA for compliance with the spirit and intent of the regime as well as its specific limits and restrictions;***
- (b) provide adequate resources, instruction and training to MHAs and their constituency assistants to enable them to understand and comply with the regime;***
- (c) be clear and understandable in its application;***
- (d) contain detailed rules and examples of the types and amounts of expenditures permitted; and***
- (e) contain mechanisms whereby, in doubtful cases, MHAs can obtain rulings which they can reasonably rely on in making and claiming for a particular expense.***

² See footnote 1.

The other component of responsibility is that there must be a means of calling violators of clear criteria to account and taking enforcement action in respect of those violations. Without a mechanism of calling to account, the public will not have confidence that the persons within the system are being encouraged to take their responsibilities seriously. It is not sufficient to rely only on criminal and quasi-criminal sanctions in the general law.³ They have limited application. Enforcement of standards of public behaviour must be accomplished through a variety of other, more broadly applicable, mechanisms.

The rest of this chapter will focus on a number of disparate topics, but which have one of two unifying themes: the establishment of clear expectations and the creation of mechanisms for calling persons to account when those expectations are not met.

Tone at the Top

In Chapter 4 I observed that the “tone at the top” of an organization is fundamentally important in supporting a culture of responsibility. I further observed that there was a failure to pay proper attention to governance issues within the House, with the Commission of Internal Economy not giving the financial management and administrative affairs of the House the priority they deserved and not regarding themselves as having sufficiently high duties of oversight and due diligence.

As I observed in Chapter 4, the “tone at the top” filters down and sends signals throughout the organization as to the overall standards of behaviour expected. Although there has been significant improvement, resulting in part from initiatives taken by the current Speaker since 2004 to improve attention to governance issues, there is, as I have noted, still room for improvement. Other steps should be taken to promote and encourage a sense of responsibility at all levels of the House organization that is commensurate with the duties that are imposed. This is important not only to improve the overall environment, but also to promote public confidence in the integrity of the institution.

The Commission of Internal Economy must take a leadership role in this regard.

Members’ Codes of Conduct

The notion of a code of conduct that enunciates basic standards of behaviour has been an integral part of regulation of the professions for a long time. More recently, it is

³ See *Criminal Code of Canada*, R.S.C. 1985, c. C-46, Ss. 12 (influence peddling); 122 (Breach of Trust by a Public Officer); *Provincial Offences Act*, S.N.L. 1995, c. p. 31.1, s. 5.5 (General Penalty for Contravening Provincial Statute).

becoming common in the business world.⁴ In recent times, a number of jurisdictions both in Canada and elsewhere have taken the step of adopting codes of conduct to govern parliamentarians in the conduct of their duties.⁵

The importance of promoting high standards of behaviour by public officials was emphasized by the Supreme Court of Canada, as follows:

It is hardly necessary ... to expand on the importance of having a government which demonstrates integrity. Suffice it to say that our democratic system would have great difficulty functioning efficiently if its integrity were constantly in question. While this has not traditionally been a major problem in Canada, we are not immune to seeing officials fall from grace as a result of a violation of the important trust we place in their integrity ... [T]he importance of preserving integrity in the government has arguably increased given the need to maintain the public's confidence in government in an age where it continues to play an ever increasing role in the quality of everyday people's lives ...

In my view, given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe.⁶

I am satisfied that a code of conduct is an important element in fostering public trust in our elected officials and in the institutions in which they operate. By setting out guidelines as to the conduct expected of MHAs in fulfilling their duties, a code will reinforce the notion of accountability that should permeate the organization and set an appropriate tone for the House. As stated by E. N. (Ted) Hughes, Conflict of Interest Commissioner of British Columbia:

⁴ Recently a study was conducted that asked the CEOs of many of Canada's top organizations whether their organization had a corporate ethics policy in place. Eighty-six percent of the respondents to this survey stated that their corporations had a code of ethics in place. As well, 97% of respondents felt that the policy they had adopted was effective. Jang B. Singh, *Business and Society Review: Ethics Program in Canada's Largest Corporations* (Oxford: Blackwell Publishing, 2006).

⁵ See Alberta, Office of the Ethics Commissioner, *Conflict of Interest Legislation, Policies and Guidelines for Members of the Legislative Assembly of Alberta and Designate Senior Officials of the Public Service of Alberta*, (2006); Nunavut, Legislative Assembly, *Members Obligations*, (2006); Saskatchewan, Legislative Assembly, *Code of Ethical Conduct for Members of the Legislative Assembly*, (2006); Canada, *Conflict of Interest Code for Members of the House of Commons*, (2006), (Standing Orders Appendix 1); and United Kingdom, House of Commons, *The Code of Conduct together with the Guide to the Rules Relating to the Conduct of Members*, (2005).

⁶ Per L'Heureux-Dube, J, writing for the majority in *R. v. Hincey* (1996), 111 C.C.C. (3d) 353 (SCC) at paras 14 and 18 (on appeal from the Newfoundland and Labrador Court of Appeal).

It is my view that a nation is no stronger than its ethical and moral principles, and the ultimate strength of those ethical and moral principles is in the hands of those citizens democratically elected to lead our country in the provinces, the territories and our municipalities. The cornerstone that underpins sound moral and ethical principles and values is the integrity, honor and trustworthiness of our democratically elected officials at all levels of government.⁷

Many of the codes that have been adopted are expressed in general, aspirational language. Their intent is not to set out a set of detailed rules to control every aspect of Members' behaviour, but rather to set general public standards by which the behaviour of parliamentarians can be assessed and, in so doing, provide general guidance to them so they can order their affairs on the basis of principle, not expediency or self-interest. The focus of a code is usually not on obviously illegal behaviour since that is already the subject of normative rules in the law of the land. Instead, codes often focus on areas of activity that would generally be regarded as unethical or inappropriate according to community expectations. In that regard they often contain general guidelines, and broad prescriptions and prohibitions.

Conflict of interest guidelines are a subset of broader guidelines that are often contained in codes of conduct. In this province, MHAs are subject to a series of conflict of interest prescriptions set out in legislation.⁸ The trend in Canada and in the United Kingdom is towards a movement away from specific narrow concerns like conflict of interest to broader concerns of general propriety and integrity. It is generally recognized now that legislative functioning can be compromised in many ways apart from violation of conflict of interest prescriptions.

In those jurisdictions that have adopted codes of conduct for elected officials, it is generally accepted that standards of proper behaviour need to be declared publicly and, as well, an effective process for holding officials to account for breaches of those standards should be developed and implemented. To achieve acceptability by the public, however, any code of conduct that is adopted must be seen to be administered impartially and independently of the political system to which it applies.

A number of approaches to the implementation of a code of conduct have been developed. One is to enshrine the code in a legislative framework. Another is to have the legislators themselves develop the code and assign it either to a parliamentary commissioner for implementation and enforcement or to a committee of the legislature itself. A further approach would be simply to adopt a series of aspirational guidelines and leave compliance internally to each individual member's conscience.

⁷ The Hon. G. Evans et al., "A Roundtable on Ethics and Conflict of Interest," (1995-96) 18 Canadian Parliamentary Review 25 at p. 31.

⁸ *House of Assembly Act*, R.S.N.L. 1990, c. H-10, Part II.

In my view, given the current political climate, the notion of self-regulation by Members themselves would likely have little credibility with the public. If a code of conduct is to be an important element in a political system designed to foster public trust, it must be seen to be more than merely aspirational; in short, there must be some mechanism for achieving accountability. Having said that, the actual development of the code should not, I believe, be imposed from without. It is now recognized that, to be effective, codes must emerge from within the culture of the organization and reflect its own fundamental values.

It would be inappropriate in the circumstances, therefore, to attempt to legislate a code on the basis of detailed recommendations from me. The Members of the House of Assembly themselves must have a role in debating and defining in a public way the standards of public behaviour that they believe should apply to them.

In my view, therefore, while I am satisfied that the adoption of a code of conduct is advisable, the way in which that should be brought about is by the House referring the matter to the Standing Committee on Privileges and Elections, or to a committee specially constituted for the purpose, to develop and propose a code to the House for adoption by resolution.⁹ Types of areas often covered by codes of conduct are as follows:

- standards of behaviour, impartiality and conflicts of interest
- appointments and other employment matters
- outside commitments
- personal interests
- the tendering process
- corruption
- use of financial resources
- gifts
- whistle-blowing¹⁰

There are many examples of codes in existence. Several of them are appended to this report.¹¹ As a starting point, a suggested draft for consideration by the Standing Committee on Privileges and Elections is also appended.¹²

Upon the adoption of a code, it should be regarded as setting a standard of behaviour

⁹ I have been informed that the Privileges and Elections Committee of the House has not been appointed for the current General Assembly. Obviously, if that committee is to be charged with responsibility for developing and recommending a code of conduct to the House, members should be appointed forthwith.

¹⁰ These components for a code of conduct are taken from “Code of Conduct for Local Government Employees,” a paper prepared by the Local Government Staff Commission for Northern Ireland, (2004). They are but some of the many kinds of conduct that can be considered for such a code.

¹¹ See Appendix 5.1 for samples from the United Kingdom House of Commons, the Legislative Assembly of Saskatchewan, the Legislative Assembly of Nunavut and the Federal House of Commons.

¹² See Appendix 5.2.

for members which, if violated, would expose the violating member to censure. The House of Assembly presently has a mechanism in place with respect to conflicts of interest for investigation of alleged violations by the Commissioner for Members' Interests who can make recommendations to the House for a variety of sanctions.¹³ I believe this model, which has some familiarity, should be adapted to deal with broader questions of behaviour as well as conflicts of interest.

All Members of the House, when being sworn as Members following an election, should be expected, as part of the oath that they swear, to include an affirmation of support for the principles stated in any code of conduct adopted by resolution of the House. In this way, especially for newly elected members, it can become an important reminder of the expectations for an MHA's behaviour.

It may be objected that, for existing Members of the House, the participation in the development of a code and its affirmation may amount to an acknowledgment by Members that they have not, until now, met the standards being adopted. On the contrary, participation in a debate and in the adoption and subsequent affirmation of a code gives each Member of the House an opportunity to affirm values which they believe in and have attempted to follow. The process can and should be a positive affirming experience.

It may also be argued that codes are in essence "motherhood" statements and that there is little likelihood of real practical impact or enforcement. The answer to this objection is found in the following observation:

Arguing that codes should be avoided because they will never be implemented or enforced is to concede the point that is at issue; that parliament is incapable of regulating itself. It is to concede that the public's perception is correct. So the conclusion is that codes are needed in order to prove the skeptic wrong; and if they are to be effective, and to avoid being classed as window dressing or ploys to avoid responsibility, or if they are to avoid reducing still further the reputation of parliamentarians and parliament, then codes will need to be enforced and sanctions imposed upon those who violate them. Imposing sanctions will not be the first option. Education is usually the first appropriate response, but the possibility must exist if the code is to be taken seriously by both those who must obey it and those whose trust it is intended to garner.¹⁴

It is not enough to rely upon the ordinary electoral process to ensure proper standards of public behaviour. The ballot box does not always remove people who display less than desirable standards of public behaviour. That is why it is useful, in my view, to have clear,

¹³ *House of Assembly Act*, Ss. 43 - 46.

¹⁴ Dr. Andrew Brien, "A Code for Parliamentarians?" (Research Paper 2), September 14, 1998), online: Parliament of Australia Parliamentary Library, <<http://www.aph.gov.au/LIBRARY/Pubs/RP/1998-99/99rp02.htm>>.

understandable and published standards against which the behaviour of our elected officials can be judged and subjected to criticism between elections. In that way, accountability may be improved.

I am therefore prepared to recommend:

- Recommendation No. 4***
- (1) Upon the legislative reforms recommended in this report coming into force, the Speaker should refer to the Standing Committee on Privileges and Elections, or to a special committee appointed for the purpose, the responsibility for developing and proposing to the House of Assembly the adoption, by resolution, of a code of conduct for Members to provide guidance on the standards of conduct expected of them in discharging their legislative and public duties;***
 - (2) The Commissioner for Members' Interests, constituted under the House of Assembly Act, should be assigned responsibility for investigating and conducting an inquiry, if necessary, to determine whether a Member has failed to fulfill any obligation under the code of conduct and to report to the House with recommendations as to appropriate sanctions similar to the ones that are available for breaches of conflict of interest duties in Part II of the House of Assembly Act. The Act should be amended accordingly;***
 - (3) The Commissioner for Members Interests should be renamed "Commissioner for Legislative Standards" in recognition of this expanded role; and***
 - (4) The oath or affirmation of office that a member of the House of Assembly is required to swear or affirm upon election to the House should include an affirmation and an agreement to follow the code of conduct adopted by the House.***

In making this recommendation, I recognize that there are more elaborate mechanisms employed in some jurisdictions with respect to the way in which allegations of a breach of code of conduct may be investigated and enforcement action taken. I have declined to recommend a more elaborate scheme at the present time. This is partly because the provisions of Part II of the *House of Assembly Act* dealing with conflicts of interest of Members are not technically within the scope of my mandate and the whole area of the code of conduct, including conflict of interest, should be reviewed comprehensively. That would require a more detailed analysis than I was able to give to the matter for the purposes of this report. I regard the foregoing recommendation, therefore, as an interim measure, but an interim measure that should be proceeded with forthwith with a view to restoring public confidence.

Code of Conduct for House Staff

Because so few of the expected standards of behaviour of the House staff were recorded in formally issued and easily accessible policies, there was often general confusion as to what policies actually applied and, in particular, whether policies of the executive applied within the House. Issues with respect to alleged conflicts of interest of a senior member of the House administration in dealing with businesses in which he may have had an interest and the failure to follow up to ensure that, after the employee was told to cease, that he did in fact cease, have already been referred to.¹⁵ As well, the Auditor General has made reference in his reports to a failure to abide by government tendering practices.

This is an unacceptable situation. The staff should have clear guidelines setting out the standards expected of them. There should be a code of conduct promulgated for House staff as well as for MHAs. Not only would it be fairer to them, but clearly understood guidelines would go a long way to enhancing a general culture of accountability within the House administration.

Generally, the standards to be expected of House staff should be as close as possible to the standards expected in the general public service. The adoption of executive policies in this regard would be not be a violation of legislative autonomy because it is recognized that the IEC could make changes in the policies to fit its own special circumstances if that were necessary. It is important, however, to ensure that if the IEC were ever to opt out of executive policies it not leave a void, but have a responsibility to substitute other substantive policies in their place.

I therefore will make the following recommendation:

Recommendation No. 5

- (1) The Commission of Internal Economy should develop and adopt a code of conduct applicable to persons employed in the House of Assembly and in the statutory offices;***
- (2) All policies and guidelines respecting standards of behaviour of House staff should be made by the Commission of Internal Economy or the Clerk in writing and published in a formal policy manual;***

¹⁵ Chapter 3 (Background) under the heading “The Refocusing Era: 2004-2005” under the sub-heading “Audit of the House of Assembly.”

- (3) *The Conflict of Interest Act should, as a general rule, apply to the House of Assembly; and*
- (4) *If the Commission were to modify the existing conflict of interest regime and other standards of conduct applicable to staff in the executive branch of government, the IEC should be required to put in place an alternative substantive regime.*

Access to Information and the House of Assembly

A fundamental part of achieving transparency in government is the provision of access to information on a timely basis to persons who might have use for it or might have an interest in monitoring and reporting on the activities of officials and politicians. Within the last 15 years, there has been an increasing trend in Canada and elsewhere towards the enactment of legislation that provides for a general right for members of the public, subject to some exclusions, to access government records and information. Indeed, the province of Newfoundland and Labrador has recently enacted updated access to information legislation reflecting this general approach.¹⁶

The right of access given by such legislation is usually not contingent on the person seeking access being able to demonstrate that he or she has a “legitimate” or “reasonable” use for the information. In that sense, “nosey-parkerism” is not prohibited. The rationale for this is that a greater good will be achieved by allowing a broad right of access without allowing the custodian of the information to shield it from view on the pretense of questioning the motives of the person seeking it. In this way, there is a greater likelihood that transparency will be achieved. After all, if something is truly transparent it is transparent to all who care to look.

In principle, the right to access to information should apply not only to the executive branch of government, which implements the law but also to the legislative branch which makes it. “Those who insist on others being open should be open themselves. This is the essence of transparency.”¹⁷

The terms of reference require me to give consideration to “opportunities to achieve accountability and transparency,” but “without undermining the autonomy of the legislature and its elected members.” In my view, adherence to a general principle of transparency and

¹⁶*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1 (Access to information provisions in force as of January 17, 2005) [*ATIPP Act*]. The *ATIPP Act* replaces earlier pioneering legislation in this province: *Freedom of Information Act*, S.N.L. 1981, c. 5.

¹⁷ Dr. Christopher Dunn, “Access to Information Legislation and a Publication and Disclosure Regime for the House of Assembly,” p. 1. This part of the report relies heavily upon this research paper, which was prepared for the Commission and has been reproduced in Appendix 5.3 [Christopher Dunn, “Access to Information”].

accountability in the legislative branch is not fundamentally inconsistent with the autonomy of the legislature.

While the notion of legislative autonomy requires the legislature to be treated and dealt with separately from the executive and to organize and operate its affairs free from improper influence by the executive, it does not justify the legislative branch adopting a “bunker” mentality that ignores fundamental principles of accountability in government. It may, however, justify the adoption of a different or modified regime to take account of the special peculiarities of the legislative branch. For example, it would have to take account and be respectful of the constitutional principles underpinning parliamentary privilege which, as was noted in Chapter 2, is reflective of legislative autonomy.

Although the principle that a general access to information regime should apply to the legislative branch is perfectly defensible, it has not been commonly adopted by legislatures, either in Canada or abroad. This, however, seems to be a function of the age of the access legislation rather than of principled objection. Countries with older legislation, like Australia, New Zealand and Canada, do not have it, but those with more recent initial adoption, like the United Kingdom, the Scottish Parliament, The National Assembly of Wales, the Northern Ireland Assembly, the Republic of Ireland, India and Trinidad and Tobago, do have application to their legislatures. Thus the thrust of reform of best practices, as it were, is clearly with the newer access/freedom of information regimes.

This province’s *Access to Information and Protection of Privacy Act* presently does not apply to the House of Assembly. The Act places access obligations on “public bodies,” but the definition of “public body” does not include the House and specifically excludes the office of an MHA or “an officer” of the House.¹⁸ Thus, records maintained in the offices of the House of Assembly administration are completely outside the bite of the Act. Furthermore, to emphasize the point, the Act excludes “records created by or for an officer of the House of Assembly in exercise of that role,”¹⁹ thereby excluding House records even if maintained and stored in another part of the government service.

Although Newfoundland and Labrador has not shown any sign of movement towards including the legislative branch within the ambit of access to information legislation, there has been development in that direction elsewhere. Alberta and Quebec now apply their legislation to the legislative branch.²⁰ Federally, there has been a long history of advocacy for its application. Canada has had access to information legislation since 1983, but it did not apply to parliament or its officers. In 1987, a Commons standing committee advocated including both the Senate and House of Commons (but not the actual offices of senators and MPs) as well as certain parliamentary officers such as the Auditor General, the Information

¹⁸*ATIPP Act*, ss. 2(p).

¹⁹*ATIPP Act*, ss. 5(c).

²⁰Saskatchewan and British Columbia do not. The legislation in Nova Scotia, New Brunswick, Manitoba and Ontario is ambiguous on the point. See Christopher Dunn, “Access to Information” at pp. 6-7 for a more detailed discussion.

Commissioner and the Official Languages Commissioner.²¹ Again, in 2002, the Access to Information Review Task Force reasserted the appropriateness of its application based on the rationale that parliamentary bodies were public institutions and that all publicly funded bodies should fall within the ambit of the legislation.²² The Task Force also addressed the impact of legislative autonomy in this area. Dr. Christopher Dunn, in his paper written for this commission, described the approach of the Task Force this way:

In making its recommendations the Task Force was respectful of legislative autonomy, parliamentary privilege and the functional needs of officers of parliament. Parliamentary privilege, the collective and individual rights enjoyed by parliamentarians which guarantee that they will be able to carry out their respective functions without obstruction, should be the guiding principle in access questions. The Task Force, urged that the *Act* should apply to information touching on the administrative operations of the Senate, the House, and the Library of Parliament, save for the information that would be protected by parliamentary privilege. This stipulation would protect the independence and effectiveness of the two Houses. It also recommended the exclusion of the records of the political parties, as well as the personal, political and constituency records of individual Senators and members of the House of Commons ...

Officers of Parliament were also a focus of the Task Force. It recommended that the *Act* apply to the offices of ... the Auditor General, the Commissioner of Official Languages, the Information Commissioner and the Privacy Commissioner, but not to the Office of the Chief Electoral Officer. In order to respond to the concerns of the first four offices, the Task Force recommended the exclusion of records connected with the audit or investigatory functions of an Officer of Parliament, or such records from other government institutions in the custody of an Officer.²³

Since 2002, there have been further calls for inclusion of parliament within the scope of the legislation.²⁴ The Gomery Commission also made reference to access issues, though not specifically in relation to application of the Act to parliament. Of interest, however, is Gomery's recommendation that "the government should adopt legislation requiring public servants to document decisions and recommendations, and making it an offence to fail to do so or to destroy documentation recording government decisions, or the advice and

²¹Canada, Standing Committee on Justice and Solicitor General on the Review of the Access to Information Act and the Privacy Act, *Open and Shut: Enhancing the Right to Know and the Right to Privacy* (Ottawa: Queen's Printer, 1987).

²²Canada, Access to Information Review Task Force, *Access to Information: Making It Work for Canadians* (Ottawa: Queen's Printer, 2002).

²³Christopher Dunn "Access to Information", p. 7.

²⁴Further studies and reports are summarized in Christopher Dunn, "Access to Information," pp. 9-10.

deliberations leading up to decisions.”²⁵ This recommendation of an explicit duty to keep records is of significance in the context of the current inquiry. As has been noted at several places throughout this report, there have been a number of instances of misleading or missing records relating to deliberations of the Commission of Internal Economy. Although I have been given full “access” to information in the offices of the House, the staff of this inquiry have still had considerable difficulty in gaining a full appreciation of the essence of certain decisions - not to mention the nuances of certain decision making processes - because of these unexplained gaps in the records of the House.

The new *Federal Accountability Act*, which finally passed parliament in late 2006, amended the federal *Access to Information Act* so as to extend its provisions to officers of parliament (with certain exemptions and protections built-in), but drew back from its application to parliament itself.²⁶

On the other side of the Atlantic, the United Kingdom *Freedom of Information Act 2000*, which came into force in January 2005, gives a general right of access to information held by public authorities, which includes the House of Commons and the House of Lords (though with separate appropriate arrangements applying to them).²⁷ Of significance as well is that the legislation mandates that all public bodies, including the parliamentary institutions, prepare a “publication scheme” which, in relation to the Lords and Commons, resulted in information on Members’ allowances, amongst other things, being periodically publicized automatically. This placement of allowance information in the public domain, in the words of the House of Commons Commission (analogous to our Commission of Internal Economy) “constitutes a considerable extension in openness and transparency about allowances paid to Members.”²⁸

²⁵Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations* (Ottawa: The Commission, February 1, 2006), p. 181.

²⁶*Federal Accountability Act*, S.C. 2006, c. 9, Ss. 89-90; 109; 129; 141-172.1; 179; and 221 made changes to the current *Access to Information Act*, R.S. 1985, c. A-1.

²⁷ *Freedom of Information Act 2000*, 2000, c. 36.

²⁸Quoted in Christopher Dunn, “Access to Information,” p. 3. On May 18, 2007, on a second attempt, and with the tacit consent of both the Labour and Conservative front benches, a Private Member’s Bill passed in the House of Commons 113-27, amending this legislation. [If passed by the Lords and given Royal Assent, it would be called the *Freedom of Information (Amendment) Act 2007*.] The effect of the legislation would be first, to remove both Houses of Parliament from the list of public authorities included within the scope of the *Freedom of Information Act 2000* and second, to make communications between MPs and public authorities exempt from the *Act*. It is unclear as of this writing whether the bill will have enough support in the House of Lords to pass into law. The proposals have been subject to criticism by some public commentators. Significantly, many see the change as rooted in opposition to greater transparency and detail regarding Members’ expenses. *The Times* reported on May 19 that “Critics said that data protection legislation should already prevent such incidents [release of MP-public body communications], urging better enforcement, and that there was a hidden agenda to exempt Parliament from releasing other information such as MPs’ expenses. MPs have been forced into disclosing details of how much they claim on taxis, trains, flights and other transport after the previous practice of publishing a single figure for each MP’s travel expenses was challenged using freedom of information powers.” For a background to the bill, see Oonagh Gay, “The Freedom of Information (Amendment) Bill,” (Research Paper 07/18), (February 21, 2007), online: House of Commons Library <<http://www.parliament.uk/commons/lib/research/np2007/rp07-018.pdf>>. In my view this approach

The requirement of a “publication scheme” has had a very important incidental benefit for those charged with the time-consuming task of fielding and responding to access to information requests under the legislation. Because much more information is now in the public domain, there is less of a need for such requests to be made.

This theme of automatic publication of relevant information is picked up in the *Freedom of Information (Scotland) Act 2002*.²⁹ Its publication scheme provides for the publication of information in a variety of ways, including by way of a website, printed leaflets, videos and DVD and CD ROMs, and covers information available relating to the Scottish Parliament, including parliamentary business, the administration of parliament and information about individual members of the parliament. The Scottish Parliament Corporate Body (analogous to the Commission of Internal Economy) describes the application of the “high tech” scheme to Members’ allowances:

In order to ensure that the Scottish parliament’s allowances system is as open and accessible as possible, and with our obligations under [the Freedom of Information (Scotland) Act] in mind, it was agreed that all Members’ allowances information should be published on the Parliament’s website ...

We consider that the facility, which allows members of the public to view and search on-line MSPs claims and accompanying receipts in respect of allowances claimed while carrying out parliamentary duties, was an important step in ensuring that the work of parliament continues to be as open and transparent as possible.³⁰

Attitudes with respect to access to information are changing. I agree with Dr. Dunn’s summary of the position:

Access to information can now be regarded as a fundamental value not only of our country, but also of many others. As a fundamental value, its drift is towards universalism. It is significant that the scope of the program has been steadily outward, to become more inclusive, like a tree takes on rings. It began as a program three decades ago, first in the provinces, then in the

goes against the trend towards making freedom of information legislation applicable to the legislative branch and is a retrograde step, certainly as a precedent for application to Newfoundland and Labrador. Commons opponents to the measure have made comments similar to those in this report, to the effect that it was unprincipled to seek to exempt the Houses of Parliament from FOI legislation while applying it to all other public authorities; that such exemption would undermine respect for Parliament, its members and officers; and that Parliament’s ability to have authority on matters of accountability, transparency and openness would be harmed. It is significant that for the sake of principle, the Speaker, Michael Martin, has promised to continue publishing the expenses of the Members even if this Bill should pass.

²⁹ A.S.P. 2002, c. 13.

³⁰Quoted in Christopher Dunn, “Access to Information,” p. 4.

federal sphere. Its emphasis has steadily expanded.³¹

In my view, the time has come for the adoption in this province of an access to information regime and a concomitant publication scheme that is applicable to the House of Assembly and, in particular, one that will provide for public accessibility to information concerning Members' allowances.³²

Until now, the structure of the existing system respecting the setting of Members' salary levels and the setting and administration of allowances lent itself to secrecy and suspicion. The events that occurred in 2000 that removed the ability of the Auditor General to perform a legislative audit and eliminated any means of ensuring documentary justification for allowance claims, as well as the consignment to the IEC of the power to adjust salaries behind closed doors without leaving a proper paper trail that would enable complete after-the-fact examination, effectively made the IEC and the House administration a fiefdom onto itself without any proper checks and balances. In the name of legislative independence, the IEC and the House administration have hidden behind the inapplicability of the access requirements that apply to the executive branch, resulting in a "dark zone" in government into which the public cannot peer. The public concern that has been created over the alleged improper administration of constituency allowances has led to a severe lack of confidence in our political institutions.

One of the antidotes to this lack of confidence and suspicion is to shine light into the darkness by giving access to information so that members of the public can reassure themselves that public funds are being spent properly and that decisions are being made in a responsible manner. Indeed, if an access regime had been in place over the past several years, it is arguable that investigative media could have used such legislation to review Members' allowances and spending patterns and thereby brought allowance issues to light well before the issues of 2006 were identified.

To advocate application of an access regime to the House is, in my view, consistent with emerging trends in this area. It is a best practice. The time is right.

³¹Quoted in Christopher Dunn, "Access to Information," p. 10.

³² A first step towards a rudimentary publication scheme has been recommended recently in British Columbia in the *Report of the Independent Commission to Review MLA Compensation* (Sue Paish, Q.C. Chair), p. 17: "We recommend that a plain-language summary listing all expenses reimbursed to each MLA (accommodation, food, incidental expenses and travel) be tabled with the Speaker on an annual basis." Saskatchewan has already implemented a form of publication scheme: information about members' allowances must be periodically made available in the office of the Speaker and in each MLA's office for inspection by members of the public on demand.

Accordingly, I recommend:

Recommendation No. 6

- (1) Subject to limitations designed to respect the different functioning of the legislative branch, Parts I, II and III of the Access to Information and Protection of Privacy Act should be amended to provide for its application to the House of Assembly administration, including financial information about Members' salaries and expenditures on allowances, and to the offices of the Citizens' Representative, the Child and Youth Advocate, the Chief Electoral Officer, the Information and Privacy Commissioner and the Commissioner of Members' Interests;³³ and***
- (2) It should be a legislated requirement that the House of Assembly be subject to a publication regime where basic information concerning the finances of the House, especially information about expenditures in relation to Members' allowances, is made publicly available as a matter of course.***

Clearly, there are special considerations applicable to the legislative branch that may impact on the appropriateness of making certain types of material publicly available either by way of an access application or by prior publication. I agree with the analysis of the federal Task Force, referred to earlier, that parliamentary privileges must be protected. This recognizes a legitimate aspect of the autonomy of the legislature and ensures its effective functioning.³⁴ It allows protection of the legislative branch, in certain circumstances, from

³³It will be noted that I have included the statutory offices within the recommended changes. One might question whether making recommendations about them falls within my mandate. However, it must be borne in mind that issues of improper expenditure involving two of those offices have also arisen in recent years. Similar considerations of principle apply to them. Because the statutory offices are, for some purposes, part of the House of Assembly administration, which *is* within my mandate, from a practical point of view, it is necessary to deal with them if for no other reason than to differentiate between them and the general House operations.

³⁴The *House of Assembly Act*, R.S.N.L. 1990, c. H-10, s. 19 provides that the House and its members “hold, enjoy and exercise those and singular privileges, immunities and powers that are now held, enjoyed and exercised by the House of Commons of the Parliament of Canada and by the members of that House of Commons.” The case law interpreting federal law respecting parliamentary privilege in turn refers the inquiry back to these privileges as they existed in the United Kingdom parliament. See *New Brunswick Broadcasting Co v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, which holds that parliamentary privileges have constitutional status, that it is up to the courts to determine if circumstances providing the support for the existence of privilege in a given case exist, and that the test for the existence of a privilege is the test of necessity. One of the leading cases on the scope of parliamentary privilege originated in Newfoundland when it was a colony of England: *Kielley v. Carson* 1843 CarswellNfld 1, (1893), 13 E.R. 225 (JCPC). It holds that the local legislature has, in the words of Baron Parke, “every power reasonably necessary for the exercise of their functions and duties”. The test of “necessity”, to ensure that the House and its members can carry out

interference by the executive or judicial branches, or from any other person for that matter. A claim to parliamentary privilege may arise in multifarious ways. For example, in *Gagliano v. Canada (Attorney General)*,³⁵ the Federal Court held that freedom of speech regarding the debates in parliament and its committees was a parliamentary privilege, justifying a refusal of the Public Accounts Committee of the House of Commons to make available a transcript of its proceedings for use in the Gomery Inquiry to enable counsel to cross-examine a witness on the basis of prior, allegedly inconsistent, statements made by that witness before the Public Accounts Committee. The degree to which parliamentary privilege may be able to be invoked as a means of refusing to disclose information that otherwise would be available under the *ATIPP Act* will, of course, have to be worked out on a case by case basis, applying the test of necessity of ensuring that the effective functioning of the House will not be inappropriately affected by the disclosure.³⁶

As well, the personal records of a Member and the political records of his or her constituency office should also be inaccessible. Such records would relate to political strategies and decisions and to dealings with individual constituents. Those are matters where the reasonable expectation of confidentiality is high.

Other circumstances that might require exemption are those involving personal data relating to third parties and situations where the release of the data would, or would be likely, to endanger the health or safety of an individual.³⁷ These latter two circumstances,

their functions efficiently and effectively, is still essentially the test for the scope of privilege today.

³⁵[2005] 3 F.C.R. 555.

³⁶In *Canada (House of Commons) v. Vaid* [2005] SCC 30, the Supreme Court of Canada reaffirmed that it is for the courts, not the legislative body itself, to determine the *existence* and *scope* of a claimed privilege. (At the same time, of course, the judgment also reaffirmed that parliamentary privilege was as much a part of the Constitution as was the Canadian *Charter of Rights and Freedoms* and that it was up to the Court to balance both.) At para. 29 Binnie J. wrote: “The role of the courts is to ensure that a claim of privilege does not immunize from the ordinary law the consequences of conduct by parliament or its officers and employees that exceeds the necessary scope of the category of privilege.” This is consistent with the existing *Access to Information and Protection of Privacy Act*, S.N.L 2002, c. A-1.1 (if it were made applicable to the legislature) which contemplates a challenge to a refusal to provide access to requested information by appeal directly to the Supreme Court of Newfoundland and Labrador, Trial Division under ss. 43(3), or indirectly on appeal to that court from a review decision of the Information and Privacy Commissioner under s. 60.

³⁷Of interest in this connection are two administrative decisions, one in England and the other in Scotland, that have dealt with the issues of third party data protection and safety issues as argued justifications for non-disclosure in relation to parliamentarians’ travel expenses. In *The Corporate Officer of the House of Commons and the Information Commissioner and Norman Baker, MP* EA/2006/0015 and 0016 (January 16, 2007), the Information Tribunal, on appeal from decisions of the Information Commissioner, held that information giving a further breakdown of aggregate figures for travel claims for MPs already published under the publication scheme under the *Freedom of Information Act 2000* should be provided so that specific figures for rail, road, air and bicycle for each MP would be made available. The Tribunal concluded: “the legitimate interests of members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of MPs.” Similarly, in *Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body*, Decision 033/2005 (delivered October 6, 2005), the Scottish Information Commissioner held that a newspaper journalist’s request for information as to a Scottish MP’s travel claims supporting mileage, air travel, car rental and taxis without blacking out information regarding the taxi travel destinations, as had been done when the

however, are dealt with as potential exemptions in the existing legislation³⁸ and would not have to be specifically provided for in any amending legislation applying the *ATIPP Act* to the legislature.

With respect to statutory offices, I recognize that these offices deal with sensitive and confidential information gained through investigations into the lives of individual citizens who approach them for assistance. That sort of information, often given in an expectation that privacy will be respected, should not be disclosed.³⁹ Nevertheless, there is no reason why general financial and other information about the operation of the offices themselves and the expenses of the heads of the offices and the staff should not be available.⁴⁰

The office of the Auditor General should, however, be put in a separate category. At present there is a general obligation of confidentiality imposed on that office by section 21 of the *Auditor General Act* with respect to matters that come to the staff's knowledge in the course of their work. The Auditor General occupies a special - some would say unique - place in the government. This is cause for proceeding slowly before wrapping this office into any system of general reform of the legislative branch. Having said that, I believe a case can be made for subjecting the Auditor General to basic access to information requirements about the financial and administrative organization of the office. The Auditor General is, by law, an officer of the House and is responsible, just as are other officers, for the expenditure of public money. I am aware, however, that some consideration is being given to making substantial revisions to the Auditor General's constituent legislation. The better approach for the present, therefore, is to exempt the office from the reforms being recommended in this report and to recommend that the application of access to information provisions be considered at the time of the general revision of the Act.

Accordingly, I recommend:

Recommendation No. 7

(1) The application of the ATIPP Act to the House of Assembly administration should be excluded in relation to:

information was originally provided, should be granted. The Commissioner commented: "even though the [publication] scheme is audited both internally and externally. The *Freedom of Information (Scotland) Act* has brought a further expectation that information involving public expenditure should be made publicly available."

³⁸ *ATIPP Act*, Ss. 26, 27 and 30.

³⁹ In fact, there are statutory obligations of confidentiality and secrecy imposed on a number of the statutory offices. See e.g. *Citizens' Representative Act*, S.N.L. 2001, c. C-14.1, Ss. 13, 23, 27; *Child and Youth Advocate Act*, S.N.L. 2001, c. C-12.01, Ss. 13, 17.

⁴⁰ It should be noted that many government departments also are repositories of sensitive and confidential information (for example, social service recipients) but that, in itself, has not been regarded as a justification for *complete* exclusion from an access to information regime.

- (a) information protected by parliamentary privilege;*
 - (b) records of political parties and caucuses; and*
 - (c) personal, political and constituency records of individual MHAs.*
- (2) The application of the ATIPP Act to statutory offices should be excluded in relation to records connected with investigatory functions or otherwise expressly required by law to be kept confidential; and*
- (3) The ATIPP Act should not be extended to the Office of the Auditor General but the appropriateness of requiring access to information should be examined as part of a general legislative review of the Auditor General Act.*

Having recommended in Recommendation No. 6(2), that the House develop a publication scheme for the automatic disclosure of certain categories of information about House operations, it is necessary also to consider what such a scheme should look like specifically with respect to disclosure of information about MHAs' expenditures on their allowances. I believe this is one area that *must* be included in a publication scheme. It would go a long way to dispelling suspicion and mistrust in the minds of the public about the stewardship by MHAs of public money in this area if anyone who cared to look could see exactly what expenditures were being made. This is the situation that now exists in both the United Kingdom and Scottish parliaments.

The question is: what level of detail should be published? There are at least four possibilities: (i) periodic publication of running totals of expenditure by each MHA in selected categories, such as travel, meals and office operation; (ii) periodic publication of total claim amounts as of the dates the claims are processed, broken down only into totals for various categories of expenses; (iii) periodic publication of daily amounts of total expenditure, as of the days on which the expenditures are incurred, with only totals of categories of expenditure on a given day being recorded (for example, a total for three meals on a given day); and (iv) periodic publication of individual expense items, as disclosed on individual receipts submitted, such as each meal bill. It will be seen that the required level of detail increases as one moves from the first to the fourth category.

In reality, the choice to be made depends in part on the technology available and on a cost-benefit analysis of each choice. At the moment, the financial management system of government, which the House is presently accessing, is capable of producing information to the level of choice (ii) above. Any further degree of information would have to be provided by a laborious and expensive manual compilation. This is because MHAs submit claims only periodically, containing claims for reimbursement for a number of different days of activities and on each day there may be more than one item of expenditure. The forms used

by the House require the individual expenditures to be categorized in columns and the totals for each type of expenditure to be added up at the bottom of each column.⁴¹ The individual receipts are attached to the claim form as backup. After checking the receipts to the items of expenditure listed, it is the total claim that is approved for payment and the only information that is recorded in the financial management system is the total amount for which the cheque will be cut, as well as the totals of the breakdown of each category of expenditure. In that way, the system is able to keep track of the total amounts of expenditure incurred by an MHA in each category and thereby determine how much he or she has left to spend in that category for the rest of the year.

Choice (ii), insofar as it must rely on the financial management system to produce reports of expenditure, will therefore only provide totals, by category, for each claim that is periodically submitted by an MHA. It will not disclose individual expenditures, showing which hotel was stayed in or what restaurants were visited and the amounts spent on each occasion. Realistically, that is about all that can be provided in a publication scheme *at the moment using the financial management system*. At least that amount of information should immediately be published on the House of Assembly website.

Having said that, I believe that the maximum amount of information, including individual items of expenditure, should be made available if it is not cost prohibitive. I have been told that the government is in the process of introducing a new financial management system known as the “Iexpense” system in the coming year, first on a trial basis for some departments and then for all departments. Eventually, it can be made available to the House of Assembly administration as well. It may be that this new system can be reconfigured so that, when applied to the House, it can capture a much greater deal of information. When that happens, the publication scheme can and should be expanded. In the meantime, the IEC should engage in a careful study of the Scottish system, which, I understand, publishes individual items of expenditure, to see if there are other ways to duplicate that degree of publication on a cost-effective basis.⁴²

There is a supplementary question that must also be addressed in the context of a publication scheme. There may, from time to time, be differences of opinion between an individual MHA and the House officials as to just how much the MHA has spent at any point in time. Before the information is published, it is only fair to give the MHA the opportunity to dispute the calculations and to arrange for correction. Accordingly, the Clerk of the House should be required to provide periodic statements to each MHA summarizing the

⁴¹A sample of the form now in use can be found in Appendix 5.4.

⁴²I should note in passing that in Chapter 10 (Allowances) I will recommend a substantially revamped system of constituency allowances. Many expenditures now made by MHAs will henceforth be made by direct payment by the House. As well, many other expenditures will be controlled and regulated in other ways - such as by means of quantity control (for example, maximum numbers of trips), or automatic maximum *per diem* amounts rather than overall financial caps. Furthermore, many of the categories of expenditure that were allowed in the past will no longer be permitted. As a result, the amount of money available for “controversial” expenditures will be substantially reduced.

expenditures which, according to the House records, that MHA has spent. The MHA should be given a limited opportunity to dispute those records. Thereafter, he or she should be required to keep a copy of the record on file in his or her constituency office so that a member of the public may access it. As well, a copy of the record should be on file with the office of the Speaker for public access and also published on the House website.

I therefore recommend:

Recommendation No. 8

- (1) The publication scheme developed by the IEC, as recommended in Recommendation No. 6(2), should involve publication on the House's website;***
- (2) The publication scheme should include publication of information about MHAs' expenditures on their constituency allowances, including, at the least, a breakdown of information by category of expenditure relating to each claim made by each MHA as and when processed by the existing financial management system;***
- (3) The IEC should undertake a further study of the Scottish system of publication of information about Members' allowances with a view to expanding the amount of information that can be displayed, with the ultimate intent of publishing the details of individual items of expenditure on a regular basis;***
- (4) The Clerk of the House should be required, prior to periodically publishing information about an MHA's allowance expenditures, to provide a statement to the MHA and give the MHA an opportunity to dispute the accuracy of the information;***
- (5) If there is a dispute between an MHA and the Clerk about the accuracy of the information in a statement that cannot be resolved, the information should nevertheless be published, but the MHA should be allowed to publish at the same time and in the same place his or her disagreement and the reasons therefor; and***
- (6) In the case of publication of information about an MHA's allowance expenditures, the information, in addition to being published on the website of the House, should also be kept on file in the MHA's constituency office and in the office of the Speaker and made available for inspection by the public.***

I also believe it to be good practice, in light of the experience noted previously of missing and incomplete records of the IEC, to adopt, as applicable - at least within the legislative branch - a provision as recommended by the Gomery Commission, imposing a requirement of accurate record-keeping and making it an offence to alter records. This is merely good business practice. It will make it more difficult for officials to bury indiscretions, and the potential of public exposure of accurate records will have a deterrent effect on persons contemplating decisions that may have questionable justifications. Furthermore, it is important for the Auditor General or any other auditor performing a compliance audit to be able to have access to backup documentation to properly determine whether decisions have been taken in accordance with law and policy.

I therefore recommend:

<p><i>Recommendation No. 9</i></p> <p><i>It should be a legislative requirement:</i></p> <p>(a) <i>that the IEC, officers of the House and the staff of the House of Assembly administration document decisions and recommendations;</i> <i>and</i></p> <p>(b) <i>that it is an offence to fail to so document, or to destroy documentation recording decisions or the advice and deliberations leading up to those decisions.</i></p>

Finally, it is worth noting at this point that, as important as making the specific access to information legislation applicable to the legislative branch may be, the acceptance of the underlying *principles* of openness and transparency is even more important. The recognition that these principles are equally applicable to the legislative branch, and that the House cannot shelter behind notions of legislative autonomy to avoid them, has the potential of infusing the analysis of all aspects of reform of House administration and MHA accountability with an awareness of these principles and may provide bases for reform in other areas, such as, for example, ways in which the IEC should conduct its business and MHAs should account for their spending practices.

Commission of Internal Economy

The discussion in Chapter 4 demonstrates that one of the contributing causes of systemic failure was the manner and the environment in which the Commission of Internal Economy operated or, in some cases, failed to operate. I observed that there was a failure to place sufficient importance on fundamental notions of governance, accountability and transparency.

Notwithstanding these significant issues, it is not necessary, in my view, to consider jettisoning the concept of the IEC as a management board in favour of some other, completely different model. In countries following the Westminster parliamentary tradition, a management board similar in concept to our IEC is generally recognized as the means whereby the legislative branch of government exercises management, administration and control over its affairs.⁴³

The more important issue is to consider how the IEC can best be reorganized and restructured to ensure that it properly fulfills its function as steward of “all matters of financial and administrative policy affecting the House of Assembly, its offices and its staff.”⁴⁴ This can be accomplished, I believe, by: adjusting the IEC’s formal operating structure (a matter to be dealt with in the next chapter); developing and imposing greater controls over and clear limits on the types of decisions it can make, and the manner of making those decisions (also dealt with in the next chapter); reorganizing its operational methodologies to ensure a better functioning environment of responsibility; and developing higher and more appropriate standards of responsibility for the IEC collectively and for each member individually. Since these changes mark a significant new departure both in philosophy and management practices, now is an opportune time to signal this new departure by changing the name of the Commission. Accordingly, I propose that the name be changed to the “House of Assembly Management Commission.”

I therefore recommend:

<p><i>Recommendation No. 10</i></p> <p>(1) <i>Subject to (2) below, the management and administration of the House of Assembly, including financial management, should continue to be under the supervision and control of a management board presently called the Commission of Internal Economy but to be henceforth renamed as the “House of Assembly Management Commission”;</i>⁴⁵</p> <p>(2) <i>The existing Commission must:</i></p> <p>(a) <i>be restructured legislatively with respect to its formal operating structure;</i></p>

⁴³ In the Survey administered to MHAs by inquiry staff 64% of respondents answered, in response to the statement “The most appropriate person/body to apply the rules with regard to Members’ compensation is ...”, either a “reformed IEC” or the IEC as presently constituted. See Appendix 1.6 (Survey Results), Question 46.

⁴⁴ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, ss. 5(2).

⁴⁵ Although all further references in the text of the report to the restructured and renamed IEC should in reality be to the “House of Assembly Management Commission;” for ease of reference it has been decided to continue with reference to the old name in the text and to confine the use of the new name to references in the formal recommendations.

- (b) have greater controls over, and limits on, the types of decisions it can make and the manner of making those decisions;***
- (c) have its operational procedures reorganized; and***
- (d) have higher and more appropriate standards of responsibility, both as an institution and also with respect to its members individually, so that the Commission will be able to function efficiently, openly and with due regard to its stewardship mandate.***

In this part of the report, I will deal with items (c) and (d) in Recommendation No. 10(2) above: reform of the Commission's operational procedures and the imposition of better standards of responsibility. The remaining matters in the recommendation relating to formal restructuring will be dealt with in Chapter 6.

As the Commission staff and I interviewed some of the past and present members of the IEC, as well as other MHAs, it became apparent that there were many concerns about the manner in which the IEC conducted its business. While the points of view expressed were by no means always coincident, I gained a general impression that at many times in the past the work of the IEC was not given the priority it deserved. There was no set schedule of meetings that was adhered to for dealing with routine business. Meetings were cancelled at the last minute because one or more members claimed they had other commitments that had greater priority. This was particularly true with respect to cabinet members who served on the Commission. When meetings were held, agendas were sometimes cobbled together at the last minute and presented at the meeting. Often, no briefing book of materials was circulated in advance of the meeting. Issues would sometimes be worked out in advance by agreements reached between the Government House Leader and the Official Opposition House Leader and then ratified by the Commission as a whole.

While there are no doubt exceptions to this picture, I have to say that the general image that has been presented is one of casual attention to the work of the Commission with little sense of the importance of acting with prudence and diligence at all times to ensure that the absence of checks and balances, present in other aspects of the political process, but absent in the IEC, would not lead, perhaps unthinkingly, to the subordination of the public interest to other considerations.

It was also suggested to me that members of the IEC did not regard themselves as a working committee. The members relied, perhaps to too great an extent, on officials of the House to look after the details and to present proper information to them. It was suggested that the IEC functioned, and was expected to function, like a cabinet, where ministers are responsible for matters of broad policy, but rely heavily on their officials.

In my view, the analogy with cabinet responsibilities is not apt. The cabinet is at the

apex of a large professional bureaucracy whose basic function is to analyze and refine information, consider policy options and present distilled advice to the executive council for final decision. Decisions made by cabinet are, by virtue of the doctrine of ministerial responsibility, subject to scrutiny in the House by the Opposition. Not only are the checks and balances inherent in the notion of ministerial responsibility present, but the scrutiny comes about in the public forum of the House. The duty of the Opposition is to challenge and test, through questions and debate, the policy decisions made by Government.

Contrast this with the way the IEC functions. It does not have a large bureaucracy to do the type of in-depth analysis that the executive does. Its decisions, though reported to the House for information purposes after a considerable time lag, are not subject to debate and challenge. Most importantly, there is no incentive to challenge them because in many cases the decisions, especially when dealing with benefits for members, affect all members equally, no matter what political party. The same checks and balances do not apply because self-interest is a much more pervasive factor. This is not to say that members of the IEC will always act out of self-interest. Nevertheless, any system that leaves open the possibility that public interest will be subordinated to self-interest raises serious perception problems affecting public confidence that proper decisions will be made.

I have concluded that the closer analogy for IEC operations is not that of a cabinet but a board of directors of a publicly traded corporation. I say this primarily because, especially following the *Enron* and *WorldCom* scandals, a much greater emphasis has been placed on stewardship responsibilities and duties of boards of directors, particularly responsibilities of diligence, prudence, knowledge acquisition, supervision and good faith. A board of directors wields considerable policy making power and must do it independently of management influence, while taking into account the information that management provides. Its decisions govern the direction of the corporation subject, of course, to accountability at the next annual meeting of shareholders. Because accountability at the shareholders' meeting can be influenced by many factors, including unbalanced shareholdings, accountability is increasingly not being left solely to the shareholders' meeting, but is being placed by law and regulatory requirements directly on the directors themselves by the imposition of stricter standards of behaviour. These standards extend beyond mere passive reactive diligence to, instead, proactively ensuring that proper information is provided by management so that fully-informed decisions can be made.

It used to be said that the most important duty of a board of directors is to hire a good chief executive officer and then support him or her to enable a good job to be performed. This is now no longer regarded as sufficient to discharge the duties of a board member. The duties now extend to such things as: exerting good and informed judgment in decision making; directing and empowering management in accordance with a clearly established vision; effectively overseeing management by means of establishment of measures of outcomes and accountability reporting; publicly communicating and providing access to information; and generally acting proactively in the discharge of their duties.

This change in approach, especially the emphasis on being proactive and on acting on the basis of adequate information, has led to the notion of "management certification" of the

adequacy of systems and of the information emanating from those systems, so as to enable the directors to be able to do their job properly and effectively.⁴⁶

The notion of a board of directors as a supervising or monitoring body is now well recognized in Canadian law.⁴⁷ In discharging their responsibilities, directors are regarded as having a positive duty to act diligently and prudently in managing the corporation's affairs. Subsection 122(1) of the *Canada Business Corporations Act* provides:

Every director ... of a corporation in exercising their powers and discharging their duties shall

(a) act honestly and in good faith with a view to the best interests of the corporation;

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.⁴⁸

It is not enough for a director merely to show up at the board meeting and collect the fee. There are objective standards against which his or her participation will be judged. It is more than a duty, subjectively, not to be grossly negligent with respect to the affairs of the corporation.⁴⁹ It requires a director to act in good faith and on the basis of adequate information in arriving at business decisions. It is described thus in a recently published text:

Directors are expected to spend sufficient time on the affairs of the corporation to comply with such duty. It includes the responsibility to oversee the activities of the corporation by attending board meetings, requiring the corporation to provide adequate information upon which to make decisions, carefully reviewing documents prepared in view of a meeting and monitoring the activities delegated by the board to committees and management.⁵⁰

Of course, "perfection is not demanded"⁵¹ in the discharge of a director's responsibilities. A director will generally not be held to be in breach of the duty of care in subsection 122(1)(b) if, objectively considered, he or she "act[s] prudently and on a reasonably informed basis

⁴⁶ See the discussion of management certification in Chapter 7 (Controls) under the heading "Quality and Risk Management."

⁴⁷ See *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, ss. 102(1) which provides that "the directors shall manage or *supervise the management* of, the business and affairs of a corporation. The Newfoundland and Labrador *Corporations Act*, R.S.N.L. 1990, c. C-36, s. 167 similarly provides that the directors shall "*direct the management* of the business and affairs of the corporation." [emphasis added]

⁴⁸ The equivalent provision in this province's *Corporations Act* is s. 203.

⁴⁹ *Peoples Department Stores (Trustee of) v. Wise*, [2004] 3 S.C.R. 461 at pp. 489-491.

⁵⁰ Thierry Dorval, *Governance of Publicly Listed Corporations* (Toronto: LexisNexis Canada Inc., 2005), p. 95.

⁵¹ *Peoples Department Stores*, p. 493

even though, with hindsight, the decision appears to have been ill-advised.”⁵²

I believe that the public sector is entitled to expect similar standards of diligence, prudence, knowledge acquisition, supervision and good faith from its political leaders, who are put in a position of stewardship over public money, as are expected from directors of corporations in the private sector.

Accordingly, I believe that the legislation governing the Commission should be amended to set out the standards expected of individual members of the Commission in a manner similar to those expected of corporate directors.

I therefore recommend:

- Recommendation No. 11***
- (1) Legislation governing the House of Assembly Management Commission should set out clearly the standards, diligence, prudence, knowledge acquisition, supervision and good faith expected of each member of the Commission;***
 - (2) Those standards should include:***
 - (a) a duty to exercise powers with the care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances;***
 - (b) a duty to act in good faith, on the basis of adequate information in arriving at Commission decisions;***
 - (c) a duty to attend Commission meetings except in exceptional circumstances;***
 - (d) a duty to spend time on the affairs of the Commission to be able to comply with his or her responsibilities; and***
 - (e) a duty to act in such a way to promote compliance with law and policy and to advocate policies in support of such objective; and***
 - (3) It should also be stated in the legislation that a member of the Commission should not be considered in breach of these duties so long as he or she acts prudently on a reasonably informed basis.***

⁵² Ibid., p. 493.

Of course, individual standards of behaviour do not have much practical meaning unless the nature of the subject matter for which a commission member is to be held responsible is clearly spelled out. It is therefore important to describe carefully and in detail the *collective* duties and responsibilities of the Commission. Such a description should start with a broad statement of responsibility for financial stewardship, management and administration and then move to a detailed listing of the substantive areas of involvement expected of the Commission, followed by procedural or process responsibilities.

This is particularly important because the approach sometimes taken by the IEC in the past was to take the position that it was not bound by the *Financial Administration Act* nor by the financial and management policies of the executive branch but, having created a policy void by claiming their non-application, the IEC did not then move to fill the void by enunciating proper or adequate alternative policies in their place. This is certainly exemplified in the IEC's decision not to require *any* receipt justification to be sent to the office of the Comptroller General in support of MHA claims submitted for payment, and by not insisting on adequate claim assessment and authorization, through a proper segregation of duties, within the House administration itself. Given such events, it is necessary therefore not only to spell out what the IEC's duties are, but to require that it be bound by the *Financial Administration Act*. The IEC should further be bound to follow the executive's financial and management policies unless it takes formal steps to modify those policies in their application to the House by putting alternative adequate policies in place covering the same ground.

Accordingly, I make the following recommendation:

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| <p><i>Recommendation No. 12</i></p> <p>(1) <i>New legislation should contain a broad statement of the responsibility of the House of Assembly Management Commission for the financial stewardship of all public money appropriated for the use of the House and for all matters of financial and administrative policy affecting the House administration;</i></p> <p>(2) <i>The specific duties and responsibilities of the Commission should be set out in legislation and should include responsibilities to:</i></p> <p>(a) <i>oversee the budget, revenues, expenses, assets and liabilities of the House;</i></p> <p>(b) <i>review and approve administrative, financial and human resource and management policies of the House;</i></p> <p>(c) <i>implement financial and management policies for the House and keep them updated;</i></p> |
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- (d) *give general direction with respect to the efficient and effective operation of the House;*
 - (e) *make and keep current rules respecting MHA allowances;*
 - (f) *annually report in writing, fully and accurately, to the House through the Speaker;*
 - (g) *regularly review the financial performance of the House and compare that performance with the House budgets;*
 - (h) *ensure proper audits are conducted of the accounts of the House;*
 - (i) *ensure that full and plain disclosure of the accounts and operations of the House is made to the auditor on a timely basis; and*
 - (j) *consider and address on a timely basis any recommendations for improvement made by the auditors from time to time;*
- (3) *Delegation of duties by the Commission should not relieve it of ultimate responsibility for what is done or not done and, when delegation is made, the Commission should be required to establish oversight mechanisms by means of measurement of outcomes and accountability reporting;*
- (4) *The Commission should be guided by the spirit and letter of the Financial Administration Act; and*
- (5) *It should be stated in legislation that the financial and management policies of the executive branch shall apply to the House except to the extent that they may be modified by the Commission, in which case the Commission must put in place alternative policies deemed more appropriate.*

In order for the Commission to be effective, and for the individual members to be able to discharge their responsibilities, the manner in which the Commission conducts its business will have to be improved considerably. It is obvious that if members are to fulfill their duties to act reasonably on the basis of adequate information, there have to be mechanisms in place for them to amass the requisite information in sufficient time to be able to analyze and digest it. This is certainly the case with the way in which corporate boards are expected to operate and I would expect nothing less from our public stewards.

I therefore recommend:

Recommendation No. 13

As one of the first orders of business of the newly restructured House of Assembly Management Commission, the Commission should develop and adopt rules with respect to the advance circulation of agendas and briefing materials respecting items on those agendas, and give instructions to the Clerk with respect to compliance with those rules.

I have already alluded to the fact that there are no inherent checks and balances present in the operations of the IEC that would give assurance that the public interest is not subordinated to self-interest in the decision making of the Commission. There is no natural “opposition” with a duty to challenge and question decisions in the Commission. IEC decisions are not government decisions and hence the official opposition does not have the same role to play, especially since opposition members may be just as interested in obtaining additional benefits as others. The reality is that, in these circumstances, the real “opposition” to, or questioning skepticism about Commission decisions must come from the public, through the media. The notion of the media as performing a “watchdog” function on the possible abuse of government power is a central part of our democratic political culture. For that to happen, the decision making process would have to be opened up to public scrutiny, possibly engendering comment and debate through such means as editorials, opinion pieces and letters to the editor.

I have also recommended earlier in this chapter that access to information legislation apply to House operations, and that there be a publication scheme implemented so that basic information respecting MHA allowances and other matters is made available to the media and the public. In so doing, I observed that these policy positions underscore a broader principle in favour of openness and transparency generally, which may provide the basis for reform in other areas of House administration.⁵³

Melding these two ideas leads to the proposition that the proceedings of the IEC should be open to the public and be capable of being recorded, reported on and broadcast in the same manner as are the proceedings of the House itself. In this way, the exposure to public scrutiny and possible criticism of the decision making process may lead to a greater assurance that decisions will be based on public interest considerations or, if not, there will be an opportunity for community debate on the matter.

Of course, there will always be some matters that would be appropriate to deal with in private discussion. Legal matters and private personnel matters are examples. Any exceptions to public meetings should, however, be carefully circumscribed.

⁵³ See discussion under the heading “Access to Information and the House of Assembly.”

I therefore recommend:

- Recommendation No. 14***
- (1) With limited exceptions, all proceedings of the House of Assembly Management Commission should be open to the public and should be able to be electronically accessed by the media in the same manner as proceedings of the House of Assembly;***
 - (2) Recordings of Commission meetings should be made as part of the Hansard service;***
 - (3) Exceptions to public meetings of the Commission should include:***
 - (a) legal matters involving actual or impending litigation;***
 - (b) personnel issues relating to officers of the House; and***
 - (c) matters protected by privacy and data protection laws.***

The discussion in Chapter 4 underlined the poor and inadequate record-keeping functions of the Commission. In addition, there was an absence of clarity in the way in which Commission decisions were reported. There was even a practice of maintaining two sets of minutes, one of which would be released to the House as part of the IEC's annual report with another, more expansive and clear set, kept for the IEC's internal use. This state of affairs is completely unacceptable. There must be clear, timely and substantively complete reporting to the House and the public. Of course, public meetings of the IEC will go a long way to ensuring this. However, the permanent record of the Commission's work should be equally clear and accessible for all.⁵⁴

Accordingly, I make the following recommendation:

- Recommendation No. 15***
- (1) The substance of all decisions of the Commission, including the final decisions of matters decided in private meetings, should be recorded in publicly accessible records of the Commission;***

⁵⁴ It is to be noted that a recent review commission in British Columbia recommended that communication of decisions of the Legislative Assembly Management Commission (the B.C. equivalent of the IEC) would be enhanced if minutes of its meetings were posted on the Legislative Assembly's website. See *Report of Independent Commission to Review MLA Compensation* (Sue Paish, Q.C., Chair), p. 17. Online: <http://www.leg.bc.ca/bcmlacomp/index.htm>.

(2) *Minutes containing the substance of all decisions should, following approval, be tabled in the House within a short time frame, be provided to each MHA and be placed on the House website for inspection by the public.*

The Need for Training and Orientation and Members' Manual

One important message I received from my interviews with MHAs, members and former members of the IEC, House staff and others is that there has been a serious absence of any coordinated attempt to provide information to MHAs and bureaucrats as to the nature of their roles and the extent of the expectations of their respective jobs. In Chapter 4 I referred to the experience of one MHA, upon being elected, of arriving in the capital not knowing where to go, what to do and what resources to which he had access, and having to acquire a knowledge base essentially by trial and error. In particular, he received little or no instructions on the substantive rules respecting what he was entitled to claim under his constituency allowance, nor on the processes to be followed in preparing and submitting the claim documentation.

Because of the delays in publishing the IEC's annual report (quite apart from its inaccuracies and lack of clarity), Members were not always kept abreast in a timely manner of changes to constituency allowance rules or of decisions as to how the rules were to be applied in specific cases. Members often had to rely on acquisition of information by way of the informal "grapevine" which, of course, may not always be accurate.

Members and House staff both stressed that, from their respective points of view, it was essential that the rules governing constituency allowances should be clear and detailed and that there be a reliable source to which they could go to get guidance on how to comply with and apply the rules. Indeed, I would have thought that the same could be said of the need for clear and accurate information about a host of other things involving MHA activities as well, including the types of infrastructure and other resources available to MHAs, how to set up and operate a constituency office and how to obtain secretarial and other constituency assistance. A newly elected member should not have to find out this information by osmosis. It should be readily available in an authoritative source.

If ultimate responsibility is to be placed on the individual MHA for compliance with the rules with respect to constituency allowances and other aspects of constituency duties - as was recommended in Recommendation No. 3 - then, in fairness, it is necessary for the MHA to be given the means to be able to access, understand and follow those rules.

There is, in my view, a need for a manual of information to be prepared and made available to all MHAs containing all the basic information that a MHA would need to access from time-to-time with respect to job responsibilities and the resources available to enable those responsibilities to be discharged effectively. In addition, newly elected MHAs should be provided, at an early date following their election, with an orientation program; and all

MHAs should, from time-to-time be given training and updated information on various aspects of constituency duties, especially when new programs are introduced.

Accordingly, I recommend:

Recommendation No. 16

(1) A Members' manual should be prepared under the direction of the House of Assembly Management Commission within six months (and, in any event, before the next general election scheduled for October 9, 2007) and made available to every Member following the election.

(2) As a minimum, the Members' manual should contain:

- (a) information with respect to allowances available to MHAs;***
- (b) duties of MHAs with respect to claims for allowances and the management and expenditure of public money;***
- (c) copies of applicable legislation including:***
 - i) legislation recommended in this report,***
 - ii) the House of Assembly Act,***
 - iii) the Financial Administration Act,***
 - iv) the Members of the House of Assembly Retiring Allowances Act;***
- (d) copies of rules and directives made by the Commission;***
- (e) information summarizing rulings and determinations made by the Speaker and the Commission respecting matters affecting Members' responsibilities;***
- (f) copies of the Code of Conduct adopted from time to time by the House;***
- (g) instructions as to the manner in which duties of MHAs are to be carried out with respect to making claims, and the forms to be employed and the documentation to be supplied; and***
- (h) information as to how to organize and operate a constituency office;***

(3) The House of Assembly Management Commission should have responsibility to keep the Members' manual continuously updated;

- (4) The Commission should be made responsible for causing to be developed and offered to all newly elected MHAs, whether in a general election or by-election, an orientation program on matters contained in the Members' manual and on other matters pertaining to expectations for MHAs; and***
- (5) The Commission should also be responsible for causing to be developed and offered to MHAs such training and information dissemination programs as may be appropriate from time to time on various aspects of an MHA's duties as well as changes in the rules.***

There is also a need, in my view, for an orientation program for new members of the Commission of Internal Economy. It is obvious from the recommendations I have already made⁵⁵ that the Commission as an entity, as well as the Members of the Commission individually, should be subject to considerably higher standards and expectations than before. It is vitally important that members of the Commission under the new regime I am recommending be fully aware of the responsibilities that are placed on them and are given appropriate levels of information as to Commission processes. The Commission, with the assistance of the Clerk of the House, should be responsible to ensure this is done.

Accordingly, I recommend:

- Recommendation No. 17***
- (1) The Speaker should cause each new member of the House of Assembly Management Commission to be provided with an information package containing, at least, information as to:***
 - (a) the responsibilities of the Commission and individual members;***
 - (b) past minutes of the Commission that are of continuing relevance;***
 - (c) rules and directives of the Commission;***
 - (d) policies and guidelines issued to House staff;***
 - (e) procedures and processes of the Commission; and***
 - (f) the role of the audit committee⁵⁶ of the Commission;***
 - (2) The Clerk should be required to conduct a briefing session with all new members of the Commission within 30 days of their***

⁵⁵ See Recommendations 11, 12, 13 and 14.

⁵⁶ See Recommendation 35.

The Clerk as “Accounting Officer”

In Chapter 6 I observe that the Clerk of the House plays a “pivotal role” in the affairs of the House and should have increased duties and responsibilities especially in respect of management and financial administration. I make a series of recommendations designed to strengthen the position of Clerk in the role as chief financial and administrative head of the House administration.

The Clerk is, and should be, the senior official charged with the stewardship and effective operation of the legislative branch of government. It is essential that he or she be provided the mandate to ensure the effective operation of the House and, as well, be held accountable for that mandate. The Clerk also needs, in my view, to be given the assurance (and associated protection) that positions he or she advocates in good faith in attempting to carry out the responsibilities of office that might be in opposition to positions of the Speaker and the Commission of Internal Economy will not work to his or her disadvantage. It is important to create an environment in which the Clerk can be encouraged to speak up on matters of principle, even as against his or her political masters.⁵⁷

In a research paper prepared for this inquiry, Dr. Christopher Dunn advocates that the House of Assembly adopt a practice of having the Clerk serve as “accounting officer in the UK tradition,” and that legislation be drafted to emphasize the Clerk’s personal accountability to the Public Accounts Committee of the House for the propriety and regularity of certain aspects of the responsibilities associated with the office.⁵⁸

The term “accounting officer” may be confusing to some. It might suggest that the emphasis is on performing the functions of an accountant. That is not so; rather, it emphasizes a special degree of “accountability” for the responsibilities of office. The term is usually applied to the permanent head of a government department or entity.

The concept of an accounting officer has existed in practice in the United Kingdom since 1872. In 2000, the concept was enshrined in statute. Traditionally, the deputy minister of a department was regarded, with respect to accountability, as having the function of supporting his or her minister with respect to the minister’s accountability to the legislature and its committees under the doctrine of ministerial responsibility. In supporting the minister

⁵⁷ In the Members’ survey conducted by the inquiry staff 53% of respondents either strongly or moderately agreed with the proposition, “The Clerk should have the responsibility to challenge the propriety and wisdom of discussions and decisions undertaken in IEC meetings.” See Appendix 1.6 (Survey Results), Item 51.

⁵⁸ Dr. Christopher Dunn, “The Applicability of the Accounting Officer Position in the House of Assembly,” (February 1, 2007). This paper has been reproduced as Appendix 5.5 [Christopher Dunn, “Accounting Officer”].

before committees and in other public venues, the deputy acted, not in his or her own right, but on behalf of the minister under the ministerial responsibility umbrella. The notion of the deputy as “accounting officer” changes this traditional idea and purports to place personal responsibility directly on the deputy for the overall organization, management and staffing of his or her department, particularly in the area of financial issues where matters are directly assigned or delegated to him or her by legislation. The deputy then becomes directly accountable. The emphasis is on ensuring, amongst other things, “regularity” and “propriety” in administration.⁵⁹ In the United Kingdom, the accounting officer is accountable to the Public Accounts Committee of the House of Commons and is liable to be summoned before it.

Another important aspect of the concept of accounting officer is that it provides a means whereby the deputy (or permanent secretary, as the position is called in the United Kingdom) can object to a proposed ministerial course of action and protect himself or herself for having taken a stand on principle. The accounting officer must put his or her objections in writing and notify the comptroller general or auditor general if the advice is overruled. If the minister persists in the proposed course of action, the accounting officer can request a written instruction from the minister, whereupon the accounting officer will be bound to comply with it. In this way, political will can not ultimately be thwarted, but the potential impropriety of the action will be brought to the attention of public officers like the auditor general. As Dr. Dunn observes, “the deterrent value is great.”⁶⁰

In Canada, the federal government has only recently passed legislation to introduce the notion of an accounting officer into the federal public service. The idea had been recommended - in a variety of guises - in a number of government reports and studies as well as by academics over the past 30 years. Most recently it was recommended for adoption by the Gomery Commission.⁶¹ The *Federal Accountability Act* enacted a version of the accounting officer in late 2006.⁶² The legislation makes a deputy minister (and sometimes others) “accountable before the appropriate committees of the Senate and the House of Commons” for:

- (a) the measures taken to organize the resources of the department to deliver departmental programs in compliance with government policies and procedures;
- (b) the measures taken to maintain effective systems of internal control in the department;
- (c) the signing of the accounts that are required to be kept for the preparation of

⁵⁹ These ideas are described in detail in Christopher Dunn, “Accounting Officer,” pp. 4-6.

⁶⁰ Christopher Dunn, “Accounting Officer,” p. 6.

⁶¹ Canada, Commission of Inquiry into the Sponsorship Program & Advertising Activities, *Restoring Accountability: Recommendations* (Ottawa: The Commission, February 1, 2006), p. 200.

⁶² S.C. 2006, c. 9, (amending the *Financial Administration Act* by adding Part 1.1).

the Public Accounts; and

- (d) the performance of other specific duties assigned to him or her by, or under “this or any other Act in relation to the administration of the department.”⁶³

One of the motivations for introduction of these provisions was, in the light of the Gomery inquiry, to send a strong message about the importance of strong departmental management and of the role of the deputy in achieving it. Because accounting officers were not to be accountable to Parliament itself, but only before parliamentary committees, there was no weakening of the doctrine of ministerial responsibility, since the accountability of the deputy before committees would only aid Parliament in holding ministers to account before the House itself, by giving Members more information on which to base questions to the Minister.

Unlike the United Kingdom model, the Canadian provisions introduce a different regime where there is a difference of opinion between a deputy and his or her minister on interpretation of a policy or directive: the accounting officer must seek guidance from the secretary of Treasury Board, and it is the Board that will, in effect, arbitrate a solution if the minister and the deputy continue to disagree.

As Dr. Dunn points out in his research paper, a number of arguments for and against the concept of an accounting officer have been put forward over the years.⁶⁴ On balance, he concludes, as do I, that there is much to the idea that commends it for adoption in the legislative context. He lists a large number of arguments that favour its adoption within the House even though it does not exist - and may not be adopted in the future - within the executive branch of the provincial government.⁶⁵ The fact that the United Kingdom has an accounting officer within the legislative branch is testimony to the fact that the concept can work.⁶⁶ Indeed, since section 5 of the *Clerk of the House of Assembly Act* provides that the general duties of the Clerk, where no special provision is made, “shall be similar to those of the clerks of the House of Commons in England,”⁶⁷ it is natural that we should look to United Kingdom practice for guidance in this area. In fact, Dr. Dunn suggests, that because of section 5 “there is already a mandate for adopting the accounting officer idea in the House.”⁶⁸

A legislative accounting officer would be a method of clarifying and emphasizing the management responsibilities of the Clerk. By strengthening the position, the Clerk may be

⁶³ S. 16.2 of the *Financial Administration Act*, as amended by the *Federal Accountability Act*.

⁶⁴ Christopher Dunn, “Accounting Officer,” pp. 16-18.

⁶⁵ Christopher Dunn, “Accounting Officer,” pp. 18-19.

⁶⁶ See the discussion of the Clerk’s role as accounting officer in Robert Rogers and Rhodi Walters, *How Parliament Works*, 6th edition (Harlow: Pearson Longman, 2006) at pp. 59-60.

⁶⁷ R.S.N.L. 1990, c. C-19.

⁶⁸ Christopher Dunn, “Accounting Officer,” p. 19.

encouraged to challenge decisions of the Commission of Internal Economy in appropriate cases. The practice to date has been that the Clerk has not often challenged IEC decisions and has become tarred with the results of them. The possible danger of lack of confidence and trust between minister and deputy (an argument sometimes put forward in favour of not adopting the idea) should not be a concern in the present context since the primary relationship is between the Clerk and the IEC. The Speaker is not a perfect analogy for a minister in this context.

On balance, the introduction of the notion of the Clerk as accounting officer for the House has much to commend it. It is another measure, amongst a number of recommended measures, that may assist in restoring public faith in the system, a faith which at the moment appears to be at a low ebb. In addition, declaring the Clerk to be accounting officer will also send a message to politicians generally and to the IEC in particular that the Clerk, as permanent head, has ongoing responsibilities that he or she cannot resile from, and that there is no legal authority resting in the Speaker or the IEC to tell the Clerk to do something that is clearly contrary to rule or policy. It will reinforce ownership by the Clerk of the obligations of office.

Before leaving this subject, however, let me address several arguments that might be put forward in objection to adoption of the idea within the House. The first is the notion that deputy ministers (and by analogy, the Clerk) already have a full, accountable generalized duty of stewardship for the departments over which they preside and that the idea of an accounting officer is redundant. The answer to this is that many studies, government reports - and now legislative initiatives - recognize the concept as adding something significant to the mix of deputies' responsibilities. In fact, the commonly understood notion of the deputy of a department having a generalized responsibility for his or her department does not find specific expression in any legislation.⁶⁹ One must extrapolate a general principle from individual provisions on specific subjects in other legislation like the *Financial Administration Act* and in government policy manuals issued under authority of that Act. The matter is therefore not as clear as it might be in the executive branch of government and, in any event, the current legislative description of the Clerk's duties - as will become apparent from the discussion in the next chapter - is even less satisfactory.

The second objection might take the form of an argument that the *Transparency and Accountability Act*,⁷⁰ which was made applicable to the House of Assembly and was recently brought into force, provides, in section 21, that the Speaker must enter into a "performance contract" with the Clerk, as an officer of the House.⁷¹ It might be argued that the same result

⁶⁹ The closest one can come to a generalized statement is ss. 9(2) of the *Executive Council Act*, S.N.L. 1995, c. E-16.1 which provides simply, and unhelpfully, that "the deputy minister shall be the deputy head of the department."

⁷⁰ S.N.L. 2004, c. T-8.1 [the TAA].

⁷¹ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, as amended by S.N.L. 2004, c. 41 makes the *Transparency and Accountability Act* applicable to the House and stipulates that the analogue for a minister is the Speaker and that for a deputy minister under s. 21 is "an officer of the House..."

as naming the Clerk as an accounting officer could be achieved by this process. This would be a poor substitute for a legislative accounting officer regime.⁷² The primary objection is that, at best, such a performance contract could only provide for accountability to the other party to the contract (the Speaker), whereas the accountability of the accounting officer would be, amongst other things, to a body (the Public Accounts Committee) completely outside the entity in which the Clerk operates.

A third objection could be that the introduction of the accounting officer idea in the legislative branch on its own would involve an inappropriate partial or piecemeal reform. The UK Clerk of the House is the accounting officer for the House of Commons, but he or she exists in the context of a system of accounting officers that are found throughout government departments. The objection would be that one should introduce accounting officers only as part of a government-wide system and, accordingly, the naming of the Clerk alone as an accounting officer is premature. With respect, this logic is faulty. Many wide-ranging reforms start as pilot projects or partial steps. In any event, the more important point is that the imprecision that has marked the job description of the Clerk must be eliminated, and I perceive the accounting officer idea as an appropriate corrective. The introduction of a reform in the legislative context does not preclude it being adopted ultimately by the executive, although this is, of course, beyond my mandate to investigate or recommend.

A fourth objection is that the committee system upon which the British system depends cannot be imported into this province. Much depends in Britain on the venerable Public Accounts Committee. The Public Accounts Committee - or Committee of Public Accounts, as it is sometimes called - is a sixteen-member committee that has existed for over a century and a quarter in Britain. Although it has the power to hear from ministers, its main witnesses are accounting officers. It has an Opposition Chair, but the committee does not manifest party divisions. This committee is a generally non-partisan and active one, making an average of fifty reports a year.⁷³ Membership on it is coveted, and tends to be long-term in nature. C.E.S. Franks, in a paper prepared for the Gomery Commission, comments on its importance:

Three factors, apart from its long history and tradition as a powerful committee, permit the British Public Accounts Committee to maintain its importance. First, it is composed of able and long-serving members. It is a matter of great prestige to be appointed to the Committee, and members have to wait for an opening before they are considered for appointment. Once appointed, they remain on the Committee for a long time.

