



Chapter 3

Background

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

— Pope John XXIII¹

Overall Perspective

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

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

whether proper safeguards are in place to ensure accountability and

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

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

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

I am further requested:

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

And, in addition, I am asked:

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

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

The background review that follows encompasses three main dimensions:

- *Organizational Framework of the Legislature*

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

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

⁴ Terms of Reference, item 2.

⁵ Terms of Reference, item 4.

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

- *Financial Framework and Budgetary Trends*

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

- *Evolution of Administrative Practices*

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

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

Organizational Framework of the Legislature

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

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

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

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

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

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

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

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

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

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

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

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

types of activities:

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

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

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

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

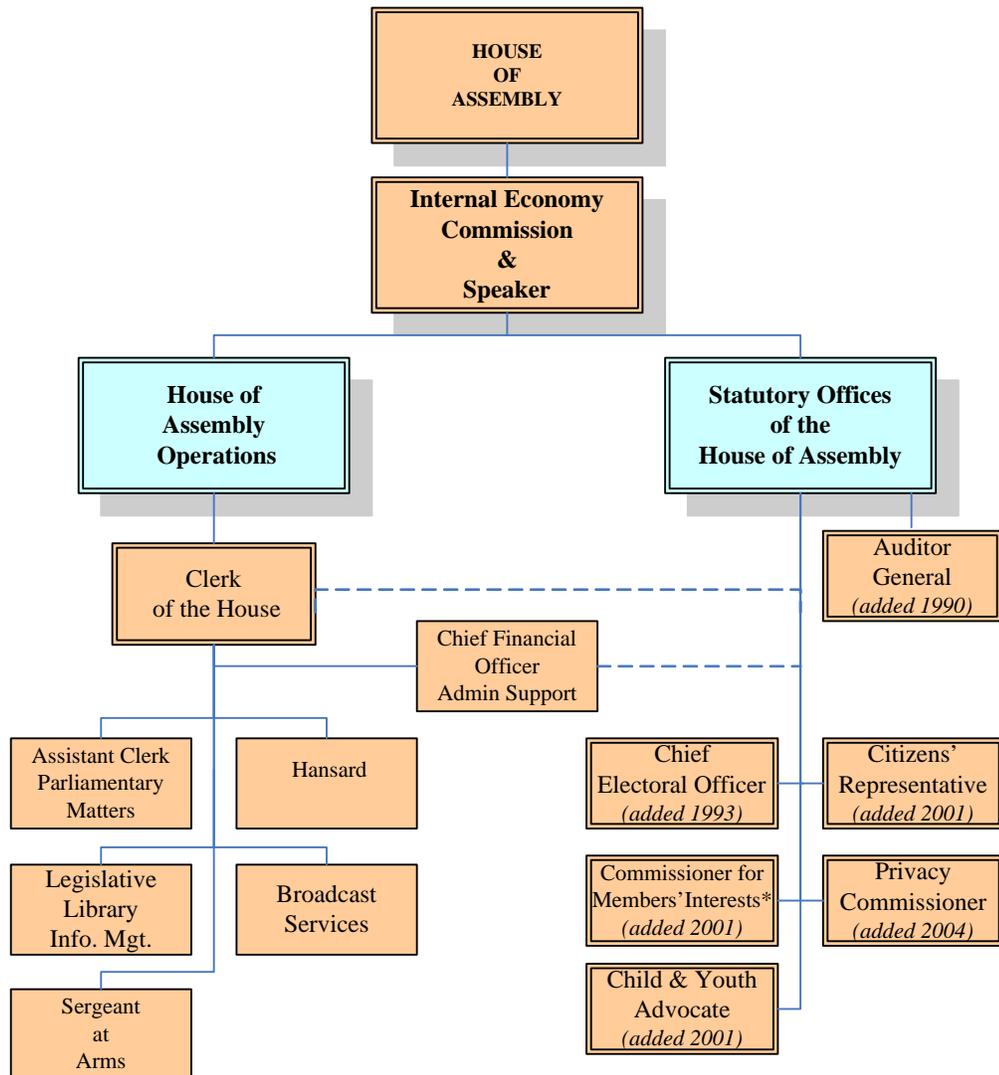
¹¹ Later in this report, in discussing legislative and regulatory frameworks, I will be recommending that these activities be referred to collectively as the “House of Assembly Service.” See Recommendation No. 38(3).

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

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

Chart 3.1

Administrative Framework of the Legislature¹³



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

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

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

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

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

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

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

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

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

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

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

Financial Framework and Budgetary Trends

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

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

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

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

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

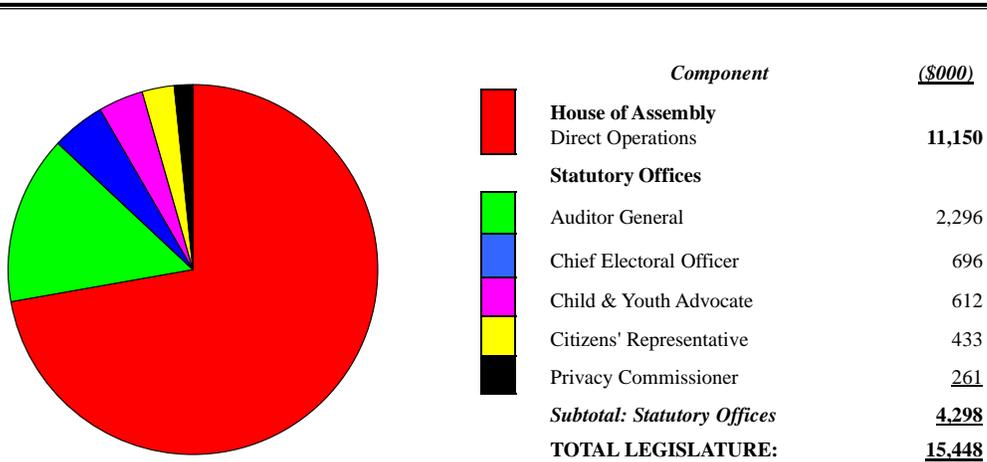
An analysis of expenditure trends indicates that, while the overall level of actual expenditures relative to budget has been reasonably on track, this overall picture masks a pattern of savings in certain expenditure components that have offset consecutive budgetary overruns in other areas.

Chart 3.2

Legislature Expenditure Profile

Major Expenditure Components

Actual Expenditures for the Fiscal Year Ended March 31, 2006



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

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

(i) Indications of Favourable Budgetary Performance – Overall Perspective

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

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

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

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

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

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

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

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

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

Chart 3.3

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

(\$000)

Favourable (Unfavourable) Variances¹⁷

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

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

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

(ii) Expenditure Overruns in the House of Assembly

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

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

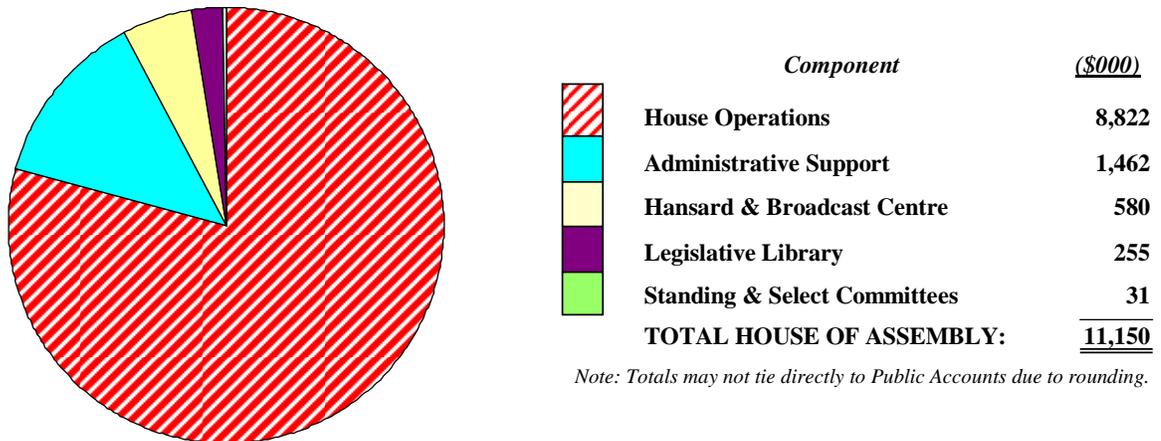
¹⁷ "Favourable variances" are amounts by which actual expenditures were less than budget. "Unfavourable variances" are the amounts by which actual expenditures exceeded budget.

