

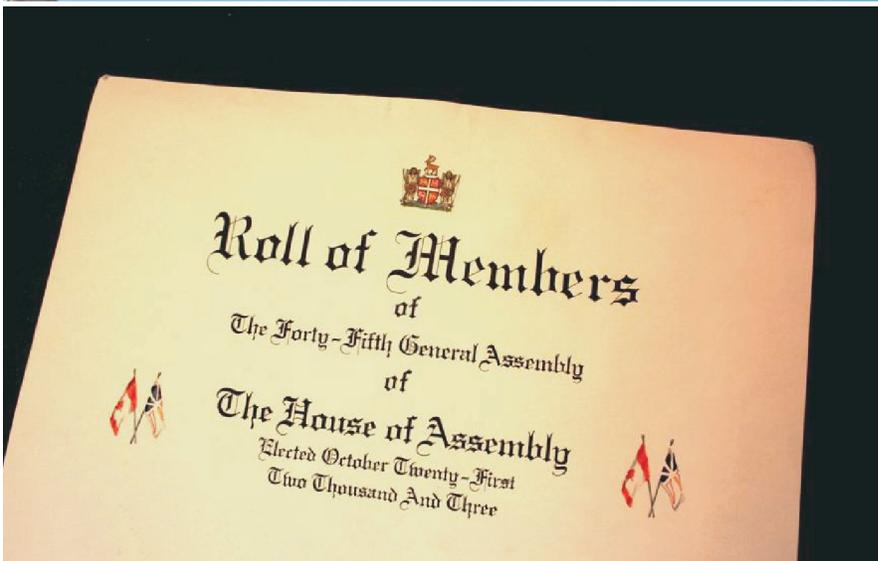
Executive Summary



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

Rebuilding Confidence

EXECUTIVE SUMMARY

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Hon. J. Derek Green, Commissioner

May 2007

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ACKNOWLEDGMENTS

The preparation and writing of this report faced many challenges. In particular, it had to be prepared and delivered within a short time frame. In addition, as a sitting judge with both judicial and administrative responsibilities to my Court, I could not devote myself full-time to the work.

The report could not have been researched, compiled and written in these circumstances without the dedicated assistance of the professionals I was fortunate to be able to engage to advise and assist me. Each of them - John Dawson, LL.B., Christopher Dunn, Ph.D., Gail Hamilton, F.C.A., David Norris, M.B.A., and Beth Whalen, LL.B. - displayed a degree of professionalism, interest and devotion to the work that is deserving of profound gratitude, not only from me, but from the people of the province as a whole. This province is lucky to have such individuals living and working here. I would work with each of them again in a moment.

I am very grateful for the level of cooperation and assistance provided by virtually every person whom the inquiry staff and I consulted. I especially must acknowledge the willingness of the Speaker of the House of Assembly, the Honourable Harvey Hodder, and the administrative staff of the House to make themselves available, often at very short notice, to answer multitudinous questions, search for and provide numerous documents and generally provide whatever information we requested. In this regard, Ms. Marlene Lambe, C.A., Chief Financial Officer of the House, also deserves special mention.

The drafting of the proposed legislation and rules implementing many of the recommendations of this report was accomplished with the assistance of Ms. Lorna Proudfoot, LL.B. of the Office of the Legislative Counsel. Her advice was invaluable.

I also must acknowledge the work of the editors of this report - Paul Bowdring, Anne Hart and Marnie Parsons - who took a rough and lengthy manuscript and put it into presentable form. Most of the actual work of typing, formatting and presentation of the report was performed by Ms. Jeanette Brown and Ms. Johna Thompson of the accounting firm Ernst & Young. They worked long hours without complaint under tight time constraints and stressful conditions. I am most appreciative of their contribution.

Finally, I must express my gratitude to my colleagues on the Supreme Court of Newfoundland and Labrador, Trial Division and Unified Family Court who selflessly and without complaint took on extra cases and other administrative work so that I could free up a considerable amount of my time to be able to work on and complete this report.

Derek Green
Commissioner

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Executive Summary

*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.
Do so with pride, and be forever grateful
that you have been given the opportunity to do so.*

- His Honour,
the Honorable Edward M. Roberts, ONL, QC¹

The Commission and Its Work

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 also calls for considerable personal sacrifice and, in some cases, financial sacrifice as well. 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. Attitudes of public cynicism and mistrust are periodically reinforced by reports documenting breakdowns in government financial management. Newfoundland and Labrador is not unique in this regard. Notwithstanding the reality of the systemic, and ultimately human, failures which spawned this inquiry, this Commission situates its Terms of Reference in the context of the high standards expected of those who hold public office. Despite examples of impropriety by elected officials in many jurisdictions and the resulting low esteem in which politicians are sometimes held, the Commission senses an undeniable public desire, approaching a sense of urgency, to rebuild confidence in our political institutions. The recommendations in this report therefore stress the need for fundamental institutional reform.

This Commission was established following the publication of several reports by the Auditor General, in June and July of 2006, alleging irregularities in the administration of the affairs of the House of Assembly and excess spending of constituency allowances

¹ “Speech from the Throne 2007”, (Personal Reflections) delivered at the Opening of the 4th Session of the 45th General Assembly of the Province of Newfoundland and Labrador, (April 24, 2007).

by Members of the House. The Terms of Reference of the Commission require, among other things, an assessment of the existing system of constituency allowances in this province, the “evaluation of best practices for compensation of members of legislatures in other provinces and territories” and an independent evaluation of expenditure policies, procedures and controls in the administration of the House.

In carrying out its mandate, the Commission first conducted an analysis of the evolution of the administrative and financial control framework in the House of Assembly, as well as the processes and rules governing MHA compensation and constituency allowances. The Commission then proceeded to conduct a comparative review of practices in other jurisdictions in Canada and, to a lesser extent, a number of jurisdictions outside Canada. The Commission examined its overall research findings in the context of the reports of the Auditor General as they relate to the issues of alleged overspending of MHA allowances and financial control deficiencies in the House of Assembly.

Numerous contacts were made with MHAs, by way of consultations with the caucuses of the governing party and the official opposition party, as well as with the former and present leaders of the third party represented in the House of Assembly. Further input was sought through surveys, individual MHA meetings, interviews with a broad range of public officials and the review of written communications to, and submissions from, MHAs and members of the public.

At the outset, the report focuses first and foremost on the crucial political and constitutional values and principles that form the essential foundation to guide those who chose to serve the province in political office.

Values

Initiatives to strengthen the administration of the House of Assembly should be examined in a context that is reflective of, and consistent with, a full understanding and acceptance of key political and constitutional values. Indeed, the Commission’s Terms of Reference require that the inquiry be undertaken bearing in mind the principles of legislative autonomy, accountability, transparency and control. To that list the Commission has added the notions of the rule of law and trust. While the notions of trust and legality might tend to be readily recognized and accepted, the other principles merit greater elaboration.

Legislative autonomy is based on the principle of the separation of powers between the executive and legislative branches of government and upon the principle of the supremacy of parliament. It is reflected in the concept of parliamentary privilege which insulates from outside interference the running of the House, with the intent of enabling the legislature and its Members to function effectively. However, it does not entitle Members to avoid accounting for their stewardship of public money. It should not be used as a justification for decisions and practices that impinge upon the accountability of the legislature. One cannot, in asserting autonomy, avoid the rule of law. That said,

the autonomy of the legislature properly applied is an important value that should be fostered.

The Commission supports the observation that “the stewardship of public officers is a serious and sacred trust.” In that regard, the political position of an elected Member exhibits fiduciary characteristics. The concept of the elected representative as a fiduciary provides a strong basis for developing the parameters of individual responsibility of Members of the House with respect to their public duties.

Public accountability is a fundamental obligation in a democratic system. The focus on accountability serves several purposes, emphasizing, among other things, mechanisms to achieve efficiency in the expenditure of public funds and the delivery of government programs, and the responsibility of public officials to act properly in the public interest. Holding public officials accountable for what they do ultimately enhances citizens’ confidence in the system. The principles of accountability and compliance must be mandatory for the legislature, just as they are for the executive branch of government. Prudent and comprehensive policies and controls can and must be employed in relation to the House; doing so must not be regarded as incompatible with the concept of legislative autonomy.

Transparency is the foundation on which the accountability of public officials is built; it implies openness and a willingness to accept public scrutiny. Notions of accountability and transparency have been receiving increased emphasis in legislative policy, as exemplified by the *Transparency and Accountability Act* in this province and the more recent, and farther-reaching, *Federal Accountability Act*. Respecting legislative autonomy does not mean that the legislative branch of government can insulate itself entirely from obligations of accountability and transparency. While the manner in which accountability and transparency are achieved in the legislative branch may differ from other areas of government because of the special effects of autonomy, there is no reason why high standards of accountability and transparency cannot be applied by the legislature to itself in a manner that is appropriate to its special circumstances.

Financial control, and policies centered on the preservation of such control, can be regarded as both restricting and enabling. In examining the MHA constituency allowance issues, and the questionable payments which have been identified, the focus in the current environment is on the restricting aspect of financial control, rather than on its enabling aspects. Financial control in the restrictive sense means the establishment of, and adherence to, procedures designed to ensure economy, efficiency and probity. However, it is relevant to acknowledge that, in the broadest sense, financial control means the promotion of performance and achievement while avoiding such unwanted events as lapses in quality, unproductive uses of resources and law-breaking.