⁷² TAA, ss. 21(2) provides that the Lieutenant-Governor in Council shall “determine the matters” to be included in a performance contract. While the subject-matter of such a contract can be prescribed, presumably the details of the terms are a matter of negotiation between the minister (Speaker) and deputy (Clerk). There is, therefore, no guarantee that a specific level of responsibility will necessarily emerge. In any event, at present there are no regulatory prescriptions issued stipulating the matters to be included in performance contracts.

⁷³ Rogers and Walters, footnote 66, p. 284.

Second, the Public Accounts Committee adopts a non-party attitude in its work and seeks to reach dispassionate findings and recommendations whatever government is in power. The Committee performs a vital function on behalf of Parliament. It gives Parliament, and through Parliament the people of Britain, assurance that the Government handles its finances with regularity and propriety, and, as far as possible, ensures that expenditures are made with due regard to economy, effectiveness and value for money. The Committee's sense of this vital function in the broader scheme of parliamentary government creates a demand that its members act in this non-partisan way.

Third, the British Public Accounts Committee operates within a system of clearly and logically related bodies and functions. Its focus on the Accounting Officers as the officials personally responsible for good financial administration provides a logic and coherence to the system. The Committee has a well-established place within an effectively operating system of roles, responsibilities and accountabilities.⁷⁴

In contrast, this province's legislature is highly partisan, both at the committee level and in the plenary legislature. The committees are not particularly active (as the discussion in Chapter 4 indicates).⁷⁵ The output of the Public Accounts Committee has been minimal in the last several years.

However, institutions can change. Even the federal House of Commons Public Accounts Committee, which has traditionally been derided as partisan and short-sighted, has impressed observers in the past few decades as having matured into a more even-handed oversight committee. The Gomery Commission Report was of this opinion as well, but, in order to continue that progress, suggested that members of the federal Commons PAC be appointed for the duration of a Parliament.

In the next section I argue for a more active role for the Public Accounts Committee. In the context of the events and issues chronicled in this report, the House of Assembly will, I hope, likely be in a collective mood to make its operations, and those of the PAC, more active and relevant. If they do not, the Committee may have to be restructured in order to encourage greater effectiveness. In any event, I do not believe that the past performance of the PAC in this province compared with the vibrant status of the UK equivalent should be accepted as an insuperable objection to the adoption of the accounting officer concept.

I therefore remain of the view that the accounting officer concept should be applied

⁷⁴ C.E.S. (Ned) Franks, "The Respective Responsibilities and Accountabilities of Ministers and Public Servants: A Study of the British Accounting Officer System and its Relevance for Canada," in *Restoring Accountability: Research Studies Volume 3*, Commission of Inquiry into the Sponsorship Program and Advertising Activities, pp. 177-178.

⁷⁵ See Chapter 4 (Failures) under the heading "Inaction by Public Accounts Committee."

to the Clerk. I agree with Dr. Dunn that the United Kingdom model should be followed, rather than that of the *Federal Accountability Act*, in relation to the manner of dealing with disagreements between the Clerk and the Speaker or the IEC. Under the Canadian federal model, the Treasury Board would be the arbiter of disagreements. That would result, in the current context, in an unnecessary intrusion of the executive branch into the legislative. Besides, the idea of the political level having the final say, but having to account for the decision in the context of principled objection, is, in my view, appropriate and consistent with notions of responsible government.

Accordingly, I recommend:

Recommendation No. 18

- (1) ***The Clerk of the House of Assembly should be designated as accounting officer for the House, to be directly accountable to the Public Accounts Committee for the authorities and responsibilities assigned by law or delegated by the House of Assembly Management Commission, including for:***
 - (a) ***measures taken to organize the resources of the House to deliver programs in compliance with established policies and procedures;***
 - (b) ***measures taken to implement appropriate financial management policies;***
 - (c) ***measures taken to maintain effective systems of internal control;***
 - (d) ***the certifications that are made in annual reports regarding accuracy of MHAs' transactions and the minutes of the Commission and***
 - (e) ***the performance of other duties specifically assigned;***
- (2) ***Where the Speaker or the House of Assembly Management Commission is unable to agree with the Clerk on the interpretation or application of a rule, directive, policy or standard applicable to an MHA, the House administration or the statutory offices, the Clerk should seek guidance from the Comptroller General or the Deputy Minister of Justice; and***
- (3) ***The legislation should provide that no reprisal shall be taken***

against the Clerk for actions taken by him or her in good faith as accounting officer.

Role of the Public Accounts Committee

In the parliamentary system of government, the Public Accounts Committee (PAC) has a very important role to play in “hold [ing] government accountable for the stewardship of public assets and the spending of public funds.”⁷⁶ The annual report of the Auditor General usually provides the basis for the lines of inquiry that the PAC makes.

The PAC, a standing committee of the House, is virtually moribund. As noted in the previous section and in other parts of this report, the PAC has not been very active in recent years. This is unfortunate, given the potentially important role it could play in ensuring good governance. In years past, the PAC was not always so inactive. In the late 1970s, for example, the PAC played a fundamental role in examining alleged improper tendering practices within government, using comments in the Auditor General’s annual reports as a basis of inquiry. The Committee held a series of public hearings and summoned a variety of witnesses. The proceedings were followed daily by the media. The issues became a matter of public discussion. The work of the PAC was one of the catalysts for the appointment of a commission of inquiry (the Mahoney Inquiry) to examine the whole issue and make recommendations for improvements in the tendering processes and legislation.⁷⁷

In my view, there is room for a greater role for the Public Accounts Committee than it has been playing in recent years. In Chapter 4 I observed that there was an important oversight role that could be played by an active PAC in relation to the financial affairs of the legislature, as well as the role it should play in relation to financial accountability of the executive. So long as there is no overlap in membership between the PAC and the Commission of Internal Economy, there is a basis for the PAC, independent of the IEC, to fulfill its time-honoured role of financial watchdog with respect to spending in the House.

I therefore recommend:

⁷⁶ *Financial Management Handbook of the Office of the Comptroller General*, (March 2003), p. 6. Order 62 of the *Standing Orders of the House of Assembly*, which constitutes the Public Accounts Committee, does not set out any formal mandate.

⁷⁷ See *Report of the Commission of Enquiry into Purchasing Procedures of the Department of Public Works and Services*, (March 1981).

Recommendation No. 19

- (1) The Public Accounts Committee of the House of Assembly should develop a program of action for regular investigation of matters of concern expressed in the Auditor General's annual reports, whether they relate to the executive or legislative branches of government; and***
- (2) The Public Accounts Committee, additionally, should regularly examine and investigate matters dealt with in the annual reports of the House of Assembly Management Commission, including the financial statements of the House and auditors' opinions thereon, as well as matters disclosed in the course of compliance audits and any other matters of concern arising out of decisions of the Commission.***
- (3) The Public Accounts Committee should regularly review with the Clerk of the House of Assembly, the Clerk's responsibilities as accounting officer of the House.***

As I noted in the previous section, the PAC appears in recent years to have operated in a highly partisan manner, therefore hampering its effectiveness. The operation of the equivalent body in the United Kingdom Parliament is an example of how such a committee, mindful of the vital function it performs, can put partisan politics aside and seek “to reach dispassionate findings and recommendations whatever government is in power.”⁷⁸

I am hopeful that in the new climate engendered by the events that have occurred, as commented on by the Auditor General and as dealt with in this report, the PAC may develop a more active and constructive role as a government spending watchdog. While I am not prepared to recommend it at this time, I will observe that if the PAC does not become more active and effective, perhaps the time will come when the committee should be mandated to have a balance of government and combined opposition party representation on it. The House could deal with this issue by appropriate amendments to its Standing Orders.

Internal Rulings and Investigations

Having internal processes to deal with potential irregularities, financial or otherwise, is an essential part of a truly accountable system. In the context of Members' constituency allowances, the institution of such processes would have a number of benefits. The most

⁷⁸ See Franks, footnote 70.

obvious benefit is the early identification of problems and the ability to deal with them expeditiously. Such processes would also be of significant assistance to MHAs generally because, notwithstanding the greater detail that will be provided with respect to allowable constituency expenses as a result of later recommendations in this report,⁷⁹ and notwithstanding the provision of a Members' Manual as previously recommended,⁸⁰ complex situations requiring clarification will undoubtedly arise from time to time.

One model for these internal investigations would be a system consisting of two separate processes. The first would involve the situation where a Member makes or contemplates making or incurring an expense and wishes to clarify whether it is an expense that is susceptible to being reimbursed. Thus an advance inquiry could be made by a Member to the Speaker as to the appropriateness of an anticipated expenditure, or of an expenditure already made.⁸¹ In Recommendation No. 3(e), I recommended that a proper expenditure regime should, amongst other things, contain mechanisms whereby, in doubtful cases, MHAs could obtain rulings they could reasonably rely on in making and claiming reimbursement for a particular expense. Such a process would involve: a) a written request by a Member to the Speaker for a ruling; b) a written response and ruling by the Speaker; c) the right to make an appeal of the Speaker's ruling to the Commission, and d) ultimately, if necessary, a ruling from the Commission, which decision would be final.

The second process could involve the review of an allowance use where a particular expenditure appears to be questionable. It could be initiated at the request of a Member, or of the Clerk, or of the Speaker's own accord. The Speaker would then conduct, in his or her capacity as Chair of the Commission, a review to determine whether the Member's use of an allowance or other disbursement complies with the purposes for which the allowance or other disbursement was provided, or complies generally with legislation, or the rules or directives of the Commission. This idea has now found legislative favour in some other jurisdictions.⁸²

This process would involve a series of steps, similar at the outset to those suggested with respect to the advance ruling, wherein the Speaker would make an initial determination. Again, this ruling would be appealable. However, because in this circumstance suggestions of impropriety may be involved, the appeal should be to a person who is not part of the House administration. The Commissioner for Members' Interests (renamed in accordance with an earlier recommendation⁸³ to be Commissioner for Legislative Standards) is, in my view, an appropriate appellate venue.

⁷⁹ See Chapter 10 (Allowances).

⁸⁰ See Recommendation 16.

⁸¹ Even expenditures that have already been made could be made the subject of such an interpretative ruling. The need for such a ruling could arise, for example, where a claimed expenditure is rejected by House staff or where, although a member has had a claim honoured, he or she still has concerns about the application of the rules to that type of expenditure and wishes a definitive ruling in case a similar expenditure has to be claimed in the future.

⁸² See e.g. *The Legislative Assembly and Executive Council Act, 2005*, S.S. 2005, c. L-11.2, s. 56.

⁸³ See Recommendation 4(3).

These processes should foster a further measure of self-discipline on the part of Members. They would have the assurance of a formal process wherein they can initiate the review of a difficult matter in a positive sense and not a pejorative one. At the same time a formal process would exist to enable those in charge of the administration of allowances to better protect and account for the expenditure of public money by conducting internal investigations where warranted.

The adoption of such a regime should also have a broader benefit: the reversal of a certain culture of neglect and carelessness by the elimination of pleas of ignorance of the rules, something that is rarely justified, but too often made in the past.

I therefore make the following recommendation:

Recommendation No. 20

- (1) A procedure should be established in legislation whereby an advance inquiry could be made in writing by a Member to the Speaker as to the appropriateness of an anticipated expenditure, or of an expenditure already made, with the resulting ruling being binding;***
- (2) A procedure should be established in legislation whereby the review of an allowance use could be initiated at the request of a Member or of the Clerk or of the Speaker's own accord, and the Speaker would conduct, in his or her capacity as Chair of the House of Assembly Management Commission, a review to determine whether the Member's use of an allowance or other disbursement complies with the purposes for which the allowance or other disbursement was provided, or complies generally with legislation, the rules and the directives of the Commission;***
- (3) Both of the above described procedures should include procedural safeguards by way of further review and/or appeal mechanisms. In the case of advance inquiries, these would ultimately involve the House of Assembly Management Commission. In the case of review of allowance use, these would ultimately involve the Commissioner for Legislative Standards.***

“Whistleblower” Legislation

A mechanism to promote good governance that has been developed in both the private and public sectors in recent years has been the notion of a “whistleblower” policy designed to encourage persons within an organization to report instances of behaviour of others in the organization that is considered improper, unethical or wrong. In the public

sector, the policy is usually embodied in legislation and is often referred to by other names such as “public servants disclosure”⁸⁴ or “public interest protection.”⁸⁵ The key elements of a whistleblower policy are: the provision of a well-publicized formal mechanism whereby a person concerned about the improper behaviour of another in an organization may express those concerns in confidence to another person who is regarded as independent; a process whereby those concerns will be investigated in a fair manner; and protection to the whistleblower against reprisals for having come forward. For the scheme to work, the policy must be communicated to all employees affected and key members of management should stress the importance of the policy.⁸⁶ As well, potential whistleblowers must have confidence in the protections that are provided.

In the area of publicly traded corporations, either an independent member of the board of directors or an independent firm often monitors the whistle-blowing policy. In the public sector, the monitor is often a statutory officer specially appointed for the purpose and who, by virtue of the position, is regarded as independent and not subject to influence by the organization being investigated.

The public service of the province of Newfoundland and Labrador does not have a formal, legislated public interest disclosure policy within any part of the government. In other jurisdictions that have implemented a whistleblower policy, the policy does not usually apply within the legislative assembly service or within the legislature generally. Notwithstanding this, and notwithstanding the considerable opposition to the concept by local MHAs,⁸⁷ I believe that it is appropriate to recommend such a policy within the House of Assembly in this province. It is obvious from the events that have been documented in Chapters 3 and 4 that at least some people within the public service - both within and without the House administration - would have seen the way in which claims were being processed without proper documentation and without checking or segregation of duties. Others would have known about the year-end payments that were made to MHAs in violation of the previously enunciated policy of requiring receipts for all future claims. These are but two examples. If a system had been in place encouraging reporting of perceived improprieties, it is possible (and I recognize there is no guarantee) that some of the events that occurred could have received scrutiny much earlier than they did.

I realize that there is a concern that applying a whistleblower policy to publicly-visible persons like MHAs leaves them open, perhaps more than others, to spurious claims being made by disgruntled persons with an axe to grind. A fair and thorough investigation

⁸⁴ *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46.

⁸⁵ *Public Interest Disclosure (Whistleblower Protection) Act*, S.M. 2006, c. 35.

⁸⁶ William B. deMeza, “New Protections for Employees, Responsibilities for Employers Under Sarbanes-Oxley Whistleblower Provisions,” (March 27, 2003), online: Hollard & Knight LLP <<http://www.hklaw.com/Publications/OtherPublication.asp?ArticleID=1984>>.

⁸⁷ In the survey of MHAs conducted by inquiry staff, 50% of respondents either strongly or moderately disagreed with the notion of a whistleblower process applicable to inappropriate behaviour by MHAs. See Appendix 1.6 (Survey Results), Item 53.

process should, however, screen out unfounded allegations of a vindictive nature. I do not believe that a concern of this nature is sufficiently strong to overbalance the other benefits of implementing such a policy, particularly the removal of public suspicion that MHAs have something to hide and the bolstering of public confidence in the open and transparent nature of the political system.

I have already recommended that the Clerk be designated the “accounting officer” for the House administration.⁸⁸ That concept involves the expectation that the Clerk will “stand up and be counted” when he or she believes that the Speaker or the Commission of Internal Economy is embarking on a course that is contrary to a rule, directive, policy or standard, and provides a mechanism for the Clerk to document his or her concerns and a protection against reprisal for doing so. To some degree, that will protect the Clerk against the pressure of always having to support his or her masters at all costs.

A whistleblower policy is broader than this. It should provide all persons, whether in high management positions or not, an opportunity to voice concerns about impropriety in the confidence that they will not be penalized for speaking up.

A number of models for public interest disclosure mechanisms exist in this country but, as I have noted, they do not generally apply to the legislative branch.⁸⁹ I have chosen to follow the Manitoba model because of its relative simplicity, but I have had to adapt it to make it apply to the House. The opportunity to invoke the policy should not be limited to persons within the House administration, but should include members of the public service generally. Since the financial affairs of the House occur within the broader system of management of the spending of public money under the *Financial Administration Act*, there may well be people in other parts of government (such as in the office of the Comptroller General) who may become aware of impropriety involving the House. The focus of inquiry should not be solely on employees of the House or its statutory offices, but should include the Speaker, MHAs and members of the IEC.

The whistleblower policy I am recommending will only apply to the legislative branch. To recommend application throughout government would be outside my mandate. Since it would be inappropriate and not cost-effective to recommend that a new statutory office be created to perform the investigative and monitoring function safely within the legislative branch, and assuming that the policy will not expand beyond its present size, I believe the Citizen’s Representative should be named as the person to whom a disclosure could be made and who would conduct an investigation.

Accordingly, I recommend:

⁸⁸ See Recommendation 18.

⁸⁹ *Public Service Act*, R.S.O. 1990, c. P-47; *Civil Service Act*, R.S.N.S. 1989, c. 70; *Employment Standards Act*, S.N.B. 1982, c. E-7.2; *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2; *Public Interest Disclosure (Whistleblower Protection) Act*, S.M. 2006, c. 35; *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46.

Recommendation No. 21

- (1) A public interest disclosure (“whistleblower”) program should be implemented by legislation in the legislative branch of government;***
- (2) Under the program, members of the public service or MHAs who believe that wrongdoing, such as committing a statutory offence, gross mismanagement of public money, violation of a code of conduct or failure to disclose information required to be disclosed, has been committed by an MHA, the Speaker, persons employed in the House or its statutory offices, or members of the House of Assembly Management Commission should be provided with a mechanism to report such wrongdoing in confidence;***
- (3) The program should provide a means whereby the disclosure of alleged wrongdoing can be investigated in a fair manner and recommendations made for appropriate action to be taken;***
- (4) The Citizens’ Representative should be designated as the investigator under the program;***
- (5) The program should provide that no reprisals can be taken against any person making a disclosure in accordance with the program; and***
- (6) The Clerk should be tasked with undertaking at an early date the development of explanatory material relating to the program, and how it should be used, for approval by the Commission, and then for general distribution to members of the public service and MHAs, stressing the importance of the program and its full support by the Commission.***

The details of the policy I am recommending are set out in the draft legislation that is being submitted with this report.⁹⁰

Public Exposure by Auditor General

⁹⁰ See Chapter 13, Schedule I, Part VI.

There can be no doubt that one method of preventive enforcement of a Member's obligations is the existence of the possibility of exposure to the public, through the media and otherwise, of a Member's failure to comply with expected standards of financial accountability. Such exposure depends, however, on the ability to gain access to the information indicating the failures in question. One method is through a whistleblower policy just discussed.

Section 15 of the *Auditor General Act*⁹¹ requires the Auditor General in certain circumstances to report instances of improper financial activity discovered in the course of an audit. The specific provision reads as follows:

(1) Where during the course of an audit, the auditor general becomes aware of an improper retention or misappropriation of public money or another activity that may constitute an offence under the Criminal Code or another Act, the auditor general shall immediately report the improper retention or misappropriation of public money or other activity to the Lieutenant-Governor in Council.⁹²

(2) In addition to reporting to the Lieutenant-Governor in Council under subsection (1), the auditor general shall attach to his or her annual report to the House of Assembly a list containing a general description of the incidents referred to in subsection (1) and the dates on which those incidents were reported to the Lieutenant-Governor in Council.

This provision applies generally to all aspects of the Auditor General's audit work. It is not specifically aimed at MHAs or only financial activities in the House of Assembly. Identical standards applicable to reporting by the Auditor General must therefore be applied throughout government including both executive and legislative branches.

There are constraints on the obligation of the Auditor General to make a section 15 report. They are that:

1. the information must be obtained "during the course of an audit," and not otherwise;
2. the information must indicate an "improper retention" or "misappropriation" of public money or "another activity" that may constitute a criminal or statutory offence; and

⁹¹ S.N.L. 1991, c. 22 as amended.

⁹² Section 31 of the *Auditor General Act* in fact requires that reports to the Lieutenant-Governor in Council should be submitted through the Minister of Finance.

3. the retention, misappropriation or activity must be such that it is either “improper” or “may” constitute an offence under the *Criminal Code* or provincial statute.

It is important to note that the role of the Auditor General involves considerably more than merely reporting every time a discrepancy is discovered in the course of an audit. The reporting obligation under section 15 is only triggered where there is a basis for believing that there may have been some impropriety, criminality or illegality associated with the questionable transaction. Accordingly, it is not correct to say, as has been suggested, that the Auditor General’s role is only to state the facts relating to the discrepancy and does not extend to determining whether there is a potential for concluding that the author of the transaction intended to bring it about in circumstances that might be criminal. If that were so, it would mean that every time the Auditor General discovered an instance of, say, double billing or overpayment, however benign, he or she would be obligated to report it. That is not so. Instead, there must be a basis for belief by the Auditor General that there may be impropriety, criminality or illegality involved in the discrepancy.

The issuing of a section 15 notice is therefore a serious matter inasmuch as it carries with it the suggestion of potential impropriety or criminality and may well trigger further investigative processes that could possibly lead to criminal charges being laid or civil actions being instituted.

It is true that the role of the Auditor General is not to decide whether charges should be laid or prosecutions or actions be proceeded with. Those decisions are for the police and Crown prosecutors. The police must apply a threshold test of “reasonable grounds” to believe an offence has been committed.⁹³ That essentially involves an assessment, objectively, of whether there is admissible evidence that could result in a conviction and, subjectively, whether the police officer contemplating laying the information believes that grounds exist. This is a lower standard than that applied by a Crown prosecutor in deciding whether to proceed with a prosecution. That standard involves consideration, additionally, of whether, given the nature, credibility and admissibility of the available evidence, there is any reasonable prospect of conviction, and whether it is in the public interest to proceed with prosecution.⁹⁴

Both the police and prosecutorial standards, though low thresholds in themselves, are higher than the threshold contemplated by section 15. Nevertheless, section 15 does require an advertence to the question of potential criminality before proceeding with the issuance of a notice.

Because the consequences of initiating a report can be significant in terms of their impact on the reputations of individuals who may be identified as being involved in the

⁹³ *Criminal Code of Canada*, s. 504.

⁹⁴ Newfoundland and Labrador, Public Prosecutions Division, *Crown Policy Manual*, Topics 200, 2005.

impugned activity and on the ability of such individuals to receive a fair trial if criminal charges are ultimately laid, the discretionary decision to make a report under section 15 must be exercised judiciously and with caution. Factors that should be taken into account in exercising the discretion would include:

1. whether, judged against proper accounting and other investigative standards the retention, appropriation or other activity actually occurred;
2. whether, following a thorough investigation, it can be said that the nature of the transaction, viewed in context, indicates that it is something more than a mistake or inadvertent error - i.e., is there no realistic possibility that there is an innocent explanation for what occurred?;
3. whether the transaction is materially significant; i.e. is something that extends beyond *de minimis*; and
4. whether there is a realistic (i.e. not merely fanciful) possibility that a reasonably informed public official could conclude that the transaction was improper or evidenced criminal or illegal behaviour.

The report that the Auditor General is required to make is two-fold: (i) he or she must “immediately” report to the Lieutenant-Governor in Council; and (ii) he or she must attach to the annual report to the House of Assembly a list containing “a general description” of the incidents.

The legislation does not contemplate that a written report be issued to the public or the media, or that a news conference be held, or that interviews be given to the media amplifying what is in the report. This is as it should be. Undue publication of the information in a report at such an early stage - before decisions are taken to lay charges, or prosecute or seek reimbursement - risks interfering with important constitutional and other values. Given the relatively low threshold justifying the making of a report, even though its issuance may cause considerable damage to an individual’s reputation that may be difficult to repair if it is ultimately shown that there is an innocent explanation, one ought to be careful about bandying details about in the public domain. Furthermore, undue publication of the information with its implicit suggestion of impropriety or criminality may have an effect on a person’s constitutional right to a fair trial if charges are ultimately laid.

As a general rule, therefore, the reporting function of the Auditor General should be limited to making the official reports to the Lieutenant-Governor in Council and the House as contemplated by section 15. I note that, as a general rule, even at the stage of the decision to prosecute, where the threshold for acting is higher, the police do not make a habit of making public announcements that charges have been laid.

While I recognize that there is a possibility that the Lieutenant-Governor in Council might not do its duty on receipt of a report and disregard it, that risk is minimized by the fact that ultimately there has to be public disclosure - at least with respect to a “general

description” - of the incident in the Auditor General’s annual report to the House.

These observations, I believe, are all the more important when one comes to dealing with situations involving public figures such as MHAs. They are particularly vulnerable to attacks on their reputations. Allegations of impropriety - even if ultimately shown to be unfounded - may have the effect, given the tendency of the public to ascribe low motives to politicians, of making the MHA’s continuing job untenable, and may irrevocably affect re-election chances. Caution in the manner of dealing with such situations is called for.

It is outside my mandate to make recommendations with respect to the continuing operation of section 15 generally. However, I believe it to be appropriate to address the matter with respect to matters involving MHAs. After all, it was the issuance of section 15 reports that became the catalyst for the current inquiry.

In the first place, I believe it important - indeed a fundamental aspect of fairness - that in undertaking the analysis of whether the Auditor General should exercise his or her discretion to issue a section 15 report, the Auditor General should make full disclosure to the Member concerned, give him or her an adequate opportunity to provide any additional information as well as an explanation for what has been found, and consider those responses as part of his or her discretionary decision making.

Additionally, I believe the role of the Auditor General, at least when dealing with identified discrepancies involving Members, to be one of preparing and delivering to the appropriate officials a comprehensive report detailing the transactions being questioned, why he or she believes that a report is warranted, and containing any recommendations he or she considers appropriate to make. I do not believe it appropriate, however, to make the report to the Lieutenant-Governor in Council as section 15 now contemplates. The Auditor General is an officer of the House and provides his or her audit services to the House. The report should therefore be to the Speaker. In addition, however, the report should be given to other persons who have a vital stake in the information disclosed. They include:

1. The Premier. With respect to MHAs who are also Cabinet Members, the Premier must be in a position at the earliest opportunity to make decisions as to whether the Minister ought to remain in Cabinet. With respect to MHAs who are not Cabinet Members, the Premier also must be aware of any potential impropriety in case he or she is contemplating inviting such a person into cabinet.
2. The Leader of the political party of which the MHA is a member. The Leader needs to know this information in case the roles assigned to the MHA in caucus will be compromised by the information disclosed in the report.
3. The Attorney General. Inasmuch as a report is based on the possibility of impropriety or criminality, the Attorney General in his political role as chief law officer of the Crown must decide whether to request a police investigation and, if charges are laid, to proceed with prosecution.

4. The Minister of Finance. Any time public funds are in issue the Minister of Finance is *ipso facto* interested. It would be necessary for the Minister, at an early date to be in a position to initiate action to recover public funds and, in the interim, to freeze assets or institute set-offs.

The Auditor General should not, unless in the most exceptional of circumstances, make his or her report known to any other individual. Indeed, section 21 of the *Auditor General Act* provides that the Auditor General must “keep confidential all matters that come to his or her knowledge in the course of his or her employment or duties under [the] Act and shall not communicate those matters to another person.” The only exception is where such communication may be required in connection with the discharge of responsibilities under the Act or the *Criminal Code*. Inasmuch as the Auditor General’s responsibilities to report under section 15 are limited to reporting to the Lieutenant-Governor in Council and in his annual report, it is arguable that the Act already forbids communication to any other person, including the media and the general public.

I am not concerned about the risk of the report being “buried” with no action being taken on it. I cannot conceive of an Attorney General, who must act without reference to political considerations in such matters, not doing his or her duty to initiate the appropriate action. If charges are laid, or an action commenced, the matter may then become public in the same way as any other prosecution or court proceeding. In any event, the Auditor General must include a reference to the matter in his or her public annual report to the House. Thereafter the Public Accounts Committee, if it is doing its job conscientiously, would be in a position to examine the matter.

Furthermore, there are other mechanisms whereby information in a section 15 report may legitimately become public. The circumstances surrounding the creation of this Commission are a case in point: upon being made aware of a section 15 report involving a Cabinet Minister, the Premier relieved him of his office and, quite properly, felt compelled to provide a public explanation for his decision.

Accordingly, aside from making his or her report to the individuals I have identified, the Auditor General generally ought to remain mute. Indeed, the Auditor General even generally ought not to make it known to any person - even those identified above - that he or she is examining transactions and records involving an MHA until he or she has made the decision that there is a reasonable prospect that a section 15 report will have to be issued.

Finally, there is one other matter touching on this issue that bears comment. As noted previously, section 21 of the *Auditor General Act* places an obligation of confidentiality and non-communication on the Auditor General. It has been suggested that this section amounts in effect to an immunity from court process. I do not agree. There would have to be more explicit statutory language employed to lead me to the conclusion that the Auditor General - perhaps the only one with the requisite knowledge - could, with

impunity, refuse to comply with a subpoena requiring him or her to give material evidence in a judicial proceeding and thereby jeopardize a fair trial in either a civil or criminal matter. Whatever may be the merits or otherwise of according the Auditor General a *general* immunity from court process (on which I do not propose to comment because it is outside my terms of reference), I am prepared to state that the legislation should be clarified to provide that in any civil or criminal matter regarding alleged improper retention or misappropriation of public money by a Member, or any matter that may constitute an offence by a Member under the *Criminal Code* or another statute, the Auditor General should be a fully compellable witness. Otherwise, valuable evidence relating to potential civil recovery of misappropriated funds, or relating to prosecution or full defence to a prosecution, may not be available.

I am prepared to make the following recommendation:

Recommendation No. 22

- (1) Section 15 of the Auditor General Act should be amended to make it inapplicable to members of the House of Assembly;***
- (2) The new legislation recommended in this report should contain a provision dealing specifically with reporting of possible impropriety and criminality by MHAs by providing that, if during the course of an audit, or as a result of review of an audit report prepared by another auditor employed by the House of Assembly or as a result of any internal audit procedure, the Auditor General becomes aware of an improper retention or misappropriation of public money by a Member, or another activity by a Member that may constitute an offence under the Criminal Code or another Act of the Parliament of Canada or the Province, the Auditor General should be required immediately to report the improper retention, misappropriation of public money or other activity to:***
 - (a) the Speaker;***
 - (b) the Premier;***
 - (c) the leader of the political party with which the member involved may be associated;***
 - (d) the Attorney General; and***
 - (e) the Minister of Finance;***
- (3) In addition to reporting the retention, misappropriation or other activity, the Auditor General should be required to attach to his or her annual report to the House a list containing a general description of these incidents and the dates on which those incidents were reported;***
- (4) Before making a report, the Auditor General should be required to give to any Member involved and who may be ultimately named or identified in the report:***

- (a) *full disclosure of the information of which the Auditor General has become aware;*
 - (b) *a reasonable opportunity to the Member to provide further information and an explanation; and*
 - (c) *the Auditor General should take that information and explanation, if any, into account in deciding whether to proceed to make the report;*
- (5) *The Auditor General should be under a duty not to make the existence or contents of a report referred to in Recommendation 22(1) known to any other person except:*
 - (a) *as part of his or her annual report to the House;*
 - (b) *in accordance with court process;*
 - (c) *as part of proceedings before the Public Accounts Committee; and*
 - (d) *as a result of a request from the House of Assembly Management Commission*
- (6) *The Auditor General should be a compellable witness in any civil or criminal proceeding and in a proceeding before the Public Accounts Committee relating to any matter dealt with in a report made under this section; and*
- (7) *Section 19.1 of the House of Assembly Act should not apply to a report made by the Auditor General under the new legislative provision.*

Enforcement of Duties by the Public

The history of the administration of constituency allowances, recited in Chapter 3, highlights a number of circumstances where there was a failure on the part of various persons to perform legal duties to which they were subject. Two notable examples can be repeated.

The first example was the failure of the IEC to appoint an auditor and cause an audit to be conducted of the accounts of the House for the fiscal year 2000-01, despite the fact that section 9 of the *Internal Economy Commission Act* placed a mandatory duty on the IEC to do so. In fact, that audit has yet to be conducted or completed in the manner contemplated by the legislation. As well, the audit for the final year for which the external auditor was engaged during the “Hold the Line” era, as described in Chapter 3 - fiscal year 2003-04 - has also not been completed, as a result of instructions from the Speaker, on behalf of the IEC.

In my view, section 9 imposes a continuing obligation on the IEC, no matter that its membership subsequently changes, to ensure that an annual audit of the House is carried out; that obligation cannot be avoided except by ensuring that the audit is ultimately completed.

The second example is the failure to disclose and document decisions of the IEC in the annual report to the House in a manner that would enable an informed member of the public to understand the nature and import of those decisions. Subsection 5(8) of the *Internal Economy Commission Act* requires that “all decisions of the commission shall be a matter of public record and those decisions shall be tabled by the speaker,” in the House. The decision in May of 2004 to grant to all members an additional payment of \$2500 (plus HST) without supporting receipts, as discussed in Chapter 4, is but one example of a failure to document and publicly report in an understandable manner decisions relating to expenditures of public money.

In my view, subsection 5(8) of the *Internal Economy Commission Act* places an obligation on the Speaker to record IEC decisions and make them public through the tabling process in a way that makes it possible for a reader to understand the true nature of the decision.

From a practical point of view, obligations imposed by legislation on members or officials of government are often hard to enforce. These difficulties are compounded, in the case of the IEC by two factors. The first is the relative secrecy under which the performance (or lack of performance) of the obligations takes place. The second is that the normal political checks and balances inherent in a system that pits opposing political interests against each other is weakened by the fact that all Members can be said to have similar self-interests in matters pertaining to their financial circumstances as members of the House. There is less likelihood, therefore, that political partisanship would result in criticism from within the IEC, or in agitation for action with respect to a failure to comply with statutory

obligations pertaining to matters that have equal effect on Members, no matter what their political persuasion.

While it is true that enforcement of statutory duties on the part of government officials often falls to the Attorney General, the circumstances under consideration demonstrate that that has not been an effective remedy. For example, I have not been made aware of any requests having been made to the Attorney General from within the government service or by a Member of the House that the obligation of the IEC in section 9 of the *Internal Economy Commission Act* be enforced, nor have successive Attorneys General taken it upon themselves of their own motion to initiate enforcement action (presumably because the failures to comply were not brought to their attention).

The fact that I am recommending that greater openness be brought to the proceedings of the IEC increases the possibility that failures to perform a statutory duty may become more easily known, through the media and otherwise, by members of the public. It is not unreasonable, therefore, that members of the public who become aware of a major failure to comply with a statutory duty should have an opportunity, out of sense of public duty, to seek enforcement of those duties through the courts where they perceive that others in the system are not taking appropriate enforcement action.

The judicial remedy for enforcement of a statutory duty is the order of *mandamus*. It will be granted by a court where: (i) a public duty (not merely a discretion) is imposed on an official (not merely the Crown generally); (ii) there is an identifiable person or group of persons who have a right to performance of the duty; (iii) there is no alternative specific legal remedy which is not less convenient, beneficial and effective; and (iv) there has been a demand for performance of the duty and a failure to comply.⁹⁵

The second and third requirements raise issues relating to standing and the role of the Attorney General. Traditionally, the Attorney General was regarded as the appropriate person to take proceedings against public officials to enforce statutory duties; accordingly, a private citizen seeking a *mandamus* could be met with the argument that the wrong claimant was before the court or that, at the very least, the Attorney General's consent had to be obtained to proceed with the action. Additionally, the traditional rule was that a claimant for a *mandamus* had to show that he or she was specifically entitled to performance of the duty above and beyond the fact that he or she was entitled simply because the duty was owed to the public generally.

More recent case law has relaxed the general public law requirement for participation by the Attorney General by, first, permitting the claimant to proceed in situations where the consent of the Attorney General was refused, so long as the claimant then joined the Attorney General as a defendant, and then, later, by recognizing that in some cases there was

⁹⁵ See *Johns-Mansville Canada Inc. v. Newfoundland (Minister of Mines and Energy)* (1985), 51 Nfld. & P.E.I.R. 338 (NLSC, TD).

no need to involve the Attorney General directly at all.⁹⁶ Furthermore, the rules regarding standing in public law generally were relaxed by allowing the claimant, in ratepayers' and taxpayers' actions, to challenge the constitutionality or *vires* of legislation or regulations without any claim to being specifically aggrieved,⁹⁷ and then extending the relaxation to other circumstances on a discretionary case-by-case basis.⁹⁸

Given this trend towards allowing greater access to the courts to challenge governmental action, it is not unreasonable, in my view, to allow members of the public to seek to enforce statutory duties imposed on bodies like the IEC where they perceive in good faith that observance is being ignored. After all, the duties imposed on bodies like the IEC are designed, in the last analysis, to ensure proper stewardship of public funds and thereby achieve accountability to members of the public for that stewardship. My sense is that members of the public often feel shut out of direct involvement in the political process, thereby breeding a sense of helplessness with respect to being able to have any real influence, and even a sense of cynicism about the motives of their elected representatives. It is not unreasonable, however, to require a claimant to first make a demand on the person or body alleged to have failed to observe the duty before proceeding to court.

While I agree that a claim to enforce a statutory duty should not be automatically derailed because the Attorney General has not been made a party (either as plaintiff or defendant), I do see value in giving the Attorney General the opportunity to become involved and to take the steps it is being alleged he or she should have taken earlier or to present to the court other information that could explain why the duty should not be enforced. It is appropriate, therefore, to require copies of the application to be served on the Attorney General. In a meritorious case, perhaps that in itself would be enough to precipitate informal action on the part of the Attorney General to persuade the person or body involved to perform the duty.

⁹⁶See *Thorson v. Canada (Attorney General) (No 2)*, [1975] 2 S.C.R. 138; *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.

⁹⁷See *Thorson v. Canada (Attorney General) (No 2)*, [1975] 1 S.C.R. 138; *MacNeil v. Nova Scotia (Board of Censors)*, [1976] 2 S.C.R. 265.

⁹⁸See *Carota v. Jamieson*, [1977] 1 F.C. 19; *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.

Accordingly, I make the following recommendation:

Recommendation No. 23

- (1) Express statutory recognition should be given to a right of a member of the public to seek an order of mandamus, as well as consequential and declaratory relief, to enforce statutory duties imposed on the House of Assembly Management Commission, the members of the Commission as well as MHAs where the member of the public, acting in good faith, believes that a statutory duty has not been complied with and no other action to enforce it has been or is being contemplated;***
- (2) A member of the public seeking an order of mandamus:***
 - (a) should not be denied standing on the ground that he or she is not affected by the alleged failure to perform the duty to any greater degree than any other person; and***
 - (b) should be required to serve notice of the application on the Attorney General who should have the right to intervene and be heard on the application; and***
- (3) A person seeking a mandamus in the above circumstances should not be exposed to an adverse order as to costs, even if unsuccessful, provided he or she has acted in good faith in bringing the application.***

I am under no illusion that this remedy, in itself, will provide an adequate or complete means of enforcing public obligations. Nevertheless, every bit of accountability in an area that traditionally has presented difficulties for accountability should be welcome.

In addition to giving the public direct access to the possibility of achieving greater accountability, we should not diminish the importance of more traditional means of enforcement of public duties. The Attorney General should be given greater opportunity to be made aware of the need for enforcement in specific cases. It is to be hoped that, as the chief law officer of the Crown charged with the responsibility of upholding the rule of law uninfluenced by political considerations, he or she would, if made aware of serious failures to perform public duties that had been imposed by the legislature, take appropriate action, either by seeking mandatory orders if the recalcitrant person or body rebuffed any demands for compliance, or even, in appropriate circumstances, by commencing a prosecution.⁹⁹

⁹⁹ See s. 5 of the *Provincial Offences Act*, S.N.L. 1995, c. P-31.1.

I therefore make the following additional recommendation:

Recommendation No. 24

- (1) The new legislative regime being recommended should expressly provide mechanisms for the provision of information to the Attorney General concerning alleged failures by Members and public officials to comply with legal prescriptions, thereby improving the likelihood that the Attorney General will be in a position to take appropriate enforcement action;***
- (2) Examples of such mechanisms would include:***
 - (a) direct notification by the Auditor General if a notice of potential improper retention or misappropriation of funds or a possible criminal or statutory offence is proposed to be issued under section 15 of the Auditor General Act; and***
 - (b) notification of a finding of potential wrongdoing following a disclosure under the “whistleblower” legislation being recommended in this report.***



Chapter 6

Structure

It may seem strange that the Clerk combines the somewhat academic precision of procedural matters with overall responsibility for the management of the House's services. In fact it would be strange if he were not to do so. He is the authority on all aspects of the House's core business ...

— Robert Rogers and Rhodri Walters¹

Restructuring As an Integral Part of the Reform Process

The Terms of Reference require me to make recommendations on policies and practices resulting from my review of the controls, accountability and compliance rules with respect to spending in the House. Implicit in my mandate to “ensure the accountability and compliance practices employed in the House of Assembly meet or exceed the best in the country” is the necessity of examining whether the formal statutory and administrative structures in which the policies and practices operate need adjustment.² Formal structures can often play a big part in facilitating or hampering the implementation and maintenance of proper systems of control and accountability.

In this chapter I will examine some of the key structural elements of the House administration and make recommendations for their improvement. Key components include the Commission of Internal Economy, the office of the Clerk, the organization of the House administration and the relationship between the House administration and the officers of the House, who, by statute, are regarded as heading independent operations. I will also comment briefly on ancillary matters, such as the provision of adequate resources to ensure that a revised legislative and administrative structure functions properly.

¹ Robert Rogers and Rhodri Walters, *How Parliament Works* 6th ed. (Harlow: Pearson Longman, 2006) pp. 57-58.

² Terms of Reference, Appendix 1.2, item 4.

The Office of the Clerk

The Clerk of the House of Assembly plays a pivotal role in the affairs of the House. The office involves two very distinct parts. The aspect of the role that has traditionally been associated with the office of the Clerk is that of parliamentary advisor to the Speaker. This is the aspect that former clerks in this province have emphasized and to which they have paid most attention. The other aspect of the role, which has grown exponentially over the years as the administration of House affairs has expanded, is that of chief permanent head of the organization responsible for management and administration of what is now a bureaucratic structure like other institutions in government.

In both roles, it is important that the Clerk be, and be seen to be, independent of the executive branch of government. As chief permanent head of the House administration, the Clerk's loyalty has to be to the legislative branch, which he or she serves. In matters where there is a conflict of positions between the executive and legislative branches, the Clerk has to be in a position to act on behalf of the whole House, unconstrained by any special obligations to the government side. As the parliamentary advisor to the Speaker, the Clerk's advice, given often in reliance on research from law clerks who should also be independent, must be scrupulously balanced so as to ensure that the impartiality of the Speaker is maintained.

At present, the Clerk is appointed by the Lieutenant-Governor in Council.³ As a Cabinet appointment, the choice will ultimately be made by the Premier or, at the least, with the Premier's approbation. In my view, executive control over the appointment of the Clerk is not appropriate. In some jurisdictions, the power of appointment is vested in the legislature or in the House board of management.⁴ The appropriate procedure, I believe, is for the House to make the appointment. The responsibility for initiating the process should rest with the Speaker. It is obviously important, however, to ensure that qualified candidates for the position are identified. The Speaker may not have the resources necessary to do a proper search. He or she should therefore be encouraged to take advice from the public service commission and the executive council as to the processes and means to be employed for selection. The chosen candidate should be presented to the House for ratification.

³ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, ss. 4(a).

⁴ In Saskatchewan, for example, the Clerk is appointed by the Board of Internal Economy on the recommendation of the Speaker. *The Legislative Assembly and Executive Council Act, 2005*, S.S. 2005, c. L-11.2, s. 79. In the Northwest Territories and Nunavut, the Clerk is appointed by the Commissioner on the recommendation of the Board of Management approved by motion of the Legislative Assembly. *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22, ss.54(1) and *Legislative Assembly and Executive Council Act (Nunavut)*, R.S.N.W.T. 1988, c. L-5, s. 49.

I therefore recommend:

- Recommendation No. 25***
- (1) The next Clerk of the House of Assembly should be appointed on nomination by the House; and***
 - (2) The Speaker should initiate the selection process and should consult with the House of Assembly Management Commission, the Clerk of the Executive Council and the Public Service Commission to determine the appropriate process for recruitment of suitable candidates for appointment.***

At present, the responsibilities of the Clerk, both in respect of the parliamentary role and the administrative role, are inadequately spelled out in the applicable legislation. The *Internal Economy Commission Act* merely provides for the appointment of the Clerk and assigns to him or her the role of secretary of the Commission of Internal Economy⁵ and the task of preparation of the budget of the House for the consideration by the Commission.⁶ On the other hand, the *Clerk of the House of Assembly Act* confers on the Clerk responsibility for “safe-keeping of the records of the House of Assembly and all dispatches, bills, petitions and documents presented to or laid on the table of the House.”⁷

The only other statutory provision dealing with the duties of the Clerk is section 5 of the *Clerk of the House of Assembly Act*, which provides:

5. The general duties of the clerks of the House of Assembly, where no special provision is made, shall be similar to those of the clerks of the House of Commons in England according to the practice of Parliament, or as may be provided by resolution of the House of Assembly.

I am not aware of any resolution of the House having been passed to better define the Clerk’s duties. The only other source of information as to what the expectations of the Clerk are, therefore, is the vague “default” provision that requires a reference to the situation in the United Kingdom Parliament.

It will be seen that these provisions, while at least addressing the role of the Clerk as parliamentary record-keeper, do not at all address the role of the Clerk as manager and administrator, except in respect of budgeting matters. This void in the legislative structure perhaps gives some support for the absence of a concerted focus on management by clerks of former years. The reality is, however, that regardless of what the legislation fails to say, the

⁵ Ss. 5(8).

⁶ S. 6.

⁷ *Clerk of House of Assembly Act*, R.S.N.L. 1990, c. C-19, s. 4.

management function has quite clearly devolved on the office of the Clerk, and expectations have been engendered that that role would be fulfilled. The very fact that it is commonplace to analogize the position of the Clerk, from an administrative point of view, to that of a deputy minister of a government department underscores this point. In addition, the reference, in section 5 of the *Clerk of the House of Assembly Act*, to practice in the United Kingdom reinforces the notion of the Clerk as a manager and administrator. There is no question that the role in Britain has evolved in this way as well.⁸

In my view, it is important that the two roles of the Clerk be carefully delineated, with the responsibilities of each being spelled out.

I will therefore make the following recommendation.

Recommendation No. 26

The roles, duties, and responsibilities of the Clerk of the House as (i) parliamentary advisor to the Speaker and (ii) as chief permanent head of the management and administration of the House should be set out in detail in legislation.

I recognize, of course, that the role of the Clerk as parliamentary advisor to the Speaker is not, *in itself*, within my mandate. However, it is nevertheless necessary to comment on it because a disproportionate emphasis on that role will have a potentially serious and detrimental impact on the ability of the Clerk to perform his or her managerial and administrative role. I believe, therefore, that the responsibilities of *both* roles should be dealt with in legislation.

With respect to the parliamentary role, I must note in passing that I have been advised that the role of the Clerk in this regard may have been recently changed. The former Clerk, who retired in August of 2006, performed the duties of law clerk within the House. It was he to whom the Speaker turned primarily for parliamentary advice. I am told that, since the appointment of the new Clerk, it is expected that the Speaker will seek advice from the office of the Legislative Counsel. That office is a division of the Department of Justice, not the House of Assembly.⁹ The *Statutes and Subordinate Legislation Act* specifically provides that “the chief legislative counsel is the Law Clerk of the House of Assembly.”¹⁰ While it is true that the office of the Legislative Counsel is a separate division within the Department of

⁸ See, Rogers and Walters, p. 58: “It may seem strange that the Clerk combines the somewhat academic precision of procedural matters with overall responsibility for the management of the House’s services. In fact it would be strange if he were not to do so. He is the authority on all aspects of the House’s core business not just the drier matters of procedure - and no one is in a better position to understand from long experience how the main functions of the House need to be supported and how they can be made more effective.”

⁹ *Statutes and Subordinate Legislation Act*, R.S.N.L. 1990, c. S-22, s. 17.

¹⁰ S. 20.

Justice, the fact remains that the Speaker will, under the current arrangement, receive his advice, not from within the House, but from within the executive branch of government. For anyone interested in ensuring the independence of the House from influence by the executive and promoting the impartiality of the Speaker of the House, this should be a matter of concern.

Consider the following scenario:

The Minister of Justice is on his feet in the House. Another Member raises a point of privilege or some other procedural matter. The Speaker has to make a ruling. He needs advice on the matter. Instead of turning to the Clerk, the Speaker consults with legal officials in the Department of Justice - a department that has as one of its functions the duty to support the Executive in general and the Minister of Justice in particular - and then he makes his ruling.

I would venture to say that the notion of the Speaker taking advice from officials of the department that is charged with supporting the very minister whose position is being challenged in the House is not designed to engender any degree of confidence in other Members who are expecting a fair and impartial ruling. The ruling may ultimately be correct, but the perception that there may have been some improper influence brought to bear, or that the advice may have been coloured in favour of the minister, may linger.

In my view, it is important for the maintenance of the integrity of the office of the Speaker that the parliamentary advice to which the Speaker has access be, and be seen to be, completely independent of the executive branch. I believe that the time has come for the House of Assembly to have its own law clerk, who can assist the Clerk in his parliamentary advice-giving role and in providing the myriad of other legal services that may be required, under the direction of the Clerk, to the House of Assembly, its committees and the Commission of Internal Economy. While there is no uniformity across the country, I do note that in some jurisdictions the office of law clerk is expressly denominated as an officer of the legislative branch and as responsible for providing legal services to the legislature.¹¹

¹¹ The Office of the Legislative Counsel in Nova Scotia is under the direction of the Chief Legislative Counsel who is responsible to the Speaker of the Nova Scotia House of Assembly. The position of Legislative Counsel was created in Nova Scotia on April 5, 1941, replacing the Law Clerk. The Legislative Counsel assumed all of the duties of the Law Clerk. The position of Chief Legislative Counsel was created November 6, 1979. The legislative counsel are the lawyers for the Nova Scotia House of Assembly. They are not only legislative counsel, but also parliamentary counsel. As parliamentary counsel, they provide legal counsel to the House of Assembly, the Speaker and the Office of the Speaker. The Office of the Legislative Counsel provides legal counsel and some support services to committees of the House (primarily the Committee on Assembly Matters, the Law Amendments Committee and the Private and Local Bills Committee) and to the Legislature Internal Economy Board. The Office of the Legislative Counsel publishes the Rules and Forms of Procedure of the House of Assembly. One member of the legislative counsel also serves as the Assistant Clerk of the House of Assembly: Nova Scotia Legislature, online: < <http://www.gov.ns.ca/legislature/legc/~office.htm> > and House of Assembly Act, R.S.N.S. 1989,

Accordingly, I make the following recommendation:

Recommendation No. 27

- (1) The Clerk of the House should be charged, in legislation, with the responsibility of being the chief parliamentary advisor to the Speaker;***
- (2) The provisions of the Statutes and Subordinate Legislation Act appointing the chief legislative counsel and other legislative counsel as law clerks of the House of Assembly should be repealed;***
- (3) The Clerk should be provided with sufficient resources to be able to perform that function without relying on legal and other advice from the executive branch of government; and***
- (4) An office of law clerk should be created within the House of Assembly to advise and assist the Clerk in the performance of his or her functions.***

Turning now to the role of the Clerk as chief permanent head of the legislative branch, it is vitally important that this side of the Clerk's duties be clearly stated and understood. The Clerk is no less than the chief administrative officer and the highest ranking financial officer of the House.¹² This description fits well with a current description of the Clerk of the House of Commons in the United Kingdom, which, as section 5 of the *Clerk of the House of Assembly Act* (referred to above) mandates, is the touchstone for determining the scope of this province's Clerk's duties:

He is Chief Executive of the House Service, chairs the Board of Management, which is responsible for providing the services that support the work of the House, its committees and members and is the principal adviser to the House of Commons Commission [analogous to this province's Commission of Internal Economy] ... He is Accounting Officer for the House of Commons Administration Estimate and the Members Estimate and

c. 1 (1992 Supp.), s. 52.

¹² The duties and roles of the Clerk as chief administrative and financial officer of the House should not be confused with those of the Chief Financial Officer of the House. The chief administrative and financial officer's usual title is that of the Clerk - the longer title is used to indicate the breadth and depth of what the Clerk's full duties should be. The Chief Financial Officer is usually referred to as the CFO, and is primarily responsible for managing the financial risks of the legislature under the supervision of the Clerk. The CFO is also responsible for budgeting and maintaining the financial records of the House, again under the Clerk, as well as for reporting on finances to the Clerk and the IEC.

so is personally responsible for the propriety and economy of expenditure. He is the House's corporate officer and so formally holds property and enters into contracts on the House's behalf, and is legally responsible for the actions of the House administration. He is also the professional head of the Clerk's Department, which is the part of the House Service most closely connected with the work of the House and its committees.¹³

While our legislature is small compared to the House of Commons in the United Kingdom, nevertheless the Clerk has to deal with all the administrative complexities that arise in any legislature. It is surprising then that the office of the Clerk of our House of Assembly would not have had a more visible profile. As the discussion in Chapters 3 and 4 demonstrates, there has been, to some extent, an unbalanced attention to the parliamentary side of the Clerk's duties in the past to the detriment of the administrative side. This has led, in my view, to a lack of appreciation of the importance of the Clerk's office as the managerial lynchpin around which the administration of the House should operate.

Given its onerous responsibilities of administration and financial management, the Clerk's office can only function properly if its place in the administrative structure of the House is affirmed and emphasized. As part of this reemphasis, it is important that the specific duties and responsibilities of the Clerk be spelled out in legislation. That will bring home not only to the Clerk but to others, both within and outside of the legislative branch, the importance of his or her role in providing direction to the whole organization. In so doing, it will also assist in reestablishing a proper "tone at the top" within the administrative structure, to complement a proper tone on the political side.

Later in this report, I will be recommending that a comprehensive piece of legislation be enacted dealing with a variety of matters requiring reform.¹⁴ Included within that draft legislation are sections specifying duties and responsibilities of the Clerk.¹⁵ I will not itemize them further here except for two matters.

These matters relate to the notions of *accounting officer* and *management certification*. In Chapter 5, I recommended that the concept of an accounting officer be introduced into the House administration and that the Clerk be designated as the person with ultimate responsibility for accounting directly to the Public Accounts Committee of the House for specific aspects of his or her management responsibilities.¹⁶ In Chapter 7, I will be discussing, and recommending, a management certification process that should be implemented within the House.¹⁷ This process will require the Clerk to certify in a formal way to the Speaker, the Commission of Internal Economy and the House that, amongst other things, a proper system of internal controls is in place that will provide reasonable assurance

¹³ Rogers and Walters, pp. 57-58.

¹⁴ See Recommendation 80. The draft legislation is contained in Schedule I of Chapter 13. (Renewal)

¹⁵ See Draft Act at ss. 28, 29, 30 and 31.

¹⁶ See Recommendation 18.

¹⁷ See Recommendation 48.

as to the reliability of financial reporting and that that system is operating effectively.

I have made both of these recommendations even though similar concepts do not, as yet, apply throughout the rest of the government service. I have done so because I believe that the time has come to recognize the appropriateness and usefulness of these two processes within government generally, and also because their existence specifically within the House will be helpful in giving assurance to the public and people within the government system that the House administration is operating according to sound management and financial standards.

These two processes will place specific responsibilities on the Clerk that do not apply to deputy ministers or other senior bureaucrats in the executive branch of government. As noted in Chapter 7, however, the process of management certification cannot be imposed on the Clerk and implemented overnight. The Clerk must therefore be given a reasonable period of time to develop a certification plan and to put in place new systems in which he can have confidence before being held to the certification requirement.

I am therefore prepared to recommend:

- Recommendation No. 28***
- (1) The role of the Clerk as the chief permanent head of the management and administration of the House should be affirmed and the Clerk's principal duties and responsibilities should be specified in legislation;¹⁸***
 - (2) The duties of the Clerk, as specified in the legislation, should include:***
 - (a) acting as accounting officer for the House;***
 - (b) being responsible for management certification in accordance with a certification plan prepared by the Clerk and approved by the House of Assembly Management Commission;***

¹⁸ The list of duties contained in Ss. 28, 29, and 30 of the draft legislation in Schedule I of Chapter 13 should be deemed to have been incorporated here.

- (3) *The imposition of responsibility for the management certification process should be delayed for one year to enable a proper management certification plan to be developed;***
- (4) *The Clerk should be provided with sufficient additional resources to enable him to perform the additional duties and responsibilities flowing from the recommendations in this report; and***
- (5) *The Clerk of the House of Assembly Act should be repealed.***

It goes without saying that the role of the Clerk will change in this new environment. There are increased responsibilities. Under the present regime, the Clerk's position is at times regarded as analogous to that of a deputy minister. The Clerk will now have to spend significantly more time on matters of administration than before. Yet he or she will have the responsibilities of directing, coordinating and causing to be provided to the Speaker the parliamentary advice the Speaker requires. In addition, the Clerk will have responsibilities of accounting officer and management certification which no other senior bureaucrat in the government service has. In short, the office of the Clerk will have, under the new recommended regime, significantly more responsibility and accountability than before.

I therefore make the following recommendation:

Recommendation No. 29

A review of the classification and remuneration of the office of the Clerk should be undertaken forthwith by the House of Assembly Management Commission, with the assistance of the Public Service Secretariat, to determine whether an adjustment in the remuneration of the office should be made commensurate with the office's level of responsibility and unique position in the government service.

Commission of Internal Economy

I have outlined in some detail in Chapter 4 my view that one of the contributing causes of systemic failure was the way the Commission of Internal Economy operated, and, in some cases, failed to operate,¹⁹ including a failure to place sufficient importance on fundamental notions of governance, accountability and transparency.²⁰ I also expressed

¹⁹ See Chapter 4 (Failures) under the heading "Notable Inappropriate Decisions."

²⁰ See Chapter 4 (Failures) under the heading "Lack of Commitment of Governance, Transparency and

concern about what I described as an “ever-weakening legislative framework” within which the IEC operated.²¹

I have already made recommendations in Chapter 5 with regard to some aspects of IEC operations, all with a view to improving the “tone at the top.” These recommendations²² included:

- defining of the *collective* responsibilities of the IEC for financial stewardship;
- imposing *individual* duties of diligence, good faith and prudence on IEC members;
- making detailed rules as to how the IEC should operate;
- increasing accountability and transparency through a public meeting process and a better means of publication of minutes of meetings;
- improving mechanisms to enhance informed decision-making, such as the circulation of agendas and briefing materials in advance; and
- providing orientation and training programs for IEC members, especially new members.

For the IEC to operate effectively, I believe that it must operate within an improved legislative structure.

The present structure, with a majority of members from the government side of the House, effectively allows for domination of the affairs of the IEC by the government in power. Some would say this is appropriate, since all other committees of the House also have a majority of government members on them. But the IEC is a committee like no other. It is charged with very specific management and administrative responsibilities for overseeing a bureaucracy, and has specific, decision-making powers that affect the finances of the House and that should be exercised in a relatively non-partisan manner.

I have been told by some former members of the IEC, as well as others, that the members of the IEC find it difficult to leave the partisanship, which is perfectly appropriate in other forums, out of the IEC meetings and decision-making process. In the end, with the government members voting as a block, the government can always have its way. As a result, members of the opposition have felt that the IEC sometimes is nothing more than a rubber stamp for executive financial policy, contributing to cynicism as to its effectiveness in

Accountability.”

²¹ See Chapter 4 (Failures) under the heading “Ever Weakening Legislative Framework.”

²² See Recommendations 10-17.

managing the finances of the House independently from the executive branch. This is reinforced, it has been suggested, by the fact that the Minister of Finance is often (though not required to be) a member of the IEC and is believed by some to try at times to impose his views on financial matters on the IEC's financial decisions.

The current structure of the IEC also excludes any representation from any opposition party other than the Official Opposition.²³ This in effect marginalizes the members of other parties and makes it very difficult for them to have their legitimate needs heard and addressed.

I am not satisfied that it is either necessary or appropriate to structure the IEC so that the government has a majority on it. In some jurisdictions, bodies analogous to the IEC do not have government majorities, and, in fact, sometimes have a majority of opposition members.²⁴ Having considered this issue carefully, I believe that the best approach is to restructure the IEC so that there are an equal number of government and opposition members on it, including representatives from all registered parties that have Members in the House. The Speaker, who is usually (but not necessarily) from the government party, is expected to be non-partisan in his or her rulings and should nevertheless have the right to break a tie vote, if necessary, where consensus breaks down.

I am not concerned that the inability of the government to necessarily carry the day on financial matters at the IEC will lead, as has been suggested, to IEC decisions that are fiscally irresponsible or in opposition to executive policies for overall sound provincial fiscal management. It must be remembered that, although the convention is that the IEC's budget should be placed on the floor of the House as part of the overall estimates for the province without alteration by the executive, the convention is subject to the constitutional requirement that money bills can only be introduced into the House with the consent of the executive.²⁵ In extreme cases, therefore, there would have to be negotiation between the executive and the IEC before that consent would be given. In any event, even if a budget for the IEC made it to the floor of the House in a form that the government did not approve of, the government (except possibly in a minority situation) would be able to control the vote to achieve its ends at the end of the day.

The idea of the opposition parties being able to have as much weight in the expression of their views in a management forum that should be non-partisan may well lead

²³ Ss. 5(3)(f) of the *Internal Economy Commission Act* in theory contemplates the possibility of a representative of a third party ("one member ... who sits in opposition to the government") being placed on the IEC, but since it provides that that person is to be "designated by the members of the House ... who sit in opposition to the government," it means effectively that all opposition members, regardless of party, voting as a bloc, will likely designate a member of the Official Opposition, rather than a member of a third party, especially since only one such person is to be designated in this way.

²⁴ In the United Kingdom, the House of Commons Commission, the equivalent body to the IEC, "*has never had a majority of government members*": Rogers & Walters, footnote 1, p. 60.

²⁵ *Constitution Act, 1867*, Ss. 54, 90; *Newfoundland Act*, Sch. Term 3. This is discussed in further detail in Chapter 7 (Controls) under "Legislative Controls on Spending of Public Money."

to a greater focus on principle than on political expediency. It may lead to a breaking down of voting by party and a greater ability to reach decision by consensus. It is also my hope that the fact that the meetings of the IEC will, for the most part, be public will also foster this more co-operative approach. Even where that does not happen, the equality of party membership should lead to a “creative tension”²⁶ within the IEC, as the members search for a solution that will work for all. Furthermore, the possibility of decisions emanating from the IEC that may not be the result of executive domination may also lead to a “creative tension” between the IEC and the executive in the resolution of financial matters and may enhance *proper* legislative independence.

I am also of the view that, although it is appropriate to have a Minister of the Crown on the IEC, it is not necessary to have the Minister of Finance serve in that role. While it is important that there be some overlap in membership so that the IEC can have access to information about the Executive’s approach to financial and management matters, the number of ministerial representatives need not predominate. The number of representatives of the Executive Council should therefore be fewer than at present, thereby reducing the possibility of undue executive influence.

The Public Accounts Committee should, as suggested in Chapter 5,²⁷ have a much more prominent role to play in holding not only the government, but also the IEC, to account for their stewardship of public funds. In the past, members of the PAC have also served on the IEC. In some cases, as is the situation recently, even the chair of the PAC served as a member of the IEC. There is an inherent conflict in these two roles when it comes to the examination by the PAC of allegations of improper management of the House by the IEC. I believe, therefore, that persons serving on one of these bodies should not serve at the same time on the other. Furthermore, it is important for members of the PAC, when considering matters relating to the IEC, to be alert to ensure that they do not participate in hearings of the PAC if they were serving on the IEC when the matters under consideration were decided, even though they may not be on the IEC when the hearing is being held.

I considered the advisability of recommending the appointment of one or more *lay* (i.e., non-political) persons to the IEC to represent the public interest. I agree that an argument can be made for doing so, especially in light of the less-than-forthright manner in which the IEC authorized the payment of \$2875 to MHAs in May of 2004 (and possibly in previous years as well), and the public denunciations that followed when that decision became public in February 2007. The presence of an independent member of the public on the IEC could also, it might be suggested, reduce the possibility that “backroom deals” that

²⁶ I have borrowed this phrase from Thierry Dorval, *Governance of Publicly-Listed Corporations* (Toronto: Lexis-Nexis Canada Inc., 2005) pp. 11-13. Dorval uses it in the corporate sphere to describe the desirability of maintaining a climate of “creative tension” between an independent board of directors and the management of the corporation so that the board will retain its independence and not become unduly influenced by management. He describes this as “an attitude of constructive skepticism.” While the context is quite different, the concept does, I think, have application, perhaps with a slightly different emphasis, to the present discussion.

²⁷ Recommendation 19.

go against the public interest might be made between government and opposition IEC members before the formal meeting is held.

Notwithstanding these arguments, in the end, I decided against recommending it. The IEC is a form of committee of the House, but it has special decision-making powers. In our parliamentary tradition, decisions respecting the House should be made by elected members of the House. The injection of non-elected persons into the decision-making process would fundamentally violate that principle. Furthermore, based on recent events, the primary concern about the proper operation of the IEC relates to decisions in respect of financial matters. The IEC, of course, deals with other types of matters as well. Whatever the merit may be of having lay participation in financially related decisions, I am not convinced that it would be appropriate to allow for general participation in all of IEC affairs, which a general membership on the IEC would necessarily permit.

Later in this chapter, I will be recommending the creation of an audit committee of the IEC to bring some scrutiny to the audit process and related financial issues. This committee should have on it at least two members of the public who are experienced in financial matters. This is the more appropriate area for the participation of the public. I believe that the interests of the public can be adequately represented and protected by an audit committee that functions properly in accordance with the guidelines that I will be recommending later in this chapter. Inasmuch as the audit committee is recommended to act as an advisory committee to the IEC, the presence of lay members on it does not violate the principle of the House making its own decisions in the same way as if lay representatives were on the IEC itself. It must also not be forgotten that I have recommended that the IEC conduct its meetings in public, with only some limited exceptions, and that all recommendations (including dissenting opinions by audit committee members) of the audit committee, and any IEC decisions flowing therefrom, must be made part of the public record.

Accordingly, I make the following recommendations:

Recommendation No. 30

(1) The Commission of Internal Economy (House of Assembly Management Commission) should be restructured to consist of:

- (a) the Speaker, who will vote in case of a tie;***
- (b) the Government House Leader;***
- (c) the Official Opposition House Leader;***

- (d) two members from the government party, only one of which should be a Cabinet minister;*
- (e) one member from the Official Opposition (unless there is no third party in the House, in which case there should be two members from the Official Opposition); and*
- (f) one member from a third party that is a registered political party under the Elections Act, 1991;*
- (2) The right of a third party to have a representative on the Commission should not be dependent on having any minimum number, beyond one, of elected members in the House;*
- (3) No member of the Commission should also serve concurrently as a member of the Public Accounts Committee of the House;*
- (4) A member of the Public Accounts Committee should not participate in any hearings relating to decisions of the Commission when he or she may have been a previous member at the time those decisions were made;*
- (5) A quorum of the Commission should be 50% of its members provided the Speaker or Deputy Speaker and at least one member representing a party in opposition to the government be present; and*
- (6) The Clerk of the House of Assembly should act as secretary of the Commission.*

Controls on Decision-Making by the Commission of Internal Economy

Two of the major criticisms with respect to the manner in which the IEC made its decisions in the past were that (i) the decisions were made in private and the resulting reports of those decisions were sometimes inadequate or misleading and (ii) the range of decision-making was so broad that the IEC was effectively a “law unto itself,” without any effective checks and balances with respect to all matters of MHAs’ salaries, allowances and other financial benefits.

The first of these criticisms has been addressed by previous recommendations relating to public meetings and improvements in the manner of the formal recording and reporting of the decisions emanating from those meetings.

The second criticism will be addressed here. The problem stems from the

progressive assigning, by periodic amendments to the governing legislation, of greater and greater discretion to the IEC to make what changes it saw fit to members' salaries and allowances.²⁸ It will be recalled that the regime moved from a situation in 1989 where all salaries and allowances were to be determined by an independent commission whose determinations were to be binding, to a situation, by 1999, where the IEC itself was given unfettered discretion to "make rules respecting indemnities, allowances and salaries to be paid to members."²⁹ The events that have been documented in previous chapters paint an unhealthy picture of what can happen when a body of MHAs, like the IEC, is left with unfettered discretion to make decisions relating to their own personal financial interests without there being any real prospect of having to be called to account in the ordinary course.

The restoration of public confidence in the integrity of the system of setting Members' salaries, allowances and other benefits requires, in my view, some visible restrictions on the ability of the IEC to make changes as they see fit.

Accordingly, I recommend:

- Recommendation No. 31***
- (1) The salary levels of members of the House of Assembly, and all other officers of the House, such as the Speaker and House leaders, should be specified in legislation; and***
 - (2) The legislation should specify that a Bill to adopt an amendment to the legislation to change salary levels may only be enacted where first, second and third readings on the Bill are held on separate days in the session.***

The result of this recommendation would be to take any change to salary levels out of the hands of the IEC. It would further ensure that, before any change were to be made, there would have to be a public disclosure and debate in the public chamber of the House. By stipulating that an amending Bill must be read on at least three successive days, it would prevent the practice - which has occurred in the past - of passing amendments to legislation pertaining to the IEC in a rush at the close of the day by conducting all three readings of the Bill one after the other, with the unanimous consent of the House.³⁰ There would therefore be a greater prospect that there might be some reflective debate, or at least discussion, on the

²⁸ In one of the headings in Chapter 4 (Failures), I described this process as an "ever-weakening legislative framework."

²⁹ S.N.L. 1999, c. 14, s. 3 (amending s. 14 of the *Internal Economy Commission Act*).

³⁰ Dispensing with procedural restrictions on the manner and form of doing things in the House is recognized by the Newfoundland and Labrador House of Assembly *Standing Orders* (adopted May 18, 1951, with amendments to and including March 16, 2005), Standing Order 84.

wisdom and appropriateness of changing salary levels - and an opportunity for public reaction and comment (assuming the media does its job and reports, and possibly editorializes, on the matter) - before the change takes effect.

I recognize, of course, that the notion of stipulating in advance certain restrictions on the legislature's law-making functions may be regarded as problematic, as trenching on parliamentary supremacy. I believe, however, that restricting the speed with which a Bill may pass through the House involves merely "manner and form," rather than substantive, legislation. It is recognized that a legislative body may be bound by self-imposed procedural restraints on its enactments.³¹ Accordingly, I see no impediment to placing this restriction on the amendment process in this area.

A further control on the ability to make changes in salary levels for MHAs will also come from the recommendation I will be making later in the report that no changes be undertaken unless the appropriateness of making a change is first examined and recommended by an independent commission charged with reviewing the whole compensation landscape.³²

With respect to changes to allowances, it would be impractical to stipulate that current levels be embodied in legislation and to prevent any adjustment except by legislative amendment and on recommendation of an independent commission. I acknowledge that there will be occasions, between the periodic appointment of independent commissions, when it will be necessary for the IEC, for very legitimate reasons, to revise the allowance regime affecting Members. Costs may escalate, electoral boundaries may change and travel infrastructure within and between districts may alter, to name but a few examples. The IEC must have the flexibility to ensure that MHAs are treated fairly with respect to being reimbursed for legitimate expenses incurred in performing their duties.

It does not follow from this, however, that the IEC should be given unfettered discretion in this regard. As in the case of changes to salaries, I believe there should be procedural restrictions imposed to ensure that, with publicity, there is time for reflection and potential public comment and debate before any changes are adopted. There must be a formal process for making changes in this fundamental area.

In addition to *procedural* restrictions, there is one area where the IEC should be restricted with respect to making *substantive* changes as well. That area encompasses the creation or payment of non-accountable discretionary allowances. Given recent past history, especially in relation to discretionary year-end payments, it should not be regarded as acceptable for the IEC, on its own motion, to approve non-accountable payments either on an *ad hoc* basis or as a category of allowance. The potential for abuse is too great. Furthermore, I do not believe that the concept would have any degree of acceptance by the

³¹ Peter Hogg, *Constitutional Law of Canada*, 4th ed. (Toronto: Carswell, 1997), pp. 314-31.

³² See Chapter 9 (Compensation), Recommendation 63.

public without independent examination and recommendation.

In this area, therefore, I believe that the IEC should be prohibited from creating any category of non-accountable allowances or authorizing any such type of payment unless it is recommended by an independent commission.

I therefore recommend:

- Recommendation No. 32***
- (1) The allowance regime for MHAs should be embodied in rules formally passed by the House of Assembly Management Commission as subordinate legislation;***
 - (2) No changes to the allowance regime should be capable of being made by the Commission except by the passage of an amendment to the rules;***
 - (3) No change to the rules respecting the allowance regime that would have the effect of creating a category of non-accountable discretionary allowance or authorizing such type of payment should be allowed to be made except in response to a review commission's recommendations;***
 - (4) No rule respecting changes to the allowance regime should be capable of being made and rendered legally in force unless:***
 - (a) the motion proposing it is made at a public meeting of the Commission, posted on the House's website and not voted on until at least the next meeting thereafter;***
 - (b) the rule, as passed by the Commission, is submitted to the House of Assembly and an affirmative resolution approving it is passed; and***
 - (5) All rules made by the Commission should be deemed to be subordinate legislation within the Statutes and Subordinate Legislation Act and subject to the filing and publication requirements of that statute.***

No doubt, questions will come up from time to time as to the application of rules respecting allowances in particular cases. The rules themselves may require interpretation. There ought to be mechanisms in place to ensure that clarifications can be made. In Chapter 5, I recommended one method of doing this: a means of obtaining an advance ruling by the Speaker as to whether an item of expenditure is reimbursable or claimable under the rules

respecting allowances.³³ In addition, the IEC itself ought to have the authority, either by way of appeal from a ruling of the Speaker, or on its own motion, to issue clarifications and interpretations of specific rules to clear up any confusion that may exist. In the past, many of the determinations of the IEC were made in an informal manner and were not given broad currency among MHAs. Their effectiveness in guiding behaviour was therefore hampered. Clarifying determinations by the IEC should have a formal character about them. They should be embodied in formal directives.

I recommend:

Recommendation No. 33

- (1) The House of Assembly Management Commission should have the authority to entertain appeals from rulings of the Speaker as to the application of the rules to particular cases in which advance rulings have been sought from the Speaker by an MHA;***
- (2) The Commission should have the authority, by the issuance of formal directives, to alter rulings on appeal from the Speaker, and to issue clarifications, amplifications and explanations generally with respect to the application of rules respecting MHA allowances; and***
- (3) All directives of the Commission should be carefully filed, collated, indexed and numbered and should be:***
 - (a) available for consultations by MHAs and for inspection by the public;***
 - (b) summarized and referred to in the annual report of the Commission to the House;***
 - (c) published on the House's website;***
 - (d) included in an indexed Members' manual in an orderly fashion; and***
 - (e) made available to House staff charged with administering the allowance regime.***

³³ See Recommendation 20.

It will be seen that I envisage a number of ways in which the IEC should formally exercise its decision-making power. The first, and most formal, is by making *rules* (or regulations). The second is by the issuance of formal *directives*. It is important to understand, however, that the issuance of directives should not be used as a means of circumventing the requirement that *substantive changes to the allowance regime* may only be made by making formal rules. The issuance of directives, insofar as they relate to allowances, must be limited to *clarifying, explaining or amplifying* existing provisions, not substantively changing them.

The remainder of the IEC's decision-making power should be exercised by making *orders* recording decisions on the myriad of other matters that call for determination and action. By stipulating limits on the manner in which the IEC may make a legally effective decision, it will, I hope cause the IEC to reflect, each time it is proceeding to make a decision, on whether the manner of doing so is correct. In so doing, the propriety of the type of decision-making is more likely to be assured.

I recommend:

Recommendation No. 34

The decision-making authority of the House of Assembly Management Commission should be exercised by (a) making rules, (b) issuing directives and (c) making orders; and that the circumstances under which each method of decision-making may be exercised should be set out in legislation.

Audit Committee

Within the corporate sector, the notion of an audit committee composed of independent directors, with a mandate to review financial statements before they are approved by the full board, and to perform a variety of other tasks related to financial governance, is well recognized.³⁴ In fact, publicly traded corporations are required by law to have an audit committee.³⁵ The members of the committee are expected to be “financially

³⁴ The National Commission on Fraudulent Financial Reporting (known as the Treadway Commission), a private sector initiative in the United States, sponsored by a number of leading accounting associations including the American Institute of Certified Public Accountants, recommended that all public corporations be required to set up audit committees composed entirely of independent directors, stating in its report that “primary responsibility for the company’s financial reporting lies with top management, overseen by the board of directors”. *Report of the National Commission on Fraudulent Financial Reporting*, (Washington, 1987), p. 40.

³⁵ *Canada Business Corporations Act*, R.S. 1985, c. C-44, s. 171; *Corporations Act* R.S.N.L 1990, c. C-36, s.

literate.”³⁶ In some jurisdictions, the criteria stipulate financial or accounting expertise.³⁷ The duties of audit committees have expanded over the years, especially since the events involving *Enron*, and now often include such things as recommending the choice of external auditors, overseeing internal control and risk management, and overseeing disclosure of financial information.³⁸

The notion of an audit committee is also being adopted in the public sector. In the recently enacted *Federal Accountability Act*, for example, provision is now made for the creation of audit committees within each department of the federal government.³⁹ The notion is that persons external to the department can strengthen financial management and governance issues within the department. This provision does not apply to Parliament, however. In the United Kingdom, on the other hand, the notion of an audit committee as a committee of the House of Commons’ board of management is well established. It is described this way:

[The Audit Committee] consists of two members of the [House of Commons] Commission (one as chairman) and two external members. It has general oversight of internal audit and review, with emphasis on achieving value for money; it advises the Clerk of the House in the exercise of his responsibilities as accounting officer, and on the program of internal audit; and it has the task of encouraging best financial practice, use of resources and governance in the House administration.⁴⁰

The idea of having *lay* persons serve on regulatory organizations in other areas has proved a valuable means of improving the method whereby the point of view of the public is taken into account when important governance issues are at stake. For example, the *Law Society Act* provides for the appointment of a number of persons who are not lawyers to the Benchers, the governing body of the Society.⁴¹

In my view, the time for implementing an audit committee, as a committee of the Commission of Internal Economy, with financially literate members of the public on it, has arrived. It will help with governance issues generally by providing an independent and informed point of view on financially related matters to the Commission. It will also indirectly provide a “foil” of independent thinking against which the positions of the MHAs on the IEC can be judged. In that sense, it can become a “watchdog” for financial mismanagement.

