



House of Assembly

Nova Scotia

Independent Review of Allowances and Expenses of

Elected Provincial Officials

Interim Report

March 2010

Background

By a Resolution passed by the Legislature Internal Economy Board (LIEB) on December 2, 2009 I was appointed to conduct a review of the resources provided to MLAs under resolutions passed by the Board. I was directed to deal with the appropriateness, adequacy and accountability of existing resources bearing in mind the recognized need for Members to serve their constituents and the Province effectively, and to report by July 31, 2010.

On February 3, 2010 Auditor General Jacques Lapointe presented a report resulting from his performance audit of constituency allowances and other expenses of MLAs. His audit included all claims from July 2008 to June 2009 and constituency allowances and electronic technology fund claims from July 2006 to June 2009.

The Auditor General found the systems and processes in place inadequate to protect both the Members and the public. Weaknesses in the system enable the Members to receive inappropriate benefits and ambiguity in the current rules contributes to the problem. He described the system as “deficient” and one that invites errors and misuse.

The Auditor General provided information to the Speaker of the House, Honourable Charles Parker, and the LIEB to enable the recovery of funds from individual members. Subsequent public release of the names of the MLAs who received inappropriate payments provoked a huge and justified public outcry and increased demands for change in the system and the regulations.

My appointment was made in anticipation of the Auditor General’s key recommendation that a comprehensive examination of the expense system be initiated. I should

point out that I am not appointed to be a Commission of Inquiry, but rather to conduct a review and to make recommendations designed to improve the system.

As a result of the need for prompt action I have decided to present this interim report. I have divided my work into two sections, the first dealing basically with the system for approval of claims submitted by Members and the second with the content of the Regulations. This interim report will deal mainly with the structure of the LIEB, the system for approval of claims and make some recommendations regarding content of the Regulations. My final report will contain more comprehensive recommendations relating to Regulation content, and will incorporate the results of an evaluation of best practices for compensation of members of legislatures in other Canadian jurisdictions.

Principles and Values

Most people are aware that a scandal involving fraudulent claims made by members of the Newfoundland House of Assembly resulted in the creation of a six-member Review Commission on Constituency Allowances and Related Matters under the chairmanship of Mr. Justice J. Derek Green, which reported in May 2007. I can do no better than adopt the statement of Values set out at the outset of the Green Commission Report as follows:

Values

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

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

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

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

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

***Financial control**, and policies centered on the preservation of such control, can be regarded as both restricting and enabling. In examining the MHA constituency allowance issues, and the questionable payments which have been identified, the*

focus in the current environment is on the restricting aspect of financial control, rather than on its enabling aspects. Financial control in the restrictive sense means the establishment of, and adherence to, procedures designed to ensure economy, efficiency and probity. However, it is relevant to acknowledge that, in the broadest sense, financial control means the promotion of performance and achievement while avoiding such unwanted events as lapses in quality, unproductive uses of resources and law-breaking.”

In my view these values are valid and of universal application in jurisdictions such as Nova Scotia where the Westminster parliamentary system is in place and they have guided my thinking as my review has proceeded.

Legislative Provisions

The Legislature Internal Economy Board (LIEB) is established by Sections 76 to 80 of the Public Service Act. Its authority to pass regulations regarding members’ expenses and allowances is found in Section 44 of the House of Assembly Act. That Act also contains an important definition - that of an “outside member” in Section 2(1)(e).

Currently, the LIEB consists of eight members:

- 1) The Speaker - who chairs the Board;
- 2) The Government House Leader;
- 3) The Chair of the Treasury and Policy Board of the Executive Council;
- 4) The Minister of Finance;
- 5) The Deputy Speaker;
- 6) The Chairman of the Government Caucus;
- 7) One member from the Official Opposition Caucus; and
- 8) One member from the caucus of each recognized party;.

Where there is more than one Deputy Speaker, one who is a member of the

Government Caucus shall be the LIEB member.