The focus of this inquiry is on policies and practices in the administration of the legislative branch of government as opposed to the executive branch. Yet there are trends in the executive branch, including trends in other jurisdictions, which are instructive with respect to the issues under consideration and may be capable of adaptation in the

legislative realm. Indeed, the Commission's research indicates that much of the innovation in the executive branch in the Westminster systems of government, nationally and worldwide, has been or is capable of being applied to the legislative branch. The most relevant of such innovations for purposes of this Commission include a trend toward greater access to information, the expanding scope of accountability legislation, the notion of senior executives being designated specific control and reporting responsibilities as "accounting officers," and the concept of "whistle-blower" legislation.

Against this framework of fundamental values, principles and trends, the Commission proceeded to examine the chronological evolution of the administration in the House of Assembly, its policies and practices over the past several years, the failures in legislative administration, and the measures necessary to achieve recovery and to advance to "best practices."

Background

House Administration and Finances – Financial and administrative affairs of the House of Assembly of Newfoundland and Labrador are overseen by the Commission of Internal Economy (IEC), essentially a standing committee of MHAs chaired by the Speaker. The Clerk, who reports to the Speaker, is the senior permanent executive responsible for House administration and parliamentary affairs. The annual budget of the legislature has exceeded \$15 million, and encompasses two types of activities: i) the direct operations of the House - including the administration of financial matters pertaining to MHAs, Hansard, broadcast services, the legislative library and other aspects of parliamentary administration, and ii) the statutory offices - including the offices of Auditor General, the Chief Electoral Officer, the Child and Youth Advocate, the Citizens' Representative, the Privacy Commissioner and the Commissioner for Members' Interests.

A *global* analysis of spending by the House over the years portrays a pattern of steady financial performance with relatively marginal budgetary variances. In some important respects, however, this global assessment conveys an incomplete and misleading picture. A *drill-down* analysis of the major expenditure components indicates a consistent pattern of spending beyond the original budget on the MHA Allowances and Assistance account. Successive years of overspending on this account were masked by savings in the statutory offices and other aspects of House administration.

MHA Allowances and Assistance, at over \$5 million annually, is the largest account in the House. It is comprised of MHA sessional indemnities and non-taxable allowances, which together constitute the salaries paid to MHAs (\$3.3 million), and MHA constituency allowances (\$1.8 million based on current limits). The number of MHAs is fixed, and sessional indemnities and non-taxable allowances are equal for all MHAs. MHA salary adjustments are generally predictable based on wage trends, and there is a prescribed maximum for each MHA's constituency allowance. Such parameters provide the expectation of a reasonable degree of budgetary accuracy. Yet, this has not been the case. A consistent pattern of budgetary variances, ranging up to \$500,000

beyond the levels initially budgeted, was recorded in this account. This counter-intuitive trend went largely unchallenged. Furthermore, this Commission's analysis revealed that expenditure overruns were highly concentrated in the constituency allowance category.

The House and the public were not provided timely, accurate and meaningful information on MHA Allowances and Assistance expenditures. The revised estimates for Allowances and Assistance tabled with the budget in the House for several years underestimated the expenditures ultimately recorded in the government's accounts. The breakdown of the expenditures was not publicly disclosed, and the concentration of excess charges to the constituency allowance category was never revealed. The IEC's reporting of MHA expenses was untimely, inadequate, inaccurate and misleading. All of this contributed to a troublesome lack of transparency and accountability that becomes clearer only through a more detailed review of the recent history of the House administration.

Evolution of Administrative Policies and Practices – The Internal Economy Commission Act had been amended in 1988 to require the appointment of an independent commission, following each general election, to review and make binding recommendations regarding MHA compensation and expense reimbursement. In 1989, the first (and as it turned out, the only) such independent commission, chaired by Dr. M.O. Morgan, recommended a revised and comprehensive framework to govern MHA compensation and expenses. In view of the significance of the Morgan recommendations, this Review Commission chose 1989 as the logical starting point for its analysis. It then determined that the review of the evolution of administrative policies and practices should be broken down into four distinct periods denominated for ease of reference as follows: the Morgan Era, the Policy Shift Era, the Hold-the-line Era, and the Refocusing Era.

The Morgan Era: 1989-1996 - The Morgan Era introduced significant changes to MHA compensation and expense arrangements. Compensation was increased, expenses were subdivided into categories, and limits were prescribed for each. Rules stipulated the maximum number of travel trips allowed, and all expense claims were to be supported by receipts. Practices subsequently evolved and, by 1993-94, the IEC had ordered that various individual expense components recommended by Morgan be combined into one allowance, but all allowances still remained "accountable."

In 1993, the *IEC Act* was changed to remove the obligation to appoint an independent commission after each election; the timing of the appointment of such commissions was left to the discretion of the IEC. Yet the legislated requirement for an independent commission remained, as did the requirement that the recommendations of any such commission be binding.

The Morgan recommendations were said to have added considerable complexity to the administration of the House, but the very small administrative staff was not increased. While the Clerk was the administrative overseer of the House, financial management and administrative functions were essentially delegated to the Director of

Administration (later redesignated the Director of Financial Operations). It appears there was deference to the principle of legislative independence, with the IEC periodically reminding the Treasury Board that the executive branch had no authority to encroach on the affairs of the House. However, the Comptroller General had access to all financial documentation related to expenditures of the House, and had the authority to undertake internal audit and compliance testing functions. Accordingly, in many respects, the financial control framework of the government was deemed to apply to the House of Assembly.

During this era, and historically, the legislature was subject to audit by the Auditor General. While the scope of annual audits was relatively limited, the Auditor General had full access to the financial records of the House, including MHA expense claims. Periodically, the Auditor General expressed concerns arising from the audits, including the lack of segregation of duties in respect of the House administration. The Clerk's response to these concerns emphasized constraints related to staffing limitations. Financial restraint was prevalent throughout this period, and no additional administrative resources were provided. Also, the compliance testing and internal audit resources of the Comptroller General were substantially reduced as a restraint measure.

The Policy Shift Era: 1996-2001 - The Policy Shift Era was characterized by material changes in the policy framework governing MHA allowances and key aspects of House administration. A "block funding" arrangement for MHA constituency allowances, ostensibly targeted to achieve budgetary savings, was introduced to replace the more prescriptive framework recommended in the Morgan Report. There were successive increases in the level of constituency allowances. In the two - year period ending March 31, 2000, MHA allowances were increased by an average of 33%. In 1999-2000 alone, constituency allowances were increased three times. Also, in 1997-98, the IEC ordered that \$1,500 be added to Members' allowances on a one-time basis.

In a notable policy shift from the principles of the Morgan Report, in 1996 the IEC changed the rules to allow MHAs to claim up to \$2,000 in discretionary expenses annually, *without receipts*; by March of 2000, this had been increased to \$4,800 plus HST. This was in addition to the non-taxable allowance (equal to 50% of an MHA's indemnity) that Members were already receiving, as allowed by the *Income Tax Act*. The IEC also relaxed the rules governing expenditures on furniture and equipment. Severance pay benefits for MHAs were increased; salaries and benefits for parliamentary positions were increased. All of this was done without the appointment of an independent commission as previously required by the *IEC Act*. Furthermore the substance of some of these IEC decisions on MHA allowances and compensation were not reported in the minutes tabled in the House and there are notable discrepancies between the minutes of the IEC tabled in the House and the official minutes maintained by the Clerk.

Whenever it presented an obstacle to the measures contemplated by the IEC, the *IEC Act* was changed. Such legislative changes were processed expeditiously by the House of Assembly, usually in the last days of a session and with minimal discussion or debate. In 1996, the *Act* was amended to enable the IEC to make rules varying the

salaries and allowances recommended by the Morgan Report. Subsequently, in 1999, the *Act* was further amended to remove all references to the Morgan Report and to remove the stipulation that recommendations of such independent commissions be binding. A section was also added that provided the IEC with unlimited scope to make rules to adjust indemnities, allowances and salaries of Members. The requirement for review by an independent commission was also removed; no such commission has been appointed for 18 years. In addition, the *Act* was changed to extend the time for the tabling of the IEC annual report in the House - effectively negating any prospect of timely disclosure of the IEC's deliberations.

In 2000, in response to the Auditor General's plans to conduct a compliance or program audit of the House (including MHA allowances and expenses), the *IEC Act* was again amended. These amendments enabled the IEC to disrupt the audit process; to bar the Auditor General from auditing the accounts of the legislature and , in particular, MHA allowances; and to deny the Comptroller General access to expenditure documentation of the House, effectively terminating the potential for pre-audit and compliance testing of MHA expense claims. The amendments included a mandatory requirement that the accounts of the House be audited annually by an auditor appointed by the IEC. However, the IEC procrastinated for three years on this appointment. When, after the three - year hiatus, it contracted for audits, it left an audit void in relation to 2000-01 and possibly 1999-2000.

The House effectively exempted itself from the key control frameworks of government, and instituted no replacement policies or controls. In this era of relaxed rules and increased allowances, reliance on the parliamentary doctrine of legislative independence, removal of the Comptroller General's access to records, expulsion of the Auditor General, and procrastination over the audit process, all meant that, for an extended period, the only eyes to scrutinize the financial affairs of the House were those of the IEC and the administration that reported to it.

During this period, certain administrative duties were realigned but no additional staff was provided to bolster the financial management capability of the House. It was said that an effort was made to segregate duties and responsibilities, but the small staff complement made it difficult. There are signs that inappropriate claims processing practices, improper payment authorization processes and financial control deficiencies were commonplace.