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³⁶ See e.g. Canadian Securities Administrators, *Multilateral Instrument 52-110: Audit Committees*, ss. 3.1(4).

³⁷ See e.g. *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745, s. 407.

³⁸ See e.g. *Multilateral Instrument 52-110*.

³⁹ *Federal Accountability Act*, S.C. 2006, c. 9, s. 261 (adding s. 16.2 to the *Financial Administration Act*).

⁴⁰ Rogers and Walters, footnote 1, p. 61.

⁴¹ *Law Society Act*, S.N.L. 1999, c. L-9.1, s. 8.

The committee should have statutory recognition and should have its mandate carefully spelled out. It should consist of both IEC members and lay members. I see nothing wrong with equality of numbers between these two groups. Where there is fundamental disagreement on a matter, both points of view can be presented to the IEC for consideration. Recommendations should be publicly recorded.

It will be important that the lay persons chosen to serve on the audit committee have the confidence of the public that they are independent and have no government or close political connection. I suggest that they be chosen by the Chief Justice of Newfoundland and Labrador as the representative of the third branch of government, the judiciary.

I therefore recommend:

- Recommendation No. 35***
- (1) An Audit Committee of the House of Assembly Management Commission should be created by statute;***
 - (2) The committee should consist of two members of the Commission and two members who are residents of the province, but who are not MHAs, and have demonstrated knowledge and experience in financial matters;***
 - (3) The two lay members of the committee should be chosen by the Chief Justice of the province;***
 - (4) The lay members should have fixed terms that provide for rotation over time;***
 - (5) The mandate of the committee should include:***
 - (a) making recommendations to the Commission with respect to choice and terms of engagement of auditors;***
 - (b) reviewing financial statements, audit reports and recommendations and giving advice thereon to the Commission;***
 - (c) reviewing any compliance audits undertaken by the Auditor General;***
 - (d) making recommendations respecting internal audit procedures;***

- (e) reviewing with the Clerk the effectiveness of internal control;*
- (f) reviewing a code of conduct applicable to the Clerk and House staff;*
- (g) reviewing disclosure practices of the Commission; and*
- (h) advising the Clerk with respect to the exercise of his or her responsibilities as accounting officer;*
- (6) The committee should be required to meet regularly and frequently enough to discharge its duties;*
- (7) Lay members on the committee should be paid from public funds with the level and type of remuneration being determined by the House of Assembly Management Commission; and*
- (8) In the case of disagreement between the lay members of the committee and the Commission members, both points of view should be passed on to the Commission and recorded in the Commission minutes.*

I must, however, make one additional comment on the role of an audit committee. The Treadway Commission, which recommended audit committees in the private sector in the United States, admonished: “Establishment of such committees, of course, does not relieve the other directors of their responsibility with respect to the financial reporting process.”⁴² So, also, should it be for the members of the IEC.

Resources of the House

No administrative structure can operate effectively and accomplish its objectives without the necessary financial and human resources to make it work. Although I have not undertaken a full management study of the existing resources of the House administration, I am certainly satisfied that, even with the existing structure, the House has been inadequately provided with staffing resources in the past. My review of other jurisdictions indicates that, speaking generally, more administrative support staff are provided in those places than has been made available to the House in this province.

With the restructuring proposed in this report and the recommended additional

⁴² *Report of the National Commission on Fraudulent Financial Reporting*, p. 40.

procedures to be followed for transparency and controls, there is no doubt in my mind that there will have to be additional resources provided to the House to enable it to function properly in the new environment. While the spending of public money should always be a concern, I am satisfied that whatever financial resources are reasonably necessary to implement the recommendations in this report should be made available. The legislature is one of the three branches of government, the other two being the executive and the judicial system. Democratic government as we know it cannot function unless the three fundamental branches of government can operate at a minimally effective level. This is so regardless of the strains that may be put from time to time on important social services like education and health. The basic functions of government - law-making, law implementation and law-applying - must continue even in the toughest of times, or else we will not have a civil structure within which all other social activities can be carried on.

There is little point in operating an underfunded House of Assembly that does not provide the level of operating efficiency and accountability necessary to preserve and protect public funds. That would hardly be an appropriate way of inspiring public confidence that the identified problems of the past are in fact a thing of the past.

Accordingly, I recommend:

- Recommendation No. 36***
- (1) The House of Assembly Management Commission should require the Clerk to prepare revised estimates of what may be required to operate the House of Assembly at a reasonably acceptable level, taking into account the recommendations in this report;***
 - (2) The estimates so prepared should be submitted as part of the overall budget of the House pursuant to section 6 of the existing Commission of Internal Economy Act or any applicable successor legislation; and***
 - (3) If the budget process has been concluded for the current year, the Commission should seek a special warrant under the Financial Administration Act to ensure that funds are made available at the earliest opportunity.***

Relationship Between House Administration and the Statutory Offices

Since 1990, the House of Assembly head of expenditure in the estimates of the province has continually grown, with the addition, every few years, of the financing requirements of another independent office of the House. These offices, like the Citizens' Representative and the Child and Youth Advocate, are all constituted and regulated to a

certain degree by their own separate statutes.⁴³ They do have, however, a number of features in common: the holder of each office is declared to be an “officer” of the legislature, and each office must prepare and submit its budget to the Commission of Internal Economy for approval before having it placed in the estimates of the province.

Because the estimates for the statutory offices are grouped as subheads under the head of expenditure for the legislature, they are subject to the ordinary rules with respect to transfers of money between subheads throughout the year. This is the means whereby significant transfers were made from such offices as the Auditor General to other subheads within the House administration to enable extra funds to be paid on a variety of expenditures, including constituency allowances.⁴⁴

In addition, in all offices except that of the Auditor General, the hiring of employees requires the approval of the IEC. It is unclear from the *Internal Economy Commission Act* or from the constituent legislation of each office just what degree of administrative authority and control is exercisable by the financial staff of the House administration over the operations of each statutory office; and whether financial, human resource and general administrative policies promulgated by the IEC and sought to be implemented by the Clerk may be applied to the respective administrations of each statutory office.⁴⁵ Reference should again be made to the organization chart in Chapter 3, which attempts to graphically describe the existing administrative structure of the House.⁴⁶ It will be seen that “dotted lines” are used in some places to depict an uncertain relationship with the statutory offices.

The matter is compounded by the fact that, when the new position of Chief Financial Officer of the House was created in 2006, the job description included a degree of financial and administrative responsibility for the statutory offices. Indeed, I understand that there is an ongoing, day-to-day relationship between the CFO and staff in most of these offices. The oddity, however, is that it is generally regarded that the Clerk, who is the superior official to whom the CFO reports, does not have any financial or administrative relationship with, or authority over, the statutory offices. Certainly, there is nothing in any legislation that suggests that such a relationship or authority is contemplated.

This creates a very unsatisfactory situation. It should be clarified. Although reform of the statutory offices in themselves is outside the mandate of my Commission, I do regard

⁴³ *Auditor General Act*, S.N.L. 1991, c. 22 as amended; *Child and Youth Advocate Act*, S.N.L. 2001, c. C-12.01 as amended; *Citizens’ Representative Act*, S.N.L. 2001, c. C-14.1 as amended; *Elections Act, 1991*, S.N.L. 1992, c. E-3.1 as amended; *Conflict of Interest Act, 1995*, S.N.L. 1995, c. C-30.1 as amended; *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1 as amended; *House of Assembly Act*, R.S.N.L. 1990, c. H-10 as amended.

⁴⁴ See, in particular, the discussion of the undocumented extra payment apparently made to MHAs in 2003 in Chapter 4 (Failures) under the heading “Notable Inappropriate Decisions.”

⁴⁵ The one clear exception, at least with respect to personnel policies, is that of the Auditor General. The *Auditor General Act*, ss. 23(2) provides that “the personnel management policies of the Treasury Board as they relate to the public service of the province apply to” that office.

⁴⁶ Chart 3.1 in Chapter 3 (Background).

the role and function of the office of the Clerk to be very much a part of my mandate. To the extent to which the functioning of the Clerk is affected by his relationship, or lack of relationship, with the statutory offices, I believe it is appropriate to comment on it.

Earlier in this chapter, I advocated a broad managerial and administrative role for the Clerk as being necessary to achieve the degree of financial control and accountability necessary to make the House operate effectively. In addition, I recommended in Chapter 5 that the Clerk fulfill the role of accounting officer with respect to, amongst other things, measures taken to implement appropriate financial management policies and to maintain effective systems of internal control. As well, I noted that the Clerk should also have responsibility for a “management certification” role to certify to the IEC that appropriate systems of internal control are in place and operating effectively. Insofar as the financial affairs of the statutory offices remain under the legislative head of expenditure in the estimates, the Clerk will of necessity have to be involved, to some degree, in the financial and administrative side of those offices, in order to be able to do his job effectively and with proper accountability.

In my view, there is nothing in the notion of “independence” of these offices, especially in light of the control that the IEC presently exerts in budgetary and hiring matters, that necessarily requires the complete autonomy of the offices in respect of financial matters. Indeed, it should not be forgotten that, in recent years, the Auditor General had expressed concerns about the financial management practices in two of those offices. I believe, therefore that it is appropriate for the Clerk to have, just as the CFO presently appears to have, a broader and clear role with respect to financial and administrative policies applicable to those offices. If at a later date, it was decided as a matter of government policy to set up completely independent administrative structures for some or all of the offices, then the matter could be revisited at that time. Until then, with the IEC and the CFO already having an involvement on the financial and administrative side, the Clerk should likewise have authority, as chief permanent officer of the House administration. While he should be the manager of House operations, his authority should stop at matters of general administrative policy with respect to the statutory offices.

Accordingly, I recommend:

Recommendation No. 37

- (1) The Clerk should be designated in legislation to be the chief administrative and financial officer responsible to the Speaker and, through the Speaker, to the House of Assembly Management Commission for the management of the operations of the House and***

the general administration of the statutory offices, including, in relation to the statutory offices:

- (a) providing administrative, financial and other support services;*
 - (b) establishing of general administrative policies;*
 - (c) commenting to the Commission on the budget submissions of the statutory offices;*
 - (d) reporting to the Commission regarding the financial and budgetary performance of the statutory offices;*
 - (e) reporting to the Commission and the audit committee on the status of audits;*
 - (f) assessing and maintaining the effectiveness of internal controls in the statutory offices; and*
 - (g) accounting to the Public Accounts Committee for their administration;*
- (2) The office of the Auditor General should be exempted from the foregoing until such time as new legislation being considered for the revamping of that office is implemented;*
- (3) The Commission should continue with its current practice of approving appointments to the staff of the statutory offices except for the office of the Auditor General; and*
- (4) The Public Service Commission Act, except for section 11 with respect to appointments, should apply to the staff of the House and the statutory offices except where varied by directive of the Commission.*

It is important that the new administrative structure of the House, including the statutory offices, be carefully documented and depicted in appropriate organization charts. As well, the structure within the House administration relating to House operations proper should be described and identified.

I recommend:

Recommendation No. 38

- (1) The Clerk should prepare and distribute appropriate organization charts depicting the organization of the House administration and its relationship with the statutory offices;***
- (2) The Clerk should prepare and distribute appropriate administrative and financial policies outlining the degree of administrative supervision the office of the Clerk intends to apply to the statutory offices and how that supervision is to be effected; and***
- (3) The administration of the House operations, other than the statutory offices, should be designated the “House of Assembly Service” and consist of the following divisions:***
 - (a) the office of the Speaker;***
 - (b) the office of the Clerk;***
 - (c) Financial and Administrative Services;***
 - (d) the Legislative Library;***
 - (e) the office of Hansard; and***
 - (f) the Broadcast Centre.***



Chapter 7

Controls

Whatever funding model applies, there is an expectation that Parliament will adhere to the highest standards of accountability. In a number of international settings the executive has established financial accounting and reporting standards that are regarded as the gold standard and many Parliamentarians have adopted these standards for their own financial operations.

— Commonwealth Parliamentary Association¹

The Control Environment

The implementation of an effective system of controls over the spending of public money within the legislative branch is obviously of central importance in providing a system of best practices that will provide a degree of confidence to the public that financial stewardship is being properly practiced in the House administration.

The Terms of Reference require me to make “a determination of whether proper safeguards are in place to ensure accountability and compliance with all rules and guidelines.”² More specifically, I am directed to undertake an independent “review and evaluation of the policies and procedures for control” of the types of expenditures reviewed by the Auditor General in his report of June, 2006 respecting *Payments Made by the House of Assembly to Certain Suppliers*.³

That report observed, amongst other things, that “internal controls relating to purchases were basically non-existent,” there was a failure to comply with proper tendering guidelines, there was “inadequate documentation” provided on invoices to support which

¹Tanzania, Commonwealth Parliamentary Association, *Administration and Financing of Parliament*, (Report of a CPA Study Group, hosted by the legislature of Zanzibar), (May 25-29, 2005), p. 6.

² See Appendix 1.2, item 1(iv).

³ See Chapter 1, footnote 12.

MHA the goods were purchased for, or whether payments were incorrectly charged to other parts of the House accounts, and the manner of record-keeping (involving over-writing of records respecting MHA constituency allowance payments) meant that the audit trail with respect to those matters was “effectively eliminated.”

There are multiple sources demonstrating the need for improvement of the system of controls in the House of Assembly. The above-mentioned report together with the Auditor General’s most recent annual report issued on January 31, 2007, as well as the material reviewed in Chapters 3 and 4 of this report that identified the potential for uncontrolled overspending and double billing of amounts from MHA constituency allowances are sufficient to be able to conclude that the system of controls in the House of Assembly is in need of substantial reform and enhancement.

The Terms of Reference also require me “to develop recommendations on policies and practices ... that would ensure the accountability and compliance practices employed in the House of Assembly meet or exceed the best in the country.”

This chapter will therefore focus on the type of financial policies, procedures and practices that should be adopted in the House administration to create an effective control environment. The approach taken will be to start with a discussion of the components of a general control environment. Then the focus will move to comparison of what a good control environment should be with the situation within the House of Assembly as it was at the time when this commission was appointed, leading to more recommendations, beyond those already made in Chapter 5, for improving the “tone at the top.” From there the discussion will move to a review of government accounting systems and policies, best practices from other government and industry sources, and a comparison with the policies and systems *currently* in use.⁴ From that analysis, I will identify controls and policies that are suitable for the future operation of the House and recommend changes to ensure that “best practices” are implemented.

As a preliminary to all of this, however, I propose, to put the problem in context, to sketch out the *legislative controls* on spending money that exist in government generally and in the legislative branch in particular. A comparison between these two control regimes is instructive in itself.

⁴ It must be acknowledged at the outset that a number of significant and positive changes have been made in control systems in the House since early 2006, especially since the position of Chief Financial Officer was created, and filled by the present incumbent. The CFO has been working diligently to make improvements, with limited resources, to make improvements in an environment that is very fluid. It is necessary, however, to assess the current regime, even with its improvements, to determine whether further changes need to be made to ensure best practices.

Legislative Controls on Spending of Public Money

The spending of public money in the province of Newfoundland and Labrador is governed by the *Financial Administration Act (FAA)*.⁵ All public money over which the legislature has the power of appropriation forms the Consolidated Revenue Fund.⁶ The Comptroller General is charged with the administration of the fund.⁷ Both constitutionally and by statute, public money may not generally be paid out of the Consolidated Revenue Fund without legislative appropriation in the form of a “supply bill” that is passed by the House of Assembly.⁸

The Comptroller General is statutorily mandated to ensure, amongst other things, that “no payment of public money” is made without a legislative appropriation or is in excess of an appropriation.⁹ He or she is required to report to the Treasury Board¹⁰ any case that comes to his or her attention in which a liability has been incurred by a public officer which contravenes the *FAA*. The Comptroller General is also required to ensure that cheques are issued only in relation to expenditures for work, goods or services supplied to government where a deputy minister “or another authorized person” has certified that the work has been performed, goods supplied or services rendered or, in the case of expenditures incurred by a person while traveling on government business, that the person has certified that the expenses were incurred on government business and are in accordance with rates, amount and allowances prescribed by Treasury Board.¹¹

A legislative appropriation is achieved by the preparation of estimates of expenditure which are submitted to the House of Assembly for debate and ultimate inclusion in a supply bill that must be enacted by the legislature. Constitutionally, only the executive can introduce a bill calling for appropriation of money in the House.¹² Any amendments to a money bill that would increase the amount of an appropriation may only be made with the consent of the executive.

The *FAA* provides that the total amount of money appropriated, the expenditure of which is assigned to a particular department, is to be referred to as a “Head of

⁵ R.S.N.L. 1990, c. F-8. See also the general discussion of this issue in Chapter 4 (Failures) under the heading “Ineffectiveness of Central Control Functions in Government.”

⁶ S. 12

⁷ S. 20.

⁸ S. 22. There are some limited exceptions, such as authorizations of expenditure by way of “special warrant” in urgent or unforeseen circumstances until the legislature can deal with the matter. See s. 28.

⁹ *FAA*, s. 29. It is also provided that no issue of public money shall be made unless the Comptroller General, or his or her designate, certifies that there is a balance available in the appropriation authorized by the legislature for the specified services in question.

¹⁰ The Treasury Board is a committee of Cabinet charged, amongst other things, with financial management of the province and administrative policy and personnel management in the public service. See *FAA*, s. 6.

¹¹ S. 30.

¹² *Constitution Act, 1867*, Ss. 54, 90; *Newfoundland Act*, Sch., Term 3.

Expenditure.”¹³ Thus money assigned in the estimates for expenditure by, say, the Department of Justice is a separate head of expenditure and is regulated as such. The appropriations to the House of Assembly have been treated as a separate head of expenditure for this purpose, even though the House does not easily fall within the definition of a “department” in the *FAA*.¹⁴

The *FAA* also provides that Treasury Board may, for the purpose of exhibiting in the estimates, divide a head of expenditure into “subheads,” and subheads into “subdivisions” of the subheads.¹⁵ Thus, by breaking down an appropriation for a department (a “head” of expenditure) into subheads and subdivisions, Treasury Board can more tightly control the types of expenditure that can be made, since the *FAA* provides that transfers between subheads and certain subdivisions may only be made with the consent of Treasury Board.¹⁶ Thus, assuming for a moment that the *FAA* applies fully to the House of Assembly, it would be possible, within the subdivision of expenditure known as “Allowances and Assistance” in the House vote, to divide House operations into constituent parts, segregating MHA allowances from other items of expenditure, and requiring expenditures on allowances to be tracked and monitored separately.¹⁷ Furthermore, the Board also has authority to prescribe “the manner and form in which the accounts of the province and the several departments are to be kept.”¹⁸ Thus, again, the degree of recording separate types of expenditures may be dictated by Treasury Board.

In carrying out his or her duties relating to the control of unauthorized expenditure of public money, the Comptroller General must establish a record of commitments already chargeable against each appropriation and, when a subhead or subdivision is exhausted, must not sanction any further charge against that subhead or subdivision.¹⁹ Furthermore, as noted above, such a charge could not utilize funds from another subhead unless the appropriate Treasury Board-sanctioned consent was first obtained.

It is obvious that, for the Comptroller General to be able to carry out his or her statutory duties effectively, he or she must have access to documentation that can provide the justification for making an expenditure or that will be able to flag a situation that does not permit the expenditure. Accordingly, subsection 20(3) of the *FAA* provides that the Comptroller General has “free access” to the books, accounts, files, documents or other records of “a department” and is entitled “to require and receive from the officers, clerks or employees of the public service the information and explanations that he or she considers

¹³ Ss. 23(3).

¹⁴ See ss. 2(1)(e).

¹⁵ Ss. 23(4), (5).

¹⁶ Ss. 28(1).

¹⁷ It should be noted that this can be accomplished by having House Operations, as currently presented in the estimates, split to segregate the true operations of the House and the salary component of the MHAs from the amounts pertaining to the remaining activities of the MHAs.

¹⁸ Ss. 7(1)(a).

¹⁹ Ss. 27(2), (4).

necessary for the proper performance of his or her duties.” Even more important, for present purposes, is subsection 25(4) which provides:

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

As well, the Treasury Board itself may also “direct a person receiving, managing or disbursing public money to keep those books, records and accounts” that the Board considers necessary.²⁰

It is within this legal framework that the process of authorizing claims for payment and the establishment of supporting policies to enable disbursements to be issued must be developed.

Application of the Financial Administration Act to the House of Assembly

Before examining actual government control and payment policies, however, it is necessary to consider the degree to which the legal framework that has been just described can be said to have application to the House of Assembly. Questions as to its applicability have generally arisen from two sources:

- the doctrine of the autonomy of the legislative branch; and
- the infelicity of the statutory language in the *FAA* which does not fit easily over the legislature, as opposed to a “department” of government.

This is an important issue, because it was used to justify a very different treatment of the House in respect of financial accountability matters after the amendments made in May of 2000 to the *Internal Economy Commission Act*. Even today, in the course of my investigations, it has become clear that there is considerable confusion in the minds of many - both politicians and officials - as to the degree to which the *FAA* applies to and, consequently, the degree to which general government policies respecting financial matters govern, House financial spending activities.

In Chapters 2, 3 and 4, references are made to the notion of legislative autonomy and how it has influenced decisions as to the manner in which House financial affairs, and other matters, have been administered. In the current context, the argument is that the legislative branch ought to be the “master in its own house” and ought not to be under the control of the executive, including its policies relating to financial control. It should have the right to

²⁰ Ss. 7(1)(d).

develop its own policies in financial matters that may differ from those of the executive.

This argument is buttressed by the infelicity of the language of the *FAA* in its indications (or lack of indications) of its application to the legislature. I have argued in Chapter 4²¹ that - inasmuch as the *FAA* applies to all “public money,” which forms one consolidated revenue fund that is supposed to be safeguarded and controlled by one individual (the Comptroller General), and inasmuch as the legislative branch must defray its operations out of this same fund of money - the *FAA* must, in at least some respects, apply to the House as well as to the executive. The problem, nevertheless, is that many of the specific sections of the *FAA* are drafted as applying only to a “department” which, in its definition, does not clearly encompass an anomalous body like the legislature.²² If the House is not included within such language, then provisions like subsection 25(4) quoted above would not apply to enable the Comptroller General to stipulate the types of documentary backup for claims as a condition of payment of money to, or for the benefit of, the legislative branch.²³

The argument based on legislative autonomy and the uncertainty, as a matter of statutory interpretation, as to the scope of the application of the *FAA* to the House is reflected in the amendments to the *Internal Economy Commission Act* in 2000. Section 7 of the *IEC Act* now provides that all amounts of money voted by the legislature with respect to estimates prepared for the House shall be paid out of the consolidated revenue fund “on the order of the commission” to defray the expenses of the House. Subsection 8(1) of that Act authorizes the IEC to “establish policies respecting documents to be supplied to the Comptroller General where an application is made for an issue of public money to defray the expenses of the House of Assembly.” Presumably, to remove any uncertainty as to whether subsection 25(4) of the *FAA* applied to the House, subsection 8(1) of the *Act* expressly excludes its potential application. Then, to make the point even clearer, subsection 8(2) provides that where the Commission “establishes policies,” documents supplied to the Comptroller General in accordance with those policies “shall be considered to fulfill all of the requirements” of the *FAA*.

The result of these amendments is that the IEC is effectively a law unto itself in financial matters. Once a budgetary appropriation has been made to the House, the Comptroller General is expected to comply with an “order” of the Commission, regardless of whether there is any documentary justification provided.

It is to be noted that the exemption from the requirement to supply documentary

²¹ See, Chapter 4 (Failures) under the headings “Lack of Compliance Testing;” and “Effectiveness of Central Control Functions in Government.”

²² Ss. 2(1) (e) defines “department” as “a department of the civil service of the province or other division, branch or part of the public service of the province.”

²³ Yet, ss. 25(4) of the *FAA*, which by its terms only applies to a “department,” was expressly excluded from application to the House by S.N.L. 2000, c.17, s. 2, thereby implying an assumption on someone’s part that it had prior application to the House.

support for payment orders is predicated on the Commission establishing “policies” respecting the types of documents to be supplied. The irony is that the commission’s “policy” was to declare that *no* documents need be supplied. Even if this position can be technically described as a “policy,”²⁴ it surely is not within the intent of the subsection, which, in my view, was to require the IEC, if it was not to be bound by the executive’s policies, to implement a set of alternative policies designed also to achieve accountability and control by other means. The approach taken by the IEC in eschewing the giving of *any* documentary justification to the person responsible for control of the public purse is legislative autonomy carried to the extreme. It ignores any governance concerns and certainly does not appear to be concerned with other values like accountability.

While it is true that the house administration itself still insisted on submission of documentation of sorts to support claims before it would “sign off” and submit them (without the documentation) to the Comptroller General’s office, that is not a sufficient substitute for providing justification to an external source. It negates entirely the possibility of the effective operation of internal audit controls within government. As will become apparent, the system within the House was, in any event, so dysfunctional that there were no effective controls in this area at all.

The notion of autonomy has led the Commission of Internal Economy to opt not to use the executive branch of government’s general accounting systems and policies in other areas. The result is that the two systems - executive and legislative - operated independently of each other in a number of important respects, particularly in the area of the processing of MHAs’ constituency allowance claims. While, in theory, there could be two systems operating side by side, both exhibiting proper attention to controls over spending, the situation as it developed in the House of Assembly shows what can happen where the House, having flexed its muscles by using the autonomy-card, then proceeds not to assume its concomitant responsibility to ensure accountability and implement proper alternative controls itself. Frankly, given the history of controls (or lack of them) in the House, one could be forgiven for assuming that under the present structure, if left to its own devices, the IEC would not take the necessary steps to develop the necessary sound policies to ensure accountability and control - and even if it did, there would be nothing to prevent a subsequent, differently constituted IEC from undoing any controls that were implemented.

The IEC cannot, and should not, be put in a position where it could shelter behind a distorted version of legislative autonomy to avoid the operation of the *FAA*.

²⁴ I have suggested in Chapter 4 (Failures) that it may not.

Accordingly, I will make the following recommendation:

Recommendation No. 39

- (1) The Financial Administration Act should be amended to make it apply to the House of Assembly operations with respect to controls over the spending of public money;***
- (2) In particular, and for greater certainty, section 8 of the Internal Economy Commission Act should be repealed, and subsection 25(4) of the Financial Administration Act should be made applicable to the House; and***
- (3) Where it is appropriate, in legislation, to allow for any deviation from financial control policies of the executive in its application to the House, the House of Assembly Management Commission should be statutorily required to deviate only if more appropriate or efficient alternative policies are to be put in place.***

I will now turn to a consideration of the components of a good general control environment.

Tone at the Top - Again

In Chapters 4 and 5,²⁵ I laid emphasis on the importance of the “tone at the top” in setting the environment in which individual responsibility and accountability can flourish. The notion of the tone at the top must also be mentioned in the current context in the more specific sense of creating a specific control environment necessary to ensure reliability of an organization’s financial systems.²⁶

It is axiomatic that a general control environment is fundamental to the accurate recording of transactions and the preparation of reliable financial reports.²⁷ Without an

²⁵ See Chapter 4 (Failures) under the heading “Inappropriate “Tone at the Top;”, Chapter 5 (Responsibility) under the heading “Tone at the Top.”

²⁶ In the discussion that follows I will borrow, where appropriate, from financial management theory as applied in the private sector since the Enron scandal. In my view, this has much to teach the public sector about good financial controls and accountability.

²⁷ A much more detailed discussion of the importance of a general control environment, and the various perspectives from which such an environment should be analyzed and assessed, is contained in a paper prepared for the Commission by Ernst & Young LLP entitled “Background Paper on General Control Environment” attached at Appendix 7.1 [“EY Paper”].

adequate control environment to ensure the proper recording of transactions, the resulting financial data may become unreliable and undermine both management's ability to make appropriate decisions, and can precipitate the erosion of the confidence of its stakeholders.

In order to assess the effectiveness of the internal controls in any organization, it is necessary to review and have an understanding of the controls that are in place at the top of the organization. These high-level system wide controls are sometimes referred to in financial management theory as the *entity level controls*.

Organizations have long understood the necessity for strong entity level controls. However, in light of recent corporate scandals such as Enron and WorldCom,²⁸ it became apparent that many organizations did not have effective entity level controls in place. From these failures came the requirement for organizations to document and evaluate the effectiveness of internal controls and procedures over financial reporting.

Entity Level Controls for the Legislature

That entity level controls,²⁹ or “tone at the top” are extremely important for the effective operation of the overall system of internal controls within the government and the legislature cannot be overstated. Regardless of the specific controls implemented, the control environment of the legislature will never be effective without the will and commitment of the IEC and House administration to enforce entity level controls.

The administrative framework of the legislature, as it has been represented to me, is outlined in Chapter 3, Chart 3.1. Chapters 3 and 4 describe many of the facets of the administrative framework and the many failures recently identified. These failures often began as a result of entity level controls in the legislature not having received the attention they deserve, which, in turn, has resulted in failures in the House's internal control environment.

As the entity that is charged with overseeing the financial and administrative functions of the House of Assembly, the Commission of Internal Economy is the body responsible for establishing the overall control environment through its attitudes and actions supporting responsible financial governance. It is apparent to me that in recent years the tone from the IEC evidenced a level of casualness or disinterest in concentrating on compliance, transparency, and accountability to the public. This shift resulted in the creation of an environment where poor financial management thrived.

²⁸ Enron and WorldCom were among the corporate scandals in the early 2000s which ultimately led to the implementation of new accounting and auditing rules, especially with respect to entity-level controls.

²⁹ Entity-level controls such as Control Environment; Risk Assessment; Control Activities; Information and Communications; and Monitoring are further explained in the EY Paper in Appendix 7.1.

I have previously noted that, in the past, the IEC operated in an unorganized and unstructured environment. Some of the more notable indications of this are:

- Regular meetings did not occur and minutes were not circulated in a timely manner;
- Restructuring of the constituency allowance framework occurred, and resulted in the increasing of MHA allowances without an independent commission to review their appropriateness, and also resulted in restructuring of the manner in which they were controlled and paid;
- For a number of years, a portion of MHA allowances was paid without requiring submission of supporting receipts;
- Year-end allowance adjustments were approved by the IEC and were only obliquely reported to the House;
- The Controller General was denied access to documents supporting payments of government funds;
- The compliance audit planned by the Auditor General in 2000 was cancelled and the IEC failed to act to provide a replacement;
- The IEC failed to appoint an auditor for three years, permitted one year to go unaudited, and did not perform timely follow-up with the external auditors to determine the status of outstanding audits;
- There was a lack of regular financial reporting and review: significant budgetary variances related to constituency allowances were not questioned and administrative affairs were delegated totally to the Clerk; and
- The IEC requested that the Treasury Board not be involved in analyzing and approving budgets.

To strengthen the entity level controls and the overall control environment of the House of Assembly, a number of actions should be taken. I have already mentioned some of them in Chapter 5. They include:

- The adoption of a code of conduct for the Members of the House. The guidelines in a code help to reinforce the concept of accountability that should permeate the organization and set an appropriate tone for the House.
- The imposition of individual standards of responsibility for members of the IEC.
- The statutory enumeration of the duties and responsibilities of the IEC as a body.

- The adoption of a “whistleblower” policy. The provision of a mechanism that will allow an avenue to report actions that are felt to be unethical, immoral or wrong will, again, reinforce the message that Members take their duties seriously.

In addition to the foregoing measures there are a number of other measures that can be taken to strengthen entity level controls and thereby ensure proper tone at the top. Development of an organization chart detailing the hierarchy of the legislature would assist Members and employees in understanding their roles and responsibilities as well as in highlighting any areas where segregation of duties issues might arise. Once prepared, the organizational chart should be reviewed regularly by management and updated when staffing changes occur.

Written job descriptions for all employees of the House would also assist Members and employees in understanding their roles and responsibilities. These descriptions must detail the requirements and expectations of each job and be prepared by someone who has the experience and knowledge to complete the descriptions.³⁰ Management must ensure that people meet the requirements as outlined in the descriptions, and training programs or courses should be offered to key employees to ensure that these employees are kept abreast of the latest developments in their particular field. All employees would benefit from annual evaluations, both to reinforce positive behaviour and to note any areas of improvement that may be required.

In accordance with the provisions of the *Transparency and Accountability Act*, a strategic plan for the House administration should be developed.³¹ This plan should outline the goals of the House administration for the upcoming year as well as how the legislature plans to mitigate the risks to meet its mandate. This plan should be made available to all Members and key employees and should be reviewed each quarter for progress with updates provided to Members on an annual basis.

Information systems are expected to provide management with timely, relevant reports to be used in the overall administration of the House. The initial focus should be on the identification of financial reports necessary to assist management in the financial reporting and budgeting processes. For example, it would be helpful to develop a report that compares, on a monthly basis, each Member’s spending to date with his or her budget for the year. A new format for such a report has been drafted by the Speaker and is included in the appendices to this report.³² Also contained in the same appendix is the sample form containing some suggested changes. This report should be reviewed and monitored monthly

³⁰ Ernst & Young, LLP, *Preparing for Internal Control Reporting: A guide to Management’s Assessment Under Section 404 of the Sarbanes-Oxley Act*, (2002).

³¹ S.N.L. 2004, c. T-8.1.

³² See “Constituency Allowance Monitoring Form” in Appendix 7.2.

by each MHA and quarterly by the Clerk. Significant variances should be followed up with the particular Member and reported to the Speaker of the House.

Finally, and perhaps most importantly, management of the House - particularly the Clerk and the Chief Financial Officer - needs to champion the need for effective internal controls for the House. Regular review of the internal controls in place must occur and suggestions for improvement to current systems must be implemented in a timely manner. Key management must lead by example and set the tone at the top that internal control is important and necessary for the effective safeguarding of public funds and the operation of the House. In the past, regular reviews of the legislature's internal controls did not occur. The issue of regular review of the system of internal control will be discussed in further detail in the Management Certification section later in this chapter.³³

In summary, effective entity level controls are fundamental to the overall operation of internal controls. By taking the actions outlined above, the House's entity level controls will be significantly improved and in line with best practices.³⁴

Accordingly, I recommend

Recommendation No. 40

- (1) Management of the House, in particular the Clerk and the Chief Financial Officer, should implement and champion the need for effective internal controls. Regular review of the internal controls in place must occur, and suggestions for improvement to current systems must be implemented in a timely manner;***
- (2) A strategic plan for the legislature should be developed as contemplated by the Transparency and Accountability Act. This plan should outline the goals of the House administration for the upcoming year as well as how the legislature plans to mitigate the risks in meeting its mandate;***

³³ See below under the heading "Quality and Risk Management".

³⁴ James L. Goodfellow and Alan D. Willis, *Internal Control 2006: The Next Wave of Certification, Guidance for Directors* (The Canadian Institute of Chartered Accountants, 2006).

- (3) *An organization chart, which details the hierarchy of the House administration should be developed. This chart will allow members and employees to know and understand their roles and responsibilities;***
- (4) *Job descriptions should be developed and documented for all employees of the House of Assembly. These descriptions must detail the job requirements and expectations of each job and should be written by someone who has the experience and knowledge to complete the description;***
- (5) *Management, particularly the Clerk, should ensure that people who are hired meet the job requirements as outlined in the descriptions;***
- (6) *Training programs or courses should be offered to key employees to ensure that these employees are kept abreast of the latest developments in their particular field; and***
- (7) *Management, particularly the Clerk, should develop, maintain and update as required, appropriate management information systems to assist in the financial reporting and budgeting processes, and to assist in reporting in a useful and transparent manner the spending patterns of each Member with respect to allowances and to enable significant variances to be identified and dealt with.***

Process and Transaction Level Controls

The accounting policies and processes applicable to the executive branch of government are documented in the *Financial Management Circulars*, *Financial Management Handbook* and the *Financial Management Policy Manual* issued by the Office of the Comptroller General. These were reviewed to determine if they could be adopted by the legislature.

Financial management circulars are issued “to assist departments in the handling of selected financial operations,” and are designed “to clarify financial principles which are legislated by the *FAA* and by policies and procedures approved by Cabinet or Treasury Board.”³⁵ These circulars provide a description of the accounting processes in place at

³⁵ Newfoundland and Labrador, Office of the Comptroller General, “Financial Management Circular,” (March 2003), “Introduction,” p. 1.

various governmental departments and appear to be very detailed, well written and comprehensive.

It is not practical or efficient to compare all of the government processes described in this information to best practices. I have reviewed government processes relating to budgets (referred to as estimates), purchases, payables, payments, payroll and financial reporting - the areas most used in the legislature - and compared them to best practices.

To determine what constitutes a best practice, the Commission staff reviewed control documents found on databases maintained by accounting firms such as Ernst & Young, as well as other databases. These databases are comprehensive and based upon the standards and guidelines recommended by the Canadian Institute of Chartered Accountants. As the information related to budgeting in the databases consulted was more corporate-based, a survey of the other legislatures in Canada was undertaken to obtain sufficient information on best practices from a public sector point of view.³⁶ Appendix 7.3 provides a summary of the survey results.

Budget Process Within Government

As a starting point, I will discuss the components of the budget process within the executive branch of government and compare it with the existing practices of the House of Assembly and best practices from the survey noted in Appendix 7.3.

(i) Initialization of the Budget Process

Government prepares its budget annually. At the appropriate time of the year, a request is issued for the various departments to begin the budget process, outlining the timelines for its completion or submission for approval. The Budget Division of the Financial Planning and Benefits Administration group within the Department of Finance (hereinafter referred to as the Budget Division) prepares forms and guidelines that are then provided to each department and agency. These include the projected revised estimates (a combination of actual expenses and revenues to a point in time during the year plus an estimate to the end of the year) and an estimate for the next fiscal year.

Anticipated changes to the requirements for the next fiscal year are documented. Changes can arise from past events that will not recur, or future events that are expected to occur and that have not taken place in the past. There is an expectation that the budget will be affected by program changes, pricing changes in contracts (such as union contracts with wage increases) and inflation. General guidance is given with respect to the expected outcome of the budget - in other words, the expectation to remain consistent with the

³⁶See Appendix 7.3 for the summary of budget responses from the “Interjurisdictional Survey” in Appendix 8.1.

previous year, or increase or decrease. Government strategic plans that have cost or revenue implications must be factored into the preparation of the estimates.

(ii) Preparation of the Estimates

Annually, individual departments perform a comprehensive review of the revenue and cost expectations of the programs and administrative expenditures for the next fiscal year. The account chart structure is prepared and approved by the Comptroller General. Categories of programs and activities used for the preparation of the estimates are established and approved by Treasury Board. Each monitored category is called a “vote” or “activity.” Within the votes or activities are main objects for current or capital expenditures. The votes for each department are combined to form the estimates for that department. Considerable effort at all levels of authority within the departments is expended to challenge the details of the estimates prepared.

The departmental expenditure estimate is called a Head of Expenditure³⁷ and the responsibility for preparation of the budget and monitoring of the expenditures is delegated to the Deputy Minister.³⁸ When the department is satisfied that it has adequately addressed its needs for the year and has followed the guidance given, its estimates are entered into the Oracle Financial Analyzer and, together with other analyses, are submitted to the Budget Division of the Department of Finance.

(iii) Approval

The Budget Division analyzes all proposed departmental expenditures within the estimates. Depending on the submissions, requests are made to refine, modify or clarify these estimates. When the Budget Division has completed its analysis, the expenditure estimates are presented to the Budget Committee, an informally structured group consisting of the Premier, key cabinet ministers and government officials, for review. Any requested revisions are made. A summarized package of information consisting of: statement 1³⁹ of the estimates summaries of decisions made by the Budget Committee; an update of the projected results for the previous year; a three-year outlook; a summary of net debt; details on revenue by source; an analysis of the previous year’s budget; revised estimates and forecasted year-end position; and a summary of outstanding request and unresolved items are then sent to the full Cabinet for its review prior to tabling in the House of Assembly. Ministers of various departments also may make appeals to Cabinet if they believe that there are expenditure requests that have been denied by the Budget Committee but which, in their

³⁷ Newfoundland and Labrador, “Financial Management Circular” 1.010.

³⁸ See FAA, Ss. 26(1) and (2); and “Financial Management Circular” 1.010.

³⁹ Statement 1 contains the summarized details of the expenditure requests for each department or government body that requested funds for inclusion in the supply bill to be approved by the House of Assembly.

view, have a higher priority than other expenditures already approved. Cabinet then makes the final decisions on the estimates to be included in the budget presented to the House.

In the House of Assembly, questions are asked of the budget and, once answered, the budget is approved as is or with modifications. This is accomplished by the passage of a supply bill. Based on discussions with officials, rarely are any changes made to the estimates after being tabled in the House of Assembly. The Lieutenant-Governor signs a warrant after the supply bill is approved to officially provide the appropriations for government's use.⁴⁰

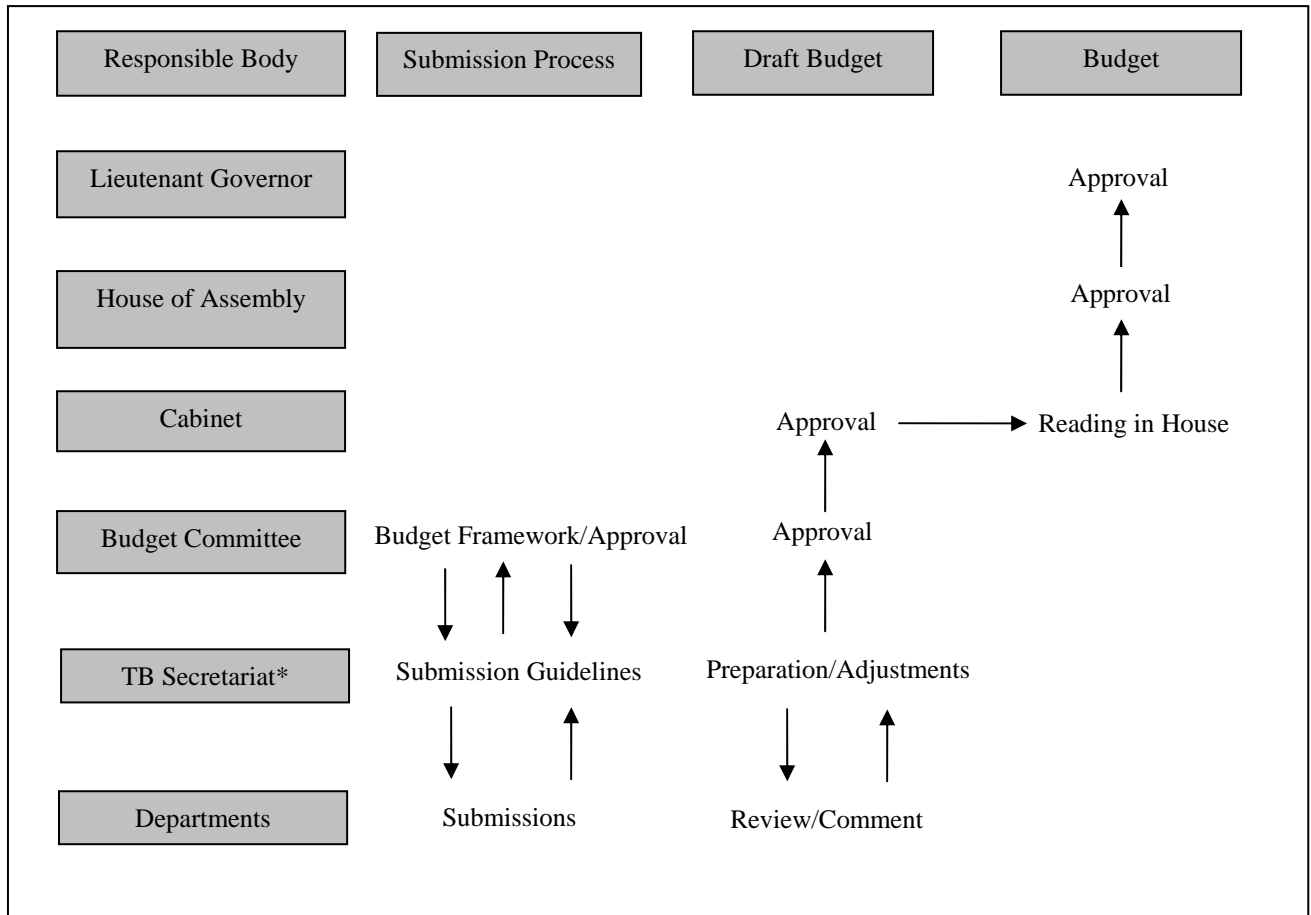
This legislative approval process is required for all government expenditures because section 22 of the *Financial Administration Act* provides that, with a few limited exceptions, no issue of public money may be made out of the consolidated revenue fund "except under authority of the legislature." This notion, of course, is a fundamental principle of our parliamentary democracy.

Chart 7.1 provides a diagram, last updated in March 2003, to illustrate the various stages of the preparation of the estimates.⁴¹ Based on discussions with government officials, the process below remains the same today, with some modifications in the titles of the bodies performing the tasks.

⁴⁰ "Financial Management Circular" 1.010.

⁴¹ Financial Management Handbook of the Office of the Comptroller General, p. 30.

Chart 7.1



* The functions of the Treasury Board Secretariat with respect to the budget process are now being performed by the Budget Division of the Department of Finance. As well, the Public Service Secretariat also reviews each new employment position being requested during the budget process.

(iv) Monitoring

After the approval of the estimates, each department enters the estimates into the government’s financial management system. The amounts entered into the financial management system are at a very detailed level - by responsibility centre and by account. Deputy Ministers⁴² are responsible for ensuring all expenditures within their departments are appropriate, and they must certify that the government policies for purchasing, receiving goods and appropriateness of payment have been followed prior to making a request for funds to be expended.⁴³ All requests for payments are made through the Comptroller

⁴² Or “another authorized person”: See *Financial Administration Act*, ss. 30(1).

⁴³ *FAA*, s. 30.

General's office. The Comptroller General is given the responsibility for monitoring the actual expenditures to ensure that a subdivision is not exceeded. Funds cannot be expended if there is insufficient funding available.⁴⁴ At the subdivision level, such monitoring is absolute, with the request for payment being denied if the account is over its limit. Below the subdivision level, monitoring can be absolute, or advisory. If it is monitored on an advisory basis and the account is over its limit but the subdivision is not, the request for payment is processed and a notification is sent.

On a monthly basis, each department is required to complete a submission and forward it to the Budget Analyst within the Budget Division assigned to monitor the expenditures of that department. I have been told these monthly submissions are analyzed and that at the appropriations level within the budget, any material variances from budget are followed up with the department by the Budget Division.

(v) Transfers

In all government departments, expenditures are monitored against the budget or estimates and, as noted above, payments cannot be made if there is insufficient funding available in the respective votes. As circumstances often change subsequent to the time the estimates are prepared, it is not unusual to require changes during the fiscal year to the overall estimates or to the allocation to the votes within the estimates. Policies are in place to provide guidance on how these transfers are to occur.

If the required additional funding is within the same department or Head of Expenditure, and within certain specified votes or activities (within "subheads" or "subdivisions" of subheads), the Deputy Ministers have been delegated authority to approve certain transfers as long as there are countervailing savings that have been identified,⁴⁵ and as long as they are within certain categories.⁴⁶ However, Deputy Ministers do not have the ultimate authority in all cases. Transfers between current and capital accounts or into salary activity accounts generally require further approval by Treasury Board or Cabinet, even if they are within the Head of Expenditure or vote.⁴⁷

Funds to be transferred between Heads of Expenditure require approval in a supply bill that is approved at the Treasury Board or Cabinet level. If new money is required in a department, and the House is sitting, a new supply bill must be raised and approved in the House. If the House is not sitting, and new money is needed, authority has been delegated by Treasury Board to the Treasury Board Secretariat for the issuance of a special warrant.

⁴⁴ FAA, Ss. 25(5), 29.

⁴⁵ See, FAA, ss. 28(1)

⁴⁶ Government of Newfoundland and Labrador, Office of Comptroller General, *Financial Management Policy Manual*, 2005, Policy 2.1.4.

⁴⁷ See Appendix 7.4 for a copy of the executive council of the Treasury Board Directive Number 97-07 which outlines the transfer of funds policy for departments.

When the House reopens, any special warrants are tabled in the House as supplemental supply bills and approved.⁴⁸

As can be seen from the foregoing description, the budgetary process and the subsequent monitoring of expenditure pursuant to budgetary appropriations is quite elaborate, and is hemmed in by controls and approval requirements throughout the appropriation-spending process. The contrast with the budget process in the House is quite striking.

Budget Process Within the House of Assembly

(i) Initialization of the Budget Process and Preparation of the Estimates

The budgetary process of the House of Assembly does not conform in all respects with that followed by the executive branch of government. Though the House follows the overall government processes with respect to the guidelines for the initialization and preparation of the budgetary estimates, it appears, however, that in the past the preparation, documentation, analysis and review have not reflected the degree of diligence appropriate for this important financial planning and management process. One particular concern, the pattern of recurring budgetary overruns in specific accounts (most notably the allowances and assistance account) appears not to have been meaningfully addressed in the budgetary process of the House.

As was illustrated in Chapter 3, in recent years the “revised” estimates of expenditures for the fiscal year just ended have been consistently understated for the MHA allowances and assistance account. This leads to two causes for concern:

- i) It created a misleading indication of budgetary performance. The revised estimates indicated that expenditures in the current fiscal year were substantially on track. Accordingly, there was no requirement for a discussion of the variances in the budget review process.
- ii) Since the revised expenditure estimates for the current year were understated at budget time, there was no indication of the extent of the budgetary overruns on allowances and assistance when the budget was tabled in the House. With this lack of transparency, there was no basis for a timely debate on sizeable expenditure overruns in the current fiscal year that could lead to a reasonable basis for questioning the legitimacy of the estimates for the coming year. The actual expenditure overruns were not identified until the public accounts were released several months later, far removed from the profile of the budget debate.

⁴⁸ See generally *FAA*, s. 28.

Clearly, greater attention should be paid to ensuring that the most accurate and up-to-date estimates possible are provided to the IEC in its deliberations on the budget. Also, it is incumbent on the IEC and the Clerk to ensure that the estimates provided to the House contain the most up-to-date and meaningful information possible to ensure that the budget is presented in a manner that fairly presents the expenditure experience and trends.

(ii) Approval

The process for the approval of the budgetary estimates of the House differs significantly from that applicable to the executive branch of government. The Budget Committee, Treasury Board and Cabinet are not involved in the legislative approval process. This responsibility falls under the IEC. The estimates “for the payment of the members’ salaries and other expenses of the House” are prepared by the House administrative staff on behalf of the Clerk and are presented by the Clerk to the Commission of Internal Economy for approval.⁴⁹ In the case of the statutory offices of the House, such as the Child and Youth Advocate and the Citizens’ Representative, a different procedure occurs. Although there are some differences in each of the pieces of legislation constituting each office, each *Act* generally requires that the hiring of staff and the payment of expenses of the office must receive the approval of the IEC.⁵⁰ Although most Acts do not expressly say that a formal budget must be submitted annually to the IEC,⁵¹ the approval requirements in the respective legislation effectively means that is what must happen, and that, in fact, is what does occur. The Clerk, therefore, is not directly involved in the estimates preparation process for the statutory offices, except as a conduit to pass along to the IEC the estimates prepared by each office.

The only scrutiny that the estimates for the House and the statutory offices receive is that given by the IEC. In the past, there was no “professional” analysis requiring responses undertaken by the staff of the House, nor by the Budget Division of the Department of Finance, as is the case with the estimates prepared by departments in the executive branch of government. In my view, this is a serious weakness.⁵²

⁴⁹ *Internal Economy Commission Act*, s. 6.

⁵⁰ *Child and Youth Advocate Act*, S.N.L. 2001, c. C-12.01, Ss. 10, 11; *Citizens’ Representative Act*, S.N.L. 2001, c. C-14.1, Ss. 9, 10; *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, Ss. 42.6, 42.7; *Elections Act*, 1991, S.N.L. 1992, c. E-3.1, Ss. 7, 9; *House of Assembly Act*, R.S.N.L. 1990, c. H-10, s. 34. The *Auditor General Act*, S.N.L. 1991, c. 22, s. 23 does not require the approval of the IEC for hiring of staff, but does require the submission of a budget.

⁵¹ Exceptions are the offices of the Chief Electoral Officer and the Auditor General; for each there is an express requirement for the annual submission of a budget. See *Elections Act*, 1991, s. 9; *Auditor General Act*, s. 33.

⁵² I understand that during the budget process for the 2007-08 fiscal year the estimates for the statutory agencies, except that of the Auditor General, received scrutiny by the House staff.

The IEC may approve the estimates as submitted to it or may alter them. Subsection 6(3) of the *Internal Economy Commission Act* then provides:

The estimates as approved or altered by the commission shall be submitted to the minister [of Finance] and shall be laid before the House of Assembly with the other estimates for the year.

Prior to 2000, the subsection required that the estimates be submitted to the Minister of Finance “for the minister’s approval.” This phrase was removed as part of the legislative changes in 2000 giving the IEC the authority to control the audit process and the documentation that should be submitted in support of claims, as discussed earlier in this report. The intent was clear - the executive branch of government was not to have any control over what the budgetary estimates of the House and the statutory offices should contain. They were to be included in the provincial estimates and put on the floor of the House, as submitted by the IEC. Inasmuch as few changes are made to the estimates once they reach the floor of the House, the result is that whatever is submitted by the IEC will generally be approved.

The position of the IEC in this regard was reinforced by the following directive issued by the IEC at its meeting of February 26, 2003:

8. The Commission by order directed the Clerk to advise the Treasury Board Secretariat ... that no changes may be made to the Estimates without the approval of the Commission in accordance with the authority of the *Internal Economy Commission Act*.

Other directives to the same effect were also issued by the IEC from time to time in recent years, reinforcing the same position.⁵³

The autonomy of the legislature and the concept of the supremacy of parliament are often put forward - both in this province and in other Canadian legislatures - as justifying this approach. To do otherwise could involve an interference with parliamentary privilege. There is, however, a competing constitutional principle that must be considered. It is found in section 54 of the *Constitution Act, 1867*.⁵⁴ It provides, in effect, that a money bill - which a supply bill to approve estimates surely is - may only be introduced into the House by the executive.⁵⁵ A corollary is that no amendments to a supply bill increasing expenditures may

⁵³ *Report of Commission of Internal Economy for Fiscal Year April 1, 2001 to March 31, 2002*, pp. 13-4, March 6 meeting at minutes 1-6; and *Report of Commission of Internal Economy for Fiscal Year April 1, 2000 to March 31, 2001*, p. 9, January 3 meeting at minute 5.

⁵⁴ S. 54 by its terms only applies to the Parliament of Canada; however, it was made applicable to the four founding provincial legislatures by s. 90 and to Newfoundland and Labrador by Term 3 of the *Newfoundland Act*.

⁵⁵ In fact, s. 54 actually says that a bill for the appropriation of any part of the public revenue must be “first recommended to that House by Message of the Governor General” (the Lieutenant-Governor in the case of

be made without executive approval. Given full reign, this principle would justify the inclusion of the requirement of ministerial approval of the House estimates in subsection 6(3) of the *Internal Economy Commission Act* as it existed before 2000.

Fortunately, it is not necessary to resolve this interesting conflict of competing constitutional principles. It is sufficient to record that the executive, perhaps out of deference (not capitulation) to the idea of legislative autonomy, does not, as a general rule, question or attempt to revise the estimates that are approved by the IEC before putting them on the floor of the House. This is as it should be in most cases; however, it must be recognized that in the case of a fundamental disagreement as to the appropriateness of the IEC approved estimates, the executive could, relying on section 54, *refuse* to place the estimates in their current form before the House, thereby setting up a potential for negotiation between the two branches of government as to what would be acceptable to go into the estimates.⁵⁶

Although I agree that, in principle, the budgetary process of the legislative branch should not *necessarily* be constrained by executive budgetary policy and, in particular, by directives of Treasury Board as to the types of, or limits on, expenditures that should be included in the estimates, it is nevertheless important that the process undertaken by the IEC be a thorough and analytic one. I have noted above that the process as it operated up to this year did not allow for any professional analysis of the estimates as presented. The members of the IEC can not be expected to have the necessary financial expertise to engage in a detailed technical analysis of the budget proposals. They should, however, as I have recommended in Chapter 5, have a broad governance and due diligence role in all financial matters that they may not be fully exercising now.

It becomes all the more important, therefore, that the IEC members have access to necessary financial expertise and that they be encouraged to avail of it. The Clerk must be expected to defend the estimates he or she proposes for House operations, but for him or her to be challenged, the IEC needs other analytic advice. I do not see any impediment to IEC availing of the services - in an advisory capacity - of the Budget Division of the Department of Finance for this purpose. With respect to the statutory offices, the estimates prepared for each should not go directly to the IEC for consideration, but should be first subject to analysis by the Clerk, who would then be expected to provide his or her advice to the Commission.⁵⁷ I say this for two reasons. First, in the revised structure of the House that I

Newfoundland and Labrador). Since the Queen's representative takes "advice" from the executive, that effectively means that any "message" from the Lieutenant-Governor would have to be made with the approval of the executive.

⁵⁶ A contrary argument might be that by removing the requirement for ministerial approval from ss.6(3) of the *Internal Economy Commission Act* and requiring that the IEC estimates "*shall* be laid before the House", the executive, as the original sponsor of the *Act*, was signifying its general consent to placing all IEC estimates on the floor of the House in the form submitted. That consent was subsequently countermanded by amending legislation.

⁵⁷ I have been told that the Chief Financial Officer performed considerable analysis of the budgets of the applicable statutory offices during the budget process for 2007-08, and submitted such analyses to the Clerk

have recommended in Chapter 6, the Clerk should have, in relation to the statutory offices (except the office of the Auditor General), a broader and clearer role with respect to the financial and administrative policies applicable in the offices. As such, he or she should have some degree of oversight over the budgetary process in respect of those offices. Secondly, it is important that the overall budgetary requirements of the House of Assembly (including the statutory offices) as a Head of Expenditure be coordinated and considered as a whole. If the Clerk were not to have any input, even by way of advice, that goal would be frustrated.

Accordingly, I will make the following recommendation:

Recommendation No. 41

- (1) The estimates of the House of Assembly, as approved by the House of Assembly Management Commission, should continue to be submitted to the Minister of Finance with the expectation that they be placed on the floor of the House as part of the provincial estimates without change, but recognizing that the executive may retain a residual discretion to refuse to present them in that form in exceptional cases;***
- (2) Estimates for the statutory offices should continue to be prepared by the offices concerned and presented to the Commission for approval;***
- (3) Before the Commission makes a decision on the estimates submitted by the statutory offices, it should request the Clerk to provide an analysis and commentary to the Commission on those estimates; and***
- (4) Before the Commission makes a decision on the budgetary estimates for the operation of the House prepared by the Clerk and on those prepared by the statutory offices, the Commission should avail itself of independent advice in respect of the estimates and, in particular, should submit the estimates to the Budget Division of the Department of Finance for analysis and comment.***

prior to the presentation of those budgets to the IEC.

(iii) Budget Monitoring and Financial Reporting

With respect to budget monitoring and financial reporting, I understand from interviews with staff within the House administration that, in the past, the budgetary performance within the respective accounts relating to the House was not regularly monitored against budgeted allocations throughout the year. Regular monthly budget update reports were not provided to the Budgeting Division of the Department of Finance, despite the fact that this was the practice employed throughout the executive branch of government. There was no formal follow-up by the Budget Division in recent years (apart from telephone enquiries that indicated that generally things were “OK”). I understand that this lack of follow-up by the Budget Division on requests for information may be a further reflection of the fact that the IEC took pains to impress upon the executive branch of government that they were an autonomous body and should not be subject to interventions from Treasury Board or Finance.

The absence of an ongoing financial monitoring process in the budgetary administration of the House was likely a key explanation for why errors in posting to the accounts that occurred throughout the year went undetected. Often, the errors were not corrected until late in the fiscal year when the preparations of the year-end reports commenced (and it is not at all clear that all such posting errors were detected even during this year-end review).

(iv) Account Structure and Expenditure Control Within Sub-Accounts

In Chapter 4 I noted that the accounts of the House were structured such that only very high levels of accounts - in fact, the level of the accounts actually voted in the House - were monitored against the estimates for overspending thereby masking significantly the variances in subcategories of expenditure within each account.⁵⁸ This was particularly troubling with respect to the - now identified - trend in overspending with respect to constituency allowances. This, in turn, meant that over expenditures within subcategories of such accounts were likely not identified until late in the year or, even worse, not identified at all - in my view, the publicly reported account structure in the estimates should be revised to subdivide the Allowances and Assistance Account so that allowances are budgeted and reported separately from MHA salary compensation.

A further dimension of this issue relates to the lack of *individual* accounts for Members’ constituency allowances and the absence of a framework installed to control individual Members’ expenditures to the respective prescribed maximum. The significance of these issues was also highlighted in the discussion of expenditure overruns on constituency allowances and administrative deficiencies in Chapters 3 and 4.

⁵⁸ See Chapter 4 (Failures) under the heading “Ineffectiveness of Central Control Functions in Government”; (i) “Inappropriate Account Structure in the Estimates.”

It has been represented to me that the concerns are in the course of being addressed. I have been told that, as of October, 2006, the House administration is utilizing the Oracle Financial Management System's discoverer tool to assist with providing periodic reports to monitor all House accounts. As well, based on recent discussions with the House staff, it appears that budget monitoring reports are now being made to the Budget Division on a regular and timely basis.

Furthermore, I understand that, as of October, 2006, the administration of the House has begun to monitor the "allowances and assistance" account by individual MHA. Each MHA account is being monitored against the maximum allowed allowance allocation for the respective constituency. I am told controls have been put in place to cap spending at the prescribed maximum. Overspending at the MHA level for their constituency allowances should not now occur as the system will not process a payment if there are insufficient funds left in any individual account.

(v) *Transfers of Funds*

The transfer of funds from one subhead or activity to another within the House of Assembly Head of Expenditure is another area of budgets that differs from the executive branch of government. The normal requirements for approval of transfer, as set out in section 28 of the *Financial Administration Act* and in government policies, were not regarded as always applying to the House. Section 28 prescribes that "a department may, with the prior consent of [Treasury] board, where countervailing savings can be affected from other subheads of its Head of Expenditure, apply those savings to meet the excess expenditure." Section 9 of the Act provides that the Lieutenant-Governor in Council may make regulations concerning various matters within the scope of the Act. In this regard, the Lieutenant-Governor in Council issued a MC 97-0410 to provide guidance on the transfer of funds, and on June 16, 1997, Treasury Board issued a Directive Number 97-07 outlining the "Transfer of Funds Policy for Departments."⁵⁹ The policy provides deputy ministers with the authority to transfer funds in various types of circumstances, and prescribes other situations where approval is required by Treasury Board. Paragraph G of that policy indicates that transfers to or from an "allowances and assistance" account requires Treasury Board approval. There is no indication in the policy as to whether or not the House was considered a "department" for the purpose of the policy.

Whether legally the policy should or should not have been applied to the House may be a debatable point. The House was nonetheless very protective of its independence in relation to its spending authority. I understand that the administration processed some transfers on its own without reference to Treasury Board. However, on a number of occasions the staff of the House sought and obtained Treasury Board approval for the

⁵⁹ See Appendix 7.4.

transfers. I understand from our consultation process that Treasury Board staff, based on their understanding of the principle of legislative autonomy, issued Treasury Board Authorities (“TBAs”) for the transfers, sometimes with very little information. There is little or no indication in the minutes of the IEC that transfers were authorized in advance by the IEC.

In essence, from a practical point of view it appears that the funds transfer process in the House was directed and implemented at the staff level by the Director of Financial Operations.⁶⁰ Even when Treasury Board authority was sought, the purpose for which the money was to be spent went largely unchallenged out of respect for the independence principle. It can be argued that, as a result of the principle of legislative autonomy, it is not appropriate to involve Treasury Board or an arm of the executive branch. However, approvals by someone other than the initiator of the transfer *must* be required.

I understand that in recent months the IEC has established a policy that all transfers of funds are to be approved by the Chief Financial Officer and the Clerk and then *ratified* by the IEC.⁶¹ Similar policies occur in other legislatures across the country.⁶² I am not convinced that this is adequate, as it would seem more appropriate to require that certain transfers, particularly those relating to the accounts currently included in allowances and assistance, and transfers across the boundaries of the statutory offices, receive *prior approval* by the IEC.

Accordingly, I recommend:

- Recommendation No. 42***
- (1) In preparing the budget for the House, the “revised” estimates for the current year, to be included with the budget for the coming year, should be based on a comprehensive analysis of expenditures to date and best estimates of expenditures for the balance of the year, and these revised estimates should be reviewed with the House of Assembly Management Commission together with an up-to-date variance analysis as an integral part of the budgetary process;***
 - (2) The Commission should only approve the House estimates for submission and inclusion in the overall estimates of the Province after it completes detailed reviews of the information explaining the basis for the items making up the overall estimates;***

⁶⁰ The Director of Financial Operations has indicated to me that he discussed transfers of funds in advance with the Clerk.

⁶¹ Letter from the Chief Financial Officer of the House of Assembly to the Deputy Minister of Finance (August 11, 2006).

⁶² See Appendix 7.3.

- (3) *Monthly budget reports on the accounts of the House should be prepared and submitted to the Budget Division of the Department of Finance on a regular basis and along with an explanation of any significant variances. The Budget Division should provide the Clerk with any questions or comments it may have on such reports. These reports should also be provided to the Commission for review and discussion along with any questions or comments from the Budget Division;*
- (4) *Any errors identified from the monthly review of the budgets to actual expenditures should be corrected on a timely basis;*
- (5) *The Allowance and Assistance account in the Estimates of the House of Assembly should be subdivided into at least two separate accounts such that allowances are budgeted and reported separately from MHA salary compensation; and each separate account should be appropriately named in a manner that is indicative of the nature of the expenditures encompassed by each account;*
- (6) *The budgets prepared for the separate account relating to allowances should be segregated by Member and monitored accordingly;*
- (7) *A Transfer of funds policy should be developed by the House of Assembly Management Commission generally consistent with the government practice as outlined in TB Directive 97-07, except that the approval of both the Clerk and the Chief Financial Officer should be required for the transfers otherwise authorized by a deputy minister in a department. For transfers that would require Treasury Board approval in the case of a government department, the prior approval of the Commission should be required (including all transfers that involve the movement of funds in respect of salaries and allowances accounts (formerly “allowances and assistance”) and transfers across the parameters of the statutory offices); and*
- (8) *The approval of all transfers should be ratified by the Commission and clearly documented in the public minutes of the Commission.*

Beyond the broad scope of the budgetary process, there are a number of individual components within the financial management and control system that have a significant impact on the operation of the House. In particular, I will review the purchases, payables, payment and payroll processes.

Purchases, Payables, Payment Process Within the Executive Branch of Government

There are a number of components essential to effective operation of the purchases, payables, payment process. The provincial policies and practices within the executive branch will first be discussed and then compared with those of the House.

(i) Initiation

The purchase, payables, payment process in government departments is initiated in one of three ways: (i) preparation and approval of purchase requisitions; (ii) direct charges; and (iii) expense claims. It is necessary to record a few comments about each.

(a) Preparation and Approval of Purchase Requisitions

The purchasing process commences with the necessity for goods or services. When this need arises, a purchase requisition is prepared. Depending on the dollar value of the goods or services, this requisition is then forwarded to an individual in the department that has been designated as an authorized departmental approver. It is this person's responsibility to review the requisition and to ensure that the purchase has a legitimate business purpose and is in accordance with spending authority. Once approved, the requisition is forwarded to the Government Purchasing Agency (GPA) where the purchase order and an invitation for Quote or Tender forms are created. It is the GPA's responsibility to ensure that the requisition has been forwarded by an authorized departmental approver.⁶³ If this is not the case, the requisition is sent back to the department for approval by an authorized individual.

The GPA has delegated low-dollar value purchasing authority to departments. The permanent head of the department designates those officers of a department who may acquire goods and services with low-dollar values directly from suppliers.

Financial Management Circular 7.010 documents the government policy that recognizes the importance of the approval of purchase requisitions and the key control that purchase requisitions must be approved by authorized departmental approvers.

(b) Direct Charges

Direct charges include payment of invoices or transfer of funds to external parties from funding allocations that have not been previously encumbered through the purchase requisition process. Direct charges include items such as grants, allowances, payments to consultants and telephone charges.⁶⁴ Officials authorized to incur such expenditures must ensure that provisions have been made in the current year's approved estimates for the activity involved or that approval was granted through other legislative authority. These officials must also determine that the expenditure is a legitimate government purchase and in accordance with appropriate legislation.

Financial Management Circular 2.075 documents the government policy for direct charges. This policy recognizes the importance of the approval of direct charges and the key control that these purchases must be in accordance with the government's spending authority.

(c) Expense Claims

There are a number of different steps necessary for a travel claim to be initiated and approved in the purchases, payables, payment system. A claimant must certify that the expenses claimed were incurred on government business and are in accordance with the rates, amounts, and allowances prescribed by the Treasury Board.⁶⁵ The purpose of the trip must be clearly indicated upon the travel claim and all supporting documentation must be attached. In each program area, a person has been delegated the authority to review the claims and the supporting documentation and approve them. Expense claims are then submitted to the department's account division where they are reviewed for compliance with the rules and receive final approval for payment.

(ii) Request for Tenders and Purchase of Goods

After the initiation of the purchase, the next part of the purchases, payables, payment process is to send out a request for tender or, depending on the dollar value of the purchase, to obtain three quotations. This step in the process ensures the most competitive pricing is obtained and gives all vendors equal opportunity to provide the goods and services.⁶⁶ Once the winning tender or quotation is selected, the purchase order is prepared, entered into the government's Financial Management System (FMS) to "encumber" (i.e. commit) the funds, and the purchase is made.

⁶³ "Financial Management Circular" 7.010.

⁶⁴ "Financial Management Circular" 2.075.

⁶⁵ See *FAA*, ss. 30(1) (b).

⁶⁶ "Financial Management Circulars" 1.020 and 2.075.

Financial Management Circulars 1.020 and 2.075 provide references to government policies in place that recognize the importance of the tendering process and the need for taxpayers to receive value for money.

(iii) *Receipt of Goods and Completion of the Receiving Report*

The next step in the purchasing process occurs when the goods are received from the supplier. The individual responsible for receiving the goods must ensure that the goods shipped are appropriate and in the correct quantity.⁶⁷ The individual should document this information on a receiving report maintained as part of the purchasing process.

(iv) *Receipt of Invoice and Payment Processing*

Once the goods or services have been received, the payment process begins. Involved in the payment process are three people - the certifier, the enterer and the approver. When the invoice is received from the supplier, the next step is to determine if certification for payment is required. The certification for invoice payments is usually delegated to managers or directors. Certification is necessary when the invoice is not supported by a receiving report, the invoice does not agree with the terms of the contract, or the invoice is for advance payment that is specified in the contract.⁶⁸ Individual invoice certification is not required when there is a supporting purchase order and a receiving report, or when the payment is for utility bills of a recurring nature. The certifier is not usually involved in the purchase process or the invoice payment process. This supports the segregation of duties function.

Next, the enterer ensures that the payment documentation has been certified for payment, if applicable, and that all documentation is complete. From here, the information is entered into the accounts payable system in the government's FMS.⁶⁹ The department's accountant or accounting manager authorizes the enterer to input the payment information into the FMS system.

After all pertinent information is entered the final payment processing step is the approval of payment requests. The approver must ensure that the amounts represent valid charges against public funds and that the expense is in compliance with the *Financial Administration Act* and in accordance with the estimates.⁷⁰ Once the approver is satisfied that these criteria are met, the invoice is approved for payment.

⁶⁷ "Financial Management Circular" 2.150.

⁶⁸ Ibid.

⁶⁹ "Financial Management Circular" 2.

⁷⁰ "Financial Management Circular" 2.150.

Financial Management Circular 2.150 documents the government policy that stresses the importance of the segregation of duties.

Purchases, Payables, Payment Process Within the House of Assembly

In the past, much of the government's purchases, payables, payment process was not followed in the House of Assembly. In relation to purchase initiation, no policy existed to require a review of the purchases of the legislature to ensure they were in compliance with the government policies and procedures as issued by the Government Purchasing Agency. As a result, funds could be encumbered without receiving the appropriate approvals and could lead to purchases with no legitimate business purpose. Additionally, as the government's process of tendering or receiving of three quotations was not always followed in the House, it is difficult to ascertain whether the legislature received competitive prices for its purchases.⁷¹

In relation to the payment portion of the processing of invoices or expense claims, government policy was again not followed in the House. The most significant difference related to a lack of the segregation of duties function among the accounting staff in the House. By not having separate employees perform the certifier, enterer and approver roles during payment processing, the same person was able to approve purchase orders and also the payments of corresponding invoices.⁷² As a result of these incompatible functions, purchases did not receive an appropriate level of scrutiny and the legislature's assets were left open to misappropriation.

From discussions the commission staff have had with current members of the House administration, I am satisfied that they acknowledge that these deficiencies occurred and indicate that a review of the requisition and purchasing component of the process will occur. I am now told by the House administrative group that as of October 2006 they have implemented the government's policy on purchases, payables and payment to ensure that the House's requisitioning and purchasing activities are in accordance with legislation and the policies and procedures issued by the Government Purchasing Agency.

With respect to the segregation of duties issues, four clerk positions have been added to the House administration in recent months (three as full-time temporary hires and one seconded from another government department). Currently, the roles of certifier, enterer and approver as outlined in the executive branch of government's policy have been adopted in the House. However, no review of the purchases, payables and payment system in place

⁷¹ Discussion with the Chief Financial Officer of the Newfoundland and Labrador House of Assembly (January 2007).

⁷² Ibid.

within the statutory offices has occurred to date.⁷³ Included in Appendix 7.5 is a summary of the steps for the purchases, payables, payment process. It describes the “what could go wrong” scenarios and the controls required to prevent such things from occurring.

Expense Claims

Although expense claims are a subset of the purchase, payables, payment system, I believe, as a result of the significant issues that have been identified as a result of the Auditor General’s comments on overpayments and double billings, they require additional focus.

As is evident from the discussion in Chapters 3 and 4, the House of Assembly did not in the past follow government policy in relation to expense claims. One of the most significant weaknesses in the expense claim process relate to supporting documentation. In many instances, Members were permitted to submit expense reports without supporting documentation. Thus, verification that the expense had actually occurred was not possible. For a long time there were no formal rules in the House in relation to the types of documentation required to support expenses. As a result, when support was included it was often incomplete and consisted of a variety of documents, itemized restaurant receipts, credit card slips, cancelled cheques, invoices, faxes, and the like.⁷⁴

As expense reports made their way into the purchases, payables, payment system, many of the deficiencies as discussed above for the other types of items processed through the purchases, payables, payment system would also occur. Most notable is the lack of segregation of duties that often resulted in expense reports being processed and paid without receiving the proper scrutiny by House staff. The fact that employees and elected officials were not required to list each item on the expense claim, but rather permitted to group expenses together into one line on the claim, significantly increased the amount of time required to process claims and hindered the review process. A shortage of staff in the House further exacerbated the problems, often resulting in expense claims being rushed through the system without appropriate review to allow Members to receive their payments in a timely manner. The approval structure of the House administrative group also contributed to the problems, as a subordinate often approved data entered into the FMS by a superior. In addition, as outlined in Chapter 3, an electronic approval of the request for payment was often performed at a different location without any supporting documentation being available for review.

Double billing and double payment are other matters that have received significant media coverage recently, and I have mentioned these issues in Chapters 3 and 4. The Auditor General has indicated that he has seen instances of elected officials claiming expenses more than once, or double billing. To illustrate, a Member may have lunch at a local restaurant.

⁷³ Ibid.

⁷⁴ Ibid.

The Member pays with a credit card and receives two receipts for the credit card purchase: one itemized listing of the items ordered and one slip that shows the approval for the purchase and required signature. As the rules in relation to documentation were not specific, either of these slips would have sufficed as supporting documentation for expense claim purposes. Different documents could therefore be used to support more than one claim for the same expense. Furthermore a Member may have expensed meals for a particular day as well as claimed a per diem amount on another expense report. While this could occur accidentally, through inadvertence, it is possible that the action could be taken with the intention of asset misappropriation. Another example relates to travel. A Member could fly to his or her district and expense the airfare. On another claim, the Member could expense the mileage required to drive to the district. These examples are just some of the ways that the assets of the government are open to misappropriation, as the opportunity exists to either accidentally or intentionally claim the expense twice.

A related concept to double billing is double payment. If the duplicate expenses that are claimed are paid twice because the controls within the House do not identify the double billing, double payment occurs and the person receives two payments for the one expense.

Commission research and discussions with House staff indicate that a number of controls processes have recently been initiated that may effectively counteract these weaknesses. Most notably, a series of detailed rules and procedures were issued on July 6, 2006, by the IEC.⁷⁵ It is noted that a rule has been implemented that all expense claims must include supporting documentation.⁷⁶ Expense claims submitted without appropriate support are to be rejected and processed only when documentation has been included. Furthermore, as of January 4, 2007, only original receipts showing that the payment has been made will be accepted.⁷⁷ Photocopies of receipts, faxed invoices, cancelled cheques, or itemized restaurant bills alone are no longer accepted as supporting documentation.