The political makeup of the Board is therefore six members from the Government party and one each from the parties in opposition.

One of the members of the Board who is also a member of the Executive Council is designated as Deputy Chairman of the Board and acts as Chair in the event of the death, disability or absence of the Speaker.

I believe that more openness and transparency would result from inclusion of the legislative provisions relating to the Board in one statute and that a change of name would more accurately describe its purpose. I also think that modest changes in its composition would make it more nearly related to the House of Assembly.

Accordingly, I recommend that a new statute, called the House of Assembly Management Commission Act be enacted. This act would continue the LIEB under the name House of Assembly Management Commission by re-enacting the current statutory provisions, with certain changes I am recommending, including those relating to open meetings.

I recommend that the Commission consist of the following members:

- The Speaker, who shall chair the Commission;
- The Deputy Speaker - when there is more than one, the Deputy Speaker who is a member of the Government Caucus and who shall chair the commission in the absence of the Speaker;
- The Government House Leader;
- The House Leader of the Official Opposition;

- Two members who are members of the Government Caucus, only one of whom may be a member of the Executive Council;
- One member from the Caucus of the Official Opposition;
- One member from the Caucus of a recognized party; and
- The Clerk, who shall be the Secretary and not vote. In the absence of the Clerk, the Assistant Clerk shall be the secretary.

Neither the Public Service Act nor the House of Assembly Act makes any reference to whether proceedings of the LIEB shall be open to the public. In fact, the Board has conducted its proceedings in camera, but in recent times decisions have been made transparent through the LIEB regulations, which are posted online. The private nature of the meetings has been the source of much criticism.

I am advised that, with one recent exception, decisions taken by the Board have been by consensus. This has been the practice dating back for many years and I am hopeful that it will be able to continue.

A review of Boards and Commissions comparable to the LIEB in ten Canadian jurisdictions reveals that in six jurisdictions proceedings are held in private and four open their meetings to the public.

In my view there is no longer a need, if in fact there ever was one, for the LIEB to continue to conduct its meetings in camera. The principles of accountability and transparency, to which reference has been made above, should be applied and meetings of the Board should be open to the public.

I therefore recommend that all proceedings of the LIEB excepting:

- personnel issues relating to officers and employees of the House of Assembly services;
- legal matters involving actual or potentially pending litigation;
- matters protected by privacy and data protection laws; and
- budget deliberations involving the preparation of the annual estimates of the expenditure of the House of Assembly service and the statutory offices

be open to the public.

When matters enumerated above are discussed the public should be cleared and the matter be discussed in private, but the substance of all decisions, including those made in private, should be recorded and form a part of the public record. Minutes of meetings should be tabled in the Legislature at the earliest reasonable opportunity following each meeting.

I have given considerable thought to the composition of the LIEB. Some advocate the inclusion of non-elected members of the public as voting members. I note that in only one Canadian jurisdiction, Prince Edward Island, has this practice been adopted.

As is pointed out in the Green Commission report the Legislature Internal Economy Board is a form of a committee of the House - one with special decision-making powers. In our parliamentary tradition, decisions respecting the House should be made by elected members of the House. The injection of non-elected persons into the decision-making process would fundamentally violate that principle. As was the Green Commission, I am not

convinced that it would be appropriate to allow for general participation in all of the LIEB affairs, which representation by non-elected persons would necessarily permit.

Mr. Justice Green went on to recommend the statutory creation of an Audit Committee of the Newfoundland House of Assembly Management Commission which would include lay participation. I am impressed by this proposal and recommend the creation by statute of such a body here in Nova Scotia as an idea whose time has also arrived in this Province. As the Green Commission put it:

It will help with governance issues generally by providing an independent and informed point of view on financially related matters to the Commission. It will also indirectly provide a “foil” of independent thinking against which the positions of the MHAs on the IEC can be judged. In that sense, it can become a “watchdog” for financial mismanagement.