The Hold-the-line Era: 2001-2003 - Following the fundamental policy shift of the previous era, the policy framework was not further materially altered for roughly three years. Nevertheless certain IEC decisions and practices of the House in this time frame are cause for concern.

In 2001-02 and 2002-03, the IEC minutes indicate that Members' allowances were adjusted near the fiscal year-end, based on proposals "on file with the clerk"; the specifics of the adjustments (amounts, timing and application) were not reported. This Commission was told that it had become a relatively common practice for the IEC to

authorize incremental allowance allocations at year-end “if there was money left in the budget.” Memories were far less clear on the timing and the amounts of these payments, and documentation could not be produced. Furthermore, in each case, there was no money remaining from the original budget for Allowances and Assistance by year-end; incremental payments could only be funded by transfers from savings in other elements of the legislature’s budget.

Despite the legislative requirement that IEC decisions be reported to the House, the substance of these year-end allowance decisions was never reported in the minutes of the IEC, and the related records cannot be located in the House. In addition, the IEC’s annual reports, which purport to report the respective allowance limits and the actual amounts claimed by each MHA, make no mention of these adjustments. Accordingly, the accuracy of the IEC reports to the House is suspect. The external auditors were told that the year-end payments in 2001-02 and 2002-03 were \$2,500 and “an extra 10%” respectively, for each MHA, but this Commission was unable to verify that to be the case. Therefore, in many respects, the mystery remains.

During this era, the concept of parliamentary autonomy reached a new level: MHA compensation was adjusted by the IEC without any form of external input or review. Scrutiny by the Auditor General and the Comptroller General was terminated. Audit accountability was effectively ignored, and the central control agencies of government were virtually ineffective in relation to the financial affairs of the House.

The scope of House administration had grown with the addition of various statutory offices, but requests for additional staff were denied. The Clerk concentrated on parliamentary matters and delegated the weight of financial management responsibility to the Director of Financial Operations. Segregation of duties continued to be a challenge. Inappropriate payment practices were followed: payments were processed with inadequate documentation; payments were processed with inadequate review of the available documentation; and payments were authorized electronically – “sight unseen” - by an individual with no access to supporting data. Regular financial management reports were not prepared for review by the Clerk, the IEC or the Budget Division of Treasury Board. Separate constituency allowance accounts were not maintained for MHAs to control their expenditures individually against their respective prescribed annual maximums. MHAs indicated that they did not receive any regular reports on the status of their accounts. This Commission was told, however, that some Members did not want written reports due to concerns that others might gain access to their expense records. Individual MHA expenditures were tracked “off-system” on a personal computer spreadsheet maintained by the Director of Financial Operations who retained *sole access* to the data.

Despite the legislated requirement for annual audits, and the Auditor General’s explicit concerns, the IEC failed to initiate the audit process through 2000 and 2001. In February 2002, the Speaker publicly committed to seek proposals for an external audit for the 2000-01 fiscal year. But it was not until November 8, 2002 that the IEC actually

agreed to call for audit proposals and then to encompass a *three - year* period commencing with fiscal year 2000-01.

The request for audit proposals was not advertised until February 2003, and it called for audits of *five fiscal years* from 2000-01 to 2004-05. An audit contract was not awarded until June of 2003 and then, on the direction of the IEC, it covered a revised time frame of *three years* - excluding 2000-01 and 2004-05. Neither the staff of the House of Assembly nor the external auditors were able to provide a copy of the signed contract or audit engagement letter. Furthermore, there are troublesome discrepancies between the official IEC minutes concerning this matter and the version tabled in the House. Also, this Commission was unable to ascertain a plausible explanation for the IEC's decision not to have 2000-01 audited. More than three years passed from May of 2000, when the IEC disrupted the Auditor General's legislative audit, to June 2003 when audits were contracted. Finally, it is noted that an audit void still remains. Not only was 2000-01 excluded from the audit process, it also appears that the 1999-2000 may not have been properly audited.

The Refocusing Era: 2004-06 - In March of 2004, following the general election in the fall of 2003, the Speaker tabled a paper that articulated a new policy direction focused on the importance of the principles of accountability, public disclosure and transparency. In some respects, it represented a refocusing on certain of the policies and principles of the Morgan Report.

Consistent with this renewed focus and in recognition of the government's fiscal challenges at the time, the IEC approved a range of measures in early 2004: MHAs allowances were to be reduced by 5% effective April 1, 2004; certain guidelines governing MHA expenses were tightened; the ability of MHAs to claim a portion of their expenses as "discretionary" without receipts was discontinued; the Comptroller General and the Auditor General were again provided access to financial documentation; and the Auditor General was reaffirmed as auditor, as of April 1, 2004. The IEC also began to strengthen the administrative framework within the House. The Clerk requested an internal audit review by the Office of the Comptroller General, and the IEC requested that Members and staff of the House become knowledgeable with respect to the *Conflict of Interest Act*. In addition, the IEC directed that Members be provided written monthly statements on the status of their expense allowances, and that a Members' manual be prepared.

Then, in May of 2004, the IEC approved a one-time allowance of \$2,875 for all MHAs, in respect of the 2003-04 fiscal year. Such a payment, so late after the end of the fiscal year, was only made possible as a result of a public service strike through April 2004 that had effectively delayed the closing of the government's books for 2003-04. It appears this payment was recognized as being over and above the regular constituency allowance limits, and was authorized by the IEC without the requirement for receipts. Related documentation is vague and does not indicate who initiated the proposal.

The circumstances surrounding this special payment were completely inconsistent with the policy thrust embraced by the IEC in the preceding weeks: the payment was totally unrelated to the allowed maximums and IEC rules; the payment was authorized by IEC order, without amending the Members' Constituency Allowance Rules. It appears that 46 of the 48 MHAs submitted claims for the \$2,875 in mid-May 2004, effectively back-dated to March 31, 2004, without receipts-contrary to the mandatory receipts policy approved by the IEC on March 31, 2004. The claims were expeditiously processed and paid.

The substance of the IEC's decision in relation to this payment (the amount, the rationale, the application, the lack of requirement for receipts) was not reported in the IEC minutes tabled in the House, nor was it otherwise publicly disclosed until the Auditor General's annual report in January 2007. The manner in which this special payment was approved, contrary to established rules and without disclosure, at a highly sensitive time during which the legislature had used its powers to freeze the compensation of all public servants, raises serious questions as to the judgment and prudence exercised by IEC members. A number of MHAs provided a range of explanations to this Commission in an effort to justify this action, all of which were found to be seriously inadequate.

The Commission notes that progress was slow on the administrative initiatives launched by the IEC in 2004. No progress was made on the development of the MHA manual or the implementation of monthly reporting on MHA allowances through to mid-2006. The internal audit review, requested by the Clerk in 2004, identified areas to be addressed, but there seems to have been no follow-up. The IEC had decided to strengthen the financial management of the House through the addition of a Chief Financial Officer, but the position was not filled until May of 2006. Nonetheless, this Commission acknowledges that there has been significant progress in a number of areas since that time.

While the IEC began to adopt a more structured approach to its operations, it fell short of meeting the standards of transparency and accountability it set for itself in 2004: disclosure of IEC decisions was not timely; the reports on MHA allowances tabled in the House were incomplete and, in some cases, inaccurate; and the substance of at least one important decision taken by the IEC was not reported at all.

In June 2005, the external audits for the 2001-02 and 2002-03 fiscal years were received - five years after the expulsion of the Auditor General in May 2000. Audits that were expected to take three months had taken two years. The auditor's reports were unqualified. The Commission noted that these were financial statement audits as opposed to more detailed legislative audits or compliance audits.

The auditors indicated to the Commission that, in the course of these audits, they initially noted discrepancies in the total expenditures on MHA allowances for both years-the total of actual expenditures reflected in the government's accounts exceeded the total derived from adding the approved maximums for each constituency. However, staff of

the House explained to the auditors that in both years the differences related to year-end payments, approved by the IEC, because “there was extra money left in the budget.” The auditors were shown documentation approving these payments but were not provided with a copy. Since they believed that they had received adequate explanations, the auditors did not report on the matter.

Given the nature of their audit mandate, the auditors did not test to confirm that allowance payments to individual MHAs were in compliance with the respective maximums. The auditors noted the segregation of duties challenge, but assessed the issue as a practical constraint given the limited staff complement; they felt that compensating controls were in place. A member of the audit team was aware of a generally acknowledged relationship between a staff member and a supplier, but the auditor did not feel it merited comment. The auditors did not issue a management letter to express any concerns regarding the control environment in the House. There was no post-audit meeting with the staff of the House, the Clerk or the IEC to express any form of concern or to provide any recommendations.

In January 2006, the Auditor General commenced an audit focused directly on the financial operations of the House of Assembly. This audit led to the issuance of a series of reports from June 2006 to January 2007 that highlighted:

- i) excess constituency allowance claims by four MHAs and one former MHA over varying periods dating back to 1997-98;
- ii) questionable payments totaling in excess of \$2.5 million to three companies from 1998 to 2005, and allegedly inappropriate payments totaling approximately \$170,000 to a company owned by the former Director of Financial Operations;
- iii) a range of financial control deficiencies;
- iv) a potential conflict of interest situation;
- v) alleged double billing and double payments in relation to MHA allowances; and
- vi) an additional allowance, paid to MHAs in May 2004, which had not been reported by the IEC.