With the addition of two new clerks in the purchases, payables, payment process there will be more time available to spend on the review of expense claims to ensure they are properly reviewed and supporting documentation attached. With all of the recent attention on expense claims and the allegations of double billing, I have been advised a group of staff have been dedicated to expense claim review. This should permit the appropriate level of segregation of duties and make it more difficult for unsupported claims to be processed. I also understand that a new approval structure has been implemented with approvals being given by a person more senior than the enterer and certifier.

Another safeguard added to this process is the implementation of a new expense claim form. This form requires expenses to be itemized. This allows for an easier review of

⁷⁵ Letter from the Speaker of the House of Assembly to the IEC, (July 6, 2006).

⁷⁶ Ibid.

⁷⁷ Memo from the Speaker of the House of Assembly to all MHAs, entitled "Documentation to be Submitted with Constituency Allowance Claims," (January 4, 2007). This memo was subsequently ratified by the IEC; see "Draft Minutes of the Internal Economy Commission," January 9, 2007 meeting at minute 10.

the expense claims as the reviewers can quickly assess the adequacy of the supporting documentation. In addition, I have been advised that employees and elected officials have been notified that only claims filed on the new forms will be accepted.⁷⁸

The tightening of policy to allow only original documentation showing that payment has occurred should be sufficient to prevent most types of double billing within the House.⁷⁹ Presently, the House has implemented a process whereby once an expense report is received from a Member, a detailed review of this Member's previous expense reports occurs. This review focuses on ensuring that per diems have not been claimed on days when other meals expenses have been claimed, or that travel costs such as airfare and mileage are not claimed for the same trip. This review also checks dates of expense claims and supporting documentation and searches for past expenses for the same or similar dollar amounts and explanations. Although this is a significant improvement in the controls over expense reporting, it is very labour-intensive and requires a large number of staff. As it is manually performed, the opportunity for inadvertent human error is still present. As an interim control, it is felt that this exhaustive review is appropriate to ensure expense claims are supported and are for legitimate business purposes.

To reduce the potential for errors of any kind to occur and to improve the efficiency of the process, a computerized expense claim process should be implemented whereby items would be entered by the employee or MHA or delegate of the MHA. As mentioned, phase two of the proposed new government expense claim process is planned to cover expense claims of the MHAs. The "Iexpenses" system can, I understand, be programmed to calculate automatically the amounts MHAs can claim for mileage, per diems and accommodations. With modifications, the system should also be able to check for dates to ensure no items are claimed twice for the same date.

Accordingly, I recommend:

Recommendation No. 43

(1) The purchases, payables, payment process applicable to the executive branch of government should be adopted within the House of Assembly. Should any policy not be implemented due to particular circumstances within the House, alternate policies approved by the House of Assembly Management Commission should be implemented;

⁷⁸ See Appendix 5.4 for a copy of the new expense claim used by the House of Assembly.

⁷⁹ As noted in Chapters 3 and 4, there is still the very real possibility that double billing and double payment could occur if one claim is submitted to the House and another to a separate government department - *i.e.* a ministerial claim for the same expense.

- (2) *The Public Tender Act should generally apply to the House of Assembly administration and to the statutory offices, but the House of Assembly Management Commission should have the authority, by directive, to modify its application in particular cases where the differing circumstances of House administration may require modification. In such cases, however, the Commission should be required to put in place alternate and more appropriate tendering and purchasing regimes rather than simply declaring the Act's non-application;*
- (3) *A complete review of the purchases, payables, payment systems for the statutory offices should be undertaken. This review should include an analysis of whether all purchases for these offices should be centralized in the House or whether each individual office is better served by having a separate purchases department based on government policy;*
- (4) *A list of approved individuals to whom tasks within the House can be delegated should be prepared by the Clerk for circulation, and updated when staff functions change. The government policy should be reviewed to ensure that the delegation limits of the government are followed within the House;*
- (5) *A full review of the House's staffing needs should be undertaken. Presently, staff seconded from other departments resolve the segregation of duties issue on a temporary basis. It is necessary to ensure that adequate staffing is hired on a full time-basis to ensure the issue of incompatible duties does not reoccur;*
- (6) *The proposed new "Expenses" program should be implemented in the House to assist with the processing of expense reports;*
- (7) *A separate account structure within the financial management system for each MHA should be assigned to allow for monitoring expenditures against individual budgeted allowances. These accounts should be monitored at the "absolute" category so that only expenditures not over the limit are processed; and*
- (8) *The concept of on-line access to allow MHAs to review their constituency allowance expenditure information and compare it with their budgetary allocation should be examined and subsequently implemented within a reasonable period of time.*

As noted at several places in this report, the current expense claim process is further complicated by the fact that Members and Ministers use different types of expense reports for differing types and sources of expenditures, and these are submitted to two different areas within government. Members submit claims to the House, while Members who are also Ministers submit claims to both the House and their departments, depending on whether the expenditures incurred were for constituency or ministerial duties. As I have mentioned in Chapter 4, this is an area that leaves the opportunity for double billing and double payment to still occur. As long as MHAs and Ministers can submit multiple expense claims using different forms to different areas of government, and these claims are not verified against one another, it is not possible to ensure that double billing and double payments do not occur.

Examining expense claim processes relating to Ministerial expenses is not, in itself, within my mandate. However, it is within my mandate to recommend best practices to ensure that proper controls over allowance claims within the House exist. The possibility of double billing by claiming the same expense within the House and also within a department is equally a problem for the House as it is for the Executive. Either way, public funds will not be protected if the issue is not addressed. It would therefore not be fulfilling my mandate if I were to ignore this potential weakness in control of expenditure of public money where money within the House budget may be inappropriately spent on a claim that may legitimately have been charged to a government department.

Inasmuch as a review of double billing practice has been undertaken by the Auditor General to ensure that past expenditures have not been billed to the House more than once, it is appropriate for a similar review to be undertaken of past ministerial billing practices so that comparisons can be made with billings within the House to ensure that double payment in such circumstances has not also occurred.

Accordingly, I recommend:

Recommendation No. 44

- (1) An examination should be undertaken of the reimbursement claims of Ministers and Parliamentary Assistants from the fiscal years 2000-01 to 2005-06 and a comparison be made with claims by those persons made to the House of Assembly in respect of constituency allowances to ensure that duplicate claims have not been submitted and funds administered by the House unnecessarily spent; and***

(2) *In the future, a review should be undertaken by the House of Assembly Management Commission and the Executive Council jointly to develop claims monitoring and classification processes that will identify and control duplicate claims billing across the legislative and executive branches of government.*

Payroll Process in the Executive Branch of Government

The policies and procedures of the government of Newfoundland and Labrador respecting payroll matters are outlined below:

(i) Maintenance of Payroll Records

Departments and “Central Payroll” are responsible for the maintenance of applicable payroll, accounting and statistical records for all employees. Each day, attendance and overtime records must be kept and approved. All authorized leaves must be properly authorized and supporting request forms must be kept on file to account for employee absences. Each individual department is responsible for maintaining an individual personnel file for each employee. All payroll actions, including, but not limited to new hires, transfers, promotions and terminations must have appropriate supporting documentation and authorization.

(ii) Input of Payroll Data

Each department is responsible for the proper collection and input of payroll data into the payroll system.⁸⁰ These responsibilities include: the validity and correctness of data keyed; payroll verification; and processing of overtime and other special payments.

All keyed data must originate from an appropriately authorized source document, such as an approved time sheet. The control of having a supervisor review and approve timesheets ensures that employees are paid only for time worked and hence protects government resources.

(iii) Processing Payroll

The government payroll is processed in the Central Payroll Department. In addition to payroll processing, Central Payroll is responsible for various functions including the

⁸⁰ *Financial Management Policy Manual of the Office of the Comptroller General* (October 2005).

preparation of income tax documentation (T4s); payroll adjustments, such as raises; and various administrative functions, including reconciliations at year-end.⁸¹

(iv) Preparation and Distribution of Payroll Cheques/Direct Deposit

Once payroll reports are run and the payroll payments are determined, payroll cheques and direct deposits are prepared and distributed. To enable the government to take advantage of the efficiencies of utilizing one business process for its payroll system and to obtain the maximum advantage of electronic direct deposits, departments must ensure all applicable employee groups are paid by direct deposit. All other remaining groups and individuals are encouraged to use direct deposit.⁸²

Payroll Process within the House of Assembly

I have been informed by the House of Assembly staff that the executive branch of government's payroll system was followed in the House with one exception: the maintenance of employee personnel files. In this instance, supporting documentation showing the authorization for new hires, transfers, promotions, terminations and raise increases were not kept in most personnel files. In fact, there were employees of the House who did not have a personnel file. Through our discussions, it was determined that new hires would often be added to the system simply by making a call to the Central Payroll Department.

I understand from the House administrative group that steps are now being taken to implement the processes applicable to the executive branch of government to ensure the completeness and accuracy of all payroll action processes in the future. I have been told that the House now prepares payroll forms in accordance with government policy. Recently, a payroll clerk with significant payroll experience was hired by the House. I understand that, since that time, all of the necessary government documents to support changes to the payroll system are used, appropriately approved, and included in the respective employee's personnel file. To date, reviews of the payroll processes in the statutory offices have not occurred.

⁸¹ Ibid.

⁸² Ibid.

Accordingly, I recommend:

Recommendation No. 45

A full review of the payroll process in the House and statutory offices should be undertaken to determine the adequacy of the current process and to confirm that the necessary changes have been implemented to ensure that the process now followed is in accordance with government policy.

Operating System Controls

The government's operating system consists of the "central accounting systems of government, including information imported from a department into the central financial and banking systems. These systems are commonly referred to as the Financial Management System (FMS) and form the books of the Province."⁸³ Oracle Financial Applications is the financial system presently used by the government to process transactions and to maintain its accounting records.

A full review of the Oracle system is outside my mandate, inasmuch as it is a government-wide system that extends well beyond the House administration. I have nevertheless caused the system to be reviewed at a high-level to ensure that there are no obvious issues that would prevent the House from utilizing the system to enhance controls over its transactions. In conducting the general review, Commission staff have had a number of interviews with individuals within the government, and I have reviewed the Auditor General's Reports from 2000 to 2006 to ensure that no serious system matters were identified.

Oracle is a well-known and respected system, one that is used by a large number of companies and government organizations worldwide. It has been characterized in its promotional material to be "the world's most flexible and complete solution that makes the job of Finance easier."⁸⁴

The House of Assembly presently accesses the Accounts Payable, General Ledger and Purchasing modules within Oracle. It would be appropriate that the House also use the fixed asset module to assist with monitoring the assets of the House and those managed by the Members, as well as the Oracle Financial Analyzer to assist with budget preparation. It will be necessary, however, that staff old and new receive proper training on the use of the

⁸³ *Financial Management Handbook of the Office of the Comptroller General (March 2003).*

⁸⁴ For more information about this software, visit Oracle's website online: Oracle Financial Management Solutions <<http://www.oracle.com/applications/financial-management.html>>.

Oracle system and that a program be implemented to ensure that new staff are adequately trained when hired.

Discussions with government officials have indicated that a new system for processing travel claims called “Iexpenses” is being piloted within departments at the present time and is expected to go live before the fall of 2007. The Iexpenses module is a self-service process where each individual enters his or her own data. Controls over the amounts that can be claimed for such matters as per diems and mileage are built into the module. A second phase of the project would involve implementing this self-service expense claim preparation module within the House. I believe that it is important that this second phase proceed, and that the new rules for expenses for Members as proposed in Chapter 10 be included in the module.

The more similar the systems and controls between the executive branch of government and the House are, less confusion will exist. There will be fewer opportunities for errors to occur, and it will be less costly to manage. Specific processes and procedures should be performed within the Oracle system as opposed to current practice. No longer should it be possible for individual House staff members to conduct certain financial operations off-system, as was the previous practice with respect to tracking MHA constituency allowance expenses by the Director of Financial Operations. Controls over all data that supports the financial information in the system used in the House must be implemented.

Accordingly, I recommend:

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| <p><i>Recommendation No. 46</i></p> <p>(1) <i>Use of the Financial Management System in its entirety should be implemented and followed in the House of Assembly and, in particular, the Oracle Fixed Asset and Financial Analyzer modules should be extended to and used by the House;</i></p> <p>(2) <i>All staff of the House should be provided with initial and ongoing training on the Oracle system;</i></p> <p>(3) <i>If the “Iexpenses” module presently being piloted within government is deemed suitable for general government use, it should be implemented within the House as well;</i></p> |
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- (4) *If there are policies that are deemed inappropriate for application in the House because of differences in House administration, it should be a requirement that they be replaced by the House of Assembly Management Commission with policies that improve controls, not just provide a means of opting out of controls; and*
- (5) *Security procedures over the use of computers should be implemented to ensure that all data and information not maintained on the system be adequately controlled and protected from inappropriate access or loss, either accidental or deliberate, through the use of mandatory access restrictions, and the use of automatic backups.*

Quality and Risk Management

Two additional tools not used to the appropriate extent, or not used at all within the House of Assembly that I believe will assist in quality and risk management are internal audit and management certification.

(i) Internal Audit

In discussing best practices surrounding an organization's controls over its accounting processes, one cannot underestimate the importance of the involvement of an internal audit group. The internal audit function can be used to assist management and the oversight body (in the case of the House, the IEC) in the effective discharge of their responsibilities.

The purpose of internal audit is to provide analysis and recommendations on business operations and activities of a financial organization to assist management in achieving orderly and efficient conduct of business and the safeguarding of the organization's assets.

The mandate of an internal audit unit usually includes:

- evaluating the soundness and adequacy of the internal control structure
- assessing compliance with policies, procedures, laws, and regulations
- reviewing the reliability, adequacy, application of accounting, financial, and other operating controls
- verifying the existence of assets and ensuring that they are safeguarded from loss

- evaluating the economy and efficiency with which resources are used and recommending improvements in operations
- conducting special examinations and reviews as requested by management.⁸⁵

There are a number of factors that will impact on the ability of an internal audit group to function effectively. Fundamentally important is appropriate support and respect for the work of the group. By having the support of an organization's top management, an internal audit group can function objectively and carry out its mandate in a meaningful fashion. The oversight board must also take an active interest in the development of the internal audit program to ensure that it meets the objectives of the organization.⁸⁶

The director of internal audit must have direct access to the oversight board and report regularly to that body. Management must give priority to internal audit recommendations and this should be properly evidenced.⁸⁷ There should also be no constraints or restrictions placed on internal audit. The group should not have limitations on scope and therefore should have unrestricted access to all the documents, manuals, systems, staff and physical properties relevant to the audit process. Finally, it is necessary for management to ensure that the internal audit function has adequate resources. There should be well-defined policies and practices for hiring, training, evaluating and supervising staff, as required.⁸⁸

The provincial government has a "Professional Services and Internal Audit Division," operated as part of the Office of the Comptroller General. Its mandate is to "provide professional services and consulting to the executive and government departments in the areas of: financial management, accounting and systems; financial policy development and implementation; financial reporting; operational support; and internal audit, in order to facilitate the efficient and effective management of programs and resources and promote accountability and quality reporting for Government."⁸⁹

I am firmly of the view that an internal audit function is fundamentally important in the monitoring of controls, not only of government generally, but specifically of the House. The government of Canada⁹⁰ and most other provinces have an internal audit function that from time to time, performs or has the authority to perform an internal audit function within

⁸⁵ The Office of Internal Audit at Kent State, online: <http://www.kent.edu/internalaudit>.

⁸⁶ Ernst & Young LLP, *Program Risk: The Internal Audit Blind Spot*, (2006).

⁸⁷ American Institute of Certified Public Accountants, *Evaluating the Internal Audit Team: Guidelines and Questions*, (New York: AICPA, 2005).

⁸⁸ Ibid.

⁸⁹ Online: Office of the Comptroller General - Professional Services and Audit Division <<http://www.fin.gov.nl.ca/comptrollergeneral/divisions/professionaldivision.html>>.

⁹⁰ Interview of Luc Desroches and Allan Glenns of the House of Commons, by Commission members Gail Hamilton and David Norris (October 12, 2006).

their respective legislative bodies.

Later in this report I will be recommending that the Auditor General perform compliance audits of the House on a periodic basis.⁹¹ Internal audit involvement will supplement the Auditor General's presence in years in which a compliance audit is not performed.

Other things being equal, it appears sensible to have the existing governmental internal audit division perform the internal audit function for the legislative branch. It would likely be more cost-effective than establishing a separate group to monitor the House alone. As well, individuals within the division will understand the government's systems and policies better than ones who are not, and therefore will be able to identify differences between government and House policies and systems, if any, that may need to be questioned or changed. Drawing on the resources from a pool of individuals within the internal audit group will allow for the provision of the correct skill set to undertake a variety of types of assignments within the House, as may be required from time to time.

That said, I am concerned about the adequacy of the existing level of internal audit resources in government, as noted in Chapter 4. This leads me to have a major concern, in the present environment, about recommending that the existing internal audit division perform the internal audit function for the House. Through discussions with government officials, it has become apparent to me that the internal audit group within government no longer has sufficient staff to be able to perform its duties effectively. The group currently has three staff, compared to a staff of twenty-one in 1991. This deficiency should be rectified. Regardless of whether government plans to act to make the internal audit function effective throughout the executive branch, I believe that such a function must be available within the legislative branch. Ideally, resources should be added to the Professional Services and Internal Audit Division to allow it to provide proper internal audit functions, not only to government generally, but to the House of Assembly as well. If that does not happen, then, at the very least, sufficient resources should be made available to allow the functions to be performed within the House alone.

For the foreseeable future, due to recent allegations of the misappropriation of the legislature's assets and the need for the taxpayers of the province to regain confidence in government financial monitoring systems, I believe that a policy should be established which requires all Members' expense reports be examined by way of internal audit for appropriateness and compliance with policy.

Presently, as noted earlier, the government is in phase one of implementing the "Iexpenses" module of the Oracle operating system in many departments of government. This module has many built in security features and requires all supporting documentation to be included prior to processing. The module is scheduled to be added in the legislative

⁹¹ See Chapter 8 (Audit), Recommendation 52(3), (4).

branch during phase two of the government's implementation, which is expected over the next year. Once this system is implemented, the security features of the program should be reviewed in detail to determine if a full review of expense reports by internal audit will still be required.

Implementation of this policy will assist in setting the appropriate tone at the top by sending the message that non-compliance with expense policies will not be tolerated. Expense reports that appear to be in violation of the approved MHA expense policies should be brought to the attention of the Member. If there is a concern over the interpretation, the matter should be brought to the attention of the Speaker for resolution.

Accordingly, I recommend:

Recommendation No. 47

- (1) The financial accounts of the House of Assembly and its statutory offices should be subject to appropriate and effective internal audit processes;***
- (2) The internal audit function of the House should be performed by the Professional Services and Internal Audit Division of the Office of the Comptroller General;***
- (3) Sufficient human and financial resources should be provided to the Professional Services and Internal Audit Division to enable it to provide dedicated, appropriate and effective internal audits for the House;***
- (4) If resources are not made available to the Professional Services and Audit Division to enable it to perform, on a dedicated basis, an appropriate internal audit function for the House, sufficient resources should be forthwith made available within the House budget to enable it to perform its own internal audit function;***
- (5) At least until the new "Iexpenses" module of the Oracle operating system has been applied to the House and the security features of the module are found to be operating effectively, each MHA expense report should be examined, by way of internal audit, for appropriateness and compliance with policy;***
- (6) Any apparent violations of MHA expense policies should be brought to the attention of the Speaker and the MHA concerned, and mechanisms should be legislated whereby the Speaker can, in a fair manner and subject to appropriate appeal, investigate potential violations and make orders requiring rectification; and***

(7) *Mechanisms should also be put in place to enable an MHA who has had a claim rejected by House staff to have the matter reassessed by the Speaker.*

(ii) *Management Certification*

Recent events such as the Enron affair and the sponsorship scandal within the Government of Canada have sent taxpayers and other stakeholders in search of improved mechanisms to improve corporate governance, accountability and overall corporate responsibility.⁹² From these events, allegations of fraud and financial statement restatements focused the public's attention on the adequacy of internal control over financial reporting. As a result, private sector certification regulations such as the *Sarbanes Oxley Act of 2002* in the United States⁹³ and the regulations issued by Canadian securities regulators⁹⁴ were born.

These certification regulations require senior officials of an organization, such as the chief executive officers and chief financial officers, to certify by signature that they have discharged certain responsibilities. These responsibilities include the establishing, evaluating, and monitoring of the effectiveness of internal control over financial reporting.

These certification requirements will also soon impact directly upon the government and crown corporations. In 2005, the Treasury Board of Canada Secretariat released a report that outlines the Treasury Board's views on corporate governance and a detailed plan of steps intended to improve governance for Crown corporations. Included in this plan is Measure #24, which states:

In principle, the government supports the use of a certification regime adapted to the reality of public institutions. The Treasury Board of Canada Secretariat will examine, in consultation with Crown corporations, the development of a certification regime that would be applicable to all corporations.⁹⁵

Although the exact requirements of Crown certification are yet to be determined, the Treasury Board's reports have made it clear that, in future, Crown corporations will be required to complete a certification process similar to that currently in place for private entities.

⁹²Nancy Rector and Keith Davis, "CEO/CFO Certification for Crown Corporations: How Certification Can Enhance the Accountability of Public Sector Organizations," online: Deloitte & Touche LLP <http://www.deloitte.com/dtt/article/O,1002,sid%253D68725%2526cid%253D95172,00.html>.

⁹³ *Sarbanes-Oxley Act of 2002*, P.L. 107-204, 116 Stat 745.

⁹⁴ Canadian Securities Administrators, *Multilateral Instrument 52-109: Certification of Disclosures in Issuers' Annual and Interim Filings*, (March 2004).

⁹⁵ Canada, Treasury Board, *Review of the Governance Framework for Canada's Crown Corporations: Meeting the Expectations of Canadians*, (Ottawa: Treasury Board of Canada Secretariat, February 2005).

Effective internal control over financial reporting is, as I have stressed at other places in this report, a significant component of strong corporate governance. Through the implementation of a certification regime, both private and public organizations go a long way in restoring the trust of their stakeholders.

Accepting responsibility and ownership for overall financial management, including the system of internal controls, has existed in the United Kingdom since 1872. Since this time, accounting officers have, as I have noted in Chapter 5, had personal responsibilities for the propriety and regularity of the public finances for which they are answerable; for keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for efficient and effective use of all available resources.⁹⁶ An effective system of internal control is necessary for the accounting officer to appropriately perform this responsibility. As such, the accounting officer ensures that a sound system of internal control is maintained in the organization to support the achievement of the department's policies, aims and objectives, as well, and regularly reviews the effectiveness of that system.

My discussion of the accounting officer concept in Chapter 5 led to the conclusion that the position of accounting officer is an important means of promoting the effective operation of a system of internal controls. I recommended that the roles and responsibilities similar to those of an accounting officer in the United Kingdom be assigned to the Clerk of the House.⁹⁷ The notion of management certification is an important adjunct of this role.

In light of the federal Treasury Board report and Measure 24, and the need to regain public confidence in light of recent events, a certification process similar to that described should be implemented in the House. I recognize that implementation of such a process may require a significant amount of time and possibly resources. However, having this process championed by the Clerk of the House and the IEC will be instrumental in the success of any certification process.

The certification process should be completed in stages, utilizing a process similar to those undertaken by other government entities going through the process. This will allow the overall certification process to be much more manageable. These stages are:

- *Stage 1* should relate to establishing and maintaining disclosure controls and procedures. Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed under legislation is recorded, processed, summarized and reported. Once the disclosure controls and procedures are effectively designed, the Chief Financial Officer and the Clerk of the House would be required to certify, in writing, that the disclosure

⁹⁶ See Chapter 5 (Responsibility) under the heading "The Clerk as Accounting Officer."

⁹⁷ See Chapter 5 (Responsibility), Recommendation 18.

controls are in place and operating effectively.⁹⁸ Certification of the disclosure controls and procedures should occur within six months of the issuance of this report.

- *Stage 2* would require the Chief Financial Officer and the Clerk to certify that they have designed a system of internal control, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with government accounting policies.⁹⁹ Design certification should occur within one year of the issuance of this report.
- *Stage 3* would require the Chief Financial Officer and the Clerk to certify that, based upon their most recent evaluation of internal control over financial reporting, the internal control environment is operating effectively. If significant weaknesses in the design or operation of internal controls were found during this evaluation, these items would be disclosed in the certification.¹⁰⁰ At this point, it would be necessary to consider the types of deficiencies found and whether they would be significant enough to prevent the certification that the control environment is effective. Certification that the controls are operating effectively should occur within eighteen months of the issuance of this report.

For the certification process to be successful, it is necessary to have strong support from senior management. By embracing the certification program as an opportunity to improve internal communications as well as to provide accountability for public disclosures, the program has the potential to have a positive and significant impact on the quality of reporting and internal control.¹⁰¹

To be successful, it is necessary for a comprehensive implementation plan to be developed. As part of this plan, it is necessary to ensure the internal control structure is built on a framework such as the model¹⁰² developed by the Committee of Sponsoring Organizations of the Treadway Commission.¹⁰³ This model is widely used by most corporate entities as they go through the certification process.¹⁰⁴ Additionally, this implementation plan must include a comprehensive “scoping” exercise. By determining in advance which accounts and activities are significant and should be included in the review of internal

⁹⁸ See Ernst & Young LLP, *Internal Control over Financial Reporting: A Summary of the Canadian Securities Administrators’ Proposed MI 52-111 and Proposed Amendments to MI 52-109*, (2005).

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ See Rector and Davis, footnote 90.

¹⁰² Ernst & Young LLP, *Preparing for Internal Control Reporting: A Guide for Management Assessment under Section 404 of the Sarbanes-Oxley Act*, 2002.

¹⁰³ National Commission on Fraudulent Financial Reporting, *Report of the National Commission on Fraudulent Financial Reporting* (Washington, 1987) [known as the “Treadway Commission”]

¹⁰⁴ The model is described in Appendix 7.1.

controls will allow for this process to be focused and efficient. This will reduce the cost associated with the certification process.¹⁰⁵

Strong project management and the use of personnel with the appropriate skills and background are also key to a successful certification process. Using individuals without the appropriate skills or experience often results in inefficiencies and significant rework.¹⁰⁶ Organizations that are successful in the implementation process ensure that they have a strong plan in place with the appropriate resources available for plan implementation.

I believe that, at the conclusion of such a process, enhancements to the House's system of internal control should be significant and will result in improved process performance and better safeguarding of the House's assets.

For the House to be successful in implementing management certification within the timelines identified above, assistance should be provided by internal auditors and by other staff in the Office of the Comptroller General. Implementing the necessary controls and the monitoring programs to allow the certification to take place will require considerable effort. However, the efforts will be reduced after the system is fully up and running.¹⁰⁷

Accordingly, I recommend:

<p><i>Recommendation No. 48</i></p> <p><i>(1) The Clerk and senior management in the House, with the support of the House of Assembly Management Commission, should forthwith implement a management certification process by developing processes to:</i></p> <p><i>(a) establish and maintain disclosure controls and procedures;</i></p> <p><i>(b) enable the Chief Financial Officer and Clerk to certify that they designed, or caused to be designed, a system of internal control to provide reasonable assurance regarding the reliability of financial reporting in accordance with the required policies; and</i></p> <p><i>(c) enable the Chief Financial Officer and Clerk to certify that the internal controls environment is operating effectively;</i></p>

¹⁰⁵ Rector and Davis, footnote 90.

¹⁰⁶ Ibid.

¹⁰⁷ Ernst & Young LLP, *Emerging Trends in Internal Controls: Fourth Survey and Industry Insights*, (2005).

- (2) *Assistance in developing a plan of implementation should be provided from the internal auditors in the Professional Services and Internal Audit Division and by other staff in the Office of the Comptroller General; and*
- (3) *The obligation to provide the necessary certifications should be stipulated in legislation respecting the duties of the Clerk.*



Chapter 8

Audits

If Government is committed to openness, transparency and accountability, then the House of Assembly establishment should be subject to audit i.e. a comprehensive legislative audit.

— Auditor General¹

The Audit Process of the House of Assembly

One of the themes permeating this report is the importance of transparency as a fundamental building block of accountability. With respect to financial transparency, the completion of an annual audit is one very important means of achieving that goal.

I have mentioned previously some of the difficulties surrounding the audit process in the House of Assembly in recent years, including:

- the limited scope of audits performed in the House over the years (i.e., the completion of audits only as part of a government-wide audit and the absence of any form of legislative or comprehensive audit process focused specifically on the House of Assembly);
- the exclusion of the Auditor General from the House audit process by the IEC from 2000 to 2004;
- the lack of any audits of the House for at least one year;
- the lack of timely completion of some audits; and

¹ *Report of Auditor General to House of Assembly on Review of Departments and Crown Agencies For Year Ended March 31, 2006, Part 2.1.*

- the failure of external audits for the years ended March 31, 2002 and 2003, to flag the troublesome issues that were subsequently identified in respect of the management of the financial affairs of the House.

The manner in which the accounts of the House were audited, especially since 2000, has been a matter of public discussion, with a variety of opinions being expressed on solutions for improving the audit process. It is appropriate, therefore, that the whole concept of an audit process within an institution like the House of Assembly be examined, in order to develop recommendations as to best practices for delivering audits of the accounts and activities of the House in a manner that is effective, suits the purposes of the House, is transparent, and provides accountability for the public funds that have been spent.

Government Audits - What Are They and Why Are They Carried Out?

The government is responsible for administering and managing public programs. Government officials who manage these programs and spend public funds must account for their activities to the public. Officials, legislators and taxpayers all wish to know if government funds are spent as intended and in accordance with appropriate laws, regulations and policies. These individuals need to be aware of situations where government or specific departments are not spending funds in accordance with their mission, or when services are performed in an inappropriate or inefficient manner. From this idea of entitlement to information on financial stewardship, the concept of public accountability has developed and the need for government audits was established.

Auditors assist legislatures and other governing bodies to fulfill their reporting responsibility to the public by providing assurance as to the credibility of management reports, assessments of various administrative practices and compliance processes. Thus auditors can assist in holding governments accountable to the public. However, it must be emphasized that there are *different types of audits*. This issue bears elaboration because I have sensed through the consultation process a belief or expectation in the minds of some that “an audit is an audit,” and that therefore *any* type of audit should identify and disclose any and all areas of potential concern to government and the public. I have learned that this may not be a reasonable expectation.

Governments and other public sector entities use their resources to achieve a variety of different social and economic goals. While audited financial statements provide accountability in the broadest sense of a government’s financial operations, these statements alone may not adequately report on and address the quality of financial stewardship and control, or report on performance generally. To address such issues, governing bodies and the public may be interested in information relating to such matters as:

- compliance with legislative authorities;
- the safeguarding of assets;
- appropriateness of management control systems;

- efficiency in the administration of resources; and
- overall effectiveness of various government programs.²

In this regard, it must be understood that the mandates assigned to auditors in different circumstances can vary significantly. Accordingly, the type of work performed by the auditors and the nature of the issues covered by the respective auditors' reports, will be dependent upon the auditors' mandate. Mandates for the auditors of the public sector are dependent upon the expressed requirements of the governing body. In addition to determining the types of procedures required to be performed by an auditor, the audit mandate also provides the auditor with the authority to carry out his or her work. These mandates may be embodied in legislation or established by contract by way of an engagement letter. The most common mandates for auditors of the public sector include (i) audits of the financial statements of the government, (ii) audits of compliance with legislative and related authorities, and (iii) value-for-money audits. Together, these three items constitute the concept of *comprehensive auditing*.

I note that generally, over the years, the mandate prescribed for House of Assembly audits was considered to be limited to that of a *financial statement audit* conducted as part of the general government-wide audit. As I explained in Chapter 3, when the Auditor General in 2000 signified her plan to conduct a more comprehensive legislative audit, which might have encompassed the other audit dimensions outlined above, the plan was blocked by legislative change. Clearly, the nature of the audit mandate is a crucially important determinant in establishing the level of objective scrutiny to be undertaken, and the extent to which it is reasonable to expect that control deficiencies and management weaknesses will be detected and reported. The following, therefore, is a review of the principles underlying each of the three elements of comprehensive auditing.

(i) Audit of Financial Statements

The element of comprehensive auditing known as a *financial statement audit* is the one most commonly associated with the role of an auditor and involves providing an auditor's opinion on the financial statements prepared by the government. Section 5100 of the *Canadian Institute of Chartered Accountants (CICA) Handbook*, sets out generally accepted auditing standards that comprise the professional standards with which an auditor must comply when expressing an opinion on financial statements.³ This section requires the expression of an opinion on whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with

² See *Auditor General Act*, S.N.L. 1991, c. 22, ss. 12(2) for a more comprehensive list.

³ The Canadian Institute of Chartered Accountants Handbook, Toronto, Canada [which will sometimes hereafter be referred to as the *CICA Handbook*]. It should be noted that the CICA Handbook has sections specifically for Public Sector Organizations that are in addition to or in place of some sections that apply to for non public sector organizations. Throughout the course of this report, I refer to the *CICA Handbook* which encompasses the entire set of standards for all types of organizations.

Canadian “generally accepted accounting principles.”

Often, public sector auditors have a mandate that requires the expression of an opinion on whether the financial statements are presented fairly in accordance with disclosed accounting policies. In assessing the appropriateness of disclosed accounting policies, the auditor would refer to the standards in the *CICA Public Sector Accounting Handbook*, which is a part of the *CICA Handbook*.

When an auditor’s mandate is to express an opinion on the fair presentation of the government’s financial statements in accordance with a disclosed basis of accounting, the auditor should express, in his or her report on financial statements, a reservation of opinion on accounting policies believed to result in misleading financial statements, together with the reasons and a quantification of the effect on the statements.

As noted above, it is my understanding that this is the type of audit that was generally performed in relation to the House of Assembly, and no such reservations were expressed by the auditors over the years.

(ii) *Audits of Compliance with Legislative and Related Authorities*

The second element of a comprehensive audit involves assessing compliance with legislative and related authorities. This is often referred to as a “legislative” or “compliance” audit.

The examination standards as written in section 5100 of the *CICA Handbook* apply to all instances in which an opinion is provided on financial statements. Since readers of an audit opinion on compliance are entitled to the same degree of quality provided by an audit opinion on financial statements, the examination standards set out in section 5100 apply to both compliance and financial statement audits as well.⁴

In an engagement designed to express an opinion on compliance with authorities, reasonable assurance that the authorities specified in the audit report have been complied with is sought from appropriate officials of the institution being audited.⁵ Absolute assurance is not possible due to the requirement for judgement, the inherent limitations of internal control, and the use of various testing methodologies. In an opinion on compliance, the words "in all significant respects" are used, as insignificant items may be discovered but might be regarded as not worthy of inclusion in the report. If significant widespread non-compliance is encountered, further testing should be completed to confirm or dispel suspicions. If, in this instance, the auditor is also responsible for the audit of the financial statements, the impact of non-compliance should be considered and, in particular, whether

⁴ *CICA Handbook*, PS 5300.06.

⁵ *CICA Handbook*, PS 5300.07.

the non-compliance with legislative and related authorities results in misleading financial statements.

Mandates within this type of compliance engagement include:

- expressing an opinion on whether an entity complied with specified authorities or whether its transactions were carried out in compliance with specified authorities;
- expressing an opinion on whether the transactions that have come to the auditors' notice in the course of discharging their other audit responsibilities were carried out in compliance with specified authorities; and
- reporting instances of non-compliance with authorities observed in the course of discharging their audit responsibilities.

Auditors of public sector entities may have mandates to report instances of non-compliance with authorities that they have observed in the course of discharging their audit responsibilities. Such mandates require the auditor to report only those matters that, in his or her opinion, do not comply with relevant authorities. Some auditors may consider it appropriate to examine for compliance all of the matters that come to their attention in the course of discharging their other audit responsibilities, while others may examine only suspicious or high-risk transactions.⁶

Auditors with such a reporting mandate usually report the observed instances of non-compliance in their annual reports to the government or the legislature, as the case may be. These reports vary between jurisdictions, depending on variations in audit mandate and differences in the style and format of each individual auditor's report. Notwithstanding the format of the report, the context in which the observed instances of non-compliance were found would be described.

With respect to the audits of the House of Assembly, it now appears that there were ongoing compliance issues that were not detected in the financial statement audit process over the years. The Auditor General's recent special reports identify a number of alleged instances, spanning nine years, where there was an apparent failure to comply with stipulated maximum constituency allowances prescribed for certain Members. In addition, there are indications that certain expenditures, charged to a given account, did not comply with the purpose for which the funds were voted in that account. There are also questions as to whether there was compliance with the federal *Income Tax Act* in relation to the discretionary or non-receipted expenditure components of the constituency allowances. None of these discrepancies or compliance issues was highlighted in the financial statement audits conducted over the years as part of the Auditor General's government-wide audits, or

⁶ *CICA Handbook*, 5300.19.

as a result of the specific audits of the House conducted by external auditors for the years 2001-02 to 2003-04.

(iii) Value-for-Money Audits

The third main element of comprehensive auditing is value-for-money auditing. Value-for-money audits are conducted for the purpose of examining and reporting on matters related to any or all of the following:

- the adequacy of management systems controls and practices, including those intended to control and safeguard assets, to ensure due regard to economy, efficiency and effectiveness;
- the extent to which resources have been managed with due regard to economy and efficiency; and
- the extent to which programs, operations or activities of an entity have been effective.⁷

The auditor may be asked to audit all or only a portion of the matters set out above, as specified in his or her mandate. To illustrate, some mandates could require the auditor to audit and report on the adequacy of procedures to measure and report on program effectiveness, but do not require the auditor to report on the extent to which the programs are themselves effective.

The reporting requirements of value-for-money auditing mandates also vary. Many value-for-money auditing mandates, such as those relating to federal and provincial government departments and agencies, require the auditor to report deficiencies observed. However, other auditing mandates require the auditor to express an opinion, such as whether there is reasonable assurance, based on specified criteria, that there are no significant deficiencies in the systems and practices examined.

The auditor is expected to identify the criteria in his or her report and describe the findings sufficiently to allow readers to understand the basis upon which the auditor formed his or her conclusions.⁸ Value-for-money audit reports may include the auditor's recommendations and management's responses with respect to the matters reported.

The value-for-money dimension of auditing has generally not been followed in respect of audits of the House. While the notion of “value for money” presents challenging

⁷ *CICA Handbook*, PS 5400.04.

⁸ *CICA Handbook*, PS 5400.15.

public policy and measurement considerations in the broadest context of the legislature, questions related to “the adequacy of management systems controls and practices” in the administration and ongoing activities of the House are clearly relevant concepts. In fact, through Chapters 3 and 4, I have reviewed multiple indications of inadequacies in this regard - inadequacies which, prior to 2006, with a few exceptions, had gone essentially unaddressed in the audit process.

It is obvious from the foregoing that there are various dimensions of comprehensive auditing that have not been characteristically applied to assess compliance, management practices and controls in the House in the past. Accordingly, the need for a more prescriptive, encompassing audit mandate in this regard is compelling.

There is an additional auditing approach that also merits consideration in view of the nature of the issues before this commission - *forensic accounting investigations*.

Forensic Accounting Investigations

For many years, forensic accounting investigations were not commonly performed within any organization, government or private enterprise. However, with recent events such as the “Enron affair” and the “sponsorship scandal,” forensic accounting investigations are becoming much more prevalent.⁹ Since the release of the provincial Auditor General’s reports in 2006, there has been considerable interest in forensic accounting investigations in the hope or expectation that they may help resolve some of the questions about the transactions identified in those reports.

Forensic accounting investigations are conducted in a fashion that is as thorough and complete as possible. The findings of such investigations may be used in adversarial legal proceedings with the forensic accounting practitioner acting as an expert witness.¹⁰ These findings are the result of scientific detection and interpretation of the evidence of phenomena introduced into the books and records of an accounting system. Forensic accountants mainly utilize cause-and-effect analyses of these phenomena to discover any deceptions within the system and the effects these deceptions have.¹¹ Forensic accounting is utilized to obtain evidence to support criminal charges such as those related to bribery, fraud, theft, breach of trust, extortion or forgery. Forensic accountants utilize both accounting expertise and an understanding of the legal system to lay out factual conclusions in a clear and logical manner, including a description of the actions and events which have happened, the parties

⁹ The Enron Corporation collapsed in 2000 after a severe drop in its share price amid allegations of impropriety in its accounting for certain transactions and the occurrence of fraudulent activities within the ranks of senior management. The “sponsorship scandal” in Canada has now been described and dealt with by recommendations as a result of the *Gomery Inquiry*.

¹⁰ *The Canadian Law Dictionary* (Toronto: Law and Business Publications (Canada) Inc, 1980) defines “forensic” as “pertaining to court of justice; relating to or used in legal proceedings.”

¹¹ *What is Forensic Accounting?*, Journal of Forensic Accounting, R.T. Edwards Inc., 2003.

involved, the amount of misappropriation and any damages resulting from the actions.¹²

In situations where internal control systems fail or have been compromised, forensic accounting can often be valuable in analyzing the violation. Forensic accountants will attempt to determine the parties involved in the violation, and the approximate damage caused by the transaction. After the completion of the analysis, a forensic accountant may provide recommendations respecting the control system to eliminate or minimize such violations from occurring in the future. Experiences from forensic accounting investigations can also help pre-emptively to eliminate control risks from the system.

Application of Forensic Accounting Investigations to the House of Assembly

Due to their nature, forensic accounting engagements can be time-consuming and require the use of a significant number of highly trained individuals. They involve, in effect, an examination on a document-by-document basis. With respect to its application to the House of Assembly, it is necessary to balance the benefits of forensic accounting against its considerable costs.

While a forensic accounting investigation is a valuable tool for getting to the bottom of questionable transactions and for assessing what may have gone wrong with a system, it is not intended to be the basis of normal on going audit processes in an organization or institution. The cost associated with effectively double-checking every transaction as part of a general audit process on a “go forward” basis, once suitable policies, practices and systems of control are in place, would be disproportionate to the potential benefit. In fact, it has been suggested to me that no reputable accountant would promote the use of forensic accounting specialists for such purpose. There are, however, two *past* matters which *would* benefit from further investigation.

Matters Requiring Further Investigation or Audit

The work of this inquiry and that of the Auditor General have left unanswered questions with respect to a number of particular transactions that have, or may have, occurred. Some of the most troublesome questions relate to the transactions anticipated in the minutes of the Commission of Internal Economy on March 6, 2002, and February 26, 2003, with respect to potential year-end payments to MHAs related to their constituency allowances. As was discussed in some detail in Chapter 4,¹³ the IEC minutes indicate that adjustments to the constituency allowances were approved, but the amounts were not

¹² Forensic Accounting and the Expert Witness, American Management Association, URL: <<http://www.flexstudy.com/catalog/index.cfm?location=sch&courseum=95063>>

¹³ Chapter 4 (Failures) under the heading “Lack of Commitment to Governance, Transparency and Accountability”.

indicated; yet the nature of the payments appears to have been verified to the satisfaction of the external auditors. Nevertheless, I have been unable to confirm, from the records made available to me and my research staff, whether or not any such payments were in fact made or to whom they might have been made. To ensure that full confidence can be restored in the House of Assembly and its operations, this unresolved discrepancy must be addressed to ensure that appropriate action can be taken and the potential for a recurrence is blocked. Accordingly, I recommend:

Recommendation No. 49

A forensic accounting investigation should be conducted to determine if the transactions contemplated by the decisions of the Commission of Internal Economy on March 6, 2002, and February 26, 2003, with respect to potential payments to MHAs of sums related to their constituency allowances occurred, and if so, if they reflected the intent of the decision so made.

A second area that requires an audit assessment is the financial operations of the House for the fiscal year 2000-01. Section 9 of the *Internal Economy Commission Act* requires that the accounts of the House, “under the direction and control of the commission, be audited annually by an auditor appointed by the commission.” This is a mandatory requirement. There *must* be an audit. The fact that the audit is to be conducted under the “direction and control” of the commission does not mean that it can “control” the situation by not having one at all.

I have already noted that the Commission of Internal Economy never did cause an audit to be conducted of fiscal year 2000-01. That audit gap continues to this day. This is all the more troublesome because it relates to the year (2000) when the amendments were made to the *Internal Economy Commission Act* giving the IEC authority to bar access to the Auditor General to the accounts of the House, following a stated intention by the Auditor General to conduct a compliance audit. That is a year that certainly deserves audit scrutiny. As I indicated in Chapter 3, it was suggested to me that the failure to initiate the 2000-01 audit was due to a clerical error at the administrative level in the House. However, in light of the decision to amend the legislation in 2000; the decision to oust the Auditor General; the excessive and inappropriate delays in initiating the audits; the confusing array of IEC minutes on the matter; and the IEC-directed revisions to the external auditor’s mandate period as indicated in the IEC minutes, I am reluctant to accept the notion of clerical error as an explanation for the audit void. In all the circumstances, I believe it is prudent to ask the question: “Was there a reason the 2000-01 fiscal year was not audited?”

I acknowledge that the Auditor General is in the course of a very substantial audit process, and he is reviewing MHA constituency allowance accounts dating back to 1989. It has been suggested to me that the work that the Auditor General is presently undertaking is sufficient to meet the audit requirement in section 9 of the *Internal Economy Commission Act* in respect of the year 2000-2001 and that no separate financial statement audit need

therefore be performed. It is not at all clear, however, as to whether the Auditor General, with his renewed mandate in 2006, will necessarily be performing a discrete and complete audit covering all of the accounts of the House, producing financial statements and compliance comments for the year 2000-01, *as a separate part of his larger multi-year review*. If not, his current work will *not* in fact be a substitute for the audit requirement in section 9.

I believe it is important that a full audit of 2000-01 be completed and that careful consideration be given to the levels of materiality that should be applied, given the fact that in the two subsequent years the level of materiality applied (which was appropriate according to generally accepted auditing standards) appears to have been a contributing factor to the failure to discover discrepancies that subsequent investigations have shown were in fact present. If indeed an audit of this nature has been, or is being, conducted by the Auditor General, and *separate financial statements and opinions thereon relating to the House of Assembly* have been or are to be prepared, then they should be produced and submitted to the IEC and the Public Accounts Committee for consideration. If they are not, or will not be, prepared as a result of the Auditor General's current work, then they should be, so as to comply with the law and the expectations that existed when the IEC took it upon itself, following the legislative amendments in 2000, to control and direct the audit process.

There is one other matter that should be addressed in this context. In Chapter 3, reference was made to concerns expressed by the Auditor General in his annual report for the fiscal year ended March 31, 2003, that “the expenditures of the House of Assembly have not been audited for the past four years.”¹⁴ That would include fiscal year 1999-2000. It is obviously inappropriate for the accounts of the House to escape audit scrutiny for *any* year. Inasmuch as it appears that the fiscal year 1999-2000 may not have figured even in the audit of the overall governments accounts generally, I believe that it is now appropriate for a separate audit of this fiscal year to be conducted, as well as for 2000-01.

¹⁴ See Chapter 3 (Background) under the heading “Audits of the House of Assembly”.

Accordingly, I recommend:

- Recommendation No. 50***
- (1) A complete financial statement and legislative compliance audit should be conducted forthwith of the accounts of the House of Assembly, as a separate entity, for the fiscal years 1999-00 and 2000-01, with appropriate levels of materiality, taking into account the size of the organization and the experience of subsequent years; and***
 - (2) Upon issuance of financial statements, auditor's report and management letter, if any, in relation to the fiscal years in question, they should be referred to the Public Accounts Committee for review.***

Moving from an assessment of opportunities to reinforce the scope of the audit process, and areas requiring specific attention, it is important to explore the reasonable expectations for the nature and form of results of the audit process - the *audit deliverables*.

Audit Deliverables

The audit deliverables¹⁵ vary from engagement to engagement and are directly dependent upon the auditors' mandate.

In relation to a financial statement audit, the auditors' report is required to express an opinion on whether the financial statements are in accordance with generally accepted accounting standards, or a disclosed basis of accounting. Additionally, it is normal practice for a management letter to be issued at the completion of a financial statement audit. This letter communicates the various matters that would have come to the auditors' attention during the audit, which, in their judgement, should be brought to the attention of senior management of the organization with respect to the systems of internal control. As the management letter might well contain information that discusses potential control deficiencies within a client's organization, it is important for this letter to be issued on a timely basis.

As a best practice, most auditors attempt to release the management letter at the same time as, or shortly after, the issuance of the auditors' report. It is common practice for auditors to query senior management about the issues contained in a previous management

¹⁵ The term "audit deliverables" means the information given to the client to fulfil the mandate of the particular type of audit, and includes such things as the audit report, management letters and independence letters.

letter to determine if the issues were subsequently addressed or whether these issues still persist for the current year's engagement.

The *CICA Handbook*, section 5751, sets out additional requirements for disclosure to management. These items include:

- results of the auditors' procedures in relation to management judgments and estimates;
- concerns identified in relation to significant accounting policies, such as revenue recognition and cut-off of expenses;
- instances of fraud or any illegal acts identified during the audit;
- a listing of significant errors corrected by management during the audit;
- unadjusted audit differences considered by management to be immaterial;
- significant weaknesses in internal control;
- concerns about fraudulent financial reporting;
- disagreements or difficulties encountered with management during the audit engagement; and
- confirmation of auditor independence.

I would emphasize that, prior to the audit reports issued by the Auditor General in 2006, there had not been a concern raised in management letters in respect of the House since 1997.

In relation to compliance audits, the main deliverable is an auditor's opinion that states whether the entity is in compliance with the required authorities. Additionally, a management letter often accompanies this type of report. It discusses the exceptions found during the examination, and includes as any other comments or recommendations the auditor wishes to communicate to the oversight board. A compliance audit in relation to the House of Assembly would, of course, be expected to examine MHA expenditures on constituency allowances in relation to the prescribed maximums, and to either confirm compliance, or through the management letter, highlight any exceptions identified. Since, prior to 2006, it appears this type of audit was not specifically mandated for the House of Assembly, no such issues were identified, or no related communication conveyed, until June of 2006.

The main deliverable in relation to a value-for-money audit is the "findings report." Due to the nature of this type of audit and the level of scrutiny from the public and media that often results, this type of report must be clearly written and concise so that the user of

the report understands the motive and findings of the audit. A value-for-money report would clearly communicate the following items:¹⁶

- the objectives, scope, and time period covered for the audit;
- the professional standards used;
- a description of the program or activity that was audited;
- the criteria used and any disagreement with management on their suitability;
- the observations made;
- the recommendations made to assist in correcting deficiencies;
- management comments in relation to findings; and
- conclusions reached by the engagement team.

As with all types of audits, the timing of this communication is essential and it should be released as close to the audit completion date as possible. Auditor follow-up of recommendations made in its report is crucial to ensuring that corrective actions are taken and the issues identified are resolved. As noted previously, the value-for-money audit approach has not to this point been applied in respect of the operations of the House.

Audit Legislation of the Province of Newfoundland and Labrador

Against the foregoing review of the basic concepts in the auditing discipline generally, and some of the specific issues identified in the course of our review of the House of Assembly, it is pertinent to consider the nature of the legislative framework applicable to the audit of the public accounts of the Government of Newfoundland and Labrador. In this regard, sections 10, 11, and 12 of the *Auditor General Act* are most relevant.¹⁷

Sections 10 and 11 provide:

10. The auditor general is the auditor of the financial statements and accounts of the province and shall make those examinations and inquiries that the auditor general considers necessary to enable him or her to report as required by this *Act*.
11. The auditor general shall examine the several financial statements required by the *Financial Administration Act* to be included in the public accounts of the province, and any other statement that is required to be audited by the auditor general under that *Act* or another statement that the Minister of Finance may present for audit and shall express his or her opinion as to whether the financial statements present fairly the financial position, results of operations and changes

¹⁶ *CICA Handbook*, PS 5400.12.

¹⁷ S.N.L. 1991, c. 22.

in the financial position of the province in accordance with the disclosed accounting policies of the provincial government and on a basis consistent with that of the preceding year, together with reservations the auditor general may have.

To date, these provisions have been interpreted to mean that the Auditor General can perform the financial audit of the province and report thereon. In accordance with these responsibilities, he and his predecessors have been carrying out financial statement audits, and have delivered their reports on the accounts of the province to the House annually as required.¹⁸

The more specific requirements of the audit process conducted by the Auditor General are dealt with in section 12 of the *Act*:

- 12(1) The auditor general shall as he or she considers necessary but at least annually report to the House of Assembly on:
 - (a) the work of the office;
 - (b) whether, in carrying out the work of the office, the auditor general received all of the information including reports and explanations the auditor general required;
 - (c) the results of the auditor general's examination of the financial statements referred to in section 11; and
 - (d) audits, examinations and inquiries performed under this *Act*.
- (2) A report of the auditor general under subsection (1) shall include the results of the auditor general's examination of the accounts of the province, and shall call attention to anything the auditor general considers significant, including instances where:
 - (a) collections of public money
 - (i) have not been effected as required under various *Acts* and regulations, directives or orders under those *Acts*,
 - (ii) have not been fully accounted for, or
 - (iii) have not been properly reflected in the accounts;

¹⁸ See ss. 12(1).

- (b) disbursements of public money
 - (i) have not been made in accordance with the authority of a supply vote, or relevant *Act*,
 - (ii) have not complied with regulations, directives or orders applicable to those disbursements,
 - (iii) have not been properly reflected in the accounts, or
 - (iv) have not been made for the purposes for which it was appropriated;
 - (c) accounts have not been faithfully and properly kept;
 - (d) assets acquired, administered or otherwise held are not adequately safeguarded or accounted for;
 - (e) accounting systems and management control systems that relate to revenue, disbursements, the safeguarding or use of assets or the determination of liabilities were not in existence, were inadequate or had not been complied with; or
 - (f) factors or circumstances relating to an expenditure of public money which in the opinion of the auditor general should be brought to the attention of the House of Assembly.
- (3) Paragraph (2) (f) shall not be construed as entitling the auditor general to question the merits of policy objectives of the government.

As noted earlier in my report, for the last several years the Auditor General has been performing “legislative” or “program” audits on a rotating, department-by-department or program-by-program basis. I understand that this process was commenced during the 1990s and the Auditor General had hoped to cover all programs within the government within at least a 12-year period. The program audits the Auditor General’s office currently completes are a combination of compliance and value-for-money audits, as I have described above. His office has indicated that they believe that the authority to undertake this type of audit is derived from the *Auditor General Act*, most notably, section 12. I understand, however, that there have been occasional challenges to this position.¹⁹ Whatever the scope of audit permitted by section 12, it is certainly clear that legislative or compliance audits (as opposed to value-for-money audits) are included. This is as it should be. It is fundamentally important that an audit of the public accounts address the compliance of public officials with legislative and other regulatory requirements governing the spending of public money.

I would emphasize, therefore, that when the Auditor General is engaged to audit the public accounts, his authority to audit extends beyond the standard financial statement audit

¹⁹ As a result, the Auditor General has proposed certain amendments to his constituent legislation to remove any ambiguity surrounding the legality of performing value for money audits for the province.

and may include compliance considerations. I note as well, however, that from a practical point of view, compliance audits are not completed on every part of government on an annual basis. By contrast, whether a private auditing firm would have the authority to engage in auditing inquiries beyond a standard financial statement audit would depend on the specific terms of engagement, which are established through agreement between the auditor and the entity being audited at the outset of the process.

The Audit Process of the House of Assembly

For the fiscal years from 1989 to 1999, the Auditor General performed financial statement audits of the province's accounts. The accounts of the House of Assembly - a very small part of the overall provincial accounts - were consolidated into these financial statements and would have been contemplated during the Auditor General's audit planning process. The degree of examination that the legislature's accounts would have received during the Auditor General's audit of the provincial accounts was likely dependent upon a number of factors, most important of which would normally be materiality and risk.

The concept of materiality recognizes that some matters, either individually or in the aggregate, are important if financial statements are to be presented fairly in accordance with generally accepted accounting principles. A misstatement, or the aggregate of all misstatements, in financial statements is considered to be material if, in the light of surrounding circumstances, it is probable that the decision of a person who is relying on the financial statements, and who has a reasonable knowledge of business and economic activities will be changed or influenced by such misstatement or the aggregate of all misstatements.²⁰

The materiality level calculated by the Auditor General to plan and execute his or her audits during these periods was calculated based upon the balances of the province's consolidated accounts, where total revenues and expenditures now exceed \$5 billion. This materiality level for the consolidated accounts would be significantly different than the level that would have been calculated for a separate audit based on the legislature's accounts alone, where annual expenditures are more in the order of \$15 million. As a result of the variance in materiality levels, the audit performed on the provincial financial statements would not have focused on the accounts of the legislature in sufficient detail to extend to issuing a separate audit opinion for the legislature.

Through the financial audit on the accounts of the province, several management letter points were raised and communicated to the Clerk of the House. The management letters were dated February 16, 1995, October 25, 1995, January 30, 1997, and December 15, 1999, and related to the audits of the Consolidated Revenue Fund financial statements for the years ended March 31, 1994, 1995, 1996, and 1999. The Auditor General has issued no

²⁰ *CICA Handbook*, PS. 5142.04.

management letters to the House since December 15, 1999.

The letters for the years ended March 31, 1994 and 1995, included a reference to a lack of segregation of duties. The letter for the year ended March 31, 1999, stated “No significant matters came to my attention during the audit.” When the Auditor General was questioned about the comments, and why the reference to the lack of segregation of duties was no longer mentioned in the letter of December 15, 1999, the Auditor General replied that, when the matter was previously raised, suggestions for improving the controls surrounding the lack of segregation of duties were made. I understand that, in such circumstances, it is not uncommon for auditors to revisit their prior recommendations and specifically assess progress, if any, on rectifying the deficiencies; and, if necessary, to reiterate their concerns if the matter had not been rectified. It appears that this process was not followed in this case.

Up to year 2000, no *stand-alone* financial statement *or* program audits had ever been performed on the accounts of the legislature. In 2000, the Auditor General attempted to initiate a program audit in the House of Assembly, as noted in Chapter 3. While the Auditor General performed compliance or legislative audits on a rotating basis throughout many government departments prior to 2000, she had not previously selected the House for this treatment. Unlike financial statement audits, these types of audits do not have a materiality threshold and are performed to determine if government funds are spent for their intended purpose. As explained in Chapters 3 and 4, this attempt to perform such an audit was firmly resisted by the IEC and resulted in changes in the legislation. The effect of the change was to consign to the Commission of Internal Economy the authority to choose who would audit the accounts of the House and, just as importantly, *to determine the scope of the audit*. Thus, the IEC could - and did - thereafter bar the Auditor General from the House. Under the amended legislation, the audit process was “under the direction and control of the commission.”²¹ In choosing an alternative “external” auditor, the IEC could limit the scope of the auditor’s engagement to exclude a compliance audit.

It is critical to realize that choosing an external auditor whose terms of engagement did not include a full compliance audit was not a substitute for the type of audit work that the Auditor General was proposing to do in the House before being asked to leave. To achieve equivalency, the mandate of the external auditor would have to have been defined to parallel the scope of authority and responsibility given to the Auditor General in section 12 of the Auditor General Act.

²¹ *Internal Economy Commission Act*, R.S.N.L. 1990, c. I-14, s. 9, as amended by S.N.L. 2000, c. 17.

The External Audits

Tenders for external audits were called in February 2003. The tender originally requested proposals for audit services for the fiscal periods ending March 31, 2001 to March 31, 2005, and an external public auditing firm was selected through the process. The term of appointment, however, was subjected to a change from the original proposal term. Instead, of the requirement to perform audits for five fiscal years, the engagement period was reduced to three fiscal years, from March 31, 2002, to March 31, 2004. I have already noted above, that as a result of this change, an audit void was created whereby neither an external auditor nor the Auditor General reviewed the financial records of the legislature for the fiscal year ended March 31, 2001.

The mandate for the audit, as shown in the final request for proposals,²² was as follows:

- to support the Auditor General’s attest opinion on the financial statements and public accounts of the province;
- to provide attest audit assurance related to the annual statements of expenditure and related revenue and the schedules of assets and liabilities of the House of Assembly; and
- to provide a report to the House of Assembly for each year, including any significant comments the auditor wished to bring to the attention of the House of Assembly.

In the technical sense, it appears that the mandate relates to only the first element of a comprehensive audit- that of the *financial audit* - and did not require any compliance or value-for-money auditing to be performed. Again, I note that the engagement letter, which would have prescribed the final mandate, was not available to me.²³

The external audits for the fiscal years ended March 31, 2002 and 2003 commenced in the fall of 2003. At the time, the auditors met with the Clerk of the House of Assembly, and the Director of Financial Operations, amongst others to discuss planning for the audit,

²² “Request for Proposals: Audit of the Accounts of the House of Assembly,” Requirement 3 (a)-(c) (undated – obtained from Clerk of House of Assembly).

²³ As noted in Chapter 3 (Background), the external auditors, in their response to the government’s request for audit proposals, had offered to perform some compliance testing during the course of their audits. No engagement letter could be located, and the auditors have indicated that their engagement was ultimately to perform a financial statement audit only. In the end, it has been difficult to determine just what the scope of the audit was, as no final documented engagement letter was ever located either from the external auditors’ or the House’s files.

and to arrange a time to commence the fieldwork.

Although the audit engagements began in the fall of 2003, there were significant delays encountered throughout the audit process, and the audit reports related to the 2002 and 2003 fiscal years were not released until October 5, 2005. While the audit of the March 31, 2004 fiscal year had commenced prior to the release of the 2002 and 2003 reports, the audit had not been completed by the summer of 2006 and was subsequently cancelled.²⁴

I was told that the delay in the issuance of the audit reports for 2002 and 2003 was a result of multiple factors. Firstly, it appeared that the auditors encountered difficulty in obtaining all of the documentation necessary to complete the engagement. This slowed the progress of the audit team and resulted in the redeployment of the members of the engagement team to other audits. Secondly, we have been told by the external auditors that no pressure was placed on them by the management of the legislature or the IEC to complete the audit. Whatever the reason, in my judgement prolonged delays in the completion of the audit exercise undermined the usefulness of the audit process and detracted from adherence to the principles of transparency and accountability.

Apart from issues related to the timing of the audits, the results of the audits bear further examination.

Results of the External Audits

The standards of the Canadian Institute of Chartered Accountants require that an auditor must not issue an unqualified opinion in the following instances:

- the financial statements contain material departures from generally accepted accounting principles with respect to one or more matters; and
- there is a limitation in the scope of the auditor's examination that prevents him or her from obtaining sufficient appropriate audit evidence.

As the external auditor has released unqualified opinions on the financial statements of the legislature for the years ended March 31, 2002 and 2003 it is apparent that they determined neither of these conditions applied for the relevant fiscal periods.

Research staff of the Commission conducted a thorough review of the audit processes followed by the external auditors. We were provided with unlimited access to the audit files

²⁴ At a meeting of the Commission of Internal Economy on October 5, 2006, the IEC agreed that they would not require the external auditors to complete the audit of the House of Assembly for the year ended March 31, 2004. (Information contained in the draft Minutes of Commission of Internal Economy, 2006-2007, October 5, 2006 at Minute No. 6.)

related to those audits. Our review started with the planning sections of the 2002 and 2003 audit files. The engagement and control risk for the audits was considered normal by the auditors and, due to the existence of a simple computer environment, computer risk was assessed as minor. Materiality was calculated based upon expenditures as recommended by the *CICA Handbook* and was established at approximately \$125,000.

It is important to note that, during an audit, testing is performed of the controls over systems and of a sample of transactions that have taken place. The types and extents of tests are determined by the risks assessed and the materiality of the transactions. The results of these procedures assist the auditor in determining if the financial statements of the entity are free of material misstatements and dictate whether an unqualified opinion can be given on the financial statements.

The audit procedures listed in the work plan and the related details of these procedures were reviewed. Procedures that were included in the audit programs were signed as having been performed by staff members responsible for execution of fieldwork and by managers and partners as reviewers of the work performed.

Further review of the audit files, however, identified instances where audit procedures were not completed as outlined in the audit plan. For example, 32 MHA expense reports were initially selected for testing during the 2002 audit. One of the expense reports selected for testing was not completed, as it could not be located, and two additional expense reports were selected. In the 2003 audit file, five of the 34 expense reports selected were not tested. In this instance, no explanation was provided in the file to indicate why these five expense reports were omitted from testing. No errors were found in the samples that were tested.

No management letter was issued for either of the 2002 or 2003 audits, and no management letter points were documented in either of the files. As discussed previously, management letters contain information about a client's business to help him or her improve controls and are regularly issued at the completion of most financial audits. When the external auditor executives were asked about this issue, they advised us that no such letters were issued for these years; and that, if a letter was necessary, it would be issued after the completion of the 2004 audit (which audit, as noted above, was subsequently cancelled).

It was surprising to learn that signed engagement and management representation letters were not located in either of the audit files. These are standard forms for all financial statement audits. The engagement letter details the scope of the audit to be performed and is usually obtained prior to, or at the commencement of, the audit. The representation letter is normally dated the same as the audit report and is obtained at the conclusion of the audit. It confirms management's representations regarding the information provided to the auditor during the audit.

While we did review the audit files and the processes documented, a detailed assessment of the audit performed by the external auditor has not been undertaken to determine if the audit was performed in accordance with *CICA Handbook* requirements, as

this is beyond the scope of the Terms of Reference of this Commission.

Our review of audit practices generally, and the audit experiences of the House of Assembly in particular, give rise to a number of concerns:

- the lack of effort undertaken to ensure that audits were commenced and completed on a timely basis in the past;
- the confusion as to the scope of the audit for which the external auditors were engaged;
- the failure of the audit process, as undertaken and completed to detect and report any weaknesses or deficiencies (when it was subsequently discovered that serious inadequacies did exist);
- the need to ensure that the nature of the audits of the House was appropriate to address the needs of the House and the public in terms of enhancing accountability; and
- the need to ensure that matters identified through the audit process (as noted in respect of the audits in the 1990s) are addressed on a timely basis.

Accordingly, I recommend:

Recommendation No. 51

- (1) The Speaker and the House of Assembly Management Commission should be required by legislation to ensure that appropriate audits of the House of Assembly and its statutory offices are commenced and completed on a timely basis;***
- (2) Careful attention should be given by the Commission and its audit committee to the detailed terms of engagement of each auditor to ensure that the scope of the audit is appropriate to the purpose of the proposed audit;***
- (3) To remove doubt as to what is required, the types and broad scope of any audits that are required to be conducted of the House and its statutory offices should be stated in legislation; and***
- (4) For each type of audit to be performed for the House of Assembly, the appropriate communications and reports should be issued within 60 days of the completion of the audits and management should respond with any comments within a further 60 days.***

Common Practices in Canada

In order to assess the past audit practices of the Newfoundland and Labrador legislature, and to make recommendations on a mandate for the future, it is important to understand the audit practices in place at the provincial and territorial legislatures across Canada. To determine this, questions were asked of various finance officials employed by the provincial and territorial legislatures across the country. Some of these questions and a brief summary of the responses will be described here. A complete listing of responses by province and territory is included in Appendix 8.1 of this report.

Some of the more prominent questions and a brief summary of the responses are outlined below:

1. *Does the Auditor General audit the accounts of the House of Assembly (Legislature) or is this role conducted by an external auditing firm?*

The majority of the provincial respondents to this question stated that their Auditor General performs the audit of the legislature. For two respondents, Nunavut and the Yukon, the Auditor General of Canada provides this service. The federal House of Commons uses an external auditor to perform a separate financial statement audit of the House of Commons.

Based upon the responses received, I felt that further clarification on this question was required. I mentioned earlier that the accounts of the legislature in Newfoundland and Labrador have been included in the consolidated accounts of the province every year. Thus, I wanted to ensure that I was able to determine if the responses were indicating a situation similar to that in Newfoundland and Labrador, or if, indeed, there were different arrangements in the remainder of the country. As a result, all provinces and territories were contacted and asked whether a *separate* financial statement audit is completed on the legislature. Only two provinces, Ontario and Alberta, stated that their legislature receives a separate financial audit. The remaining respondents indicated that audits are performed from the perspective of the government as a whole, and, similar to the Newfoundland and Labrador situation, materiality for the audit is at the level for the government as a whole. The province of British Columbia stated that the Auditor General has never, as yet, attempted to audit the accounts of the legislature.

Other than the House of Commons, no respondents stated that an external auditing firm was used to perform a financial statement audit of the legislature. Two provinces, Nunavut and the Northwest Territories, indicated that an external accounting firm is used to audit their pension plans.

2. *Does the audit mandate (Terms of Engagement) of the Auditor for the accounts for the Legislature differ in any way from that of the Auditor General in respect of government departments? Does the process contemplate regular “comprehensive audits” - or are they more “high-level” reviews?*

All respondents to this question stated that the audit mandate of the auditor for the accounts of the legislature does not differ from the mandate that applies to various government departments. Most provinces stated that the audit of the legislature is mainly a

high-level review and does not take on the characteristics of a comprehensive audit. Alberta, the Yukon, and Nova Scotia all stated that their audits could contemplate comprehensive audits. All respondents stated that a value-for-money audit has never been performed on their respective legislatures; however, the option is available, as with any government department.

3. *Is there a management letter process whereby an auditor's comments and concerns are tabled in writing, or is this function accomplished through the Auditor General's report?*

The answers to this question varied, with five respondents stating that there was a management letter process in place. Four respondents stated that this function was accomplished through the Auditor General's report.

4. *Are there stipulated timeframes in which an audit must be completed? What happens if an audit is missed?*

The majority of respondents stated that there is a requirement for the audit of the legislature to be performed annually. In relation to deadlines for the completion of audits, few provinces responded to this question. The Northwest Territories stated that they attempt to have their audit completed by the end of August, while the Yukon stated October 31. Both of these entities have fiscal year-ends of March 31. Most respondents did not answer the second part of this question, as the audits have always been completed in a general timely fashion.

5. *Is there a policy for Commission follow-up on audit findings? What is it and who oversees the process?*

Most respondents stated that there is no formal policy in place in relation to follow-up on audit findings. Most did state, however, that there is an informal policy in place whereby management of the legislatures would review the auditor's findings and provide a formal response to the auditor's queries. Additionally, it would be common practice for the auditors to follow up on these points in subsequent audits to determine if they have been addressed.

The Future of Audits of the House of Assembly

It is apparent that the audit processes that were implemented in the past were not sufficient to provide the transparency and accountability that is needed to maintain public confidence, in the financial affairs of the House, let alone restore it from its current position.

While audits are only one of the mechanisms for public disclosure of the information surrounding the legislature, they are, nevertheless, an important one.

As I have discussed previously, there are three types of audits potentially applicable to government generally and to the legislative branch in particular: (i) financial audits, (ii)

compliance audits, and (iii) value-for-money audits.

The survey indicated that most provinces and territories currently receive a financial statement audit only as a part of the overall audit of the accounts of the provinces or territory, and only two of the respondent provinces and territories allow compliance or value-for-money audits on their legislatures. Nonetheless, I am firmly of the view that an annual financial statement audit of the Newfoundland and Labrador House of Assembly *as a separate entity* is required.²⁵ Without it, there will not be the improved transparency and accountability that is needed at this time. The goal of a financial audit is to express an opinion on whether the accounts of the legislature are fairly presented in accordance with the accounting policies noted. As the concept of public accountability is critical to restoring trust in the administration of government funds expended by the legislature, I believe that the House of Assembly must continue to receive an annual financial audit of its accounts.

I was particularly interested to learn that the Auditor General of Canada adds an additional requirement to her financial audits of Crown corporations.²⁶ The federal Auditor General has instituted a policy of providing an opinion on whether the transactions that have come to her notice in the course of discharging her audit responsibilities were carried out in compliance with “specified authorities.” While this is not a full compliance audit, it adds additional assurance that matters related to compliance have been examined for such Crown corporations. Appendix 8.2 provides an example of such an audit report. I believe that adding such a requirement to the financial audit of the House on an annual basis would be an important measure to reinforce accountability of the legislature.

As important as subjecting the House to a separate annual financial statement audit (supplemented by a limited compliance report) may be, something more is also required. A full compliance audit would determine whether government spending is properly authorized and is in accordance with government policy. Regardless of the fact that none of the other provinces or territories that responded to the survey is currently subjected to a compliance audit, I believe that auditors of the House should be periodically mandated to perform a compliance audit and to express an opinion on whether the expenses incurred in the operations of the House of Assembly are in accordance with the policies of the legislature and, where applicable, the policies of the government. The scope of a compliance audit is greater than the expanded financial audit I have just mentioned, and would result in a stand-alone report. It would cover the full scope contemplated by a compliance audit described previously, and not simply express an opinion on transactions that have come to the auditors’ attention while performing other audit functions. It would involve the preparation of an audit plan that would articulate the scope of the engagement, the criteria to be used to conduct the audit, and the resources necessary to complete the engagement.

²⁵ I note that the Supreme Court of Newfoundland and Labrador which is part of the other branch of government - the judicial branch - has a separate financial statement audit of its financial operations conducted on an annual basis, pursuant to s. 67 of the *Judicature Act*, R.S.N.L. 1990, c. J-4.

²⁶ See e.g. *Auditor’s Report on the Canadian Air Transport Security Authority* (March 31, 2006) at Appendix 8.2.

There are currently two issues to be addressed with respect to the intensity of the compliance audits. One is with respect to ensuring that internal controls recommended in this report have been implemented, or existing controls are being appropriately modified to ensure the right controls are in place for the present. The other is with respect to ensuring that the controls are effectively maintained and are not slowly changed or eroded over time so as to render them useless.

Due to the amount of preparation required to complete a full compliance audit, I do not believe that it would be practical to have a compliance audit of the House performed every year. Instead, I am satisfied that the required outcomes from a compliance audit can be obtained if one is completed every three to four years, or once during each General Assembly. Fiscal periods in which a full compliance audit is not completed would be supplemented by the opinion on the transactions examined during the financial statement audit as noted previously.

In the short term, to address the issue of improving public confidence, I believe that a compliance audit should be initiated within six months of the implementation of the changes to the controls that are being recommended in this report. This will allow time to have the controls implemented. Then, to ensure that they continue to operate, another one should be performed within a year. If there are no significant issues that arise from these first two compliance audits, then the schedule can revert to once every General Assembly. To those who feel that a compliance audit should be done every year, it must be remembered that right now the Auditor General only does compliance audits on a rotating basis throughout government on a twelve-year cycle. The regime that I am recommending (once every four-year General Assembly and twice in the next general Assembly) is a substantial improvement on that.

A value-for-money audit determines if government programs are being run efficiently and effectively. Due to the nature of such an audit, I am of the view that a value-for-money audit is not required for the legislature. The concept of an Auditor General, rather than the voting public, determining the effectiveness of government programs has further reduced the popularity of this type of engagement for the legislature in multiple jurisdictions across the country. None of the other provinces or territories currently is subjected to a value-for-money audit. I would stress, however, that there is one component of the concept highlighted in the review of the value-for-money audit outlined earlier in this chapter that should be considered generally applicable to the audit process in the House - the need to examine and report on “the adequacy of management system controls and practices, including those intended to control and safeguard assets”²⁷ (not from the perspective of the efficiency or effectiveness of legislative programs, but from the perspective of effective financial control). I would envisage that this examination could be incorporated in the

²⁷ See under the heading “Government Audits – What are They and Why are They Carried Out?”; (iii) Value for Money Audits”.

regular financial statement audit mandate by way of explicit inclusion in future engagement letters.

Performance of the Audit Engagements

It is necessary to consider the most appropriate organization to be engaged to perform the audits of the House of Assembly: the Auditor General or an external accounting firm.

One advantage to having the Auditor General perform the audit of the legislature is the fact that he or she has a “whole of government” mandate. Such mandates are all-encompassing, matching the responsibilities and interests of legislatures and covering organizations as diverse as government departments, agencies, commissions, boards and Crown corporations.²⁸ In this way, legislatures can rest assured that they will receive all their officers’ conclusions and recommendations for the whole government entity. As well, the Auditor General is fully familiar with public sector processes and would be more accustomed to the government’s reporting systems than a private firm engaged from outside.

This is not to say that external auditors would be unqualified or unprepared to perform this type of work. Many private firms are regularly engaged on projects that involve government-related work and so would also have public sector experience

Another advantage of having the Auditor General perform these types of engagements is that the Auditor General’s office has the option of reporting directly to the House. Private sector auditors must report directly to their appointees, usually the executives of the government departments, or in the case of the House, the Clerk or the Speaker. The Auditor General will often have access to the Public Accounts Committee of the legislature, and this gives the Auditor General a formal and very direct way to apprise legislators of significant audit findings.²⁹

One advantage of using an external auditor is that external auditors have developed specialized skills in the area of internal controls in response to changes in the field of auditing with the adoption of Multilateral Instrument 52-109 and Sarbanes Oxley legislation.³⁰ These regulatory requirements in Canada and the United States require management to certify with respect to the design and effectiveness of their organization’s disclosure and reporting controls. External auditors are engaged to audit controls implemented within the organization, or to assist organizations with reviewing and implementing any necessary controls to assist the management team to gain confidence over the effectiveness of internal controls and thereby to enable them to feel comfortable in

²⁸ See Canadian Council of Legislative Auditors, “Legislative Audit: Serving the Public Interest,” (Draft Discussion Paper as part of the CCOLA Project), (February 2000), online: Canadian Council of Legislative Auditors < [http://www.ccola.ca/web/english/serving %20public %20interest.pdf](http://www.ccola.ca/web/english/serving%20public%20interest.pdf)>.

²⁹ Ibid.

³⁰ Canadian Securities Administrators, *Multilateral Instrument 52-109: Certification of Disclosures in Issuers’ Annual and Interim Filings*, March 2004; and *Sarbanes-Oxley Act 2002*, P.L 107-204.

signing the required certifications. A similar engagement related to the accounts of the House could be efficiently and effectively performed by external auditors.