Chart 3.4

House of Assembly Expenditure Profile

Expenditure Components

Fiscal Year Ended March 31 2006



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

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

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

Chart 3.5

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

(\$000)
Favourable (Unfavourable) Variances

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

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

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

(iii) Expenditure Overruns Within the House Operations Accounts

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

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

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

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

well as the Constituency Allowances of MHAs.

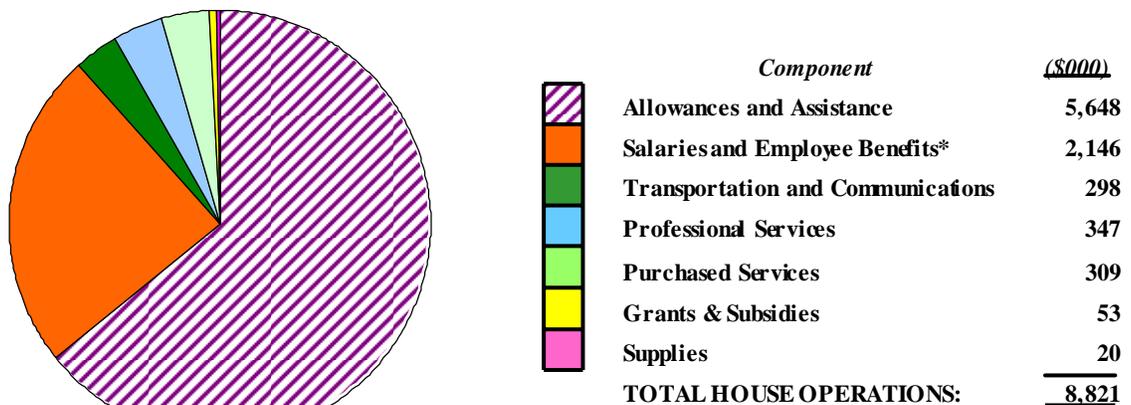
- *Salaries* (\$2.1 million in 2005-06): This account covers the political support staff salaries and benefits (temporary or contractual) for the people who directly support and assist the MHAs of all parties. Also, it covers any severance payments in respect of political staff.

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

Chart 3.6

“House Operations” Expenditure Profile Expenditure Components

Fiscal Year ended March 31 2006



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

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

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

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

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

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

Chart 3.7

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

(\$000)

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

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

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

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

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

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

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

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

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

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

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

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

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

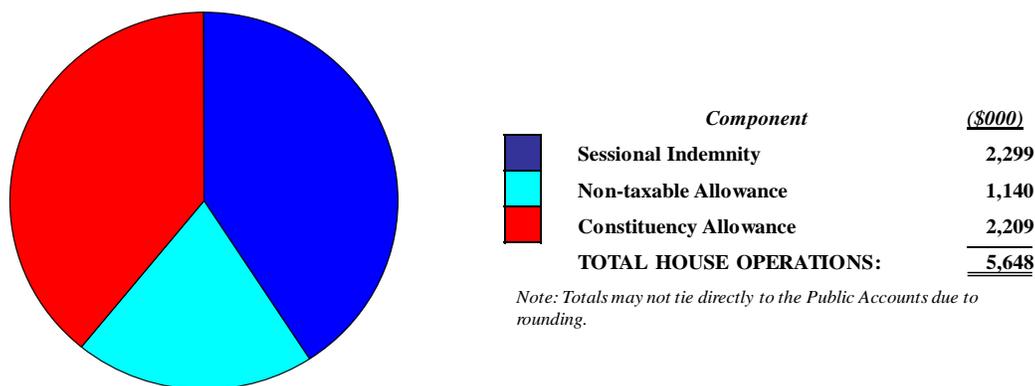
The three components of the Allowances and Assistance account are not budgeted separately in the estimates tabled in the legislature. Therefore, there is no direct public record of the budgetary trends for each of the individual segments. However, a breakdown was obtained from internal government records,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

Chart 3.8

Components of the “Allowances and Assistance” Account

Sessional Indemnity - Non-taxable Allowance - Constituency Allowances

Actual Expenditures during the Fiscal Year Ended March 31, 2006



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

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

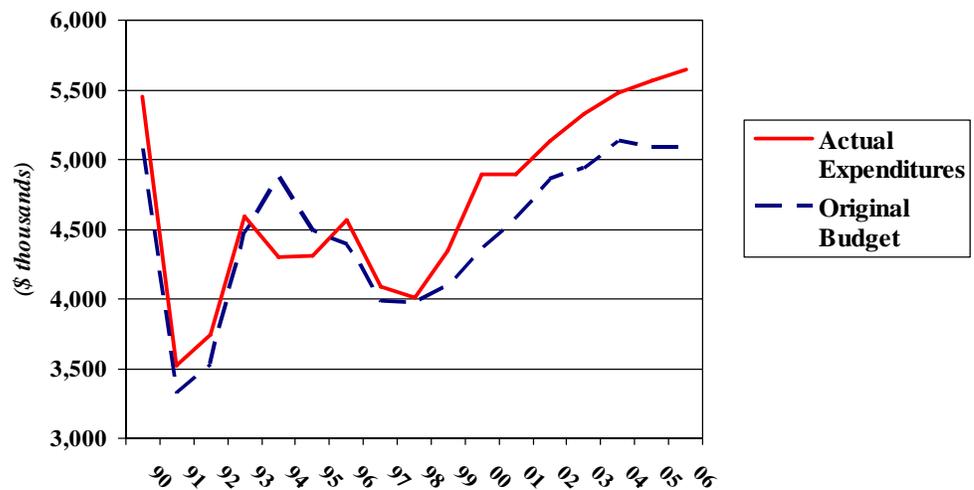
Previously, I highlighted a negative trend in the aggregate budgetary variances on allowances and assistance dating back to 1999-2000 (Chart 3.7). This limited analysis raised the question as to when the trend actually commenced.

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

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

Chart 3.9

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



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

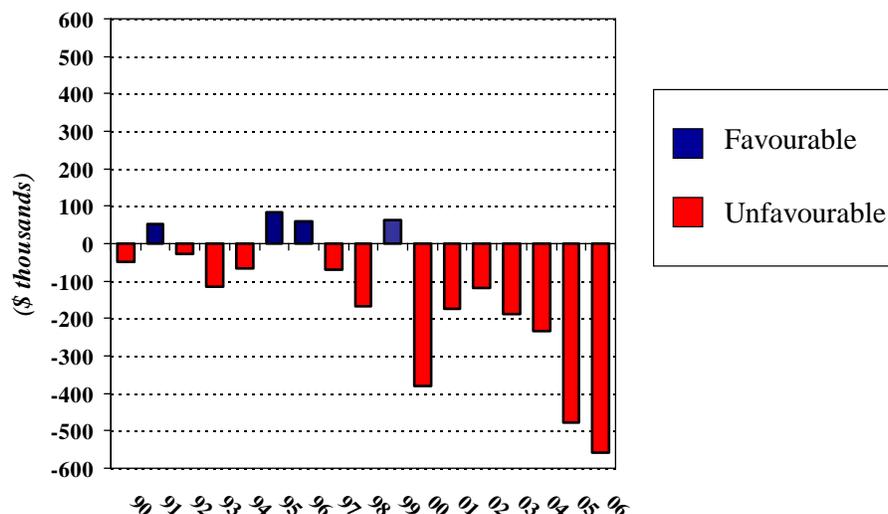
In attempting to understand when the signals of expenditure overruns might have emerged each year, the Commission examined the trends in “revised” estimates for the Allowances and Assistance account.

