



HOUSE OF ASSEMBLY

Members' Compensation Review Committee

*MHA Salaries, Allowances,
Severance Payments and Pensions
Review*

**Report
November 2012**

Table of Contents

ACKNOWLEDGEMENTS	1#
EXECUTIVE SUMMARY	2#
SALARIES	10#
PENSIONS	17#
SEVERANCE PAYMENTS	27#
ALLOWANCES	31#
ALLOWANCES IN GENERAL.....	31#
APPROPRIATENESS OF PUTTING TERMS OF REFERENCE 6 AND 7 BEFORE THIS COMMITTEE.....	38#
TERM OF REFERENCE 6	42#
TERM OF REFERENCE 7.....	52#

Schedules

Tab A	<i>House of Assembly Accountability, Integrity and Administration Act, SNL2007, c.H-10.1</i>
Tab B	<i>Members' Resources and Allowances Rules</i>
Tab C	House of Assembly Resolution - April 26, 2012
Tab D	Terms of Reference
Tab E	List of Members who appeared before the Committee
Tab F	List of Press Releases on Government Website and Dates in Newspapers
Tab G	Press Release - Extension of Time for Public Submissions
Tab H	List of MHA Salaries – 1989-2007 (Chart 9.2 from <i>the Green Report</i>)
Tab I	Comparative Salaries - Canadian Legislatures
Tab J	Jurisdictional Survey of Member's Pay, April 2012
Tab K	Jurisdictional Comparison of Public Sector and MHA/MLA Pension Plans
Tab L	Comparison of NL Public Sector Pension Plans
Tab M	Written Submission of St. John's Board of Trade
Tab N	Written Submission of NL Public Sector Pensioners' Association
Tab O	Written Submission of Individuals
Tab P	Service Years of MHAs from 1989 to date
Tab Q	Member Total Compensation Comparisons
Tab R	Jurisdictional Survey of Severance for Canadian Legislators
Tab S	<i>The Kennedy Report</i>
Tab T	Directive 2007-012 – re Intra-Constituency Travel
Tab U	Schedule 10.3 of <i>the Green Report</i>
Tab V	Kilometre Estimates and Roadway Distance Within Districts
Tab W	Intra / Extra Constituency Travel Expenditure 2007 – 2013
Tab X	House in Session Costs / House not in Session Costs – 2007 – 2013

November 16, 2012

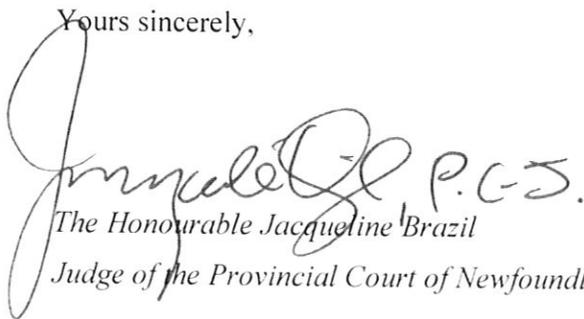
HAND DELIVERED

The Honourable Ross Wiseman
Speaker of the House of Assembly for the Province of
Newfoundland and Labrador
House of Assembly
Confederation Building
St. John's, NL

Mr. Speaker:

I am very pleased to deliver to you the 2012 Members' Compensation Review Committee Report, in compliance with Section 16 of the *House of Assembly Accountability, Integrity and Administration Act* and the Terms of Reference. Ms. Dawson and I would like to thank you for this opportunity and we look forward to addressing any issues or questions that you may have with respect to the Report.

Yours sincerely,



The Honourable Jacqueline Brazil

Judge of the Provincial Court of Newfoundland and Labrador

ACKNOWLEDGEMENTS

Many people have assisted me in completing this massive amount of work since I began on August 6, 2012:

- Chief Judge D. Mark Pike of the Provincial Court of Newfoundland and Labrador consented to my taking leave from my busy court in Harbour Grace. I would like to thank him for his support and for his willingness to ensure that another judge was available to sit in Harbour Grace during my absence.
- To the staff of the Provincial Court of Harbour Grace - thank you for adjusting to the less than convenient circumstances of my absence. The absence of your presiding judge for 4 months creates significant challenges. As always, you have responded to this inconvenience with grace, efficiency and professionalism.
- House of Assembly staff have been accommodating, gracious and informative. My presence was not necessarily comfortable for them but it never showed and my many requests for information were answered in a timely and comprehensive manner. I would particularly like to thank Sandra Barnes, Craig Drover, Geoff Cahill, Rosalind Dawe and Maureen Dooley.
- William Noftall and Maureen McCarthy of the Department of Finance's Pension Division provided great assistance on the complex issue of pensions.
- Thank you to those who made written and oral submissions. Engaging the public and enhancing accountability and transparency is at the very heart of this process. Your interest and participation was greatly appreciated.
- Thank you to the 27 MHAs who took time from their frenetic schedules to meet with me. Your insights helped me to understand your role and the joys and challenges that go with it.
- Finally, to my analyst and dear friend, Rosemary Dawson - I have known Rosemary since we practiced law together in the early 1990s. Her keen legal mind, her precise writing skills and most importantly, her sense of humour, have been my mainstay throughout this complicated, and sometimes, difficult process.

EXECUTIVE SUMMARY

Pursuant to s.16(1) of the *House of Assembly Accountability, Integrity and Administration Act*,¹ (“*the Act*”) the House of Assembly is mandated to appoint an independent committee known as the Members’ Compensation Review Committee at least once during each General Assembly, to conduct an inquiry into and to prepare a report respecting the salaries, allowances, severance payments and pensions paid to Members of the House of Assembly, (“MHAs”).²

Pursuant to a resolution of the House of Assembly on April 26, 2012, I was appointed as the sole member of the 2012 Members’ Compensation Review Committee, with the requirement that my report be delivered to the Speaker of the House of Assembly by December 3, 2012.³

The Terms of Reference⁴ refer to the four areas as outlined in Section 16 of *the Act* and expand this review to request that in addition to my general review of allowances, I pay particular attention to three discrete areas of the *Members’ Resources and Allowances Rules* (“*the Rules*”) pertaining to Allowances. More particularly, Terms of Reference 6 and 7 deal with intra-constituency allowances, anomalies between Rule 7 and government-wide accounting practices and the portion of Part VI of *the Rules* pertaining to “secondary accommodation”.

I commenced work on August 6, 2012. With the assistance of Rosemary Dawson, I completed a thorough review of *Rebuilding Confidence*, the Report of the Review Commission on Constituency Allowances and Related Matters prepared by Chief Justice Derek Green and his team.⁵ I returned to this volume on a daily basis throughout my mandate.

I then familiarized myself with *the Act* and *the Rules*.

I reviewed the October 2009 report of the first Members’ Compensation Review Committee, as well as a number of provincial and federal reports from other jurisdictions in Canada. I also researched the issues of compensation, allowances, severance and pensions for elected officials in other Commonwealth jurisdictions.

¹ *The Act* is attached as Schedule “A”.

² Subordinate legislation developed under *the Act*, “*Members’ Resources and Allowances Rules*” (“*the Rules*”) is attached as Schedule “B”.

³ See Schedule “C”.

⁴ See Schedule “D”.

⁵ Newfoundland, *Rebuilding Confidence*; Report of the Review Commission on Constituency Allowances and Related Matters, (May 2007) (Commissioner: The Honourable J. Derek Green), hereinafter referred to as “*the Green Report*.”

In familiarizing myself with the current practices and procedures, I met with staff of the House of Assembly; also, officials from the Pensions Division of the Department of Finance provided a briefing on pension issues.

I invited all Members of the House of Assembly (“MHAs”) to meet with me and I was very pleased that 27 MHAs accepted my invitation.⁶

Public meetings were held in St. John’s, Happy Valley-Goose Bay, Corner Brook, Grand Falls and Clarenville. Notices of these public meetings were placed on the House of Assembly web site, and published in the *Telegram*, *Labradorian*, *Western Star*, *Advertiser* and *Packet* on 3 separate occasions.⁷ Notices of these public meetings were published and broadcast by the media, and the general public was invited to attend. Written submissions were also accepted and I extended the time for accepting written submissions from September 15, 2012 to October 15, 2012.⁸

Despite the publicity, attendance at the public meetings was very low. Other jurisdictions experienced similar poor attendance at public meetings, and in some areas scheduled meetings were cancelled. I have given some thought to how future Committees might enhance public participation. The Department of Political Science from Memorial University suggested to the previous Committee that opinion surveys might be useful. Anonymity may also be important to those who wish to make submissions.

The St. John’s Board of Trade made the only public presentation and concentrated its efforts on the MHA pension plan. Six private individuals forwarded written submissions as well as the Newfoundland and Labrador Public Sector Pensioners’ Association (“NLPSPA”).⁹ I also reviewed feedback comments posted online. The general concentration of most submissions was on pensions as was indeed the focus of the few people who attended the public meetings. All referred to the pension plan as being too generous and some advocated changing the plan from a defined contribution to a defined benefit plan. One person proposed that severance should be eliminated for future MHAs.

To inform my report, I was guided by the principle that the process of establishing adequate compensation for MHAs must be transparent to and understandable by the public. Some members of the public who made submissions or spoke at public meetings were under the impression that this Committee was implemented to justify an increase of MHA benefits. Nothing could be further from the truth. This report is mandatory and while I have had great cooperation from House of Assembly staff and MHAs, this process is not necessarily comfortable or convenient for them. A Members’ Compensation Review Committee is independent and has authority under the *Public*

⁶ See Schedule “E” for a list of MHAs who met with me.

⁷ See Schedule “F”.

⁸ See Schedule “G”.

⁹ One other individual forwarded a written submission, but I have not included it with the Report, as it was totally unrelated to my mandate.

Inquiries Act. The legislation requires the appointment of a Members' Compensation Review Committee every four years, primarily to enhance the public's confidence in how MHAs are compensated.

I have tried to ensure that this report is readable and understandable by the public, House of Assembly staff and MHAs. However, some of the concepts are complex and I also struggled to ensure that nothing of substance was lost while I attempted to simplify these issues. It is necessary for those who are reviewing this Report to have an understanding of *the Act* and *the Rules* in order for the review to be meaningful.

Salaries

Several people stated that MHAs salaries should be frozen for the next four years or until the salaries of the public service are similar to MHAs salaries. MHAs who met with me were mostly satisfied with the current salary, but expressed the view that there should not be another roll back as had happened in 2009. All spoke of the need to attract and retain qualified people to public office, and all were of the opinion that the long hours, the onerous responsibility and the public scrutiny warranted the salary. They felt that compensation for the privilege of serving as an elected official should be competitive, and the benefits offered to potential candidates should be worth the effort.

From my analysis of compensation paid to legislators across the country, I noted that the current salary paid to MHAs rates 6th behind Ontario, Quebec, British Columbia, Alberta and Nunavut, but ahead of the other Atlantic Provinces, Manitoba and Saskatchewan. I also noted that other jurisdictions have frozen salaries for legislators. MHA salaries have been frozen since 2009.

Presently, 36 of our 48 MHAs receive extra remuneration for serving in other capacities such as ministers, parliamentary assistants or party whips.

Pensions

As I have already stated, most submissions from the public concentrated on MHA pensions. The current pension plan for MHAs is a defined benefit plan which vests after an MHA has served at least 5 years and in 2 separate Assemblies. The current trend across Canada and indeed internationally is to provide a defined benefit plan. Several provinces in Canada have reverted to a defined benefit plan or some modification of such a plan from a defined contribution plan.

The current MHA pension plan is similar to that of some other provinces. Our MHA pension plan is presently based on 3.5% of the MHAs salary for the best 3 years' service with the MHA contributing 9% per year. Salary is defined for pension purposes as the base salary plus extra salary earned by the MHA with added responsibilities, i.e. a parliamentary secretary. An MHA's pension is reduced when an MHA receives CPP. This differs from most other legislators' pension plans. The biggest concern with the

MHA pension plan, as with other public service pensions plans in the Province, is its unfunded liability and the associated heavy debt load.

Severance

There was limited public comment with respect to the MHA severance policy. Several people stated that it is quite generous and that it should be reduced to the same severance payments paid to public servants, more particularly, one week's pay for each year of service rather than one month's pay for each year of service. MHAs had little to say about the existing severance policy and many of them did not know the terms of the policy.

A review of the severance provisions of other legislatures across the country revealed that all provide severance for elected officials after they have held office for a certain period of time. The rationale for the more generous scheme is that legislators who leave office may not be readily employable and have less security of tenure. The MHA severance policy is not so different from that of other jurisdictions. Salary for severance purposes is calculated on 81.2% of the base salary and one month's salary is paid for each year of service for a minimum of 3 months' salary and a maximum of 12 months' salary. MHAs who were familiar with the policy were satisfied with the severance provisions.

Allowances

There was limited comment from the public with respect to allowances. However, the allowance provisions were the area of greatest concern to MHAs. This was also the area that took up the largest part of my time.

To conduct my analysis and review of the allowance scheme, I met with and relied on information provided by the House of Assembly staff; I reviewed many of the MHAs' disclosure reports posted on the House of Assembly website; I reviewed *the Rules* and in particular the allocations for allowances assigned to each district and MHA; I reviewed Management Committee meetings; and I listened to and noted the concerns voiced by the various MHAs who met with me both in St. John's and across the Province. I also read the report of Peter Kennedy who had been engaged by the Management Commission to review some issues respecting allowances.

I note that the allowance reimbursement regime in this Province is less flexible than that of other provinces. This is a result of Government's decision to implement stringent rules, as recommended in *the Green Report*, in the wake of the spending scandal. However, I also discovered that most MHAs do not spend even half the amounts allotted for their intra-constituency allowances.

I acknowledge that *the Rules* for submitting expense claims and the time frame for so doing are prescriptive. However, *the Rules* were devised to fulfill the two key components of rebuilding public confidence towards our elected officials - accountability

and transparency. In order to provide for a more effective, efficient and accountable system, the House of Assembly staff has been greatly increased. Most MHAs were very complimentary towards the House of Assembly staff to whom they submit claims. The primary concerns for MHAs were the amounts allotted under the different categories and the lack of flexibility with respect to certain claims.

The Act and *the Rules* provide ample authority to the Management Commission to determine and decide on issues that arise from the prescriptive nature of *the Rules*. I refer particularly to Sections 11 and 20 of *the Act*. I have determined, however, that the Management Commission has, on times, failed to interpret, clarify or amplify *the Rules* as is mandated by *the Rules*.