It has been argued that one of the most significant advantages of using an external auditor to perform the audit of the legislature is that it ensures the autonomy of the legislature is not unduly impacted. Accordingly, it is also argued that having the option of selecting an auditor provides flexibility to the Commission of Internal Economy and ensures the independence surrounding the audit can be maintained.

This is not to say, as some have suggested, that it is *inappropriate* to have the Auditor General audit the accounts of the House. In fact, variants of this theme of Auditor General inappropriateness were put forward as the justification for removing the Auditor General from the House in 2000. Justifying comments included, for example, that inasmuch as the Auditor General is an “officer” of the House, it would be inappropriate to have an insider-employee act as the auditor. Also, since the Auditor General’s overall budget is established by the IEC, it has been argued by some that it is inappropriate to have him or her audit the affairs of the body that exercises fundamental decision-making powers in relation to his or her resources. Of course, this is spurious. Even in the private sector, an auditor is engaged and paid by the entity that will be audited. In that sense, the external auditor is “employed” by the entity. This relationship does not compromise the auditor’s independence. The auditor remains bound by detailed professional rules of conduct. In any event, the Auditor General is, in reality, not an employee of the House in the normal sense of the term. The office is regarded as independent and is equally bound by professional rules of conduct. The practices across Canada also belie a concern about an audit of the legislature by an Auditor General unduly affecting legislative autonomy: with the exception of the House of Commons no provincial or territorial jurisdiction has used an external auditor to promote legislative independence.

The Auditor General is by statute the “auditor of the financial statements and accounts of the province.”³¹ Inasmuch as the House spends public money, the accounts of the House are included in the accounts of the province. It is therefore certainly *not inappropriate* for the Auditor General to conduct an audit of the House’s spending of public money. Either the Auditor General or an external auditor, provided they are given the *proper mandate* could be expected to conduct an effective financial audit of the House.

Having considered this matter carefully, I believe that an annual financial statement audit of the House (supplemented by a limited compliance report, as previously described) must be performed, but the IEC, assisted by advice from its audit committee, should have the option of choosing either an external auditor or the Auditor General to perform it.³² To

³¹ *Auditor General Act*, S.N.L. 1991, c. 22, s. 10.

³² I note that Bill 11, “An Act to Amend the Internal Economy Commission Act” has recently been placed before the House of Assembly but has not yet been enacted. It purports to repeal s. 9 of the *Internal Economy Commission Act* and to provide that “The accounts of the House of Assembly shall be audited annually by the Auditor General.” In my view, this amendment is not adequate to address the full panoply of auditing concerns

prevent a situation from arising again in which the accounts are not subjected to a specific audit, as occurred for the fiscal year ended March 31, 2001, the Auditor General should automatically be considered the auditor if an external auditor is not selected by the IEC by the end of the fiscal year. The Auditor General should also have a residual authority to perform an audit of the House on his or her own motion if that is considered warranted.

An external auditor or the Auditor General could also, in principle, equally perform a compliance audit. However, due to the Auditor General's greater familiarity with government systems and policies, I believe that the most efficient and cost-effective process would be to have the Auditor General perform this type of audit, particularly for the audits during the next General Assembly.

Accordingly, I recommend:

- Recommendation No. 52***
- (1) The accounts of the House of Assembly and its statutory offices should be audited annually by either the Auditor General or an independent external auditor chosen by the House of Assembly Management Commission assisted by the advice of its audit committee;***
 - (2) Such an annual audit should consist of a financial audit of the House of Assembly and its statutory offices separate from that of the government as a whole and should include:***
 - (a) an analysis of and an expression of opinion on whether or not the expenses incurred by the House of Assembly administration are in accordance with the policies of the House of Assembly Management Commission and, where applicable, the policies of the executive branch of the government; and***

discussed in this chapter. Most significantly, it begs the question as to what the scope of the audit should be. The recommendations in this report, on the other hand, recognize the necessity for two types of audits: (i) a financial statement audit (with certain enhanced characteristics) to be conducted annually by either the Auditor General or an external auditor, and (ii) a compliance audit to be conducted once every General Assembly by the Auditor General. The recommendations I have made, if accepted, would subsume the provision of Bill 11 and make its enactment unnecessary.

- (b) an analysis of and an expression of opinion on whether the Clerk's assessment of the effectiveness of internal controls of the House and statutory offices is fairly stated and whether internal controls are operating effectively;*
- (3) Where the Commission fails to appoint an auditor for a particular fiscal year by the end of the previous fiscal year, the Auditor General should be deemed by legislation to be the auditor for that year;*
- (4) Subject to paragraph (5), a compliance audit should be conducted by the Auditor General on the House of Assembly and its statutory offices once every General Assembly;*
- (5) Until the controls in the House of Assembly administration have been assessed as having no significant weaknesses, a compliance audit should be performed by the Auditor General, initially within six months of the adoption of the revised controls as implemented in response to this report, and then within one year of the first assessment; and*
- (6) Any such audits shall not be considered to entitle the Auditor General or any other auditor to question the merits of policy objectives of the House of Assembly service, the House of Assembly Management Commission or the statutory offices.*

Constituency Allowance Review

In addition to the compliance audits recommended above, consideration needs to be given to providing the Speaker of the House with the ability, at any time, to commence a review of the spending of any Member of the House of Assembly. As with the compliance audit, the purpose of this examination would be to determine if a Member's spending is in accordance with the policies of the legislature and the government, where applicable. This option would allow the Speaker flexibility to assure himself or herself of the appropriateness of the expenditures and assure the Member that all is well.

In fairness to the Member, should the Speaker have concerns that the expenditures are not appropriate, the Member must be given the opportunity to have an independent person review the situation and offer his or her opinion, which I believe must be binding.

Accordingly, I recommend:

Recommendation No. 53

- (1) The Speaker should, at any time, have the authority to review a Member's allowances to ensure that the expenditures are for the intended purposes and are in accordance with the policies and rules so established; and***
- (2) If the Speaker determines that such expenditures, in his or her view, are not appropriate, the Member should have the option of requesting the matter to be reviewed by the Commissioner of Legislative Standards.***

Tabling of the Annual Report

Each year the IEC is required to table a report in the House of Assembly. As a result of several amendments over the years, this obligation assumed less and less significance because of the relaxation on the requirement for timely reporting. As well, in the past number of years, the minutes describing the discussions of the IEC were incomplete and financial components were incorrect. Elsewhere in this report, I have described these matters in further detail. It is important, however, that reports of the activities of the IEC be available to the public and that they reflect accurately what has occurred. This annual report should be prepared by the Speaker of the House and should comprise the deliverables of the auditor, as well as the other documents deemed necessary for the overall governance of the legislature. The annual report should contain the following documents:

- the audited financial statements of the accounts of the House of Assembly;
- the management letter containing audit findings and recommendations resulting from the audit of the House of Assembly;
- a discussion of past audit recommendations and how they are presently being addressed by the House of Assembly;
- a report that outlines a plan to address audit recommendations of the current year audit;
- the minutes of all meetings held by the Internal Economic Commission during the year;
- a statement of the total salary, allowances and expenses approved for each Member;

- a listing of all payments made to each Member of House of Assembly;
- a listing of any changes or adjustments made to the allowances previously approved for each Member of the House of Assembly; and
- a statement from the Comptroller General stating that the salary, allowance, and expense amounts in the listing agree with the amounts recorded in the accounts of the government.

In order to ensure the full benefit of this annual report and maximum accountability of public funds, the report should be tabled and published within three months of the legislature's fiscal year-end.

Accordingly, I recommend:

<p><i>Recommendation No. 54</i></p> <p>(1) <i>An annual report should be tabled in the House of Assembly;</i></p> <p>(2) <i>The annual report should contain the items noted in this report and be tabled in the House within 90 days of year-end and if the House is not then sitting, within five days of the next sitting of the House; and</i></p> <p>(3) <i>In addition, the Speaker should be required to deliver a copy of the report to every MHA, post it on the House's website and make it available on request by members of the public.</i></p>
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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 Commission¹

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 1988³ 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 report¹² 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 terms¹³:

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 *Statutes 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 amended¹⁷ 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 1989-2006¹⁸

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 contradistinction to a number of other provinces and territories²² where the non-taxable portion varies between 1.5% and 43.7% of the taxable portion. In four provinces²³ there is a trend away from using non-taxable allowances altogether. Only two provinces and one territory²⁴ 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 \$62,700²⁷ 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	
(2) Beyond Commuting Distance and Members of Executive Council		10,483	104,536	104,536	4
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	
(2) Outside Whitehorse and Members of Executive Council		19,091	27,943	66,126	12
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 Frequency³⁴ 2004 - 2006**

<i>Standing Orders Committee</i>	<i>Public Accounts Committee***</i>
(8 members)	(7 members)
2004: 0	2004: 4 days
2005: 1 day	2005: 7 days
2006: 0	2006: 6 days
<i>Resource Committee</i>	<i>Social Services Committee</i>
(7 members)	(7 members)
2004: 6 days	2004: 5 days
2005: 6 days	2005: 6 days
2006: 6 days	2006: 5 days
<i>Government Services Committee</i>	<i>Privileges & Elections Committee</i>
(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 2006³⁶ (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 than 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 reimbursed⁴⁵ (and in some cases that the pre-2004, non-accountable discretionary allowance ought also to be reinstated), 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.

⁴⁷Nova 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.

⁴⁸In 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**

40 th General Assembly 1989	57 days
41 st General Assembly 1990	94 days (18 nights)
1991	90 days (15 nights)
1992	91 days (4 nights)
1993	19 days (2 nights)
42 nd General Assembly 1993	39 days (7 nights)
1994	83 days (14 nights)
1995	81 days (13 nights)
43 rd General Assembly 1996	58 days (10 nights)
1997	55 days (7 nights)
1998	62 days (4 nights)
44 th 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)
45 th 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. Noel⁵³:

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

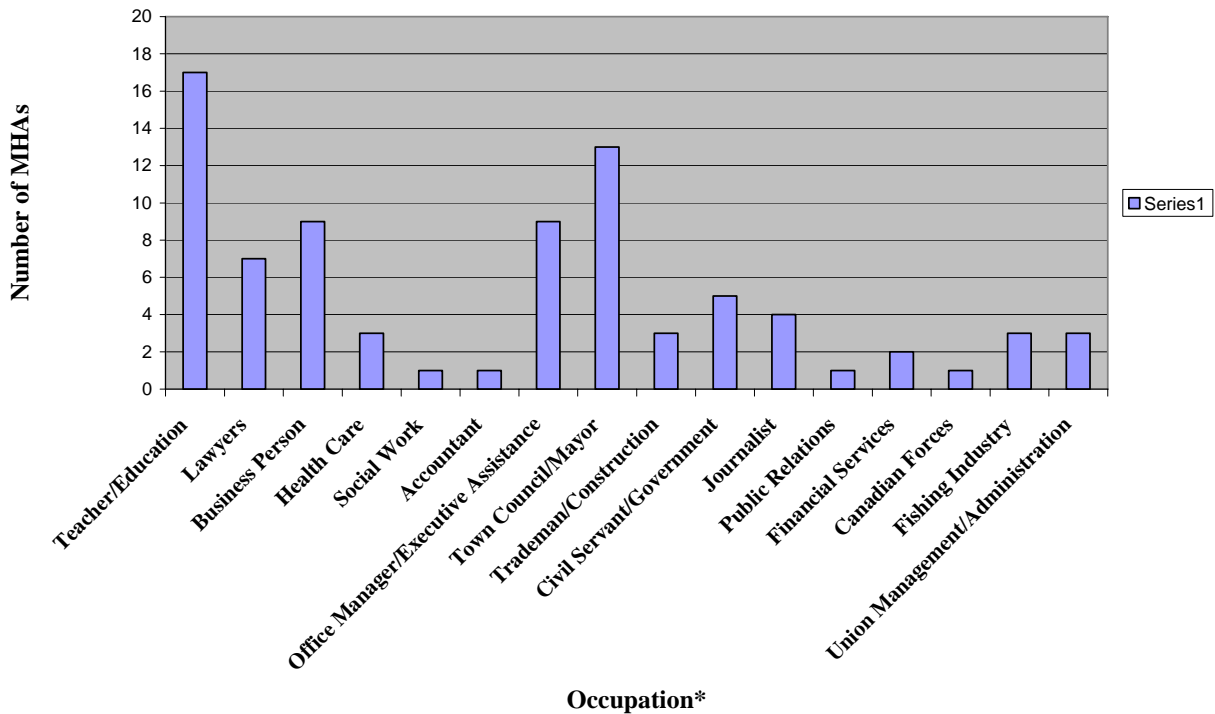
⁵⁴ Sir Ralph Williams, *How I Became a Governor* (London, 1913), pp. 412-413 (as quoted in Noel, p. 20).

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

MHA Previous Occupations



* 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 following⁵⁹:

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 law⁶¹ 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 at 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 indemnity⁷⁹ 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 universal⁹¹) 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 than 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.*



Chapter 10

Allowances

Though honesty cannot be legislated, exposure to the attempt to defraud should be reduced to the minimum possible. Receipts should be required and if no receipts are submitted for certain types of expenditure, some verification should be provided. For what is at issue is not the honesty of the individual member, even though sometimes the odd case of false claims may occur, but the confidence of the electorate.

— The Morgan Commission¹

Scope of the Review of Allowances

The terms of reference require me to conduct:

an assessment of Members of the House of Assembly Constituency Allowances to determine if they are the most effective and efficient vehicle to reimburse MHAs for expenses incurred during the normal execution of their duties.²

I have also been mandated to undertake a review of allowance regimes across Canada,³ determine whether proper safeguards are in place to ensure accountability and compliance with rules and guidelines governing payments of constituency allowances,⁴ and propose recommendations for appropriate “policies and practices,” taking into account “opportunities to enhance the accountability and transparency of MHA expenditures.”⁵

¹ *Morgan Report*, p. 19.

² Terms of Reference, Schedule “A,” item 1(i).

³ Item 1(ii).

⁴ Item 1(iv).

⁵ Item 4.

By “allowances”⁶ is meant allocations from the public treasury of money to, or for the use of, MHAs, other than by way of compensation, severance and pension benefits, to enable them to carry out their duties by defraying expenses they necessarily and reasonably incur as a result of performing their public functions. Unlike other payments of public money, such as salaries, MHAs are not *entitled* to the payment of allowances on the basis that they have been *earned*; rather, they may only expect payment of an allowance if they are able to *justify* payment by proving that there is a need to *reimburse* them or make payments on their behalf because expenditures must be, or have been made related to their work.

Judged by the amount of public commentary in 2006 and early 2007, the analysis of the allowance regime and the determination of its deficiencies are amongst the most controversial aspects to which this Commission’s work is directed. Arguably, it has been the allegations of impropriety, such as overspending and double billing, that have contributed greatly to a lack of public confidence in MHAs and the system in which they work. This lack of confidence has been manifested in public comments by responsible journalists and others referring to the “utter contempt in which the electorate is held by many of the people who sit in the House of Assembly”⁷ and using descriptions of MHAs who “feast lavishly” in the “public pork barrel,”⁸ or describing them as “opportunists, carpetbaggers and glad-handers.”⁹

It is in this area, then, that Members’ ethics and standards of public accountability for the use of public funds come into stark relief. If any allowance regime is to have any hope of finding public acceptance and confidence, it will have to be one that is understandable by both the public and the MHAs involved, operates in a transparent manner and is seen to be fair, both for the MHA and the public treasury, in the way it allows for access to public money. To design this is a significant challenge. Particularly challenging is not getting so immersed in detailed rules that the ultimate purpose of the whole project - service to constituents - is not obscured.

Overall Conclusion on the Existing Allowance Regime

The terms of reference require me to give an “assessment” of the existing allowance regime and to make a “determination” of whether safeguards are in place to ensure accountability and compliance. I will state my conclusions on those matters now. I can state

⁶ The use of the term “allowances” in this chapter excludes the type of “non-taxable allowance” that is explicitly dealt with in the *Income Tax Act* and that was discussed and dealt with as part of MHA compensation in the previous chapter.

⁷ Brian Jones, “Spending Scandal Reveals Politicians’ Profound Arrogance,” *The [St. John’s] Telegram* (January 12, 2007).

⁸ Jim Combden, “On the Verge of Political Chaos,” (Letter to the Editor), *The Independent*, (January 26, 2007), p. 6.

⁹ Craig Wescott, “Editorial,” CBC Radio’s *The Morning Show*, (February 6, 2007).

unequivocally that:

- The existing regime is *not* an “effective and efficient vehicle to reimburse MHAs for expenses”;
- There are *not* proper safeguards in place “to ensure accountability and compliance” with rules and guidelines;
- There are *no* sufficiently clear, understandable and effective guidelines in place to enable the system to operate with due regard to the objective of protecting public money; and
- The system is and will continue to be *ripe for abuse* if steps are not taken to reform it.

Having stated these things, I do want to record that since mid 2006, especially since the employment of the new Chief of Financial Operations in the House of Assembly, many important steps have been taken to improve the control and accountability systems applicable to the administration of constituency allowance claims. I have already referred to these developments in Chapter 7 on controls. Much, however, remains to be done. One of the main reasons for this is that the administrative staff of the House has had to continue administering a set of rules and guidelines that are fundamentally flawed. They are vague, incomplete and are no longer fully responsive to the needs of MHAs. They require a substantial overhaul.

Before considering any recommendations for change, however, I believe that it is important to consider the changes in the allowance regime that have occurred since the time of the Morgan Commission. I have made the point earlier in this report, but it is worth re-emphasizing, that an analysis of the post-Morgan developments demonstrates that a profound change occurred over the past 18 years in the way in which Members were given access to allowance money - a change from a restrictive, receipts-based regime of different categories of claim-types to a much more flexible, less accountable regime capable of easier access with less control over the types of expenditures that could be made.

The Morgan Commission: Principles and Recommendations

One of the goals of the Morgan Commission was to recommend a system of compensation and allowances that would encourage individuals of high calibre and with concern for the public welfare to be persuaded, without undue sacrifice, to seek election to the legislature. This meant, among other things, that it had to be recognized that persons who offered themselves for public office would have to have a reasonable assurance that the state would be prepared to ensure that such persons would be reimbursed their reasonable and legitimate expenses that they would be expected to incur in doing their job.

The 18 recommendations made by the Morgan Commission were, by virtue of the *Internal Economy Commission Act*, binding on the House. They resulted in some major changes with respect to the procedure for paying Members' allowances and expenses. Eight of the recommendations, relating to allowable expenses for travel, accommodations, meals, district offices and the like were assigned to the Commission of Internal Economy for determination of the maximum amounts allowable in each category. The amounts and guidelines later adopted by the IEC were developed through comparisons with other provincial legislatures and with specific consideration to travel and accommodation costs in our own province.

Effective January 1, 1990, the Morgan Commission abolished the old system of district allowances. In commenting on the need to ensure reimbursement of legitimate MHA expenditures, the Commission observed that, although honesty could not be legislated, the system should be structured in such a way that exposure to the attempt to defraud should be reduced to a minimum. The Commission recommended that receipts for virtually all expenditures should be required, and if no receipts were submitted for certain types of expenditures, some other form of verification should be provided.¹⁰

With respect to specific types of claims, the Commission dealt with them as follows:

(i) Travel (Morgan Recommendations 8-11)

The Morgan Commission recognized that while the House of Assembly was in session regular separation from family was a concern for many MHAs whose normal place of residence was beyond commuting distance from St. John's. It therefore recommended travel reimbursement as follows:

- While the House was in session and with the permission of the Speaker, MHAs whose homes and normal places of residence were beyond commuting distance from St. John's should be reimbursed for traveling expenses actually incurred and documented for one return home journey each week during the session;
- Because it was reasonable to expect that an elected Member would have to visit his or her constituency to attend many local functions, while the House was in session a Member normally residing in or near St. John's and who represented a constituency outside the St. John's area should, while the House was in session, be reimbursed for the traveling costs actually incurred and documented while attending such functions within the constituency. The IEC was tasked with the responsibility of developing guidelines for this purpose.

Because it was often necessary, when the House was not in session, for Members to

¹⁰ *Morgan Report*, p. 19.

visit St. John's frequently to lobby government departments and agencies on behalf of their constituents or to attend to other parliamentary duties, the Morgan Commission concluded that Members should be reimbursed for traveling costs actually incurred and documented for up to 25 return trips per year between their constituencies and St. John's or between St. John's and their constituencies.

The Commission also recognized that Members should be additionally reimbursed for traveling costs actually incurred and documented for traveling *within* their constituencies up to an annual maximum as determined by the IEC.¹¹

(ii) Meals and Accommodations (Morgan Recommendations 12 and 13)

The Morgan Commission concluded that Members should be reimbursed for reasonable expenses for accommodations and meals actually incurred while away from their normal places of residence attending to their parliamentary duties. The Commission felt that, while the House was in session, there should be no maximum per session. On the other hand, while the House was not in session, because of the discretionary nature of the periods of time involved during authorized visits, the Morgan Commission felt there was a need for the IEC to establish an annual maximum.

Prior to the Morgan recommendations, there had been no distinction made between the cost of accommodations and meals for those whose normal place of residence was within St. John's and those beyond commuting distance from St. John's, and between those who lived within their constituency and those who did not but lived in or near St. John's. These distinctions were drawn in other jurisdictions. The Morgan Commission felt they should be drawn in our province as well, and recommended the following:

- Members whose normal place of residence was beyond commuting distance should be reimbursed for reasonable expenses actually incurred for accommodations with receipts and meals without receipts;
- Members within 25 miles from St. John's should be reimbursed for meals only without receipts;
- Some consideration should be given to reimbursement of some meals for members in or near St. John's; and
- The maximum amount of per diems for accommodations and meals should be established by the IEC, and consideration should be given to those sharing

¹¹ Ibid., pp. 19-22.

accommodations and those clearly maintaining two regular houses, exclusive of a summer house.¹²

The Morgan Commission also felt it was important to allow for reimbursement to Members for travel-related expenses while in St. John's attending to House business and committee and constituency duties. Reasonable costs actually incurred for accommodation with receipts and for meals without receipts should be reimbursed.¹³

(iii) *Constituency Allowances (Morgan Recommendation 17)*

It was the Morgan Commission's belief that some accountable allowance should be granted to Members to help them in fulfilling their responsibilities to their constituents. It therefore recommended that each member be entitled to an "accountable constituency allowance" to assist members in meeting obligations to constituents when the House was not in session. The IEC was to determine the amount of this allowance. There was no formula or approach recommended to the IEC for setting the constituency allowance.¹⁴ As subsequent events have demonstrated, this absence of a recommended formula or approach was a weakness in the Morgan recommendations.

(iv) *Cost Implications*

The Morgan Commission recognized that a consequence of its recommendations would be an increase in cost to the province. However, the Commission justified the recommendations by stating that "if there was to be a good and efficient government and decisions that affect our daily lives to be made by competent and well qualified men and women, the Government must be prepared to pay for it."¹⁵

Changes in Allowance Structure Since the Morgan Commission

One of the notable features of the Morgan report is that, although its recommendations were by legislation meant to be binding. Ultimately they were not. The fact that a significant number of the recommendations left the setting of amounts and other details to the Commission of Internal Economy meant that considerable discretion was, in fact, delegated to subsequent decision of the IEC and subsequent decisions of the IEC expanded on this discretion. Furthermore, as Chapters 3 and 4 detail, from 1996 onwards the governing legislation was changed to accord discretion to the IEC to make essentially

¹² Ibid., pp. 22-25.

¹³ Ibid., p. 24.

¹⁴ Ibid., p. 31.

¹⁵ Ibid., p. 34.

whatever changes to the allowance scheme it deemed appropriate.

Morgan's recommendations 8 through to 11 dealt with the travel rules for Members and recommendations 12 and 13 dealt with per diems for Members. For these rules, there was a distinction made between Members who lived within or near St. John's and those whose residences were beyond commuting distance from St. John's. The commuting distance was originally set at 60 kilometres from the Confederation Building; in 1994-1995 this was changed to 40 kilometres.¹⁶

One of most significant changes to the travel and per diem rules came in 1996 with the implementation of the *Members' Travel and Constituency Rules, 1996*.¹⁷ The passage of these rules was made possible by amendments to the *Internal Economy Commission Act* that permitted the IEC to vary the allowance regime established by Morgan. The main difference between the new *Members' Rules, 1996* and the Morgan regime related to the provision of *block funding* for MHAs. This fundamentally changed the nature of constituency allowances and had major implications on the travel and per diem rules for Members. Members were now required to stay within their set constituency allowance maximum for all constituency-related expenses that included, among other things, their travel-related expenses. There was no longer a set number of trips per year but, rather, a maximum financial allocation by district that a Member was expected to work within for all types of travel when the House was in and out of session. Expenses incurred by a Member for transportation, accommodation and meals would be charged against the constituency allowance. It was now each Member's responsibility to manage his or her annual travel expenditures appropriately in order to stay within the budget allocated to that Member's district.¹⁸

Prior to the *Members' Rules, 1996*, Members received under the Morgan regime an accountable constituency allowance of \$7,500.00 per year to pay expenditures incurred in the performance of constituency business. This \$7,500.00 was to cover items such as:

- 1) office rental, equipment, supplies, staff (up to \$5,000.00);
- 2) information material, purchase of flags, pens, etc., Christmas cards (up to \$1,000.00); and
- 3) other items as approved by the IEC (up to \$1,500.00 without receipts).¹⁹

With the changes in 1996, this accountable constituency allowance became district-

¹⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1994 to March 31, 1995*, Schedule B, Recommendation No. 8, p. 12.

¹⁷ See *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1996 to March 31, 1997*, p. 12, June 12 meeting at minute 6. Hereinafter, "Members' Travel and Constituency Rules, 1996" will be referred to as "Members' Rules, 1996."

¹⁸ "Members' Rules, 1996," Schedule B in *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1996 to March 31, 1997*, p. 23.

¹⁹ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1990 to March 31, 1991*, Schedule B, Recommendation No. 17, p. 4. (This breakdown per category ceased in 1993-1994 until the new rules came in 1996).

specific and was no longer \$7500.00 for each MHA. A schedule outlining the allowances by district was attached to the *Members' Rules, 1996*. The maximum amount paid to each Member was to be used for constituency-related expenses as outlined above and also for all travel, accommodation and meal expenses. Total expenditures for MHAs for the fiscal year would be deducted from their maximum constituency allowance.²⁰

Under the *Members' Rules, 1996*, the IEC set the discretionary amount per MHA that was meant to cover miscellaneous expenses at \$2000.00, but claims could not exceed \$75 a day.²¹ The total amount claimed under the discretionary amount was to be deducted from the maximum constituency allowance for a Member's district. This discretionary amount was increased to \$3,600 at the start of the 1999–2000 fiscal year, with monthly payments not to exceed \$300.²² In the same fiscal year, on March 22, 2000, the IEC increased this amount yet again to \$4,800 for miscellaneous expenses without receipts and with no monthly limitation.²³ This discretionary amount remained until March 31, 2004 when the IEC revoked this rule and abolished the discretionary amount.²⁴

The 1999-2000 fiscal year also saw a change to the rule regarding property purchased and eventually owned by Members. Originally, any property valued at more than \$500 would have a depreciation factor of one third of its value applied each year and at the end of three years it would become the property of the Member. The IEC changed this rule in 1999-2000 so that property valued at more than \$1,000 would now be depreciated at one third of its value each year and at the end of three years would be the property of the Member.²⁵ In the 2003-2004 fiscal year this was reduced back to property valued at more than \$500.²⁶

The specific adjustments to the schedule of Members' constituency allowances went through a variety of changes that are outlined in more detail in Chapter 3. Again, as noted in Chapters 3 and 4, in addition to periodic adjustments in the level of the annual allowance, it appears that on several occasions the IEC approved one-time unbudgeted allowance increases late in the fiscal year. While the documentation approving these payments is far from clear, it appears that these were lump sum payments that were not to be supported by receipts.

²⁰ "Members' Rules, 1996," Rule 10 and 11, p. 27.

²¹ *Ibid.*, Rule 8(1), p. 26.

²² *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000*, p. 5, May 5 meeting at minute 2(2).

²³ *Ibid.*, p. 19, March 22 meeting at minute 2.

²⁴ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2003 to March 31, 2004*, p. 20, March 31 meeting at minute 1.

²⁵ *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 2.

²⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4.

Current Allowance Regime

Assessing the structure of the current allowance regime proved to be a difficult task. The *Members Travel and Constituency Allowance Rules, 1996*, as amended and attached to the most recent report of the Commission of Internal Economy did not include all updates to the rules. The practice of the IEC, in the years following the original adoption of the *Members' Rules 1996* was not always to formally amend the rules themselves. After consultation with the House of Assembly staff, it is my understanding that there have been various rulings and decisions made by the IEC over the period of 1996-2006 that may or may not be recorded in the annual reports of the IEC.

Below is an overview of key components of the Members' allowances regime as it stood in fiscal year 2006-07, as confirmed by the current House of Assembly staff.

(i) *Resource Support*

Most MHAs have one constituency assistant located in his or her office. The constituency assistant is paid out of general House of Assembly funds. However, an MHA may fund additional support staff out of his or her constituency allowance. This is used by Members primarily to cover replacement staff when the regular constituency assistant takes vacation.²⁷

(ii) *Accountable Constituency Allowance*

Each MHA is also entitled to an accountable constituency allowance that varies in amount according to constituency. Appendix 10.1 outlines the current annual constituency allowance allocations by Member and district.²⁸

The purpose of the constituency allowance is described this way in the IEC's annual reports (in language taken from the Morgan report):

Each Member is entitled to an accountable constituency allowance. This allowance is for the payment of expenditures incurred in the performance of constituency business and may cover such items as office rental, equipment, supplies, secretarial and other support services, information material such as newspapers, advertising, purchase of flags, pins, etc., Christmas cards and other such items that may be approved by the Commission of Internal Economy.²⁹

²⁷ Confirmed by the Chief Financial Officer of the House of Assembly.

²⁸ Information supplied by officers of the House of Assembly.

²⁹ "Members' Rules, 1996" as amended for 2005-2006; see *Report of the Commission of Internal Economy for*

This is the only written guideline governing the general scope of expenditure, aside from travel and associated accommodation, that can be made and reimbursed from a Member's constituency allowance. It is predicated on the expenditure being made in relation to "constituency business."

There are no lists of allowable and non-allowable expenditures nor any specific guidelines capable of being analyzed and reviewed. Nor are the various decisions of the IEC over the years approving specific types of items in accordance with the allowance policy recorded in any location easily accessible by MHAs, let alone the public. This is one aspect that the Speaker and virtually all MHAs urged me to address. The position is well-summed up in a written submission from the current Speaker:

While there was no codification of the rules and while I had completed a lot of information thereto, we did operate on a tradition of some semblance of rules. While I was Speaker (late 2003 to the present), many instances abound where my opinion was obtained on the appropriateness of expenditures and based on my experience and my knowledge of best business practices, I would make a decision. In that time, many decisions resulted in claims being refused or adjusted. Each instance created a precedent. These decisions also reflected my knowledge of practices in other jurisdictions (which is fairly extensive). I spoke many times about the need for codification and had completed the research that I thought was the beginning of a process. I will not dwell on the reasons why progress was often hampered but it certainly was!

One of the great difficulties of administering a "fluid" system like this is that neither the MHAs concerned nor the staff of the House who have to examine and approve individual claims have a clear understanding of what is claimable around the margins of the allowance. For example, although the brief statement from the IEC annual report quoted above gives some examples of acceptable types of expenditures, it does not mention anything about donations to community groups or to individual constituents in need - yet these types of expenditures have been condoned by the IEC.

There have also been cases of claimed expenditure which, on the face of it, call for explanations as to why they would be regarded as having been incurred "in the performance of constituency business." In fact, it was the Auditor General's concern over purchases of artwork and quantities of liquor, among other things, by a Member in the course of a proposed legislative audit that appears to have been one of the motivating factors behind the amendments to the *Internal Economy Commission Act* in 2000 that were discussed earlier in this report. One of the difficulties with the existing regime is that the absence of detailed and clear guidelines as to what should be regarded as "constituency business" means that the

the Fiscal Year April 1, 2005 to March 31, 2006, p. 17.

debate as to whether a particular type of expenditure falls within or without the permitted range of expenditure must take place at a high level of abstraction - by reference to understandings of what relates to constituency business, a concept on which reasonable persons may differ in some cases. This is not helpful either for an auditor who is trying to determine if there has been compliance with policies in a given case, nor is it helpful for the Member who may be unsure as to whether to incur a particular expenditure and claim it, nor for the staff member tasked with having to approve or reject the payment of the claim.

Of course, there may be situations which, by any measure, do not appear to fall within any reasonable definition of constituency business. Even in such cases, however, what may appear obvious at first glance may be more complicated when examined more closely. Take one hypothetical example: an MHA makes a claim for the cost of underwear. At first blush (no pun intended), this may seem to be a clear case of an unacceptable expenditure. But, what if the reason for the claim was that the Member had been travelling on constituency business, the plane was delayed because of weather and the MHA's luggage had been misplaced or stolen? Would a modest purchase of underwear in such circumstances to tide the member over in an emergency *necessarily* constitute an inappropriate claim? Would there not be room, at least for argument, that such a purchase, in those special circumstances, was incurred in relation to constituency business? Certainly, the answer would not be crystal clear. An answer might depend on whether that sort of expense was covered by travel contingency insurance or whether the airline could be expected to assist or whether in comparable circumstances in the private corporate sector there would be a general expectation that such a claim would be regarded as business-related and claimable. Then again, it might still be arguable that even though the expense would not have been incurred but for the fact that the Member was travelling on constituency business, it is nevertheless one of life's contingencies that anyone might have to face and should be expected to pay for out of his or her own pocket.

While one cannot expect that every possible contingency could be dealt with in advance by a comprehensive definition - words often have a penumbra of unclear meanings - the current rules are so vague that little guidance can be had from them except in obvious core situations that have been established by precedent over time.

I was told that, in recent times - at least since the current Chief Financial Officer took over in mid 2006 - there has been considerable tension, leading in some cases to angry exchanges, created between individual MHAs and the staff of the House when the staff have questioned certain types of expenditure. This puts an unacceptable degree of pressure on the staff person struggling to apply the "guidelines" as best she or he can.

The other important aspect of the way in which the constituency allowance is presently structured is that there are no limits within the total maximum allowable restricting how expenditures can be made. Thus, a member could theoretically spend all of his or her constituency allowance on travel or, alternatively, spend all of his or her time in residence in the district and give all of the allowance away in donations. "Block funding," as it is called, does not channel expenditures into the categories of basic expenses that are fundamental to the proper, balanced performance of an MHA's duties.

Another aspect of block funding is that there are no controls on the ability of the MHA to spend his or her constituency allowance in a disproportionate way throughout the year. Unless the MHA is careful with budgeting the expenditures, they could all be spent well before the year is up. In the past, this has led to demands near the end of the year for additional funds.

(iii) *Equipment and Furniture*

All equipment and furniture for an MHA's office in the Confederation Building is supplied by the House of Assembly. Any equipment and furniture for offices outside the Confederation Building must be funded through the Member's constituency allowance.³⁰ Purchases of equipment and furniture valued at \$500 or more will be the property of the House of Assembly. Such equipment or furniture will have a depreciation factor of one third of its value each year, and at the end of 3 years will become the property of the Member.³¹

(iv) *Travel Expenses, Accommodations and Meals*

Travel expenses cannot exceed the constituency allowance maximum that is allocated to each Member's district. There is no specific budget within that allowance for travel and a Member could, as has already been noted, use his or her entire constituency allowance for travel-related expenses. The type of transportation allowed includes mileage, airfare and/or car rental. The kilometre rate for automobiles, up to December 31, 2006, was 33.42¢/km.³²

While the House of Assembly is in session, no daily meal allowance is to be paid to a Member who represents an urban St. John's district that is within commuting distance (40km) of the Confederation Building Complex; nor paid to a Member who lives on a full-time basis in the City of St. John's or the St. John's urban area.³³

A Member who maintains a permanent residence in his or her district and a second residence in the City of St. John's or the St. John's urban area is eligible to receive reimbursement:

- a. while the House of Assembly is *in session* only, for expenses up to \$50 a day for meals plus \$75 a day for accommodations, Monday to Friday of each week only; and

³⁰ Confirmed by Chief Financial Officer of the House of Assembly.

³¹ "Members' Rules, 1996" as amended for 2005-06; see *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2005 to March 31, 2006*, Schedule B, p. 17.

³² Confirmed by Chief Financial Officer of the House of Assembly.

³³ *Ibid.*, Recommendation No. 5, p 18.

- b. while the House of Assembly *is not in session*, for expenses up to \$103 a day while in St. John's on constituency business.

In addition to the amounts set forth above, while traveling on constituency business in his or her district and being required to be away from home overnight, a Member is eligible to receive reimbursement for expenses up to \$50 a day for meals plus accommodations with receipts, or \$103 a day for meals and accommodations without receipts.³⁴

A Member who maintains a permanent residence in the City of St. John's or the St. John's urban area and another residence outside commuting distance (40km) of the Confederation Building Complex is, if the residence is within reasonable proximity of his or her district, and if the member files an affidavit in the Office of the Clerk stating his or her accommodation circumstances, eligible to receive reimbursement for:

- a. while the House of Assembly is *in session only*, for expenses up to \$75 a day for accommodations, Monday to Friday of each week only; and
- b. while traveling to his or her *district on constituency business* and being required to be away from home overnight, for expenses up to \$50 a day for meals plus accommodations with receipts, or \$103 a day for meal and accommodations without receipts.³⁵

Where a Member maintains a residence in the City of St. John's or the St. John's urban area and a second residence outside the City of St. John's or the St. John's urban area and wishes to claim under the rules, he or she must maintain an affidavit with respect to the current status of his or her accommodations on file in the Office of the Clerk.³⁶

One could be forgiven for feeling confused about the impact of the foregoing rules on reading them for the first (and perhaps the second and third) time. The need to clarify them is self-evident.

³⁴ Ibid., Recommendation No. 6 (1) and (2), p. 19.

³⁵ Ibid., Recommendation No. 6(3), p. 19.

³⁶ Ibid., Recommendation No. 6(4), p. 19.

Anomalies

In the course of my review, I was made aware of a number of circumstances under the existing regime that appeared to operate unfairly to the MHA concerned or to the public treasury. I will mention two of them.

An MHA who resides in a district outside of the St. John's region, but who nevertheless has to be present in St. John's when the House of Assembly is in session,³⁷ is entitled to reimbursement for accommodations and meals only while the House is "in session." This has been interpreted as excluding weekends, even though the member is required to be back in St. John's for continuation of the session the following week. Often it is not convenient for the MHA to return home to the district on the weekend. If the MHA stays in St. John's over the weekend, the costs associated with the stay will not be claimable. Yet, the member is entitled under the rules to travel back to his or her district during the weekend break and the travel costs will be claimable. Those costs may often be greater than what it would cost the member to stay in St. John's and pay accommodations and meals. However, because travel back to the district is covered and the stay in the City is not, there is a great incentive for the member to travel home even though the amount of time he or she will be able to spend in the district before having to return to the House might be very small. The result is that the public treasury loses. It would be cheaper to allow the member to stay in St. John's over the weekends rather than, in effect, to "force," or at least encourage, him or her to spend more money travelling, perhaps for no good purpose.

In my view, it is not unreasonable for an MHA to consider it appropriate to stay in St. John's on a weekend during a session of the legislature that may extend over several weeks. Constituency business can still be done through telephone and other communications devices. There may well be reading and preparation that has to be done for the session's continuation the following week. Any reimbursement system that is counterproductive with respect to the spending of public money clearly is in need of an overhaul.

I am therefore prepared to make the following recommendation:

Recommendation No. 64

Accommodation and meal allowance rules should be structured in such a manner that Members whose primary residence is in a district outside of

³⁷ Order 19 of the *Standing Orders of the House of Assembly* provides: "Every member is bound to attend the service of the House, unless leave of absence has been given to him or her".

reasonable commuting distance from St. John's and who remain in St. John's over one or more weekends while the House of Assembly is in session should be able to claim reasonable accommodation and meal expenses, as determined by rules established by the House of Assembly Management Commission, during such periods.

A second anomaly relates to MHAs who are also Ministers and who, because of the continuing nature of their ministerial duties, are required to live in St. John's,³⁸ even though their permanent residence - and their family - remains in their district. Under the existing regime, a Member who travels from his or her district to the capital when the House is not in session is entitled to accommodations, meals and car rental while in St. John's. However, where the Member is also a Minister, the rules are interpreted to preclude the ability to claim for hotel expenses and meals when in the City on the theory that, because the Minister is "required" to live in St. John's, he or she must be treated as in fact living there and, accordingly, should not be entitled to accommodations, meals and other expenses when living "at home." The obverse of this situation leads to the conclusion that when the MHA returns to the "real home" in the district, he or she is regarded as on travel status and is entitled to claim hotel, meal and car rental costs even though there would be no need of them, because he or she will, in fact, be living or eating at home and driving his or her own car while there.

This also is an anomalous situation. It occurs because, for ministerial purposes, the MHA is regarded as living in St. John's, but for other purposes he or she is regarded as living in the district. As a result, the Member may be deprived of an ability to make a claim. I was told that, to get around this problem, some Ministers felt forced to file an accommodation affidavit to the effect that their "permanent" residence was in St. John's when, in fact, what was being maintained in the City in reality was a secondary residence and the residence that was regarded as "home" and where the family lived remained in the district. In this way, they are then entitled to claim certain per diem amounts when in their district that could be used indirectly to partially subsidize the expenses in St. John's.

It has not been suggested that it is unreasonable for a Member to be reimbursed directly for expenses in such circumstances. Clearly, no Member ought to be put in a position of having to pretend a state of facts that is untrue simply to access a scheme that should be designed to provide reasonable protection against expenses legitimately incurred.

³⁸ It is commonly thought that a Minister of the Crown is "required" by Cabinet Directive to live in St. John's when the department for which he or she responsible is located there. However, at my request, a search of the records of the Executive Council was undertaken and a copy of such a directive was not located. Nevertheless, it can be said that there is certainly an "expectation" that a minister live near where his or her department is located. Certainly, this makes sense from a practical point of view.

The matter is complicated, however, by the fact that there is a set of rules for Ministers and an additional regime for Members who are not Ministers. The two apparently do not mesh. It is not my mandate to make recommendations respecting expense allowances for Ministers. Those matters are dealt with as part of executive policy, not as part of the House administration. Nevertheless, the matter should be addressed. My approach to the matter is to design a set of rules that will provide reimbursement of reasonable and legitimate expenses whenever MHAs are on constituency business and wherever they may be residing. It will be up to the Executive to design a set of rules for Ministers that acts as an overlay on those rules and is not counterproductive to them.

I recommend:

- Recommendation No. 65***
- (1) The rules respecting allowances should be designed on the basis of what is the most appropriate regime to assist Members of the House of Assembly in carrying out their constituency and other duties as Members without reference to other expense reimbursement regimes that might also be applicable to them in other capacities; and***
 - (2) All other expense reimbursement regimes, such as those applicable to Ministers or Parliamentary Assistants, should be designed in such a manner that they complement the floor of allowances applicable to MHAs as Members, and do not permit, as a result of the rules or their application, double claiming for the same expense or leaving legitimate expenses not reimbursed.***

Members' Views on Constituency Allowances

It may be of interest to review what the Members themselves said, in the survey of their opinions taken in fall of 2006,³⁹ about some aspects of the allowances issue.

There was a substantial response rate for the survey: 36 of 48 members or 75% of the members completed the questionnaire. All in all, the questionnaire seemed to be of greater interest to government members than to opposition members: 74% of government members filled out the questionnaire as opposed to 61% of the opposition.

Women members were more interested in making their views known: 80% of them completed the questionnaire in comparison to 68% of men. Women in a variety of riding

³⁹ See Appendix 1.5 for a copy of the Survey, and Appendix 1.6 for a tabulation of results.

types were also maximally involved. All women in the categories of rural women, whether in cabinet, on the government side of the House, or in opposition, and urban women in cabinet completed the questionnaire. This stood in marked and somewhat surprising contrast to the 22% of rural men and 33% of urban male cabinet members and 50% of urban male government members who completed the survey.

There was more knowledge of this Commission's business than with the Morgan Commission report. Nearly 70% of respondents declared themselves to be completely or almost completely familiar with this Commission's terms of reference. In contrast, the report of the Commission which established an 18-year old regime under which the members operated (the Morgan Commission) was not very familiar to the members: 22 of 36 members were "only in general," "a little," or "not at all familiar" with it. Despite this, there was general support (completely or somewhat supportive) for the Morgan recommendations.

The issue of how to provide space for constituency offices shows something approaching consensus as well. A majority (21 or 58%) find that the level of compensation for constituency office support to them as MHAs to be not adequate, with less than a third finding it adequate. Two thirds exactly believe that MHAs should have publicly-funded space in a government building to provide service to their constituents, but 75% moreover feel that if this is not available for reasons of community size or circumstances, reasonable alternatives should be explored and offered (implicitly at public expense). On the other hand, freedom to shift money around between different heads of expenditure if a member rejects having a constituency office is rejected by nearly half (47%).

Discretion rates vary highly. Fully 94% believe strongly or moderately (72% strongly) that the block funding arrangement for travel and constituency allowances should be continued, and 92% strongly or moderately (69.44% strongly) believe that there should be a reasonable proportion of MHA compensation designated for discretionary expenses.

There is also significant consensus in another important area of the compensation regime question, when one compresses strong and moderate agreement together. Nearly three quarters (72%) believe that there should be receipts for all expenditures by members where they are to be compensated.

When ranking and evaluation exercises were completed, members were fairly diffuse in their opinions, but gave some emphasis to these matters. Aspects of Members' compensation that deserve the most attention and corrective action, according to respondents, are: constituency allowances;⁴⁰ travel reimbursement,⁴¹ and finally, indemnity.⁴²

⁴⁰ 11 and 5 ranks of 1 and 2, respectively.

⁴¹ 4 and 6 ranks of 1 and 2 respectively.

⁴² 5 and 2 ranks of 1 and 2 respectively.

Review of Allowance Regimes in Other Jurisdictions

In the course of its work, the Commission staff reviewed the allowance regimes of each of the other provincial and territorial jurisdictions in Canada, as well as the federal system. A summary of those regimes is contained in Appendix 10.2. This comparative analysis disclosed that there is not a lot of consistency across jurisdictions. In the end, each jurisdiction has had to tailor its regime to fit its own circumstances. Nevertheless, the examination was useful and enlightening. While not presenting one clear model that was capable of wholesale importation into this province, there were many important ideas and concepts that helped in conceptualizing what I believe will be a significantly better regime than what we have now.

Basic Requirements of a New Regime

In Chapter 9 I argued for the idea of treating the elected Newfoundland and Labrador politician as a full-time professional.⁴³ The acceptance of this concept has a number of implications. On the one hand, there is an expectation that the politician will adhere to high standards of professional conduct and seek out and undergo the training necessary to fulfill the administrative aspects of the job. These matters, especially the expectation that the politician take primary responsibility for the management of public resources over which he or she is given control, have been discussed in general terms in previous chapters, in particular Chapter 5. There - in Recommendation No. 3(a) - I expressed the view that a proper regime providing for claims for reimbursement for expenditures made in performance of constituency duties should place ultimate responsibility on the MHA for compliance with the applicable allowance regime. The nature and extent of that responsibility should be spelled out clearly in the rules constituting the regime.

Another aspect of being treated as a professional is that there is the expectation that he or she will be provided with the resources necessary to be able to discharge professional duties ethically and responsibly.

The MHA must be given the means necessary to do the work entrusted to him or her. This means that there should be public subsidization of administrative office space, realistic operational resources, and travel allowances sufficient to enable the Member to service the constituency for which he or she has been elected. As well, provision should be made to ensure that other reasonable and legitimate expenses incidental to carrying out an MHA's functions are covered. In incurring legitimate expenses in carrying out public functions, the MHA should not be expected to do so at serious personal financial sacrifice.

In Chapter 5 I also expressed the view in Recommendation No. 3(c) and (d) that a proper allowance regime should be clear and understandable in operation. This is important

⁴³ Chapter 9 (Compensation) under the heading "The Job of a Member of the House."

not only for the MHA but also for the officials administering the regime in processing claims. As well, clarity and comprehensibility is important to vindicate the value of transparency for the public so as to maintain confidence in the system. It follows, therefore, that a proper regime should contain detailed rules and examples of permitted expenditures so as to eliminate as much uncertainty as possible in the operation of the regime.

In essence, a proper regime should serve three purposes:

- provide adequate resources to MHAs to assist them to fulfill their public duties and responsibilities for the benefit of the citizens they serve;
- promote accountability and transparency with respect to the expenditure of public funds; and
- facilitate public understanding of the use of public funds by MHAs in the fulfillment of their obligations.

In fulfilling those purposes, any new allowance scheme should:

- be based on principle rather than expediency;
- be clear and understandable in application;
- be capable of being administered in a manner that will control abuse;
- provide a means whereby only reasonable and legitimate expenses relating to constituency business will be reimbursed or paid for; and
- operate fairly both to the MHAs concerned as well as to the public purse and, accordingly, not produce anomalies in operation.

General Principles

For an allowance regime to operate fairly and to be seen to so operate, it must, in the final analysis, be controlled by fundamental, well-understood principles. No allowance-reimbursement system, no matter how detailed its rules, can possibly anticipate all the situations that will have to be addressed in its day-to-day administration. In cases of doubt there has to be a way of arriving at a principled decision. As well, it is important for actors in the system to understand that, for the regime to operate fairly, more is required than rote or mechanistic application of specific rules or precedents without filtering the decision through the sieve of principle to ensure that the underlying purpose of the regime is being served. It is therefore appropriate to engage in a brief discussion of the basic principles that I believe should underpin the specific regime that I will be recommending.

(i) *Personal Responsibility*

The first and most important principle that must be underscored in any allowance regime is that of *personal responsibility* of the MHA in the incurring of expenses and the making of claims for their reimbursement from public funds. The Member has to be alert to ensure that the purposes of the regime are not subverted. I will repeat what I wrote in Chapter 5:

It is not sufficient, I would suggest, in cases of doubt to “take a chance” and make a claim, hoping that others will take the responsibility for allowing or disallowing it. In the end it has to be a matter of judgment and conscience on the part of the MHA, recognizing that what he or she is dealing with is not his or her own money.

That means that the MHA has to be proactive to maintain proper controls over the record-keeping in the constituency office and to instruct his or her constituency assistant to whom the task is delegated as to the manner in which the claim process should be carried out. Even where delegation does occur, if something goes wrong the MHA should not be allowed to hide behind that delegation to disclaim personal responsibility. There must be a recognition that responsibility rests with the MHA. The detailed rules constituting the regime should make this abundantly clear.

Accordingly, I recommend:

Recommendation No. 66

- (1) *The rules respecting allowances should stipulate that the Member of the House of Assembly making or incurring an expenditure is the person responsible for compliance with requirements for claims, payments and reimbursements of expenses under the allowance regime and that the Member is not relieved of that responsibility even if:*
 - (a) *he or she delegates that responsibility to another person;*
 - (b) *the claim is accepted for payment by an official of the House;*
 - (c) *the claim is ultimately paid.*
- (2) *Members should be required to maintain proper records pertaining to claims and should be responsible for operating their constituency offices and engaging and training support staff in a manner that will facilitate compliance with the requirements of both the letter and the spirit of the allowance regime;*

- (3) *In keeping with the notion of personal responsibility, the Clerk of the House, the House of Assembly Management Commission and an auditor of the House should be able to require a Member to certify that an expense that he or she is claiming, or has claimed, has actually been incurred in compliance with the rules of the allowance regime;*
- (4) *Where a Member makes an expenditure or a commitment to an expenditure that exceeds a maximum allowable or is otherwise inappropriate, he or she should be personally responsible for the payment of that expenditure; and*
- (5) *The rules of the allowance regime should state that where through inadvertence or otherwise a claim is paid when it should not have been, the Member is liable to repay that amount to the public treasury.*

(ii) Constituency Business

I noted earlier that one of the problems with the existing regime - as well as with the recommendations of the Morgan Commission - was that there was very little guidance given as to what types of expenditures should be reimbursable or not. All that was provided was the general statement that the constituency allowance was to be used for “payment of expenditures incurred in the performance of constituency business” without defining what constituency business entailed.

The reimbursement scheme is, in the end, a *purpose-based* scheme: the ability to claim reimbursement depends on the legitimacy of the purpose of the expenditure, which must be related to the proper performance of the MHA’s public functions. While it is nice to be provided with a list of approved *types* of expenditures, in reality many categories of expenditure are, in the abstract, not necessarily appropriate unless they can ultimately be grounded back into a justification related to legitimate constituency work. For example, to claim reimbursement for written communications such as newsletters to constituents may or may not be appropriate, depending on whether they relate to matters of interest or at issue in the community with which the MHA is concerned or expressing an opinion as part of his or her constituency work. On the other hand, to claim reimbursement for written communications to constituents designed for party promotion or re-election would not be appropriate.

Most other provinces and territories have not set out in their legislation or regulations any comprehensive definition of what would constitute legitimate constituency business. This is perhaps understandable, given the difficulty of formulating a clear and detailed enough description that would be capable of easy application. Nunavut and the Northwest

Territories have attempted to formulate a definition. Nunavut defines “constituency work” as: “any work directly connected with a member’s responsibilities as a member in relation to the ordinary and proper representation of his or her constituents.”⁴⁴ The Northwest Territories’ definition is essentially the same except, instead of referring to representation of constituents, it refers to representation of “members of the public.”⁴⁵ In Manitoba, regulations made under the *Legislative Assembly Act*⁴⁶ simply indicate that payments from a Member’s constituency allowance must be for “non-partisan” service to constituents and must be made at arm’s-length.⁴⁷

The approach taken by most other jurisdictions has, instead, been to attempt to describe the types of purposes for which expenditures should *not* be regarded as appropriate. In that regard, such things as expenditures for “political” purposes or expenditures to supplement a Member’s income or to acquire equity in property or for items that are personal in nature are most often stated as being inappropriate.

Notwithstanding the difficulties associated with the problem of definition, I believe it is important to attempt to define the parameters of legitimate *constituency business*. It is important not only because it may help resolve uncertainties in some cases, but also because it will underline the fact that *all* expenditures, at bottom, must be legitimately related to the work of the MHA for the constituency. I recognize, of course, that no general definition will be sufficient in itself to resolve all questions of legitimacy of expenditure. There will always be some subtle nuances of activities in the penumbra of the definition that may be difficult to categorize one way or the other. There is a role, therefore, for also providing specific examples of activities that would, in normal circumstances, fall both within and outside the line. Nevertheless, the rules should be expressed to emphasize that the fundamental justification for *any* expenditure is service of constituents.

As a corollary to stating a principle of what *is* a legitimate purpose, there is also, I believe, a role for stating what purposes are *not* legitimate. In so doing, there will be a greater likelihood that the parameters of permissible activities will be made clear.

⁴⁴ *Legislative Assembly and Executive Council Act (Nunavut)*, S. Nu. 2002, c. 5.

⁴⁵ *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22, s.1.

⁴⁶ C.C.S.M., c. L-110.

⁴⁷ *Members’ Allowance Regulation*, Manitoba Gazette, Part I, Vol. 133, No. 31 (July 31, 2004), ss. 10(1) provides for an annual allowance payable “for authorized expenses for non-partisan access and service to constituents.” Subsection 10(3) defines “non-partisan” as follows: (a) without reference to any word, initial, colour or device that would identify a political party; (b) free of any solicitation for money or votes on behalf of a person or political party; (c) free of any statement advocating that money or votes not be given to a person or political party; and (d) free of any statement advocating that a person (i) join or not join a political party, or (ii) continue to be, or cease to be, a member of a political party.

Accordingly, I recommend:

Recommendation No. 67

- (1) The rules respecting allowances for Members of the House of Assembly should provide that allowances may only be used exclusively and necessarily in relation to “constituency business,” which should be defined as: any activity directly connected with a Member’s responsibilities in relation to the ordinary and proper representation of electors and their families and other residents in the constituency; and***
- (2) The rules should also provide that a claim against an allowance should not be made if it relates to:***
 - (a) partisan political activities;***
 - (b) a personal benefit to a Member or an associated person of a Member; or***
 - (c) a matter that calls into question the integrity of the Member or brings the House of Assembly into disrepute.***

(iii) Clarity

The fact that it was difficult for the Commission staff to ascertain with certainty the exact scope of the current rules respecting allowances underscores the unsatisfactory nature of the current regime and the need for a clear statement of the applicable rules. There was virtual unanimity in the submissions we received from MHAs that they wanted “clear, detailed guidelines” of what was permitted and what was not. Clarity is also important for the staff of the House who have to administer the rules and decide, in a given case, whether a claim should be honoured.

There is, therefore, a case to be made for attempting to set out lists of the *types* of expenditures that would often be regarded as acceptable. As noted above, however, there is one very important caveat: the overriding determination of the acceptability of a particular expenditure is not its type but its *purpose*.

Subject to this caveat, broad categories of expenditure could be stated in the allowance rules and these could be supplemented, from time to time, by inclusion in a Members’ manual or other material provided to Members, of directives of the House of Assembly Management Commission or rulings of the Speaker in particular situations to be used as guides in future cases.

Accordingly, I recommend:

Recommendation No. 68

- (1) The rules respecting allowances for Members of the House of Assembly should, subject to the overriding requirement that an expenditure be for a proper purpose, contain lists of types of expenditures that would normally qualify for reimbursement;***
- (2) The rules should also contain examples of types of expenditures that would normally be regarded as not qualifying for reimbursement; and***
- (3) Where the House of Assembly Management Commission issues directives clarifying the rules respecting the acceptability of types of expenditure for reimbursement, or the Speaker makes rulings in respect of such matters, those directives and rulings should be included in the Members' Manual and should be brought to the attention of each Member in a timely manner.***

(iv) Control of Abuse and Convenience of Administration

The adoption of a number of other basic principles could assist in the control of abuse of the allowance system. They could also lead to convenience of administration.

Earlier I expressed the view that the adoption of *block funding* by the Commission of Internal Economy in 1996 fundamentally changed the nature of constituency allowances as recommended by the Morgan Commission. In particular, it changed the travel rules by wrapping them into an overall budget for constituency expenses and removing them from their own separate regime with its own rules. Although arguably giving greater flexibility to the Member, including all types of expenditure within one budget led to a number of other difficulties: potentially unbalanced expenditure across the range of potential types of constituency expenses; greater difficulty for House staff to monitor the expenditures; and restricting legitimate travel by virtue of the maximum cap on the allowance budget that had not necessarily been set by reference to a proper estimate of expense for travel.

The more Members are constrained by broad categories of constituency expenses, such as office accommodation, travel and communications, the greater will be the control that may be able to be exercised over the associated public expenditure. Notwithstanding the fact that a majority of MHAs appear to favour retention of the block funding arrangement,⁴⁸

⁴⁸ See Appendix 1.6 (Survey Results), Item 44 where 94% of respondents either strongly or moderately agreed with the proposition that "The block funding arrangement for travel and constituency allowances should be

I believe it should be done away with.

Another problem in the past was the lack of clarity and consistency with respect to the type of original documentation that would be required to justify the payment of an allowance claim. As has already been noted, there was also a portion of the allowance that was payable without any receipts at all, and certain year-end payments were also made payable without the requirement for any justification in relation to actual use on constituency business. Stipulation of a requirement for receipts - and the type of receipts - for every expenditure would also assist in control.⁴⁹

Finally, the degree to which payments can be committed and made through the offices of the House, rather than by the Member himself or herself, will also affect the ability of the House to ensure the proper use of allowance money. Some jurisdictions now promote a policy of encouraging most standard expenditures, such as equipment purchases, telephone lines, stationery and pins and certificates to be made through the offices of the House rather than *ad hoc* by the Member. The benefits are significant: there will be greater monitoring and control over the type and extent of expenditure before it is made; consistent purchasing policies, including tendering and requests for proposals, can be applied; and economies can be achieved by bulk purchases.

Accordingly, I am prepared to recommend:

Recommendation No. 69

- (1) The use of block funding as the basic means of administering the allowance regime should be done away with;***
- (2) Broad categories of allowances should be established, each with its own set of rules and controls appropriate to the control and administration of each type of expenditure;***
- (3) All expenditures for which an allowance claim is made should be supported by original receipts except where the claim is based on mileage or a standard daily amount allowed for meals;***
- (4) The nature of the original receipts that should be acceptable should be defined by the House of Assembly Management Commission in***

continued.”

⁴⁹ In the survey administered to MHAs by inquiry staff, 72% of respondents either strongly or moderately agreed with the proposition that “There should be receipts for all expenditures by Members where they are to be compensated.” See Appendix 1.6 (Survey Results), Item 47.

rules issued by it, and where, in exceptional cases, it is deemed appropriate to accept some lesser form of verification, such as affidavits with a reasonable explanation where a receipt has been lost, the Commission should define the nature of such alternative verification in the rules; and

(5) *To the extent reasonably possible, the Commission should require that:*

(a) *expenditures in relation to allowances be coordinated in advance with House of Assembly staff, and that payments to suppliers be made directly by the House rather than by the Member with subsequent claim for reimbursement; and*

(b) *payments to Members by way of reimbursement of expenses be made by direct deposit to Member's bank accounts.*

Categories of Allowances

In accordance with recommendation No. 69(2), it is appropriate to consider the categories of allowances that should be part of the new allowance regime. There are some natural divisions: office accommodation; operational resources; and travel and living expenses. The first two categories can, to a great extent, be standardized according to what is regarded as appropriate reasonable levels of resources that should be provided to every Member. Each Member should be treated the same in terms of what he or she is provided with. There should not be any arbitrary maximum dollar amounts applied to these categories. What is important is that each be provided with a certain basic level of assistance to do their jobs properly. The costs may vary according to district and may vary from year to year or even within a year. In many cases they will be able to be paid directly by the House on the MHA's behalf rather than by the MHA who would then have to make a subsequent reimbursement claim.

The third category - travel and living expenses - is much more MHA - and district-specific. The costs may vary significantly depending on each MHA's individual representational style and in terms of the distance of the district from the capital and from where the MHA maintains his or her permanent residence. It will also depend on the geography of individual districts and how difficult it is to travel throughout them. In this area, claims for reimbursement will generally have to be made by the individual MHA rather than have direct payments made by the House on the MHA's behalf. Different rules dealing with how to ensure sufficient flexibility to enable each MHA to service his or her district adequately can be developed if this category is segregated from the others.

There will, of course, also be a need for a residual category of expenditure to catch

other types of legitimate expenses that do not fit any defined category. This is the area that will continue to resemble the existing constituency allowance. By exempting out major expenditures relating to office operation and travel and accommodation - frequently the most significant under the existing regime in terms of dollars spent - the difficulties of administering this category of claim will be reduced because the amounts needed and available will be much smaller. As well, the fact that the rules will have a general definition of constituency business and lists of examples of permitted and forbidden types of expenditures to assess the validity of given claims should again reduce the frequency of the types of problems experienced with the existing regime.

I therefore recommend:

<p><i>Recommendation No. 70</i></p> <p><i>(1) The types of allowances available to Members of the House of Assembly to defray legitimate expenses associated with constituency business should be broken down into the following categories:</i></p> <p><i>(a) office allowances;</i> <i>(b) operational resources;</i> <i>(c) travel and living allowances;</i> <i>(d) a residual, constituency allowance; and</i></p> <p><i>(2) Each category of allowance should be dealt with separately in rules adopted by the House of Assembly Management Commission with conditions attached to their use being adopted to ensure proper administration and control as may be appropriate to each separate category.</i></p>
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The adoption of this type of allowance regime will, in fact, bring the regime much closer in *concept* to the regime that was originally recommended by the Morgan Commission in 1989 before its principles were subverted by the amendments to the legislation and by decisions of the Commission of Internal Economy over the succeeding decade that I have discussed previously. The new regime I am recommending is not, however, simply “Morgan revisited.” As I noted, Morgan left many of the details of how allowances were to work as well as the levels of those allowances to the IEC to determine. I believe, on the other hand, that those details should be set right from the start to ensure they are consistent with the initial philosophical intent of this report’s general recommendations. I have tried to do that.

I do not propose to discuss in detail in this report each condition, restriction and rule that I believe should apply to each category of allowance. I have, however, caused to be drafted a detailed set of rules that I believe should be adopted by the new House of Assembly Management Commission. They are contained in Schedule II in Chapter 13. They should be treated as having been part of the recommendations that I am making in this chapter. Instead, I will limit the text of this chapter to a discussion of some of the general principles

that I believe should underpin the operation of the detailed rules of each category.

Office Allowances

Under the present arrangement, an MHA can be provided with office space in the area of his or her caucus offices in the Confederation Building in St. John's. The costs associated with this office are paid for out of the general House of Assembly budget. An MHA is also entitled to rent space and operate an office at a location in his or her district, but the costs of that operation must be paid for out of the MHA's constituency allowance. An MHA who is also a Minister of the Crown is also provided with space for a constituency office in the department where his or her ministerial office is located.

A Member is only allowed to hire one constituency assistant to operate any or all of those offices. If a Member decides to operate an office in the constituency, the assistant will usually operate out of that office, providing a local conduit to the Member for citizens from within the district. In such circumstances, the office maintained within the Confederation Building caucus area will essentially be unsupported. The Member, while in St. John's, must therefore rely on the good nature of the other caucus staff to do any administrative work.

One of the problems with maintaining an office in the constituency is that, with the cost coming out of the Member's constituency allowance, the Member is constantly faced with having to make a trade-off of those costs against spending the allowance on such other equally important things as travel to and from the district. In the survey administered to MHAs by inquiry staff 58% of respondents either strongly or moderately disagreed with the proposition "I find the level of compensation provided for constituency office support to me as an MHA to be adequate."⁵⁰

In my view, a Member should not have to choose between maintaining an office in the constituency and in the Confederation Building or between trading off office operation costs against other legitimate allowance expenditures. Proper office and administrative support should be provided to enable the professional politician to do his or her job effectively. Accordingly, a Member should be entitled to set up an office in his or her district *and* have an office in the Confederation Building without having to juggle scarce allowance funds to enable that to happen. A proper office arrangement should be regarded as part of the standard resource allocation that should be made available to every MHA. The cost should come out of the general budget of the House and not out of an overall capped constituency allowance of the Member. This is not to say that every MHA *must* operate an office in his or her constituency. In the case of MHAs representing districts in the St. John's area, for example, it may be deemed unnecessary to maintain an office in addition to the one in the Confederation Building. Nevertheless, every Member should have the option, if he or she deems it in the best interests of his or her work, to open and maintain a district office.

⁵⁰ Appendix 1.6 (Survey Results), Item 35.

Control over the costs involved can be achieved by the stipulation of maximum amounts that may be spent on individual types of expenditure within the general category, as well as by the development of standard specifications for what will be allowed, requirements for tendering or requests for proposals, standardized terms for space and equipment leases and a requirement that all major contracts, like lease agreements, be entered into and signed by the Speaker on behalf of the individual member. In addition, Members should be encouraged to utilize suitable space in Crown-owned buildings in the district where they are available.

With respect to office space in the Confederation Building, if a Member chooses to have his or her constituency assistant work in the district, I do not think it necessary that an additional full-time assistant should be provided in the Confederation Building office. The Member should, however, have access to basic secretarial and administrative assistance from time to time while in St. John's. This can be provided by means of each caucus being allotted an additional number of "pool" assistants who would be available to provide that work periodically as needed.

I was also struck by the disparity in quality of office accommodation in the Confederation Building as between government and opposition caucuses. I recognize that with each election the government may change and, even if it does not, that the numbers in the respective caucuses will likely vary with each new General Assembly. There may always have to be some renovation on an almost continuous basis. Nevertheless, the standard of construction ought to be the same for all parties. All MHAs, *qua* members, no matter what side of the House they may be on at any point in time, should be treated equally in terms of the facilities that should be made available to enable them to do their work as constituency representatives. From the tour I undertook of the existing office spaces, that is certainly not the case now.

The Speaker is ultimately responsible for making space available to Members within the precincts of the House. He or she should ensure that all Members are provided with the same general level of office facilities.

An issue that involved some public discussion during the course of this inquiry was the renting of constituency office space owned by Members or by companies owned or controlled by Members. There is an obvious potential conflict of interest in such arrangement, especially where the MHA concerned is responsible for negotiating the terms of any such lease. I recognize that in some rural districts there may not be much suitable office accommodation available to choose from. The Member's property may be "the only game in town." Nevertheless, the perception of impropriety that is present when an elected member spends public money on himself or someone with whom the member may be associated requires, I would suggest, a different arrangement. The fact that the Member asserts that the rental is at less than market value and that the cost will be higher elsewhere is not a sufficient justification - one can never know for sure unless other options are explored; nor is the fact that he or she discloses the arrangement and receives the blessing of the Speaker or the IEC sufficient. Maintenance of confidence of the electorate in the propriety

of the Member requires a rule that a Member may not rent from or enter into other financial dealings with himself or herself or an associated person.

I therefore recommend:

Recommendation No. 71

- (1) Every Member of the House of Assembly should be entitled to office accommodation in the Confederation Building complex in the area of the offices of the party caucus to which that Member belongs;***
- (2) The Speaker should be required to ensure that the quality and size of office accommodation in the Confederation Building complex for an MHA of one political party is not materially different than that for an MHA of another political party;***
- (3) Every Member should also be entitled to set up and operate an office in his or her constituency, subject to such restrictions, conditions and controls as may be stipulated from time to time in general rules made by the House of Assembly Management Commission. In the alternative, each MHA should be entitled to:***
 - (a) rent short-term accommodation in the district to facilitate meetings with constituents from time to time; or***
 - (b) operate an office from his or her residence provided he or she does not pay rent to himself or herself or a spouse or other associated person;***
- (4) The costs of setting-up, maintaining and operating a constituency office should be paid by the House of Assembly out of the House budget;***
- (5) The House of Assembly Management Commission should provide funds to each party caucus to enable sufficient numbers of secretarial assistants be made available on a shared basis to Members whose constituency assistants work in the district and not out of the Confederation Building office; and***

(6) *No Member should be permitted to rent property for a constituency office that is owned by the Member or a person not at arm's length with or related to or associated with the Member, or in which any of such persons may have an interest; nor should the Member be permitted to enter into other financial dealings relating to the constituency office that involve himself or herself or other associated persons.*

Office Resources and Operations

As in the case of the constituency office itself, each Member should be provided with a standardized package of equipment, including office furniture, computer, data communication devices, printer and telephone and facsimile services, to enable him or her to serve constituents properly. These items should be provided as a matter of course from the House budget as opposed to an individual MHA's allowance.

I do not believe it is justifiable that a rule under the existing regime that assets acquired by a Member from public funds valued at \$500 or more are to be depreciated over three years, and that at the end of that time they become the property of the Member. Property purchased with public money should be and always be regarded as public property so long as it has any useful life. It should be marked as public property and an inventory of its existence and location should be kept. The Member who has been entrusted with the asset should be responsible for it at all times and be made to account for it. There should be standard procedures in place to enable decisions to be made on a principled basis as to when and how assets should be disposed of and replaced.

In the past, issues have arisen respecting the appropriateness of Members purchasing artwork, ostensibly to decorate constituency offices. Under the three-year depreciation rule, this effectively meant that the Member could acquire a personal art collection over time at public expense. This is inappropriate for at least two reasons. First, it is inappropriate that public money should be used to fund personal acquisitions of this nature. Secondly, even if the artwork were to be kept indefinitely for public use, it is an inappropriate way in which to acquire artwork for public purposes as it depends on the whim and personal taste of the individual MHA rather than on any coordinated government acquisitions policy, such as the already existing government art procurement program. While it is not inappropriate for a Member to want to decorate a constituency office in a modest, receptive and tasteful way, the way to achieve that is to allow MHAs to select, on temporary loan, pieces of art that have already been purchased by government through the existing procurement program as a means of supporting the arts community.

I must emphasize the importance of maintaining proper inventory control over all property purchased by or for MHAs for use in constituency business. I was told in the course of this inquiry that large numbers of significant pieces of equipment such as photocopiers

and fax machines - some of which were under lease with monthly payments still being made - could not be readily located. No one seemed to know where this equipment was or who was responsible for it. There was no proper documentation in the records of the House that could clearly answer these questions. This is obviously an unacceptable situation. The Clerk of the House should be required to maintain proper inventory records and specific responsibility should be placed on each Member to account for the assets acquired for and used in his or her constituency office.

Accordingly, I recommend:

Recommendation No. 72

- (1) The House of Assembly Management Commission should, as part of its rules respecting allowances, and subject to such restrictions, conditions and controls as may be stipulated from time to time, make available a standardized package of office equipment and other resources to each Member to enable the member to serve constituents properly;***
- (2) The standardized package should include: basic office furniture; telephone and facsimile services; computer; data communication devices; photocopier; printer; scanner; internet services; and such other items as may be approved by way of general directive of the Commission;***
- (3) All property acquired by or for a Member should remain the property of the House and be identified as such by appropriate markings;***
- (4) The Clerk should be required to maintain and update an inventory report of all House assets entrusted to each Member;***
- (5) It should be stated in the allowance rules that each Member is responsible personally for all items entrusted to him or her and should account annually or on demand to the Speaker for such items;***
- (6) A Member should not be permitted to purchase artwork or crafts with public money, but should be allowed to participate in the government art procurement program for the purpose of selecting items on a temporary loan basis to be used for decorating a constituency office;***

- (7) *Disposal and replacement of House assets entrusted to a Member should be undertaken in accordance with a general policy established by the Commission and embodied in rules of the Commission; and*
- (8) *To the extent possible, arrangements for the acquisition of office equipment, data communication devices and telephone lines by lease or purchase should be made and coordinated by the House rather than undertaken by individual members on an ad hoc basis.*

Travel

The Morgan Commission recognized the importance of ensuring that MHAs had adequate resources to be able to travel between their districts and the Confederation Building “to be able to attend effectively to the needs of their constituents” and “to visit St. John’s frequently to lobby government departments and agencies on behalf of their constituents or to attend to their parliamentary duties.”⁵¹

The Commission implicitly recognized the futility of trying to determine a realistic fixed annual amount that should be used for travel, especially given the differing geographies of individual districts, disparate transportation systems in the province and differing distances from St. John’s. It therefore recommended, instead of focusing on a maximum annual expenditure *amount* for each district, that control be achieved generally by limiting the travel by reference to a standard number and frequency of trips, regardless of what the actual total cost might be. The specific details and rules as to how part of this regime was to work were consigned to the Commission of Internal Economy to develop “guidelines.”

As to travel *within* a Member’s district, the Morgan Commission also recognized its importance in keeping the Member in touch with the needs of the local communities. It decided, however, that the traveling costs should only be paid up to an annual maximum to be determined by the IEC.

The Morgan regime ultimately depended, for its day-to-day operation, on the development of another sub-level of rules by the IEC. As has been seen, the IEC ultimately determined, following the 1996 amendments to the governing legislation, to scrap the “number and frequency of trips” concept and, instead, to wrap the cost of travel into a global allowance for each MHA, thereby putting the cost of travel into direct competition with all the other financial demands on the allowance. I received a number of representations from

⁵¹ *Morgan Report*, p. 21.

MHAs that they were experiencing difficulties with the current system. They complained that their constituency allowance often underestimated the amounts that would be necessary to travel sufficiently to service their districts. As a consequence, they said they were frequently short of money in their constituency allowance, especially near the end of the fiscal year, to enable them to travel to and from their districts. Rather than cutting back on the frequency of their travel and restricting contact with constituents, they would often simply not claim for other legitimate claimable expenses to enable them to keep traveling. The result was that they ended up paying some expenses related to their work out of their own pockets.

A system that requires elected representatives to pay legitimate expenses necessarily incurred in properly working on constituency business out of their own pockets is not adequate. As a general principle, MHAs should have sufficient resources to be able to travel between their districts and St. John's on constituency business, whether the House is in session or not, and also to travel within their districts. This should be so whether the Member lives in his or her district or not.

Some may argue that a Member should always live in the district to remain close to those whom he or she serves. Others may argue that it is important that the Member live close to the capital, especially when the House is in session. As well, if the MHA is also a Minister of the Crown, it will be almost essential to reside near the seat of government. Some Members try to get the best of both worlds by maintaining their original home in the district but also maintaining a secondary residence near the capital. Others chose to move their permanent residence to St. John's and use temporary accommodation when visiting the district. Others have, for a variety of personal and family-related reasons, chosen to live neither in their district nor in the capital region.

There is no "one size fits all" solution to this issue. The situation is unlike many types of occupations where the employee is expected to move to the city where the job is; in such circumstances the employer would not be expected to pick up the cost of daily transportation from another city. In the case of the MHA, however, the job is not located in one place. It can equally be said to be in the district as in St. John's where the House of Assembly is. Even within the district, there is no one locus - the whole of the district's area is the job venue. For that reason, it is not unreasonable to provide for reimbursement of travel costs in a variety of circumstances and even to recognize that it may well be reasonable in some situations that a Member operate out of, and travel to and from, a secondary residence, as well as his or her permanent residence.

Members should have the flexibility to adopt whatever arrangement seems best for their individual circumstances and how they perceive they can best serve their constituents. The travel rules should be flexible enough to accommodate these differing possibilities provided, of course, that controls against abuse are built in.

With respect to travel between the district and St. John's, this can best be achieved, I believe, by reverting to the Morgan Commission concept of determining a reasonable number and frequency of trips for travel between each district and then funding those trips

regardless of the cost. This approach is used by a number of other jurisdictions. It also does not place the cost of travel in competition with other resources that need to be used for other purposes. The details of how this will work are set out in the draft rules attached to this report in Chapter 13. I believe that it is important that the detailed rules be determined at the outset, rather than leaving them to later consideration by the IEC as was done in the past.