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

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

Chart 3.10

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



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

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

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

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

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

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

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

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

(vi) The Allowances and Assistance Account Structure

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

the entire financial framework of the legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) Expenditure Trends - Constituency Allowances

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

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

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

year ended March 31, 2006.²⁴

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

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

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

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

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

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

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

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

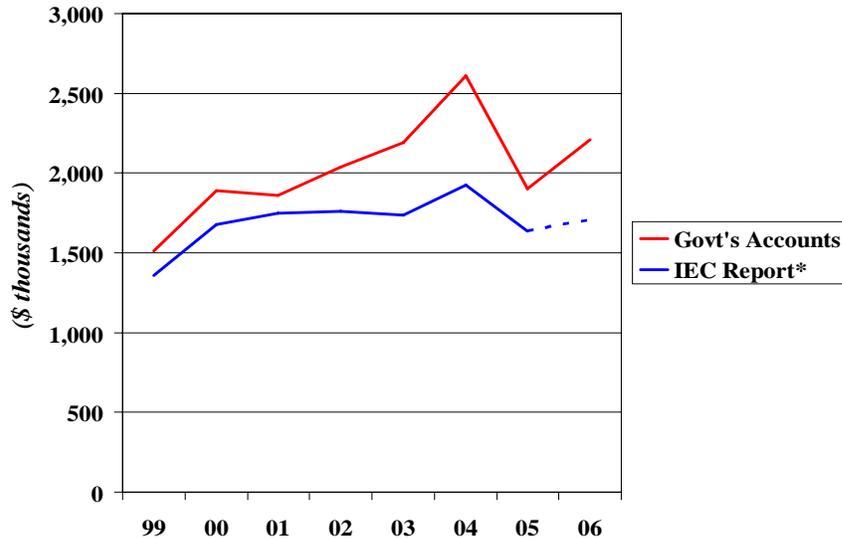
I found it unusual that the schedules of annual constituency allowance payments to MHAs (Schedule C) contained in the IEC reports for the past several years were not totaled. Nonetheless, I requested that the totals be provided by the staff of the House of Assembly for each year. Accordingly, while a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

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

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

Chart 3.11

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



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

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

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

Chart 3.12

Constituency Allowance Reporting Discrepancy

Totals from Government's Accounting System v. IEC Reports

Fiscal Year Ended March 31, 1999 to 2006

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

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

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

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

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

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

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

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

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

(ix) Summary

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

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

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

Evolution of Administrative Policies and Practices

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

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

report as follows:

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

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

We have been reminded during this review of the outmoded nature of how legislators in Canada are compensated. It is however virtually impossible for any one legislature to change it. What is required is a united and co-orderly effort to develop a new system based upon payment for services rendered and reimbursement of actual expenses incurred. For our part we are aware of the increase in the cost of our House of Assembly as a consequence of our recommendations. But if we want good and efficient government and decisions that affect our daily lives to be made by competent and well qualified men and women, we must be prepared to pay for it.³⁰

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

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

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

(Secretary).

²⁹ *Morgan Report*, p. 1.

³⁰ *Ibid*, pp. 33-34.

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

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

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

The Morgan Era: 1989-1996

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

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

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

(i) *MHA Compensation and Allowances*

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

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

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

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

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

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

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

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

³² *Morgan Report*, p. 19.

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

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

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

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

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

(ii) General Administrative Environment

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

³³ R.S.N.L. 1990, c. I-14, ss. 5(3).

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

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

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

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

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

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

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

(iii) Audits of the House of Assembly

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

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

The Policy-Shift Era: 1996-2001

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

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

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

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

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

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

(i) MHA Compensation and Allowances

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

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

funding arrangement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Successive Increases in Constituency Allowances

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

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

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

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

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

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

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

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

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

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

Chart 3.13

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

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

(b) Payment of Allowances Without Receipts

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

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

(c) Relaxed Furniture and Equipment Guidelines

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

(d) Enhanced Severance Benefit

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

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

(e) Increased Salaries and Benefits for Parliamentary Positions

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

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

(f) The Impact of the “HST Factor”

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

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

(g) Discrepancy in IEC Minutes

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

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

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

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

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

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

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

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

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

(h) Legislation to Accommodate Policy Shift

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

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

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

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

salaries of Members.

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

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

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

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

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

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

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

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

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

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

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

⁵⁰ R.S.N.L. 1990, c. I-14, ss. 5(8).

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

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

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

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

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

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

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

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

(ii) Audits of the House of Assembly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵⁹ Ibid.

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

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

(b) IEC Constrained by Legislation

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

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

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

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

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

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

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

(c) *Legislative Change*

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

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

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

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

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

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

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

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

(d) *Audit Hiatus - Diminished Controls*

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

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

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

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

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

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

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

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

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

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

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

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

⁶⁸ *Ibid.*

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

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

(iii) Administration in the House of Assembly

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

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

(a) The Financial Reporting Process

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

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

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

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

(b) Fund Transfers Near Year-End

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

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

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

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

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

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

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

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

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

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

(c) *Financial Control Environment*

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

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

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

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

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

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

(d) Assignment of Administrative Duties

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

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

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

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

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

The “Hold-the-Line” Era: 2001-2003

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

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

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

(i) MHA Compensation and Allowances

(a) Sessional Indemnity and Non-taxable Allowances Increased

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

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

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

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

(b) Indications of Year-end Payments to MHAs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31, 2002.

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

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

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

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

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

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

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

There was extra money given to the members at the end of 2003 due to extra money in the budget. An extra 10% was given to each member. Recalculated the amount. This is consistent with the prior year in that there was excess money in the budget and they distributed it to the members.⁸⁷

However, I have been unable to obtain any documentation from the Speaker or the Clerk of the House that confirms the amount of any approved increase or to whom it applied.⁸⁸

The substance of the IEC decision, whatever it was, was again not reported to the House. Schedule C (the schedule of allowed and actual constituency allowance payments) in the IEC report for fiscal 2002-03 does not reflect a 10% increase in the maximum allowed expenses. As was the case in the prior year, the totals reported as being claimed are in line with the unadjusted maximum allowed and, therefore, appear not to reflect any increase or special payment. It should be noted that the actual expenditures from the allowances and assistance account in the public accounts of the province (which includes the MHA

⁸⁵ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2002 to March 31, 2003*, p. 18, February 26 meeting at minute 10.

⁸⁶ “*Official Minutes of the Internal Economy Commission*,” February 26, 2003 meeting at minute 10, signed by the Clerk of the House of Assembly.

⁸⁷ External Auditors’ working papers from the audit of the House of Assembly for the fiscal year ended March 31, 2003.

⁸⁸ Because it was not within my mandate, I did not cause a forensic audit - or any audit, for that matter - to be undertaken with respect to payments to individual members.

constituency allowances) exceeded the initially approved budget by some \$384,000 and \$390,000 in the 2001-2002 and 2002-03 fiscal years respectively. These matters will be further discussed later in this chapter in relation to the external audits as well as in Chapter 4.

(c) *Inadequate Reporting*

I am particularly concerned by the lack of information provided in the official minutes of the IEC. Section 5(8) of the *Internal Economy Commission Act* places a requirement on the IEC to report its decisions:

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

The report of the IEC for the fiscal year ended March 31, 2002, was tabled on April 10, 2003, 13 months after the end of the respective fiscal year. Similarly, the IEC's report for the year ended March 31, 2003, was not tabled until May 20, 2004, almost fourteen months after the end of the related fiscal year.