RECOMMENDATIONS:

SALARIES

- 1. MHAs salaries shall be frozen until December 2013.**
- 2. Starting in December 2013, MHAs shall receive a pay raise linked to the Consumer Price Index for this Province to a maximum of 1.5% for that year as of December 2013. A further increase, based on the same formula, shall be implemented in December 2014 and December 2015.²⁹**
- 3. This raise will also apply to the positions outlined in Section 12 of *the Act*.**
- 4. Beyond the 2015 raise, no further adjustments shall be made to MHA salaries until such time as salaries have been reviewed by the next Members' Compensation Review Committee.**

PENSIONS

- 5. The current MHA pension scheme remain unchanged.**
- 6. Immediately upon receipt of this report, the Management Commission should adopt recommendation 78 of *the Green Report* and develop a proposal that either converts the MHA pension plan to a defined contribution plan or significantly modifies the existing defined benefit plan. This proposal should be submitted to the next Members' Compensation Review Committee and that Committee should be given the necessary time and resources to conduct a thorough review of the proposal and of the existing MHA pension plan.**

7. The next Members' Compensation Review Committee be provided with actuarial and other resources necessary to conduct a thorough review of the MHA pension plan.
8. The House of Assembly include an actuary as one of the members of the next Members' Compensation Review Committee.

SEVERANCE

9. The current provisions of the MHA severance policy remain unchanged, with the following exceptions:
 - a. Severance shall not be payable to MHAs who are retiring.
 - b. Severance shall be payable in monthly installments until exhausted and if during this period the MHA becomes re-employed should immediately cease.
 - c. If these recommendations are implemented, they shall apply only to MHAs who are elected after the implementation date.

ALLOWANCES

10. Maintain existing House of Assembly staff who ensure compliance with *the Members' Resources and Allowances Rules*.
11. In compliance with *the Rules*, no issue should be put before the Members' Compensation Review Committee if the Management Commission has the legislative authority to rule on the issue.
12. The Management Commission should establish clear procedures to enable MHAs to raise allowance issues before it.
13. Section 44 of *the Rules* should be utilized as one way for MHAs to place issues with travel and living allowances before the Management Commission.
14. Requests made by MHAs to change allowance allotments should be principled and well supported by facts.
15. The MHA for Burgeo-La Poile be granted reasonable access to helicopter travel.
16. Helicopter travel should only be availed of if less expensive travel is not available.

17. Helicopter travel should not be included in intra-constituency cost estimates and should only be availed of with the specific permission of the Speaker upon representation by the MHA to justify such travel. It should be budgeted for separately.
18. If possible, an MHA should visit several isolated communities per trip in an effort to reduce costs.
19. If possible, helicopter travel should be shared with other professionals visiting these remote areas.
20. With respect to claiming for kilometres for private vehicle operation under the Intra-Constituency Cost Estimates, MHAs be provided the option of claiming up to 75 kilometres per week on the basis of a reasonable estimate of kilometres used for constituency business per week (Saturday to Sunday). An MHA should also have the option of submitting a claim for kilometres used under the existing *Rule* but in any given week, shall not do both.
21. If the intra-constituency cost estimate for the district of Fortune Bay-Cape La Hune is reduced by \$48,000, as set out in recommendation 17, the mileage estimate included in the intra-constituency cost estimate for this district should be increased from 4,500 to 20,000 kilometres and the dollar amount of the total be adjusted accordingly.
22. The mileage estimate included in the intra-constituency cost estimate for the district of St. Barbe should be increased from 15,000 to 20,000 kilometres and the dollar amount of the total be adjusted accordingly.
23. If recommendation 17 is followed, the amount of \$1,500 should be added to the intra-constituency allowance estimate for the district of Fortune Bay-Cape La Hune for increased ferry travel.
24. The provision of s.7 of *the Rules* with respect to submitting claims for payment or reimbursement within 60 days after the expenditure is made, remain unchanged.
25. House of Assembly staff attempt to procure cost-effective short-term apartment type rental facilities for MHAs who are travelling to St. John's to attend at the House of Assembly or to attend to constituency business. An MHA can still avail of the existing accommodation allowance arrangement if this is his or her preference.

The provisions of Part VI be amended as follows:

26. When the House of Assembly is in session, MHAs should have the option of either availing of the provisions of Sections 31 or 33 of *the Rules* with respect to travel and living allowances, or claiming daily mileage costs for travel to and from their permanent accommodation to the capital region, if the facts of that particular MHA's circumstances warrant such an amendment. This expense should be claimed from the House-in-session allocation and should apply only to MHAs who are within a reasonable driving distance of the capital region.

SALARIES

*Compensation for MLAs should be generous enough to attract suitably talented and capable individuals from all sectors, yet not so generous as to be the primary motivator for prospective members. Experience has shown that to attract the best people seeking office is to appeal to those primarily motivated by a desire to serve. For some, pursuing politics as a career will involve a financial sacrifice - MLAs' salaries cannot compete with those offered in the private sector. However, compensation should be so crafted so as not to deter desirable candidates from serving due to unreasonable monetary sacrifices.*¹⁰

HISTORICAL PERSPECTIVE

In compliance with Section 16 of *the Act*, Terms of Reference 1, 2 and 3 direct me to review “the annual salary adjustments for the salary for Members of the House of Assembly.”¹¹

When Chief Justice Green conducted his review in 2006-2007, compensation paid to MHAs consisted of a base salary and a tax-free allowance. The tax-free allowance comprised one half of the amount of the base salary.¹² This was in addition to allowances received for accommodation, offices, travel and meals both while the House was in session and while the House was closed.

Following the release of *the Green Report* in June 2007, and the enactment on June 14, 2007 of the *House of Assembly Accountability, Integrity and Administration Act*, c. H-10.1 SNL2007 (“*the Act*”), a new system of remuneration was implemented, and tax-free allowances were eliminated. As already stated in the Executive Summary, Section 16 of *the Act* compels the House of Assembly to appoint at least one Members’ Compensation Review Committee during each General Assembly to review, among other things, salaries of MHAs.¹³

The Green Report recommended that MHAs’ salaries be adjusted in conjunction with government’s executive pay plan increases until the first Members’ Compensation

¹⁰ Alberta, *MLA Compensation Review – Alberta, May 2012 Report*, (Commissioner: The Honourable J.C. Major, CC, QC.), p. 33

¹¹ Term of Reference 3 would only be relevant if I recommend a salary increase.

¹² Attached at Schedule “H” is a detailed review of the salaries and allowances paid to MHAs between the fiscal years 1989-1990 and 2006-2007 as included at pp. 9-5 of *the Green Report*.

¹³ Terms of Reference 1 and 2 also mandate a review of MHAs’ salaries.

Review Committee completed its work.¹⁴ Accordingly, the salaries were increased by 3% on July 1, 2008 and by 8% on July 1, 2009.

When the first Members' Compensation Review Committee ("*the 2009 Committee*") met on July 6, 2009, the annual salary of MHAs was \$102,984.00.

Following a series of meetings with MHAs, public meetings, submissions, representations, and reviews of salaries in other jurisdictions in Canada and elsewhere in the Commonwealth, *the 2009 Committee* presented its Report to the Speaker of the House and made the following recommendations:¹⁵

- (a) The 8% salary increase which commenced on salaries referred to in subsections 11(1) and 12(1) of the Act on July 1, 2009 are to be relinquished and the salary for an MHA will be the salary in place on June 30, 2009.
- (b) The salary referred to in number 1 above be frozen at that level pending the recommendations of the next Members' Compensation Review Committee appointed in accordance with the Act.
- (c) The changes referred to above are to become effective on the date of the coming into force of the amendments to the Act giving effect to these recommendations.
- (d) In consideration of the fact that this committee makes no recommendation on a formula for periodic increases in MHA salaries, the Committee recommends that the next Members' Compensation Review Committee be appointed within 6 months following the date of the election to the next General Assembly.

The House of Assembly accepted these recommendations and on December 22, 2009 *the Act* was amended. MHAs' salaries were rolled back by 8% to \$95,357.00. The salary is still at that level.

FINDINGS

Other Legislatures

I have reviewed current salaries of legislators in other Canadian Jurisdictions.¹⁶ The research revealed that the present salary level of MHAs ranks 6th among provinces and territories in Canada, behind Alberta, Ontario, Northwest Territory, Quebec, and British Columbia but ahead of Saskatchewan, Manitoba, and the other Atlantic Provinces. The latter five provinces were referenced in *the Green Report* as a "peer group closest in

¹⁴ I have been advised by House of Assembly staff that the executive pay plan, also known as the executive compensation plan, outlines the terms of employment for executive personnel of government, including deputy ministers, assistant deputy ministers and equivalents. Typically, executive members receive the same percentage increase in salary as other members of the civil service.

¹⁵ Newfoundland and Labrador, *Review of MHA Salaries, Allowances, Severance Payments and Pensions*, (Chairperson: Joe O'Neill), October 2009, ("*the 2009 Report*") p. 43.

¹⁶ See Schedule "I".

population size and geographic proximity [to this Province] and faced with similar social and fiscal challenges.”¹⁷ I agree with this observation of the Chief Justice.

MHAs’ salaries in this Province have been frozen since December 2009. This is not unique to the Province. Salaries in a number of other jurisdictions in Canada were similarly held at the same rate for 2-3 year periods. In Manitoba, salaries have been frozen since 2009, and the recent report from the Manitoba Review Commissioner has stated that there will be no increase until April, 2014 and no cost of living increase until April 2015.¹⁸

Salaries for legislators in other Commonwealth countries are in some cases higher than base salaries in this Province while others are within the approximate range. For example, in Australia, the annual base salary for Provincial members ranges from \$116,143 Australian dollars to \$148,550; and the base salary for Federal members in Australia is \$190,550.¹⁹ These salaries are similarly reviewed by tribunals or commissions that conduct public hearings, invite member submissions and consider variables such as the Wage Price Index, Average Weekly Earnings, the Consumer Price Index and Total Employment Growth.

New Zealand legislators currently receive a base salary of \$155,700 New Zealand dollars,²⁰ determined by *The Remuneration Authority Act* which takes into account the Consumer Price Index, public and private sector salary levels and, since 2010 “any prevailing adverse economic conditions, based on evidence from an authoritative source.”²¹

The basic salary for MP’s in the British or Westminster Parliament is 65,738 British Pounds and has been frozen at that level since April 2010.

In Scotland, the base annual salary for members is set at 87.5% of the members of the Westminster Parliament and is currently 56,671 British Pounds.²² This rate was set in 2009 following debate in the House of Commons, which took into consideration recommendations of a review body.

Meetings with MHAs

While not a full majority, a vast number of the MHAs who met with me were satisfied with the base salary of \$95,357. While some expressed disappointment at the 2009 salary roll back, most displayed a good understanding of the rationale behind it and

¹⁷ *The Green Report*, pp. 9-38

¹⁸ Manitoba, *Report of the Commissioner on Salaries, Allowances and Retirement Benefits for Members of the Manitoba Legislative Assembly*, (Commissioner: Michael D. Werier), September 2012, p. 18 and p. 27.

¹⁹ At the time of publication the Australian dollar was valued at 1.04 of the Canadian dollar.

²⁰ At the time of publication the New Zealand dollar was valued at 0.81 of the Canadian dollar.

²¹ s. 18A(2)(a) *Remuneration Authority Act 1977* as amended.

²² At the time of publication the British pound was valued at 1.59 of the Canadian dollar.

acknowledged that their compensation was satisfactory for an MHA in this Province. Many MHAs also acknowledged that the Province is presently facing budget deficits and is going through a period of fiscal restraint. The following are quotes from some MHAs:

“It is quite reasonable”

“It is quite sufficient”

“I’m happy with the salary”

However, all MHAs felt that their salary was well earned and many very ably described the work life. I accept that MHAs do not have 9 to 5 jobs and that their constituents expect them to be available to them after work hours and on weekends. For example, an MHA told me that a constituent invited himself to sit with the MHA and the MHA’s partner to discuss a constituency issue while the MHA and partner were enjoying a private dinner. Another MHA told me that a constituent came to that MHA’s home on Christmas Eve to discuss a problem.

MHAs typically spend a significant amount of after hours’ time attending social functions and dealing with constituency business. As one MHA put it, being an MHA is not a job or even a career, “it’s a lifestyle”.

Many MHAs also expressed frustration and disappointment at the lack of respect and understanding that some members of the public have for their role. As one MHA expressed it:

“On election night, I went to bed an honest person, and the next morning after having been elected, I was a liar and a cheat.”

I was assured by this MHA that s(he) is neither a liar nor a cheat.

I also accept that MHAs are under considerable media and public scrutiny. This is a necessary aspect of the democratic process, but it does take its toll on the MHAs and on their families. I was told of several instances of MHAs’ children being challenged at school about government policies or issues, and of spouses and partners being challenged at their work places.

Several MHAs advised that they received physical threats from constituents and other members of the public. One MHA told me of a threat made to the MHA as well as to another member of that MHA’s family.

Some MHAs advised that the stress of their office has negatively affected their health. In fact, several MHAs experienced very serious health issues, which they partially attribute to the stress of the job and the public scrutiny associated with it.

Most MHAs emphasized the necessity of maintaining a reasonable salary and benefits package in order to attract and retain good candidates to the position. I have reviewed the

online profiles of our current 48 MHAs and I was impressed by the level of education, skill and life experience that each brings to the role. The present MHA benefit package has indeed succeeded in attracting competent people.

Offering reasonable benefits to MHAs for attraction and retention purposes was also endorsed by several members of the public who spoke with us at the public consultations.

I share Chief Justice Green's view that MHAs' salary increases should not be linked to public service wage increases because of the perception, at least, of a conflict of interest. If government agrees to certain public service wage increases knowing that MHAs will get the same raise, this can be seen as MHAs essentially determining their own pay rates.²³

The ability of an MHA to earn compensation beyond the base salary is also relevant to my deliberations on this point. Many MHAs receive more than the base salary of \$95,357 because of added responsibilities they have been assigned either through positions within the House of Assembly, as Ministers or as parliamentary or legislative secretaries. Section 12 of *the Act* sets out the various positions within the House, including Speaker, Deputy Speaker, Leader of the Official Opposition and party whip. There are 11 such positions and the compensation for each ranges from \$10,333 per year to \$54,072 per year. The Premier receives an added salary of \$74,824, Ministers receive an added salary of \$54,072 and parliamentary assistants and legislative assistants receive an added salary of \$27,033.²⁴ While I have no authority to make recommendations respecting executive salaries, cabinet members are also MHAs so the increased salary does inform my analysis.