The Audit Committee should consist of two members of the LIEB and two members who are residents of Nova Scotia, but who are not MLAs, and have a demonstrated knowledge and experience in financial matters. The two lay members should be chosen by the Chief Justice of Nova Scotia and have fixed terms that provide for rotation over time.

The mandate of the committee should include:

- making recommendations to the Commission with respect to choice and terms of engagement of auditors;
- reviewing financial statements, audit reports and recommendations and giving advice thereon to the Commission;
- reviewing any compliance audits undertaken by the Auditor General;
- making recommendations respecting internal audit procedures;
- reviewing with the Director of Administration the effectiveness of internal

control;

- reviewing a code of conduct applicable to the Director of Administration and House staff;
- reviewing disclosure practices of the Commission; and
- advising the Director of Administration with respect to the exercise of his or her responsibilities as accounting officer.

The Audit Committee should be required to meet regularly and frequently enough to discharge its duties and the lay members should be paid from public funds with the level and type of remuneration being determined by the LIEB. In the event of disagreement between the lay members of the committee and the LIEB members, both points of view should be passed on to the LIEB and recorded in its minutes.

As has been often pointed out elsewhere, establishment of an Audit Committee does not relieve members of the LIEB of their responsibility with respect to the financial reporting process.

Office of the Speaker - Administration

The process of authorizing MLAs' expense claims for payment is conducted in the Office of the Speaker - Administration, whose current staff complement is six persons. One full-time employee, who also has reception duty responsibilities and is the Administrative Support Clerk for the Director of Administration, is responsible for receiving and processing Members' claims.

Currently, an internal monitoring system designed by the Business Solutions

Division of the Department of Natural Resources is in place. This system captures monthly, weekly and daily limits for Members' claims submitted for constituency expenses and travel and living allowances. It does not track each receipt submitted or retrieve information for sorting or reporting on a per invoice basis. It also does not check and notify if there is duplication caused by keying an expense receiptable item more than once. The Auditor General noted 64 instances in which 28 Members submitted claims for expenses which had previously been claimed.

Previously, furniture and equipment purchased by Members for use in their constituency offices remained their property when they ceased to be Members. On October 28, 2009 the Regulations were amended to ensure that all furniture and equipment purchased by Members is the property of the Province. No system currently exists for tracking and retrieval of these assets.

If there is to be increased scrutiny of claims submitted by Members, an asset management system, and an enhanced monitoring system, it is clear that there will have to be an increased number of scrutineers.

I recommend that a new division be established within the Office of the Speaker to be called the "Members' Expense Division." This division would consist of three people and would be responsible for developing a new database system which would be integrated with the existing system. Each claim would be analyzed, calculated, checked, and a determination made if appropriate documentation, including original invoices, evidence of payment and purpose of the expenditure is included to support the claim.

The new database would be designed to capture singular entries and would have controls which track dates, amounts and names of suppliers, thus eliminating duplicate entries. Data would be compiled in monthly or bi-weekly allocations and transferred into the existing system.

In line with the principle of transparency, a system and resources should be put in place to allow all expenses claimed by Members to be viewed on the Legislature website. The administrative support staff would be responsible for scanning expense claims by member each month for online viewing.

The staff complement of the “Members’ Expense Division” should also include a professionally qualified Internal Auditor to review documentation and whose duties would also include asset tracking, to ensure all assets are logged properly and verified against expense claims. While the Internal Auditor would be a member of the staff of the Office of the Speaker - Administration, he or she would report to the Speaker.

I am advised that the Department of Transportation and Infrastructure Renewal has an Asset Management System which tracks purchases of equipment and furniture and that this system is capable of being adapted to apply to the Members’ constituency offices. The Department has the capacity to retrieve assets and return them to the Crown. Use of this system could, I am advised, result in considerable savings. In order that it be implemented, policy and legal changes would have to be made to allow software to be placed in Members’ constituency offices, something which currently is not permitted.