The nature of the IEC's reporting, or lack of reporting, in relation to these matters is problematic. Not only were the minutes tabled so late as to seriously detract from their usefulness and relevance, but the information provided was inadequate, misleading and confusing:

- In both years the IEC failed to report to the House the nature of the year-end adjustments it approved for Members' allowances.
- Schedule C (the MHA constituency allowance payment summary) in the IEC reports for both years indicated that the maximum allowable expenses did not change for the respective constituencies, and, further, that the amounts claimed by MHAs were within the maximum in all cases (which would suggest that even if an increase were granted by the IEC, members did not claim it). For this reason alone, the accuracy of the allowances reported in Schedule C of the IEC reports for both years is suspect. The fact that the total of the expenditures reflected in Schedule C does not reconcile with the total of the amounts recorded on government's accounting system and reflected in the Public Accounts is a further fundamental indicator of inadequate reporting, if not misreporting, by the IEC.

It was suggested that funds were available for additional payments to MHAs because there were savings in the accounts of the House of Assembly. This may not be a fair representation of the situation. The Allowances and Assistance account was effectively overspent. The IEC was only able to authorize additional payments to MHAs by transferring

funds that had been voted by the legislature for other purposes.

This type of practice by the IEC, of approving year-end payments beyond the stipulated guidelines, appears to have carried over into the 2003-04 fiscal year as well. This will be discussed further in the review of the next era

(ii) General Administrative Environment - Overall Observations

As was noted previously, there were some administrative changes following the legislative changes of May 2000. Duties of various staff positions in the administrative structure were shuffled about. Certain titles, classifications and pay-levels were changed, but the overall staff complement did not change. Yet the administrative scope of the House of Assembly was expanded, with the addition of further statutory offices: the Office of the Citizens' Representative, the Office of the Child and Youth Advocate, and the Office of the Information and Privacy Commissioner. While each of these offices operated semi-autonomously, I was told they added further complexity to the role of the core administrative group in the House of Assembly. By 2003-04, they had added a further \$1.3 million to the budget.

Assessing the environment years after the fact, it now appears that the biggest changes did not relate to the organizational structure as such, but in the evolution of virtually absolute financial autonomy within the administrative framework of the IEC. It appears that, with the changes in the *Internal Economy Commission Act* in May 1999 and May 2000, the concept of parliamentary autonomy in Newfoundland and Labrador attained a new level:

- The IEC had been freed from the constraint of being bound by the recommendations of an independent commission in relation to MHA compensation and allowances. Through legislative change, such recommendations were no longer binding on the House. The IEC used its powers to change MHA allowances in material respects, without reference to an independent commission as initially contemplated by the legislation
- The IEC had been provided with the discretion to deny the Comptroller General and the Auditor General access to documentation supporting the expenditure of public monies. It chose to exercise this discretion immediately, yet did not correspondingly act quickly to institute audit accountability. It delayed the appointment of external auditors for over two years. Effectively, the only people with access to the documentation for payments in relation to the MHAs were the very limited and overworked financial staff in the House itself.
- The administration of the House was deemed to be outside the financial policy and control framework of government. For example, government purchasing and tendering policies were not applied. No additional policies, procedures or control mechanisms were put in place to compensate for the exclusion of the Comptroller General's pre-audit and compliance testing role.

- Treasury Board was not involved in analyzing or approving budgets, or monitoring budgetary performance in any meaningful way. Its role, by parliamentary principle, as it was often reminded, was not to question, but to facilitate, the wishes of the legislature, as represented by the IEC.

The administrative environment in the House of Assembly at this time did not reflect a concentration on compliance, transparency and accountability. The focus appeared to be on adjusting the structure and the rules with respect to the financial arrangements of the MHAs. Given the environment, that was able to be done with a minimum of public disclosure.

In assessing the administrative environment of the House of Assembly, I did not have the benefit of an operations audit of the administrative practices at the time. Nor was the information provided to me given under oath through a formal hearing process. Nonetheless, I did have the opportunity to review the reflections on the evolution of the administrative environment provided by a large number of people, including the former Clerk of the House, the Chief Financial Officer, the Director of Financial Operations, the Deputy Director of Financial Operations, the Comptroller General, secretaries of Treasury Board (past and present), Treasury Board analysts, Auditors General (past and present), representatives of the external auditors, Speakers (past and present), various members (past and present) of the IEC, a significant number of MHAs, and others. I also had the opportunity to review a wide range of documents processed by the House administration, including examples of MHA expense claims, transfers of funds, year-end payments, official and tabled IEC minutes, as well as budgetary documents, expenditure records and signing authorities. The messages from this input were not always unanimous and views differed significantly on some issues, but people were eager to express their views and observations.

Based on this considerable input, I feel compelled to share the essence and tone of what I heard and observed through my consultations and research. I must emphasize that I cannot determine exactly when some of these processes, practices, and observations first began to appear. Accordingly, this commentary does not relate to the narrow 2001-2003 time frame, but is provided in an effort to *reflect the general environment described to me as being prevalent in the years leading up to the appointment of this Commission.*⁸⁹ I would urge that they be viewed in that context:

⁸⁹ I must also emphasize that there was no sense of any impropriety expressed to me with respect to the senior staff in the administration of the House prior to the revelations in the Auditor General's reports of June 2006. In that regard, a number of people expressed surprise and shock at the Auditor General's comments. Some indicated "blind faith" and total confidence in the staff. Several MHAs indicated that they did not question matters of an administrative nature; they trusted and relied totally on the staff to guide them, advise them and ensure that they were in compliance with all of the rules of the IEC and the policies of government.

(a) Resource Constraints

Despite repeated pleas for additional administrative staff in the House of Assembly to help them cope and adjust to increased responsibility and volume of work, additional resources were not approved. It was noted that the restraint environment had been prevalent for so long it was considered virtually pointless to ask. One staff member commented: “We regarded ourselves as the poor cousins of the executive branch.”

(b) Delegation

I was told that the Clerk’s workload and concentration on matters related to the legislative responsibilities of his role were such that the full scope of responsibility for financial administration was essentially delegated to the Director of Financial Operations, whom he trusted implicitly. The Clerk would generally address financial issues only when there was a problem, or at budget time, when a matter was brought to his attention by the Director, and as required in his role as secretary of the IEC. The Clerk was not regularly involved in reviewing or processing documents, financial reporting, budget monitoring or administrative matters.

(c) Segregation of Duties Difficult

The small administrative staff made segregation of duties extremely difficult. With the Clerk’s and Clerk Assistant’s concentration on legislative matters, there were really only two people on the staff of the House of Assembly Operations regularly involved in financial administration - the Director of Financial Operations and the Deputy Director of Financial Operations / Research Officer of the Public Accounts Committee. The Director of Financial Operations had been delegated full authority to sign documents for payment on behalf of the Clerk.

(d) Claims Processing Challenges

Appropriate review of the constituency allowance claims could be a very complex and time-consuming task. I was told the small administrative unit in the House felt that they just did not have the staff available to do justice to the detailed review and verification that was required. Accordingly, there was the sense that often claims may have been processed without adequate scrutiny.

(e) Unusual Approval Process

The constituency allowance claim form in use required two authorized signatures, besides that of the claimant, to verify that the claims were in order. I was told that claims

were frequently reviewed first by the supervisor and then sometimes sent to a subordinate for sign-off before entering on the system. As one staff member put it, “We had the cart before the horse.” I was also told that government’s *Oracle* electronic accounting and payment system requires the involvement of two individuals as a control to provide appropriate segregation of duties: one person to enter the data on the system and a separate person, designated by the Clerk and authorized by the Comptroller General, to review the transaction and authorize the release of payment electronically.

We heard that frequently a staff member would review MHA claims, sign them as being authorized for payment, counter-sign them or request another to counter-sign them, and then authorize payment electronically on the government computer system. We were told as well that sometimes a staff member would actually prepare claims on behalf of MHAs (in an effort to be of assistance), obtain the MHA’s signature, and then the staff member would sign and send it to a subordinate for verification and the electronic release of payment.