When the Chief Justice completed his report in 2007, 75% of MHAs were receiving additional remuneration beyond the base salary.²⁵ More particularly, 36 of 48 MHAs earned additional salary. This number fluctuates but as of October 25, 2012 there are 36 MHAs who earn additional remuneration for other duties.

Public Input

The views of those who attended public consultations and who forwarded written submissions varied widely. I quote from some of these submissions:

"Current salaries are OK....."

²³ *The Green Report*, pp. 9-39.

²⁴ House of Assembly staff referred me to a document titled "Jurisdictional Survey of Members Pay, April 2012 prepared by the Legislative Assembly of Alberta for the Canadian Association of Parliamentary Administrators, last updated in July of 2012. It offers a detailed cross-jurisdictional comparison of legislators' pay, including those positions that pay an amount above the base legislators' salary. This document, along with a list of MHAs who presently have added responsibilities is attached as Schedule "J."

²⁵ *The Green Report*, pp. 9-8, footnote 31; See also page 9-10 and 9-11.

“...politicians should be compensated fairly, and by that I mean given their responsibility (sic) and workload as compared to comparable positions in NEWFOUNDLAND...”

“My suggestions are that elected officials be paid at the same level of earnings as they were paid prior to being elected.”

“With respect to salaries I feel our MHA’s (sic) are excessively compensated.”

“no increase of any kind”

An editorial that appeared in the Telegram on September 27, 2012 made two suggestions with respect to setting MHAs’ salaries:²⁶

“...take a representative group of professions across the province and match their respective salary rates across the country. If a sample of the pay rates of nurses, architects, security guards, public servants and teachers were to show that Newfoundlanders and Labradorians in those positions made an average of 72 per cent of what the same positions paid across the country, then Newfoundland’s legislators should receive no more than 72 percent of the average pay of Canadian provincial politicians.”

The second suggestion:

“...untie our province’s MHA pay from other provinces completely. Pay them some proportion or multiplier of the province’s average industrial wage.”

ANALYSIS

As previously mentioned, there is a lack of understanding of the role of an MHA, the toll that this lifestyle takes on family life and in general the sacrifice that a person makes when s(he) enters public life. I considered these factors as well as the jurisdictional comparisons when making my recommendations with respect to MHAs’ salaries.

To quote the *British Columbia Independent Commission to Review MLA Compensation*:

Few positions are more important to our status as a free and democratic society than those of our elected representatives....

Our MLAs are expected to exercise judgement and to make decisions that involve millions of dollars and affect the immediate quality of life of individuals, as well as the long-term success of the province overall. No other group in our province has such a significant impact on our lives. Unfortunately, few members of the public fully understand the responsibilities and burdens shouldered by MLAs collectively or individually.²⁷

For these reasons, MHAs believe that they are entitled to the salary and benefits that they receive. Not one MHA that I met with suggested that I recommend a huge salary

²⁶ The editorial is included with the written submissions at Schedule “O”. Editorial Page Editor Russell Wangersky contacted me and suggested that I consider the editorial as a written submission.

²⁷ British Columbia, (Chairperson: Sue Paish, Q.C.), April 2007, p. 11.

increase. Some suggested that I recommend a wage increase linked to public service wage increases. Others mentioned an increase based on the Consumer Price Index or a cost of living allowance.²⁸

The present government has acknowledged that the Province will likely face budget deficits this year, mainly due to a decrease in oil prices. It is expecting government departments to find efficiencies in an effort to save public dollars. It has also sent a clear message to the public service unions that it should not expect significant pay increase in this economic climate.

RECOMMENDATIONS:

- 1. MHAs salaries shall be frozen until December 2013.**
- 2. Starting in December 2013, MHAs shall receive a pay raise linked to the Consumer Price Index for this Province to a maximum of 1.5% for that year as of December 2013. A further increase, based on the same formula, shall be implemented in December 2014 and December 2015.²⁹**
- 3. This raise will also apply to the positions outlined in Section 12 of *the Act*.**
- 4. Beyond the 2015 raise, no further adjustments shall be made to MHA salaries until such time as salaries have been reviewed by the next Members' Compensation Review Committee.**

²⁸ The CPI is described by Statistics Canada as follows:

*The CPI is defined, more precisely, as an indicator of the changes in consumer prices experienced by Canadians. It is obtained by comparing, through time, the cost of a **fixed basket** of commodities purchased by Canadian consumers in a particular year. Since the basket contains commodities of unchanging or equivalent quantity and quality, the index reflects only **pure price movements**.*

Statistics Canada Price Division, Your Guide to the Consumer Price Index, p. 1

²⁹ If accepted, this recommendation will require an amendment to *the Act*.

PENSIONS

In compliance with Section 16 of *the Act*, Terms of Reference 1 and 5 direct me to “review the current provisions for MHAs’ pensions.”

HISTORICAL PERSPECTIVE

The Green Report on Pensions

The existing MHA pension plan is a defined benefit plan as opposed to a defined contribution plan. Justice John Major in his recent report respecting compensation to Alberta legislators provided the following definition for both types of plans:

In a defined benefit plan, the pension income received at retirement is predetermined and is based on a formula involving years of service and earnings. Contributions to a defined benefit plan fund are typically made by both the employer and the employee, and the pooled assets are invested and managed by a professional asset manager on the behalf of the employees. In a defined benefit plan, the employer is responsible for all pension liabilities and therefore shoulders the risk if the fund does not cover the entirety of the retirement incomes.

In a defined contribution pension plan, the income received at retirement is not predetermined, but the contributions made by both the employer and employee are fixed. Contributions are deposited into a fund in the employee’s name and are invested and managed by the employee or on an employee group basis. The income received at retirement is based on the contributions made over the years and the investment income generated on those contributions and continues only until there are no more funds in the employee’s account. In a defined contribution plan, the employee shoulders the investment and interest rate risk, and retirement income will vary according to market fluctuations during their career and at the time of retirement.³⁰

When the Green Commission commenced, the MHA pension plan had two accrual formulae depending on when the MHA was first elected. MHAs elected for the first time prior to February 1999 had an accrual rate of 5% of the best 3 years’ average salary for the first 10 years of service, 4% per year of the best 3 years’ average salary for years’ of service from year 11 to year 15, and 2.5% of the best 3 years’ average salary for the next 2 years, providing for a maximum entitlement after 17 years’ service.³¹ For MHAs elected for the first time after February 1999, pensions accrued at a rate of 5% of the best three years’ average salary for the first 10 years and 2.5 % of the best 3 years’ average salary from year 11 to 20 years’ service for a maximum of 75% of the MHA’s best 3 years’ average salary. Under this plan, an MHA accrues maximum pension entitlement after 20 years of service. Prior to *the Green Report*, MHAs’ salaries were comprised of a

³⁰ MLA Compensation Review – Alberta, May 2012 Report, *supra.*, p. 30 (See footnote 10).

³¹ *The Green Report* pp. 11-10 to 11-12.

base amount and a non-taxable allowance.³² As well, since 1998, MHAs' pension benefits were and still are integrated with the Canada Pension Plan, that is, they are reduced upon receipt of CPP.³³

Pensionable earnings accrue on the base MHA salary as well as on any other increased salary an MHA might receive, including allowances for parliamentary secretaries and other positions within the House of Assembly as set out in Section 12 of *the Act*.³⁴

As mentioned in the section on salaries, following *the Green Report*, the tax-free allowance portion of an MHA's salary was replaced by a wholly taxable salary. As of July 1, 2007, the total salary was set at \$92,580. To ensure that this change in the salary determination was neutral in its effect on the level of MHAs' pension entitlement *the Green Report* also recommended that:

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.³⁵

Recommendation No. 57 was implemented and Section 2(1)(g) of the *Members of the House of Assembly Retiring Allowances Act*³⁶ was amended on June 4, 2008, retroactive to July 1, 2007.

Upon reviewing pension plans of other provincial public sector employees, Chief Justice Green found that the MHA pension plan was the most attractive, allowing an MHA to accumulate a pension entitlement of 50% of his or her salary within ten years. As well, the plan provided for early retirement without any penalty and without a minimum age requirement for an MHA to collect a full pension. The plan required only that an MHA's age plus service equal 60 years and that he or she serve for 5 years and in two General Assemblies.

³² See Schedule "H".

³³ *The Green Report*, pp. 11-9. Chapter 11 of *the Green Report* provides a detailed review of the MHA pension plan up to 2007.

³⁴ The accrual rate on the additional salary earned by Ministers, the Speaker and the Leader of the Official Opposition continues at the post 1999 rate of 5% for the first 10 years and 2.5% for the next 10 years of service.

³⁵ *The Green Report*, pp. 9-18. For a more detailed explanation of the rationale behind the 81.2% figure please see p. 20.

³⁶ SNL, c. M-6.1.

In addition to Recommendation 57, Recommendation 78 proposed that the House of Assembly Management Commission, with the assistance of the Department of Finance, develop a new pension structure. *The Green Report* suggested that either the existing defined benefit plan be replaced with a defined contribution plan or that the existing defined benefit plan be significantly modified to conform more closely with other public service plans. The proposed new pension plan would then be submitted to a Members' Compensation Review Committee "and 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." *The Green Report* proposed that when the new pension structure was developed, it would apply only to MHAs who had not already been elected to the House of Assembly and that existing and former MHAs be "grandfathered" under the existing system.³⁷

The 2009 Members' Compensation Review Committee

When the first Members' Compensation Review Committee was appointed in July 2009, the proposals from Recommendation 78 of *the Green Report* with respect to pensions had not been implemented and the Management Commission had not developed a new MHA pension structure to submit to *the 2009 Committee* for its review.³⁸

There is no indication from its report that *the 2009 Committee* availed of actuarial services. Nevertheless, this Committee undertook a review of the MHA pension plan and made the following recommendations:

- (a) The current MHA pension plan accrual rate should be reduced from its current level of 5% per year for the first 10 years and 2.5% per year from year 11 to 20, to 3.5% per year for each year to a maximum of 20 years. The effect of this recommendation will reduce the current maximum pension accrual from 75% to 70%. Currently there is no maximum accrual for the Public Service Pension Plan, Teacher's Pension Plan or the Uniformed Services Pension Plan.
- (b) The current MHA pension plan eligibility criteria be eliminated and replaced with the following:
 - An MHA shall be eligible for pension entitlement at the age of 55 years provided that MHA has at least 5 years service as an MHA and has served in at least two General Assemblies.
 - An MHA may elect to take a pension between the ages of 50 and 55 years with a minimum of 5 years as an MHA and having served in at least two General Assemblies. In this event the MHA pension shall be reduced by 6% for each year less than the age at which the unreduced pension would commence.

³⁷ *The Green Report*, pp. 11-32.

³⁸ A rationale for not completing such a review was discussed at a Management Commission meeting on November 28, 2007. I do not share the Management Commission's interpretation of Recommendation 78 of *the Green Report*.

- (c) The changes recommended in numbers 1 and 2 above commence as of the date of the coming in force of the legislation to give effect to those amendments. This would mean that these proposals will apply to MHAs first elected after the commencement of these amendments.³⁹

These recommendations were accepted by the Management Commission, placed before the House of Assembly and brought into force on December 22, 2009.⁴⁰

Initially when I reviewed *the 2009 Committee* recommendation on pensions I had assumed that the reduction of the accrual rate to 3.5% had created a significant reduction in pension benefits for new MHAs. On further examination, however, it became apparent that the changes were not as significant as I had initially thought.

Prior to the implementation of the Green recommendations, the pension benefit accrued on the taxable and non-taxable salary (at the time called an indemnity and a non-taxable allowance respectively). As I have already stated, *the Green Report* recommended that MHAs should not receive an enhanced pension benefit resulting from the combination of the indemnity and the non-taxable allowance into a taxable salary. For example, in 2006-2007 an MHA accrued a pension benefit on a total salary of \$72,390, which included an indemnity of \$48,260 and a non-taxable allowance of \$24,130. When the indemnity and tax-free allowance were combined and grossed up for taxes, the total salary was \$92,580. To ensure that pension benefits accrued only on income as it existed before the non-taxable portion was converted, *the Green Report* recommended that pension benefits accrue on 81.2% of the full taxable salary. This recommendation was accepted by the House of Assembly.

The 2009 Committee changed the accrual rate of 5% for the first 10 years and 2.5% for the remaining years to 3.5% per year. However, it did not recommend that pensionable earnings be calculated on 81.2% of the salary. Upon implementation, pensionable earnings are calculated on 100% of the salary. At first blush, it appears that MHAs took a significant cut to their pensions as a result of the decreased accrual rate. However, because the 3.5% is multiplied by 100% of the salary and not 81.2% of the salary, the decrease in benefit is not as significant as it initially seems.⁴¹

It is unclear to me whether *the 2009 Committee* intended for a decreased accrual rate to apply to a larger salary. Officials from Pensions Division, Department of Finance are of the view that *the 2009 Committee* gave no consideration to this issue. The issue was discussed when *the 2009 Committee* appeared before the Management Commission, and at least one MHA in attendance assumed that the 3.5% accrual rate would apply to 81.2%

³⁹ *The 2009 Report*, p. 25.

⁴⁰ *Members of the House of Assembly Retiring Allowances Act, supra.*, ss 2(1)(g), 19 and 20.

⁴¹ It is interesting to note that severance, unlike pensions, is still calculated at 81.2% of the base salary.

of the MHA's salary.⁴² The issue was also given consideration when the amendments were drafted. However, that is not how the recommendation was implemented.

OTHER PROVINCIAL PLANS

As did Chief Justice Green and the 2009 Committee before me, I also reviewed four other public service pension plans in comparison with the MHA plan. A chart prepared by the Pensions Division compares the MHAs' pension plan with the Public Service Pension Plan, the Teachers' Pension Plan, the Uniformed Services Pension Plan and the Provincial Court Judges Pension Plan.⁴³ While this chart indicates that there are similarities across the plans, the 3.5% accrual rate for MHAs and the 3.3% accrual rate for Provincial Court Judges is greater than the 2% accrual rate for the other plans. However, unlike the MHA plan and the Judges' plan, the three other plans have no maximum years of service.

There is a large unfunded liability associated with the MHA pension plan as well as with other public service plans in this Province.

PENSION PLANS OF OTHER CANADIAN LEGISLATURES

When *the Green Report* was published, there were a number of defined contribution plans for members of legislatures in other provinces, but since that time, independent reviews resulted in Manitoba and British Columbia re-establishing defined benefit plans.⁴⁴ The May 2012 report from Alberta, *supra.*, also recommended that that province return to a defined benefit plan.