It should also be noted that the rules respecting travel between the district and St. John's should only apply where the Member lives in the district and his or her residence is not within commuting distance of the Confederation Building. The Member should not be entitled to reimbursement of the cost of local commuter travel to and from St. John's any more than any other person traveling to and from work would be entitled to payment of such expenses.

I recognize that one of the reasons given for the IEC decision to move to a block funding arrangement in 1996 was the perceived difficulty of estimating, for House budget purposes, what the total annual cost of travel would be. While it may be true that there may be greater difficulties presented with such a requirement than would be presented if all the House budgeters had to do was add up maximum allowances amounts for each district, I do not believe that that is a sufficient justification for adopting the block funding concept with all its other problems. Estimates are made for travel budgets in other parts of government. I am sure they can be done within the House as well.

With respect to travel within a district, on the other hand, I believe the needs of the district and the disparities in transportation infrastructure, especially in rural areas, will continue to require an estimate, based on the peculiarities of each district, of a maximum amount that can be spent. In this regard, I specifically sought input from MHAs in rural areas as to the difficulties associated with servicing their individual districts. Many responded. I have attempted to take that information into account in developing what I believe to be a reasonable estimate of the costs associated with travel within each district. Where a Member did not respond with district-specific information, I have tried nevertheless to make an estimate based on the best information I could obtain. I have set out those figures in Chart 10.1. They should be incorporated in the allowance rules adopted by the new House of Assembly Management Commission. The detailed calculations and the assumptions that led to the recommended numbers in Chart 10.1 are set out in Appendix 10.3. Where a strong case can be made, in respect of individual districts, that an amount is not adequate or is based on wrong assumptions, it would be open to the Commission on application by a Member, to amend the amounts accordingly in accordance with the procedures governing its operation.

Chart 10.1

House Operations		
Estimates of Intra-constituency Costs		
Riding No.	Riding Name	Total
1	Baie Verte	\$12,600
2	Bay of Islands	15,600
3	Bellevue	16,400
4	Bonavista North	12,600
5	Bonavista South	12,600
6	Burgeo & LaPoile	14,100
7	Burin-Placentia West	10,200
8	Cape St. Francis	9,000
9	Carbonear-Harbour Grace	9,600
10	Cartwright-L'Anse au Clair	49,200
11	Conception Bay East & Bell Island	9,600
12	Conception Bay South	9,000
13	Exploits	12,600
14	Ferryland	12,600
15	Fortune Bay - Cape La Hune	59,600
16	Gander	9,600
17	Grand Bank	15,000
18	Grand Falls - Buchans	11,400
19	Harbour Main - Whitebourne	8,600
20	Humber East	7,900
21	Humber Valley	15,000
22	Humber West	10,200
23	Kilbride	9,000
24	Labrador West	9,600
25	Lake Melville	10,000
26	Lewisporte	11,500
27	Mount Pearl	7,500
28	Placentia & St. Mary's	14,400
29	Port au Port	8,500
30	Port de Grave	9,600
31	St. Barbe	12,600
32	St. George's - Stephenville East	9,600
33	St. John's Centre	7,500
34	St. John's East	7,500
35	St. John's North	7,500
36	St. John's South	7,500
37	St. John's West	7,500
38	Signal Hill - Quidi Vidi	7,500
39	Terra Nova	12,800
40	The Straits & White Bay North	12,600
41	Topsail	7,500
42	Torngat Mountains	45,900
43	Trinity - Bay de Verde	10,800
44	Trinity North	10,200
45	Twillingate - Fogo	12,300
46	Virginia Waters	7,500
47	Waterford Valley	7,500
48	Windsor - Springdale	9,000
Total		\$626,400

I recommend:

Recommendation No. 73

- (1) ***Rules respecting allowances adopted by the House of Assembly Management Commission should contain provision for reimbursement of the cost of travel by a Member of the House:***
- (a) ***between the Member's permanent residence and the Confederation Building, provided it is outside reasonable commuting distance;***
 - (b) ***between the Member's constituency and the Confederation Building, provided it is outside reasonable commuting distance;***
 - (c) ***within his or her district;***
 - (d) ***to another district in relation to matters affecting his or her district;***
 - (e) ***to attend conferences and training courses; and***
 - (f) ***to other parts of Canada on matters related to constituency business.***

- (2) *It should be a condition of reimbursement for travel that the Member must be engaged in constituency business and the travel must be outside of commuting distance of the Member's permanent residence;*
- (3) *The limits on travel between district and the capital should not be determined by a maximum allowance, but by rules governing the number and frequency of trips;*
- (4) *Travel within a particular district should be limited by a maximum allowance determined specifically in relation to the special circumstances of each particular district affecting the modes and extent of travel required to provide reasonable contact between the Member and constituents. The specific amounts applicable to each district should be stipulated in rules adopted by the Commission and updated by amendment from time to time.*

Accommodations and Meals

In many respects, allowances for accommodations and meals go hand in glove with travel expenses. Whenever there is constituency travel that keeps a Member away from his or her permanent or secondary residence (if any) overnight, there will be a need to provide reimbursement of the cost of accommodations and related expenses such as meals.

As a means of controlling costs in this area, the Member should be limited to a specified number of accommodation nights per year; as well, maximum rates per night that could be claimed should be stipulated. I am recommending an amount of up to \$125 per night. Receipts should be required.

With respect to meals, there should also be a daily maximum that can be claimed. The amount should be set artificially at an amount lower than what would be reasonably necessary to pay the full costs of daily meals. This is because a Member living at home would have some costs related to meals. By eating out those costs are saved. An amount of \$50 per day is, in my view, reasonable. It is generally in-line with government executive expense allowances and is the same as the meal allowance currently applicable to MHAs.

I am not satisfied that receipts should be required for meal expenditures. The amount of paperwork in processing and checking such claims is considerable. The small amounts, controlled in any event by the total number of overnights that can be spent on travel per year, do not justify the administrative costs associated with their processing. The Member should be entitled to claim meals on the basis of a per diem amount without receipts provided, of course, that he or she can demonstrate that the meals were eaten while on travel status on constituency business.

I recommend:

- Recommendation No. 74***
- (1) The allowance rules adopted by the House of Assembly Management Commission should provide for claims, supported by receipts, for accommodation while on travel status on constituency business on the basis of a maximum accommodation amount per night and a maximum number of nights per year; and***
 - (2) The allowance rules should also provide for claims for maximum per diem amounts for meals, without receipts, while on travel status on constituency business.***

The rules with respect to when claims can be made for travel, accommodations and meals and how they intersect with each other will inevitably have to be very detailed if controls over their use are to be maintained. The specific rules I am recommending in this regard are set out in Part VI of the draft rules in Schedule II in Chapter 13. They will no doubt require some getting used to. As an aid to understanding their operation, I have attempted to set out in Chart 10.2 the nature of the claims that can be made in the varying circumstances that are contemplated, along with references to the sections of the specific recommended rules that apply in those circumstances. In this regard, Chart 10.2 deals with 4 different categories of MHAs (referred to in the chart as MHA #1, #2, #3 and #4) to reflect the varying application of the rules depending on the location and type of residence maintained by each MHA.

Chart 10.2

Summary of Members' Travel and Living Allowance

(References to section numbers are to sections in the draft *Members' Resources and Allowance Rules*, Schedule II, Chapter 13)

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
<p>MHA #1</p> <ul style="list-style-type: none"> • PR within Capital Region • SR, TA or PA in Constituency <p>SECTION 32 & 36</p>	<p>One way trip to Capital Region per week (s. 32(2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • \$0 (s. 32(1)) <p>Meals</p> <ul style="list-style-type: none"> • \$0 (s. 32(1)) 	<p>One way trip to Constituency per week (s. 32(2)(a))</p> <p>Accommodation up to Max of 3 nights per week</p> <ul style="list-style-type: none"> • up to \$125 w/ receipts (s. 32(2)(b)(i)); or • \$25 for private accommodation (s. 32(2)(b)(ii)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 32(2)(c)) 	<p>20 one way trips to Capital Region (s. 36 (2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • \$0 (s. 36(1)) <p>Meals</p> <ul style="list-style-type: none"> • \$0 (s. 36(1)) 	<p>20 one way trips to Constituency (s. 36 (2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • up to \$125/night w/ receipts up to 35 nights per year (s. 36(2)(b)(i)); or • \$25 for private accommodation up to 35 nights (s. 36(2)(b)(ii)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 36(2)(c)) 	<p>Transportation costs within Constituency as determined under (s. 38(2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • up to \$125 w/ receipts; or • \$25 for private accommodation (s. 38(b)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 38(c))

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
MHA #2 <ul style="list-style-type: none"> PR in Constituency SR, TA or PA within Capital Region SECTION 31 & 35	One way trip to Capital Region per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> Up to \$125 w/ receipts (s. 31(1)(b)(i)); or \$25 for Private accommodation (s. 31(1)(b)(ii)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 31(1)(c)) 	One way trip to Constituency per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> \$0 (s. 31(2)) Meals <ul style="list-style-type: none"> \$0 (s. 31(2)) 	20 one way trips to Capital Region (s.35(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 35(b)(i)); or \$25 for private accommodation up to 35 nights (s. 35(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 35(c)) 	20 one way trips to Constituency (s. 35(a)) Accommodation - \$0 (s. 31(2)) Meals - \$0 (s. 31(2))	Transportation costs within Constituency as determined under (s. 38(2)(a)) Accommodation <ul style="list-style-type: none"> up to \$125 w/ receipts; or \$25 for private accommodation (s. 38(b)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 38(c))

PR = Permanent Residence **(section 28(d))**
 SR = Secondary Residence **(section 28(f))**
 TA = Temporary Accommodation **(section 28(g))**
 PA = Private Accommodation **(section 28(e))**
 HOA = House of Assembly

Meal per diems will be prorated for part days **(s. 29(7))**
 Approved modes of travel & requirements outlined at **section 40**
 Accommodation expenses outlined at **section 41**
 Maximum intra constituency travel allowance in respect of an electoral district is set out in **Schedule A**

Chart 10.2 (Continued)

Summary of Members' Travel and Living Allowance

(References to section numbers are to sections in the draft *Members' Resources and Allowance Rules*, Schedule II, Chapter 13)

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
MHA #3 <ul style="list-style-type: none"> • Capital Region/Urban Area • PR in Capital Region • NO SR, TA or PA SECTION 29	Accommodation <ul style="list-style-type: none"> • \$0 Meals <ul style="list-style-type: none"> • \$0 (s. 29(5))	N/A	Accommodation <ul style="list-style-type: none"> • \$0 Meals <ul style="list-style-type: none"> • \$0 (s. 29(6))	N/A	Only mileage

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
MHA #4 <ul style="list-style-type: none"> PR not in Constituency and not within Capital SR, TA or PA within Capital SECTION 33 & 37	One way trip to Capital region per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> Up to \$125 w/ receipts (s. 31(1)(b)(i)); or \$25 for private accommodation (s. 31(1)(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 31(1)(c)) 	One way trip to Constituency from either Capital region or PR per week (s. 33(a)) Accommodations up to max 3 nights per week <ul style="list-style-type: none"> up to \$125 w/ receipts; (s.33(b)(i)); or \$25 for PA (s. 33(b)(ii)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 33(c)) 	20 one way trips from PR to Capital (s.35(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 35(b)(i)); or \$25 for private accommodation up to 25 nights (s. 35(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 35(c)) 	20 one way trips from PR to Constituency (s. 37(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 37(b)(i)); or \$25 for private accommodation up to 35 nights (s. 37(b)(ii)) Meals \$50 w/o receipts (s. 37 (c))	Transportation costs within Constituency as determined under (s. 38(2)(a)) Accommodation <ul style="list-style-type: none"> up to \$125 w/ receipts; or \$25 for private accommodation (s. 38(b)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 38(c))

PR = Permanent Residence **(section 28(d))**
 SR = Secondary Residence **(section 28(f))**
 TA = Temporary Accommodation **(section 28(g))**
 PA = Private Accommodation **(section 28(e))**
 HOA = House of Assembly

Meal per diems will be prorated for part days **(s. 29(7))**
 Approved modes of travel & requirements outlined at **section 40**
 Accommodation expenses outlined at **section 41**
 Maximum intra constituency travel allowance in respect of an electoral district is set out in **Schedule A**

Residual Constituency Allowance

In addition to office accommodation and operation, travel and associated accommodation and meal expenses, there will always be other types of expenses that an MHA will legitimately incur from time to time while working on constituency business. A means should be provided for reimbursement of these expenses as well. This is where the definition of *constituency business* will remain particularly important as the basic guide to determining whether a claimed expense in this residual category should be reimbursed. By including in the rules, as recommended in Recommendation No. 68, lists of types of expenditures that may qualify, as well as those that will not qualify for reimbursement should make decision making as to the appropriateness of reimbursing a particular expenditure easier not only for the Member concerned, but also for the officials having to accept or reject the claim.

One type of expenditure that had achieved some notoriety at the time of the appointment of this inquiry was expenditure on refrigerator magnets containing telephone numbers and other contact information for the local MHA for distribution to constituents. In principle, there should be nothing inappropriate in this practice. It is a useful form of communication by the MHA to citizens as to how to access him or her. It would be otherwise, however, if the information contained on the magnet contained partisan political information, such as the political party to which the Member belonged or solicited support for that party. Use for such purposes would offend the principle, referred to earlier, that allowance funds should be used for non-partisan purposes only. To allow otherwise would be to use public funds to support an incumbent politician to the disadvantage of other potential contenders for the seat. Proper expenditure for items like fridge magnets can therefore be regarded as a legitimate charge against the communications budget for office operations referred to earlier if used to impart access - type information and not partisan messages.

Another area that appeared to be controversial involved expenditure on certificates of recognition from an MHA to constituents or groups, and the provision of promotional items like provincial pins and flags to district sports teams and other groups that travel to other areas and want to be able to give away or trade favours with the persons with whom they compete or otherwise interact. I was told that this was a common practice and that there was considerable pressure placed on MHAs to provide these items. A number of years ago, the government, through the department promoting tourism, made standard items available to MHAs to give to constituents, or the department itself provided them directly. More recently, that practice was cut out as an austerity measure. However, the demand did not cease, and MHAs felt pressure to continue to provide these items out of their individual constituency allowances.

One of the problems with the current arrangement is that there is no consistency of demand across districts and no consistency in the type or cost of the items provided or in the type of activity that will or will not be supported. Some MHAs are prepared to provide very

expensive pins and other promotional items. As well, with respect to certificates of recognition, some will provide elaborate plaques or trophies, while others are more restrained in what is given.

It is not unreasonable that groups or community organizations - and perhaps individuals - who have made an important contribution to the community or have achieved some important milestone or accomplishment should be recognized by the local MHA on behalf of the government in a modest way. It would be inappropriate, however, for lavish recognition to be made that would be costly to the public purse. Similarly, a modest level of support to sports teams and other groups by providing provincial promotional material may be justifiable, but there has to be restraint from a cost perspective with respect to what is provided. Under the current system, there is no control (except the theoretical control of the upper limit of the MHA's global constituency allowance) over what is provided, how much money is spent, and who will be favoured with the recognition or support and who will not.

In my view, expenditures on such items are not appropriate to be claimed under an MHA's individual constituency allowance. Instead, the House of Assembly Management Commission should be responsible for setting modest standards for such matters, developing standardized styles of certificates and pins, purchasing the items in bulk out of the general House budget and providing them in reasonable amounts to MHAs as required for identified purposes. I recognize that the Auditor General, in his report on *Payments Made by the House of Assembly to Certain Suppliers* and in his annual report dated January 31, 2007 expressed serious concern over lack of controls in the House leading to apparent abuse of its purchasing procedures. I am satisfied, however, that if the recommendations respecting internal controls made in Chapter 7 are implemented, proper purchasing procedures will be in place. Henceforward, there should not, therefore, be cause for concern about improper spending on certificates, pins and the like.

Accordingly, I recommend:

Recommendation No. 75

- (1) In accordance with recommendation No. 70(1)(d), a residual category of constituency allowance should be made available to each MHA to defray other expenditures necessarily incurred in relation to constituency business;***
- (2) The allowance rules adopted by the House of Assembly Management Commission should contain a list of expenditures that would normally qualify for reimbursement if spent on constituency business, including:***
 - (a) meals (but not alcohol) for meetings with constituents or other members of the public;***

- (b) *memberships in community organizations;*
 - (c) *magazine, newspaper and journal subscriptions;*
 - (d) *travel, accommodations, meals and registration fees for conferences and training courses for the MHA or his or her constituency assistant, if approved by the Speaker; and*
 - (e) *expenses associated with attending meetings or hearings involving advocacy on behalf of a constituent;*
- (3) *The allowance rules adopted by the Commission should contain a list of expenditures that will not qualify for reimbursement, whether or not they can be said to be related to constituency business, including:*
- (a) *the acquisition, creation or distribution of anything that uses a word, initial or device that identifies a political party;*
 - (b) *artwork and crafts;*
 - (c) *sponsorship of individuals or groups;*
 - (d) *donations;*
 - (e) *raffle or other tickets;*
 - (f) *hospitality other than meetings listed in recommendation (2)(a) above;*
 - (g) *gifts;*
 - (h) *items of a personal nature;*
 - (i) *travel costs for constituents;*
 - (j) *travel costs for spouses or dependents; and*
 - (k) *financial assistance for constituents;*
- (4) *Non-partisan information relating to the availability of an MHA to his or her constituents, in the form of fridge magnets or other means of communication, should be able to be purchased as part of the MHA's budget respecting office operation; and*
- (5) *The Commission should develop standards for creation and distribution of certificates of recognition and provincial promotional material that may be given by MHAs to individuals or groups in the district, and should arrange to have such material purchased in bulk and on hand for reasonable use by each MHA.*

It will be seen from Recommendation No. 75(3)(c),(d),(e),(f),(g),(i) and (k) above that I do not believe it to be appropriate to claim expenditures relating to donations or financial assistance to groups or individuals against an MHA's constituency allowance. This was perhaps the most controversial issue that presented itself concerning the scope of the constituency allowance. Strongly held views were expressed by MHAs both in favour of

and in opposition to the practice of spending public money in this way. Because of the importance it assumed, I have devoted the next section of this report to the issue. I will refer to all of these types of expenditures compendiously as “donations.”

Donations

Substantial amounts of public money have been spent by many MHAs from their constituency allowances by way of *donations* to individual constituents or groups. These expenditures come about in a variety of circumstances. I have noted in Chapter 9 that the job of a politician in this province appears to involve the dispensation of largesse in the community. In the run of a year, an MHA may be expected to provide hospitality, including rounds of drinks, at community events; to contribute with cash donations to sponsorship of individuals or groups, especially cultural or sports groups, who are competing away; to provide financial assistance to constituents who need food, clothing or supplies or who need help traveling to a major centre for medical treatment; to buy raffle tickets at community events; and to buy items for sale at community events as a means of supporting those activities.

Oftentimes, especially with cash donations to community groups, the donations are made at the end of the fiscal year by MHAs who had money left in their constituency allowance account and felt that this was an appropriate way to spend the remaining funds.

A substantial number of MHAs argued that the nature of political life in Newfoundland and Labrador is such that it is necessary that such expenditures be condoned.⁵² In fact, some said that their lives as elected members would be intolerable if those expenditures were not permitted. They talked in terms of the tremendous pressure placed on politicians to make donations and give financial support within the community. They said it was expected of the politician and that if he or she did not “play the game” there would be consequences at the polls. They also argued that such expenditures, judiciously

⁵² In the survey administered to MHAs by inquiry staff, the following percentages of respondents indicated that they considered the following types of expenditures to be “appropriate”:

Most charitable donations	75%
Grants to local sports teams	72%
Grants for team uniforms	72%
School scholarships	83%
School fundraisers	78%
Subsidization of youth trips	81%
Financial aid for medical transportation of constituents	61%
Advertisements in a program for cultural, sports or other groups	72%
Gifts to commemorate a 100 th birthday or 50 th wedding anniversary	75%
Emergency financial aid for constituents in need	53%
Provincial flags and lapel pins	83%

See Appendix 1.6 (Survey Results) under the heading “Appropriate and Inappropriate Uses of MHA Compensation.”

applied, made an important contribution to the community. How could an MHA, it was said, turn down a request for food or medicine for an impoverished constituent? They pointed out that government social programs were often inadequate and citizens sometimes “fell through the cracks.” The MHA was in the best position to know who the deserving ones were and to take steps to fill the void. The point was also made by some opposition Members that the ability of an opposition MHA to provide “social service” types of donations was especially important because there was a perception that government Members, especially if they were also Ministers, had an easier time accessing government programs for their constituents. The ability of opposition Members to make discretionary donations was one way in which this perceived imbalance could be righted.

Notwithstanding these arguments, I believe these practices belong to another age. It is an age we should leave. They are reminiscent of Governor Williams’ description of the politician at the beginning of the twentieth century quoted by S.J.R. Noel in Chapter 9 as:

one who has to look after [constituents’] 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 ... employment on the railways, free passes from place to place, billets for their sons and daughters ... In short there is nothing too ridiculous for electors to expect of the member.⁵³

In Chapter 9 I sketched out the concept of the professional politician as the basis of the role of the MHA for the future. The notion of the politician as a professional is inconsistent with these customs. Accordingly, these types of expenditures should not be made from public funds. Let me explain why.

First and foremost, the practice of making financial contributions and spending in this way supports the unacceptable notion that the politician’s success is tied to buying support with favours. Such things, especially the buying of drinks, tickets and other items at events, has overtones of the old practice of *treating* - providing food, drink or entertainment for the purpose of influencing a decision to vote or not to vote. As I wrote in Chapter 9, it demeans the role of the elected representative and reinforces the view that the standards of the politician are not grounded in principle. In fact, I would go further. The old practice of treating was usually undertaken using the politician’s own funds or his or her campaign funds. To the extent that the current practice involves the use of public funds, it is doubly objectionable.

Related to the notion of using public funds to ingratiate oneself with voters is the unfair advantage that the ability to do that gives to the incumbent politician over other contenders in the next election.

⁵³ Quoted in Chapter 9 (Compensation) under the heading “The Job of a Member of the House”.

Even if it were deemed acceptable to make certain kinds of donations, such as those to “worthy causes” like cultural groups or sports teams, the practice by its nature is open to inequitable application and leaves the politician susceptible to allegations of discrimination. A grant to the local soccer team and not to the baseball team may be perceived as nepotism if the politician’s uncle happens to be the coach of the soccer team. Often it is the “squeaky wheel” that gets the attention, yet there may be many other worthy causes that could equally benefit from support, but may not be known to the politician. In these circumstances, it is difficult to treat all claimants fairly. In principle, a system of financial support to the community using public funds should only be operated on a basis that is fair to all, and perceived to be fair to all. All groups should have the opportunity to compete on a level playing field, something that is not followed when political discretion is concerned.

I recognize that there is a natural tendency to want to help those facing the misfortune of financial or personal hardship. It is no doubt hard for a public figure like a local politician to face an indigent constituent and not provide medical travel assistance or basic necessities of life when the constituent is facing an emergency. Nevertheless, making financial contributions, even in such circumstances, is subject to the same objection, discussed earlier, of inconsistent and inequitable treatment. As well, there should be government assistance programs in place for dealing with such matters. The role of the MHA in such circumstances should surely be to advocate on the constituent’s behalf with the appropriate government agencies for proper assistance or, if there is no such program, to lobby for its implementation in deserving cases. There is, of course, nothing to prevent an MHA, just as in the case of any citizen, from acting out of humanitarian concern and making a contribution out of personal funds. The use of public funds, however, is inappropriate.

A number of the foregoing points were made by a former long-serving Member from a rural constituency in a written submission to me. They are worth quoting:

Any representation I made on behalf of my constituents for the purpose of furthering their efforts with regard to community projects was centered on the availability of existing Government programs. I was seldom, if ever solicited for significant donations to worthy projects in the District ...

Indeed during the Government [of the 1970s and early 1980s], the idea of a Constituency Allowance was never mooted. I would like to think that I would have resisted it, on principle. However, when principle and money collide, the latter is often the victor.

I am sure that significant numbers of citizens feel hoodwinked and cheated by the fact that MHA’s availed of the Constituency Allowance to ostensibly make personal donations to worthy causes. It also raises confusion in some areas where a Government Member or an Opposition Member is making a donation to a cause which does not fit into the Government’s ordinary funding objectives. In other words there is inconsistency throughout the Province. I believe this tends to heighten cynicism among the electorate. It is hard being a politician anywhere, but when the citizenry is provided with

“proof” of inconsistency and apparent favoritism, it tends to bring the whole system into disrepute.

As noted in the foregoing quotation, the making of donations, even to recognized charitable entities, is an important matter of public policy because it amounts to being charitable with other people’s (the electorate’s) money. Public policy is also engaged because the priorities and agenda of the group donated to may differ from those of government. Furthermore, when the donation is made to a registered charity one cannot be sure that the Member is not using the receipt from the charity for income tax purposes.

It has also been suggested that the practice of making donations in the various circumstances just described is, in effect, a “slippery slope.” As the practice becomes better known, there is a tendency for the extent of the demands to become more and more incessant, putting greater pressure on the MHA and on the public treasury to fund these “off balance sheet” social service programs. A number of MHAs stressed this point to me. One experienced current Member inferentially confirmed this when he observed that decades ago, when he was first elected, he experienced very little demand for him to make donations, but he has felt increasing pressure to do so as the years have gone by. In fact, it is not uncommon for supplicants to stress to a Member that the former Member or the Member in the neighbouring district has always been “fully supportive,” the clear implication being that the expectation is that the Member should be also.

The basic trend in the United Kingdom and in Canada is not to permit donations out of Members’ allowances. The situation in the Canadian provinces and territories is summarized in Appendix 10.4. This trend represents best practice. It should be adopted here.

In recommending a prohibition on the making of donations, I recognize that, initially, until the new policy becomes well-known, MHAs may experience uncomprehending negative reaction from constituents on being told that their expectations of direct support can no longer be fulfilled. It is important that these community expectations be dispelled. The Speaker therefore should be tasked with making appropriate public notifications advising the residents of the province that Members are henceforth prohibited from engaging in these practices.

As in the case of any citizen, Members should be able to make a donation privately from personal funds to whomever they consider needs it. One has to be careful, however, to ensure that more wealthy Members should not be able to obtain an advantage in promoting their own political position by making substantial personal donations, thereby placing financial pressure on less well off Members to do the same. In my view, the effects of this potential inequity can be reduced by requiring that when a Member makes a personal donation he or she should do so without reference to the fact that he or she is a Member of the House; in other words, it is to be made in a personal capacity only. It is true that many people might nevertheless recognize the name and make the connection with the Member’s public position. There is little that can be done about that if the connection is made from general knowledge in the community. However, the Member should not actively promote

dissemination of information about the connection when making the donation.

I am therefore prepared to recommend:

Recommendation No. 76

- (1) Members of the House of Assembly should be prohibited from making donations and other gratuitous payments to or on behalf of individuals, charities, community groups or agencies using their constituency allowance or other public money;***
- (2) A Member should be prohibited from making donations or gratuitous payments out of his or her own funds unless:***
 - (a) the donation is expressed to be made in his or her personal capacity without any reference to the fact that he or she is a member of the House;***
 - (b) if there is to be a public acknowledgement of the donation or payment attributing it to the Member, the Member stipulates that there is to be no reference in the acknowledgement that he or she is an MHA or a member of a political party;***
- (3) Upon adoption of a rule dealing with prohibitions on donations and other gratuitous payments, the Speaker should forthwith cause notification to be published to the residents of the province informing them of the restrictions placed on Members in this regard.***

Costs and Budgeting

I have already noted that the House staff might experience greater difficulty in budgeting for the allowances that have been recommended than under the existing regime. Nevertheless, I do not believe that the problems are insuperable. Members should be required to assist in the process, especially in relation to estimating travel costs associated with the particular district that each Member represents. Annually, as part of the budget process, each Member should be required to prepare an estimate of what he or she believes is an amount necessary to allow for adequate travel in relation to that Member's district. That information can then be used in developing the House's overall budget.

Accordingly, I recommend:

Recommendation No. 77

- (1) Each member of the House of Assembly should be required to submit to the Clerk an estimate of the amount of money he or she reasonably estimates will be required by him or her for travel in the following fiscal year reflecting the principles and parameters set out in the rules; and***
- (2) The figure so submitted should be taken into account by the House staff and the House of Assembly Management Commission in developing the House's budget for the following year.***

In making the recommendations in this chapter, I was concerned about the additional costs that would be associated with the new regime. I felt intuitively that the new allowance arrangements would be more costly than the old. The question was: how much and could it be afforded?

I therefore asked the commission staff to attempt to cost out the new regime using reasonable assumptions. The results of that costing, together with the assumptions on which the costing is based, are set out in Appendix 10.5. While the result is only a rough estimate, it is, I believe, a useful indication of the order of magnitude as to what will be entailed financially in substituting the recommended regime for the existing one. On this analysis, it is estimated that the new allowance arrangement could cost approximately \$577,000 more than the legitimate charges under the existing regime should the maximum allowed expenses be incurred and claimed in each case and if the general living arrangements for existing MHAs do not materially change after the next election. This assumes that each MHA will opt to operate an office in his or her constituency as well as in the Confederation Building. As noted periodically, it is likely that some MHAs, especially St. John's MHAs, will not opt for the second office. The additional costs will therefore be correspondingly less.

Although the recommended allowance regime will be more costly, I believe that, if the other recommendations in this report respecting responsibility, structure, controls and audits are implemented, there will be a better chance that value for money will be obtained than under the present system. The extra cost is worth it. I fully agree with the comment in the Morgan Commission quoted in the epigraph at the beginning of Chapter 9: "if we want good and efficient 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."



Chapter 11

Pensions

*“The structure of pensions in Canada is supported by three pillars, namely:
1. government programs, 2. employer programs, and 3. individual savings.
Only when all three pillars are present in the correct proportions
will the structure hold up. There is no doubt that for most Canadians
all three components are required if adequate retirement incomes
are going to be available to all.*

— Mercer Human Resources Limited¹

The Scope of the Pension Review

Although an examination of Members’ pension arrangements is required by the terms of reference,² very little was said about pensions during the Commission’s extensive consultations with MHAs or in the submissions received from the public. Neither the specifics of the MHA pension plan, nor the pension plan structure itself were highlighted as contentious issues. Nevertheless, my mandate required that I undertake at least a general review of the pension arrangements with a view to assessing their appropriateness.

Notwithstanding the absence of comment on the specifics of the pension arrangements, the importance of having a good pension for MHAs was emphasized on a number of occasions. Stress was placed on the special position of elected officials and, in particular, the lack of long-term job security flowing from the uncertainty of re-election. Concerns were expressed relating to the MHA’s prospects for re-employment following defeat at the polls or upon a decision not to offer oneself for re-election. Although there are exceptions, the “shelf life” of an elected politician is relatively short; in most cases, it is certainly not a lifetime career. Absence from the job market for a period of time, changing professional standards requiring upgrading and the perception, sometimes held, that a “has

¹ Mercer Human Resources Limited, *The Mercer Pension Manual*, vol.1, (Toronto: Carswell, 1994), p. 1-11 (M.P.M.) (2006-Rel. 6).

² See Appendix 1.2, item 1 (ii).

been” politician has, during his or her political career, acquired few specialized skills to offer in private business all militate against an easy transition back into private employment after serving as an MHA. Accordingly, in examining pensions, I was asked to bear in mind the characteristic uncertainty of long-term employment and the associated earnings vulnerability of elected officials.

Having said that, the analysis performed by the Commission’s research staff has satisfied me that the current MHA Plan by various measures is considered generous and quite costly. In addition, the Commission’s research indicates that the relative position of the MHA Plan in this province, when compared to the arrangements for elected officials in a number of other Canadian provinces, appears to have changed over the years. Accordingly, before examining the current plan structure, it is useful to review the evolution of the present MHA pension arrangements.

Historical Perspective

Pension arrangements for MHAs in Newfoundland and Labrador were first introduced in 1962 under the *Members of the House of Assembly Contributory Pension Plan Act*.³ Under that plan, individual members and government each contributed an amount equal to 7% of the members’ sessional indemnity into a fund established as part of the Consolidated Revenue Fund. While a separate trust fund was said to have been established, it remained part of the overall Consolidated Revenue Fund - “no assets were accumulated and obligations were paid from the Consolidated Revenue Fund as they became due.”⁴

This initial pension arrangement was subsequently replaced, effective January 1, 1976, by the *Members of the House of Assembly Pension Plan* (MHA Plan) under the *Members of the House of Assembly (Retiring Allowances) Act*.⁵ The MHA Plan is characterized as a “Defined Benefit Pension Plan”:

A defined benefit plan defines the benefits to be paid to each member, by a formula related to the member’s length of service and earnings.⁶

At the time it was introduced, the revised MHA Plan was assessed as being in line with “the format established for other MHA plans throughout Canada.”⁷ Some of the more significant elements of the MHA Plan (prior to the more recent amendments in 1998) provided for:

³ S.N.L. 1962, c. 71.

⁴ Submission of the Department of Finance, to the Commission of Enquiry on Pensions, Concerning the Members of the House of Assembly Pension Plan, (November 1989), p. 3.

⁵ S.N.L. 1975-76, c. 15.

⁶ Mercer Human Resource Consulting, *The Mercer Pension Manual*, Vol. 1, (Toronto: Carswell, 1989). See Chapter 4.6 (a).

⁷ Submission of the Department of Finance to the Commission of Enquiry on Pensions, Concerning the Members of the House of Assembly Pension Plan, (November 1989), p. 3.

- an annual benefit accrual rate: 5% for 10 yrs., 4% for 5 yrs., and 2.5% for 2 yrs.
- maximum pension entitlement : 75% of salary at 17 years service
- pension eligibility: age plus service = 60 (55 for Premier)
- pension based on an average of the highest three year salary
- MHA contribution rate of 7%.

While there have been subsequent amendments to the Plan over the years, the benefit structure set forth in that legislation some 30 years ago essentially forms the basis for the current MHA pension plan. The Plan provided the most costly benefit arrangements of all other public service plans in the province, namely the Public Service Pension Plan (PSPP), the Teachers' Pension Plan (TPP) and the Uniformed Service Pension Plan (USPP).⁸ Contribution rates did not cover the full cost of the MHA benefit structure (but nor did the contributions in two of the other public sector pension plans at the time). Government chose not to fund the accumulating actuarial liabilities associated with the MHA pension benefits as they were earned:

[A]s was the case with other Government plans, the Province continued to deduct contributions from MHAs which were paid into the Consolidated Revenue Fund, and pay benefits as they became due. The trust fund established in the previous plan was discontinued and collapsed into the Consolidated Revenue Fund.⁹

Government eventually initiated pension funding for its various pension plans in 1980, but only on a go forward basis. However, by 1989, inaction with respect to past service liabilities and inadequate funding of future liabilities had resulted in an unfunded pension liability of some \$2.4 billion in the aggregate in respect of all of government's pension plans.

Commission of Enquiry on Pensions

At the national level at this time, a broad-based movement focused on the need for pension reform generally was developing. In addition, a number of federal tax reform initiatives related to pension plans and retirement arrangements were initiated.

⁸ The separate pension plan for Provincial Court Judges (JPP) was not introduced until 2004, and was retroactive to 2002.

⁹ Submission of the Department of Finance to the Commission of Enquiry on Pensions, Concerning the Members of the House of Assembly Pension Plan, (November 1989), p. 3.

It was in this context, as well as the ongoing fiscal challenges confronting the province, that the government of Newfoundland and Labrador appointed a Commission of Enquiry on Pensions on August 31, 1989.

The Commission, chaired by George M. Cummins, M.B.A. L.L.B.,¹⁰ had a broad scope with a detailed terms of reference that encompassed virtually all aspects of government's four pension plans at the time, including: benefits, contribution rates, past service unfunded liabilities, un-worked (purchased) service, indexation of pension payments, and investment programs.

In its report, the Commission summarized its terms of reference in the form of three questions. Perhaps the one that best characterized the broad scope of that commission was its first question:

Should taxpayers of the province continue pension plans in their current form for Public Service Employees, Teachers, Members of the Uniformed Service and Members of the House of Assembly taking account of contemporary concepts of pension adequacy, of similar plans across Canada, of the National Pension Reform Consensus, and the Tax Reform initiative with respect to Retirement Savings Plans?¹¹

The Commission made a range of recommendations in respect of all four pension plans. While not all were accepted, some of recommendations, when combined with the national trend toward pension reform and the changes to the *Income Tax Act*, formed the basis for fundamental changes in pension plan structure for the three public sector pension plans in the early 1990s. The changes made to the three public sector plans varied, but encompassed such matters as: increased contribution rates, funding current service costs as they were incurred, scaled down benefits in some areas, and a targeted approach to pension funding. It is not necessary to review the detail of the individual changes in these other plans except to note that the MHA Plan was not amended at the same time to provide for corresponding changes.

In its brief to the Cummins Commission in November 1989, the Department of Finance placed particular emphasis on its interprovincial comparative analysis of pension plans. At the time, that comparison indicated that the MHA Plan in this province was very much in-line with provincial plans for elected officials in other provinces. The department also went to some length to explain how the particular circumstances of the elected official differed from others employed in the public service, a point very similar to some of the concerns expressed to this Commission by certain MHAs:

¹⁰ There were two other commissioners: David W. Earle, C.A. and Michael F. Power, C.A.

¹¹ *Report of the Commission of Enquiry on Pensions*, Volume 1, (March 1990), p. 29.

From reviewing the benefits under this plan in comparison to other plans sponsored by the Province and those in other provinces, it can be concluded that all provincial plans for elected officials and Members of Parliament cannot be considered pension plans in the traditional sense.

The Plan does not have a retirement plan which has as its sole purpose the provision of suitable retirement income. The very nature of our democratic system forces certain Members to retire at a relatively young age but on pensions which, more often than not, force them to seek alternate employment. For them the plan is, in effect, a specific salary continuance program which helps to compensate former Members who are forced to begin second careers at a time in their life when their counterparts are fully established. Since this is the accepted means of pension compensation for MHAs throughout Canada, it is difficult to see this province moving to more traditional but less costly arrangements.¹²

The Cummins Commission appears to have struggled with the contrast between the MHA pension plan structure and the other provincial public sector plans. In fact, the Commission was split in its recommendations in respect of the MHA Plan. Two members of the Commission had indicated that the teachers' pension plan and the uniformed services plan were overly generous and recommended changes to bring them in-line with the public service pension plan. Furthermore, they took the position that "a member of the House of Assembly should be treated exactly the same as public service employees, teachers and members of the uniformed services."¹³ On the other hand, the Chair of the Commission took the position that the circumstances confronting Members of the House of Assembly were substantially different than public sector employees and as such required special consideration:

Members of the House of Assembly are unique when compared to public servants, teachers and uniformed services. Members of the House of Assembly must expend considerable amounts of time, effort and money before they are elected.

Even after they are elected, they do not qualify for a retiring allowance until they are elected for a second term. It could occur that an MHA who is performing adequately, or perhaps even above average, is not re-elected due to a change in the mood of the electorate or the "time to change" syndrome. On the other hand, it is unlikely that a public servant, teacher or a member of the uniformed services would be dismissed in such circumstances.

¹² Submission of the Department of Finance to the Commission of Enquiry on Pensions, Concerning the Members of the House of Assembly Pension Plan, (November 1989), p. 42.

¹³ *Report of the Commission of Enquiry on Pensions*, Volume 1, p. 17.

It has also been alleged that, once a person becomes an MHA, their life is not their own. Commitments must be made and honoured outside what most of us would consider their normal working day. There is no such thing as an 8-hour day or 40-hour week for an MHA, particularly if the MHA is dedicated and committed.¹⁴

Though stressing that the MHA Plan was unique in the provincial public sector, the Chair concluded that the type of plan was generally in-line with the benefit trends for this type of position in Canada at that time. He also drew a distinction between the use of the terms “pensions” and “retiring allowances”. He emphasized that, from his perspective, the “difference in terminology evidences a fundamental difference” between the arrangements for MHAs and the pension plans for the members of the various groups in the public service:

Because the Retiring Allowance for Members of the House of Assembly is not a true pension plan, it should be properly considered elsewhere. In my view, it was, and is part of the terms of reference and within the purview of the Commission on the Remuneration to Members of the House of Assembly (The Morgan Commission). According to their own report, their report “ought to deal with ... all allowances ... received by Members of the House of Assembly.” Accordingly, I recommend that the question of Retiring Allowances for Members of the House of Assembly be referred once again to the Commission on Remuneration to Members of the House of Assembly.¹⁵

It appears that neither the majority recommendation (to harmonize the plan with the public service) nor the Chair’s minority recommendation (to refer the MHA pension plan back to the Morgan Commission) was adopted by government. In fact, there were no changes to the MHA Plan for several years.

The minority recommendation of the Cummins Commission raises an important general question for consideration in relation to the evolution of pension policy for MHAs in this province over the years.

Approach to MHA Pension Policy

While few would argue with the notion that pension benefits are a very important component of the MHA compensation package, pensions were not dealt with as part of the mandate of the Morgan Commission, which addressed the other substantive components of MHA remuneration. (Of course, pensions have not been addressed by a commission since, because no commission has been appointed over the intervening years.) Of equal significance is the fact that the Commission of Internal Economy has not generally addressed

¹⁴ Ibid., p. 14.

¹⁵ Ibid., pp. 15-6.

policy considerations relating to amendments to the pensions/retiring allowances of MHAs. Unlike all other aspects of MHA compensation, it appears the responsibility for pension policy and administration has remained entirely with the executive branch of government.

When substantive changes to the MHA Plan have been made, the changes generally originated in the executive branch. In particular, the changes have mostly originated in the Department of Finance which, it should be noted, oversees pension policy and administration on behalf of the entire executive branch. Over the years, recommendations to alter MHA retiring allowances have been presented to Cabinet over the signature of the Minister of Finance. Direction to draft amending legislation was provided by Cabinet Directive to the Office of the Legislative Counsel. There is no indication in the minutes of the IEC that proposed legislative amendments in this regard were even vetted by the IEC before presentation to the House of Assembly.

Pension Plan Changes in the Early 1990s

Government assessed the Report of the Cummins Commission, which was submitted in March of 1990, in the context of national pension trends and the changes in the *Income Tax Act*. In many respects, the thrust of the changes at the national level were designed to bring about a greater degree of long-term financial stability to public sector pension plans and to provide a level of uniformity in the application of tax policy to registered pension plans in terms of both exemptions and taxable benefits.

Through the course of 1991 and 1992, a series of steps were taken to modify the Public Service Pension Plan, the Teachers' Pension Plan and the Uniformed Services Pension Plan. These steps included:

- Contribution rates were increased for all employee plans to “meet the costs of benefits as they are earned”;
- Some of the most “generous” provisions of the USPP were eliminated (i.e., pension based on final salary was replaced by a three-year average, and higher accruals in years 21-25 (4%), and year 30 (7%) were eliminated);
- Pension funding targets were established and initiatives were undertaken to provide special payments annually to begin to address the large, and growing, unfunded liability in respect of prior service for the teachers' plan and the public service plan;
- Service accrual rates under the TPP were reduced to 2% from 2.22%; and
- The ability to purchase “un-worked service” and teacher training years was eliminated.

Highlighting these significant changes in the other provincial plans serves to bring into stark perspective the fact that no similar modifications to the MHA Plan were made in the same time frame.

Through discussions with officials of the Department of Finance, the staff of this Commission learned that recommendations for changes to the MHA Plan were brought forward by the Minister of Finance in November of 1992, but they were deferred by Cabinet at that time. While it appears that the matter continued to receive ongoing study and analysis within the Department of Finance over the course of following years, there was no definitive action taken for several years.

Concerns Over Status of MHA Plan - Mid 1990s

In 1995, a further set of recommendations was drafted by finance officials who proposed the discontinuance of the MHA Plan at the end of the 42nd General Assembly.¹⁶ Under this concept, existing MHAs would have been entitled to their accrued pension earned to dissolution and, on a go forward basis, would participate in a group registered retirement savings program (RRSP).

In presenting a case for a significantly modified structure for the MHA Plan in 1995, the Department of Finance indicated that all plans in the provincial public sector, except the MHA Plan, were by then financing the current service cost and, in fact, making a net contribution to reducing the unfunded liability. The MHA pension plan, on the other hand, was estimated to have a current service cost equivalent to 42.6% of salary. The contributions of MHAs and government at 7% each (14% in total), left a relatively huge funding deficit of 28.6% in relation to current service costs alone.

The analysis of the Department of Finance at that time also suggested that: i) in comparison with other public sector plans, the MHA benefits were “too generous and difficult to justify in the economies of the 1990’s”; ii) given the measures taken to reduce benefits and increase contributions for teachers and other public service employees to address unfunded liabilities, similar actions should be taken with respect to “the most generous of all four plans”; iii) under new income tax rules the MHA Plan would be ineligible for registration unless the benefits were substantially reduced; and iv) “the increasing media focus questions the integrity of those Governments which fail to address the excessive features of those pension plans of elected officials.”¹⁷

¹⁶ Letter from the Assistant Deputy Minister, Debt Management and Pensions, to the Minister of Finance and President of Treasury Board (February 17, 1995).

¹⁷ Draft Cabinet paper appended to the letter from the Assistant Deputy Minister, Debt Management and Pensions, to the Minister of Finance and President of Treasury Board (February 17, 1995).

It appears the draft Cabinet paper and the associated recommendations did not find favour and was never submitted to Cabinet.

Changing Trends in Other Provinces - Mid 1990s

While in 1989 the Department of Finance had acknowledged that the MHA Plan in this province was generally in line with the other Canadian jurisdictions, by 1995 that assessment had begun to change:

During the review by the Commission of Enquiry on Pensions most MHA plans in Canada were relatively comparable. In several provinces the financing of these plans have now been addressed and many of the more generous provisions have now been removed. In fact, in some instances the plans have been discontinued altogether.¹⁸

This was a very significant change, and one that appears to have become more pronounced in the succeeding years. A key element, interprovincial comparability, which had helped rationalize the existing plan structure in the past, had been diminished. It was not until the provincial budget in the spring of 1998, six to seven years after the changes to the public service plan and the teachers' plan, that government signified its intention to amend the MHA pension plan.

Changes in the MHA Plan - 1998

Pursuant to a commitment in the 1998 provincial budget, the House of Assembly amended the *Members of the House of Assembly (Retiring Allowances) Act* in June of 1998. The principal amendments provided for:

- An increase in the MHA contribution rate from 7% to 8% effective April 1, 1998, and to 9% effective April 1, 1999, to be matched by government;
- Modification to the service accrual formula for new members elected for the first time after the 43rd General Assembly - this effectively increased the service requirement for the attainment of full pension from 17 to 20 years; and
- The integration of Canada Pension Plan (CPP) benefits with those provided by the MHA Plan.¹⁹

¹⁸ Ibid.

¹⁹ This was a benefit reduction from the previous arrangement whereby benefits of the two plans were effectively added together or "stacked." The benefits of the Teachers Plan were also integrated with CPP in 1998. Government at the time had taken a firm position that the TPP should be integrated with the CPP in order

Changes in the MHA Plan - 2005

The MHA Plan was further amended in 2005, primarily in response to the requirements for registration under the *Income Tax Act (ITA)*. The benefit structure of the MHA Plan in the aggregate exceeds the maximum permitted to enable the plan to be considered a “registered” plan, and thereby have contributions considered tax-deductible under the *ITA*. Accordingly, as has been done in other cases with benefit plans that exceed the *ITA* maximum, the plan was split into two parts:

- i. A “registered pension plan” component (RPP), which provides for benefits up to the maximum permitted under the *ITA*; and
- ii. A “supplementary employee retirement plan” (SERP), which provides for the balance of the benefits as stipulated in the MHA Plan, which are in excess of the amounts permitted under an RPP. These are sometimes referred to as “offside” arrangements.

These changes were made solely to preserve the tax status of the plan and did not alter the benefit structure or the contribution rates which, arguably, should have been made years before.

The MHA Plan was also amended in 2005 to rationalize the level of credit awarded in respect of “other service” - for future Members only. Previously, the benefit attached to other service was based on both MHA and ministerial remuneration. With this amendment, it was to be based on the MHA remuneration only. The MHA Plan was also amended to eliminate “rounding” of service to the nearest full year. Service is now to be based on years and months of service for future Members.

These changes to the MHA Plan in Newfoundland and Labrador, while important, did not approach the level of significance of the changes which were occurring in many other Canadian jurisdictions.

Current MHA Pension Plan Overview

The MHA pension plan as it exists today still reflects the basic structure implemented in 1976. Even with the revised benefits, resulting from subsequent amendments noted above, the MHA Plan would, by most measures, be considered generous and, from a financial perspective, be regarded as quite costly.

to reduce the huge unfunded liability and it appears the integration of the MHA plan at the same time was part of a strategy to help gain acceptance of integration by the teachers. The benefits under the public service pension plan had always been integrated with the CPP.

The 1998 amendments scaled back the pension benefit accrual rate for new MHAs, but “grandfathered” the arrangements for sitting MHAs and previous Members who had been elected prior to the 44th General Assembly. Accordingly, there are effectively two pension accrual formulae for MHAs depending on when they were first elected.

MHAs elected for the first time since the end of the 43rd General Assembly accrue pension benefits according to a formula that builds to a maximum entitlement of 75% of the best three years’ average salary with 20 years of service. The formula reflects a higher accrual rate (5% per year of service) for the first 10 years as an MHA, and then a lower accrual rate (2.5% per year of service) for service beyond 10 years.

For Members elected for the first time prior to the 44th General Assembly, the MHA Plan remains more generous. It provides an accrual rate of 4% per year for years of service from year 11 to year 15, and thereby provides for a maximum pension entitlement upon the attainment of 17 years of service. Accordingly the two formulae are summarized in Chart 11.1 as follows:

Chart 11.1

MHA Pension Plan
Pension Formula - Benefit Accrual Rates and Entitlements

<i>Pension Accrual Rates</i>	<i>Formula</i>	<i>Benefit (as % of salary)</i>
<u>Members first elected after February 1999 (44th General Assembly and since)</u>		
5.0%	for first 10 years x best 3 years' average salary	= 50.0%
2.5%	for next <u>10 years</u> x best 3 years' average salary	= 25.0%
	<u>20 years</u>	<u>Maximum = 75.0%</u>
<u>Members first elected prior to February 1999 (prior to 44th General Assembly)</u>		
5.0%	for first 10 years x best 3 years' average salary	= 50.0%
4.0%	for next 5 years x best 3 years' average salary	= 20.0%
2.5%	for next <u>2 years</u> x best 3 years' average salary	= 5.0%
	<u>17 years</u>	<u>Maximum = 75.0%</u>

Source: Data extracted from the *Members of the House of Assembly Retiring Allowances Act* S.N.L. 2005, c. M-6.1.

The base “salary” used to calculate the basic MHA pension benefit entitlement is the sessional indemnity plus the non-taxable allowance and, where applicable, will also include other remuneration such as allowances paid to the Deputy Speaker, chairs of committees and other parliamentary officer remuneration. The same pension entitlement formulae are also applied to the additional salaries paid to various MHAs in respect of their roles of Ministers, and to the Speaker and the Leader of the Opposition for the years served in those respective roles.

The MHA annual salary base for pension purposes for a Member who does not hold any other office is \$72,390²⁰ (sessional indemnity \$48,260 + non-taxable allowance \$24,130). In the case of a Cabinet Minister, the additional ministerial salary is \$50,968. This yields a combined salary base of \$123,358, for pension purposes for an MHA who is also a Minister:

Chart 11.2

Maximum Pension Entitlement
MHAs and Ministers

<i>Plan Member</i>	<i>Salary Base*</i>	<i>Service Years**</i>	<i>Maximum Accrual</i>	<i>Maximum Pension</i>
MHA	\$ 72,390	17 or 20***	% 75	\$ 54,293
MHA/Minister	123,358	17 or 20***	75	92,519

* *assume the three year average equals the salary indicated for the 2006-07 fiscal year.*

** *assuming the MHA has no other credited service*

*** *17 or 20 years to accrue maximum entitlement, depending on when first elected.*

Source: Application of formulas under the *Members of the House of Assembly (Retiring Allowances) Act*, S.N.L. 1975-76, c.15 to current remuneration levels as provided by Pensions Division, Department of Finance.

It is recognized that the electoral process and cabinet minister turnover add a significant degree of uncertainty to the continuity of service for elected officials. In particular, it is rare for an MHA to acquire 15 to 20 years as a Minister.

(i) Other Service

In addition to credit for service in the House of Assembly, an MHA who has “other service” with an affiliated organization may elect to transfer that service for credit towards pension entitlement under the MHA Plan, based on an accrual rate of 2% per year of other service.

The calculation of benefits transferred in this regard is based upon the application of the additional percentage accrued in relation to the other service, to the MHA salary base (\$72,390), or the combined MHA/ministerial salary base (\$123,358) as the case may be. This application of other service accrual to the combined salary base was modified in the 2005 amendment to apply to MHA remuneration only - but for new members only.

²⁰ MHA earnings in the 2006-07 fiscal year as reflected in Chart 9.1 in Chapter 9 (Compensation).

This type of service transfer can, of course, in various circumstances significantly reduce the time required to be served as an MHA in order to be entitled to a full pension. For example, an MHA who transferred ten years of service as a teacher or service under the public service pension plan could be entitled to full MHA pension after 12 years of service, even under the scaled back new accrual rates. In any event, the maximum benefit is capped at 75% of total salaries. In this regard, it is estimated that 14 or 30% of the current MHAs have potential service transfer entitlements as teachers, provincial and /or federal public servants.

(ii) *Qualification for the Commencement of Pension Benefit Payments*

MHAs who are no longer serving in the House of Assembly may begin to collect their pension benefits when their age plus service as an MHA equals 60 (55 for the Premier) and they have served at least five years spanning a minimum of two General Assemblies. Unlike many pension plans, there is no minimum age stipulation as such, and no benefit reduction formula applicable to reduce benefits in cases where the payment of pension benefits commences prior to a specified age.

(iii) *Integration with Canada Pension Plan*

The pension benefits payable to MHAs are integrated with the entitlements under the Canada Pension Plan. As a result, MHA pension benefits are reduced at age 65 by a “formulated” amount that is slightly less than the CPP pension benefits payable from age 65. The integration of CPP benefits is now a common feature in public sector pension plans and pension plans for elected officials where defined benefit plans remain in place.

(iv) *No Indexing of Benefits*

There is no automatic indexing of benefits within the MHA pension plan in this province. Over the years there have been periodic *ad hoc* adjustments to benefit levels but, unlike certain other public sector plans within this province and plans in certain other provinces, there is no formula to adjust benefits automatically relative to the escalation in the cost of living (the last *ad hoc* increase was provided in 1989). The USPP also does not have an indexing provision. It was suggested to the Commission that this was due to the other relatively generous provisions of that plan in the past.

It is estimated that the cost of instituting a form of limited indexing for MHAs, comparable to that in the public service plan (60% of CPI to a maximum of 1.2% in a year, payable from age 65), would be 6.4% of salary - if applied in respect of active Members and all retirees. The cost is estimated at 3.6% of salary if it were only applied to current

Members and retirees who retired after 1998 with integrated pensions (similar to TPP indexing).²¹

(v) *Survivor Benefits*

In the event of death, survivor benefits of 60% of the former MHA's pension entitlement are paid to the spouse. This is applicable both in the case of an elected official who dies while still serving as well as in the case of a death after retirement.

MHA Pension Benefits vs. the Public Service Plans

The MHA pension plan is the most attractive of all provincial public sector plans in Newfoundland and Labrador. The key benefits are the rapid accrual rate to a maximum potential benefit of 75% of salary with 20 years of service as an MHA (with a reduction of service years in the case of a carry-over of other service) and the ability to retire early and draw a pension with no penalty. An MHA can accumulate a pension entitlement equal to 50% of the salary base in ten years, whereas it would take a public servant 25 years to reach that level of accrued benefit.

Chart 11.3 provides a summary comparison of some of the main elements of the respective pension plans in the provincial public sector. (It will be noted that this table includes the Provincial Court Judges' Plan, which was only introduced in 2004 with effect from 2002):

One of the most significant benefits of the MHA Plan that is not apparent from Chart 11.3 relates to early retirement without penalty. There is no minimum age requirement for full pension under the MHA Plan. An MHA can draw the full pension under the basic calculation based on credited service, provided his or her age plus credited service equals 60 and he or she has served in two assemblies with a combined minimum total service in the House of 5 years. For example, an MHA aged 45, with 15 years service in the House, could begin drawing a pension equivalent to 62.5% of his or her three-year average at age 45. It should be noted, however, that only service under the MHA Plan counts in terms of determining eligibility in this regard.

²¹ Estimates provided by the Pensions Division of the Department of Finance.

Chart 11.3

Comparison of Pension Plans
Government of Newfoundland and Labrador
Key Elements in Benefit Structure

<i>Pension Plan</i>	<i>Annual Benefit</i>	<i>Pension Salary</i>	<i>Maximum Pension</i>	<i>Pension Accrual</i>		<i>Indexing to</i>
	<i>Accrual</i>	<i>Base</i>	<i>Accrual</i>	<i>20 years</i>	<i>35 years</i>	<i>CPI*</i>
MHA Plan	5.0% 1 st 10 yrs. 2.5% 11-20 yrs.	Avg. best 3 yrs.	75.0%	75.0%	75.0%	No
Public Service (PPSP)	2.0%	Avg. best 5 yrs.	No max.	40.0%	70.0%	60% of CPI Max. 1.2%
Teachers (TPP)	2.0%	Avg. best 5 yrs.	No max.	40.0%	70.0%	60% of CPI Max. 1.2%
Uniformed Service (USPP)	2.0%	Avg. best 3 yrs.	75.0%	40.0%	70.0%	No
Provincial Court Judges(JPP)	3.3%	Final Salary	66.6%	66.6%	66.6%	60% of CPI Max. 1.2%

**Indexing applies from age 65*

Source: Data provided by the Pensions Division, Department of Finance.

Other public sector plans generally have significant minimum service thresholds of 25 to 30 years and/or strict age limitations of 50 to 60 years of age before an employee/plan member may begin drawing pension. In some cases, there are pension reduction factors applied to reduce benefits to those who are eligible to retire early and draw pension. There are no such early retirement penalties under the MHA Plan.

In addition to the rapid accrual rate and the relative absence of early retirement restrictions and penalties, the MHA pension is based on the average of the best three years' salary, compared with the best five years for the two largest public sector plans.

It is noted that the pension plan for provincial court judges, which was introduced in 2004, is quite attractive as well. However, the accrual rate on the front-end is much lower. Furthermore, while pension is based on final salary, it is at a lower maximum than can be attained under the MHA Plan.

Current Service Cost and Contribution Rates - MHA Plan

As explained previously, the MHA Plan was restructured into two components in 2005 based on the limits prescribed in the federal *Income Tax Act*: i) the registered portion (RPP), which is administered and funded within the Province of Newfoundland and Labrador Pooled Pension Fund, and ii) the supplementary employee retirement plan (SERP), which is funded directly through the Consolidated Revenue Fund of the province.

From a benefit perspective for the MHAs, there is effectively only one plan that reflects the combination of both the RPP and the SERP. However, from an actuarial perspective, each component of the MHA Plan is evaluated separately. At the time of the last formal actuarial evaluation of the Plan (as of December 31, 2003), the current service cost for active members was as follows:

Current Service Cost - As a Percentage of Payrolls

MHA Pension Plan: December 31, 2003

<i>Plan</i>	<i>%</i>
Registered Plan (RPP)	12.9
Supplementary Plan (SERP)	29.0
Total MHA Plan	41.9

Source: Actuarial Evaluation for Accounting Purposes as of December 31, 2003 prepared by Mercer Hurman Resource Consulting.

While the RPP is funded, the SERP is not. The SERP is by far the most expensive component of the MHA Plan, and any contributions to fund SERP obligations in advance would not be on a tax-assisted basis. In order to fund the SERP on a tax-assisted basis, government would have to establish a Retirement Compensation Arrangement (RCA) as provided under the federal *Income Tax Act*, whereby 50% of the contributions to fund the SERP could be paid to the RCA, while the other 50% would be remitted to the Canada Revenue Agency to be held until SERP benefits commence to be paid. Because of the complexities related to funding SERP arrangements, many plan sponsors, particularly for public sector plans, elect not to fund them.

With the formal split of the plan in 2005 into the RPP and the SERP, and in order to optimize the tax position and preserve the “registered” status of the RPP, government moved to cash funding of the RPP only. This means that the entire obligation of the SERP is now carried on government’s books as an unfunded liability.

MHAs now contribute 9% of their salary base toward the cost of their pension plan and this goes entirely towards the RPP. Accordingly, the balance of the current service cost, an amount equivalent to 32.9% of salary, is effectively borne by government. Government contributes 3.9% in cash to fund the remainder of the cost in respect of the RPP, while the 29% related to the SERP is carried as an unfunded liability.

MHA Current Service Costs and Contributions vs. Public Service Plans

A comparison of the current service cost and contribution arrangements of the MHA Plan with other plans in the public sector of this province indicates the current service cost of the MHA Plan is clearly the most expensive. On a relative basis, therefore, the MHA Plan has the greatest ongoing financial deficiency as a percentage of payroll, as illustrated by Chart 11.4:

Chart 11.4

Current Service Cost and Contributions Pension Plans - Government of Newfoundland and Labrador

<i>Pension Plan</i>	<i>Current Service Cost (% of pay)</i>	<i>Member Contribution (% of pay)</i>	<i>Total* Contribution (% of pay)</i>	<i>Excess (Deficiency)</i>
MHA Plan				
<i>Registered Plan (RPP)</i>	12.9	9.00	12.9	0.0
<i>Supplementary (SERP)</i>	29.0	0.00	0.0	(29.0)
	41.9	9.00	12.9	(29.0)
PPSP	11.3	7.25	14.5	3.2
TPP	13.3	9.35	18.7	5.4
USPP	12.8	7.20	14.4	1.6
JPP	37.5	9.00	12.8	(24.7)

** Includes both employer/government and employee/member contributions.*

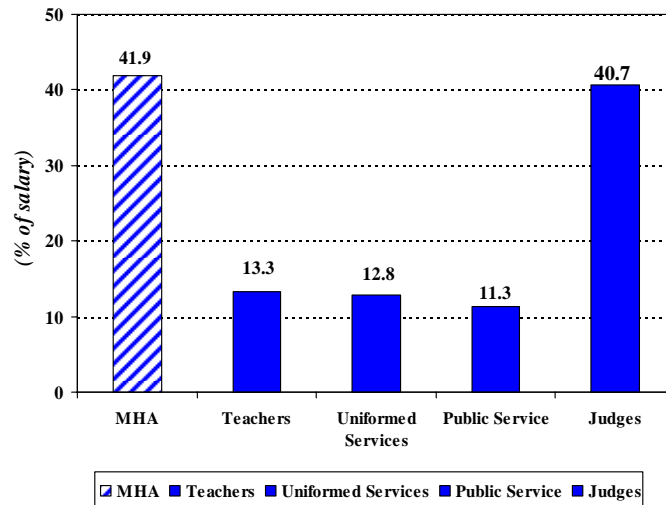
Source: Actuarial Reports of respective Pension Plans of the Province of Newfoundland and Labrador as of December 31, 2003, except in the case of the TPP, August 31, 2003, and the J PP, December 31, 2004.

The relative overall cost of current service accruing under the MHA Pension Plan, in comparison with the cost of the respective public service pension plans in the province, is more graphically illustrated in Chart 11.5:

Chart 11.5

Pension Plan Costs

Current Service Cost - MHA Plan vs. Various Provincial Public Sector Plans
Actuarial Value of Plan Benefits as a Percentage of Annual Salary



Source: Actuarial Reports of respective Pension Plans of the Province of Newfoundland and Labrador as of December 31, 2003, except in the case of the TPP, August 31, 2003, and the J PP, December 31, 2004

Pension Plan Funding Status

The overall cost of the MHA pension plan has exceeded the annual funding arrangements from the outset and, for a period, there was virtually no funding arrangement. While the current service cost of the RPP is funded, current service cost of the SERP is not funded. On an ongoing basis, this results in an annual contribution deficit equivalent to 29% of payroll (estimated at \$1.3 million for fiscal 2005-06).

The accumulated net unfunded pension liability in the MHA Plan at the time of the last actuarial valuation in December of 2003 was estimated at \$60.8 million. While there has not been an actuarial study prepared since December 31, 2003, assumptions and estimates are made annually to update the projections since the last formal report. Accordingly, as of March 31, 2006, the unfunded liability on the MHA Plan, based on the latest actuarial assumptions, was estimated at \$65.1 million.

Chart 11.6 that follows summarizes the funded status of all provincial public sector pension plans in Newfoundland and Labrador based on the most recent actuarial assumptions:

Chart 11.6

Funded Status of Pension Plans
 Government of Newfoundland and Labrador
Actuarial Funding Estimates of 31 March 2006

<i>Pension Plan</i>	<i>Active MHAs / Employees</i>	<i>Pensioners</i>	<i>Value of Fund (\$millions)</i>	<i>Estimated Net Unfunded Liability* (millions)</i>	<i>Funded Ratio %</i>
MHA Plan	48	111	10.3	65.1	14
Public Service (PSPP)	25,879	12,144	2,388.4	1,783.0	57
Teachers (TPP)	5,839	7,082	2,851.1	338.3	89
Uniformed Service (USPP)	600	609	83.6	173.1	32
Provincial Court Judges (JPP)	10	0	1.7	3.5	33
	32,376	19,946	5,335.1	2,363.0	

* *The most recent valuation dates: MHAPP, PSPP, USPP, December 31, 2003; TPP, August 31, 2003; & JPP December 31, 2004.*

Source: Data provided to the Commission by the Pensions Division, Department of Finance, Government of Newfoundland and Labrador.

The foregoing analysis indicates that the MHA Plan has the lowest funding ratio in the provincial public sector - it is only 14% funded. Conversely, therefore, it has by far the largest funding deficiency of some 86%.²²

²² *Actuarial Funding Assumptions vs. Accounting Assumptions*

At the risk of confusing an already complex assessment, it should be noted that actuarial estimates for funding purposes, such as those illustrated above, do not always correspond to actuarial estimates made for accounting purposes. This is not unique to the assessment of the funded status of this Province's public sector pension plans.

Actuarial estimates for funding purposes are made in accordance with accepted actuarial practice. Their estimates deal with extensive multi-year projections, decades into the future. They are inclined to use conservative assumptions when estimating the long term growth of salaries, assets, liabilities and the resultant funding requirements.

Another actuarial calculation is made for each pension plan being evaluated to determine the costs for accounting purposes. Estimates made for accounting purposes are made in accordance with accounting principles promulgated by the Canadian Institute of Chartered Accountants (CICA) under Section PS3250 of the *CICA Handbook*. These estimates provide the data used to account for the costs of the retirement and other post employment costs over the estimated service lives of the individuals covered by the plans. These estimates differ principally from those used in the funding calculation as these use best estimates for salary and asset

Escalating Unfunded Liabilities in the MHA Plan

Quite apart from the technicalities associated with the different approaches to assumptions (as outlined below), it is significant to note that, under the accounting estimates contained in the Public Accounts for the MHA Plan, the year-over-year numbers (2006 vs. 2005) reflect an increase of \$11.8 million in the unfunded liability.

The Public Accounts data indicate that, in respect of the MHA Plan, pension benefits earned during the period, together with interest expense and current amortization, exceeded the combined contributions from MHAs and government during fiscal 2006 by \$1.4 million.²³ In addition, the Auditor General notes in his report released December 12, 2006:

... commencing in 2001-02, the Province began making annual payments of \$7.5 million to the Members of the House of Assembly Pension Plan, however, these payments will only be allowable under the federal *Income Tax Act* to the extent that they fully fund the Registered component of the Plan. There were no special payments made to the Members of the House of Assembly Pension Plan in 2005-06.²⁴

The staff of this Commission explored this matter with officials of the Department of Finance and learned that the review of the funding status of the MHA Plan in fiscal 2006 (following the formal split of the Plan into the RPP and the SERP) indicated that the RPP had in fact been “over-funded” by some \$10.4 million to that point in time. Accordingly, in order to remain “onside” with the requirements of the *Income Tax Act*, there could be no special funding in 2005-06. In fact, it was necessary to transfer \$10.4 million out of the MHA component of the pension fund. This \$10.4 million was moved to the teachers’ fund and consequently the unfunded component of the MHA Plan increased by \$10.4 million, which combined with the \$1.4 million, explained previously, accounts for the entire \$11.8 million year-over-year change in the unfunded liability.

Based on the foregoing, and given the relatively significant obligation associated with the SERP, it would appear that, with the current benefit structure and tax strategy, the scope for additional funding in the MHA Plan is minimal. Government is effectively funding the RPP benefits, and operating the SERP on a “pay-as-you-go” basis. Barring a significant policy change, the unfunded liability in respect of the MHA pension benefits is destined to

growth. The fact that the estimates are to be used for differing purposes explains the difference between the unfunded liability in the MHA plan of \$65.1 million outlined above (based on actuarial assumptions for funding purposes) and the estimate of \$52.1 million (based on actuarial assumptions used to account for costs in accordance with Canadian generally accepted accounting principles) contained in the public accounts released on December 13, 2006.

²³ *Report of the Auditor General to the House of Assembly on the Audit of the Financial Statements of the Province of Newfoundland and Labrador for the Year Ended March 31, 2006*, extracted from fig. 4, p. 41.

²⁴ *Ibid.*, p. 42.

continue to escalate, particularly in relation to the mounting interest impact on the proportionately high unfunded liability.

Overall Financial Perspective of MHA Plan

The MHA Plan has the lowest funded ratio (14%) of all five provincial public sector pension plans, which is a reflection of a number of factors: i) lack of any form of funding in the early years of the Plan (a problem common to all plans in the provincial public service); ii) a very costly benefit structure; iii) low contribution rates relative to the actuarial cost of the benefit framework; iv) an income tax environment that is not conducive to the funding of benefits beyond certain established norms; and v) the lack of special incremental contributions to reduce or eliminate the accumulated funding deficit related to past service.

The MHA Plan encompasses a relatively small group. There are only 48 active members; pensioners (111) outnumber active members 2.3:1. The ongoing annual payout to pensioners today exceeds the combined funding contributions of active members and government by a multiple of 8. For the 2006-07 fiscal year, contributions for the MHA Plan were estimated at \$570,000 (\$400,000 from MHAs and \$170,000 from government), while pensions paid out to former MHAs (“supplementary allowances”) were budgeted at \$4,500,000.²⁵ These pension payments to former MHAs are made directly out of the Consolidated Revenue Fund and constitute ongoing expenses reflected in the annual operating budget of the province.

It should also be noted that the pension payments, or “supplementary allowances,” paid to retired MHAs are not reflected in the budget of the House of Assembly, but are contained in the budget of Consolidated Fund Services. The significance of these payments to pensioners is highlighted by the fact that they exceed the total current salary costs of sitting MHAs (sessional indemnities and non-taxable allowances). See Chart 11.7.

Due to the prolonged historical and ongoing funding deficiencies, pensions paid to former MHAs have a greater ongoing budgetary impact than the salaries paid to sitting Members of the House. In this regard, it is noted that since pension expenses are not included in the House budget, the accounts of the House of Assembly are not truly reflective of the actual costs associated with the operation of the legislative branch of government.

²⁵ Data provided to the Review Commission by the Pensions Division, Department of Finance, Government of Newfoundland and Labrador.

Chart 11.7

MHA Salary Costs & Cost of Pensions to Former MHAs Annual Expenditure Impact (estimated 2006-07)

<i>Cost Component</i>	<i>Annual Cost</i>
	\$
Current MHA Salary Costs:	
Sessional Indemnity	2,300,000
Non-taxable Allowance	1,150,000
	3,450,000
Former MHA Pension Costs:	
Pensions / Supplementary Allowances	4,500,000
	7,950,000

Source: Data provided to the Commission by the Pensions Division, Department of Finance, Newfoundland and Labrador (estimates rounded).

Interprovincial Comparison of MHA/MLA Pension Trends

As noted earlier, at the time of the *Report of the Commission of Enquiry on Pensions, 1990*, the pension benefit structure for MHAs in this Province was considered to be very much in-line with benefit arrangements generally prevalent in other Canadian jurisdictions. That pattern changed significantly over the course of the next several years, and there are now two very different approaches to retirement benefits for elected officials - one reflects a continuation of the type of defined benefit plans for elected officials that were predominant in Canada in the 1980s; the other represents a distinct movement away from the defined benefit structure. This is illustrated by the following analysis based upon a July 2006 survey prepared by the Manitoba Civil Service Superannuation Board, augmented by follow up consultations by the Pensions Division of the Department of Finance with representatives of various other provinces.

(i) *Provinces that Retained Defined Benefit Plans*

Quebec and the Atlantic provinces have retained the relatively generous, and costly, defined benefit structure that was broadly prevalent prior to the 1990s. Chart 11.8 summarizes some of the key elements of those plans:

Chart 11.8

Interprovincial Comparison - MHA/MLA Defined Benefit Pension Plans

For those provinces that have retained defined benefit plans

Key Elements in Plans

<i>Pension Plan</i>	<i>Annual Benefit Accrual</i>	<i>Pension Salary Base</i>	<i>Maximum Pension Accrual</i>	<i>Min Age (no benefit reduction)</i>	<i>Indexing to CPI</i>	<i>Benefit Accumulation Rate (1 yr.)*</i>
Newfoundland and Labrador	5.0% 1 st 10 yrs. 2.5% 11-20 yrs.	Avg. best 3 yrs	75%	no min. age 5yrs./2 terms	No	\$3,820
Quebec	4.0%	Annual Salary	none	Age + Svce. =65 & age 50	CPI less 3%	\$3,218
New Brunswick	4.5%	Avg. best 3 yrs	none	60	CPI to 6% max.	\$1,872
Nova Scotia	5.0%	Avg. best 3 yrs Includes Expense All	75%	55 5yrs./2 terms	CPI to 6% max.	\$3,278
P.E.I.	2.0% of Contributions (4% if elected 2x & serve 5yrs.)	Annual Salary	none	55	CPI to 8% max.	\$1,927

**Calculations based on remuneration rates as of October 2006.*

Source: Data extracted from the Manitoba, Civil Service Superannuation Board, "Public Sector Pension Plan Survey, as of December 31, 2005," (July 2006).

(ii) Movement Away from Defined Benefit Plans

In comparing pension plans across jurisdictions, there are two distinct structures noted: defined benefit plans and defined contribution plans. While the concept of the *defined benefit pension plan* was previously outlined, it is worth comparing this concept with that of the *defined contribution plan* to facilitate an understanding of pension trends in various Canadian provinces:

Defined Benefit Plan

A defined benefit plan defines the benefits to be paid to each member, by a formula related to the member's length of service and earnings.

Defined Contribution Plan

A defined contribution, or money purchase, plan defines the contributions to be credited to members. Individual accounts are kept at the contributions paid by each member and by the employer on the member's behalf. The Pension payable is the amount that can be paid by the sum of the contributions plus the investment income.²⁶

Five provinces (Ontario and the western provinces) substantially altered the pension structure for members of their legislative assemblies in the last several years. In those cases, there was a marked shift from the previous defined benefit arrangements to a more conservative approach based on defined contribution plans or registered retirement savings plans (RRSPs). In the case of Alberta, the plan was cancelled entirely.²⁷

- 1993: Alberta discontinued its MLA plan, retroactive to 1989.
- 1995: Manitoba cancelled its MLA plan. Benefits to April 1995 were grandfathered. The plan was replaced by a 7% member plus a 7% provincial contribution to the MLA's choice of private RRSPs.
- 1996: British Columbia cancelled its MLA pension plan. Benefits earned to June 1996 were grandfathered. The plan was replaced by a private RRSP arrangement.
- 1996: Ontario converted its pension plan to a money purchase plan. Benefits prior to June 1995 were commuted to the new plan or paid into personal locked-in retirement accounts. For service on or after June 1995, the Ontario government contributes 5% of the member's remuneration.
- 2002: Saskatchewan repealed its MLA pension plan effective September 2002, and MLAs now contribute to the Public Employees Pension Plan, which is a defined contribution, money purchase plan. Members contribute 9% of their salary, and the province of Saskatchewan matches the members' contributions to the maximum permitted by the federal *Income Tax Act*.²⁸

Accordingly, by 2002, the five provinces that encompass almost 70% of the country's population and, ironically, include the strongest provincial economies, had moved to more conservative and far less lucrative retirement benefit arrangements for their elected officials. This has resulted in a wide variation in the value of the MHA/MLA pension benefits provided in various jurisdictions across the country. It should be noted also,

²⁶ *Mercer Pension Manual*, Volume 1, Chapter 4.6 (a) and (b).

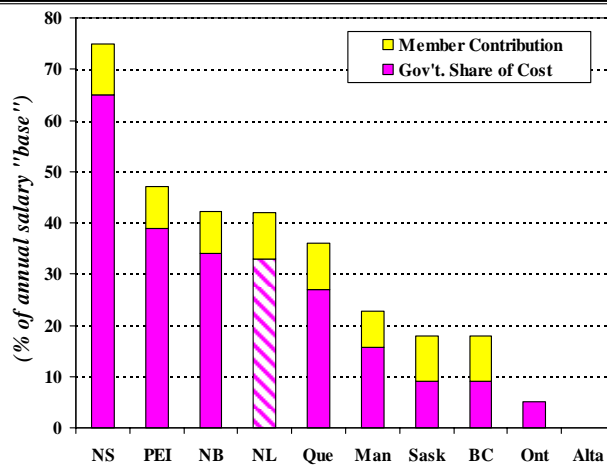
²⁷ See Manitoba, Civil Service Superannuation Board, "Public Sector Pension Plan Survey, as of December 31, 2005," (July 2006).

²⁸ The maximum that can be contributed to a registered pension plan is 18% of taxable earnings, to a maximum of \$18,000 for the 2006 calendar year.

however, that given that previous and sitting MLAs tended to be “grandfathered” when plan changes were made, there are distinctly different benefits prevailing within certain jurisdictions.