(f) Expedited Payment of Claims

We were told that there were times when claims were backlogged or there were pressing needs to expedite payments quickly. It was suggested to us that the second reviewer would be told that everything was in order and he would “let it go,” knowing that he did not have the opportunity to review it in the fashion he considered appropriate. It was also noted that in such cases the person reviewing the claim was the subordinate in the organizational hierarchy. He was being asked by his boss to approve a claim that his supervisor had already approved and signed. Similarly, it was indicated to us that there were occasions when claims would be presented to the subordinate late in the day or just before lunch, in the context that approval was needed quickly.⁹⁰

(g) Double Signing

There was evidence that individual MHA claims would sometimes be signed twice by the same staff member, to verify the validity of the claim and authorize it for payment. In this regard, staff of the Commission reviewed a number of claims that appeared to have been signed or initialed twice by the same person. At one point, it was suggested to us that this should not be a matter of disproportionate concern, given the realities of the small staff complement and the presence of a further electronic control. That control involved the further segregation of duties in the requirement for sign-off electronically by a second authorized person, other than the person entering a transaction on the system, before actual payments could be released. There were indications, however, that this did not prove to be

⁹⁰ This assertion is disputed by the supervisor who indicates that in such cases the initial request would have been made previously, but the subordinate was “either too busy or had something else to do.”

an efficient control, and I was told that payments were sometimes authorized without the person authorizing having viewed the documentation.

(h) Authorization of Payments Electronically - "Sight Unseen"

Due to the volume of the claims and invoices, the small staff and the pressures to meet the service requirements of the House of Assembly and its members, the financial administration personnel had some time ago sought the Clerk's approval to designate an additional person to help with authorizing payments on the system. An administrative officer in one of the statutory offices of the legislature was given authority by the Comptroller General to approve payments electronically on the system and thereby release the funds for payment. The person granted this authority was employed in a statutory office that has its offices in a separate building in another part of the city.

The person to whom the authority outlined above had been granted would get a call indicating that a claim had been entered in the system that required approval. This employee would be informed that it had been reviewed by staff of the House of Assembly and it was in order for payment. The transaction would then be called up on the computer system, where the individual could see the bare basics of the transaction, particularly the payee and the amount, but none of the supporting documentation. In short, it appears that this person was not in a position to verify the claim, its conformity with the rules, and the adequacy of documentation (or even if documentation existed). We were told that if the payment related to the purchase of goods, this individual was not in a position to verify that the purchase was in order and the goods received. However, we were also told that this person, physically remote from the House of Assembly's administrative offices in the Confederation Building, was asked to, and did, release payments in relation to such matters "sight unseen." It was suggested to us that this individual had initially questioned whether there was a rational basis for this process, but the person ultimately complied in an effort to help facilitate the process. "Who was I to question it - if that was the way the House of Assembly wanted it done," was the explanation given.

(i) Inadequate Documentation

I did not initiate an audit of MHA claims, but, through Commission staff research efforts, I did attempt to get an appreciation of the nature of the physical documentation provided in support of MHA claims. In a number of cases, the documentation appeared to be lacking, if not totally inadequate. At least one claim was noted that had been paid with no signature of approval from a staff member of the House of Assembly. Another claim was noted to have been processed with no receipts attached, and the notation "receipts to follow." There were many cases when little explanatory information was provided on the form, and the documentation appeared to be lacking.

(j) No Individual MHA Accounts

Separate accounts were not maintained, as part of the House financial system, for individual MHAs to monitor or control their constituency allowance expenditures individually against the prescribed annual maximum expenditure for their respective constituencies.⁹¹ We were told that individual MHA expenditures were tracked against their respective allowed maximums on a “spreadsheet” maintained by the Director of Financial Operations, who effectively retained sole access to the data. I received a number of indications that neither MHAs nor the Clerk were provided with regular reports on the status of constituency allowance accounts throughout the years.⁹² We were told that when members inquired orally, they would be informed orally of where they stood relative to the maximum allowed. Sometimes the information provided would be countermanded by provision of alternate figures, especially when the initial figures were challenged by the MHA concerned.

As a general overall impression, it is important to highlight that we repeatedly heard how the House of Assembly was different from the rest of Government. There appeared to be a mutual understanding that, when it came to the legislature, the executive branch of Government was to adopt a “hands-off” policy.

(iii) Audits of the House of Assembly

I have already noted that following the changes in the *Internal Economy Commission Act* in May of 2000, the IEC failed to appoint an auditor, despite the requirements of the new Section 9 of that Act. It appears that the IEC procrastinated on the appointment of an external auditor, and for a considerable period of time did not articulate its position to the Auditor General. The Auditor General had identified areas of concern with respect to certain constituency allowance expenditures, but was unable to access the associated documentation. Eventually, several months after the *Act* had been amended, the Auditor General was essentially barred from pursuing the issues she had identified. Given the concerns articulated by the Auditor General one might be forgiven for assuming that the IEC, now charged with audit responsibility, would have been anxious to assume its responsibility for stewardship and would have moved quickly to ensure that public funds were being spent properly. Yet, as the following review indicates, despite its various commitments, including

⁹¹ We received conflicting information on the reason separate accounts were not maintained. Staff of the House indicated that requests for a new system were denied, while the Comptroller General indicated the administration staff of the House had been informed that government’s computer systems could accommodate separate accounts but the staff of the House did not wish to change the system.

⁹² The Director of Financial Operations disputes this assertion and has indicated to me that Members were informed of their balances at the beginning of each year and were provided with updated reports quarterly. He also indicated that some Members, particularly some Ministers, did not want reports in writing or electronically “for fear it would be seen by others.” He emphasized that in his opinion “confidentiality” was the biggest concern with respect to MHA expenses.

public undertakings with respect to the audit process, the IEC effectively disrupted the audit process for over two years, despite the fact that questions had been raised by the Auditor General (which appear to have precipitated amendments in 2000 to the *Internal Economy Commission Act*) about the propriety of certain MHA expense claims.

(a) Auditor General Denied Access

On October 4, 2001, the Auditor General met with the Speaker of the House of Assembly to discuss issues identified during preliminary audit work on MHA constituency allowances, including information on the purchase of artwork and entertainment expenses.⁹³ Then, on October 9, 2001, the Auditor General wrote the Speaker to request access to supporting documentation for disbursements made by the House. She indicated that this information was necessary to enable her to carry out her responsibilities in connection with the audit of the financial statements of the province: to “audit the disbursements of public money” as required under the *Auditor General Act*.

The IEC considered the Auditor General’s request on October 12, 2001, and the official minutes of that meeting indicate that

The Commission directed the Speaker to write the Auditor General to advise her that in the opinion of the Commission, in accordance with the *Internal Economy Commission Act*, the Commission was not obligated to comply with the Auditor General’s request. The Members of the Commission further directed the Clerk to seek, if necessary, an interpretation of Section 9 of the *Internal Economy Commission Act* and its implications with respect to the Auditor General’s powers under sections 11, 12, and 13 of the *Auditor General Act*.⁹⁴

The Speaker complied with this direction from the IEC and wrote the Auditor General on October 23, 2001, indicating that

I have been directed by the Commission to report that in accordance with section 9 of the *Internal Economy Commission Act*, the Commission is not obligated to comply with your request.⁹⁵

While the extracts from the minute and the letter outlined above appear to be totally consistent with one another, I must point out that both are at variance with the tabled minutes for that IEC meeting held on October 12, 2001, as contained in the IEC’s report to the House

⁹³ Newfoundland, *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies, for the year ended March 31, 2001*, p. 13, item 12 (MHA Constituency Allowances).

⁹⁴ “Official Minutes of the Internal Economy Commission,” October 12, 2001 meeting at minute 1, signed by the Clerk of the House of Assembly.