Manitoba currently has both a defined benefit and a defined contribution plan. The experience with a defined contribution plan in Manitoba was found to be a negative one. In 2005, that province moved back to a defined benefit plan, but continues to provide MLAs with the option of a registered retirement savings plan ("RRSP") or a tax paid trust. The author of the 2012 Manitoba report made the following recommendation:

I do not believe it would be in the public interest to change the present plan from a defined benefit plan to a defined contribution plan. This would put Manitoba out of line with most provinces in Canada. Furthermore, it would be a further disincentive to attracting people to run for public office.

Changes in the 1990s to the plan from a defined benefit to a Registered Retired Savings Plan (RRSP) did not work out. Also, it would not be fair to maintain a defined benefit

⁴² Hansard, Meeting of the House of Assembly Management Commission, November 18, 2009.

⁴³ See Schedule "L".

⁴⁴ For a comparative review of pensions plans for legislators throughout the country, please see Schedule "K".

plan for the civil service and not one for elected officials who already earn less than many in the civil service.⁴⁵

However, the 2% accrual rate of the Manitoba pension plan is much lower than the 3.5% to 5% accrual rate schemes presently in existence in this Province.⁴⁶

For some time, British Columbia legislators had no pension plan. Instead, BC MLAs contributed 9% of their salaries to a group RRSP and the amount was matched by the employer.⁴⁷ In 2007, *the Independent Commission to Review MLA Compensation* recommended that the RRSP plan be discontinued and that a defined benefit contribution plan be reinstated. This plan is very similar to the most recent MHA plan. More particularly, it has a “benefit accrual rate of 3.5% of the highest three-year average earnings (with the benefit calculated separately on the members basic salary and on any additional salary earned), to a maximum of 70% of the three-year average earnings.”⁴⁸ In making this recommendation, the independent committee stated the following:

Based on all the information we received in the course of our review, we are satisfied that the sacrifices suffered by members who are elected to and serve in the legislature, together with the re-employment difficulties they encounter on returning to private life, justify the reinstatement of a defined benefit pension plan on the terms set out above.

After extensive consultation with various pension experts, we have concluded that this pension plan is fair both to members and to the public. We are also satisfied that this pension arrangement is actuarially sound and tax efficient, and that the defined benefit plan can be administered at a cost consistent with the pension plan for provincial public servants. Furthermore, we believe that the pension cost estimates presented in our report are sufficiently conservative to provide reasonable assurance that the actual costs incurred to finance the plan will be at or below the estimated contribution.⁴⁹

In the May 2012 Alberta Compensation Review, Justice Major recommended that a defined pension plan be re-implemented for MLAs. In 1993, Alberta’s defined benefit plan had been replaced by a defined contribution plan, more particularly a Registered Retirement Savings Plan (“RRSP”). To inform his report, Justice Major hired an actuarial firm, Aon Hewitt, to assess both types of pension plans. He recommended that a defined benefit plan be re-instated, but instead of a final average earnings defined benefit plan with the government bearing all the salary, investment and post-retirement risk, the plan be a Career Average Revalued Earnings Plan with price indexing annually based on changes in a Consumer Price Index. Under such a plan, the member would earn an amount of pension based on the plan’s accrual rate and the member’s salary for each year to be re-evaluated annually. The terms recommended are significantly different from the provisions of the MHA’s plan. The recommended accrual rate is 2.5% (in comparison to 3.5% to a 5% accrual rate in this Province) and the MLA does not receive

⁴⁵ *Report of the Commissioner on Salaries, Allowances and Retirement Benefits for Members of the Manitoba Legislative Assembly*, pp. 39-40, *supra.*, footnote 18.

⁴⁶ *Ibid.*, p. 39.

⁴⁷ *Independent Commission to Review MLA Compensation*, p. 3, *supra.*, footnote 27.

⁴⁸ *Ibid.*, p. 13.

⁴⁹ *Ibid.*, p. 14.

his pension until age 65, in comparison with age 55 or younger in this Province. As well, Justice Major recommended a contribution rate of 1/3 from the MLA and 2/3 from the government and indexing of the post-retirement benefits to 60% of the Alberta Consumer Price Index. Justice Major further recommended that the defined benefit plan not have a retroactive effect and he laid out a strategy to ensure that the pension would be fully funded.⁵⁰ I have been advised by House of Assembly staff that the Alberta legislature is in the process of assessing these recommendations.

Although MHAs' pensions are not indexed, unfortunately, in this Province unfunded pension liability is already a major concern.

SUBMISSIONS FROM THE PUBLIC

The only public presentation made at the scheduled public meetings was by the St. John's Board of Trade.⁵¹ The Board of Trade submitted that the current public sector pension plan is inequitable, unsustainable and unaffordable. Included in the written submission is a table indicating that 56% of the net provincial debt is a combined net unfunded liability of \$4.5 billion for the public pension schemes for all public sector employees. Another table outlines the aggregate unfunded liability of public pension plans in this Province in comparison to three other provinces. The Board of Trade recommended that MHAs lead the way by changing their defined benefit plan to a defined contribution plan; the MHA pension benefits would then be based only on the contributions accumulated by members and government, and the return on the investments earned on these amounts.

The Newfoundland and Labrador Public Sector Pensioners' Association ("NLPSA") forwarded a written submission. Among other things, the NLPSA referred to discrepancies between public sector retirees' pensions and MHAs pensions.⁵²

As well, private individuals made written submissions or spoke at public meetings.⁵³ All written submissions mentioned changing the current MHA pension plan with 3 of the 5 individuals advocating that the plan be changed from a defined benefit plan to a defined contribution plan. Members of the public who spoke at the public meetings in Goose Bay, Corner Brook, and Grand Falls voiced differing opinions. One person felt that there should be a standard pensionable salary and a standard accrual rate. Another felt that there should not be a roll back for existing MHAs, but that a new pension plan should be developed for incoming MHAs in line with the pension plans for other public servants. Yet another member of the public, a former national representative for the Communications, Energy and Paper Workers' Union, voiced the opinion that a defined contribution pension plan did not by its design suit the job of MHAs, as the average tenure of MHAs was of such short duration that one could not build up much pension.

⁵⁰ MLA Compensation Review – Alberta, *supra.*, pp. 43 to 46.

⁵¹ Attached as Schedule "M" is the written submissions of the St. John's Board of Trade.

⁵² The NLPSA submission is attached as Schedule "N".

⁵³ Written submissions from 5 individuals, as well as *the Telegram* editorial are attached at Schedule "O".

He had heard about the Board of Trade submission and felt compelled to respond. To quote the gentleman:

“if you don’t maintain a certain level of salary and benefit, you will deter the common person from entering politics...only those who are well off will run for office.”

INPUT FROM MHAS

MHAs who met with this Committee were pleased with the Pension Plan. However, they advocated that it not be changed. Comments ranged from:

“there has to be a reward on that side too”

“one year in politics is equivalent to 3-4 years in real life”

“you have to have something to attract qualified people”

“if you went with defined contribution you’d get no one on a pension plan”

“retired defeated politicians are not readily employable in this town”

ANALYSIS

Of the four issues that I have been mandated to review, pensions has generated the most public interest. However, opinions varied greatly on what changes should or should not be recommended.

I accept, as did most of my counterparts who have conducted similar reviews, that a good pension plan impacts the attraction and retention of qualified candidates. In light of the challenges faced by MHAs, including the long work hours, the necessary but constant scrutiny from the media and the public, and the lack of public respect that this office often attracts, a good pension plan may be a major factor for those considering running for public office. Many of the MHAs who met with me maintained that it was a factor they considered when deciding whether or not to seek election.

MHAs often leave behind other careers to seek election and if elected, take on positions that have considerably less security of tenure than do most other types of employment. On average, MHAs spend about 8.6 years in office.⁵⁴ This factor explains the increased accrual rate that is typically seen with legislators’ pension plans. While many MHAs may find employment after leaving politics, an individual who is deciding to run for office knows that obtaining post election employment can be uncertain, particularly if a person is defeated in an election and his or her party is also defeated. Making the decision to seek election often requires a leap of faith.

⁵⁴ Attached as Schedule “P” is a chart outlining the service years of MHAs from 1989 to date.

Of the thirteen provincial/territorial legislatures in the country, only three offer defined contribution pension plans, and as already stated, *the Major Report* recommends that Alberta return to a defined benefit plan.

Appended as Schedule “Q” is a chart called Member Total Compensation Comparisons.⁵⁵ This chart shows that Newfoundland and Labrador ranks 7th among Provinces and Territories with respect to contribution cost to the Province of the current MHA pension Plan.

However, the issue of unfunded liability is problematic for all public service pension plans in the Province. What can be done to address unfunded liability? Officials at the Department of Finance advise that, as of December 31, 2011, the unfunded pension liability in this Province amounts to \$4,600,000,000, in round numbers. The unfunded liability of the MHA plan is \$81,000,000, in round numbers, or 1.76% of the overall unfunded amount. While the MHA plan is underfunded by 81.2%, the issue of unfunded liability extends well beyond the MHA pension plan.

As already stated, the St. John’s Board of Trade believes that the plan should change from a defined benefit to a defined contribution plan. The Board of Trade is mainly concerned about the overall unfunded liability of pensions in the Province and believes that MHAs should lead by example in modifying the pension plan.

Without discontinuing the defined benefit plan, underfunding can also be reduced by increasing member contribution, increasing the vesting period, increasing the normal rate of retirement, decreasing the survivor benefit or decreasing the accrual rate.⁵⁶

The 2009 reductions to the MHA pension plan also decrease its unfunded liability. Since 2009, the age of retirement is increased to 55 years. Prior to this change, MHAs could receive their pension once their age plus years of service equalled 60. *The 2009 Committee* also recommended a decrease in the accrual rate. While this change was not as significant as it initially appeared, it reduced the maximum pension accrual to 70% from 75% of salary.

In order for a Members’ Compensation Review Committee (“MCRC”) such as this to conduct an extensive analysis of the existing MHA pension plan, significant background work must be completed before hand. Section 16 of *the Act* provides an MCRC with only 120 days to review the four headings of compensation, including pensions.⁵⁷ As I

⁵⁵ The information found at Schedule “Q” is taken from p. 38 of the September 2012 *Manitoba Report, supra.*, which in turn relied heavily on *the Major Report* from Alberta, *supra.*

⁵⁶ Bill C-45 is presently before the House of Commons. It is Parliament’s intention to increase the contribution of the Members of Parliament to 50% and to increase the normal retirement age from 55 to 65 years. The legislation will be known as the *Jobs and Growth 2012 Act* and it will also impact federal public service plans.

⁵⁷ Both the Nova Scotia and New Brunswick legislatures had independent reviews of their MLA pension benefits conducted in 2011. These reviews focused solely on pension reform. It took the Nova Scotia

have already stated, Chief Justice Green recommended that the Management Commission, assisted by the Department of Finance, develop a proposed new pension plan and that the proposal be put to an MCRC. The Chief Justice also recommended that the MCRC have the services of an actuary available to it while completing its review of the Management Commission proposal. That has not happened and I could not complete this work on my own with a 120-day mandate. Pension plans are complex investment vehicles and tinkering with a plan can have unintended affects.

RECOMMENDATIONS:

- 5. The current MHA pension scheme remain unchanged.**
- 6. Immediately upon receipt of this report, the Management Commission should adopt recommendation 78 of *the Green Report* and develop a proposal that either converts the MHA pension plan to a defined contribution plan or significantly modifies the existing defined benefit plan. This proposal should be submitted to the next Members' Compensation Review Committee and that Committee should be given the necessary time and resources to conduct a thorough review of the proposal and of the existing MHA pension plan.⁵⁸**
- 7. The next Members' Compensation Review Committee be provided with actuarial and other resources necessary to conduct a thorough review of the MHA pension plan.**
- 8. The House of Assembly include an actuary as one of the members of the next Members' Compensation Review Committee.**

committee 6 months to review pensions while this committee has 120 days to review salaries, severance, allowances and pensions.

⁵⁸ While an MCRC has no authority to look at the executive portion of the pension plans, it is suggested that the executive branch allow for the same review of pensionable time earned as a result of being a cabinet minister, a parliamentary secretary or legislative assistant. It is difficult to conceive how the MHAs portion of the pension could be changed and the executive portion of the pension plan remain the same when the MHA portion and the additional income received through other positions form part of the pensionable earnings for the same person.

SEVERANCE PAYMENTS

In compliance with Section 16 of *the Act*, Terms of Reference 1 and 4 direct me to review the existing MHA severance policy.

Severance payments are typically based on a set amount (i.e. one week or one month's salary) multiplied by years of service. The practice of making such payments to MHAs who voluntarily terminate their terms of service predates the Morgan Commission.⁵⁹

The Morgan Report

The Morgan Commission was appointed by the Speaker of the House of Assembly "to make an inquiry and a report respecting the indemnities, allowances and salaries to be paid to Members of the House of Assembly."⁶⁰ The Morgan Commission made recommendations respecting compensation and reimbursement of MHAs and approved the already established practice of paying severance to retiring members. The House of Assembly adopted the recommendation of the Morgan Commission on severance. A separation allowance of 5% per year of the indemnity and non-taxable allowance for each year of service up to a maximum of 50% was paid if an MHA had at least 7 years' service.⁶¹

This policy was in turn revoked by the Internal Economy Commission, the forerunner of the House of Assembly Management Commission, in 1999 and the following was substituted ("the 1999 Policy"):

Members who were Members immediately before an election are eligible for severance pay when they cease to be Members for any reasons. Severance is calculated at one month's current basic indemnity for each year of service and prorated for part of the year's service. Minimum severance is three month's pay; maximum severance is 12 month's pay.⁶²

Severance is calculated only on base salary. The payment can be rolled into an RRSP, paid in cash or a combination of both.

The Green Report

The Green Report did not address the issue of severance at length and did not receive substantive submissions from either MHAs or the public on the adequacy or

⁵⁹ *The Green Report*, p 9-41.

⁶⁰ Newfoundland, *The Report of the Commission on Remuneration to Members of the House of Assembly*, (September 18, 1989), p. 1 (Chair: Dr. M.O. Morgan), ("*the Morgan Report*").

⁶¹ *The Morgan Report*, pp. 30-31.

⁶² As cited in *the Green Report*, pp. 9-42.

appropriateness of the severance policy. It was recommended that the issue of severance be referred to a Members' Compensation Review Committee.⁶³ The 1999 Policy remained in place post *Green Report*.