Chart 11.9 illustrates the estimated value of the pension benefits provided by governments to MHAs (MLAs) in various jurisdictions²⁹ across the country in 2006 as a percentage of the members’ salaries, taking account of the government’s share of the cost only (i.e. excluding MHA contributions) and relating to “go forward” arrangements only, as opposed to “grandfathered” benefits:

Chart 11.9 Relative Cost of MHA Pension Benefits
Inter-provincial Comparison – 2006
*Sharing of Pension Costs => Gov’t. Share & Member Contributions**



* Comparative data is provided for the other provinces; however similar data was no available for Nunavut, the Yukon and Northwest Territories.

Source: Data obtained from the Pensions Division, Department of Finance, Government of Newfoundland and Labrador based on surveys and contacts with plan administrators in other provinces. The data used does not reflect the most recent adjustments to members’ compensation referred to in Chapter 9.

The lack of consistency is clearly quite pronounced. It should be noted that the value of the benefits under pension plans with small memberships (such as MHA/MLA plans) can vary considerably as a result of the age and service profile of the plan membership, and the differences in key benefits, such as indexing and early accessibility.

It should be noted, as well, that the percentage values reflected in Chart 11.9 apply to the “salary base” used to calculate the pension benefit. This base is not the same in all provinces. For example, in New Brunswick the salary base for pension calculations does not include the non-taxable allowance, which it does in Newfoundland and Labrador.

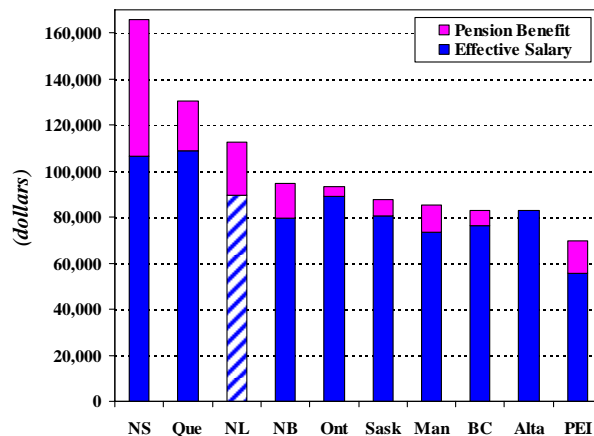
²⁹ Comparative data is provided for the other provinces, however similar data was not available for Nunavut, the Yukon and the Northwest Territories.

Accordingly, it is perhaps more meaningful to examine the value of pension benefits in the context of total compensation.

(iii) Pension Benefits and Total MHA Compensation

Clearly, pension benefits constitute a significant component of total compensation for MHAs in Newfoundland and Labrador. In other jurisdictions, however, the significance of the pension benefits provided by governments varies quite markedly. In this regard, Chart 11.10 illustrates an inter-provincial comparison of total compensation (which encompasses “effective” salaries including: sessional indemnities, non-taxable allowances and the estimated value of the tax benefit) combined with the estimated cost of the government share of the pension benefits in each case in 2006:

Chart 11.10 MHA Total Compensation
Inter-provincial Comparison – 2006
Effective Total Salary & Value of Gov’t. Share of Pension Cost



Source: Salary data based on survey of provinces and estimated value of tax benefit prepared by this Commission. Pension benefit cost provided by the Pensions Division, Department of Finance, Government of Newfoundland and Labrador based on surveys and controls with plan administrators in other provinces. The data used does not reflect the most recent adjustments to members' compensation referred to in Chapter 9.

This chart illustrates that, with the relatively high salary component combined with the relatively valuable pension benefit package, the total compensation arrangement for MHAs in Newfoundland and Labrador ranks amongst the highest in the country.

(iv) Recent Developments

The foregoing comparison and analysis illustrates members' pension arrangements in the various jurisdictions as reflected in survey data collected in 2006. However, the practices continue to evolve and there are indications that two western provinces may be reverting to defined benefit arrangements. Recent consultations indicate that in 2006 Manitoba introduced a defined benefit plan option for Members based on an accrual rate of 2% a year (still substantially less than the accrual rates for MHAs in this province - 5% a year for the first 10 years and 2.5% for the next 10 years). In British Columbia, the Report of the Independent Commission to Review MLA Compensation was filed on April 30, 2007 and it recommended that the Group RRSP plan for Members be terminated effective April 1, 2007, and that it be replaced by a defined benefit plan - including a benefits accrual rate of 3.5% a year, but providing for benefit reductions for early retirement prior to age 65 (also less than the benefit formulae currently applicable in Newfoundland and Labrador). It should be noted that there is very little rationale provided in the BC report for the changes recommended and it is not known whether these recommendations will ultimately be accepted and implemented.

Summary

In summary, the review of the evolution of the MHA pension arrangements in Newfoundland and Labrador, in the context of other pension plans in the provincial public sector and in other provincial jurisdictions in Canada, highlights a number of key factors:

(i) Roots of the MHA Plan date back to the 1960s:

Separate pension arrangements for MHAs were introduced in 1962 and subsequently modified in 1976. Although that framework has been modified somewhat since, the basic 1976, thirty-year-old, structure still forms the basis of the retirement benefit framework for MHAs in this province today.

(ii) National focus on pension reform in the late 1980s:

In the late 1980s, a national focus on pension reform emerged, along with a range of federal tax reform initiatives aimed at ensuring consistency in the application of federal tax policy to pension plans across the country. This spawned a wave of revisions in varying degrees to the pension plan framework in both the public and private sectors across the country. It appears that it was in response to these factors, coupled with Newfoundland's ongoing fiscal challenges, that the provincial government appointed a Commission of Enquiry on Pensions.

(iii) *Commission of Enquiry on Pensions 1989-90:*

The Commission of Enquiry on Pensions appointed in 1989 recommended changes in respect to the public service pension plans, including increased contribution rates and some benefit reductions. Pursuant to the Commission's recommendations, changes were made in all plans except the MHA Plan. The Commission was split in its assessment of the MHA plans. The majority recommended that benefits be scaled back to correspond with other public service plans. The Chair supported the retention of the more favourable benefits and recommended the issue of pension benefits be referred to the Morgan Commission. Neither of these recommendations was adopted. Accordingly, the potential for reform was lost.

(iv) *Benefits comparable to other provinces through to 1990:*

Comparative analysis of MHA pension benefits at the time of the Commission of Inquiry with those applicable to elected officials in other Canadian jurisdictions, indicated that the MHA pension plan for this province, while generous relative to other public sector categories, was very much in-line with the pension plans for members of legislative assemblies in other provinces.

(v) *Special or "unique" circumstances of MHAs:*

The minority report of the chair of that 1989-90 commission emphasized some of the same "unique" circumstances highlighted by various MHAs in their discussions with this commission. In particular, reference was made to the earnings uncertainties posed by the very nature of the role of the MHA in terms of the continuity and duration of time in office, as well as the implicit constraints on re-employment after leaving elected office.

(vi) *MHA pension policy under the Department of Finance - not the IEC:*

While virtually all other matters related to MHA compensation appear to have been determined by the IEC over the years, pension policy matters have been primarily determined by the executive on the recommendation of the Department of Finance. The determination of, or recommendations with respect to, pension benefits have never been referred to a commission, such as the Morgan Commission, under section 13 of the *Internal Economy Commission Act*. As well, the cost of pension benefits paid to former MHAs has been budgeted for, and has been shown in the public accounts of the province in a manner which is not reflected in the accounts of the House. Therefore, it is not reported as part of the cost of House operations.

(vii) *Reluctance and/or delays in updating MHA plans:*

There were a number of changes to the various public sector pension plans in the early 1990s, which were reflective of the recommendations of the Cummins Commission and of general trends in pension reform. However, it appears there was a reluctance to amend the MHA pension plan despite a number of analyses and recommendations by officials of the Department of Finance.

(viii) *MHA pensions remain generous relative to other public sector plans:*

The MHA Plan has a far more rapid benefit accrual rate than the public service, teachers' and uniformed services plans, with more favourable early retirement arrangements.

(ix) *MHA Plan is not indexed to the CPI:*

Pension benefits under the teachers' and the public service pension plan have a form of limited indexing (based on 60% of the escalation in the CPI to a maximum of 1.2% in a year). While the MHA Plan has a more favourable benefit structure in many other respects, there is no automatic benefit escalation related to the CPI.

(x) *MHA Plan is far more costly than other public sector plans:*

Actuarial cost estimates indicate that the benefit structure in the MHA Plan has a current service cost of 41.9% of salary, which on a relative basis is more than three times the cost of the public service pension plan, the teachers' pension plan and the uniformed services plan. It is also more costly than the Provincial Court Judges' Plan, which has a current service cost of 37.5%. This cost differential exists despite the absence of indexing in the MHA Plan.

(xi) *MHA plan significantly underfunded:*

The MHA Plan was not funded from the outset and, with the relatively generous benefit structure, the plan has accumulated a significant unfunded liability in the order of some \$52 to \$65 million, depending on the assumptions used to value the obligations. The Plan is now being funded to the maximum level permitted for a registered plan under the federal *Income Tax Act*. In this regard, given the implications of the federal *Income Tax Act*, government has opted to split the MHA Plan into two parts, the registered portion RPP, which is being fully funded to the maximum permitted, and a supplementary plan, which is virtually an annual "pay-as-you-go arrangement." However, the ongoing liabilities associated with the mounting benefit obligations are such that the MHA Plan is only 14% funded, compared with 89% for the teachers' plan, 57% for the public service plan and 32% for the uniformed services plan.

(xii) *Annual budgetary impact of pension payments exceed the current MHA salary bill:*

Given the lack of funding in the MHA pension plan, MHA pensions impose an ongoing budgetary obligation of some \$4.5 million annually to pay the pensions of former MHAs, which is more than the \$3.5 million a year paid in salaries to current MHAs.

(xiii) *Different approaches have emerged in many Canadian provinces:*

The position of the MHA Plan in this province relative to pension arrangements for elected officials in other Canadian jurisdictions has changed significantly since the time of the Cummins Commission in 1990, when there was relative uniformity in overall plan structure for MHAs/MLAs). The 2006 comparative analysis indicated a pronounced shift away from defined benefit arrangements in five provinces. In those provinces, the highly lucrative pension arrangements for elected officials had been discontinued on a go-forward basis, with previous plan members being “grandfathered.” The 2006 survey indicated that only four other provinces, along with Newfoundland and Labrador, continued to provide the previously conventional, relatively generous, pension arrangements to elected officials. Those four provinces also have a form of indexing in place that may account, in part at least, for higher costs in those jurisdictions.

One province (Alberta) has discontinued providing retirement benefits to its MLAs altogether. Ontario and the remaining three western provinces had moved to defined contribution (generally RRSP-type) arrangements, whereby governments contribute amounts, mostly based on matching MLA contributions, up to the maximum level permitted for a registered pension plan under the federal *Income Tax Act*. However, there are recent indications of pension policy fluctuations in at least one and possibly two of these western provinces - reverting to versions of a defined benefit structure for their MLAs, albeit at formulae less generous than currently applicable in this province.

A comparison based on the value of the pension benefits as a percentage of the “salary base” (used to calculate benefits) indicates that in 2006 this province ranked fourth amongst the 10 provinces; however, since pension benefits are based on salary, the higher the “salary base” (and Newfoundland and Labrador’s is relatively high), the pension benefit is that much higher. Furthermore, in some jurisdictions, non-taxable allowances are not included in the salary base for calculating benefits, whereas these allowances are included in the salary base in Newfoundland and Labrador.

(xiv) *Pensions a significant factor in “total compensation”:*

The level of government participation in financing pension plans/retirement arrangements for MHAs/MLAs now varies quite substantially in the different jurisdictions across the country. Accordingly, it constitutes a crucial element in the comparison of total compensation for elected officials. This analysis indicates that total compensation for MHAs in Newfoundland and Labrador ranks among the highest in the country. In fact, the pension differential, in some cases, widens the compensation differential between this province and others.

Recommendations

This analysis indicates that the MHA pension plan is relatively lucrative compared to the arrangements one might expect to prevail in a province which has historically had a relatively low fiscal capacity, high debt burden and in many respects is still regarded as “a have-not” province in economic terms. While the challenges and uncertainties confronting MHAs due to the very nature of the role are acknowledged, these same challenges exist elsewhere in the country; nevertheless, there has been a movement away from particularly generous and costly defined benefit plans. Even in the two provinces where defined benefit plans have been reintroduced or are being contemplated, the benefit formulae indicated are less generous than the existing arrangements in Newfoundland and Labrador.

While the MHA plan in Newfoundland and Labrador is not indexed, it is nonetheless relatively generous when compared to other public service plans in the province and the retirement arrangements in respect of most other Canadian provinces.

Government has been slow in adapting to changing circumstances in respect of the MHA pension plan (as exemplified by the delay to 1998 in implementing contribution rate increases and the delay to 2005 in implementing changes to conform with previously established income tax requirements). Furthermore, it appears that the movement away from defined benefit plans, evident in a number of provinces, has not been seriously addressed in recent years in this province.

Furthermore, the Commission of Internal Economy has played no significant role in addressing pension issues. While pension benefits are a crucially important component of MHA compensation, the process established to address MHA compensation under the *Internal Economy Commission Act*, through the appointment of periodic review commissions, has not been followed in respect of pensions, as, indeed, it has not been followed in respect of other aspects of MHA compensation and allowances.

Accordingly, I make the following recommendations:

Recommendation No. 78

- (1) The House of Assembly Management Commission, assisted by the Department of Finance, should proceed to develop a proposed new pension structure for MHAs:***
 - (a) eliminating the existing defined benefit plan and implementing a defined contribution, RRSP type of arrangement that takes account of cost and level of benefits relative to other public service plans; or***
 - (b) significantly modifying the terms of the existing defined benefit plan to make it conform more closely, in terms of levels of benefits, with other public service plans.***
- (2) The new pension structure should be developed on the basis that it will apply only to MHAs who have not already been elected to the House and that existing and former MHAs be “grandfathered” under the existing system;***
- (3) The proposed new pension structure should be submitted to the next committee on Members’ salaries, benefits and allowances constituted under the new House of Assembly Accountability, Integrity and Administration Act as recommended elsewhere in this report, and that that committee should be provided with sufficient funding to engage actuarial and other advice to enable a thorough study of the appropriate levels and features of the plan that should be adopted; and***
- (4) Following receipt of this Commission’s report, government should introduce legislation within six months effecting the recommended changes.***

Recommendation No. 79

In the future, matters of pension policy related to the pension benefit structure for MHAs should be referred to the review committee on Members' salaries, benefits and allowances constituted under the new House of Assembly Accountability, Integrity and Administration Act as recommended elsewhere in this report, as part of the committee's mandate as a matter of course so that they can be addressed in the same context as salaries and other key compensation arrangements for MHAs.



Chapter 12

Signals

Protecting the integrity of government is crucial to the proper functioning of a democratic system.

— Hon. Calvin F. Tallis¹

A Basis for Broader Reflection

I have endeavored to cover the full scope of the issues of my terms of reference in the preceding chapters. While I do not wish to reach beyond my mandate in making recommendations, neither do I feel it appropriate to leave unaddressed important signals of concern or potential opportunities for improvement related to matters pertinent to financial administration in government generally. Accordingly, there are a number of matters that I bring forward with no specific recommendations but to ensure that the full benefit of this Commission’s research may be realized in the larger picture of public administration in the government of the province. In many respects, I believe the matters we have studied, the manner in which events unfolded and the extent of the underlying weaknesses identified provide reason to pause and reflect on matters beyond the narrow administrative framework of the House of Assembly - in short, to ensure we do not “miss the forest for the trees.”

As we have delved extensively into the “trees” of the administration of the House of Assembly, it is prudent to ask whether there were any signals or messages identified that might be symptomatic of issues prevalent in the overall financial administrative “forest” of the government generally. I raise these matters not to allege that a vast array of other problems necessarily does exist, but to underline my sense that some of the signals or deficiencies that we identified in the House of Assembly administration may not be unique to the legislature.

¹ *R. v. Bertson*. [2000] SKCA 47, at para.25.

“Could This Have Happened Elsewhere in Government?”

This question was asked of us many times through our consultation process. In fact, in some instances the issue arose not as a question, but as a definitive pronouncement: “This could not have happened elsewhere in Government.” Generally, the support for this proposition was related to the fact that the notion of autonomy and virtual independence, characteristic of the House of Assembly, is not prevalent in individual government departments in the executive branch. Accordingly, one might conclude *the exact same collection of circumstances could not exist elsewhere* in government. Across the executive branch there are extensive financial management policies, reporting practices and control mechanisms in place that were not present in the legislature. In fact, I have acknowledged the existence of such policies and controls. In the final analysis, however, the question is: are the controls effective in all cases? While not all of the failures outlined in Chapter 4 could be prevalent elsewhere, are there some that *could* be?

In this context, I believe it is worth reflecting on some of the specific control and accountability questions identified in Chapter 4 and to consider the potential for their occurrence in the broader context from front line administration up to top management in the executive branch of government. Accordingly, I pose the following questions as a basis for reflection:

- i. Are there other circumstances in the executive branch where front line administrative personnel feel overburdened and unable to cope properly through lack of resources as a result of successive rounds of fiscal restraint?
- ii. Are there other relatively small administrative units in government where segregation of duties is an ongoing practical challenge?
- iii. Are there circumstances where front line staff members approve claims or invoices for payment without appropriate review of the documentation?
- iv. Might there be circumstances where, notwithstanding that the Comptroller General legally is entitled to review documentation, there is minimal, or no compliance testing done due to lack of resources?
- v. Might there be cases where a supervisor approves items for payment first and then asks a subordinate to sign-off?
- vi. Might there be cases where the permanent head and the Comptroller General (perhaps even unknowingly) have approved the delegation of electronic signing authority to an individual in a location that does not have ready access to supporting documentation for payments?

- vii. Could there be other situations where an individual with such electronic signing authority releases payments without having reviewed the documentation?
- viii. Are there other situations where administrative staff in a government department manage sub-accounts within large subheads in a manner which is less than appropriate, but where the management and structure of the internal departmental accounts is not addressed by the Comptroller General or Treasury Board - as long as the overall level of funds "voted by the House" is not exceeded?
- ix. Are there other situations in government where there have been consistent overruns from the original budget on individual expenditure votes that have not been scrutinized, due to the fact that they are considered "immaterial" in the context of the overall budget? Does the larger notion of "materiality" limit the extent of expenditure variance analysis - for example: might there be overruns from an original budget of \$100,000 to \$500,000, or more in individual accounts that are not analyzed by Treasury Board (Budget Division) staff because they are considered immaterial in the context of the \$5 billion budget?
- x. Are there other situations where the "revised" expenditures tabled with the budgetary estimates have consistently underestimated the actual expenditures ultimately recorded in the respective account? Does the trend in "revised" expenditures relative to the original budget get reviewed and analyzed on an ongoing basis?
- xi. Are there cases where a large account (subhead or subdivision voted by the legislature) is managed by a department according to various sub-accounts? Is it likely that such sub-accounts are not monitored on an ongoing basis by the Comptroller General or Treasury Board? Within such sub-accounts, might there be individual accounts that have consistently recorded significant expenditure overruns that have been masked by savings in other areas, gone unchallenged by Treasury Board or the Comptroller General, and have not been publicly disclosed?
- xii. Are there Deputy Ministers or other permanent heads whose focus is almost entirely concentrated on the policy formulation and program delivery aspects of their positions, and who have effectively delegated the overall financial management and administrative role to an Assistant Deputy Minister or Director of Financial Operations - based on "*total confidence*" and "*blind faith*"? Do all Deputy Ministers take ownership of the financial management and internal control functions within their departments? Would they be comfortable today certifying that appropriate systems of internal control are in place and are functioning effectively in their respective departments?
- xiii. Are transfers of funds amongst subheads voted by the legislature regularly processed within departmental budgets without substantive review or objective

analysis other than the internal analysis done by departmental management personnel, who may have originated the transfer in the first place?

- xiv. Would the regular annual financial statement audit process for a government department likely detect individual internal control or system weaknesses and compliance difficulties, or would such matters likely only be uncovered in more extensive legislative audits that are conducted infrequently?

The questions posed above are meant to be thought-provoking examples only. There are many more questions of a similar nature that might be asked as well. While I do not propose to list them all, or to answer them, I believe they bear *sober reflection in the larger context of government as a whole* to ensure that, to the maximum extent possible, we learn from the troublesome experiences in the House of Assembly that gave rise to the appointment of this Commission.

All of the failures identified in the House would not likely be found concentrated in a single operational unit elsewhere in government. On the other hand, I am not at all convinced that many of the administrative weaknesses identified in the course of my review are unique to the House of Assembly administration. To the extent such circumstances exist in the executive branch of government, either individually or in combination, there exists potential cause for concern. I leave it to government to determine the measures, if any, it deems necessary to identify and address them.

Delegation of Authority and Effective Control of Public Money

At the risk of delving too far into some of the questions outlined above, I feel it is appropriate to offer some general observations on the overall control framework in government. Through the course of my consultations I was confronted by questions such as:

Irrespective of the financial management approach within the House, how could such an array of weaknesses go undetected by the central control functions of government? Why didn't the Comptroller General or Treasury Board detect at least some of these difficulties and address them?

As I pursued the answers to these questions, I was told that much of the monitoring, analysis and control responsibility that I might have expected to reside with the office of the Comptroller General and Treasury Board staff had effectively been delegated to the management and administrative staff of the House. It was emphasized to me that this was consistent with the practices followed throughout government in relation to the delegation of responsibility to the Deputy Ministers and, accordingly to various levels of management in the line departments. Such areas of delegated authority include: approval of signing authorities; various types of transfers of funds; budgetary variance analysis; the determination of how accounts are subdivided; and the determination of the control mechanisms, if any, put in place to ensure compliance with appropriate regulations, authorities and spending limits. In several respects (not all), the remoteness of the central

control agencies of government from the operations of the House was described to me as being no different than the relationships that today exist between Treasury Board, the Office of the Comptroller General and departments throughout the executive branch of government. While I did not research the issue, it was suggested to my research staff that this approach to delegation was not out of line with practices followed in other Canadian jurisdictions.

It was explained to me that this increased autonomy and responsibility at the departmental level had evolved as a result of a perceived need to improve the responsiveness and operational effectiveness of the departments in delivering government programs - a desire to reduce the constraints and *red tape* of a system that might have been perceived to be overly bureaucratic and unresponsive through excessive centralization.

In addition, I was told that the Comptroller General and staff responsible for the Treasury Board function today feel they do not have the resources to monitor and evaluate effectively the various controls, accounting practices, signing authorities and ongoing budgetary variances at the departmental level. Furthermore, there is a sense that they do not have the authority to intervene. For example, in relation to accounting practices and the method of maintaining accounts below the level reported in the public accounts, while there may be circumstances where the Comptroller General's office might recommend corrective measures or controls be instituted, these officials may not feel they have the authority to prescribe or direct that such action be taken. There is a sense that such an approach by the Comptroller General would meet strong resistance from departmental officials.

From the Treasury Board perspective, the Treasury Board Secretariat, as such, no longer exists. The central financial management, analysis and authorization capability contemplated by the *Financial Administration Act* has been scaled back from previous levels and is entirely performed by the Budget Division, which is now part of the Department of Finance. In speaking with officials of this division, there is the sense that "we have a five-billion dollar budget to monitor and manage, and while we do analyze significant variances, we just don't have the resources to address every two or three hundred thousand dollars variance." There is an expectation that the departments have the mandate to manage their budgets and that they are expected to be on top of the variances at that level. Therefore, the focus of Treasury Board's analytical arm (the Budget Division) appears to be on the bigger numbers and program areas with the most *material* expenditure requirements. While this might initially appear understandable, it presents a troublesome notion. It implies the absence of objective scrutiny on spending practices and budgetary variances which fly under the radar of *materiality*. In the context of a \$5 billion budget, numbers that might otherwise appear significant - up to \$500,000, as we observed in the House of Assembly - might be considered immaterial.

The impact of this pendulum swing to decentralization is compounded by fiscal restraint. In earlier chapters I highlighted the impact of the curtailment of the pre-audit and internal audit capability of the Comptroller General on the control environment. These reductions in pre-audit and internal audit capability affect the rest of government as well as the House of Assembly. I have just noted how the level of analytical capacity to support the financial management functions of Treasury Board has been reduced. I was also told the

same may be true in varying degrees throughout the departments of government. In times of financial restraint, it was suggested to me, the financial people were the first to go because their removal was not as sensitive as the elimination of positions with front line program delivery responsibility.

Undoubtedly, the move toward increased delegation of responsibility to the departments was well-intentioned, yet there are no indications that it was accompanied by a corresponding strengthening in the financial management capability at the departmental level. On the contrary, there are indications that the financial management capability of the departments has been watered down by cutbacks induced by fiscal restraint. It was suggested that in some cases “the financial shop has been gutted out.” Furthermore, in the course of our consultations, it was suggested that some of the Deputy Ministers who now shoulder these financial responsibilities, and whose capabilities and strengths are recognized in many important respects, may not be sufficiently conversant in systems of internal control and the principles of financial management to perform the full scope of their financial oversight role to the desired standard. It was not within my mandate to assess the extent or validity of these assertions, but I feel obligated to draw government’s attention to the fact that these sentiments do exist. Indeed, one sensed that it might be especially difficult at this stage to expect some of the deputies to perform the accounting officer and management certification functions similar to those I have recommended for the Clerk of the House.

I am convinced that the preservation of an effective financial control environment requires the dedication of the necessary resources at the operational level, as well as an appropriate degree of objective monitoring, assessment and analysis by persons other than those who directly incur and/or authorize the expenses. In my judgment, the *Financial Administration Act* is intended to ensure that appropriate standards are maintained in relation to the control of, the spending of, and the accounting for public monies under that *Act*. The overall responsibilities to ensure that these standards are established and maintained are assigned to the Treasury Board and the Comptroller General. I do not accept that these are discretionary determinations to be established with varying degrees of emphasis and quality by 15 to 20 departments of government.

Accordingly, I believe there are signs the pendulum of delegation may have swung too far. There are indications that the effectiveness of the financial management role of the Comptroller General and the Treasury Board has diminished to something less than contemplated in the *Financial Administration Act*. There are indications that the financial management function of government may be under-resourced, both at the departmental level and at the central agency level. To the extent that these observations are valid, some of the inadequacies found to be prevalent in respect of the management of financial affairs of the House of Assembly, might therefore be also present in the departments of the executive branch of government.

Accountability and the Public Accounts Committee

In Chapters 4 and 5 I expressed my concern over the failure of the Public Accounts Committee of the legislature to exercise a sufficiently active role in holding government “accountable for the stewardship of public assets and the spending of public funds.”² In my recommendations I have addressed the legislative direction that I believe is appropriate to confirm and reinforce a financial oversight role for the PAC in respect of the administration of the financial affairs of the House. In the *broader context*, one cannot help but question the degree of inactivity and inattentiveness of our PAC in recent years in relation to the overall financial affairs of government generally. During the last three years, which saw provincial expenditures totalling in the order of \$15 billion, there have been successive Auditor Generals’ reports identifying various matters of concern - yet the PAC has only held only two public hearings in that period.

In Chapter 5 I explained the level of importance assigned to the Public Accounts Committee under the British Parliamentary System in providing “assurance that the Government handles its finances with regularity and propriety.”³ I also noted that, years ago, the Public Accounts Committee in this province was far more active than it has been for the past several years. To my knowledge, the Committee’s mandate has not changed. I note that its members are paid an extra salary in recognition of their role and the expectation that it will be performed.

Accordingly, as government and Members of the House reflect on my recommendations in respect of the proposed role for the Public Accounts Committee in relation to the legislature, they may wish to do so by giving consideration as well to the broader context of the revitalizing of the overall role and responsibilities of the PAC in the stewardship of the province’s finances.

Claims Processing and Overlapping Claims

In Chapters 3, 4 and 7 I have identified a number of issues associated with the potential for “double billing” and “double payment” of MHA claims, and I have recommended various measures to address the concerns identified. However, the potential for duplicate payments is likely the greatest in circumstances where claims are submitted to different payment centres for processing.

The most obvious situations that could give rise to problems are, as noted in Chapter 7, those where a Cabinet Minister may submit claims to the administration of his or her department (as Minister) and also to the administration of the House of Assembly (as

² *Financial Management Handbook of the Office of the Comptroller General*, p. 6.

³ C.E.S. Franks, “The Respective Responsibilities and Accountabilities of Ministers and Public Servants;” p. 177-178.

Member). The potential for multiple payments is of course increased further in situations where a Member who is a Cabinet Minister holds more than one portfolio - in such cases the individual might be in a position to submit claims to three or more administrative units for payment. The potential for duplicate payments in this regard may soon be reduced considerably if the new Iexpense computerized claims processing system being introduced in government is deemed suitable for the processing of MHA claims as well as ministerial claims.

Should the new Iexpense system not provide sufficient interface and controls, government might ultimately wish to consider a move to a *centralized claims administration and processing unit* for all of government that would process the expense claims for MHAs in respect of their role as Member as well as the claims of all Cabinet Ministers (albeit, perhaps, according to different rules as may be applicable to different reimbursement regimes). In such a situation, the same administrative unit would have visibility, access and analytical capability to review all claims made by respective individuals (both as Ministers and MHAs), and to perform the necessary cross-checks to avoid duplicate payments.

While these processing options can be assessed at the administrative level, there is an additional dimension of this issue to be addressed from a policy perspective. It relates to *overlapping entitlements*. Through the course of addressing my mandate, I have focused on recommending a comprehensive allowance entitlement framework for *all* Members - *as MHA's*. I emphasize that I have *not addressed* the allowance framework or expense reimbursement entitlement of Cabinet Ministers - *as Ministers*. The treatment of ministerial expenses is not within my terms of reference, yet, there are at least two circumstances affecting reimbursement of ministerial expenses on which I believe I should comment.

In the first place, there may be circumstances in which Members who are also Cabinet Ministers can make *overlapping claims*. There may be circumstances in which the rules might permit an individual to claim an expense or a per diem allowance as *either* a Member *or* as a Cabinet Minister. This presents two issues: i) safeguards must be put in place to ensure the individual is only reimbursed once (for example, an individual should only be able to claim one per diem allowance for a given day), and ii) safeguards must be put in place to ensure that the Cabinet Minister does not derive an advantage in relation to funding constituency expenses compared to the Member who is not a Minister.

It is also to be noted that if the recommendations in this report regarding access to information respecting MHA spending on allowances are adopted, there will be two different regimes in place with ministerial expenses being subject to greater degrees of secrecy than constituency expenses. There will, therefore, be a greater degree of difficulty in achieving accountability for ministerial expenses.

These concerns, raised by Members during our consultation process, indicate that the possibility exists that Ministers could effectively charge some constituency-related expenses to their respective departments as departmental expenses, particularly where, for example, a visit to their district involves both constituency and ministerial work. Accordingly, this component of their expenses, coupled with their regular constituency allowances as an

MHA, would have the effect of indirectly increasing the overall amount of public money they were able effectively to spend on constituency work - thus providing them with a financial advantage relative to the level of funding available to the “regular” MHA.

The second circumstance relating to reimbursement of ministerial expenses on which I wish to comment relates to the opposite side of the “financial advantage” coin. Just as the combined operation of MHA and ministerial reimbursement rules should not give a financial *advantage* to MHAs who are also Ministers when it comes to constituency work, they should also not result in a financial *disadvantage*. In the “Anomalies” section of Chapter 10 I referred to one “anomaly” that appeared to affect Ministers adversely⁴ where a Minister whose principal family residence is in a constituency outside the capital region is effectively required to live in St. John’s to enable him or her to perform ministerial duties properly. I was told that the rules respecting constituency allowances and ministerial allowances, particularly in relation to travel and meals, were applied inconsistently, with one set of rules treating the Minister as living in St. John’s and the other treating him or her as living in the district. As a result, it was difficult for legitimate expenses to be reimbursed under either set of rules.

Clearly, the rules respecting reimbursement of legitimate constituency and ministerial expenses should be applied consistently so that Ministers in the position I described are not unfairly financially disadvantaged. There may well be other circumstances where the two sets of rules do not effectively mesh. The recommendations I have made respecting a new allowance regime should, I hope, address most of these issues. However, I believe the new allowance regime should be reviewed against the reimbursement rules for Ministers to ensure that any other potential anomalies are eliminated.

The point of this discussion is that the Executive Council should carefully consider the expense reimbursement rules for MHAs when formulating reimbursement rules for Ministers (and for others such as parliamentary assistants) to ensure that when the ministerial rules are overlaid on the constituency rules neither financial advantage nor financial disadvantage results. The MHA rules - which, of course, apply to all MHAs, whether Ministers or not - should be regarded as a floor, with the ministerial rules being designed to dovetail appropriately with those rules.

Lack of Employment Standards for Political Support Staff

In my consultations with MHAs, concern was raised with respect to the terms and conditions of employment of political officials of the House of Assembly - assistants to MHAs, as well as research and support staff of the respective caucuses. I understand that these officials, while paid a salary out of public funds, are employed on a contractual basis for the benefit of the MHAs or representatives of the respective caucuses. They are not

⁴ See Chapter 10, under the heading “Anomalies.”

considered members of the public service and they are not included in a bargaining unit. Accordingly, they are not deemed to be covered by government's general employment policies and practices, nor are they covered by any collective agreement.

As is the case with MHAs, I understand it is not at all uncommon for the political support staff to be generally required to attend to constituency business, including traveling on nights and weekends outside of what might be regarded as normal business hours in other disciplines. While the need for flexibility is recognized, it appears that there are no consistent employment practices or policies established to govern the working conditions or benefit entitlements of these people.

There are also greater concerns with respect to continuity of employment in these positions than might be expected in the public service generally. By the very nature of the political process, these positions are periodically subject to turnover depending on election results. The assistant's employment fate is often determined by the election success (or defeat) of the MHA for whom he or she is working. In this regard, I was told that the practices with respect to notice of termination of employment and severance, as well as opportunities for employment elsewhere in government, were at best inconsistent, and at worst inconsiderate and unfair, leaving the assistant vulnerable to the relative benevolent influence (or lack thereof) of individual politicians.

I acknowledge that those who become involved in the political process should do so with their eyes open to the uncertainties associated with it, and to the requirements for flexibility in responding to the needs of constituents. However, the concerns raised through our consultations might cause one to reflect on the extent to which the employment arrangement should be completely open-ended, or whether there should be some general guidelines to provide for equity and consistency in the employment practices applicable to the people engaged in these important functions that ultimately support the parliamentary process.

As with other points raised in this chapter, it is beyond my mandate to recommend a policy framework to address this situation. However, this is an area where I sensed there are very genuine concerns amongst MHAs who point to a need to introduce policies or guidelines to ensure fairness and equity for people who could find themselves lost or forgotten in the political process. Accordingly, the House of Assembly Management Commission may wish to reflect on these observations and consider establishing appropriately focused policy parameters to govern employment conditions of political support staff.

Interdepartmental Co-operation in Sharing of Transportation Costs

One MHA pointed out that, in his experience, there are times when an MHA could, if arrangements were appropriately made, accompany another government professional - such as a doctor - on a fixed wing or helicopter flight to a remote community. The possibility of joining such a flight often comes to the MHA's attention at the last minute. This is

understandable, particularly when the flight involves a medical emergency. However, there are other flights that are planned well in advance, and if there was appropriate interdepartmental co-operation, this could facilitate travel to some remote areas for no additional cost. It is therefore both in the interest of better serving constituents and cost saving to undertake a review of planned travel of those departments that are involved in providing such services, and to establish a protocol for communication between the described departments and MHAs having constituencies with remote communities in order to facilitate and reduce the cost of MHAs' travel to such communities.

Caucus Funding

There can be no doubt that for an opposition to do its job in the House and on House committees effectively, its MHAs have to have sufficient levels of support in the form of administrative assistance and research capability.

A number of opposition MHAs expressed concerns about the levels of funding provided by the House to the caucus offices, particularly with respect to the levels of funding for research purposes. These expressions of concern took two forms. First, it was pointed out that a special arrangement had been made to accommodate the third party in the House to enable a floor of funding to be made available for such purposes, but that this arrangement had not been applied to the Official Opposition. The rules presently in place contemplate the provision of \$20,000 of such funding per caucus member. In the case of the third party, with (until recently) two members in the House, that would have meant only \$40,000 - not a large amount to engage additional personnel with research capability and defray all associated costs. Notwithstanding those general rules, however, the Commission of Internal Economy ordered that, for the current General Assembly only, the third party ought to be given a floor amount of \$100,000 to be allocated and spent by the third party caucus as it thought best.⁵

It was suggested to me that a floor amount of \$100,000 should also be made available to the Official Opposition caucus over and above the \$20,000 per member that it would otherwise be entitled to. If that were to be the case, that would result in a more generous formula than that applied to the third party. I understand that the order of the IEC providing the floor of \$100,000 to the third party was interpreted as not being *additional* to the per member allocation. In other words, the third party would not receive any per member allocation until the number of its caucus members multiplied by \$20,000 would exceed \$100,000. Applying that formula to the Official Opposition would mean that it should not be entitled to an additional \$100,000, because the number of its existing members times \$20,000 would already exceed the floor.

Having said that, however, I believe it is time to review the funding arrangements for

⁵ "Official Minutes of the Internal Economy Commission," November 29, 2004 meeting at minute 2(1) (a). This order was made retroactive to April 1, 2004.

all opposition parties to ensure that adequate arrangements are in place for them. It is essential that they have sufficient resources to be able to carry out their vital democratic functions. I have not been able, as part of the work of this inquiry, to do a cost analysis of what would be required. The House of Assembly Management Commission should, I believe, undertake such a study directed at determining appropriate funding levels, taking into account submissions from the caucuses concerned and the practices in other Canadian jurisdictions.

The second concern I have with respect to caucus funding relates to the third party's role generally.⁶ To qualify as a "parliamentary group" within the *Standing Orders* of the House, the practice has been to recognize such a group only if that party contested two-thirds of the number of seats in the House in the preceding general election and has elected three members at that election or in a subsequent by-election.⁷ Notwithstanding that position, past rulings of the Speaker have accorded certain rights to the New Democratic Party in the House so long as it has two members in the House.⁸

It would be inappropriate, and certainly not within my terms of reference, for me to comment generally on how the status of a third party should be treated with respect to its parliamentary role. That is a matter within the privileges of the House. I believe it is a different matter, however, with respect to how the House of Assembly Management Commission should treat a party that has minimal representation in the House with respect to *financial* matters.

In Chapter 6 I recommended that a third party ought to be represented on the IEC even if it had only one member elected to the House.⁹ In like manner, it seems to me that a third party ought also not to be constrained by minimum-member rules with respect to being provided sufficient floor funding to enable it to perform its parliamentary functions. Even a party represented by only one member in the House should have access to basic resources, over and above those available to him or her *qua* member, to enable research and other administrative functions to be carried out. It is not an objection to such an arrangement that it would open up the provision of extensive resources to "fringe" movements or non-affiliated individuals who manage to get one member elected to the House. The arrangement could be limited to only those persons or groups who meet the criteria for registration and are registered as a political party under the provisions of the *Elections Act, 1991*.

Inasmuch as the present funding arrangement for the existing third party (which, as I read the order, was not expressly made contingent on the third party continuing to have a minimum of two members in the House) was, by the terms of the order of the IEC referred to

⁶ For this purpose, I assume that the third party is a registered party under s. 278 of the *Elections Act*, S.N.L. 1992, c. E-3.1

⁷ *Standing Orders of the House of Assembly*, Appendix (Practice Recommendation 2).

⁸ See reference to a ruling of Speaker McNicholas in 1987, in Practice Recommendation 2 attached to the *Standing Orders*.

⁹ Recommendation 30(2).

previously, only intended to last for the duration of the current General Assembly, the issue of the continued funding of the third party will have to be re-addressed after the next election if only a limited number of persons in that party are elected. If the matter is addressed, I would encourage the House of Assembly Management Commission to give consideration to the forgoing discussion in arriving at an appropriate formula for funding of the third party at an acceptable level to enable it to discharge its parliamentary duties effectively.

Advancing to “Best Practices”

The recommendations in this report have been designed to facilitate the advancement of the administration of the House of Assembly to a “best practices” standard as stipulated in the terms of reference. The recommended approach represents a significant departure from the past, as well as a significant departure from existing practices, not only in the House of Assembly, but also in the executive branch of government.

It is important to appreciate that the rationale for many of my recommendations is not based solely on the unique circumstances of the House of Assembly. In many respects, the underlying thrust of the best practices approach is generic. The principles might be considered universally applicable. To note some of the more prominent examples: high ethical standards emanating from a strong tone at the top; the importance of a code of conduct; clear articulation of accountability; increasing access to government information; executive due diligence responsibility; ongoing financial performance review and analysis; management certification of compliance; an ongoing obligation for full, true, plain and timely disclosure; “whistleblower” protections; and a formalized procedure for objective input into the audit process. My recommendations reflect research encompassing trends in various jurisdictions, new policy directions in Canada that have evolved following the Gomery Inquiry with the *Federal Accountability Act*, and international regulatory and corporate governance trends following the Enron and WorldCom scandals. Many of those trends are, in fact, evident in non-legislative areas of government, and I have adapted them for application to the legislative branch.

I note as well that there has been a backlash against the extent of certain regulatory trends in the private sector, with some taking the position that the regulators have gone too far - that they have overdone it by placing *micro-managing* control mechanisms, undue reporting burdens and governance responsibilities on organizations at a disproportionately high cost. I understand those concerns. In our exuberance to regain control, we must not let the remedies surpass the requirements of practical and meaningful standards of transparency, compliance and accountability and degenerate into counterproductive activities. Given the events that were the catalyst for this inquiry, and given the lack of accountability and transparency that has become evident from our investigations, I am satisfied that, in the context of the political affairs in this province, we have not gone too far in the recommendations that have been made. Credibility must be re-established. The process has begun, but we still have a long way to go. Many of the most basic ingredients of control, accountability and governance were missing. I am convinced that, given our experience and the imperative that public confidence be restored, a comprehensive regime is vital.

In the broader context as well, it must be acknowledged that, should government and the Members of the House accept and proceed to implement my recommendations, the legislative branch will, in many respects, progress to standards beyond those currently in place for the executive branch of government in this province. It may be that these same standards, issues of principle and best practices, and the means to address them, are already being assessed by government in another forum in terms of their potential application to the executive branch. But to the extent they are not, government and Members may wish to ask themselves “Why not?”



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.

Schedule I

House of Assembly Accountability, Integrity and Administration Act



A BILL
AN ACT RESPECTING THE EFFECTIVE
ADMINISTRATION OF THE HOUSE OF
ASSEMBLY, THE STANDARDS OF CONDUCT OF
ELECTED MEMBERS, AND THEIR ETHICAL AND
ACCOUNTABLE BEHAVIOUR

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72. Commencement

*Be it enacted by the Lieutenant-Governor and House of Assembly in
Legislative Session convened, as follows:*

Short title

1. This Act may be cited as the *House of Assembly Accountability, Integrity and Administration Act*.

Definitions

2. (1) In this Act

- (a) “audit” means an examination of the accounts of public money and other records relating to the House of Assembly service, statutory offices and a member that may be conducted by an auditor under this Act or another law of the province;
- (b) “audit committee” means the audit committee established under section 23;
- (c) “auditor general” means the auditor general as defined in the *Auditor General Act*;
- (d) "caucus" means a group of two or more members who belong to the same registered political party;
- (e) "clerk" means the Clerk of the House of Assembly;
- (f) “commission”, unless the context indicates otherwise, means the House of Assembly Management Commission continued under section 18;
- (g) “commissioner” means the Commissioner for Legislative Standards appointed under the *House of Assembly Act*;
- (h) “compliance audit” means an audit contemplated by subsection 43(9);
- (i) “financial audit” means an audit referred to in subsection 34(5);
- (j) “fiscal year” means fiscal year as defined in the *Financial Administration Act*;
- (k) “House of Assembly service” means the House of Assembly Service established under section 25;

- (l) “manual” means a manual referred to in section 50;
- (m) "member" means a member of the House of Assembly as described in the House of Assembly Act;
- (n) "minister" means a minister appointed under the *Executive Council Act*
- (o) “registered political party” means an organization formed for the purpose of contesting an election of members to the House of Assembly and which is registered in the register of political parties under section 278 of the *Elections Act, 1991*
- (p) “rules” means rules enacted by the commission under this Act;
- (q) "speaker" means the Speaker of the House of Assembly;
- (r) “statutory office” means the office and administrative staff directly serving the
 - (i) Chief Electoral Officer,
 - (ii) Commissioner for Members’ Interests,
 - (iii) Child and Youth Advocate,
 - (iv) Information and Privacy Commissioner,
 - (v) Citizen’s Representative, and
 - (vi) other offices of the House of Assembly, with the exception of the office of the Auditor General, that may be created by statute from time to time; and
- (s) “third party” means the second largest party sitting in the House of Assembly in opposition to the government.

Purpose

- 3. (1) The purpose of this Act is to
 - (a) establish an administrative framework for the House of Assembly that is transparent and accountable;

- (b) place responsibility with individual members to conduct their public and private affairs so as to promote public confidence in the integrity of each member, while maintaining the dignity and independence of the House of Assembly;
- (c) promote the equitable treatment of each member of the House of Assembly;
- (d) establish clear rules with respect to salary, allowances and resources for members and to provide for mandatory review at regular intervals;
- (e) provide for clear and timely disclosure in relation to operations of the House of Assembly service and statutory offices, including members' salaries, pensions, allowances, resources and separation payments that is consistent with the public interest;
- (f) create an environment for members in which full-time devotion to one's duties is encouraged; and
- (g) establish standards of conduct for members and for those charged with the responsibility of administration of operations of the House of Assembly service and the statutory offices.

PART I

HOUSE OF ASSEMBLY

Composition of
House of Assembly

4. The House of Assembly consists of those persons elected in accordance with the *Elections Act, 1991* as members to represent the districts set out in section 5 of the *House of Assembly Act*.

Oath or affirmation
of member

5. (1) Before being permitted to take his or her place and vote in the House of Assembly, a member shall take and subscribe before the Lieutenant-Governor or a person who may stand in the place of the Lieutenant-Governor an oath of allegiance in the following form:

I, A.B., do swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law, (in the case where the oath is taken, add "So help me God")

and also an oath of office in the following form:

I, A.B., do swear (or affirm) that

(a) I am fully qualified to hold the office of Member for the District of -----to which I have been elected;

(b) I have not knowingly contravened the Elections Act, 1991 respecting any matter in relation to my election;

(c) I will faithfully, to the best of my ability, perform the duties and responsibilities of my office and will not allow any direct or indirect monetary or other personal or private interest to influence my conduct or affect my duties in public matters;

(d) I hereby affirm, ascribe to and agree to follow the Code of Conduct of Members adopted by the House of Assembly, (in the case where the oath is taken, add "So help me God")

Speaker term of office

6. For the purpose of this Act, the speaker in office following the dissolution of the House of Assembly is considered to be speaker until a new speaker is chosen by the House of Assembly.

House officers

7. (1) Upon nomination by the House of Assembly, the Lieutenant Governor in Council shall, by Commission under the Great Seal, appoint the following officers

(a) the Clerk of the House of Assembly

(b) the Assistant Clerk of the House of Assembly;

(c) the Law Clerk; and

(d) the Sergeant-at-Arms of the House of Assembly.

(2) Before a nomination is made under subsection (1), the speaker shall consult with the commission, the Clerk of the Executive Council and the chairperson of the Public Service Commission to determine an appropriate process for recruitment of suitable candidates for appointment.

Oath of clerk

8. (1) The clerk, shall, when appointed, take

- (a) the oath of allegiance provided by the *Oaths of Office Act*; and
- (b) the oath of office as provided in subsection (2) before the Speaker of the House of Assembly, who is empowered to administer the oaths.

(2) The oath of office of the clerk shall be as follows

"I, _____, swear [affirm] that I will well and truly serve Her Majesty the Queen in, and will diligently, faithfully and impartially discharge the duties of the office of Clerk of the House of Assembly and I will make true entries, memoranda and journals of the things done and passed in the Assembly. And I will faithfully manage and supervise the financial management and administration of the House of Assembly service" (In the case where an oath is taken add "So help me God").

Oath of assistant clerk

9. (1) The clerk assistant of the House of Assembly shall, when appointed, take:

- (a) the oath of allegiance provided by the *Oaths of Office Act*; and
- (b) the oath of office as provided in subsection (2) before the speaker, who is empowered to administer the oaths...

(2) The oath of office of the clerk assistant shall be as follows:

I, _____, swear [affirm] that I will diligently, faithfully and impartially discharge the duties of clerk assistant to the House of Assembly, to the best of my knowledge and ability." (In the case where an oath is taken add "So help me God").

Inability of clerk to act

10. Whenever the clerk is absent or unable to act, or the office of clerk is vacant, the clerk assistant shall perform the duties of the clerk

PART II PAYMENTS TO MEMBERS

Salaries, expenses, severance and pensions

11. (1) A member is entitled, effective July 1, 2007, to be paid an annual salary of \$92,580 payable in 26 equal installments, in arrears.

(2) A member is entitled, subject to those conditions and limitations as may be prescribed by rules of the commission, to be reimbursed or have payment made on his or her behalf for reasonable and legitimate expenses incurred by the member in carrying out his or her duties as a member.

(3) Upon ceasing to be a member, the member is entitled to a

(a) severance allowance, upon the conditions, in amounts and in accordance with the formula that may be determined by a directive of the commission; and

(b) pension determined in accordance with the *Members of the House of Assembly Retiring Allowances Act*.

(4) Where prescribing the types and amounts of expenses to which a member may be entitled under subsection (2) the commission may, by rule

(a) make distinctions between constituencies with respect to the amounts and manner of entitlement of members, taking into account geographic, social and economic differences;

(b) prescribe a maximum daily amount for meals or a basic amount per kilometre to be paid to a member in place of providing for reimbursement of actual expenses for food and vehicle travel.

Other remuneration

12. (1) A member who also holds one of the following positions shall be paid an additional salary, effective July 1 2007,* as follows

* The salary numbers in this section have been adjusted to take account of an anticipated 3% salary increase corresponding to the basic salary adjustment for MHAs scheduled for July 1, 2007. See report Chapter 9 (Compensation) under the heading "Anticipated Changes in Current Salary Base."

- (a) Speaker----- \$52,497
- (b) Deputy Speaker and Chair of Committees- 26,246
- (c) Deputy Chair of Committees----- 13,123
- (d) Leader of the Opposition ----- 52,497
- (e) Opposition House Leader----- 26,246
- (f) Deputy Opposition House Leader ----- 17,919

(g) Leader of a recognized Third Party-----	18,367
(h) Party Whip-----	13,123
(i) Caucus Chair-----	13,123
(j) Chair, Public Accounts Committee-----	13,123
(k) Vice Chair-Public Accounts Committee--	10,032

(2) The salaries referred to in subsection (1) shall be payable in 26 equal installments, in arrears.

(3) A member who sits on a committee of the House of Assembly, the commission or a committee of the commission may be paid, subject to the conditions and limitations prescribed by the commission, a daily amount of not more than \$200 for attendance at meetings plus reimbursement of reasonable expenses in relation to such attendance when the House is not in session.

(4) With the exception of the reimbursement of expenses, subsection (3) does not apply to a minister or the holder of a position referred to in subsection (1).

Time at duties

13. (1) On a day when the House of Assembly is sitting, a member shall attend that sitting.

(2) A deduction shall be made from the salary payable to a member under subsection 11(1) in the amount of \$200 for each day on which the member is absent from a sitting of the House of Assembly for reasons other than those enumerated in subsection (3)

(3) Where a member is absent from a sitting of the House of Assembly because of

- (a) the sickness of the member;
- (b) a serious illness related to the member's family;
- (c) bereavement;

- (d) attendance at a meeting of a committee of the House of Assembly, the commission or a committee of the commission;
- (e) attendance to duties as a member of a caucus or attendance to constituency business, where the member remains within the precincts of the House of Assembly as determined under section 19.1 of the *House of Assembly Act*;
- (f) attendance to ministerial duties where that member is a minister;
- (g) other exceptional circumstances as may be approved by the speaker,

a deduction shall not be made under subsection (2).

(4) Subsection (2) does not apply to the premier, the leader of the official opposition and the leader of a third party.

(5) On or before the 31st day of January in a year, a member must file with the clerk a declaration under oath or affirmation of his or her attendance while the House of Assembly was sitting in the previous year together with the dates of absences and an explanation for those absences.

(6) Where a member fails to file the declaration required by subsection (5) or files a declaration disclosing that a deduction is required under subsection (2), the clerk shall report the matter to the Minister of Finance who shall

- (a) in the case of failure to file the declaration, withhold payment to the member of the member's salary; or
- (b) in the case where a deduction is warranted, withhold from the member's salary or adjust payments to or claim a refund from the member with respect to the appropriate amount required to be deducted under subsection (2).

(7) When the House of Assembly is not sitting, a member shall devote his or her time primarily to the discharge of his or her duties and responsibilities as a member, while making allowance for

- (a) reasonable personal and family commitments;

- (b) the need for reasonable rest and vacation time;
- (c) ministerial duties, if the member is appointed as a minister; and
- (d) parliamentary assistant's duties, if the member is appointed as a parliamentary assistant.

(8) Nothing in this Act prevents a member who is not appointed as a minister from

- (a) engaging in employment or the practice of a profession; or
- (b) carrying on a business,

so long as the member, notwithstanding the activity, is able to fulfill, and is fulfilling his or her obligations as a member under subsections (1) and (7).

(9) Where the speaker becomes aware of circumstances that indicate that, by virtue of engaging in activity referred to in subsection (8) or for some other cause, a member may not be discharging his or her primary obligations under subsection (7), the speaker shall refer the matter to the appropriate committee of the House of Assembly for investigation and report.

(10) Order 19 of the *Standing Orders of the House of Assembly* is repealed.

Commencement and termination dates

14. (1) For the purpose of entitlement to the payments provided for in subsections 11(1), (2) and (4), a person is a member from the date of his or her election until his or her seat is vacated or until the date of the next following election, whichever first occurs.

(2) Notwithstanding subsection (1), a member may not claim reimbursement of expenses under subsection 11(2) from and after the date an election is called where those expenses relate to partisan political activities or election activities

Adjustments to salaries, expenses and severance

15. (1) No adjustments to salaries under subsections 11(1) and 12(1) shall be made and no additional non-accountable allowance shall be created or provided for except

- (a) in response to a recommendation of a members' compensation review committee constituted under section 16; and
- (b) by introduction of an amending Bill in the House of Assembly with votes on first, second and third readings being taken on separate days.

(2) Notwithstanding subsection (1), the salary of a member under subsection 11(1) and the salaries for the positions referred to in subsection 12(1) shall be adjusted annually on the first day of July by a percentage equivalent to the annual increase given in the previous year in the executive pay plan of the government until the next members' compensation review committee appointed under section 16 reports, and amendments are made under subsection (1) in response to the recommendations of that committee,

(3) Subsection (2) shall cease to have effect following the submission of the next members' compensation review committee, and the appropriateness and manner of providing for periodic increases in a member's salary during the period between the appointments of subsequent committees shall be dealt with by those committees

(4) The commission may only exercise its powers to prescribe reimbursement or payment of expenses under subsection 11 (2) or compensation or reimbursement or payment of expenses under subsection 12(3) by making rules.

(5) Where the commission proposes to amend or add to the levels of or provisions respecting reimbursement or payment of expenses of members, it shall follow the following procedure

- (a) a draft containing the amendment shall be prepared and tabled at a meeting of the commission;
- (b) notice of the tabling of the draft rule shall be given to and read at the House of Assembly if it is in session, or given to every member if it is not in session, and in any case shall be posted on the website maintained by the House of Assembly; and
- (c) the draft rule shall not be voted on except at a subsequent meeting of the commission.

Inquiry re: salaries

16. (1) The House of Assembly shall, at least once in each General Assembly, by resolution appoint, upon those terms and conditions that are set out in the resolution, an independent committee, to be called a members' compensation review committee, of not more than 3 persons, none of whom shall be a member, to conduct an inquiry and prepare a report respecting the salaries, allowances, severance payments and pensions to be paid to members.

(2) Before the appointments contemplated in subsection (1) are made, the speaker shall first consult with the government house leader, the opposition house leader and the leader of a third party having one or more members in the House and report the results of those consultations to the House.

(3) The persons appointed under subsection (1) shall have and may exercise all the powers, privileges and immunities of persons appointed as commissioners under the *Public Inquiries Act*.

(4) The persons appointed under subsection (1) shall complete their inquiry and deliver their report containing recommendations to the speaker within 120 days of the committee's appointment.

(5) The speaker, upon receipt of the report containing the recommendations of the members' compensation review committee, shall refer the recommendations to the commission as soon as possible following the receipt of them and the commission, after consideration of the recommendations, shall, subject to subsection (6), accept or modify them and

- (a) submit the recommendations, as accepted or modified, relating to salaries and non-taxable allowances and other matters that may be necessary to be implemented by legislation, to the Minister of Finance or Justice, or other appropriate minister, for the preparation of a Bill to amend this Act or another Act accordingly; and
- (b) place the remaining recommendations, as accepted or modified, on the agenda of a subsequent meeting of the commission, for the adoption of appropriate rules implementing those recommendations.

(6) A modification of the recommendations of a members' compensation review committee which may be made by the commission

with respect to salaries, non-taxable allowances or other amounts for which a member may be entitled to claim reimbursement or payment on his or her behalf for reasonable or legitimate expenses, shall not exceed the maximums recommended by the committee in that regard.

(7) A members' compensation review committee shall make itself available for consultation with the commission for 6 months after delivering its report to the speaker.

Payment from CRF

17. All salaries, allowances and expenses payable under this Act shall be paid out of the Consolidated Revenue Fund.

**PART III
HOUSE OF ASSEMBLY MANAGEMENT
COMMISSION**

House of Assembly
Management
Commission

18. (1) The Commission of Internal Economy of the House of Assembly established under the *Internal Economy Commission Act* is continued under the name of the House of Assembly Management Commission.

(2) The speaker, or in his or her absence, the Deputy Speaker, shall preside over the commission.

(3) The commission shall consist of

- (a) the speaker, or in his or her absence the Deputy Speaker, who shall be the chairperson;
- (b) the clerk, who shall be the secretary and shall not vote;
- (c) the government house leader;
- (d) the official opposition house leader;
- (e) 2 members who are members of the government caucus only one of whom may be a member of the Executive Council;
- (f) one member who is a member of the official opposition caucus; and

(g) one member, if any, from a third party that is a registered political party and has at least one member elected to the House of Assembly but not from the government or official opposition caucuses.

(4) Where there is no party, other than the government party or the official opposition party, having a member elected to the House of Assembly, the member chosen for the purpose of paragraph (3)(g) shall be an additional member from the official opposition caucus.

(5) No member of the commission shall also serve concurrently as a member of the Public Accounts Committee of the House of Assembly.

(6) The Deputy Speaker, when not acting in the place of the speaker, may nevertheless attend all meetings of the commission in a non-voting capacity.

(7) Members referred to in paragraphs (3)(e) to (g) and subsection (4) shall be chosen for appointment to the commission by their respective caucuses except that the member of the Executive Council referred to in paragraph (e) shall be appointed by the Lieutenant Governor in Council.

(8) A quorum of the commission shall be 50% of its members provided that at least one member representing the party in opposition to the government, and the Speaker or Deputy Speaker, shall be present.

(9) In the second week of every session of the House of Assembly and as the need arises, the speaker shall inform the House of Assembly of the appointments made to the commission.

(10) In the absence of the clerk, the assistant clerk shall be the secretary to the commission.

Proceedings of the
commission

19. (1) All proceedings of the commission excepting

- (a) personnel issues relating to officers and employees of the House of Assembly service and statutory offices;
- (b) legal matters involving actual or potentially pending litigation;
- (c) matters protected by privacy and data protection laws; and

- (d) budget deliberations involving the preparation of the annual estimates of expenditure of the House of Assembly service and the statutory offices,

shall be open to the public.

(2) Where a matter referred to in subsection (1) is raised, the speaker shall clear the public from the place of the meeting and the commission shall proceed to discuss the matter in private.

(3) The commission shall adopt rules with respect to the circulation and preparation of agendas and briefing material to members of the commission and for the orderly conduct of business of the commission.

(4) The substance of all decisions of the commission, including the ultimate decisions made following debate on matters in private referred to in subsection (1) shall be recorded in public and shall form a part of the public record.

(5) A copy of the minutes containing the substance of all decisions of the commission made at each meeting shall, following approval by the commission at its next meeting

- (a) be tabled in the House of Assembly by the clerk no later than 5 days after that approval if the House of Assembly is sitting or, if it is not sitting, then not later than 5 days after it next sits;

- (b) be provided by the clerk to each member within 15 days of their approval by the commission; and

- (c) be placed by the clerk on a website maintained for the House of Assembly for inspection by the public.

(6) All public meetings of the commission may be electronically accessed by the media in accordance with the methods and equipment existing in the House of Assembly.

(7) Recordings of the proceedings of the commission shall be made and transcribed by the Hansard office and the broadcast centre of the House of Assembly, in the same manner as are proceedings of the House of Assembly.

20. (1) The commission is responsible for the financial stewardship of all public money, within the meaning of the *Financial Administration Act*, that may be voted from time to time by the House of Assembly for the use and operation of the House of Assembly service and its statutory offices, and for all matters of financial and administrative policy affecting the House of Assembly, its members, offices and staff and in connection with them and without limiting the generality of this subsection, the commission shall

- (a) oversee the finances of the House of Assembly including its budget, revenues, expenses, assets and liabilities;
- (b) review and approve the administrative, financial and human resource and management policies of the House of Assembly service and its statutory offices;
- (c) implement and periodically review and update financial and management policies applicable to the House of Assembly service and its statutory offices;
- (d) give directions with respect to matters that the commission considers necessary for the efficient and effective operation of the House of Assembly service and its statutory offices;
- (e) make and keep current rules respecting the proper administration of allowances for members and reimbursement and payment of their expenditures in implementation of subsection 11(2) of this Act;
- (f) annually report, in writing, to the House of Assembly, through the speaker, with respect to its decisions and activities in accordance with section 51; and
- (g) exercise other powers given to the commission and to perform other duties imposed on the commission under this or another Act.

(2) The commission may at any time report to the House of Assembly on matters referred to in this section or in another Act relating to the legislative branch of government.

(3) Notwithstanding paragraph (1)(c), the financial and management policies of the executive branch of government shall apply to

the House of Assembly service and its statutory offices except to the extent that they may be modified by directive of the commission putting in place alternative and more appropriate financial and management policies.

(4) The commission may, by directive, delegate a power or duty that it considers appropriate to the speaker or the clerk and where that delegation is made

- (a) the commission shall establish outcome measurements and accountability recording of measurements that enable that proper oversight and recording be maintained;
- (b) the exercise of that power or the performance of that duty shall be considered to have been carried out by the commission; and
- (c) the commission shall remain accountable for decisions it has made.

(5) In carrying out its duties under subsection (1), the commission shall

- (a) regularly, and at least quarterly, review the financial performance of the House of Assembly as well as the actual expenditures of members compared with approved allocations;
- (b) ensure that an annual financial audit is completed of the accounts of the House of Assembly service and the statutory offices in accordance with section 43 within 90 days after the end of a fiscal year;
- (c) ensure that a compliance audit is completed of the accounts of the house of Assembly service and the statutory offices in accordance with section 43 at least once every General Assembly, and reported on within 90 days after the end of the fiscal year to which it relates;
- (d) ensure that full and plain disclosure of the accounts and operations of the House of Assembly and its statutory offices is made to the auditor appointed in accordance with section 43;
- (e) consider and address on a timely basis recommendations of the auditor appointed in accordance with section 43; and

(f) report in writing annually to the House of Assembly, or a committee established by it, the results of any audit and the steps taken or to be taken to address a matters of concern raised by an audit.

(6) In carrying out its duties, the commission may

(a) make rules of general application respecting

(i) the amounts which members may claim for reimbursement or payment for reasonable and legitimate expenses under subsection 11(4) and the manner in which those allowances shall be calculated, claimed, substantiated and paid,

(ii) the engagement by a member and the amount and method of payment and other terms of engagement of constituency assistants and the reimbursement of reasonable expenses incurred by such assistants in carrying out their duties,

(iii) subject to the requirements of the *Financial Administration Act*, the form of documentation required to make a claim under this Act,

(iv) the financial accountability of members,

(v) the duties and responsibilities of the clerk with respect to the financial administration of the House of Assembly service and the statutory offices, and

(vi) those other matters as may be necessary to carry out the intent of this Act;

(b) issue directives

(i) interpreting, clarifying or amplifying the regulatory provisions of the rules,

(ii) establishing policies for the guidance of members, the clerk and staff of the House of Assembly service and statutory offices,

(iii) in accordance with provisions of the Act and rules calling for the issuing of directives, and

(iv) altering on appeal rulings of the speaker as to the application of the rules to particular cases where advance rulings have been sought under section 24; and

(c) make decisions

(i) on individual cases or appeals brought to the commission for decision, and

(ii) on all other matters that call for action or decision of the commission in relation to the legislative branch of government.

(7) A change shall not be made to the level of amounts of allowances and resources provided to members except in accordance with a rule and, notwithstanding section 64, that rule shall not be effective unless first laid before the House of Assembly and an affirmative resolution adopting it has been passed.

(8) A directive issued or decision made by the commission

(a) is effective on the date specified in that directive or decision; and

(b) shall not be issued or made if it is inconsistent with the Act or the rules.

Individual duties of
commission
members

21. (1) A member of the commission, in exercising his or her powers and discharging his or her duties shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) A member of the commission shall not be considered to be in breach of the duty in subsection (1) if he or she acts prudently and on a reasonably informed basis.

(3) A member of the commission shall act honestly and in good faith on the basis of adequate information in arriving at decisions of the commission, and shall

Orientation and training

- (a) attend meetings of the commission unless unable to do so for good reason;
- (b) spend sufficient time on the affairs of the commission to comply with their duties and responsibilities; and
- (c) consider and advocate policies that promote compliance with this Act and rules.

22. (1) The speaker, assisted by the clerk, shall develop and offer from time to time, appropriate orientation and training programs for

- (a) members;
- (b) members of the commission; and
- (c) officers and staff of the House of Assembly service and its statutory offices,

to assist them in understanding their respective duties and responsibilities and, in particular, in applying and complying with rules and directives of the commission relating to claims for allowances and expenses and policies and procedures respecting financial management.

(2) Within 30 days of a member's election for the first time to the House of Assembly, the speaker shall ensure that an appropriate orientation program is given to the member respecting

- (a) the types of services offered to members by the House of Assembly service and how those services may be accessed,
- (b) the proper procedures to be followed in making claims for reimbursement or payment for proper expenses incurred by the member in carrying out his or her duties;
- (c) recommendations for proper systems to be employed in operating a constituency office and employing a constituency assistant; and
- (d) other matters that the speaker considers appropriate to assist the member in carrying out his or her duties.

(3) Within 30 days of a member's election for the first time to the House of Assembly, the speaker shall ensure the delivery of the following to the member

- (a) this Act;
- (b) rules;
- (c) directives of the commission pertaining to members;
- (d) written policies of the House of Assembly service that may affect the member;
- (e) the code of conduct for members and for officers and staff of the House of Assembly service; and
- (f) the manual.

Audit committee

23. (1) There is hereby established a committee of the commission, known as the audit committee.

(2) The audit committee shall consist of

- (a) 3 members of the commission chosen by the commission, at least one of whom shall not be a member of the government party; and
- (b) persons, chosen by the Chief Justice of the Supreme Court, who are not members but who are resident in the province, have demonstrated knowledge and experience in financial matters and are suitable to represent the public interest.

(3) The commission shall designate the chair of the audit committee from time to time from the members of the committee.

(4) A person appointed under paragraph (1)(b) shall serve for a term of not more than 4 years but may be reappointed for one additional term of not more than 4 years.

(5) The assistant clerk of the House of Assembly shall act as secretary of the audit committee.

(6) The commission shall fix and direct the level of compensation and reimbursement of expenses to be paid to persons appointed under paragraph (1)(b).

(7) The audit committee shall

(a) provide assistance to the commission in fulfilling its oversight responsibility to the House of Assembly and the public with respect to stewardship of public money;

(b) make recommendations to the commission respecting the choice of and terms of engagement and compensation of the auditor appointed under section 43;

(c) review the audit plans of the auditor appointed under section 43, including the general approach, scope and areas subject to risk of material misstatement;

(d) review the financial statements, audit report and recommendations of the auditor and give advice thereon to the commission;

(e) review the compliance report issued and recommendations, if any, provided by the auditor general as a result of a compliance audit conducted under subsection 43(9) and give advice on that report and those recommendations to the commission;

(f) review internal audit reports and make recommendations to the commission as required in respect of matters arising from those reports and generally make recommendations with respect to internal audit procedures of the House of Assembly service and its statutory offices;

(g) review with the clerk the effectiveness of internal control and other financial matters, as well as compliance with legal requirements respecting accountability, record-keeping, tendering and conflict of interest in the House of Assembly;

(h) review the code of conduct applicable to the clerk and staff of the House of Assembly service and statutory offices and make recommendations as it may require for improvements to the commission;

- (i) establish procedures for the receipt and treatment of complaints regarding accounting and internal controls, and the confidential anonymous submission by staff of the House of Assembly service and statutory offices and by members of the public service of concerns regarding questionable accounting or auditing matters;
 - (j) use reasonable efforts to satisfy themselves as to the integrity of the House of Assembly service and statutory office financial information systems and the competence of accounting personnel and senior financial management responsible for accounting and financial reporting;
 - (k) review disclosure practices of the commission to ensure full, plain and timely disclosure of its decisions respecting financial matters;
 - (l) advise the clerk with respect to the exercise of the clerk's responsibilities as accounting officer; and
 - (m) deal with, advise and report on other matters relating to the financial affairs of the House of Assembly service and statutory offices as may be required by the commission.
- (8) The audit committee shall
- (a) meet at least four times a year or more often as required;
 - (b) meet separately and periodically as appropriate with the clerk, the personnel responsible for the internal audit function and the auditor appointed under section 43; and
 - (c) report regularly to the commission with respect to its activities.
- (9) The substance of the reports, advice and recommendations made by the audit committee to the commission shall be tabled at meetings of the commission and recorded in the minutes.
- (10) Where there is disagreement among members of the audit committee as to the report, advice or recommendations to be made to the commission on a matter, and the 2 members of the committee appointed under paragraph (1)(b) are in disagreement with the other members of the committee or disagree with each other on that matter, that fact shall be

Advance rulings on
allowance use

recorded in the report, advice or recommendations and in the minutes of the commission.

24. (1) Where a member makes or contemplates making or incurring a type of expense and a claim for reimbursement, or payment has been rejected by an officer or staff member of the House of Assembly service, or the member is unsure as to whether that expense will qualify for reimbursement or payment as an allowance payable, he or she may request a ruling or an advance ruling from the speaker.

(2) Upon receipt of a request in writing for a ruling or an advance ruling under this section, the speaker shall, as soon as reasonably possible, review the matter and provide a ruling in writing to the member as to whether the expenditure or the proposed expenditure complies with or will comply with this Act, the rules and directives of the commission.

(3) Before making a ruling the speaker may request further information or clarification from the member as to the nature and purpose of the expenditure in question.

(4) Where the ruling of the speaker is that the expenditure complies with, or the proposed expenditure will comply with, this Act, the rules and directives of the commission, the speaker shall

(a) inform the member of the ruling; and

(b) provide a copy of that ruling to the commission.

(5) Where the ruling of the speaker is that the expenditure or the proposed expenditure complies with or will comply with the Act, the rules and directives of the commission, and the commission does not vary the speaker's ruling in accordance with subsection (7), the ruling is binding and the member may claim reimbursement or payment.

(6) Where the commission takes issue with the speaker's ruling, the member shall be notified by the commission and given the opportunity to make a submission to the commission outlining why the expenditure complies with the Act and the rules and directives of the commission.

(7) The commission may, within 30 days of receipt of the speaker's ruling reverse that ruling and substitute another or approve that ruling and the decision of the commission is final.

(8) Where the ruling of the speaker is that the expenditure or the proposed expenditure does not comply with the rules and directives of the commission, the member may appeal that ruling to the commission and, after giving the member an opportunity to make a submission in writing in support of the appeal, the commission may decide to reverse, uphold or modify the ruling of the speaker and the decision of the commission is final.

PART IV HOUSE OF ASSEMBLY OPERATIONS

House of Assembly
Service

25. (1) The House of Assembly service consists of operations assigned by law to the legislative branch of government for the purpose of supporting the functioning of the House of Assembly, its committees and members, and includes

- (a) the speaker
- (b) the office of the clerk and other officers of the House of Assembly;
- (c) the law clerk;
- (d) the financial and administrative services;
- (e) the legislative library;
- (f) the office of Hansard;
- (g) the broadcast centre; and
- (h) other divisions as may be assigned by law or designated and provided for by the commission.

(2) For the purpose of this Act, the House of Assembly service does not include a statutory office, the office of the auditor general, or staff employed for political purposes to assist a member or a caucus.

(3) The law clerk appointed under section 7 shall provide legal services to the House of Assembly service, including but not limited to

- (a) advice to the clerk and speaker on parliamentary matters; and

(b) general legal advice and services.

Estimates

26. (1) An estimate of the amounts required to be provided by the House of Assembly for the payment of expenses of the House of Assembly service, including salaries, allowances and expenses of members, during each fiscal year shall be prepared annually by the clerk.

(2) Estimates of the amounts required to be provided by the House of Assembly for the operation of each statutory office shall be prepared annually by the head of that statutory office.

(3) The estimates prepared by the clerk and the head of each statutory office shall be submitted to the commission for its approval and may be altered by the commission.

(4) Before the commission makes a decision on the estimate of the statutory offices submitted under subsection (2), the commission shall request the clerk to provide analysis and commentary to the commission on each of those estimate requests.

(5) Before the commission makes a decision on an estimate submitted under this section, it may submit the estimate to the budget division of the Department of Finance for analysis and commentary.

(6) The estimates as approved or altered by the commission shall be submitted to the Minister of Finance and laid before the House of Assembly with the other estimates for the year.

Payment

27. All amounts of money voted by the Legislature with respect to the estimates submitted under section 26 shall, subject to the *Financial Administration Act*, be paid out of the Consolidated Revenue Fund on the order of the commission to defray the expenses of the House of Assembly service, its statutory offices and the office of the auditor general.

Clerk

28. (1) The clerk is the chief permanent officer of the House of Assembly with the status equivalent to a deputy minister in the public service and in that capacity the clerk is

(a) the chief parliamentary advisor to the speaker; and

(b) the chief administrative and financial officer of the House of Assembly responsible to the speaker and through the speaker to the commission for the management of the operations of the

House of Assembly service and the administration of the statutory offices.

(2) In the capacity as chief parliamentary advisor, the clerk is responsible for

- (a) advising the speaker, deputy speaker, committee chairpersons and members on procedural matters concerning the rules, privileges and proceedings of the House of Assembly;
- (b) directing and coordinating the provision of procedural services by the assistant clerk, sergeant-at-arms and other officers of the House of Assembly;
- (c) coordinating all official parliamentary ceremonies and other events involving the House of Assembly
- (d) custody of and safe-keeping of the records of the House of Assembly and all dispatches, bills, petitions and documents presented to or laid on the table of the House, and shall produce them when required by the speaker or by his or her order on motion of a member;
- (e) recording and carrying out all recorded votes of the House of Assembly; and
- (f) ensuring and controlling public access to the proceedings of the House of Assembly through the production and distribution of Hansard and the facilitation of electronic access to proceedings by the media.

(3) In the capacity as chief administrative and financial officer, the clerk is responsible for

- (a) the provision of administrative, financial and other support services to the House of Assembly, its members, and its statutory offices;
- (b) direction and supervision of the clerks, officers and staff employed in the House of Assembly service and for the establishment of general administrative policies of the statutory offices;

- (c) acting as secretary of the commission and has custody of all records and minutes of the commission;
- (d) ensuring that disclosure, as required by law, of the proceedings of the commission and the financial matters pertaining to members and the House of Assembly service is provided for;
- (e) the preparation of the estimates of the House of Assembly service as required by section 26 and analysis and commentary, to the commission, on the budget submissions of the statutory offices and the office of the auditor general;
- (f) administration of all services and payments to members;
- (g) the orderly safekeeping of the records of the House of Assembly service;
- (h) authorizing and recording all financial commitments entered into on behalf of the House of Assembly service and statutory offices;
- (i) reporting regularly to the commission and to the secretary of the Treasury Board regarding the financial and budgetary performance of the House of Assembly service and its statutory offices;
- (j) reporting to the commission and the audit committee on the status of audits of the House of Assembly service and the statutory offices and, specifically, reporting if in his or her opinion the audit is not being conducted on a timely basis;
- (k) maintaining and periodically assessing the effectiveness of internal controls in the House of Assembly service and statutory offices and reporting on that assessment and effectiveness to the commission; and
- (l) certifying to the commission as required that the House of Assembly service and statutory offices have in place appropriate systems of internal control and that those systems are operating effectively.

(4) Paragraph (3)(l) shall not come into force until August 31, 2008.

Financial
administration of
allowances and
expenses

29. (1) The clerk shall ensure that

- (a) all allowances allocated to a member are allocated directly to a separate account for that member, which shall be maintained by the financial officer designated by the clerk;
- (b) all expenses of a member are charged to and paid out of the member's account as a debit from funds allocated under paragraph (a); and
- (c) expenses reimbursed to or paid on behalf of a member do not exceed prescribed maximums and otherwise comply with limitations on their payment.

(2) The clerk shall ensure that quarterly or more frequently, as he or she considers necessary or as may be directed by the commission, statements of the status of a member's account are provided to that member and the commission.