The Auditor General’s findings, coupled with concerns identified through this Commission’s research on the House of Assembly administration, reveal a perplexing array of difficulties, including payments to certain MHAs in multiples of the allowed amounts; payments to certain MHAs beyond levels reported to the House; overpayments not detected by the Clerk, the IEC or the Comptroller General; payments made with inadequate (or non-existent) documentation; double billings and double payments; and additional allowance payments to MHAs, approved by the IEC but not disclosed. As

well, there was no reconciliation of IEC reports to the government's financial management records; inadequate internal control over purchases; no tenders or quotes for many purchases; few purchase orders; no commitment control process; no control over data security; and no back-up or data access controls. Finally, there were clear incidents of inadequate segregation of duties; the authorization of payments without the review of documentation; the destruction of audit trails; a failure of the audit process to detect irregularities; a lack of attention to potential conflicts of interest; and an ongoing conflict of interest through processes possibly intended to avoid detection.

This chronological review of the House of Assembly's management and administrative practices, along with the recent findings of the Auditor General, provides a compelling portrayal of multi-dimensional failure.

Failures

In examining the past, this Commission's purpose is not to assign blame or responsibility to particular individuals or to make precise findings on what went wrong with respect to the administration of constituency allowances and of finances in the House. However, to fulfill the mandate of recommending a *best practices* approach for the future, it was necessary to identify the origin and nature of the weaknesses that must be remedied.

From a timing perspective, the first reports of excess MHA claims relate to 1998-99. The administrative and audit dimensions became more prominent in 2000-01, and the excess MHA claims peaked in 2003-04. The Auditor General indicates that the questionable payments to suppliers commenced in 1999-2000 and escalated through to December 2005.

In defining the nature of the problem, it has been concluded that the plethora of difficulties confronting the House in the administration of its affairs is symptomatic of a broad-based *systemic failure* that encompasses ten key elements of varying significance: abuse of legislative independence; failure in management responsibility and accountability; deficiencies in front-line administrative practices; notable inappropriate decisions by the IEC; lack of IEC attention to its governance, accountability and transparency responsibilities; failure of government's central control agencies to assert authority; an ineffective audit process; inaction by the Public Accounts Committee; an ever-weakening legislative framework; and an inappropriate "tone at the top." Further elaboration is provided on each of the weaknesses and deficiencies identified.

Abuse of Legislative Independence – Relying on the notion of legislative independence, the House administration and the IEC exempted themselves from the government's generally applicable financial policies and controls established under the *Financial Administration Act*, public tendering and purchasing policies and procedures, and the reporting and analytical review processes of the Treasury Board. No replacement control mechanisms were put in place. The notion of independence was also used to justify the passage of legislation intended to permit the appointment of an auditor other than the Auditor General. These factors resulted in the creation of a financial policy control

vacuum, a virtual disruption of the audit process, and the ineffectiveness of the central control functions in respect of the House. Ultimately the IEC became a power unto itself.

Failure in Management Responsibility and Accountability - The Clerk's concentration was substantially dedicated to parliamentary matters as opposed to financial administration. Ongoing resource limitations were said to have caused serious challenges for the management and the small administrative staff of the House. While this may be true, the concerns identified are significant. They include: delegation of authority and responsibility beyond the level of prudence; inadequate senior management scrutiny of finances, and no ongoing top-level due diligence; minimal scrutiny of the funds transfer process; failure to ensure a timely audit process; inadequate record keeping, and a failure to use the government's financial management system to record individual MHA expenditures relative to the prescribed maximums; inadequate security of data; lack of regular reports to MHAs on their constituency allowance status; failure to develop an information manual to guide MHAs on constituency allowance rules and processes; delegation of signing authority to an individual with no knowledge of, or access to, the documentation or rationale supporting various expenditures; and the failure to maintain appropriate records of assets and leased equipment.

Deficiencies in Front-line Administrative Practices - The range of weaknesses identified include: claims processed without appropriate or adequate review of documentation; claims processed first by the supervisor and then sent to a subordinate for sign-off - an "upside-down" process; claims signed twice by the same individual; MHA claims actually prepared, and approved, by a staff member; payments authorized electronically and released by an individual with no knowledge of, or direct access to, data on the transaction; claims billed more than once (double billing); claims paid more than once (double payments); and a perceived perpetual shortage of administrative resources. As well, there was a demonstrable lack of rules, policies and guidelines; lack of clarity and consistency; and lack of any form of compliance testing

Notable Inappropriate Decisions - Certain specific decisions and policies of the IEC underline the absence of an appropriate emphasis on good governance, accountability and transparency. The more notable examples are reviewed below.

The prescribed maximum constituency allowance for each MHA was interpreted by the House administration as being exclusive of HST, though it is not outlined as such in the rules. This practice arguably provides for an unauthorized increase of the approved level of MHA allowances. It effectively understates actual expenditures in IEC reports and therefore misleads the House and the public.

In 1996-97, the IEC introduced a discretionary component of constituency allowances that could be claimed without receipts, contrary to the principles emphasized in the Morgan Report. While the IEC eventually directed that this policy be discontinued effective March 31, 2004, it subsequently authorized a special allowance payment to MHAs, without the requirement for receipts.

The IEC minutes indicate that incremental year-end constituency allowance payments to MHAs were authorized in 2001-02 and 2002-03. Many recalled this type of year-end payment occurring, but none could provide specifics. The amounts were not reported in the IEC minutes nor were any specifics on the nature of the adjustments. Documentation purported by the minutes to be on file with the Clerk, could not be found. Allowance schedules appended to the IEC reports make no reference to these payments.

On May 12, 2004 the IEC approved a payment of \$2,500 plus HST for all MHAs in respect of 2003-04 - without the requirement for receipts. The payment was approved, subsequent to the year-end, immediately following the introduction of legislation freezing public sector wages and ending a province-wide public service strike. The payment was contrary to IEC policy and arguably lacked legal authorization, and it was reported in such a misleading way as to conceal its significance.

Lack of Commitment to Governance, Transparency and Accountability – Over the years the IEC had operated in a relatively unstructured manner, providing minimal financial oversight of the financial affairs of the House. It did not regularly review the constituency allowance expenditures of MHAs relative to the prescribed limits. IEC members were not given a comprehensive orientation with respect to their duties, responsibilities and governance role. There was no code of conduct for Members or staff of the House. The deliberations of the IEC were not open to the public. Disclosure of IEC decisions was not timely, and the publicly disclosed version of the IEC's minutes was at variance with the official minutes. In some cases, the substance of important decisions was not disclosed at all and backup documentation was missing. IEC reports to the House were found to be in some respects, inaccurate and misleading. There was no process for the certification of the accuracy of IEC reports.

Ineffectiveness of Central Control Functions in Government – In 2000, the IEC used a legislative amendment to deny the Comptroller General access to documentation related to MHA expenses, thereby limiting this central control function. Legal advice at that time also indicated that some of the generally applicable control functions which the Treasury Board and the Comptroller General derived from the *Financial Administration Act (FAA)* did not apply to the House. The legal advice was unclear as to the degree to which various other aspects of the *FAA* applied to the House.

The account structure established by the Treasury Board did not provide for separate reporting of constituency allowances, and therefore did not facilitate the disclosure of variances or the external monitoring of constituency allowance expenditure trends relative to the budget. Furthermore, individual MHA expense allowances were not controlled relative to their respective maximums on the government's financial management system. It might be argued that the Treasury Board and the Comptroller General could have endeavoured to assert some control through revising the account structure and directing the manner in which accounts were to be maintained and controlled. However, given the legal uncertainty and the assertion of legislative autonomy by the IEC, this did not happen.

The Comptroller General's internal audit capability was seriously diminished through financial restraint in the mid 1990s. Then, the IEC virtually excluded the internal audit function from the House from 2000 to 2004 through denial of access to documentation. Eventually, when an internal audit of House administration was requested in 2004, no follow-up action was taken on the recommendations. Accordingly, virtually every aspect of the government's central control functions proved to be ineffective in relation to the House of Assembly.

Ineffective Audit Process – The IEC disrupted the audit process in 2000 by amending the *IEC Act* to exclude the Auditor General, and then failing to appoint an auditor for three years. When external auditors were eventually appointed in 2003, the IEC deleted the 2000-01 fiscal year from the audit mandate and created an audit void. This void is particularly significant since it relates to the year following the exclusion of the Auditor General from the accounts of the House. Documentation on the scope of the audit and the audit contract could not be located. It took two years to finalize audits that were initially expected to take three months.

As the audits performed were financial statement audits, it can be argued that the scope for these audits was relatively limited. Setting aside the nature of that mandate, it is nonetheless clear that the auditors did not report on any control weaknesses. No compliance testing was undertaken to confirm that payments to MHAs were within the approved maximum. No observations were made to indicate that a relationship between a person in a senior financial position and a supplier might constitute a conflict of interest. No commentary was made on the adequacy, or otherwise, of the financial policies and processes. No discussions were held with the Office of the Comptroller General. In short, for whatever reason, it is clear that the external audit process, as applied, was not sufficient to bring to the forefront any of the serious circumstances prevalent in the House of Assembly.

Inaction by the Public Accounts Committee – The Public Accounts Committee (PAC), as a Standing Committee of the House, is meant to provide overall scrutiny in relation to the spending of public funds, financial management and control, and legislative accountability. However, it has been relatively inactive in recent years. It met on average, only four times a year in the last seven years, and in the last three years held only two public hearings. Also there has been some overlap in the membership of the IEC and the PAC, raising questions as to the objectivity of MHAs in different parliamentary roles and whether certain roles might be incompatible.