⁹⁵ Letter from the Speaker of the House of Assembly to the Auditor General (October 23, 2001).

of Assembly for the 2001-02 fiscal year (which was tabled on April 10, 2003). The relevant sentence in the publicly reported minutes states:

The Commission directed the Speaker to write the Auditor General to advise her that, in accordance with the *Internal Economy Commission Act*, the Commission will publicly advertise for external auditors of the accounts and financial records of the House of Assembly and its various offices including the Office of the Auditor General.⁹⁶ [emphasis mine]

The Commission staff could find no evidence of a letter to the Auditor General consistent with this direction. Neither has the Commission found any indication that there was an advertisement seeking auditors at this time. Three months later, on January 17, 2002, the IEC met and agreed to advertise for an auditor to audit the accounts of the House:

The Commission by order directed the Clerk to prepare an advertisement for obtaining the services of an auditor to audit the accounts of the House of Assembly pursuant to section 9 of the *Internal Economy Commission Act*.⁹⁷

Two weeks later, the Auditor General tabled her report to the House of Assembly for the 2000-01 fiscal year and explained how she had been denied access to documentation and was “unable to fulfill [her] responsibilities under the *Auditor General Act* and complete [her] audit of payments made to MHAs from public monies.”⁹⁸

In response to the Auditor General’s concerns as set out in that report, the Speaker issued a rather lengthy public statement on February 4, 2002, on behalf of the Commission of Internal Economy, entitled “MHAs Accountable.” Some of the more pointed remarks from that statement include the following:

The Auditor General has left the impression that the *Auditor General Act* and the *Financial Administration Act* have in some way been violated and that there is no accountability for members’ district allowances. This is simply not true. An audit must take place. *The Auditor General Act* has not been violated ...

⁹⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2001-March 31, 2002* p. 8, October 12 meeting at minute 1.

⁹⁷ *Report of the Commission of Internal Economy for fiscal year April 1, 2001-March 31, 2002*, p. 11, January 17 meeting at minute 5.

⁹⁸ *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies, for the year ended March 31, 2001*, p. 14, item 12 (MHA Constituency Allowances).

... Also, the law provides the commission with the authority to set policies with respect to the documents which may be supplied to the Comptroller General. This has been done in compliance with the *Financial Administration Act*.⁹⁹

The law reflects the opinion of all members of the House of Assembly when enacted in 2000 that it is inappropriate for the Auditor General, who is both a servant and an employee of the House of Assembly, to audit her employer which is the House. Under another provision of the *Internal Economy Commission Act*, the Speaker each year tables the list of expenditures of members of the House plus the minutes of the commission and the rules relating to members expenditures. The commission has, since 1990, followed this requirement so that its affairs have always been open, transparent and accountable.

...

Some time ago the Commission of Internal Economy gave instruction that the accounts of the House of Assembly be audited by an auditor following the tabling of the Public Accounts. A public proposal will soon be advertised for the audit of the House of Assembly accounts for the fiscal year 2000-2001.¹⁰⁰

...

Unfortunately, the Commission of Internal Economy was not afforded an opportunity to review the Auditor General's remarks in time to have a response published in her report. Today's statement is the commission's means of setting the record straight and confirming the accountability of the MHAs as set forth in legislation.¹⁰¹

I would simply note that, notwithstanding the direction given by the IEC on January 17, 2002, and the Speaker's public statement on February 4, 2002, indicating that an audit was about to be commenced, a specific audit for the fiscal year 2000-2001 has yet to be initiated.

(b) *Audit Process Delayed*

It appears that no definitive action was taken for months after the Speaker's

⁹⁹This statement did not indicate that the "policy" established by the Commission was that no documentation would be provided to the Comptroller General with respect to MHA expenses.

¹⁰⁰ This Commission would point out that a public proposal for an audit of 2000-01 was not advertised until February 22, 2003. As was subsequently explained, the IEC decided to drop this audit in April 2003. Accordingly, an auditor was never appointed in respect of 2000-01.

¹⁰¹ These quotations were extracted from a press release issued by the Speaker on behalf of the Commission of Internal Economy on February 4, 2002.

statement. In April 2002, the IEC did review a draft proposal to advertise for audit services. This was presumably in response to the earlier decision of the IEC taken in January 2002. A decision was deferred at that time to permit members to consult their caucuses. The next record of the matter surfacing was at the IEC meeting on November 8, 2002. The official minutes, maintained in the Clerk's office, state:

In accordance with section 9 of the *Internal Economy Commission Act*, the Commission by order agreed that the accounts of the House of Assembly be subject to an audit for the fiscal years ending March 31, 2001, March 31, 2002 and March 31, 2003. Subject to further revision by the Clerk and the Comptroller General of a request for proposals documentation, the Commission directed the Clerk to advertise a request for proposals in the Province seeking the services of an auditor.¹⁰²

(c) *Discrepancy in IEC Minutes*

There is a notable discrepancy between the official minutes quoted above and the minute subsequently tabled in the House as part of the IEC report for 2002-03. Notwithstanding the official records of the meeting, minutes tabled in the IEC report refer to ordering the audit of a three-year period starting with the fiscal year ending *March 31, 2002*;¹⁰³ yet the official minutes refer to an audit of a three-year period commencing with the fiscal year ending *March 31, 2001* and covering the periods up to the fiscal year ending *March 31, 2003*.

The official minutes reflect a time period that appears logical because it starts with the April 1, 2000, to March 31, 2001, fiscal year - the year the *Act* was changed and the section requiring the IEC to appoint an auditor was enacted. Nonetheless, the IEC minutes reported to the House reflect a year being skipped. According to those minutes, no audit was to be requested for the fiscal year ending March 31, 2001. I note also that the IEC report including these minutes was not tabled until May 20, 2004.

(d) *Further Delays and Discrepancies*

The delays and discrepancies merit further discussion. While the IEC had, on November 8, 2002, directed that audit proposals be sought, several months passed before the audit process was finally initiated with an advertisement. The draft request for proposals appears to have been revised through subsequent discussion with the Comptroller General.

¹⁰² "Official Minutes of the Internal Economy Commission," November 8, 2002 meeting at minute 2, signed by the Clerk of the House of Assembly.

¹⁰³ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2002 to March 31, 2003*, p. 13, November 8 meeting at minute 2.

The request for proposals, which was not actually advertised until February 2003, covered a five-year period: from the fiscal year ending March 31, 2001, to the fiscal year ending March 31, 2005. (There is no indication of the IEC having provided direction to alter the time frame from the initial three years).

The proposals from various accounting firms were subsequently received and then considered by the IEC at a meeting held on April 9, 2003. While the proponents had responded to the request for audits covering five fiscal years, the IEC directed that the proposals be assessed on the basis of a three-year contract for the fiscal years 2001-02, 2002-03, and 2003-04:

Members of the Commission reviewed the recommendations with respect to the Request for Proposals to audit the accounts of the House of Assembly on file with the Clerk. The Commission directed the Clerk to discuss with the Comptroller General the decision of the Commission that the submissions received from the three accounting firms be assessed on the basis of a three year contract for the following offices and for the following fiscal years:

(a) the House of Assembly for the fiscal years 2001-02, 2002-03 and 2003-04.

...

The Clerk will report back to the Commission.¹⁰⁴

The Clerk subsequently wrote to the firms that had responded to the advertisement indicating that “the Commission has directed me to revise the terms of the proposed contract for the required audits ...” and provided them with the opportunity to submit revised estimates “[b]ased upon the revised audit requirements.”¹⁰⁵ A proposal from an external accounting firm, revised to reflect the shortened time, was ultimately accepted on June 24, 2003.

I have endeavoured to ascertain an explanation for the discrepancies in the various mandate periods: from the official minutes of November 8, 2002, to the minutes tabled in the House, to the advertised periods, to the revised audit terms directed by the IEC in April 2003 and ultimately as reflected in audit arrangements contracted in June 2003. In this regard it has been repeatedly emphasized to me by the offices of the Speaker and the Clerk that the confusion surrounding the mandate periods for these initial audit assignments must have been due to inadvertence: “clerical errors” or “oversight with respect to the audit of the 2000-01 accounts.” Furthermore, I was told that “neither the IEC nor the Speaker made direct or indirect representation ... to change the fiscal years from those contained in the

¹⁰⁴ “Official Minutes of the Internal Economy Commission,” April 9, 2003 meeting at minute 2, signed by the Clerk of the House of Assembly.