(3) The clerk shall annually certify in the report required under section 51 that

- (a) he or she has reviewed the accounts of members and that they are an accurate reflection of the transactions related to those accounts for the previous fiscal year; and
- (b) the minutes of the proceedings of the commission are an accurate reflection of the decisions made at those proceedings.

General duties of
clerk

30. The general duties of the clerk of the House of Assembly, where no special provision is made, shall be similar to those of the clerks of the Commons House of Parliament of the United Kingdom according to the practice of Parliament, or as may be provided by resolution of the House of Assembly.

Clerk to account to
Public Accounts
Committee

31. (1) The clerk, as an accounting officer, shall be directly accountable before the Public Accounts Committee of the House of Assembly for the authorities and responsibilities assigned by law or delegated to him or her by the commission, including for the

- (a) measures taken to organize the resources of the House of Assembly service to deliver the programs in compliance with established policies and procedures;

- (b) measures taken to implement appropriate financial management policies;
- (c) measures taken to maintain effective systems of internal control
- (d) certifications that are made under section 29; and
- (e) performance of other specific duties assigned to him or her by or under this or another Act in relation to the administration of the House of Assembly service and the statutory offices.

(2) The obligation of the clerk under this section is to appear before the Public Accounts Committee and answer questions put to him or her by members of the committee in respect of the carrying out of the responsibilities and the performance of the duties referred to in subsection (1).

(3) Except where section 24 applies, where the speaker or the commission are unable to agree with the clerk on the interpretation or application of a rule, directive, policy or standard applicable to a member, the House of Assembly service or the statutory offices, the clerk shall seek guidance in writing on the matter from the comptroller general or the Deputy Minister of Justice.

(4) Where guidance is provided under subsection (3) and the matter remains unresolved, but the speaker or commission, in writing, requests action by the clerk in accordance with their direction, the clerk shall comply with the direction but shall immediately notify the auditor general, the comptroller general and the Attorney General of the direction and his or her disagreement with that direction.

(5) A punishment or retaliation shall not be taken against the clerk for actions taken by him or her in good faith under this section.

Subordinate offices

32. (1) The commission may appoint those employees, other than those appointed under section 7, that it considers necessary for the conduct of the business of the House of Assembly service.

- (2) The commission may, in accordance with
 - (a) subsection 10(1) of the *Citizen's Representative Act*;
 - (b) subsection 11(1) of the *Child and Youth Advocate Act*;

(c) subsection 42.7(1) of the *Access to Information and Protection of Privacy Act*;

(d) subsection 34(5) of the *House of Assembly Act*; and

(e) subsection 7(1) of the *Elections Act, 1991*,

approve the proposed appointments of officers, clerks, assistants and employees of the statutory offices.

(3) Policies respecting the public service, including policies with respect to the reimbursement of expenses, apply to persons employed in the House of Assembly service, except where varied by a directive of the commission.

(4) Policies relating to deputy ministers, including policies with respect to the reimbursement of expenses, apply to the clerk and persons appointed to preside over a statutory office, except where varied by a directive of the commission.

(5) The employee benefits applicable to the public service of the province apply or continue to apply, as the case may be, to persons employed in the House of Assembly service, except where varied by a directive of the commission.

(6) The *Public Service Commission Act*, except for section 11 with respect to appointments, applies or continues to apply, as the case may be, to the House of Assembly and the statutory offices, except where varied by a directive of the commission.

(7) An employee of the House of Assembly service who would, if employed by a department of the government of the province, be an employee for the purpose of the *Public Service Pensions Act*, including for the purposes of the retirement age and the advanced or deferred pension privileges of an employee shall be subject to the same provisions respecting leave as a full-time employee of a department of the government of the province.

(8) The commission may, with the approval of the applicable minister or agency head, second employees from a department of government or agency to work on a temporary basis in the House of Assembly service and while working, those persons shall report to and be answerable to the clerk or other person as may be designated by the clerk

and upon return of those persons to work in a government or agency, service while employed in the House of Assembly service shall be counted as service in the public service.

Reporting of proceedings

33. The commission may make arrangements for the reporting and publishing of the proceedings of the House of Assembly.

Suspension of employees

34. (1) The speaker may inquire into the conduct or fitness of a person employed by the House of Assembly upon a complaint made to the speaker of misconduct or unfitness of that person.

(2) Where it appears to the speaker following an inquiry under subsection (1) that an employee has been guilty of misconduct or is unfit to continue his or her employment, the speaker may suspend the employee and shall report the suspension

(a) to the Lieutenant-Governor in Council in the case of a person appointed by the Crown; or

(b) to the commission where the person has not been appointed by the Crown.

PART V ETHICS AND ACCOUNTABILITY

Codes of conduct

35. (1) The speaker shall, immediately after the coming into force of this Act, refer to the standing committee of the House of Assembly on Privileges and Elections the responsibility of developing and proposing to the House of Assembly the adoption, by resolution, of a code of conduct for members to assist members in the discharge of their obligations to the House of Assembly, their constituents and the public at large by

(a) providing guidance on the standards of conduct expected of members in discharging their legislative and public duties; and

(b) providing the openness and accountability necessary to reinforce public confidence in the manner in which members perform those duties.

(2) The code of conduct adopted under subsection (1) shall be

(a) treated as a standard against which the actions of a member may be judged for the purpose of censure by the House of Assembly and by the public; and

(b) in addition to other standards of duty and responsibility imposed on members by this Act and any other law.

(3) The commission shall, within 90 days of the coming into force of this Act, develop and adopt a code of conduct applicable to the officers and other persons employed in the House of Assembly service and in the statutory offices.

Request for opinion

36. (1) A member who has reasonable grounds to believe that another member is in contravention of the code of conduct adopted under subsection 35(1) may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of the code of conduct.

(2) The commissioner, on his or her own initiative, may conduct an inquiry to determine whether a member has failed to fulfil an obligation under the code of conduct where in the opinion of the commissioner it is in the public interest to do so.

(3) The House of Assembly may, by resolution, request that the commissioner give an opinion on a matter respecting the compliance of a member with the code of conduct.

(4) The Premier may request that the commissioner give an opinion on a matter respecting the compliance of a minister with the provisions of the code of conduct.

(5) Where a matter has been referred to the commissioner under subsection (1) or (3), the House of Assembly or a committee of the House of Assembly shall not conduct an inquiry into the matter until the commissioner has completed his or her work.

Inquiry

37. (1) Upon receiving a request under subsection 36(1), (3) or (4), or where the commissioner decides to conduct an inquiry under subsection 36(2), and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) Where the commissioner conducts an inquiry under subsection (1), he or she shall give the member to whom the inquiry relates a copy of the request and at all appropriate stages throughout the inquiry the commissioner shall give the member reasonable opportunity to be present and to make representations to the commissioner in writing or in person or by counsel or other representative.

(3) Where the commissioner decides to conduct an inquiry under subsection (1), he or she has all the powers of a commissioner under the *Public Enquiries Act*.

(4) Where the commissioner determines that the subject-matter of an inquiry conducted by him or her is under investigation by police or is the subject-matter of criminal proceedings, the commissioner shall hold the inquiry in abeyance pending final disposition of that investigation or those proceedings where in his or her opinion the continuation of the inquiry would inappropriately interfere with the investigation or proceeding.

(5) Where during the course of an inquiry the commissioner determines that there are reasonable grounds to believe that an offence contrary to an Act of the province or the Parliament of Canada has been committed, the commissioner shall immediately refer the matter to the appropriate authorities and hold the inquiry in abeyance pending final disposition of a resulting investigation and proceedings.

Report

38. (1) Where the request for an opinion is made under subsection 36(1) or (3), or where the commissioner conducts an inquiry under subsection 36(2), he or she shall report his or her opinion to the commission which shall present the report to the House of Assembly within 15 sitting days of receiving it if it is in session or, if not, within 15 sitting days of the beginning of the next session.

(2) In all cases, the commissioner shall report the results of an inquiry to the member concerned.

(3) The commissioner shall report the results of an inquiry as soon as possible, and in any event no later than 90 days after beginning the inquiry.

Penalties

39. (1) Where the commissioner determines that a member has failed to fulfil an obligation under the code of conduct he or she may recommend in the report under section 38

- (a) that the member be reprimanded;
- (b) that the member make restitution or pay compensation;
- (c) that the member be suspended from the House of Assembly, with or without pay, for a period specified in the report; or
- (d) that the member's seat be declared vacant.

Concurrence of House of Assembly

40. (1) A recommendation in a report of the commissioner shall not take effect unless the report is sent to the commission under subsection 38(1) and concurred in by resolution of the House of Assembly.

(2) A report tabled in the House of Assembly under subsection 38(1) shall be taken up and disposed of within 15 sitting days after the day on which it was tabled or within a longer period, not to exceed 6 months, that the House of Assembly may determine.

Suit for compensation allowed

41. (1) Where a report to the House of Assembly under section 38 is adopted and the report recommends the payment of compensation or restitution the House of Assembly may, in an Act passed for the purpose, order the payment of compensation or restitution.

(2) Compensation ordered to be paid under subsection (1) is a debt due to the person identified in the report as having suffered damage and may be recovered from the member to whom the report relates by that person in a court.

Examination of member

42. (1) Where, after considering a matter under section 37, the commissioner concludes that, having regard to all the circumstances, there was no failure without reasonable justification in the member's fulfilment of an obligation under the code of conduct, then he or she, without providing further information, shall certify to the member in writing and shall give a copy of the certificate to the commission where the inquiry was conducted as a result of a request under subsection 36(1) or (3) or by the commissioner under subsection 36(2).

(2) Where the commissioner gives a copy of a certificate to a member under this section, he or she shall, on the request of the member, provide the member with the information and explanations in support of the conclusion referred to in subsection (1) that the commissioner considers appropriate in the circumstances, and the member may publish

or otherwise deal with information and explanations so provided as the member sees fit.

Audit

43. (1) Notwithstanding another Act, the accounts of the House of Assembly service and its statutory offices shall be audited annually by an auditor appointed by the commission under subsection (2).

(2) The commission shall before the end of each fiscal year, upon the recommendation of the audit committee, appoint an auditor.

(3) The auditor general may act as the auditor appointed under subsection (1) but in that event the audit to be performed shall be of the House of Assembly service and its statutory offices, as a separate body and not as part of the general audit of the accounts of the province, with appropriate levels of materiality applied to that entity.

(4) The commission and the speaker are responsible for ensuring that an auditor is appointed under this section.

(5) Where an auditor has not been appointed under subsection (2) by the end of the fiscal year, the auditor general shall be the auditor.

(6) The audit provided for in subsection (2) shall consist of

(a) a financial statement audit conducted in accordance with generally accepted auditing standards as determined by the Canadian Institute of Chartered Accountants, expressing an opinion on whether the accounts of the House of Assembly service and statutory offices are fairly presented in accordance with accounting policies noted;

(b) the expression of an opinion on whether the expenses incurred by the House of Assembly service and statutory offices are in accordance with the policies of the commission and, where applicable, the policies of the executive branch of government; and

(c) the expression of an opinion on whether the clerk's assessment of the effectiveness of internal controls of the House of Assembly service and statutory offices is fairly stated and whether the internal controls are operating effectively.

(7) Nothing in this Act precludes the auditor general, after consultation with the audit committee, from conducting at any time and on his or her own motion a separate financial audit of the accounts of the House of Assembly service and the statutory offices within the authorities conferred on the auditor general by the *Auditor General Act*.

(8) Where a financial audit conducted under this section is conducted by an auditor other than the auditor general, that auditor shall

- (a) deliver to the auditor general after completion of the audit a copy of the auditor's report, his or her recommendations to management and a copy of the audited financial statements; and
- (b) provide to the auditor general as soon as reasonably practicable when so requested, a full explanation of the work performed, tests and examinations made and the results obtained, and other information relating to the audit within the knowledge of that auditor.

(9) In addition to the financial audit contemplated by this section, the auditor general shall perform and complete a compliance audit at least once during every general assembly to determine and express an opinion on

- (a) whether collections of public money
 - (i) have been effected as required under law and directives and decisions of the commission,
 - (ii) have been fully accounted for, and
 - (iii) have been properly reflected in the accounts of the province;
- (b) whether disbursements of public money
 - (i) have been made in accordance with the authority of a supply vote, or relevant law,
 - (ii) have complied with regulations, rules, directives and orders applicable to those disbursements,

- (iii) have been properly reflected in the accounts, and
- (iv) have been made for the purposes for which the money was appropriated and authorized;
- (c) whether accounts have been faithfully and properly kept;
- (d) whether assets acquired, administered or otherwise held by or for the House of Assembly service and the statutory offices are adequately safe-guarded and accounted for;
- (e) whether accounting systems and management control systems that relate to revenue, disbursements, safeguarding or use of assets or the determination of liabilities were in existence, were adequate and had been complied with;
- (f) whether accountability information with respect to the operations of the House of Assembly service and the statutory offices is adequate; and
- (g) whether there are factors or circumstances relating to expenditure of public money which in the opinion of the auditor general should be identified and commented on as part of the audit function

(10) Subsection (9) shall not be construed as entitling the auditor general to question the merits of policy objectives of the House of Assembly, the House of Assembly service, the commission or the statutory offices.

Access to books

44. The auditor general, another auditor appointed under section 43 and the comptroller general shall, for the purposes of

- (a) an audit of the accounts of the House of Assembly service and statutory offices under this Act; and
- (b) the duties of the comptroller general under the *Financial Administration Act*,

have access to all books, documents, accounts and other financial records of the House of Assembly and the statutory offices.

Improper retention
of public money

45. (1) Where

- (a) during the course of an audit;
- (b) as a result of a review of an audit report prepared by another auditor employed by the commission; or
- (c) as a result of an internal audit procedure

the auditor general becomes aware of an improper retention or misappropriation of public money by a member or the clerk or assistant clerk, staff of the House of Assembly service or the statutory offices or another activity that may constitute an offence under the *Criminal Code* or another Act of the province or of Canada, the auditor general shall immediately report the improper retention, misappropriation of public money or other activity to

- (d) the speaker;
- (e) the chair of the audit committee;
- (f) the Premier;
- (g) the leader of the political party, if any, with which the person involved may be associated;
- (h) the Attorney General; and
- (i) the Minister of Finance.

(2) In addition to reporting in accordance with subsection (1), the auditor general shall attach to his or her annual report to the House of Assembly a list containing a general description of the incidents referred to in subsection (1) and the dates on which those incidents were reported.

(3) Before making a report under subsection (1), the auditor general shall give to a person involved and who may be ultimately named or identified in the report

- (a) full disclosure of the information of which the auditor general has become aware;

(b) a reasonable opportunity to the person to provide further information and an explanation,

and shall take that information and explanation into account in deciding whether to proceed to make a report.

(4) The auditor general shall not make the existence or the contents of a report referred to in subsection (1) known to another person except

(a) as part of his or her annual report to the House of Assembly;

(b) in accordance with court process;

(c) as part of proceedings before the Public Accounts Committee; and

(d) as a result of a request from the commission.

(5) The auditor general is a compellable witness in any criminal or civil proceeding and in a proceeding before the Public Accounts Committee relating to any matter dealt with in a report made under this section.

(6) Section 19.1 of the *House of Assembly Act* does not apply to a report made under this section.

(7) Section 15 of the *Auditor General Act* does not apply to a member, the clerk, assistant clerk or staff of the House of Assembly service.

Financial
Administration Act

46. The *Financial Administration Act* applies to public money issued to defray expenses of the House of Assembly including money allocated to defray the salaries, allowances and other expenses of members.

Public Accounts
Committee

47. The Public Accounts Committee of the House of Assembly or another committee that may be designated by the House of Assembly shall annually review

(a) the audited accounts and report prepared by the speaker under section 51;

(b) the clerk's role as accounting officer under section 31; and

- (c) another matter that it considers necessary or advisable with respect to the financial management of the House of Assembly service and the statutory offices.

Application of Acts

48. (1) The *Transparency and Accountability Act* shall apply to the House of Assembly service and the statutory offices, with the following exceptions:

- (a) an authority or responsibility given to a minister under that Act shall be exercised by the speaker;
- (b) an authority or responsibility given to the Lieutenant-Governor in Council under that Act shall be exercised by the commission;
- (c) sections 10, 11, 12, 13, subsections 14(2), 19(1), (2), (3) and (4), and section 24 of that Act do not apply;
- (d) subsections 14(2), 19(1), (2) and (4) of that Act apply only to the statutory offices;
- (e) where the *Transparency and Accountability Act* refers to a "governing body" it shall be read as a reference to the commission;
- (f) where the *Transparency and Accountability Act* refers to a "government entity" it shall be read as a reference to an office of the House of Assembly;
- (g) where the *Transparency and Accountability Act* refers to a "public body" it shall be read as a reference to an office of the House of Assembly;
- (h) where in sections 5, 6, and 7 of the *Transparency and Accountability Act* reference is made to the "strategic direction of the government" it shall be read as a reference to the strategic direction of the House of Assembly service; and
- (i) where in section 21 of the *Transparency and Accountability Act* a reference is made to a "deputy minister" it shall be read as a reference, in relation to the House of Assembly service, to the clerk.

(2) The *Public Tender Act* and the *Conflict of Interest Act* shall apply to the House of Assembly service and the statutory offices except to the extent that the application may be modified by a directive of the commission putting in place alternative and more appropriate regimes dealing with tendering processes and conflict of interest of persons employed in the House of Assembly service and its statutory offices.

Further duties of
commission

49. (1) In addition to providing access to information under the *Access to Information and Protection of Privacy Act*, the commission shall

- (a) adopt and maintain a scheme, to be known as a publication scheme, which relates to the publication of information by the commission;
- (b) publish information in accordance with the publication scheme; and
- (c) from time to time review and update the publication scheme.

(2) The publication scheme required to be adopted under subsection (1) shall

- (a) include information about the expenditures made by or on behalf of members under subsection 11(4) and in accordance with the rules;
- (b) include other classes of information relating to the operation of the House of Assembly service which the commission intends to publish, taking into account the appropriateness, with respect to each class, of public access to information concerning that class; and
- (c) specify the manner, including written or electronic publication on a website, in which it is to be published.

Manual

50. (1) The commission shall, not more than 6 months after the coming into force of this Act, develop a manual of appropriate conduct and policies and procedures for members of the House of Assembly.

(2) The manual shall be

(a) tabled in the House of Assembly within 10 days after its completion if the House of Assembly is then sitting and if not, within 10 days of the next ensuing sitting; and

(b) distributed to the speaker, clerk and each member of the House of Assembly.

(3) Where, after a distribution of a manual under subsection (2), a member is newly elected to the House of Assembly, the clerk shall provide a copy of that manual to that member.

(4) The manual shall be updated as the commission considers necessary and each change to the manual shall be distributed as required under subsections (2) and (3).

(5) The manual shall contain

(a) information with respect to allowances available to members;

(b) the duties of members with respect to claims for allowances and the management and expenditure of public money;

(c) copies of applicable legislation;

(d) copies of the rules;

(e) directives of the commission issued from time to time to members, the speaker and the clerk;

(f) information summarizing rulings and determinations made by the speaker and the commission under section 24 and by the speaker and the commissioner of members' interests under section 52;

(g) instructions as to the manner in which duties of the members are to be carried out with respect to making claims for allowances and the forms to be employed and the documentation to be supplied;

(h) codes of conduct and ethics as may be adopted from time to time by the House;

- (i) information as to how to organize and operate a constituency office; and
- (j) another matter that the commission believes may be of assistance to members in the performance of their duties.

Annual report of
speaker

51. (1) In addition to a report that may be required by the *Transparency and Accountability Act*, the speaker shall, on behalf of the commission, annually prepare and table in the House of Assembly a report containing

- (a) the audited financial statements and accounts and auditor's report prepared by the auditor under section 43;
- (b) minutes of the substance of all decisions made at each meeting of the commission prepared in accordance with subsection 19(4);
- (c) a report on the decisions and activities of the commission for the past year prepared in accordance with paragraph 20(1)(f);
- (d) a report on any recommendations made by the auditor appointed under section 43 and the steps taken or to be taken, if any, to address those recommendations, in accordance with paragraph 20(5)(e);
- (e) a statement of the total salary, allowances and expenses permitted for each member and a statement of all payments made to or for each member with respect to their salaries allowances and expenses;
- (f) changes or adjustments to allowances and expenses approved by the commission in the year covered by the report;
- (g) a statement of the clerk certifying that the amounts of salary, allowance and expense reflected in the report as having been paid to or for each member is consistent with the amounts recorded by the comptroller general and reflected in the public accounts; and
- (h) a statement of the substance of rulings made by the speaker, the commission or the commissioner for Legislative Standards under sections 24 and 52.

52. (1) At the request of a member or of the clerk or of his or her own accord, the speaker may conduct, in his or her capacity as chair of the commission, a review that the speaker considers necessary to determine whether a member's use of an allowance, disbursement, payment, good, premises or service provided under this Act complies with

- (a) the purposes for which the allowance, disbursement, payment, good, premises or service was provided ; or
- (b) the purpose of this Act, the rules or the directives of the commission.

(2) The speaker shall inform a member of a review concerning that member as soon as is reasonably possible.

(3) Where, after a review, the speaker determines that a member's use of an allowance, disbursement, payment, goods, premises or service provided under this Act does or does not comply with the purposes for which it was provided or the purposes of this Act or a rule or directive of the commission, the speaker shall

- (a) inform the member of the determination; and
- (b) provide a copy of that determination to the commission.

(4) A member who is the subject of the speaker's determination may, within 10 days of his or her receipt of that determination, inform the speaker that he or she disagrees with the determination and the speaker or that member may request that the commissioner investigate and provide a written opinion.

(5) Where the commissioner receives a request under subsection (4), he or she may conduct an investigation sufficient to provide an opinion and shall provide that written opinion to the

- (a) member who was the subject of the investigation,
- (b) commission; and
- (c) speaker.

(6) If an opinion provided under subsection (5) differs from that provided by the speaker under subsection (3), the commissioner's opinion shall prevail.

(7) If the member does not disagree in writing within 30 days after receiving the speaker's determination or if he or she does disagree but the commissioner, in the commissioner's written opinion, supports the speaker's determination, the speaker may direct, in writing, that the member

- (a) comply with the Act, the rules or the directives of the commission; and
- (b) pay back the amount of the allowance, disbursement, funding or payment paid or the value of the good, service or use of the premises provided.

(8) The speaker may order that an allowance, disbursement, payment, good, premises or service otherwise payable or to be provided to a member under this Act or a rule or directive of the board, be withheld from the member if

- (a) the speaker has given the member a written direction under subsection (7); and
- (b) either
 - (i) the speaker determines that the member continues to use an allowance, disbursement, payment, good, premises or service paid or provided in a manner that does not comply with the purpose for which it was provided or with the purpose of this Act or a directive of the commission, or
 - (ii) the speaker is of the opinion that the withholding is necessary to protect the public interest.

(9) An order made under subsection (8) remains in force until

- (a) the speaker is satisfied that the member's proposed use of the allowance, disbursement, payment, good, premises or service complies with the purpose for which it was provided or with the purposes of this Act or directives of the commission; or

(b) it is revoked by the speaker.

(10) The speaker may impose a term or condition on an order made under subsection (8) that he or she considers appropriate.

Enforcement of
Duties

53. (1) Where a person believes in good faith that a member, the speaker, deputy speaker, clerk, assistant clerk or the commission is failing to observe or comply with a duty imposed under this Act, he or she may commence a proceeding in the Trial Division by way of originating application seeking a mandatory order that the duty be complied with, together with consequential or declaratory relief.

(2) The claimant must make a demand for compliance with the alleged duty on the person or body he or she alleges is required to perform that duty and allow a reasonable time for compliance before commencing a proceeding in subsection (1).

(3) A person who commences an application under subsection (1) shall not be denied standing on the basis that he or she has no greater interest in the subject-matter of the application than any other member of the public or that the Attorney General is not named as a party by way of relator proceedings or otherwise.

(4) A person who commences an application under subsection (1) shall serve a copy of the application on the Attorney General and the Attorney General shall have the right to intervene and be heard in the proceeding.

(5) For the purpose of a proceeding against the commission under this section the commission shall be considered to be a party capable of being sued in its own right.

(6) An order as to costs shall not be made against a person who unsuccessfully commences an application under subsection (1) unless the court determines that the application was not brought in good faith.

PART VI PUBLIC INTEREST DISCLOSURE

Definitions

54. In this Part

(a) “disclosure” means a disclosure made in good faith by a member or an employee in accordance with section 55;

- (b) “employee” means a member of the public service and includes an officer of the House of Assembly and a person employed in the House of Assembly service or a statutory office;
- (c) “investigator” means the citizen’s representative appointed under the *Citizen’s Representative Act*;
- (d) “reprisal” means one or more of the following measures taken against an employee because he or she has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated in an investigation under this Part,
 - (i) a disciplinary measure,
 - (ii) a demotion,
 - (iii) termination of employment,
 - (iv) a measure that adversely affects his or her employment or working conditions, or
 - (v) a threat to take a measure referred to in subparagraphs (i) to (iv); and
- (e) “wrongdoing”, with respect to a member, the speaker, and officer of the House of Assembly and persons employed in the House of Assembly service and the statutory offices means
 - (i) an act or omission constituting an offence under this Act,
 - (ii) gross mismanagement, including of public money under the stewardship of the commission in violation or suspected violation of a code of conduct,
 - (iii) failure to disclose information required to be disclosed under this Act, and
 - (iv) knowingly directing or counseling a person to commit a wrongdoing described in subparagraphs (i) to (iii).

Disclosure of wrongdoing

55. (1) An employee or a member who reasonably believes that he or she has information that could show that a wrongdoing has been committed or is about to be committed may make the disclosure to his or

her supervisor, the clerk, a member of the audit committee under paragraph 23(2)(b), or the investigator.

(2) A disclosure made under this section may be given orally or in writing and shall include, if known

(a) a description of the wrongdoing;

(b) the name of the person alleged to

(i) have committed, or

(ii) be about to commit

the wrongdoing;

(c) the date of the wrongdoing; and

(d) whether the wrongdoing has already been disclosed and a response received.

(3) An employee or a member may make a disclosure even where another Act or regulation prohibits disclosure of that information

(4) Notwithstanding subsection (3), nothing in this Part authorizes the disclosure of information that is protected by solicitor client privilege.

(5) Where a disclosure involves personal or confidential information, the employee must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure.

Confidentiality of
Identity

56. The identity of a person making a disclosure shall be kept confidential to the extent permissible by law and consistent with the need to conduct a proper investigation.

Referral for
investigation

57. A person to whom a disclosure is made shall refer the matter to the investigator for investigation.

Investigation

58. (1) The investigator shall carry out investigations of matters related to allegations in a disclosure made under this Part.

(2) Upon receipt of a referral the investigator shall, within 5 days, acknowledge to the person making the disclosure that the referral has been received.

(3) An investigation of an allegation made in a disclosure shall be conducted as informally and expeditiously as possible.

(4) An investigator shall ensure that the right to procedural fairness of all persons involved in an investigation is respected, including persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings.

(5) An investigator is not required to investigate a disclosure and may cease an investigation where he or she is of the opinion that

- (a) the disclosure reveals allegations that are frivolous or vexatious or the disclosure has not been made in good faith;
- (b) the disclosure does not provide adequate particulars about the alleged wrongdoing as required under subsection 55(2); and
- (c) there is another valid reason for not investigating the disclosure.

(6) Where, during an investigation, the investigator has reason to believe that another wrongdoing has been committed, he or she may investigate that wrongdoing in accordance with this Part.

(7) Upon completing an investigation, an investigator shall report, in writing, to the clerk and the speaker on his or her findings and recommendations about the disclosure and the wrongdoing.

(8) Where the matter being investigated involves the clerk the investigator shall give a copy of the report to the speaker.

(9) Where the matter being investigated involves the speaker the investigator shall give a copy of the report to the chair of the audit committee.

(10) The speaker, or the chair of the audit committee shall, if the report recommends corrective action,

- (a) refer the report to the auditor general, the Attorney General, the Minister of Finance or other appropriate official to take appropriate action; or
- (b) refer the report to the commission.

No reprisal

59. (1) A person shall not take a reprisal against an employee or direct that a reprisal be taken against an employee because the employee has, in good faith

- (a) sought advice about making a disclosure from his or her supervisor, the clerk, the speaker or a member of the audit committee;
- (b) made a disclosure; or
- (c) cooperated in an investigation under this Part.

(2) An employee or former employee who alleges that a reprisal has been taken against him or her may file a written complaint with the board as defined in the *Labour Relations Act* and that Act shall apply to the hearing and determination with respect to that complaint.

Misleading statements and obstruction

60. (1) A person shall not

- (a) in making a disclosure; or
- (b) during an investigation,

orally or in writing, knowingly make a false or misleading statement to a person to whom a disclosure has been made or to the investigator.

(2) A person shall not wilfully obstruct a supervisor, the clerk, the speaker, an investigator or another person acting for or on behalf of them or under their direction in the performance of a duty under this Part.

(3) A person shall not, knowing that a document or thing is likely to be relevant to an investigation under this Part

- (a) destroy, mutilate or alter the document or thing;
- (b) falsify a document or make a false document;

(c) conceal the document or thing; or

(d) direct, counsel or cause a person to do a thing mentioned in paragraphs (a) to (c).

Offence

61. (1) A person who contravenes this Part is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for up to 6 months.

(2) A prosecution under this section shall not be commenced more than 2 years after the date the alleged offence was committed.

Legal advice

62. Where a supervisor, the speaker, the clerk or the investigator is of the opinion that it is necessary to further the purposes of this Part, he or she may, in accordance with the rules, arrange for legal advice to be provided to employees and members involved in a process or proceeding under this Part.

Limitations on civil remedies

63. A civil action or proceeding shall not be brought against a supervisor, the speaker, the clerk or an investigator or a person acting on behalf of or under the direction of them for a thing done or not done in good faith relating to

(a) performance or intended performance of a duty under this Part; or

(b) exercise or intended exercise of a power under this Part.

PART VII RULES

Rules

64. (1) The commission may make rules

(a) respecting allowances, reimbursements, allowable expenses and other resources available to members;

(b) establishing distinctions between member constituencies with respect to amounts and entitlement;

(c) establishing limits and restrictions on amounts related to living, constituency and other expenses, including distance travelled,

daily rates, meal rates and other rates payable by way of reimbursement or with respect to a claim of a member;

- (d) respecting reimbursement and payment of member expenses and claims;
- (e) respecting the preparation and circulation of manuals, agendas, codes, briefing ad other materials;
- (f) respecting the forms and manner in which reimbursement of claims may be made;
- (g) respecting policies and procedures for proper financial management;
- (h) respecting purposes, presumptions and principles underlying rules enacted by the commission;
- (i) respecting member responsibility for finances, expenses, claims, liability and reimbursements;
- (j) respecting records to be maintained and reports required of members, the commission, speaker, clerk and staff of the House of Assembly service and the statutory offices;
- (k) respecting forms, receipts and other documentation required for monitoring claims, expenses, reimbursements and other payments;
- (l) respecting eligibility for and prohibitions and restrictions related to expenses, claims, reimbursements and other payments;
- (m) respecting allocations of resources for office, employee, administrative and other services for members;
- (n) respecting the manner of engaging, regulating and paying for constituency assistants; and
- (o) respecting another matter that the commission considers necessary or advisable to carry out the intent and purposes of this Act.

(2) Rules made under this Act shall be considered to be subordinate legislation within the meaning of the *Statutes and Subordinate Legislation Act*.

**PART VIII
MISCELLANEOUS and CONSEQUENTIAL
AMENDMENTS**

Construing of Act

65. Unless otherwise expressly provided in this Act, this Act shall not be construed as depriving the House of Assembly, a committee of the House of Assembly or a member of a right, immunity, privilege or power that the House of Assembly, committee or member might, but for this Act, have been entitled to exercise or enjoy.

Offence

66. A person having a duty to document decisions and maintain records of the commission, the speaker, the clerk or staff member of the House of Assembly service and a person who without lawful authority destroys documentation recording decisions of the commission, the speaker or the clerk or the advice and deliberations leading up to those decisions is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment up to 6 months.

SNL 2002 cA-1.1 as amended

67. (1) Paragraph 2(f) of the *Access to Information and Protection of Privacy Act* is amended

(a) by deleting the word “or” immediately after paragraph (iii); and

(b) by adding immediately after subparagraph (iii) the following:

(iii.1) in the case of the House of Assembly service, as defined in the *House of Assembly Accountability, Integrity and Administration Act*, the speaker of the House of Assembly and in the case of statutory offices as defined in that Act, the applicable officer of the House of Assembly.

(2) Paragraph 2(p) of the Act is repealed and the following substituted:

(p) "public body" means

- (i) a department created under the *Executive Council Act*, or a branch of the executive government of the province,
- (ii) a corporation, the ownership of which, or a majority of the shares of which is vested in the Crown,
- (iii) a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister,
- (iv) a local public body, and
- (v) the House of Assembly service and statutory offices, as defined in the *House of Assembly Accountability, Integrity and Administration Act*,

and includes a body designated for this purpose in the regulations made under section 73, but does not include,

- (vi) the constituency office of a member of the House of Assembly wherever located,
- (vii) the Trial Division, the Court of Appeal or the Provincial Court, or
- (viii) a body listed in the Schedule;

(3) Paragraph 5(1)(c) of the Act is repealed and the following is substituted

- (c) a personal or constituency record of a member of the House of Assembly, that is in the possession or control of that member;
- (c.1) records of a registered political party or caucus as defined in the *House of Assembly Accountability, Integrity and Administration Act*;

(4) The Act is amended by adding immediately after section 30 the following:

Disclosure of House
of Assembly service
and statutory office
records

30.1 The Speaker of the House of Assembly or the head of a statutory office shall refuse to disclose to an applicant information

- (a) where its non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member;
- (b) that is advice or recommendations given to the speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not required by law to be disclosed or placed in the minutes of the House of Assembly Management Commission; and
- (c) in the case of a statutory office, as defined in the *House of Assembly Accountability, Integrity and Administration Act*, records connected with the investigatory functions of the statutory office.

RSNL 1990 cC-19
as amended

68. The Clerk of the House of Assembly Act is repealed.

RSNL 1990 cH-10
as amended

69. (1) Paragraphs 20(a), (a.1) and (a.2) of the *House of Assembly Act* are repealed and the following are substituted:

- (a) “code of conduct” means a code of conduct adopted by the House of Assembly under subsection 35(1) of the *House of Assembly Accountability and Administration Act*;
- (a.1) “cohabiting partner” means a person with whom a public office holder is living in a conjugal relationship outside marriage;
- (a.2) “commissioner” means the Commissioner for Legislative Standards referred to in section 34;
- (a.3) “excluded private interest” means
 - (i) an asset, liability or financial interest of less than \$10,000 in value,
 - (ii) a source of income of less than \$10,000 a year,
 - (iii) real property that is used primarily for a residence or for recreation,

- (iv) personal property used for transportation, household, educational, recreational, social or aesthetic purposes,
- (v) cash on hand or on deposit with a financial institution that is lawfully entitled to accept deposits,
- (vi) fixed value securities issued by a government or municipality in Canada or an agency of a government or municipality in Canada,
- (vii) a registered retirement savings plan, retirement or pension plan or employee benefit plan, that is not self-administered,
- (viii) an investment in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy,
- (ix) a guaranteed investment certificate or similar financial instrument,
- (x) an annuity, life insurance policy or pension right,
- (xi) an asset, liability or financial interest that is held
 - (A) as executor, administrator or trustee, or
 - (B) by bequest or inheritance, during the 12 months following the date it devolves, and
- (xii) an interest certified by the commissioner as being an excluded private interest;

(2) Subsection 34(1) of the Act is amended by deleting the words “of Members’ Interests” and substituting the words “for Legislative Standards”.

(3) Subsection 40(1) of the Act is amended by adding immediately after the word “Part” the words “or of a code of conduct”.

(4) Section 42 of the Act is amended by adding immediately after the word “Part” wherever it occurs the words “or a code of conduct”.

(5) Subsection 45(1) of the Act is amended by adding immediately after the word “Part” the words “or a code of conduct”.

(6) Subsection 48(1) of the Act is amended by adding immediately after the word “Part” the words “or a code of conduct”.

RSNL 1990 cI-14

70. The *Internal Economy Commission Act* is repealed.

RSNL 1990 cS-27
as amended

71. (1) The *Statutes and Subordinate Legislation Act* is amended by deleting the following heading

**PART III
LEGISLATIVE COUNSEL AND LAW CLERK**

And substituting the following heading and words

**PART III
LEGISLATIVE COUNSEL**

(2) Section 20 of the Act is repealed.

(3) Subsection 21(2) of the Act is amended by deleting the words “including the duties of law clerk”.

(4) Subsection 22(2) of the Act is repealed.

Commencement

72. This Act shall come into force on _____, 2007.

Schedule II

Members' Resources and Allowances Rules



MEMBERS' RESOURCES AND ALLOWANCES RULES
under the
House of Assembly Accountability, Integrity and Administration Act

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Short title

1. These rules may be cited as the *Members' Resources and Allowances Rules*.

Definitions

2. In these rules

(a) "Act" means the *House of Assembly Accountability, Integrity and Administration Act*;

(b) "allowance" means a category of allowance referred to in section 14;

(c) "associated person" means

(i) a person who is not at "arm's length";

(ii) a "related person"; and

(iii) an "associated corporation"

within the meaning of the *Income Tax Act* (Canada);

(d) "capital region" means the area encompassing the following electoral districts as described and delineated in the *House of Assembly Act* as follows

(i) Cape St. Francis,

(ii) Conception Bay East & Bell Island,

(iii) Conception Bay South,

(iv) Kilbride,

(v) Mount Pearl,

(vi) Ferryland (North of Witless Bay Line)

(vii) St. John's Centre,

(viii) St. John's East,

(ix) St. John's North,

- (x) St. John’s South,
 - (xi) St. John’s West,
 - (xii) Signal Hill-Quidi Vidi,
 - (xiii) Topsail,
 - (xiv) Virginia Waters, and
 - (xv) Waterford Valley;
- (e) “comptroller general” means the Comptroller General as defined in the *Financial Administration Act*;
 - (f) “constituency business” means an activity directly connected with a member’s responsibilities as a member in relation to the ordinary and proper representation of electors and their families and other residents in the constituency, but does not include partisan political activities;
 - (g) “direct”, “directed” and “directive” mean a direction or directive made by the commission in accordance with the Act; and
 - (h) “House”, unless the context indicates otherwise, means the House of Assembly service as that phrase is understood in the *House of Assembly Accountability, Integrity and Administration Act*.

PART I

Purposes and Principles

Purpose

3. The purpose of these rules is
 - (a) to provide resources to members to assist them to fulfill their public duties and responsibilities as members of the House, for the benefit of the residents of the province;
 - (b) to promote accountability in, and transparency with respect to, the expenditure of public funds; and

(c) to facilitate public understanding of the use of public funds in fulfillment of members' obligations.

Presumptions

4. (1) Where the commission makes a direction or requires an action, that direction or requirement shall be made in writing or evidenced by written minutes of the proceedings or decision of the commission.

(2) The clerk may establish the forms necessary for the purposes of the implementation of these rules.

(3) Notwithstanding subsection (2), the commission may by directive, establish forms necessary for the implementation of these rules.

(4) Where in these rules an expense claim is permitted, that claim shall be made for the time and amount permitted under these rules or as directed or limited by the commission.

(5) Where the clerk or speaker makes a ruling that approves additional expenditures greater than that authorized under these rules the clerk or speaker shall report his or her approval at the next meeting of the commission and a notation of that approval shall be recorded in the minutes of the commission.

Principles

5. (1) All claims and invoices submitted by or on behalf of a member or to provide resources to a member and all payments and reimbursements made under these rules shall

(a) be submitted and made in accordance with the purpose and intent of the Act and these rules;

(b) be submitted by or on behalf of a member and made only if, and in a manner that does not call into question the integrity of the member and the House;

(c) be documented and supported in accordance with sound financial management principles;

(d) not relate to partisan political activities; and

(e) shall not relate to a personal benefit to a member or an associated person of a member.

(2) The clerk and all staff of the House shall, subject to directives and approval of the commission, develop and maintain proper administrative and financial policies and procedures with respect to documentation to be provided in support of claims and invoices submitted for reimbursement or payment, and the clerk shall include those policies and procedures in the manual.

(3) The commission shall periodically, and at least once every year, review the adequacy of the policies and procedures being applied by the clerk and staff of the House and may direct changes that it considers appropriate to those policies and procedures to improve controls and accountability.

Member
responsibility

6. (1) A member making or incurring an expenditure is the person responsible for compliance with requirements for claims, payments and reimbursements of expenses under the Act and these rules.

(2) A member is not relieved of his or her responsibility under subsection (1) either because he or she has delegated that responsibility to a constituency assistant or another person or because a claim has been accepted for payment by an official of the House or has been paid by the comptroller general.

(3) A member may be required to certify to the clerk, the commission or an auditor of the House that an expense that he or she is claiming or has claimed payment or reimbursement for has been actually incurred in compliance with the Act, these rules and directives of the commission.

(4) A member is responsible for maintaining appropriate records, operating his or her constituency office and engaging and training support staff in a manner that will facilitate compliance with the Act, the rules, directives and the manual.

(5) A member who is entitled to claim reimbursement under the Act and these rules for expenses or for daily amounts or mileage in accordance with policies relating to ministers, parliamentary assistants or other officers who,

(a) engages in activity; or

(b) travels in circumstances,

where the activity or travel relates both to constituency business and business governed by those policies, shall prorate the claim based on the proportion of time spent on constituency business.

Restrictions on claims

7. (1) Allowances allocated to a member may be expended by that member during a fiscal year.

(2) A claim against an allowance for a payment or reimbursement shall be made in respect of the fiscal year in which the expenditure was made or incurred, and shall be submitted and received by the clerk not more than 30 days after the end of that fiscal year.

(3) An expenditure shall be considered to have been made or incurred when the goods and services to which that expenditure relates have been received.

(4) An unused balance of an allowance of a member at the end of a fiscal year may not be carried over for use in the following fiscal year.

(5) A purported expenditure or commitment to an expenditure by a member that exceeds the maximum allowed for that category of expenditure shall not be carried forward and reimbursed or paid from an allowance available in the next fiscal year unless it amounts to a pre-commitment of expenditure in a future fiscal year that is authorized by a directive or in accordance with a minute of the proceedings of the commission.

(6) A claim against an allowance for payment or reimbursement shall not be made more than 60 days after the date on which the expenditure was made.

Member personal liability

8. (1) Where a member makes an expenditure or a commitment to an expenditure that exceeds the maximum allowed for that category of expenditure in a fiscal year, he or she shall be personally responsible for payment of that expenditure unless it amounts to a pre-commitment of expenditure in a future fiscal year that is authorized by directive or minute of the commission.

(2) Where through inadvertence or otherwise a claim made by a member is paid from public funds and it is discovered that the claim should not have been paid or honoured because it was in excess of the maximum allowed for that category of expenditure, the member is liable for repayment of that amount to the extent of the excess and shall, upon

request by the comptroller general, immediately pay that excess amount to the Consolidated Revenue Fund.

PART II

Records and Disclosure

Records

9. (1) A member shall keep records of all

- (a) expenditures made or committed; and
- (b) claims made against allowances,

by him or her, together with copies of supporting documents for those expenditures and claims.

(2) A member shall make the records referred to in subsection (1) available for inspection and copying by the speaker, the auditor general another auditor employed by the commission on behalf of the House and the comptroller general.

Monthly reports

10. (1) Before the 21st day of each month, the clerk shall prepare and provide to each member a written report outlining for the preceding month

- (a) reimbursements made to the member
- (b) payments made on the member's behalf

together with

- (c) a statement highlighting the total amount spent by the member during the current fiscal year in each category of allowance; and
- (d) the amount in each category that remains unspent or uncommitted for the current fiscal year.

(2) The clerk shall advise the speaker and a member whenever the amount spent by that member, expressed as a percentage of the total allowable allowance permitted for that year, is an amount that is in excess of more than 10% of the amount permitted for the portion of the fiscal year that has elapsed and the allowance amount permitted for the fiscal year

shall be considered to be allocated in equal monthly amounts throughout that year.

(3) An electronic system accessible by a member from which he or she may obtain the information required under subsection (1) shall be considered to satisfy the requirements of that subsection.

Statements

11. (1) Twice in each fiscal year the clerk shall prepare a statement summarizing by category of expenditure the amounts paid in respect of which claims were made and paid against the allowances that each member is entitled to access.

(2) The clerk shall provide each statement prepared under subsection (1) to the member to whom the statement relates for review and approval by that member.

(3) Within 21 days of receipt of a statement under this section, a member shall sign the statement acknowledging its accuracy or may state in writing to the speaker objections that he or she has with respect to its accuracy.

(4) Failure to respond to the statement within the time specified under subsection (3) shall be considered to be an acceptance by the member of its accuracy.

(5) A statement prepared under this section that is sent by ordinary mail shall be considered to have been received 5 days after its date of posting.

Public access to statements

12. (1) After the expiration of 21 days referred to in subsection 11(3), a member shall

- (a) file a copy of the statement, together with any objection in response and that copy shall be kept on file in his or her constituency office, or in his or her residence in the constituency if the member does not maintain a constituency office; and
- (b) make a copy of the statement and any objection available for inspection by any person within a reasonable time of receiving the request for inspection.

(2) Notwithstanding subsection (1) and 11(1), the clerk may, for the purpose of public access under section 13, have the name of a payee in respect of whom a claim or payment is made or other information that could reasonably be said to identify a payee, suppressed from a statement where, in the opinion of the speaker, the privacy interest of a person who is not a member outweighs the interest of the public in having full and complete disclosure of a member's use of public funds.

Speaker
requirements

13. (1) The clerk shall maintain and file a copy of statements prepared under section 11, and objections in response, in the office of the speaker and shall make them available for inspection by persons within a reasonable time after the making of the request for inspection.

(2) The clerk shall post for public access and inspection a copy of each statement and objections, on a website maintained and operated by or on behalf of the office of the speaker.

(3) A statement prepared under section 11 need not be maintained by the member or the clerk for public inspection after 5 years following the end of the fiscal year to which the statement relates.

PART III

Allowances and Claims

Categories of
allowances

14. (1) A member may claim from public monies payment or reimbursement against the following categories of allowances:

- (a) office allowances;
- (b) operational resources;
- (c) travel and living allowances; and
- (d) constituency allowances.

(2) Unused portions of an allowance in a fiscal year shall not be transferred to another allowance for use by the member in respect of the type of expenditures contemplated for that other allowance.

(3) An allowance provided for in these rules shall include harmonized sales tax as defined in the agreement of the *Tax Agreement*

Act and other taxes imposed on the sale or use of goods and services by the government of the province or of Canada.

Disagreement with speaker decision

15. (1) Except in circumstances referred to in sections 24 and 52 of the Act, a member who is dissatisfied with a decision of the clerk made under these rules may appeal that decision to the commission.

(2) A decision of the commission with respect to an appeal under subsection (1) shall be made not more than 45 days after receipt of the member's appeal by the commission, is final and the decision and reasons for that decision shall be recorded in the minutes of the commission.

(3) The commission shall determine and direct the procedure to be followed for dealing with an appeal contemplated under this section.

Forms and documentation

16. (1) A member shall claim payment or reimbursement in respect of an allowance in the manner and on the forms prescribed by the clerk or as directed by the commission.

(2) A form prescribed by the commission shall contain a provision whereby the member shall be required personally to certify that the expenses to which the claim relates were actually incurred in compliance with the Act, these rules and applicable directives of the commission.

(3) A member's claim shall not be paid unless, in the opinion of the clerk, there is sufficient documentation supplied verifying that each expenditure of the member was incurred.

(4) A member's claim, except a daily allowance or mileage claim, shall not be paid unless it is supported by the original invoice together with the instrument evidencing payment, such as a credit card voucher or notification, debit card voucher, cancelled cheque or cash receipt.

(5) Where an original document is unavailable, a copy, photocopy, faxed copy or statement itemizing the expenditure may be accepted by the clerk upon provision of an explanation, in writing, for the absence of the original.

Processing of claims

17. The clerk shall ensure that the processing of member claims, including their acceptance, verification and approval for payment under these rules is undertaken in accordance with proper principles of internal control.

PART IV

Office Allowances

Eligibility for office expenses

18. (1) A member may seek reimbursement or have payment made on his or her behalf, for the provision of office expenses in order to conduct his or her constituency business.

(2) The maximum allowance available to a member for each category of office expenses is as follows

(a) constituency office accommodation allowance, \$7000; and

(b) office operations and supplies allowance, \$15,000.

(3) Notwithstanding the limits imposed under paragraph (2)(a), the speaker may, on application in writing by a member, authorize that member to exceed his or her maximum constituency office accommodation allowance where the speaker determines that suitable accommodation cannot be obtained at a cost equal to or less than the allowed maximum.

(4) Where the speaker makes a decision under subsection (3), to authorize an increased allowance, he or she shall, in writing, report that decision to the next meeting of the commission together with the reasons for that decision and that information shall be recorded in the minutes of the commission meeting.

Eligibility for constituency office accommodation

19. (1) The constituency office accommodation allowance referred to in paragraph 18(2)(a) includes accommodation expenses related to the rental of permanent or temporary offices such as

(a) rent;

(b) utilities;

(c) taxes;

(d) insurance;

(e) security;

(f) janitorial services; and

(g) signage identifying the office as the member's constituency office without any reference to a political party.

(2) A member, who is unable to establish and operate an office to adequately serve his or her constituents, may claim expenses for the rental of meeting rooms.

(3) A member shall not use a constituency office to further partisan political activities.

(4) Following a general election or by-election, a new member who was not a member in the preceding session of the House of Assembly is, in addition to the constituency office accommodation allowance, entitled to claim amounts associated with the start-up of the member's office in an amount of not more than \$1000 to defray expenses as may be specified by the commission.

Nature and location

20. (1) Office accommodation to which a member is entitled shall consist of space to provide:

(a) a private office for the member;

(b) space for a constituency assistant; and

(c) a waiting area for that office.

(2) A member shall be provided with office accommodation in the Confederation Building complex in St. John's in a location that may be determined by the speaker.

(3) The quality and size of office accommodation in the Confederation Building complex for a member of one political party shall not be materially different than that for a member of another political party.

(4) A member who chooses to have his or her constituency assistant work in the Confederation Building complex shall, with respect to the assignment of office accommodation in that complex, be given priority over a member who chooses to have his or her constituency assistant work in an office in the member's constituency.

(5) In addition to choosing office accommodation in the Confederation Building complex, a member may choose office accommodation in one of the following ways:

- (a) office space in the member's constituency;
- (b) in lieu of an office in a specific location, the rental of short-term accommodation in one or more locations in the member's constituency from time to time to facilitate the travel of the member throughout the district to meet with residents on constituency issues;
- (c) subject to the limitations in subsection 21(2), operate an office in his or her residence in, or within commuting distance of the constituency; or
- (d) if he or she is a minister, a parliamentary assistant or a special assistant to a minister, operate a constituency office in the building or department where his or her ministerial or assistant's office is located.

(6) Notwithstanding paragraph (5)(a) or (d), where a member chooses office accommodation in the member's constituency in a Crown-owned building or in a building where his or her ministerial or assistant's office is located, the member may not access the constituency office accommodation allowance.

(7) A member who represents a constituency that is wholly outside the capital region may rent short-term accommodation in one or more locations in the member's constituency from time to time, up to a maximum of \$750 annually to facilitate the travel of the member throughout the district to meet with residents on constituency issues.

(8) Where choosing office accommodation in a member's constituency under paragraph (5)(a), a member shall

- (a) not make rental or lease commitments without prior approval of the speaker;
- (b) where accommodation, suitable in size, quality and location to the member, can be obtained in a Crown-owned building in the constituency, choose that space;

- (c) where accommodation referred to in paragraph (b) cannot be obtained, the member shall
 - (i) decide in which community in the constituency his or her office will be located,
 - (ii) where possible, propose 3 possible commercial spaces, ranked in order of preference with supporting reasons, to the clerk,
 - (iii) where the member cannot propose 3 possible commercial spaces, he or she must provide the reasons, in writing, to the clerk,
 - (iv) include with the proposal documentation from the landlord indicating the total monthly cost, including utilities, taxes, insurance, security and janitorial services,
 - (v) stipulate that the lease will be on terms acceptable to the Office of the Speaker and in particular shall stipulate that the lease shall be terminable at or before the expected date for the next general election.

(9) Following consultation with the member, the speaker shall approve one of the proposed choices provided in subsection (5) provided it is within the limits stipulated in this section and section 19.

(10) Where the clerk approves a member's request for a constituency office rental, a contract shall be prepared between "Her Majesty the Queen in Right of the Province of the Newfoundland and Labrador, herein represented by the Honourable the Speaker of the House of Assembly" and the owner of the office space and the cost of that preparation shall, unless stipulated otherwise by the speaker in exceptional cases, be paid directly by the House of Assembly in accordance with the approved office lease.

(11) Notwithstanding section 22, following a by-election, a new member who was not a member in the preceding session of the House shall utilize the previous members' constituency office until the next general election unless that office was in the former member's home or a community in which the new member does not reside.

Renting from self **21.** (1) A lease of office accommodation shall not be entered into with a landlord who is an associated person.

(2) Notwithstanding subsection (1), a member may operate a constituency office from his or her residence in his or her constituency but in that event, is not entitled to claim reimbursement for provision of those accommodation except for the creation and erection of a sign identifying the constituency office.

Changing arrangements **22.** Where a member chooses accommodation under subsection 20(5), he or she may elect to use a different accommodation arrangement provided he or she is able to withdraw from an existing lease arrangement without penalty or cost to the Crown or without having to give more than two month's notice or payment of rent.

Eligibility for space **23.** (1) Where a member has chosen office accommodation in the Confederation Building complex, the speaker shall, to the extent possible, group the office accommodations for members of the same political party together in the same area as part of a caucus office.

(2) Where a member has chosen to have his or her constituency assistant work in office accommodation in the member's constituency or in the member's ministerial or parliamentary or special assistant's offices, the speaker shall provide funding to the caucus with which the member is associated to provide shared secretarial assistance in the Confederation Building complex for all members of that caucus in the same circumstances.

(3) The cost of providing shared secretarial assistance, telephone, computer and secretarial services and associated operational costs shall be a part of the estimates of the House of Assembly and paid for out of the funds allocated for its operations.

Office operations, supplies & communications allowance **24.** A member may claim against the office operations and supplies allowance for reimbursement to cover operational costs of operating a constituency office including

- (a) office supplies;
- (b) printing;
- (c) photocopies;

- (d) newspapers;
- (e) answering services;
- (f) staff professional development;
- (g) courier services and postage;
- (h) database maintenance;
- (i) advertising, including constituency office hours, contact telephone numbers for the member, email addresses, notices of constituency meetings, and advertising messages of welcome or congratulation;
- (j) greeting, Christmas, sympathy or other similar cards to be sent to constituents and others relating to the member's constituency work; and
- (f) those other items identified and directed by the commission.

PART V

Members Operational Resources

Standard office
allocation

25. (1) A member is entitled to office furniture, equipment and services for his or her constituency office based on a standard office allocation approved by directive of the commission and may include

- (a) an office furniture and equipment package;
- (b) artwork from the Government procurement program;
- (c) telephone and facsimile services;
- (d) a computer or laptop computer;
- (e) personal data communication services;
- (f) photocopier, printer and scanner services;
- (g) internet services; and,

(h) other items that may be identified and approved by a directive of the commission.

(2) All purchases within the standard office allocation remain the property of the government of the province and shall be identified by appropriate markings as House assets.

(3) A member shall not personally fund, in whole or in part, the purchase of House assets.

(4) The clerk shall maintain and update an inventory report of all House assets entrusted to each member.

(5) A member is personally responsible for all items in an inventory and shall account on an annual basis or on demand to the speaker for the items listed in his or her inventory report.

(6) A member shall not dispose of or purport to dispose of a House asset.

(7) Where a Member wishes to dispose of a House asset or have it written off, he or she shall submit a request to the clerk identifying the item and stating the reason for the request.

(8) The clerk shall consult with the Government Purchasing Agency to determine whether the item should be disposed of or written off and the member having that item shall return it to the House for disposal or otherwise comply with the clerk's directions, at which time the item will be removed from the member's inventory.

(9) A new member shall utilize the furniture, furnishings and equipment provided to the outgoing member for that constituency.

(10) Where a member wishes to have a House asset replaced from the outgoing member's standard office allocation, he or she shall submit a request to the clerk identifying the item and stating the reason for the request and the clerk shall consult with the Government Purchasing Agency to determine whether the asset should be replaced.

(12) Where an asset is to be replaced the member shall return it to the House for disposal or otherwise comply with the clerk's directions, whereupon he or she shall be provided with a replacement item.

(13) Arrangements for the hook-up of constituency fax lines, telephone lines and telephone directory advertising shall be made by or under the direction of the clerk.

Support staff

26. (1) A member is entitled to engage the services of one constituency assistant.

(2) The salaries and benefits for constituency assistants shall be set by directive of the commission and unless otherwise contrary to law or a directive of the commission the member may set the terms and conditions of employment.

(3) An employment contract of a constituency assistant shall be between the constituency assistant and "Her Majesty the Queen in Right of the Province of the Newfoundland and Labrador, herein represented by the Honourable the Speaker of the House of Assembly".

(4) Expenses related to constituency assistant salaries and benefits shall be paid directly to constituency employees by the office of the speaker.

(5) Where a member considers it necessary to engage a temporary replacement for a constituency assistant due to vacation, illness or other absence of the regular assistant that the speaker considers acceptable the member may, with the consent of the speaker, engage a temporary replacement, and the costs associated with that engagement shall be reimbursed by the office of the speaker to the member.

Other resources

27. (1) Subject to descriptions, limitations and directions respecting standardization that the commission may direct, a member is entitled to be supplied from the House with the following:

- (a) certificate folders and frames for certificates of recognition to be given by members to their constituents;
- (b) promotional items such as pins and flags for distribution to constituents and others in the course of their duties;
- (c) stationary for his or her constituency office including business cards, letterhead and other items as directed by the commission;

(2) The clerk shall, in consultation with a member, make resources referred to in this section available to the member as may be required.

(3) The cost of resources in this section shall be made part of the estimates of the House of Assembly and paid for out of the funds allocated for its operations.

PART VI

Travel and Living Allowance

Definitions

28. In this Part

- (a) “commuting distance” means 60 kilometres or less;
- (b) “constituency business” means an activity directly connected with a member’s responsibilities as a member in relation to the ordinary and proper representation of electors and their families and other residents in the constituency, but does not include partisan political activities;
- (c) “in session” in relation to the House of Assembly means the period of time between the day prior to the commencement of a sitting of the House of Assembly and the day following an adjournment, where the period of adjournment is greater than 7 days;
- (d) “permanent residence” means the place that a member declares in an affidavit to the speaker is
 - (i) the place where a member in fact resides on a settled basis with his or her family, or
 - (ii) where there is no single place where the member resides on a settled basis, the place that the member otherwise regards as his or her permanent residence,and does not include a seasonal or recreational dwelling or cabin;
- (e) “private accommodation” means accommodation owned or maintained by a person other than the member, the member’s

spouse or children and which may be used by the member when travelling;

(f) “secondary residence” means a residence that is not a permanent residence but is owned or leased by the member and is available for occupancy by the member but does not include a seasonal or recreational dwelling or cabin; and

(g) “temporary accommodation” means short-term, temporary or transient accommodation such as a hotel, motel, bed and breakfast or boarding house.

Principles

29. (1) A member may claim for a travel and living allowance only where the member

(a) is engaged in constituency business; and

(b) is outside of commuting distance of the member’s permanent residence.

(2) Entitlement to claim a particular type of travel and living allowance and the extent of that claim is affected by

(a) whether the member’s permanent residence is located in

(i) the member’s constituency,

(ii) another constituency outside the capital region, or

(iii) the capital region;

(b) whether or not the House of Assembly is in session; and

(c) whether the member maintains a secondary residence.

(3) For the purpose of these rules, a member may operate and maintain only one permanent residence but a member may operate and maintain a secondary residence.

(4) Where a member changes a permanent residence or a secondary residence, the member shall immediately notify the speaker by way of affidavit of that change.

(5) A member shall not claim reimbursement for a travel or a living allowance relating to travel from his or her permanent residence to the Confederation Building complex where his or her permanent residence is located in the capital region.

(6) A member shall not claim reimbursement for a travel or a living allowance relating to travel from his or her permanent residence to his or her constituency where the permanent residence is outside the constituency but within commuting distance of the constituency.

(7) On a day when a member may claim a meal allowance while on constituency business, but only a portion of that day is spent on constituency business, his or her daily meal allowance shall be pro-rated in a manner established by a directive of the commission.

(8) When traveling, a member may avail of temporary accommodation or may stay in a secondary residence or in private accommodation.

Types of travel and living allowance

30. A member may claim reimbursement for travel and associated accommodation and meal costs related to travel

- (a) between his or her constituency or permanent residence and the Confederation Building complex to attend sittings of the House of Assembly and to attend to constituency business and other duties of the member that may require his or her presence in the capital region;
- (b) between his or her permanent residence, where that residence is not located in the constituency, and his or her constituency, where that constituency is located outside the capital region;
- (c) within his or her constituency to attend to constituency business;
- (d) between his or her constituency or the capital region and another constituency outside the capital region in relation to matters affecting his or her constituency;
- (e) to attend conferences and training courses relating to his or her member responsibilities;
- (f) to and from other parts of Canada where the purpose of the trip is directly related to constituency business; and

(g) for travel of his or her constituency assistant where it is necessary to attend to constituency business.

Travel and living allowances: residence outside capital

31. (1) A member who travels from his or her permanent residence outside the capital region to temporary accommodation or a secondary residence in the capital region to attend a sitting of the House of Assembly may claim reimbursement for the following costs

(a) for each week or part of the week that the House of Assembly is in session the actual transportation cost of one return trip;

(b) for each day that the House of Assembly is in session, either,

(i) the actual cost of temporary accommodation, with receipts, up to a maximum of \$125 a night for every night the accommodations are actually occupied by the member, or

(ii) daily amount, without receipts, of \$25 when staying in private accommodation; and

(c) for each day that the House of Assembly is in session, a daily amount of \$50, without receipts, as a contribution to the cost of meals.

(2) Where a member makes a claim for travel under paragraph (1)(a) or under paragraph 35(a) to return to his or her permanent residence or to his or her constituency, the member is not entitled to claim under paragraphs (1)(b) or (c) for the days associated with that travel.

Sessional travel and living allowances: residence within capital

32. (1) Where a member travels from his or her permanent residence that is within the capital region to attend a sitting of the House of Assembly that member is not entitled to claim reimbursement for that travel or for accommodation or meals associated with that travel.

(2) A member who maintains a permanent residence within the capital region but represents a constituency outside the capital region may claim reimbursement for the following costs while the House of Assembly is in session:

(a) for each week or part of a week that the House of Assembly is in session, the actual transportation cost of one return trip to his or her constituency to attend to constituency business;

- (b) for a maximum of 3 nights during a trip, either
 - (i) the actual cost of temporary accommodation in the constituency up to a maximum of \$125 a night actually spent in the constituency; or
 - (ii) without receipts, a daily amount of \$25 when staying in private accommodation; and
- (c) without receipts, a daily amount of \$50, as a contribution to the cost of meals.

Travel and living allowances: residence outside capital and constituency

33. A member who maintains a permanent residence outside the capital region in a location that is not in his or her constituency and the constituency is outside the capital region may, in addition to claiming reimbursement under subsection 31(1), claim reimbursement for the following additional costs while the House of Assembly is in session

- (a) for each week or part of a week that the House of Assembly is in session, the actual transportation cost of one return trip to his or her constituency from either the capital region or from his or her permanent residence, whichever is the shorter distance, to attend to constituency business;
- (b) for a maximum of three nights during a trip, either
 - (i) the actual cost of temporary accommodation, with receipts, in the constituency up to a maximum of \$125 a night actually spent in the constituency; or
 - (ii) a daily amount, without receipts, of \$25 when staying in private accommodation; and
- (c) without receipts, a daily amount of \$50, as a contribution to the cost of meals.

No banking of weekly travel

34. Where a member does not travel under paragraphs 31(1)(a), 32(2)(a) or 33(a) in respect of a particular week, the entitlement to claim for that week ceases.

Intersessional travel and living expenses: residence outside capital

35. A member who travels from his or her permanent residence that is outside the capital region to the capital region when the House of

Assembly is not in session to attend to constituency business or other duties may claim reimbursement for the following costs

- (a) the actual transportation cost of not more than 20 return trips per year;
- (b) the actual cost of 35 nights of either
 - (i) with receipts, temporary accommodation in the capital region of \$125 a night for every night the accommodations are actually occupied by the member, or
 - (ii) a daily amount, without receipts, of \$25 , when staying in private accommodation; and
- (c) without receipts, a daily amount of \$50 as a contribution to the cost of meals.

Intersessional travel
and living expenses:
residence within
capital

36. (1) A member who maintains a permanent residence within the capital region is not entitled to claim for accommodation or meals while attending constituency business in the capital region.

(2) A member who maintains a permanent residence within the capital region but represents a constituency outside the capital region may claim reimbursement for the following travel and accommodation costs to and from his or her constituency when the House of Assembly is not in session

- (a) the actual transportation cost of not more than 20 return trips per year;
- (b) the actual cost of 35 nights of either
 - (i) temporary accommodation, with receipts, in the constituency up to maximum of \$125 a night for each night actually spent in the constituency, or
 - (ii) without receipts, a daily amount of \$25 when staying in private accommodation; and
- (c) without receipts, a daily amount of \$50 as contribution to the cost of meals.

Intersessional travel
and living expenses:
residence outside
capital and
constituency

37. A member who maintains a permanent residence outside the capital region in a location not in the member's constituency and outside commuting distance of that constituency where that constituency is outside the capital region may, in addition to claiming reimbursement under section 35, claim reimbursement relating to travel and accommodation between his or her permanent residence and constituency for the following additional costs when the House of Assembly is not in session

- (a) the actual transportation cost of up to 20 return trips between his or her permanent residence and his or her constituency, per year;
- (b) the actual cost of 35 nights of either
 - (i) with receipts, temporary accommodation in the constituency up to a maximum of \$125 per night for every night the accommodations are actually occupied by that member; or
 - (ii) without receipts, a daily amount of \$25 when staying in private accommodation; and
- (c) without receipts, a daily amount of \$50, as a contribution towards meals.

Intra constituency
travel allowance

38. (1) A member may be reimbursed in accordance with this section for reasonable travel, accommodation and meal expenses incurred while acting on constituency business within his or her constituency.

- (2) The allowance provided for in this section may include
 - (a) the cost of transportation by motor vehicle, all-terrain vehicle, boat, snowmobile, fixed wing aircraft or helicopter, in accordance with section 40;
 - (b) the actual cost of temporary accommodation, with receipts, up to a maximum of \$125 a night, or a daily amount, without receipts, of \$25 when staying in private accommodation; and
 - (c) a daily amount of \$50, without receipts, as a contribution to the cost of meals.

(3) The maximum amount in respect of an electoral district for which a member who represents that district may claim in a fiscal year for intra-constituency travel is the amount set out in *Schedule A*.

Extra constituency
travel allowance

39. (1) A member may be reimbursed in accordance with this section for reasonable travel, accommodation and meal expenses incurred with respect to circumstances referred to in paragraphs 30(d),(e),(f) and (g).

(2) The maximum amount that a member may claim in a fiscal year for extra-constituency travel is the amount unexpended on intra-constituency travel under section 38.

Modes of travel

40. (1) A member may travel by means of

- (a) his or her own motor vehicle;
- (b) a rental vehicle;
- (c) commercial scheduled fixed wing aircraft;
- (d) bus transportation; and
- (e) ferry transportation.

(2) Where a member proposes to travel by means other than the means mentioned in subsection (1), the member shall first make a proposal in writing to the speaker outlining the nature of the travel, the reasons for that travel, the details of the proposed engagement of the mode of travel and its estimated costs, and if the speaker is of the opinion that it is a reasonable expenditure to enable the member to fulfill his or her duties to constituents and there is sufficient money available within the existing travel budget of the House of Assembly, the speaker may approve the proposal subject to conditions that he or she considers reasonable in the circumstances.

(3) A decision of the speaker under subsection (2) shall be reported at the next meeting of the commission and recorded in the minutes of the commission.

(4) Subject to subsection 29(5), where a member whose constituency is in the capital region travels by his or her own vehicle, he or she may claim reimbursement for the number of kilometres reasonably

necessary to accomplish the travel objectives multiplied by the rate per kilometre payable to government employees.

(5) Subject to subsection 29(6), where a member whose constituency is outside the capital region travels by his or her own vehicle, he or she may claim reimbursement for the number of kilometres reasonably necessary to accomplish the travel objectives multiplied by the rates per kilometre payable to government employees who are required to use private vehicles as a condition of employment rate.

(6) The member for the electoral district of Cartwright-L'Anse au Clair and the members of those other electoral districts as may be designated by directive of the commission are entitled, on filing an affidavit with the speaker verifying that the member has travelled in her or his private vehicle in excess of 5000 kilometres on unpaved roads on constituency business, to payment of a sum of \$1000 annually to be paid toward deterioration of the vehicle.

(7) Where a member travels by his or her own vehicle, he or she shall at all times maintain a vehicle travel log in which he or she shall record the dates and destinations of a trip, the number of kilometres actually and reasonably traveled in connection with the trip, and in the case of members referred to in subsection (6) the number of kilometres traveled on unpaved roads.

(8) A member shall make his or her vehicle travel log available for inspection by the clerk, the speaker, the commission and an auditor appointed by the commission within the 3 year period following the date when a particular trip was undertaken.

(9) Where a member travels by rental vehicle or commercial scheduled fixed wing aircraft, the member may claim reimbursement for the actual cost provided it does not exceed the actual cost of a full fare economy ticket.

(10) Where a member travels by rental vehicle for more than 15 consecutive days, the member shall first obtain the approval of the clerk who shall report his or her approval at the next meeting of the commission and a notation of that approval shall be recorded in the minutes of the commission.

(11) Where a member travels by bus, he or she may claim reimbursement for the actual cost of the trip provided that it does not exceed the cost of a full fare economy air fare.

Accommodation
expenses

41. (1) Where a member claims expenses related to temporary accommodation, those expenses may include

- (a) room charges;
- (b) long distance telephone and internet charges related to constituency business;
- (c) overnight parking fees;
- (d) incidental hotel, motel, bed and breakfast or boarding house charges;
- (e) those other items that may be specified by a directive of the commission.

(2) Where a member claims expenses relating to a stay in a secondary residence those expenses may include

- (a) rent and associated charges;
- (b) condominium common area expenses;
- (c) mortgage interest;
- (d) utilities;
- (e) telephone and internet services;
- (f) furniture rental;
- (g) parking charges; and
- (h) those other items that may be directed by the commission.

(3) For the purpose of making a claim under subsection (2), a member may estimate the costs that he or she considers to be reasonable

on an annual basis for the determination of a pro-rated daily amount as the basis of his or her claim and submit them to the clerk for approval.

(4) The clerk may, before approving the costs under subsection (3), require the member to provide further documentation in support of the estimates.

Restriction on meal allowance

42. Where a member makes a claim pursuant to subsection 46(3) relating to meal expenses, the member shall not claim any daily meal allowance under this Part in respect of the same day,

Special circumstances

43. (1) Where it is unsafe or otherwise impractical for a member who is traveling to return to his or her permanent residence when scheduled to do so and when he or she would not otherwise be entitled to claim reimbursement for accommodations and meals under this Part, the member is entitled to claim for additional expenses at the same rates and under the same circumstances that relate to the original travel.

(2) A member shall contact the clerk or the speaker before incurring the additional expenses contemplated by this section, explain the reason for and estimated amount of the additional expenses and obtain the approval of the speaker for that expenditure and that approval shall not be unreasonably withheld.

(3) Notwithstanding subsection (2), where a member has been unable to contact the clerk or the speaker before incurring an expense, the member shall at the earliest reasonable opportunity notify the speaker of the incurring of the expense.

(4) The speaker shall, in writing, report the nature and amount of additional expenditures incurred under this section, together with the reasons for those expenditures to the next meeting of the commission and that information shall be recorded in the minutes of the meeting.

Budgetary requests

44. (1) A member shall, on or before a date in each year prescribed by the speaker submit an estimate of the amount of money that the member reasonably estimates will be required by him or her for travel in the following fiscal year.

(2) An estimate submitted under subsection (1) shall be provided to the clerk in the form that he or she may require.

(3) In preparing the estimates of the House of Assembly under section 26 of the Act the speaker shall take account of the estimates submitted by the member under subsection (1) but the commission may vary those estimates if in its opinion the amount is not appropriate.

(4) The clerk may issue guidelines for members with respect to the matters to be dealt with, and the manner of presentation of those matters, in the preparation of the estimates under subsection (1).

PART VII

Committee Allowance

Committee allowance

45. (1) A member who is a member of a Standing or Special Committee of the House of Assembly, or the commission, may claim for expenses related to attendance at a committee or a commission meeting when that meeting is held during an intersessional period.

(2) Expenses claimed by a member under subsection (1) shall be approved by the Speaker before that expense is reimbursed to the member.

PART VIII

Constituency Allowance

Expenses related to constituency work

46. (1) A member is entitled to be reimbursed for his or her constituency expenses necessarily incurred by that member to carry out his or her constituency business.

(2) The maximum amount in respect of each electoral district for which the member from that electoral district may be reimbursed from the constituency allowance in each fiscal year shall not exceed \$3000.

(3) The following expenses necessarily incurred by a member to carry out his or her constituency business may be reimbursed

(a) meals or the bulk purchase of food, non-alcoholic beverages and other supplies for meetings with constituents or other members of the public in relation to constituency business, and meals and non-alcoholic beverages on other constituency-related occasions;

(b) memberships in community or other organizations;

- (c) equipment not provided by the House;
 - (d) magazine, newspaper and journal subscriptions;
 - (e) travel, accommodations, meals and registration fees for conferences and training courses for the member or constituency assistant if approved by the speaker;
 - (f) expenses associated with attending at meetings and hearings involving advocacy on behalf of a constituent; and
 - (g) other categories of items as directed by the commission.
- (4) The following types of expenses shall not be reimbursed
- (a) the acquisition, creation or distribution of anything that uses or includes a word, initial, or device that identifies a political party;
 - (b) artwork including paintings, prints, sculptures, carvings and crafts;
 - (c) alcoholic beverages, either individually or in bulk;
 - (d) sponsorship of individuals or groups;
 - (e) donations;
 - (f) raffle tickets;
 - (g) hospitality, except for meetings referred to in paragraph (3)(a);
 - (h) gifts;
 - (i) items, services or activities of a personal nature, including clothing and laundry expenses,
 - (j) travel costs for constituents;
 - (k) travel costs for spouses or dependants;
 - (l) financial assistance for constituents; and

(m) those other items directed by the commission.

(5) A member, in his or her capacity as a member, shall not make a donation or gift, whether of a charitable nature or not, to any person, group or community except as may be contemplated by subsection (3) and section 27.

(6) Where a member makes a donation or gift, whether of a charitable nature or not, in a personal capacity, the member shall, in making the donation or gift, stipulate that any acknowledgment of the donation or gift shall not identify him or her as a member.

Prohibition

47. (1) An expense of a type listed in subsection 46(3) may not be reimbursed if

(a) it is not directly connected with the member's responsibilities as a member in relation to the ordinary and proper representation of constituents and the public;

(b) it is incurred in relation to partisan political activities or promotion; or

(c) one or more of the following persons has a financial interest in the contract or other arrangement under which the expense is incurred or in a corporation that has a financial interest in the contract or other arrangement under which the expense is incurred

(i) the member,

(ii) an associated person in relation to the member,

(iii) another member,

(iv) the spouse or child of another member.

(2) Notwithstanding subsection (1), an expense of a type listed in subsection 46(3) may be reimbursed in the circumstances described in subsection (1) where the reimbursement is specifically approved and directed by the commission.

SCHEDULE A

House Operations Estimates of Intra Constituency Costs

Riding No.	Riding Name	Total
1	Baie Verte	\$12,600
2	Bay of Islands	15,600
3	Bellevue	16,400
4	Bonavista North	12,600
5	Bonavista South	12,600
6	Burgeo & LaPoile	14,100
7	Burin-Placentia West	10,200
8	Cape St. Francis	9,000
9	Carbonear-Harbour Grace	9,600
10	Cartwright-L'Anse au Clair	49,200
11	Conception Bay East & Bell Island	9,600
12	Conception Bay South	9,000
13	Exploits	12,600
14	Ferryland	12,600
15	Fortune Bay - Cape La Hune	59,600
16	Gander	9,600
17	Grand Bank	15,000
18	Grand Falls - Buchans	11,400
19	Harbour Main - Whitebourne	8,600
20	Humber East	7,900
21	Humber Valley	15,000
22	Humber West	10,200
23	Kilbride	9,000
24	Labrador West	9,600
25	Lake Melville	10,000
26	Lewisporte	11,500
27	Mount Pearl	7,500
28	Placentia & St. Mary's	14,400
29	Port au Port	8,500
30	Port de Grave	9,600
31	St. Barbe	12,600
32	St. George's - Stephenville East	9,600
33	St. John's Centre	7,500
34	St. John's East	7,500
35	St. John's North	7,500
36	St. John's South	7,500
37	St. John's West	7,500
38	Signal Hill - Quidi Vidi	7,500
39	Terra Nova	12,800
40	The Straits & White Bay North	12,600
41	Topsail	7,500
42	Torngat Mountains	45,900
43	Trinity - Bay de Verde	10,800
44	Trinity North	10,200
45	Twillingate - Fogo	12,300
46	Virginia Waters	7,500
47	Waterford Valley	7,500
48	Windsor - Springdale	9,000
Total		\$626,400



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