In the period examined by this Commission, the *IEC Act* was amended on a number of occasions; the Auditor General expressed concerns relative to the House and MHAs' spending practices; the Comptroller General was denied access to financial records; the Auditor General was virtually expelled; the audit process was disrupted; and for years the IEC failed to comply with its legislated responsibility to appoint an auditor. Yet, the PAC did not engage in any form of critical assessment of the financial operations of the House or of the concerns raised by the Auditor General.

Ever-weakening Legislative Framework – The *IEC Act* was successively amended by increments, to the point where it is questionable whether the fundamental principles underlying it remain intact. The requirement for the appointment of an independent salary and benefits review commission once each session was removed. The requirement that the recommendations of such a commission be binding was repealed. The IEC was effectively given *carte blanche* to change MHAs’ salaries and allowances as it saw fit, without reference to any external review process. Even after the legislation was amended, there were notable cases where the IEC failed to exercise its responsibilities diligently (as exemplified by the delay in the appointment of an auditor, the remaining audit void and the failure to disclose the substance of certain decisions).

When the IEC wished to change policy, it did so. If its policy was inconsistent with the rules, it changed the rules. If its policy was inconsistent with legislation, the legislation was amended-and amended expeditiously. The current legislation provides no prescriptive framework of accountability and no obvious consequences for failure to comply with the requirements of the *Act*. In short, *the current legislative framework might well permit the recurrence of the troublesome circumstances of the past*.

Inappropriate “Tone at the Top” – In modern business theory, a strong “tone at the top” in an organization is characterized by a culture of responsibility, accountability and transparency, and by high standards of conduct. The absence of a reasonable commitment to such sound governance principles is deemed to characterize a troublesome “tone at the top,” which risks conveying inappropriate signals to the balance of the organization that are not supportive of prudent management practices, diligent financial control and high ethical standards.

Many actions of the legislature and the IEC over the years sent signals which, at best, indicated a lack of concern for governance, and at worst, conveyed the impression that there were things the IEC wished to conceal, and that it was prepared to circumvent normal governance responsibilities. In short, the administrative chronology of the House conveys the impression of a troublesome “tone at the top.” While some important progress has been made recently, there is still significant room for improvement.

A New Beginning – There must be a fundamental change of attitude, structure and policy with respect to the administration of the affairs of the House. The existing *IEC Act* should be repealed and replaced by new substantive legislation. The new legislation must address not only the effective administration of the House, but also the standards of conduct of elected officials and their ethical and accountable behaviour.

Responsibility

The difficult array of challenges evident in the House of Assembly has been attributed to a systemic failure. But a systemic failure is always, at its root, a failure of people. This raises questions that go to the core of the recognition and acceptance of responsibility. In examining the notion of responsibility, the Commission focused on two

unifying themes: the establishment of clear expectations for those involved in the affairs of the House, and the creation of mechanisms for calling persons to account when those expectations are not met.

Elements of responsibility reside in varying degrees with all of the key participants: the Members, the Commission of Internal Economy, the Speaker, the Clerk of the House, the staff of the House administration, and others. Clearly steps must be taken to promote and encourage the appropriate sense of responsibility at each level - not only in an after-the-fact manner, but in the conduct of all of the respective activities and duties within the House administration on a day-to-day basis. Accordingly, the Commission identified a number measures to reinforce the principles of responsibility.

A Code of Conduct – The House should initiate the development of a code of conduct for Members by referring the matter either to the Standing Committee on Privileges and Elections or to a committee of the House specially constituted for the purpose. Such a code to govern the conduct of Members should ultimately be adopted by resolution of the House. This concept should include the appointment of a Commissioner for Legislative Standards with responsibility for investigating and conducting an inquiry, when necessary, to determine whether a Member has failed to fulfill any obligation under the code. The Commissioner would then report to the House with recommendations, including sanctions where appropriate. A code of conduct should be promulgated for House staff as well as MHAs. Generally, the standards expected of House staff should be reflective of sound ethical standards and be as close as possible to the standards applicable generally in the public service.

Access to Information – There should be an access to information regime and an associated publication scheme applicable to the House of Assembly that is truly reflective of the principles of transparency and accountability. In particular, it should provide for public accessibility to timely and meaningful information concerning Members' allowances.

House of Assembly Management Commission – The IEC should be reorganized and restructured; in order to better reflect its revised role and responsibilities, it should also be renamed - the House of Assembly Management Commission (hereinafter referred to as the "Management Commission"). To ensure that it properly fulfills its function of financial stewardship, the Management Commission should have a formal operating structure with clearly established limits on the types of decisions it can make and the manner of making those decisions. The legislation governing the Management Commission should also set out the governance responsibilities and standards expected of individual members of that commission in a manner similar to those expected of corporate directors.

Accounting Officer – A United Kingdom-style "accounting officer" concept should be introduced and applied to the Clerk, who would be accountable to the Public Accounts Committee and expected to report to it on various matters on an ongoing basis. As Accounting Officer, the Clerk would be able to object on principle to any proposed

questionable course of action by the Management Commission, the Speaker, a Minister or a Member, without fear of reprisal.

Public Accounts Committee – As envisaged above, the Public Accounts Committee should play an expanded role in overseeing the financial administration of the House. This expanded role should include the regular review of reports from the Clerk as Accounting Officer, and the investigation of matters of concern expressed in the Auditor General’s annual reports, as well as matters arising from the annual reports of the House of Assembly Management Commission.

A Whistleblower Program - The House should introduce legislation providing for a public interest disclosure (“whistle-blower”) program, designed to encourage persons within government to report instances of behaviour that are considered improper, unethical or wrong. The legislation should not only establish the process for reporting such matters, but also the rules governing the investigation of complaints and the appropriate protections for persons who file such complaints.

Replacement of Section 15 of the Auditor General Act – The Commission emphasizes the need for care and attention to avoid the premature and potentially harmful exposure to public attention of allegations of impropriety before all requisite information is gathered and investigated, possibly for criminal prosecution. In this regard the reporting function of the Auditor General, under section 15 of the *Auditor General Act*, should be limited to the making of official reports to certain designated individuals. Furthermore, section 15 of that *Act* should be replaced by new legislation containing a provision dealing specifically with possible impropriety and criminality by MHAs.

Enforcement of Statutory Duties: “Mandamus” – The history of the administration of the House of Assembly highlights a number of circumstances where there was a failure on the part of various persons, as well as of the IEC itself, to perform certain legally mandated obligations. Members of the public who become aware of a serious failure to comply with a statutory duty should have an opportunity to pursue enforcement of the respective obligation. Accordingly, it is recommended that express statutory recognition be provided which would stipulate the right of a member of the public to seek an “order of mandamus” to enforce statutory duties imposed on the new Management Commission.

Structure

The key structural components in the administration of the House of Assembly are the Office of the Clerk; the IEC (House of Assembly Management Commission); the House of Assembly administrative organization; and the Statutory Offices (or, more specifically, the offices of those officers of the House who, by statute, are regarded as running independent operations within the scope of the legislature). A number of structural changes are recommended that, if adopted, will have a fundamental impact upon the interaction of these components.

The Office of the Clerk - The Clerk's roles of parliamentary advisor to the Speaker and chief permanent head of the House of Assembly are recognized and accepted as appropriate. In both roles, it is important that the Clerk be, and be seen to be, independent of the executive branch. The process leading to the appointment of the Clerk should be initiated by the Speaker, who should seek advice and assistance from the Public Service Commission and the Clerk of the Executive Council in the design and conduct of the selection process. Ultimately the appointment of the Clerk should be made by the House of Assembly, not the Executive Council. The role, duties, and responsibilities of the Clerk of the House should be set out in detail in legislation. This should include reference to the notions of "Accounting Officer" and, in relation to financial reporting and controls, "management certification" of the design and effectiveness of key policies and procedures. Considerable preparation will be required in order to implement an appropriate management certification process. Accordingly the Clerk must be provided with adequate resources to put the appropriate processes in place. The implementation of the management certification process should follow a stipulated time frame that permits the necessary preparation.

Composition of the IEC (Management Commission) - The composition of the existing IEC should be restructured. In addition to the Speaker, there should be an equal number of government and opposition Members. Also, the third party in the House should have the right to have a representative on the Management Commission as one of the opposition Members. Membership should be structured such that no member of the Management Commission would also serve concurrently as a member of the Public Accounts Committee. Furthermore, a member of the Public Accounts Committee should not participate in any PAC hearings relating to decisions of the Commission if he or she was a member of the Commission at the time those decisions were made.

Controls on Decision-Making - The restoration of public confidence in the integrity of the system of setting Members' salaries, allowances and other benefits necessitates the imposition of visible restrictions on the ability of the Management Commission to alter unilaterally Members' allowances and benefits. Salary levels for Members of the House and all other officers of the House, such as the Speaker and House leaders, should be specified in legislation. In addition, the legislation should clearly articulate that any legislative amendment to change MHA salary levels may only be enacted where first, second and third readings are held no closer than on successive days in the session. Furthermore, the constituency allowance regime should be formally embodied in rules approved by the Management Commission and authorized as subordinate legislation. The rules should only be able to be changed in accordance with a circumscribed process.

The decision-making authority of the Management Commission should be exercised by making rules; issuing directives; and making orders-all of which should be clearly disclosed on a timely basis. The circumstances under which each method of decision-making may be exercised by the Management Commission should be set out in legislation. The Management Commission should have the authority to entertain Members' appeals regarding rulings of the Speaker as to the application of the rules.