One issue respecting severance was addressed in *the Green Report* - the base salary to which the severance formula should apply. I have already reviewed this issue in the section on pensions.⁶⁴ As with pensions, the Chief Justice recommended against severance being calculated on the full amount of the newly structured taxable salary:⁶⁵

The rules respecting severance should therefore be forthwith adjusted to ensure that the severance payments, in absolute terms, payable to retiring Members are not increased.⁶⁶

The Management Commission accepted this recommendation and issued Directive Number 2011-007 establishing that severance would be "calculated and paid based on 81.2% of gross Member salary..."⁶⁷

The Chief Justice also noted that while the 1999 Policy stated that the severance formula was based on "one month's current basic indemnity" which referred to the taxable salary, severance was being calculated on the base salary plus the non-taxable allowance.⁶⁸

The 2009 Report

The Act was passed following *the Green Report* and Section 11(3)(a) reads as follows:

11. (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 to be determined by a directive of the commission...

The 2009 Committee recommended very little change to the 1999 Policy. As with *the Green Commission*, *the 2009 Committee* had limited input from MHAs and the public respecting severance. At page 28 of its report, *the 2009 Committee* made a recommendation that was not implemented:

An MHA who voluntarily resigns prior to a general election for reasons other than his or her own serious illness or a serious illness in his or her immediate family shall not be eligible for Severance Pay.

⁶³ *Ibid.*, pp. 9-43.

⁶⁴ See page 20.

⁶⁵ Historically, MHAs had been paid a taxable salary, called an indemnity, as well as a non-taxable allowance that equaled one half of the indemnity. To ensure that the change in the salary structure to one fully taxable salary was neutral in its effect on the level of MHA's pension entitlement, *the Green Report* recommended that MHAs accrue pension based on 81.2% of the taxable salary.

⁶⁶ *The Green Report*, pp. 9-42.

⁶⁷ While the directive was not passed until 2011, some 4 years after *the Green Report* was submitted, it is clear from the discussion at the Management Commission meeting that this had been the practice since 2007.

⁶⁸ *The Green Report*, footnote 79, pp. 9-42.

Analysis

The principle behind the more lucrative MHA severance policy is rooted in the assumption that MHAs may have difficulty obtaining employment after their political careers end. Severance can act as a financial bridge while they are attempting to return to the work force. The shorter tenure typical of a political career is also a rationale for providing severance. As I already stated in the section on pensions, since 1989, the tenure of the average MHA is 8.6 years.⁶⁹ Severance is paid to MHAs irrespective of whether they resign, retire or are defeated.

Most jurisdictions in Canada have similar provisions with respect to severance.⁷⁰ British Columbia, New Brunswick, Ontario, Nova Scotia and Nunavut also offer allowances for training, counseling and/or transitioning in to retirement as well as severance. In Saskatchewan, New Brunswick and Nova Scotia, legislators do not receive severance if they are retiring and eligible to receive their pension.

The MHA policy is different from severance provisions for most public sector employees who receive one week's pay for each year of service for a maximum of twenty weeks and who must work for a minimum of 9 years to be eligible to receive severance.

MHAs who were interviewed had no issues with the severance policy. In more than a few cases, MHAs were not even aware of the policy details. In one case, an MHA questioned why the severance was capped at the one year maximum; in yet another case, an MHA expressed surprise that there was the provision for up to one year's maximum payment.

Public representation on severance was limited.

Severance is an important part of MHA compensation, and as with other areas of compensation, it helps to attract qualified people to the difficult career of politics. The existing MHA severance policy is appropriate. Elected officials have difficult roles and are faced with the possibility of losing their positions during every election.

The MHA severance policy in this province is comparable to other legislatures across the country. However, I fail to see the rationale for providing severance to an MHA who is retiring and eligible for pension or who is resigning to take another job. This is contrary to the transition principle of severance.

⁶⁹ See page 24.

⁷⁰ Schedule "R" is a chart detailing the severance provisions for legislatures across the country.

RECOMMENDATIONS:

- 9. The current provisions of the MHA severance policy remain unchanged, with the following exceptions:**
 - a. Severance shall not be payable to MHAs who are retiring.**
 - b. Severance shall be payable in monthly installments until exhausted and if during this period the MHA becomes re-employed should immediately cease.**
 - c. If these recommendations are implemented, they shall apply only to MHAs who are elected after the implementation date.**

ALLOWANCES

For an allowance regime to operate fairly and to be seen to so operate, it must, in the final analysis, be controlled by fundamental, well-understood principles. No allowance-reimbursement system, no matter how detailed its rules, can possibly anticipate all the situations that will have to be addressed in its day-to-day administration. In cases of doubt there has to be a way of arriving at a principled decision. As well, it is important for actors in the system to understand that, for the regime to operate fairly, more is required than rote or mechanistic application of specific rules or precedents without filtering the decision through the sieve of principle to ensure that the underlying purpose of the regime is being served.⁷¹

Term of Reference 1 directs me to review allowances, among other things. Term of Reference 6 requests a review of the intra-constituency allowance in the context of a report prepared for the Management Commission by one Peter Kennedy. Term of Reference 7 requests a review of Section 7 of *the Rules*, and the portion of Part VI of *the Rules* pertaining to “secondary accommodation”.⁷²

This section will deal with Allowances in general in compliance with the first Term of Reference. I will then review the more discrete issues pertaining to allowances as set out in Terms of Reference 6 and 7.

ALLOWANCES IN GENERAL

In Chapter 10 of *the Green Report*, Chief Justice Green extensively reviewed reimbursement for expenses incurred by MHAs in the completion of constituency work. He was critical of the then existing procedures and stressed the need for accountability and transparency. A review was conducted of past practices, and major changes to the former procedures were recommended and adopted.

The 2009 Members’ Compensation Review Committee observed that, “The current system of reimbursement of Constituency Service Expenses bears no resemblance to the model in place prior to *the Green Report* in 2007.”⁷³

The Rules provide for four types of allowances, more particularly, (1) Office Allowances (2) Operational Resources (3) Travel and Living Allowances and (4) Constituency Allowances.⁷⁴

⁷¹ *The Green Report*, pp. 10-19.

⁷² *The Rules* are attached at Schedule “B”.

⁷³ *The 2009 Report*, p. 29.

⁷⁴ See Section 14 of *the Rules* at Schedule “B”.

Office Allowances:⁷⁵

The amount of \$7000.00 is allocated for constituency office accommodation and \$15,000.00 is allocated for office operations and supplies.⁷⁶ Provision is made for the short-term rental of meeting rooms and for an allowance of \$1000 after each general election “to defray expenses for supplies and equipment...”.

MHAs who have access to appropriate government office space typically locate their constituency offices in that space. This results in savings because funds are not required for accommodations. If an MHA chooses to locate a constituency office within his or her own residence he or she is not compensated. Among the current 48 MHAs, 27 maintain constituency offices within government owned buildings, 20 MHAs rent property space from third parties and 1 MHA maintains an office within his home. It is apparent that every effort is being made to reduce rental and maintenance costs for constituency offices.

Offices are procured through the *Public Tender Act*, RSNL, c. P-45.⁷⁷ Of the 20 constituency offices that are rented from third parties, only 1 office is within the \$7000 limit. It is difficult to find commercial office space for this amount, particularly when the amount includes, not only rent, but utilities, taxes, insurance, security, cleaning and signage.⁷⁸ An MHA who is unable to secure accommodations within the limit can seek the permission of the Speaker to exceed his or her limit if “the Speaker determines that suitable accommodation cannot be obtained at a cost equal to or less than the allowed maximum.”⁷⁹ I have been informed that there are no difficulties with exceeding the \$7000 limit when it is necessary.

There is provision for the rental of short-term space to a maximum of \$750 for MHAs.⁸⁰ The space must be required while the MHA is travelling for the purpose of meeting with constituents.

⁷⁵ See Section 18-24 of *the Rules*.

⁷⁶ See Section 18(2) of *the Rules*.

⁷⁷ See Section 20(8)(c) of *the Rules*.

⁷⁸ See Section 19(1) of *the Rules*.

⁷⁹ See Section 18(3) of *the Rules*.

⁸⁰ See Section 20(7) of *the Rules*.

Operational Resources:⁸¹

This section of *the Rules* sets out the standard office allocations for furniture and other office resources for each MHA. There is no maximum amount set for this allowance and all services are arranged centrally through and paid for by House of Assembly staff. All assets are identified by appropriate markings as House of Assembly assets.

Provision is also made for engaging a Constituency Assistant whose salary is set by the Management Commission and paid by the Office of the Speaker.⁸²

Travel and Living Allowance:⁸³

The Travel and Living allowance reimburses MHAs for costs incurred for accommodation, travel and meals while on constituency business including attendance at the House of Assembly while the House is in session. To quote from my predecessor committee, this allowance “comprises by far the greatest amount of specific detail governing MHA constituency spending.”⁸⁴

The House of Assembly Newfoundland and Labrador Members’ Administration Guide (“the MHAs’ Guide”)⁸⁵ gives the following instruction to MHAs with respect to travel and living allowances:

A Member can only claim reimbursement for accommodations, meals and travel related to constituency business connected with the Member’s responsibilities in relation to the proper representation of his/her constituency, which includes attending sittings of the House of Assembly.

A claim or direct payment of goods and services cannot be made if the expense relates to:

- Partisan political activities.
- A personal benefit to a Member or an associated person of a Member.
- A matter that calls into question the integrity of a Member or brings the House of Assembly into disrepute.

⁸¹ See Sections 25 to 27 of *the Rules*.

⁸² See Section 26 of *the Rules*.

⁸³ See Sections 28-44 of *the Rules*.

⁸⁴ *The 2009 Report*, p. 30.

⁸⁵ The introduction to the MHAs’ Guide describes the guide as a manual provided “to assist Members in fulfilling their roles and responsibilities as elected officials accountable to the public.”

The amounts allocated vary according to district. The charts below set out the three categories of travel and living allowances and their application to MHAs

Travel and Living Allowances

Separate allocations are provided for and different Rules apply to each of the 3 types of travel:

House in Session	Provides for travel to attend sittings of the House
House not in Session	Provides for travel to/from the Capital Region or District to attend to constituency business
Intra and Extra Constituency	Provides for travel <u>within</u> the district; to other districts or outside the Province to attend to constituency business.



30

Travel and Living Allowances

The location of the Member's permanent residence determines the specific allocation (trips, nights or \$) for each of the 3 different types of travel.

	Permanent Residence	District
MHA 1	In Capital Region	District is outside the Capital Region
MHA 2	Outside the Capital Region	District is outside the Capital Region
MHA 3	In Capital Region	District is in Capital Region
MHA 4	Outside both Capital Region and District	District is in the Capital or outside the Capital Region



31

Discrete issues respecting travel and living allowances will be addressed in more detail under Terms of Reference 6 and 7.

Constituency Allowance:⁸⁶

This allowance covers expenses related to constituency work, and is set at \$3000 annually. The chart below sets out eligible and ineligible expenses under this allowance.⁸⁷

Constituency Allowances - \$3,000

Provides for the following:	Does not provide for:
<ul style="list-style-type: none"><input type="checkbox"/> Meals or bulk purchases of food<input type="checkbox"/> Membership in community or other organizations<input type="checkbox"/> Memorial wreaths<input type="checkbox"/> Equipment not provided by HOA<input type="checkbox"/> Magazines, newspapers and journal subscriptions<input type="checkbox"/> Travel, meals, accommodations and registration fees to conferences and training courses for Member and CA<input type="checkbox"/> Expenses for attending meetings and hearings involving advocacy on behalf of a constituent	<ul style="list-style-type: none"><input type="checkbox"/> Donations, gift, raffle tickets, sponsorships, hospitality except as indicated as allowed<input type="checkbox"/> Alcoholic beverages<input type="checkbox"/> Anything that identifies a political party<input type="checkbox"/> Travel costs for constituents or spouses<input type="checkbox"/> Financial assistance to constituents<input type="checkbox"/> <i>Note:</i> Donations or gifts in a personal capacity must stipulate that any acknowledgement shall not identify him/her as a Member

FINDINGS

The Rules are prescriptive. They were formulated to further the concepts of accountability and transparency. I was advised by a senior House of Assembly staff member that no MHA has exceeded his or her allowance limits since the implementation of *the Rules*. She was very confident that the system of checks and balances that now exists would not permit it.

As a result of the spending scandal and *the Green Report* which followed it, the House of Assembly hired 20 new employees. Many of the new positions are directly related to processing expense claims for MHAs and ensuring that public dollars spent in running the House of Assembly and its related offices are properly accounted for. Expenses

⁸⁶ See Section 46-47 of *the Rules*, attached at Schedule “B”.

⁸⁷ This chart and the previous charts were provided by House of Assembly staff.

incurred by MHAs are only reimbursed if detailed expense claims are provided by MHAs and accepted by House of Assembly staff.

Chief Justice Green made the following recommendation with respect to the hiring and training of House of Assembly staff:

Written job descriptions for all employees of the House would also assist Members and employees in understanding their roles and responsibilities. These descriptions must detail the requirements and expectations of each job and be prepared by someone who has the experience and knowledge to complete the descriptions. Management must ensure that people meet the requirements as outlined in the descriptions, and training programs or courses should be offered to key employees to ensure that these employees are kept abreast of the latest developments in their particular field. All employees would benefit from annual evaluations, both to reinforce positive behaviour and to note any areas of improvement that may be required.⁸⁸

The House of Assembly has followed through on this recommendation and a management certification program has been implemented. I have been informed that “Management Certification requires senior officers of an organization to certify by personal signature that they have discharged certain responsibilities, such as establishing disclosure controls, establishing an effective system of internal controls and ensuring the effective operation of that system.” This program is extensive and allows senior officials to certify that internal controls are in place and operating effectively. Grant Thornton was retained to design the certification program and to ensure annually that controls are documented and tested. Since 2008, the House of Assembly has paid Grant Thornton approximately \$350,000 to provide this service.

With few exceptions, MHAs are pleased with House of Assembly staff who vet their expense claims. I was told that staff is helpful, competent and readily available to answer questions. Most MHAs were relieved that expense claims were being scrutinized because inadvertent mistakes are being picked up.

Some MHAs have stated that the increased cost of running the House of Assembly is excessive. My review of *the Green Report* causes me to disagree with this position. This report painstakingly sets out how loose accounting principles, reduced staff and less than ethical, and sometimes criminal, behavior can cause incredible waste of public dollars. This waste is not just an economic loss; its negative impact on the public’s perception of politicians in particular and government in general has been monumental. Chief Justice Green stated, and I agree, that accountability and transparency would cost the Province money, but it is a necessary cost if public confidence is to be regained:

Although the recommended allowance regime will be more costly, I believe that, if the other recommendations in this report respecting responsibility, structure, controls and audits are implemented, there will be a better chance that value for money will be obtained than under the present system. *The extra cost is worth it.* I fully agree with the comment in the Morgan Commission quoted in the epigraph at the beginning of Chapter

⁸⁸ *The Green Report*, pp. 7-11.