¹⁰⁵ Letter from the Clerk of the House of Assembly to External Auditors (May 23, 2003).

Request for Proposals.” As I have indicated, the information to which I have access suggests otherwise:

- *The official minutes* of the IEC for November 8, 2002, indicated that the IEC agreed that an audit be conducted for *three* fiscal years: 2000-01, 2001-02 and 2002-03. The *IEC report* to the House, however, indicated a different three years: 2001-02, 2002-03, 2003-04. (The erroneous IEC report was tabled some 18 months after the meeting. That report, while it is an incorrect reflection of the official record, coincidentally or otherwise, reflects the ultimate outcome following *subsequent IEC decisions*.)
- The advertisement published in February of 2003 requested proposals for *five* fiscal years: 2000-01, 2001-02, 2002-03, 2003-2004 and 2004-05. This was a change from the direction given by the IEC on November 8, 2002. The change from three to five years does not have the appearance of a clerical error.
- All respondents to the advertisement bid on the five-year audit assignment as requested in the advertisement. Then the official minutes of the IEC for April 9, 2003, indicated that the commission directed the submissions be evaluated on the basis of a three-year contract (2001-02, 2002-03 and 2003-04). This was a fundamental change from the advertisement and the request for proposals. This decision effectively dropped the *first* and *last* year from the advertised audit mandate period. This was an officially recorded decision and direction of the IEC.
- The Clerk wrote the respondents consistent with the *direction of the IEC* reflected in the official minutes of April 9, 2003, and requested that the audit proposal be revised to cover the three-year period 2001-02, 2002-03 and 2003-04. The auditors wrote back and changed their proposal accordingly. This was a clearly documented change.

From this sequence of events, and the official record of IEC decisions, I find it difficult to conclude that the 2000-01 audit was simply overlooked due to clerical error and that there was no IEC direction in this regard. On the contrary, the official record and related correspondence indicates that a conscious decision was made by the IEC not to proceed with the audit for 2000-01 (and the audit for 2004-05) after proposals to undertake the respective audits had been received.

More than three years had passed since the *Internal Economy Commission Act* was changed to give the IEC the authority *and responsibility* to appoint an auditor to conduct an annual audit. The disruption of the audit process and the passage of time were articulated by the Auditor General in his report for the fiscal year ended March 31, 2003:

I was informed that this change in the *Act* [the new section 9 of the *IEC Act* providing for the appointment of an auditor] was intended to prevent my Office from completing the audit of expenditures of the House of Assembly.

As a result my Office has not had access to the accounts and records of the House of Assembly since the *Internal Economy Act* was amended. Therefore, the expenditures of the House of Assembly have not been audited for the past four years.¹⁰⁶

The Auditor General went on to list the annual expenditures of the House of Assembly for four fiscal years, from the year ending March 31, 2000, to the year ending March 31, 2003. He indicated that, after excluding the net expenditures of the Office of the Auditor General, “a total of \$39.9 million of net expenditures have not been subject to an annual audit by the Office of the Auditor General.”¹⁰⁷

Notwithstanding the recitation of these warning signals, there did not appear to have been any sense of urgency on the part of the IEC to comply with its statutory duty and have audit work completed.

(e) Audit Void

Quite apart from the delay in initiating the annual audit process as required under the legislation, the IEC’s ultimate appointment of auditors left an audit void in respect of the year 2000-01. This is a direct contravention of the requirement for an annual audit as set out in section 9 of the *Internal Economy Commission Act*. Despite considerable questioning on the matter, I have been unable to ascertain why a decision was made not to audit the fiscal year 2000-01. Furthermore, it appears, based on the Auditor General’s remarks, that since he could not access the documents of the House since May of 2000, the 1999-2000 fiscal year may not have been audited appropriately either.

While not explaining the audit void, the Commission did receive a potential explanation for dropping the 2004-05 fiscal year from the audit plan when the audits were contracted in 2003. In this regard, one member of the IEC at the time suggested that the 2004-05 fiscal year was dropped because, at that time, it was a future period, following an impending election. There was a feeling amongst some members that the current IEC should not contract an audit for a period that would fall within the mandate of the next House of Assembly.

(f) The Audit Approach

The “Request for Proposals to Audit the Accounts of the House of Assembly” (RFP), pursuant to the IEC decision on November 8, 2002, appears to have been published early in

¹⁰⁶ *Report of the Auditor General to the House of Assembly on Reviewing Departments and Crown Agencies for the Fiscal Year ended March 31, 2003*, p. 7, (s.2.1 - Audit of the House).

¹⁰⁷ *Ibid.*

2003. (I was unable to determine from the Clerk's office the specific date of the request nor am I certain that we have the final RFP.) The draft RFP provided to me by the then Clerk and the auditors, which purported to constitute the essence of the final RFP, indicated that the request called for an audit to be performed in accordance with "generally accepted auditing standards," and that the audit would serve three functions:

- a. To support the Auditor General's attest audit opinion on the financial Statements and Public Accounts of the Province.
- b. To provide attest audit assurance relating to the annual statements of expenditure and related revenue and the schedules of assets and liabilities of the House of Assembly.
- ...
- c. In accordance with the provisions of the *Internal Economy Commission Act* to provide a report for the House of Assembly for each year ... including any significant comments which the auditor wished to bring to the attention of the House of Assembly.¹⁰⁸

The RFP also outlined background information on the IEC and its role in relation to the establishment of policies, procedures and funding limits:

The IEC operates and has certain powers pursuant to its *Act*. In particular, the policies, procedures and funding limits for specific MHA allowances, per diems, etc., are set by the IEC. The IEC funding requirements are included in the Consolidated Revenue Fund and the fund is audited by the Auditor General. The IEC forwards payment requests to the Office of the Comptroller General for processing via Government's (Oracle) Financial Management System in the Consolidated Revenue Fund. The detailed documentation supporting those payments resides with the Office of the Clerk of the House of Assembly.¹⁰⁹

In their proposal dated March 14, 2003, the firm ultimately contracted to do the audits emphasized their extensive experience, including in the public sector, as well as their modern risk-based approach. The proposal goes into some detail to explain the emphasis of the firm's proposed audit approach:

Our audit of the accounts of the House will focus on management controls, the overall control framework and the areas of risk ... The approach is based on the concept of understanding how management at the appropriate level

¹⁰⁸ Newfoundland and Labrador, Office of the Clerk of the House of Assembly, "Request for Proposals - Audit of the Accounts of the House of Assembly."

¹⁰⁹ Ibid, see item 11.

exercises control over various transactions and processes. We will focus on monitoring procedures, rather than entrenching ourselves in extensive transaction testing where there is a tendency to lose sight of the overall objective ...

We tailor our procedures to enable us to spend proportionately more time on these higher-risk business issues and less time on matters of lower sensitivity ...

We believe the following considerations to be relevant in your environment and should be part of our audit process:

- Expenditures in compliance with government legislation or acts of the House of Assembly.
 - Expenditures in compliance with government fiscal policies and practices.
 - Expenditures in compliance with approved government estimates as laid out in the provincial budget.
 - Examination of employment contract relating to political positions.
 - Payroll expenditures in compliance with government or House approved pay scales.

... All material financial statement balances and transactions will be subjected to our verification procedures as well as to analytical review. Our plan is based on auditing through testing of internal control processes and performance of certain substantive tests relating to operating activities ...¹¹⁰

Research staff for this inquiry were informed by the external auditors that their ultimate terms of engagement for the audit did not actually include a number of the items listed in the RFP. The auditors indicated that their ultimate assignment changed somewhat from that described in the RFP and was confined to a regular “financial statement” audit.¹¹¹ Unfortunately, as I indicated previously, neither the auditors nor the House of Assembly were able to provide me with a copy of the final engagement letter which established the terms on which the auditors were engaged.