Audit Committee Process – The financial governance of the House of Assembly should be strengthened through the legislated implementation of an audit committee process. The committee should include two financially literate members of the public, in addition to representatives selected from the Management Commission. Besides augmenting the Management Commission’s scrutiny of financial reports and compliance practices, and monitoring systems of internal control, thus structured, this audit committee would indirectly provide a “foil” of independent thinking against which the positions of the MHAs on the Management Commission could be judged. In that sense, it should become a “watchdog” to detect signs of financial mismanagement. The committee’s mandate should be carefully spelled out in the legislation, along with appropriate provisions to provide for effective external and internal audit processes.

Resources of the House - With the restructuring proposed in this report and the recommended additional procedures to be followed for transparency, controls and management certification, appropriate additional resources must be provided to the House to enable it to address its responsibilities properly in the new environment.

Relationships with the Statutory Offices – The statutory offices, such as the Citizens’ Representative and the Child and Youth Advocate, are all constituted and regulated to a certain degree by their own separate statutes. While the Clerk of the House is the senior executive to whom the Chief Financial Officer reports, there is a lack of clarity as to the role of the Clerk in respect of the statutory offices and the extent to which his administrative and financial management responsibility encompasses these functions. This Commission has made recommendations for clarifying the clerk’s relationship with the statutory offices.

Controls

Overall Control Environment – The Commission’s research indicated a range of specific areas where there were distinct weaknesses, and areas where there was a virtual absence of controls. In short, controls at the House of Assembly were found to be essentially ineffective or non-existent in multiple areas. This is notably illustrated by the amendment to the *IEC Act* in 2000 that exempted the House from normal documentary requirements of the Comptroller General, in relation to expenditure authorization, and enabled the IEC to establish alternative documentary standards. The IEC virtually circumvented all principles of control by abdicating responsibility for putting alternative documentary controls in place. In essence, the IEC deemed the *Financial Administration Act (FAA)* to be not applicable to the House and did not enact any replacement policies. To counter this serious weakness, the *FAA* should be amended to make it apply to the House with respect to controls over the spending of public money. In the future, any deviations from the established financial policy control framework generally applicable in government should only be permissible in the House when more efficient and effective alternative policies are implemented.

Entity-Level Controls – High-level, system-wide controls, or “entity-level controls,” in the House of Assembly were assessed as having a tone of casualness and disinterest, particularly in relation to the role of the IEC, thereby creating an environment

where poor financial management and a troublesome “tone at the top” thrived. Ineffective entity-level controls were determined to be a root cause of process and transaction level control weaknesses, which may have led to the specific discrepancies under investigation. A lack of attention to compliance, transparency and individual accountability contributed to the poor entity-level controls.

Clearly, there is a requirement for a renewed, demonstrated, and sustained commitment to sound governance practices commencing with the Management Commission and reinforced by the senior management of the House administration. The various entity-level control weaknesses should be addressed, including documentation of the appropriate flow of information and required levels of internal authorization. Responsibilities should be clearly articulated and assigned. This would be facilitated through a regularly updated organizational chart with specified job descriptions and responsibilities, supported by an information system to disseminate financial data regularly and appropriately.

Process and Transaction Level Controls – The Commission analyzed the control processes generally applicable throughout government. In this regard, the Financial Management Circulars, issued to departments in the executive branch to clarify financial policies, were found to be comprehensive and to contain many of the best practices observed elsewhere in the public sector and in industry. Then, the specific processes of the House of Assembly were analyzed by way of contrast with the equivalent processes in place for the executive arm of government. Multiple deviations were observed—the majority of which were control deficiencies in the House. In particular, deficiencies were noted in the key processes of the House related to cash disbursements.

Budgeting – The preparation, documentation, analysis and review of the budgeting estimates of the House did not reflect an appropriate degree of diligence. There was no regular senior level budget monitoring process, and no regular financial reporting and objective review processes. Budgetary variances were not identified or challenged. The account structure for budgetary and reporting purposes effectively masked significant and recurring budgetary variances on constituency allowances. Transfers of funds between budgetary accounts were frequently processed with inadequate management scrutiny. The budget process and controls in the House require strengthening in a number of respects including: increased management scrutiny at all stages (from budget preparation to performance review); improved analysis; regular reporting; tighter controls over the transfer of funds; and a meaningfully defined account structure.

Purchasing – Much of the government’s purchases, payables, payment process was not followed by the House. The House was deemed to be outside the ambit of the *Public Tender Act* and the policy framework of the government purchasing agency. Alternative controls were not put in place. Within the purchasing process, inadequate segregation of duties was identified as a key concern. Funds could be encumbered without receiving appropriate approvals; particular faults were noted in the expense claims subset of the purchasing process.

It is imperative that these deficiencies be addressed and that the purchases, payables and payment processes of government be generally adopted within the House. Should any such policy not be adopted due to particular circumstances within the House, appropriate alternate controls should be implemented.

Improved Transparency and Accountability - An overall increase in transparency is paramount to remedy control weaknesses. Guidance is outlined to address each of the specific weaknesses. The role of internal audit is emphasized as a means of strengthening internal compliance, as is a revitalized management focus and the promotion of individual accountability.

Management Certification – A management certification process should be implemented as a definitive and visible means of promoting the appropriate reporting and disclosure of information as well as the effective operation of internal controls. This would entail the Chief Financial Officer and the Clerk overseeing the establishment and maintenance of disclosure controls, internal controls and procedures, and providing personal certification of their participation in the design and evaluation of the operating effectiveness of such controls.

Audits

Audits of government operations are an essential reinforcement of the public's entitlement to financial stewardship. Within the extensive scope of comprehensive auditing, there are three categories of audit engagements that place different degrees of emphasis on the various elements of public accountability:

- i) Financial statement audits provide an opinion as to whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with Canadian, generally accepted accounting principles;
- ii) Compliance audits may be performed within a range of mandates, from issuing an opinion on whether transactions were in accordance with the applicable statutory and executive authorities, to reporting specific instances of non-compliance with authorities observed in the course of discharging audit responsibilities. (It is not uncommon to include compliance audit elements in a financial statement audit mandate.); and
- iii) Value-for-money audits assess the economy of expenditures and the effectiveness of programs and, depending on the specifics of the mandate, may evaluate whether or not funds were spent efficiently.

Audit Mandate - Given the array of potential audit mandates, it is necessary, at the outset, to identify the pertinent areas to be audited and then to ensure that the mandate selected incorporates the appropriate audit approach for the House of Assembly.

The external audits of 2001-02 and 2002-03 were said to be strictly financial statement audits, and no matters of concern were reported. Clearly, the unqualified results of those audits, when assessed in the context of the Commission's background research, highlight a number of areas that must be expressly addressed in future audits. In addition, surveys of legislatures across Canada were used to compare current Canadian practices to the practices of Newfoundland and Labrador. Based on these considerations, the proposed scope for regular audits of the House of Assembly includes both a financial statement audit and a compliance audit element, customized to address the Commission's concerns. Such audits should be undertaken on an annual basis.

In addition, there should be more extensive compliance audits undertaken at least once during each General Assembly (effectively once every four years). During the next General Assembly however, there should be a compliance audit six months after implementation of this report's control recommendations and then another one about a year later, in order to instill confidence that the new regime is working effectively.

The proposed legislative framework has been designed to ensure that, insofar as possible, inadequate audit mandates, delays in the appointment of auditors, and audit voids do not recur.

It is critically important that the audit mandate be clearly articulated and that it provide the necessary authority to auditors to access all relevant financial information. The terms of the audit engagement should be clearly documented to eliminate any misunderstanding between the auditor and the Management Commission. Also, in contrast with past practice, the formal documentation, or "deliverables," resulting from any audit engagement - including the audit opinion, the findings report, and the management letter, as applicable - should be delivered to the House on a timely basis. To satisfy the duty of public accountability, the audit report should be reviewed in the context of the expressed purpose of the audit and the mandate; this would also ensure congruence with the expectations of the Management Commission and adequate coverage of the identified risk areas. Where warranted, the response of the House to any issues raised in management letters should, likewise, be communicated and addressed appropriately within a reasonable period.

Appointment of Auditor - The Management Commission should retain the mandatory obligation to appoint an auditor, and in addition should, within appropriate parameters, have flexibility in selection of the auditor with respect to the annual financial statement audits. While the Management Commission must ensure that adequate independence of the auditor from the House is maintained, it should have the option to select either an external auditor or the Auditor General to perform the audit work. However, should the Management Commission fail to appoint an auditor in the legislated time frame, the Auditor General would, by law, become the designated auditor for the respective audit. In addition, the Auditor General should, at his own initiative, have the authority to conduct audit reviews of the House from time to time as he deems necessary.

With respect to the periodic compliance audits to be conducted once every General Assembly the Commission is of the view that these should be performed by the Auditor General due to his or her greater familiarity with government systems and policies.

Outstanding Matters – The IEC minutes indicate that adjustments to constituency allowances were approved on March 6, 2002 and February 26, 2003. There are indications that these decisions were intended to provide year-end payments to MHAs yet this Commission was unable to confirm whether any such payments were made. Accordingly, a forensic accounting investigation should be conducted to determine if the transactions contemplated in these IEC minutes occurred, as well as the nature and application of any payments made.