9: “if we want good and efficient government and decisions that affect our daily lives to be made by competent and well qualified men and women, we must be prepared to pay for it.”⁸⁹ (emphasis added)

The House of Assembly voted to implement *the Act* and *the Rules*. Therefore, it must also support the necessary human resources and funding required to ensure that this legislation is properly enforced.

The public should have confidence that MHA allowances are now being closely monitored.

RECOMMENDATION:

10. Maintain existing House of Assembly staff who ensure compliance with *the Members’ Resources and Allowances Rules*.

⁸⁹ *Ibid.*, pp. 10-52.

APPROPRIATENESS OF PUTTING TERMS OF REFERENCE 6 AND 7 BEFORE THIS COMMITTEE

Terms of Reference 6 and 7 instruct me to make recommendations on specific issues respecting *the Rules*, and I will do that. However, I will first address whether these issues should have been left for this Committee or whether they should have been determined by the Management Commission.

Term of Reference 6 involves a review of intra-constituency allowances. At least some of these issues have been outstanding since June of 2010 when a briefing note on the subject was prepared for the Management Commission. The issues were then referred to an outside consultant, Peter Kennedy, on September 22, 2010.⁹⁰ Mr. Kennedy was hired in November of 2010 and filed a report with the Management Commission in February 2011 (“*the Kennedy Report*”).⁹¹ Despite having this extensive report, which included recommendations, the Management Commission deferred the issues to this Committee on March 23, 2011.⁹² Management Commission members would have known that this would again delay having the issues addressed by at least another 16 to 20 months. By the time this report is filed, some of these issues will be outstanding for at least 30 months. This delay was not necessary. The Management Commission has the legislative authority and responsibility to address these matters.

Similarly, the issues set out in Term of Reference 7 have not been decided on by the Management Commission.⁹³

Chief Justice Green clearly intended that issues respecting allowances would be dealt with in a timely fashion by the Management Commission:

Members should have the flexibility to adopt whatever arrangement seems best for their individual circumstances and how they perceive they can best serve their constituents. The travel rules should be flexible enough to accommodate these differing possibilities provided, of course, that controls against abuse are built in.⁹⁴

Where a strong case can be made, in respect of individual districts, that an amount is not adequate or is based on wrong assumptions, it would be open to the **Commission** on

⁹⁰ Hansard, Management Commission Meeting, September 22, 2010.

⁹¹ *The Kennedy Report* is attached as Schedule “S”.

⁹² Hansard, Management Commission Meeting, March 23, 2011, p. 9.

⁹³ More particularly, Section 7 of *the Rules* has never been discussed at a Management Commission meeting. While issues have arisen with respect to secondary accommodations, the concerns brought to me by MHAs have not been decided on by the Management Commission.

⁹⁴ *The Green Report*, Chapter 10, pp. 10-34.

application by a Member, to amend the amounts accordingly in accordance with the procedures governing its operation.⁹⁵ (emphasis added)

This intention was codified in *the Act*:

Section 11(2) of *the Act* reads as follows:

11. (2) A member is entitled, subject to those conditions and limitations that 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. (emphasis added)

Section 20 of *the Act* sets out the duties and the responsibilities of the Management Commission. Section 20(1)(f) specifically states:

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 by the House of Assembly for the use and operation of the House of Assembly and 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, in particular, the commission **shall**
- (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; (emphasis added)

Section 64(1)(a) of *the Act* gives the Management Commission the authority to establish rules. It states:

64. (1) The commission may make rules
- (a) respecting allowances, reimbursement, 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 traveled, daily rates, meal rates and other rates payable by way of reimbursement or with respect to a claim of a member;

The issues articulated in Terms of Reference 6 and 7 should not have been deferred to a Members' Compensation Review Committee by the Management Commission. Such a decision could potentially prevent a matter from being addressed for more than four years. This is contrary to the intent and spirit of the legislation. It is the statutory mandate of the Management Commission to make these decisions. *The Rules* are meant to be fluid and to adjust to the changing circumstances that may occur within a constituency. For instance, the intra-constituency cost estimate for an MHA who lives in her district may meet her intra-constituency travel needs. However, if this MHA is replaced by an MHA who lives in the Capital region, outside his district, the intra-

⁹⁵ *The Green Report*, Chapter 10, pp. 10-35. Both of these quotations were cited in *the 2009 Report* and they warrant repeating.

constituency cost estimates may not meet his requirements. Despite this flux, the intra-constituency cost estimates detailed in the Schedule to *the Rules* have never been adjusted by the Management Commission. The total amount estimated in *the Green Report* was \$626,400 and the figure has not changed in over 5 years.

The responsibilities of the Management Commission are onerous. However, the Commission assumed these responsibilities when the legislation was enacted in June of 2007. To fail to meet its legislative mandate in a timely manner is unfair to the MHA affected and to his or her constituents.

While I appreciate that *the Act* and *the Rules* are relatively new and that the Management Commission may be cautious as a result of the events that led to the appointment of the Green Commission, one of the Management Commission's primary legislated responsibilities is to ensure that MHAs have proper resources to conduct constituency work.

I acknowledge that Section 20(7) of *the Act* requires that a change in "the level of amounts of allowances" must be adopted by the House of Assembly. The Management Commission simply cannot decide to adjust allowance amounts of its own volition; another procedural step is required. Despite this step, the allowance amounts should not be static and the Management Commission must be prepared to initiate changes to allowances when a supportable case exists for such a change.

Individual MHAs also have a responsibility to come forward when a change to an allowance is required. I appreciate that MHAs may be reluctant to seek increases in their intra-constituency allowance. In the wake of the spending scandal, some expressed concern that it would be perceived as an attempt to grab more money. However, if the request is principled and supported by facts and figures, it is the MHA's responsibility to do so. MHAs must ensure that they have the financial means required to represent their constituents properly.

Of course, the Management Commission need not wait for an MHA to raise issues with *the Rules*. It has the authority to amend *the Rules* itself if amendment is warranted.

Section 44

Chief Justice Green acknowledged that budgeting for the proposed allowance regime might be problematic:

I have already noted that the House staff might experience greater difficulty in budgeting for the allowances that have been recommended than under the existing regime. Nevertheless, I do not believe that the problems are insuperable. Members should be required to assist in the process, especially in relation to estimating travel costs associated with the particular district that each member represents. Annually, as a part of the budget process, each Member should be required to prepare an estimate of what he or she

believes is an amount necessary to allow for adequate travel in relation to that Member's district. That information can then be used in developing the House's overall budget.⁹⁶

Section 44 of *the Rules* was enacted to address this problem:

- 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.
- (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.

I have been advised that little emphasis is placed on the preparation of this estimate. Only estimates for House-in-session travel and House-not-in-session travel are sought by the Speaker's Office. Most MHAs told me that they typically submit the same numbers as were submitted the previous year. This is not in compliance with *the Rules* and an opportunity to address inadequate travel allowances is lost. A robust use of Section 44 provides an excellent opportunity for MHAs to put formal requests for travel and living allowance adjustments to the Management Commission. However, when requesting adjustments to an allowance, MHAs must be prepared to provide a principled and detailed submission that is supported by their experience and by facts and figures.

RECOMMENDATIONS:

- 11. In compliance with *the Rules*, no issue should be put before the Members' Compensation Review Committee if the Management Commission has the legislative authority to rule on the issue.**
- 12. The Management Commission should establish clear procedures to enable MHAs to raise allowance issues before it.**
- 13. Section 44 of *the Rules* should be utilized as one way for MHAs to place issues with travel and living allowances before the Management Commission.**
- 14. Requests made by MHAs to change allowance allotments should be principled and well supported by facts.**

⁹⁶ *The Green Report*, pp. 10-51.

TERM OF REFERENCE 6

If any allowance regime is to have any hope of finding public acceptance and confidence, it will have to be one that is understandable by both the public and the MHA's involved, operates in a transparent manner and is seen to be fair, both for the MHA and the public treasury, in the way it allows for access to public money. To design this is a significant challenge. Particularly challenging is not getting so immersed in detailed rules that the ultimate purpose of the whole project – service to constituents – is not obscured.⁹⁷

Term of Reference 6 states:

Review the Intra-Constituency Allowance for each District established in the Schedule to the *Members' Resources and Allowances Rules* (subordinate legislation under the *House of Assembly Accountability, Integrity and Administration Act*) as directed by Commission Minute 2011-007.

Term of Reference 6 could have been stated more clearly, so I have made certain assumptions. Despite the wording of this Term of Reference - "Review the Intra-constituency allowance for each district" - my mandate of 120 days does not afford time to conduct such an exhaustive analysis. I have therefore confined my review to the specific issues addressed in *the Kennedy Report*.

As discussed in the previous section, *the Rules* provide for three types of travel allowances – house in session, house not in session and intra-constituency. This Term of Reference directs me to review issues pertaining to one of these three types of travel, more particularly intra-constituency allowances.⁹⁸ These allowances provide for travel and living expenses incurred within an MHA's constituency.⁹⁹ I will refer to this type of allowance as "the intra-constituency cost estimates." The intra-constituency travel allowance is not available for travel to the capital region or to a district if the MHA lives outside the district.¹⁰⁰

Background

The intra-constituency cost estimates prepared in *the Green Report* are available to each MHA.¹⁰¹ Chief Justice Green reviewed and then *estimated* the costs required by the MHA for each district and devised the estimates, which are outlined in the Schedule to

⁹⁷ *The Green Report*, p. 10-2.

⁹⁸ Intra-constituency travel is described in the Chart at page 34.

⁹⁹ See Sections 28 to 44 of *the Rules* and the Schedule to *the Rules*. While Section 39 provides for extra-constituency travel within this allowance, it is typically accessed by MHAs to travel within their districts. For a more detailed review of this regime please refer to *the Kennedy Report*, p. 3-4, attached at Schedule "S".

¹⁰⁰ While *the Rules* could be interpreted to allow for MHAs to travel to the capital region or their district from their intra-constituency allowance, Directive Number 2007-012 of the Management Commission has determined that it will not be so interpreted. This type of travel is compensated from House-not-in-session travel. See Schedule "T".

¹⁰¹ The Schedule is included with *the Rules*, attached as Schedule "B".

the Rules, the total amount being \$626,400.¹⁰² He looked at four separate expense categories when reaching this figure, more particularly, meal *per diems*, temporary or secondary accommodation nights required, mileage and other travel requirements. This amount has not changed since *the Rules* were enacted.

As mentioned in the previous section, Mr. Kennedy was hired in 2010 by the Management Commission to consult with MHAs regarding their intra-constituency cost estimates. He reviewed discrete issues that arose in the context of intra-constituency travel. He then prepared a report respecting the adequacy of these estimates using the same expense categories as outlined in *the Green Report*.¹⁰³ Mr. Kennedy's recommendations were based on *the Rules*.¹⁰⁴

The Kennedy Report itself and discussions I have had with MHAs and House of Assembly staff will inform my recommendations. While I did not concur with many of his recommendations, Mr. Kennedy was very thorough and my review will be repetitive. However, repetition is necessary to fulfill my mandate under this Term or Reference.

The Kennedy Report made 9 recommendations and was discussed at a meeting of the Management Commission on March 23, 2011.¹⁰⁵ The Management Commission referred most of the recommendations included in the report to this Committee. The Minute generated from that decision, CM 2011-007, is referenced in Term of Reference 6 and reads as follows:

CM 2011-007 The Commission considered the Report to the House of Assembly Management Commission on District Intra-Constituency Allowances, February 2011 and referred the Report to the next appointed Members' Compensation Review Committee.

The specific issues looked at by Mr. Kennedy were:

- (a) Access to helicopter services for the district of Burgeo – La Poile.
- (b) The amount of detailed work required for MHAs in the St. John's area to claim for short drives while on constituency business.
- (c) The adequacy of the amount of mileage estimated for certain districts in the intra-constituency cost estimates.
- (d) The adequacy of the number of nights and meals estimated for certain districts in the intra-constituency cost estimates.
- (e) The failure to estimate for "other travel" for two districts in the intra-constituency estimates.

¹⁰² The chart from *the Green Report* detailing the estimates for each district is attached as Schedule "U".

¹⁰³ See *the Kennedy Report* attached as Schedule "S."

¹⁰⁴ *Ibid.*, p. 2.

¹⁰⁵ Hansard, House of Assembly Management Commission, March 23, 2011.

- (f) The failure to estimate for ferry service in one district in the intra-constituency cost estimates.

These issues are reviewed below.

(a) Access to helicopter services for the district of Burgeo – La Poile

In its estimates, *the Green Report* recommended that the district of Fortune Bay-Cape La Hune have helicopter access to some of its more remote communities. Prior to 2006, the adjacent district of Burgeo-La Poile had one such isolated community in its district, namely La Poile; Fortune Bay-Cape La Hune had 6 such communities. In 2006, a realignment of the electoral boundaries occurred and two of the isolated communities that had been in the Fortune Bay-Cape La Hune district, namely, Grey River and Ramea, were transferred to the Burgeo-La Poile district, leaving Fortune Bay-Cape La Hune with 4 isolated communities - Francois, McCallum, Gaultois and Rencontre East. *The Green Report* had relied on the earlier electoral boundaries in making its assessment and recommended that the MHA for Fortune Bay-Cape La Hune have access to helicopter travel to visit the isolated communities within the district. The estimated cost was \$12,000 per trip with four trips amounting to \$48,000. I have since been informed that this estimate for helicopter cost is not accurate. The MHA is charged for air time only, so the amount is approximately \$5,000 per trip. I have also been informed that the MHA for this district sometimes shares helicopter travel with health care professionals who are also visiting these communities.

Despite the fact that Burgeo-La Poile had one such isolated community i.e. La Poile, when the estimates were prepared, no estimate for helicopter travel was provided for that district.

The previous MHA for Burgeo-La Poile requested an adjustment to that district's intra-constituency cost estimate to provide for some helicopter travel within the district. The Management Commission did not sanction this request. As the district of Burgeo-La Poile has isolated communities, some helicopter access should be, and should have been, available to the MHA. However, helicopter trips by any MHA should only be necessary if more economical transportation is not available.