An alternative process for asset management would be to adopt the system in

place in New Brunswick. There, where there is a system of fixed election dates, casual employees are hired before an election to review Members' expense claims and prepare a document for each member showing all purchases since the previous election. A member who is not re-offering or is defeated has the option to purchase their assets at a depreciated value. If the member does not wish to purchase, the new member has the opportunity of buying the assets at the depreciated value. Any unpurchased assets are returned to the Crown. Implementation of a system of this type would require creating a policy for calculating reasonable depreciation.

Members should be given an opportunity to access a process of resolving issues arising out of claims which are disallowed. This would be done by asking the Speaker or his designate to review the claim. The Member should be able to present arguments in favour of allowing the claim. If the Speaker allows the claim he should authorize its payment. If the claim continues to be disallowed, reasons for so doing should be provided to the Member.

I am advised that some Members expect their claims to be processed and paid within two or three days after they are presented. A two week interval is supposed to be in place and this should be more strictly complied with in a way which treats all Members fairly.

Although I indicated that my final report will deal fully with the content of the regulations there are two matters I wish to mention at this time. First is the problem which arises when, because of ambiguity in the current regulations, claims are made for expenses which are supposed to be covered by a per diem. This practice, known as double-dipping, is sometimes unintentional, but always improper. An immediate prohibition against payment of

such claims should be enacted by the LIEB.

Advertising

Members are often engaged in meetings with and providing services to their constituents. Funding assistance for their work is provided under the Regulations through the standard allowance, the constituency allowance, the franking and travel allowance, the living allowance paid to outside members and party leaders, the living allowance for outside Executive Council members and party leaders, per diems, and mileage reimbursement. A number of these payments are made without receipts, and are thus non-accountable, others require presentation of receipts before reimbursement is made.

I agree with the Auditor General that the regulations are unclear and fail to provide guidance as to how the funds paid to the Members are to be spent.

I also agree with those who contend that payments to Members should be by way of reimbursement for expenses actually incurred, supported by receipts.

As mentioned earlier, I will be dealing fully with these matters in my final report.

Meanwhile, there are two areas I wish to mention here: the use of public funds to support the work of the Members through advertising and gifts or contributions to third parties. In my view it is perfectly proper for an MLA to advertise his or her availability to be consulted by constituents, but this should be done in a non-partisan manner if reimbursement from public funds is to be made. I agree with the definition of “non-partisan” found in the Members’ Allowances Regulation of Manitoba which prohibits:

- Reference to any word, initial, colour or device that would identify a

political party;

- Solicitation for money or votes on behalf of a person or political party;
- Any statement advocating that money or votes not be given to a person or political party or that advocates that a person join or not join a political party or continue to be, or cease to be, a member of a political party.

These prohibitions do not apply to business cards, letterheads, and internet communication including the expense of establishing and maintaining a home page.

A revision of the Regulations should incorporate the idea that reimbursement should be for “non-partisan” expenses only.

I wish to give further consideration to the issue of gifts or contributions to third parties, and note that this area is one which has caused substantial difficulties and was a matter of considerable concern to the Auditor General.

House of Assembly Act

Our current House of Assembly Act has been on the statute books for decades, has been revised piecemeal from time to time and although, strictly speaking, it is not within my mandate I believe the Government, the Official Opposition, and the Recognized Party should consider whether it is now appropriate to undertake a complete re-writing and modernization of the House of Assembly Act. This, in my view, is something which should be done by consensus among MLAs and be accomplished through the medium of an All-Party Select Committee specially struck for the purpose. Helpful guidance can be found by reference to the House of Assembly Accountability Integrity and Administration Act of Newfoundland passed

in 2007.

I fully recognize that much work remains to be done before completion of a final report. Hopefully what is included here will be of some assistance in dealing with a very serious situation. If it is the wish of the Internal Economy Board, I will continue my work with a view to completion on or before July 31, 2010.

Arthur R. Donahoe
Halifax, N.S.
March 2, 2010