It is inappropriate for the accounts of the House to escape audit scrutiny for *any* year. The IEC decided not to require an audit of 2000-01 and it also appears that 1999-2000 may not have been audited appropriately. To the extent it is not included in the Auditor General's current mandate, a complete financial statement and legislative compliance audit should be conducted for these two fiscal years. The financial statements and auditor's report should be subsequently examined by the Public Accounts Committee.

Compensation

Transparency and MHA Compensation - Currently, the principal elements of MHA compensation are called "sessional indemnities" and "non-taxable allowances." While Members are technically not paid a salary as such, these two regular payments effectively constitute their "pay" for service as an MHA and the basis upon which pension entitlements and severance payments are calculated. This practice leads to confusion and misunderstanding regarding the effective level of basic salary compensation received by MHAs. Not only are the titles of these payments different from the recognized terminology for compensation in the workforce generally, the tax-free component obviously has a far greater value than the corresponding nominal amount would if it were paid as a salary and subject to normal income tax.

Furthermore, as noted previously, the public accounts and budgetary estimates of the province do not disclose annual allocations for Members' salaries, nor do they indicate the specific allocations for MHAs' sessional indemnities and non-taxable allowances. The annual payroll for Members, multi-year trends, and budgetary variances are not reported separately, but instead are combined with other allowances, and concealed in the Allowances and Assistance account, raising both transparency and accountability concerns.

MHA Salaries - The electorate should be able to understand and relate to the Members' pay level. Consistent with the practice adopted in a number of provinces, MHA basic compensation should be called a *salary* and should be fully taxable, thereby dispensing with the terms "sessional indemnity" and "non-taxable allowance." In order to

preserve the currently effective compensation level and to enhance transparency, the nominal amount of the MHA basic salary should be “grossed up” to reflect the true value of the tax benefit implicit in the existing non-taxable allowance. The new salary levels would be designed to “tell it like it is.” However, while the new MHA salary must be grossed up to facilitate the preservation of MHAs’ effective earnings at the current level, the pension formula must also be adjusted to contain the existing value of pension entitlements in order to ensure that no windfall increase in pension benefits results from the transition to a conventional salary arrangement. In short, the change to a conventional salary arrangement should be pension neutral.

It is recognized that due to the tax implications, this compensation structure is more costly to the province, with no incremental gain to Members. However, it is nonetheless an appropriate change to reinforce the principle of transparency in MHA compensation.

The job of an MHA should be regarded as that of a professional, mandating high standards of behaviour and accountability and requiring attention to the responsibilities of office that extends beyond a “9 to 5” occupation.

The best comparator for setting future salary levels for MHAs is the salary levels of members in other provincial and territorial jurisdictions, in particular those in Saskatchewan, Manitoba and in other Atlantic provinces. Given the relatively high level of this Province’s current MHA salaries when compared to the peer group, it was decided that no salary increase, beyond existing parameters, should be recommended at this time.

MHA Attendance at the House - Attendance at the House of Assembly is considered an essential responsibility of all MHAs; all members should strive to be in attendance when the House is sitting. Accordingly, except in stipulated circumstances or when otherwise excused by the Speaker, there should be a *per diem* deduction from MHAs pay for each day a Member fails to attend the sittings of the House.

Full-time Commitment - The occupation of an MHA should be regarded as a full-time job and paid as such. It should be a legislative requirement that when the House is not sitting, a Member should devote his or her time primarily to the discharge of his or her duties as a Member, making reasonable allowances for such matters as personal and family commitments, the need for some rest and vacation time and other parliamentary duties, if any. Failure to comply with this requirement should involve investigation by the House.

A Member should not be prohibited from carrying on a business or engaging in employment or a profession provided the nature of the work does not prevent him or her from attendance in the House when it is in session and from devoting time primarily to discharge of duties as a member when the House is not in session.

Salary Adjustments and Independent Review - The legislation should mandate that MHAs’ salary and other compensation arrangements will be subject to review by an

independent commission once during each General Assembly. The transition to the new salary structure should be implemented immediately based on the preservation of the existing effective earnings levels. However, pending the appointment of an independent commission during the Forty-Sixth General Assembly, the MHA salary levels under the new structure should continue to be adjusted in line with increases awarded to employees on the executive pay plan of the government.

Allowances

For Members of the House of Assembly to do their job properly they should be provided with sufficient resources and should be reimbursed for reasonable expenses incurred while performing constituency business. If we want good and effective government we should be prepared to pay for it. No Member should have to carry out public duties at serious personal financial sacrifice.

From its assessment of the existing allowance regime, the Commission has concluded that: it is not an effective or efficient vehicle to reimburse MHAs for expenses; there are no proper safeguards in place to ensure accountability and compliance with rules and guidelines; there are no sufficiently clear or effective guidelines in place to protect public money; and the system is and will continue to be ripe for abuse if steps are not taken to reform it.

Unlike payment of salaries, MHAs are not *entitled* to payment of allowances on the basis that they have been *earned*. They may only expect payment of an allowance if they are able to *justify* payment by proving that they have made legitimate expenditures in the course of performing constituency business.

A proper allowance regime should provide adequate resources to MHAs to enable them to perform their public duties; promote accountability and transparency; and facilitate public understanding of the use of public funds by MHAs. To achieve these purposes the rules respecting allowances should amongst other things, be clear and understandable, be based on principle, be administered in a manner that controls abuse, and operate fairly.

A fundamental principle of the new allowance regime should be that each MHA has a non-delegable personal responsibility for complying with the rules of the regime. The constituency allowance framework should be completely restructured and the existing “block funding” arrangement for the reimbursement of Members’ expenses should be discontinued.

Prescribed Categories and Rules - In the future, resources to enable Members to fulfill their public duties and responsibilities should be funded and administered through four specific categories of allowances: office allowance, operational resources, travel and living allowances, and a residual constituency allowance. Each category should be governed by definitive rules that prescribe the nature of expenses covered, as well as the respective funding formulae and prescribed limits in each case. In this regard, the

Commission has provided a comprehensive draft of proposed rules to be considered for implementation by the Management Commission under the proposed revised legislation.

Office Allowances – Office allowances would relate to the provision of constituency office accommodation as well as the funding of basic expenses associated with the operations of such an office. Each Member should be entitled to operate an office in his or her district as well as in the Confederation Building. Standards should be set by the Management Commission as to what should be allowed. In the Confederation Building, the Speaker should be required to ensure that the quality and size of office accommodation for a member of one political party is not materially different than that for another party. Office accommodation would include such expenses as rent, utilities, taxes, insurance, security services and janitorial services. From an operational perspective, it would include such things as office supplies, printing, courier services and postage. The rules should contain restrictions on the lease of office accommodation to ensure that a lease not be entered into with someone who is an “associated person” of an MHA. While the rules should provide that an MHA may operate a constituency office from his or her residence, in such a case, the MHA would not be entitled to claim for reimbursement for the provision of such accommodation.

Operational Resources – Each Member should be entitled to a standard office allocation (approved by a directive of the Management Commission) that would include such things as: an office furniture and equipment package; telephone and facsimile services; computer; personal data communications services; photocopier, printer and scanner services; internet services; and art from the government procurement program. All such items within the standard office allocation should remain the property of the government and should only be disposed of and replaced in accordance with policies established by the Management Commission. Each Member should be personally responsible for all public assets entrusted to his or her care. Members should continue to be entitled to engage the services of one constituency assistant.

To the extent possible, arrangements for the acquisition of office equipment and communication devices should be made and coordinated by the House administration rather than undertaken by individual Members on an ad hoc basis.

Travel and Living Allowances – Reimbursement for travel and living expenses should be governed by detailed rules that prescribe specific guidelines for the various circumstances under which MHAs may claim reimbursement for travel, accommodation and meal costs. The rules should establish limits on the maximum number of trips, and guidelines on the maximum transportation cost claimable, as well as limits related to the extent of reimbursement that may be claimed for accommodation. The rules should also address those circumstances where, by virtue of an individual’s role as an MHA, the Member maintains two residences, rather than resorting to hotel accommodation for extended periods of time. For example, some Members whose constituencies and principal residence are outside the capital region, are frequently required to spend extended periods of time in the capital region.

Constituency Allowance – There should be a relatively modest constituency allowance allocation, capped and equal for all, entitling MHAs to be reimbursed for constituency expenses, other than those prescribed above, which are necessarily incurred in the carrying out of constituency business. Such expenses might include: meals and other supplies for meetings; memberships in community organizations; magazine and newspaper subscriptions; cost of attendance at conferences or training courses; costs related to attendance at meetings involving advocacy on behalf of a constituent; and other items as directed by the Management Commission.

Expenditures not Eligible for Reimbursement – The rules should clearly stipulate that there shall be no reimbursement to MHAs for such expenditures as charitable donations, sponsorships of individuals or groups, raffle tickets, alcoholic beverages, artwork, gifts, travel costs for constituents, travel costs for spouses or dependents, financial assistance to constituents, or expenses related to politically partisan activities. Members may continue to make donations out of their own personal funds, just like any other citizen but when so doing must stipulate for acknowledgement without reference to the MHA's public position as a Member of the House.

Original Receipts - As a basic principle, original receipts should be required to support *all* claims for reimbursement of MHA expenses (except for prescribed circumstances where *per diem* rates apply for meals, and a kilometer allowance is claimed for the use of a personal vehicle).

Pensions

The current MHA pension plan in Newfoundland and Labrador reflects the key elements of a defined-benefit pension plan introduced in the 1970s. The plan provides a generous and costly benefit package relative to other pension plans in the provincial public sector. Yet it is acknowledged that for several years following its introduction, the plan was very much in line with the prevailing trend in pension arrangements for elected officials in provincial jurisdictions across Canada.