In the case of Fortune Bay-Cape La Hune, the most remote area and the most difficult to reach in this district is the community of Francois. Other than availing of helicopter travel to Francois, the MHA would have to travel by vehicle to Burgeo to catch the ferry. This is a distance of 647 kilometres one-way from her home.¹⁰⁶

¹⁰⁶ I have been informed that the MHA can travel to McCallum from Hermitage-via Gaultois. There is a regular run most days of the week, but the ferry service only aligns with the ferry from McCallum to Francois approximately once a month as the usual ferry run for Francois is between Port Aux Basques and Francois.

Except in the case of emergency, regular visits to these remote communities should be scheduled when more economical types of transportation are available. Because of its expense, helicopter travel should not be included in intra-constituency cost estimates. It greatly inflates that MHA's overall allowance and the MHA could use that budget for other types of travel if helicopter travel is not required.

RECOMMENDATIONS:

The Members' Resource Allowance Rules should be amended to reflect the following:

15. The MHA for Burgeo-La Poile be granted reasonable access to helicopter travel.

16. Helicopter travel should only be availed of if less expensive travel is not available.

17. Helicopter travel should not be included in intra-constituency cost estimates and should only be availed of with the specific permission of the Speaker upon representation by the MHA to justify such travel. It should be budgeted for separately.

18. If possible, an MHA should visit several isolated communities per trip in an effort to reduce costs.

19. If possible, helicopter travel should be shared with other professionals visiting these remote areas.

(b) The amount of detailed work required for MHAs in the St. John's area to claim for short drives while on constituency business

The Kennedy Report mentions that some urban MHAs are frustrated with the amount of record keeping required to make claims for short distances travelled within their districts when on constituency business. This involves maintaining vehicle logs which record starting and ending odometer readings. Also, each trip has to be assessed in terms of the location of the Member's permanent residence. Claims have to be reviewed by House staff.¹⁰⁷ Many urban MHAs advised Mr. Kennedy, and me, that they claimed nothing for kilometre usage from their intra-constituency cost estimates because of the tedium involved in preparing the expense claim. This is contrary to the spirit and intent of *the Act and Rules*:

¹⁰⁷ *The Kennedy Report*, Schedule "S", p. 9.

In incurring legitimate expenses in carrying out public functions, the MHA should not be expected to do so at serious personal financial sacrifice.¹⁰⁸

I agree with Mr. Kennedy's recommendation that the amount of work required to prepare and process these claims for such short distances is a waste of time for the MHA and for House of Assembly Staff. MHAs from districts of small geographical size should have the option of estimating the kilometres used for constituency business on a weekly basis to a maximum of 75 kilometres per week. However, the MHA has a responsibility to ensure that estimates are reasonable. Alternatively, the MHA could opt to submit claims based on the existing *Rules*.

RECOMMENDATION:

The Members' Resource Allowance Rules should be amended to reflect the following:

- 20. With respect to claiming for kilometres for private vehicle operation under the Intra-Constituency Cost Estimates, MHAs be provided the option of claiming up to 75 kilometres per week on the basis of a reasonable estimate of kilometres used for constituency business per week (Saturday to Sunday). An MHA should also have the option of submitting a claim for kilometres used under the existing *Rule* but in any given week, shall not do both.**

(c) *The adequacy of the amount of mileage estimated for certain districts in the intra-constituency cost estimates*

Mr. Kennedy recommended an increased kilometre estimate for the following districts:

- Fortune Bay-Cape La Hune - 20,000 kms from the existing 4,500 kms
- St. Barbe - 20,000 kms from 15,000
- Trinity North - 15,000 kms from 10,000

The Green Report does not provide a rationale respecting how these kilometre estimates were calculated, but for the purposes of this report I am relying on the distance of roadway within the district and the locations of the MHA's permanent residence as significant indicators.

Fortune Bay – Cape La Hune

This district has approximately 328.2 kilometres of road. However, while the MHA lives in the district, she would have to drive from her residence in St. Alban's to Burgeo to

¹⁰⁸ *The Green Report*, Chapter 10, pp. 10-18.

access ferry service to Francois, a distance of 647 kilometres one way. Despite the extensive driving requirements of this district, only 4,500 kilometres is assigned in the intra-constituency cost estimates. This is in stark contrast to other districts with similar road distances. For instance, Ferryland District has 316.2 kilometres of road and is assigned 15,000 kilometres, Trinity-Bay de Verde district has 312.7 kilometres of road and has 10,000 kilometres and Bay of Islands has 92.6 kilometres of road and has 20,000 kilometres.¹⁰⁹

However, the kilometre estimate assigned to a district is used to calculate the overall intra-constituency allowance and an MHA can choose to use the estimate from one part of the allowance to fund another type of intra-constituency travel. To quote from *the Kennedy Report*:

Funds control over the Intra-Constituency Allowances is exercised on the total amount for each District, not the individual categories making up the total. Thus, Members have considerable discretion over the manner in which they manage their Budget. They may spend either more or less than the budgeted amount for each of the three expenditure categories, provided they remain within the approved total.¹¹⁰

The issue to be determined, then, is whether historically, the MHA for Fortune Bay-Cape La Hune has exhausted the intra-constituency cost estimates assigned to her, more particularly, \$59,600, including HST. What follows is a list of the percentage of the intra-constituency budget spent by the MHA for this district since this allowance was implemented in 2007:

2012-2013 (to October 26) - 28%
2011-12 - 39%
2010-11 - 36%
2009-10 - 27%
2008-09 - 31%
2007-08 - 3% (October to March31)¹¹¹

These percentages do not warrant an increase in the intra-constituency cost estimate for this district because in 4 full years and 2 partial years since these *Rules* have been implemented, the MHA has not come close to exhausting the estimated amount. More than ample funds have been available to cover intra-constituency travel. However, if recommendation 17 is followed and the \$48,000 allotment for helicopter travel is removed from this district's intra-constituency cost estimate, the kilometre estimate for

¹⁰⁹ Attached as Schedule "V" is the road distances of the 42 electoral districts in the Province considered in *the Kennedy Report*, along with the number of kilometres estimated in Schedule 10.3 of *the Green Report* for each district, already attached as Schedule "U".

¹¹⁰ *The Kennedy Report*, p. 4

¹¹¹ These percentages are based on the net of HST numbers provided by House of Assembly staff attached as Schedule "W".

Fortune Bay-Cape La Hune should be increased from 4,500 to 20,000 kilometres. This will result in an increase to the intra-constituency cost estimate for the district.

St. Barbe

The district of St. Barbe also had a slight boundary change. This district has approximately 427.1 kilometres of roadway and is assigned 15,000 kilometres as an estimate of the required road travel for each fiscal year. The MHA for St. Barbe lives in Daniel’s Harbour. As with Fortune Bay-Cape La Hune, the assigned estimate for road travel is considerably less than the kilometre estimate assigned to other districts that have fewer roadways.¹¹² The intra-constituency cost estimate for this district was set at \$12,600, including HST. Since 2007, the MHA for this district has used the following percentage of the intra-constituency cost estimate:

- 2012-2013 (to October 26) - 37 %
- 2011-12 - 85%
- 2010-11 - 100%
- 2009-10 - 84%
- 2008-09 - 100%
- 2007-08 - 19% (October to March 31)¹¹³

Except for the first year that *the Rules* were in place, the MHA from this district has used a significant portion of the intra-constituency cost estimate. This, coupled with the fact that the district has 427 kilometres of roadway, supports the request for an increase in kilometres from 15,000 to 20,000 kilometres. This will result in an increase in the district’s intra-constituency cost estimate.

Trinity North

Trinity North district has approximately 299 kilometres of roadway. The MHA for this district resides in Clarendville. Trinity North is assigned a yearly kilometer estimate of 10,000 kilometres. There are other districts with fewer roadways that have larger kilometer estimates. The intra-constituency cost estimate for this district is \$10,200, including HST. The following percentages of this allowance have historically been used:

- 2012-2013 (to October 26) - 15%
- 2011-12 - 34%
- 2010-11 - 27%
- 2009-10 - 27%

¹¹² See Schedule “U”.

¹¹³ See Schedule “W”.

2008-09 - 18%

2007-08 - 0% (October to March 31)¹¹⁴

The MHA for this area has been either a cabinet minister or the Speaker of the House throughout this period, and this has likely impacted these numbers. However, the statistics do not warrant an increase in kilometres that in turn would cause an increase to the overall intra-constituency cost estimate.

RECOMMENDATIONS:

The *Members' Resources and Allowances Rules* should be amended to reflect the following:

- 21. If the intra-constituency cost estimate for the district of Fortune Bay-Cape La Hune is reduced by \$48,000, as set out in recommendation 17, the mileage estimate included in the intra-constituency cost estimate for this district should be increased from 4,500 to 20,000 kilometres and the dollar amount of the total be adjusted accordingly.**
- 22. The mileage estimate included in the intra-constituency cost estimate for the district of St. Barbe should be increased from 15,000 to 20,000 kilometres and the dollar amount of the total be adjusted accordingly.**

(d) The adequacy of the number of nights and meals estimated for certain districts in the intra-constituency cost estimates

Mr. Kennedy reviewed the estimates set out in *the Green Report* for meals and overnight accommodations. Each MHA is assigned \$3,750 per fiscal year for meals and the number of nights estimated for overnight visits is district dependent.¹¹⁵ These amounts are factored into the total estimate for each district.

Should the meal allowance and/or overnight visits for any of the districts be increased? Statistics provided by House of Assembly staff indicate that an increase is not necessary. I will refer to statistics from four full fiscal years since *the Rules* were adopted, more particularly 2008-2009 to 2011-2012.¹¹⁶

¹¹⁴ See Schedule "W".

¹¹⁵ I have reviewed the adequacy of the House-not-in-session travel in Term of Reference 7(2) under the heading "Secondary Accommodations." Secondary accommodations accessed from the intra-constituency cost estimates are not to be confused with those accessed from the House-not-in-session budget. An MHA who exhausts the 50 nights allotment for House-not-in-session travel cannot travel to the capital region and claim it from the intra-constituency cost estimates unless the travel is for attendance at a conference or a training course. See Management Commission Directive Number 2007-012 at Schedule "T".

¹¹⁶ See Schedule "W".

For the fiscal year 2008-2009, 31% of the overall intra-constituency cost estimate of \$626,400 was spent. Of the 48 MHAs, only 2 MHAs spent 80% or more of the intra-constituency cost estimate including 1 MHA who spent 100% of the allowance. Thirty six of 48 MHAs spent 40% or less of their allowance, of which 10 MHAs spent nothing.

For the fiscal year 2009-2010, 34% of the overall intra-constituency cost estimate of \$626,400 was spent. Only 5 of 48 MHAs spent 80% or more of their intra-constituency allowance estimate, including 1 MHA who spent 100%. Thirty eight of 48 MHAs spent 40% or less of their allowance of which 12 MHAs spent nothing.

For the fiscal year 2010-2011, 31% of the overall intra-constituency cost estimate of \$626,400 was spent. Only 5 of 48 MHAs spent 80% or more of their full intra-constituency allowance estimate, including 2 MHAs who spent 100%. Thirty seven of 48 MHAs spent 40% or less of the allowance, of which 13 MHAs spent nothing.

For the fiscal year 2011-12, only 39% of the overall intra-constituency cost estimate of \$626,400 was spent. There were actually 64 MHAs during this fiscal year because 16 new MHAs were elected in the October election.¹¹⁷ Only 5 of 64 MHAs spent 80% or more of their intra-constituency cost estimate. No MHA spent the maximum amount. Forty four of the 64 MHAs spent 40% or less of the allowance, of which 14 MHAs spent nothing.

Because of the discretion that MHAs can exercise respecting how the intra-constituency cost estimate is spent, these statistics do not support a claim for increased meal or overnight accommodation allowance in the intra-constituency cost estimates. Most MHAs have significant funds left over from their budget each year. In future, the Management Commission may want to consider increasing overnight accommodations and meals for those districts that consistently require the MHA to spend the full budget, but only after the MHA has presented a principled, strong case to the Management Commission for such an increase. As a cautionary statement, this analysis should in no way encourage MHAs to maximize their intra-constituency allowance estimates in an effort to have the amount increased. MHAs must be guided by the intent and spirit of *the Act* and *Rules*, particularly Section 5(1) of *the Rules*.

(e) The failure to estimate for “other travel” for two districts in the intra-constituency estimates

When calculating the intra-constituency allowances set out in Appendix 10.3 of *The Green Report*, \$1,000 was allowed for extra-constituency travel.¹¹⁸ It was suggested that this amount may be used by an MHA for travel to Ottawa on constituency business. No such amount was included in the allowance amount for the district of Fortune Bay-Cape

¹¹⁷ The intra-constituency allowance estimate for each district was pro-rated between the previous and the new MHA.

¹¹⁸ See Schedule “U”.

La Hune, and only \$500 was included for the district of Conception Bay East-Bell Island. This was likely an oversight, but a review of spending of these districts since *the Rules* were enacted in 2007¹¹⁹ indicates that neither of these MHAs has come close to exhausting his or her intra-constituency cost estimates, so no such increase is warranted.

(f) The failure to estimate for ferry service in one district in the intra-constituency cost estimates

No funds were included in the estimates for Fortune Bay-Cape La Hune district to allow for ferry travel. As I have already stated, historically the allowance for this district has not been exhausted. However, if recommendation 17 is followed and \$48,000 is removed from the intra-constituency cost estimate for Fortune Bay-Cape La Hune, an adjustment should be made to the allowance to provide for ferry travel.

RECOMMENDATION:

The *Members' Resources and Allowances Rules* should be amended to reflect the following:

- 23. If recommendation 17 is followed, the amount of \$1,500 should be added to the intra-constituency allowance estimate for the district of Fortune Bay-Cape La Hune for increased ferry travel.**

¹¹⁹ See Schedule "W".

TERM OF REFERENCE 7

Term of Reference 7 directs me to:

Consult with Members of the House of Assembly and make recommendations respecting the Members' Resource and Allowances Rules including the following issues, which are regularly the subject of Management Commission concerns:

1. The provisions of Section 7 of the *Members' Resources and Allowances Rules* in light of the Comptroller General's government-wide accounting practices.
2. The provisions respecting "secondary accommodations" in Part VI of the *Members' Resources and Allowances Rules*.

Term of Reference 7(1)

I spent an inordinate amount of time attempting to understand what was being asked of me by this Term of Reference. Ultimately, I determined that the following two sub-components, what I will call Term of Reference 7(1)(a) and 7(1)(b), clarify the scope of review expected:

- (a) Presently, Rule 7 dictates that MHA expense claims must be processed in the fiscal year that the expense is incurred, with the caveat that there is 30 days grace to April 30, one month in to the following fiscal year. If an MHA does **not** comply with this rule he or she is not compensated for the expense. This is more stringent than the Comptroller General's government wide accounting practices, in that all other persons who work for government can **file** an expense claim at any time. However, if the expense is incurred in one fiscal year and claimed after May 1 of the following year, it is paid from the new fiscal year's budget and not from the previous year's budget. Should the more relaxed government wide approach be applied to MHAs?
- (b) Presently, if an MHA exhausts any of the allowances in one fiscal year, he or she cannot incur the expense in that fiscal year and then claim it from his or her allowance budget in the new fiscal year. Should this be changed?

Term of Reference 7(1)(a)

Government wide accounting practices allow for an employee to claim in the following fiscal year for expenses that were incurred in the previous fiscal year. MHAs are not permitted to do this due to Section 7 of *the Rules*, particularly Rules 7(2) and 7(6):

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 precommitment 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.

Section 7(2) compels MHAs to claim expenses in the fiscal year the expense is incurred, with a thirty-day grace period to April 30. If the claim is not processed by April 30, it is not paid and the MHA must incur the expense personally. *The Rules* place this more onerous requirement on MHAs because, unlike other government employees, MHAs must claim their expenses within their allowance maximums. If a government employee incurs an expense in the previous year, s(he) can submit it for payment in the next fiscal year. While it is paid out of the budget for the new fiscal year, it is paid.

Should the 60-day requirement imposed on MHAs by Rule 7(2) be changed? The vast majority of MHAs with whom I met had no problem with submitting expense claims within 60 days. Most prefer not to delay filing their claims, primarily for 2 reasons: (1) Delays can cause memories to fade and therefore lead to unintended errors in the expense claim; (2) MHAs are typically paying expenses out of pocket by using personal credit cards and they want to be compensated as soon as possible in an effort to avoid interest charges. Theoretically, the 60-day rule can result in an MHA being money out-of-pocket. In practice, however, it is not problematic for MHAs.

Section 7(2) of *the Rules* also reduces the amount of time an MHA has to submit expense claims as the end of the fiscal year approaches. Because the claim must be made by April 30 at the latest, an expense incurred, for instance, in late March, must still be processed by April 30. This reduction in the 60-day period was not mentioned to me by MHAs and does not appear to pose a problem.

I see no reason to change this Rule. It is not problematic for MHAs and it improves accountability and transparency. The more quickly an expense claim is submitted, the more quickly it will be posted on the House of Assembly web site for public review.

Processing expense claims for MHAs is very different from processing those of other government employees because of the importance of maintaining compliance with the allowance allotments. Government employees are not subject to allowances and only incur expenses when authorized to do so.

Term of Reference 7(1)(b)

Prior to the adoption of *the Rules* in 2007, MHAs who had exhausted an allowance for one fiscal year might hold on to the expense claim and submit it for payment in the following fiscal year. For example, an MHA might wait to submit a claim incurred in February until after April 1 of the following fiscal year, and have it paid from the new years' allowance. While there is a grace period of 30 days, pursuant to Section 7(5), MHAs must now have expense claims processed by April 30 or the claim will not be honoured.

While there is a government-wide "guideline" that expense claims should be submitted within 60 days, claims submitted after 60 days are honoured. I have been informed that government-wide accounting practices of the Comptroller General are as follows:

If the claim/invoice is submitted in the subsequent fiscal year within the write-back period and there are sufficient funds in the old year allocation to pay the expenditure it is paid from old year funds.

If the claim/invoice is submitted in the subsequent fiscal year within the write-back period but there are insufficient funds in the old year allocation to pay the claim then it is paid from new year funds.

If the claim/invoice arrives following the write-back period it is paid from new year funds.

(Write-back period refers to the 30-day grace period to April 30 of the following fiscal year.)

Unlike other government employees, MHAs cannot access the previous years' budget even if the allowance amount has not been exhausted and they cannot claim the expense from the allowance for the new fiscal year if it was incurred in the previous fiscal year. For similar reasons cited in the previous section, I see no reason to change the existing Rule. I was not advised by MHAs that Rule 7(5) was problematic for any of them.

TERM OF REFERENCE 7(2)

This Term of Reference directs me to:

Consult with Members of the House of Assembly and make recommendations respecting the *Members' Resources and Allowances Rules* including the following, which are regularly the subject of Management Commission concerns:

- The provisions respecting "secondary accommodations" in Part VI of the *Members' Resources and Allowances Rules*.

Secondary accommodations

Part VI sets out the rules respecting travel and living allowances. I have already addressed some issues respecting secondary accommodations in the context of intra-constituency travel under Term of Reference 6. My review of secondary accommodations under this section is in the context of travel to the capital region; (1) to

attend at the House of Assembly and (2) to attend to constituency business when the House is not in session.¹²⁰

Secondary accommodation is not defined in Section VI of *the Rules*. I am assuming that “secondary accommodations” is in reference to “secondary residence” under Section 28 (f) of *the Rules* or “temporary accommodation” under Section 28(g) of *the Rules*:

Section 28(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;

Section 28(g):

“temporary accommodation” means short-term, temporary or transient accommodation such as a hotel, motel, bed and breakfast or boarding house.

While consulting with MHAs, three main areas of concern arose regarding the application of *the Rules* in the context of secondary accommodations. One concern has a more general application while the remaining two issues apply to a smaller number of MHAs. I have set out these concerns under three separate headings.

(i) Extended Stays in Hotel

The allowance regime that existed prior to the implementation of *the Green Report* made it cost effective for MHAs who maintained a permanent residence outside the St. John’s area to rent or purchase properties in St. John’s. The regime, as it then was, did not impose a maximum number of days that an MHA could spend in St. John’s when the House was not opened.¹²¹ Combined with the daily accommodation allowance provided while the House of Assembly was in session, it was cost effective for MHAs to rent or purchase accommodations in the St. John’s area. The accommodation allowance coupled with the *per diem* totalled \$103 per day. While the daily total is still the same, it is no longer cost effective because Section 35 of *the Rules* limits the number of visits an MHA can make to St. John’s to 20 trips and 50 nights when the House is not in session. MHAs informed me that they must now incur personal cost if they rent or purchase accommodations in the St. John’s area.

Many MHAs expressed frustration with the requirement for extended stays in hotels while the House of Assembly is in session. Unless an MHA can explain his or her absence, s(he) must be present in the House when it is opened or incur a salary deduction

¹²⁰ See footnote 115 and Schedule “T”.

¹²¹ *The Green Report*, pp 10-12 to 10-13.

of \$200 per day.¹²² I was told that living in a hotel is confining and tedious and that constantly eating in restaurants is unhealthy and unappealing.

When the House is in session, MHAs are typically in St. John's from Sunday night or Monday morning to Thursday night or Friday morning – between 3 to 5 nights per week. In order to return home, the MHA must vacate his or her room each week. Anyone who has travelled for work can sympathize with this concern.

MHAs also expressed concerns about the cost of hotel accommodations and suggested that providing a monthly accommodation allowance would be not only a more comfortable and a healthier option for them; it would also save tax dollars.¹²³

I will first look at the cost issue. Of the 48 districts, 17 are either in the Capital region or in close proximity to it. That would leave 31 districts that might require MHAs to maintain secondary residences in the St. John's area, depending on where they choose to locate their primary residences. It was suggested that an accommodation allowance of between \$1,000 and \$1,500 per month would be required to maintain a secondary residence. This would cost somewhere between \$12,000 to \$18,000 per year:

\$12,000 x 31 districts = \$372,000 per year.

\$18,000 x 31 districts = \$558,000 per year.

House of Assembly staff have informed me that expenditures incurred by MHAs for accommodations while the House was in session and while the House was not in session for the years 2007-2008 to 2012-2013 is as follows:¹²⁴

2007-2008 - \$ 25,079;¹²⁵

2008-2009 - \$155,486;

2009-2010 - \$155,569;

2010-2011 - \$188,043;

2011-2012 - \$171,068;

2012-2013 - \$129,089.¹²⁶

House of Assembly staff further informed me that the number of days that the House was in session for the last 6 years is as follows:

2012 (to date) 53

¹²² Section 13 of *the Act*.

¹²³ However, some MHAs wished to have the option either to procure a secondary residence or to stay in a temporary accommodation such as a hotel. Staying in a hotel works quite well for some MHAs.

¹²⁴ See Schedule "X".

¹²⁵ This is only a partial year because *the Rules* did not come into effect until October of 2007.

¹²⁶ These numbers are accurate up to August 15, 2012.

2011	34
2010	52
2009	46
2008	52
2007	35

When these numbers are considered in the context of the projected costs of providing an MHA with a monthly accommodation allowance, this allowance is potentially more costly. It is difficult to justify an MHA's having access to a monthly accommodation allowance when these relative costs are considered and the House has been opened for a maximum of 52 days per year between 2007 and 2011.

I am also concerned that a monthly accommodation allowance may not comply with *the Rules* if it allows an MHA to gain equity in a property. Chief Justice Green believed that allowances that permitted MHAs to acquire equity in property were inappropriate,¹²⁷ and this recommendation is codified in *the Rules* at Section 5(1)(e):

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
 - (e) shall not relate to personal benefit to a member or an associated person of a member.

I sympathize with the concerns raised regarding the restrictions imposed on someone who is spending weeks at a time in a hotel. However, some members indicated that they were able to secure apartment-type accommodations for short-term periods of time – on a monthly basis. Hillview Terrace was mentioned several times. Perhaps House of Assembly staff can attempt to procure cost effective short-term rental arrangements for apartments so that MHAs can use these apartments on a short-term basis, particularly while the House of Assembly is opened. This would at least address the restrictive nature of living in a hotel, would allow MHAs to prepare their own meals if they so wished and would allow them to leave some belongings there when they returned to their districts on weekends.

While this is outside my mandate, the executive branch may wish to consider a monthly accommodation allowance for Ministers. I have been advised that Ministers are expected to be in St. John's on a weekly basis, primarily to attend to departmental and cabinet responsibilities. Many are staying in hotels, and while I have not reviewed costs related to ministerial accommodations, I am assuming that accommodation costs for ministers are significant. Ministers avail of the House of Assembly budget under *the Rules* to cover their accommodation costs while the House of Assembly is open, or if they are travelling for constituency business. However, their accommodations are paid through

¹²⁷ *The Green Report*, pp. 10-22.

their Ministerial allowance if they are travelling for ministerial business. While this is not a formal recommendation under my mandate, I would suggest that a thorough review of ministerial accommodation costs occur, and that the executive branch give consideration to providing an accommodation allowance for Ministers if such an allowance would result in cost savings to the taxpayers. If a ministerial accommodation allowance were implemented, checks and balances must also be in place to ensure that the allowance is being properly used.

(ii) Adequacy of 20 Trips/50 Nights Travel When the House is not in Session

When the House is not in session, and when in the capital region on constituency business, an MHA from outside the capital region may claim for private accommodation at a rate of \$53 per night, or a temporary residence rate, such as a hotel. Similarly an MHA who resides in the capital region and outside his or her district and who travels to his/her district on constituency business, may claim the same allowance for accommodation. As well, the MHA can claim a *per diem* meal allowance of \$50 per day.

Some MHAs have advised that the 20 visits per year and/or 50 nights per year are not sufficient to allow them to represent their constituency properly. This is particularly true for MHAs who live within reasonable driving distance of the capital or their district and who can make day trips and return home in the evening. In these circumstances, the MHA does not require overnight accommodation but 20 trips per year may be insufficient.

Again, this is a classic case where a particular MHA should appeal to the Management Commission for an adjustment to this number. In order to make a reasoned decision, the MHA should provide statistics and give examples of how the 20 trips and/or the 50 nights restrictions are preventing him or her from representing his or her constituency properly. No one MHA made such a specific appeal to me so I will not make recommendations with respect to particular districts. However, I encourage MHAs with such concerns to put the issue to the Management Commission.

(iii) Travel to Constituency while House of Assembly is in Session.

Section 33 of *the Rules* permits MHAs to make one return trip to their constituency during the week while the House of Assembly is in session and claim it from the House-in-session allocation. For the other nights, an MHA who lives in his or her district and is not within commuting distance of 60 kilometres¹²⁸ can be compensated from the House-in-session budget if s(he) stays overnight in St. John's. S/he will not be compensated if s(he) travels back to his or her district, unless it is deducted from the 20 trip allocations for travel to or from the capital region while the House is not in session.

¹²⁸ See Section 28(a) of *the Rules*.

The application of *the Rules* in this circumstance is unfair to the MHA and more costly to the taxpayer. MHAs are required to attend sessions of the House. An MHA can recover the cost of hotel accommodations, or claim the \$53 nightly allowance if s(he) stays in a secondary residence, even if he or she is within driving distance of his or her permanent residence. Except for the one night per week of permitted travel, if s(he) returns to his or her district, s(he) is not compensated for the kilometers traveled unless it is claimed under the limited trips for House-not-in-session travel. The hotel/secondary accommodation cost will likely be more than the mileage claim.

While the House is in session, it is unfair not to compensate an MHA for kilometres traveled when an MHA can return to his or her home and family and by doing so can also save public money. However, the House often sits in the evenings so in the interest of safety the MHA should have the option to remain in St. John's if s(he) chooses.

This case is a perfect example of how the application of *the Rules* can have an impractical result for certain MHAs. As I have already stated, such eventualities were contemplated in *the Green Report*. Due to these unique circumstances, cases such as these should be put to the Management Commission and specific arrangements can be made. I will again quote *the Green Report* on this point:

Members should have the flexibility to adopt whatever arrangement seems best for their individual circumstances and how they perceive they can best serve their constituents.¹²⁹

It is incumbent on the particular MHA and the Management Commission to address these issues on a principled and case-by-case basis.

RECOMMENDATIONS:

- 24. The provision of s.7 of *the Rules* with respect to submitting claims for payment or reimbursement within 60 days after the expenditure is made, remain unchanged.**
- 25. House of Assembly staff attempt to procure cost-effective short-term apartment-type rental facilities for MHAs who are travelling to St. John's to attend at the House of Assembly or to attend to constituency business. An MHA can still avail of the existing accommodation allowance arrangement if this is his or her preference.**

The provisions of Part VI be amended as follows:

- 26. When the House of Assembly is in session, MHAs should have the option of either availing of the provisions of Sections 31 or 33 of *the Rules* with respect to travel and living allowances, or claiming daily**

¹²⁹ *The Green Report*, pp. 10-35.

mileage costs for travel to and from their permanent accommodation to the capital region, if the facts of that particular MHA's circumstances warrant such an amendment. This expense should be claimed from the House-in-session allocation and should apply only to MHAs who are within a reasonable driving distance of the capital region.