Pension Trends - Through the 1990s there was a substantial move to pension reform nationally, coupled with a concentrated focus on fiscal restraint. This resulted in a number of changes to pension plans generally - in terms of containing the benefit structure, increasing contribution rates and introducing funding arrangements. In recent years, however, there has been a trend away from the preferential and costly defined-benefit plans for MHAs. Four provinces moved to a relatively conservative defined-contribution plan, or an RRSP-type arrangement. Furthermore, one province does not provide any form of retirement plan for its Members. In cases where provinces moved away from the traditional pension framework, existing plan members were “grandfathered” under the previous arrangements, and the new policy was implemented for new MHAs or MLAs on a go-forward basis.

Transition to a Revised Pension Structure - Today the current service cost of the MHA plan in Newfoundland and Labrador is 41.9% of salary (the MHA contributes 9%

and government assumes the remaining 32.9%) - far more generous than the arrangements for most who draw their income from the public purse, and likely more generous than the arrangements for most employed in the private sector. In view of the relative position of the plan and the emerging trends, the report recommends that the Management Commission, assisted by the Department of Finance, consider the development of a new defined-contribution, RRSP-type of arrangement, to be applicable on a go-forward basis for newly elected MHAs.

Future Review by Independent Commission - In the past, pension policy for MHAs had been largely determined by the executive branch. In this regard, it is recommended that matters of pension policy be referred to future independent commissions on Members' salaries, benefits and allowances.

Signals

Observations and Implications - A number of the symptoms and weaknesses found to contribute to the systemic failure in the financial management of the House of Assembly might be prevalent elsewhere in the executive branch of government. It was not within the terms of reference of this Commission to explore the extent of such circumstances, nor to address the measures necessary to correct them. Nonetheless, a range of questions raised through this Commission's research are posed for consideration, with the suggestion that the government may wish to reflect on them in the broader context and assess the extent to which they should be pursued in the executive branch.

Financial Control and Departmental Autonomy - The government may also wish to reflect on observations that, over the years, successive staff reductions related to financial restraint measures may have impaired the internal control functions and financial management capability within government departments generally. Furthermore, there are indications that the delegation of authority intended to provide increased financial autonomy at the departmental level may have diminished the overall effectiveness of the central financial management and control functions of government to something less than contemplated in the *Financial Administration Act*.

Revitalization of the PAC - The Public Accounts Committee has not only been relatively inactive in its supervision of House of Assembly finances, in recent years it appears to have played a minimal role in the scrutiny of government's finances generally. The government and Members of the House of Assembly should give consideration to the general revitalization of this important parliamentary oversight function.

Administrative Considerations - Consideration should also be given to other matters not within the mandate of this Commission, including the level of caucus funding for opposition parties in the House, the development of equitable employment standards governing political assistants, and the creation of a focused initiative to ensure that overlapping entitlements of MHAs who are Ministers do not result in either duplicate payments or inequitable treatment of MHAs.

Broader Opportunities for Progress - Should the government and the House proceed to implement this Commission's broad list of recommendations, the legislative branch of government in Newfoundland and Labrador will, in many respects, progress to standards beyond those currently in place for the executive branch of government. It may be that these same standards, issues of principle and "best practices," and the means to address them, are already being assessed by the government in another forum, in terms of their potential application to the executive branch. But, to the extent they are not, the government and Members may wish to ask themselves "Why not?"

Renewal

The recommendations in this report, of necessity, cover more than the specific reform of the rules governing constituency allowances, salaries and pensions of Members of the House of Assembly. Institutional renewal involves the reform of the structure of the legislative branch, its administration and its detailed policies.

The legislature should be accountable at least to the same standard applicable to the executive branch. Notwithstanding the notion of legislative autonomy, the two branches are involved with the same pot of public money. The solution to the narrow issues that precipitated this inquiry ultimately rests with systemic reform. This is the key to solving the specific problems *and* to rebuilding public confidence.

Substantial legislative, regulatory and administrative reform is essential. In this regard, the Commission has made a broad range of specific recommendations and has provided a draft of comprehensive legislation to facilitate their implementation. This draft bill is intended to provide the legal framework for the effective administration of the House, the standards of conduct of Members, and their ethical and accountable behaviour. In addition, the Commission has drafted the detailed rules contemplated under the proposed legislation to govern the administration and reimbursement of expenses incurred by Members in fulfilling their public duties.

Reform must include a *reform of attitude* and the creation and maintenance of an institutional culture of responsibility. Transparency and accountability are the building blocks of public confidence. There must be visible checks and balances in the system if there is to be any hope of rebuilding confidence in it. The technical implementation of specific institutional reforms will not by itself restore public confidence. Rather, that confidence will be restored by the willingness and constant dedication of our leaders to foster and maintain, by example, the standards expected of those who discharge the critically important and difficult responsibilities of public office.



Recommendations

Chapter 4

Failures

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 Members, 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.*

Chapter 5

Responsibility

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.*

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.*

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;*
- (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.*

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; 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.***

Recommendation No. 7

- (1) The application of the ATIPP Act to the House of Assembly administration should be excluded in relation to:***
 - (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.***

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.*

Recommendation No. 9

It should be a legislative requirement:

- (a) *that the IEC, officers of the House and the staff of the House of Assembly administration document decisions and recommendations; and*
- (b) *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.*

Recommendation No. 10

- (1) 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”;***
- (2) The existing Commission must:***
 - (a) be restructured legislatively with respect to its formal operating structure;***
 - (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.***

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.*

Recommendation No. 12

- (1) 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;*
- (2) The specific duties and responsibilities of the Commission should be set out in legislation and should include responsibilities to:*
 - (a) oversee the budget, revenues, expenses, assets and liabilities of the House;*
 - (b) review and approve administrative, financial and human resource and management policies of the House;*
 - (c) implement financial and management policies for the House and keep them updated;*
 - (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.*

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.

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.*

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;***
- (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.***

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.*

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 committee 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 appointment.*

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.***

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.*

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.*

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.*

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.*

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.*

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

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.*

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.

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.*

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;***
- (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;***
- (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.***

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.

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.***

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.***

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.***

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;***
 - (e) made available to House staff charged with administering the allowance regime.***

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.

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.***

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.***

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.*

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

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.*

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;*
- (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.*

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.*

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;*
- (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.*

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;*
- (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.*

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.*

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.

Recommendation No. 46

- (1) *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;*
- (2) *All staff of the House should be provided with initial and ongoing training on the Oracle system;*
- (3) *If the “Expenses” module presently being piloted within government is deemed suitable for general government use, it should be implemented within the House as well;*
- (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.*

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 “Expenses” 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.***

Recommendation No. 48

- (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:***

- (a) establish and maintain disclosure controls and procedures;*
 - (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*
 - (c) enable the Chief Financial Officer and Clerk to certify that the internal controls environment is operating effectively;*
- (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

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.

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.*

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.*

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*
 - (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.*

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.*

Recommendation No. 54

- (1) *An annual report should be tabled in the House of Assembly;*
- (2) *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*
- (3) *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.*

Chapter 9

Compensation

Recommendation No. 55

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

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.***

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.***

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.

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.***

Recommendation No. 60

- (1) There should be a clearly stated legislative requirement that, except for special circumstances, a Member is required to attend the House on each day when it sits;***
- (2) Exceptions to the requirement of daily attendance at sittings of the House should include:***

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

- (3) Where a Member is absent from the House without acceptable reason, he or she should face a deduction of \$200 a day from salary for each day of absence;*
- (4) A Member should be required to file a declaration with the Speaker annually, detailing any absences and the reasons therefor; 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.*

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.*

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.*

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;*
- (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

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 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.

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.*

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.*

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;*
- (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.*

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.***

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 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.*

Recommendation No. 70

- (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:
 - (a) *office allowances;*
 - (b) *operational resources;*
 - (c) *travel and living allowances;*
 - (d) *a residual, constituency allowance; and**
- (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.*

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.*

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.*

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.*

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.*

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.*

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.*

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.***

Chapter 11

Pensions

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 13

Renewal

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;*
- (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.*



Draft Legislation

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

(a) Speaker----- \$52,497

(b) Deputy Speaker and Chair of Committees- 26,246

* 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."

(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.

Adjustments to salaries, expenses and severance

(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

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.

Duties and responsibilities of commission

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

- (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.

Orientation and
training

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 recorded in the report, advice or recommendations and in the minutes of the commission.

Advance rulings on
allowance use

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.

Review of
allowance use

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.

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 and 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.



Draft Rules

MEMBERS' RESOURCES AND ALLOWANCES RULES
under the
House of Assembly Accountability, Integrity and Administration Act

Analysis

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Short title	1. These rules may be cited as the <i>Members' Resources and Allowances Rules</i> .
Definitions	<p>2. In these rules</p> <p>(a) "Act" means the <i>House of Assembly Accountability, Integrity and Administration Act</i>;</p> <p>(b) "allowance" means a category of allowance referred to in section 14;</p> <p>(c) "associated person" means</p> <ul style="list-style-type: none"> (i) a person who is not at "arm's length"; (ii) a "related person"; and (iii) an "associated corporation" <p style="padding-left: 40px;">within the meaning of the <i>Income Tax Act</i> (Canada);</p> <p>(d) "capital region" means the area encompassing the following electoral districts as described and delineated in the <i>House of Assembly Act</i> as follows</p> <ul style="list-style-type: none"> (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.

- (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.

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