The RFP had requested that the audits be completed within three months of

¹¹⁰ Newfoundland and Labrador, Deloitte & Touche, *The House of Assembly of Newfoundland and Labrador, Proposal to Serve* (St. John’s: Deloitte & Touche, March 14, 2003), pp. 5-6.

¹¹¹ See Chapter 8 for a discussion of the various types of audits.

acceptance of a proposal for years past, and within three months of the end of subsequent fiscal years. The auditors indicated that they would meet that timeline. They also indicated that, depending on the year, their chargeable hours for the assignment would be the equivalent of up to three weeks of audit time.

(g) *First Audits Under the Revised IEC Act*

On June 24, 2003, as noted previously, the auditors were retained to audit the accounts of the House of Assembly based on the revised time frame, which covered the three fiscal years 2001-02, 2002-03 and 2003-04.¹¹² I found it unusual, and disconcerting, that neither the administration of the House of Assembly, nor the auditors, could locate a copy of the signed contract or audit engagement letter.

I understand that the audits were not started until late in the fall of 2003, through agreement with the staff of the House. Apparently, it was also agreed that the first two years (2001-02 and 2002-03) would be done concurrently. While research staff for this Commission were told that there were no significant difficulties encountered, it appears the process was slow. The audited statements for 2001-02 and 2002-03 were dated October 29, 2004, and were not finalized to the extent that they could be delivered to the House until June 30, 2005 - almost two years after the audit contract was awarded.

The audited financial statements, when finally received, were unqualified. No unreconciled audit differences were noted, and there was no management letter issued to indicate any concerns with respect to the appropriateness of financial controls, procedures or the financial management environment. The statements for 2001-02 noted that there was no comparative data because “*the prior year [2000-01] has not been audited,*”¹¹³ - another “red flag” that an audit void existed.

I understand that the auditors commenced the audit for 2003-04 later in 2005, and again delays were encountered. This audit was still not completed in the summer of 2006, when the reports giving rise to this inquiry were issued by the Auditor General. Eventually, the auditor’s engagement for the 2003-04 fiscal year was cancelled by the IEC.

(h) *The Audit Void Remains*

It was five years from the change in the legislation, and the exclusion of the Auditor General from the House of Assembly audit process, until the first audits of the House were completed. Furthermore, notwithstanding section 9 of the Act, which requires an annual

¹¹² Letter from the Clerk of the House of Assembly to Deloitte & Touche (June 24, 2003).

¹¹³ Newfoundland and Labrador, *Financial Statements of the House of Assembly and Statutory Offices, Province of Newfoundland and Labrador, March 31, 2003*, p. 6, See note 3.

audit, and notwithstanding the Speaker's public commitment on February 4, 2002, that the accounts of the House would be audited and that they would shortly call for proposals to audit 2000-01, the IEC decided not to proceed with an audit of the accounts for that fiscal year.

The audit void remains in respect of 2000-01, along with the inherent violation of the *Internal Economy Commission Act*. Despite extensive questioning of IEC members, the Speaker, the Clerk, the staff of the House, and the auditors, and a thorough review of the IEC minutes and related documentation, I have found no plausible explanation for the IEC's failure to carry out its obligations in respect of the audit requirement for 2000-01.

The Refocusing Era: 2004-2006

Following a general election in the fall of 2003, the newly appointed IEC met for the first time on December 16, 2003. At this initial meeting, it was noted that there had not been an independent commission of inquiry to study indemnities and constituency allowances since 1989. Accordingly, the IEC requested the Clerk to prepare a memorandum respecting the appointment of such a commission to make recommendations on appropriate levels of indemnities and allowances during the 45th General Assembly.¹¹⁴ While there were initial indications in the minutes that the concept of an independent commission of inquiry was to be further considered by each caucus, the matter appears not to have been pursued.

The membership of the IEC had changed somewhat pursuant to the outcome of the election. The new Speaker adopted a distinctly different approach to various matters from both an administrative and an overall policy perspective. An Executive Committee of the IEC was established, comprising the Speaker, the Deputy Speaker, the Government House Leader, the Opposition House Leader, as well as the Clerk. This committee began to review matters and make recommendations in advance of meetings of the full IEC.

A significantly different policy thrust to set a new direction in the operation of the IEC was articulated in a confidential memorandum authored by the Speaker and addressed to the Members of the House of Assembly, dated March 1, 2004. In this memorandum, entitled "Accountability and Its Relevance to Members' Constituency Allowances," the Speaker outlined various changes in policies and practices with respect to various aspects of constituency allowances. Most importantly, however, the Speaker set out his overall policy perspective to frame the context in which the changes were being instituted:

In recent years, the public has demanded greater accountability and a high level of transparency in the expenditure of public funds. While this is a principal [*sic*] generic to all public expenditures, it is even more so in

¹¹⁴ "Official Minutes of the Internal Economy Commission," December 16, 2003 meeting at minutes 12 and 13, signed by the Clerk of the House of Assembly.

instances where elected officials have access to taxpayer revenues in the conduct of their offices.

Trust and confidence is fostered where public disclosure and transparency permeates the principles upon which public funds are received and where the expectation of public accountability and disclosure is understood and practiced.

Since assuming the Office of Speaker ... I have become aware of the need for much greater accountability in the rules and practices pertinent to Members' Constituency Allowances.

However, it is not my intent or desire to engage either directly or indirectly in a critique or analysis of the past! My intent is to establish guidelines that can be used in a "go forward" approach.

In addition, I wish to make it quite clear that while I have serious reservations about some of the past practices, there is no intent nor is there any substantive empirical data of which I have knowledge to establish a case for practices that were contrary to the rules.

However, therein lies the fundamentals of the problem. Our rules are rather loosely written and in their implementation, can and have lead [*sic*] to variations in interpretations.¹¹⁵

In this memorandum, the Speaker committed to produce a more detailed set of rules to ensure consistency in the application of policies. In this regard, following review of the memo, the IEC directed the Clerk to prepare a Members' Handbook. In addition, the IEC directed that the Director of Financial Operations provide a monthly statement to each member on the status of the Members' Constituency Allowance. The IEC also agreed that the Members and their staffs should become knowledgeable with respect to the *Conflict of Interest Act* and consult the Speaker or Clerk when in doubt concerning constituency allowance expenditures.

Perhaps one of the most pronounced and high-profile policy changes recommended at that time and adopted by the IEC was the decision that "as of April 1, 2004, the Auditor General would be invited to audit the accounts of the House of Assembly including the Constituency Allowances of Members."¹¹⁶ To this point, the House had still not received an audit for any year since the provisions of the IEC Act had been changed in May of 2000. It

¹¹⁵ Memorandum from the Speaker of the House of Assembly to Members of the House of Assembly, entitled "Accountability and its Relevance to Members' Constituency Allowances," (March 1, 2004).

¹¹⁶ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 17, March 1 meeting at minute 4(8).

appears to have been assumed that the audits for the three years ending March 31, 2004, would be completed by the external auditing firm as previously contracted.

This memo from the Speaker signaled a fundamental change in direction from the *modus operandi* evident in the previous seven or eight years. In some respects, it represented a refocusing on certain principles and policies enunciated in the Morgan report. It is for this reason that I have termed it the “refocusing era.”

A number of developments are noted in respect of this era, which are in tune with this overall policy direction:

- Constituency allowances were reduced for a period in response to fiscal challenges;
- Certain guidelines governing MHA expenses were tightened;
- The respective roles of the Comptroller General and the Auditor General were restored;
- Initiatives were launched to strengthen the financial administration of the House and to provide improved data and assistance to MHAs; and
- The external audit reports for 2001-02 and 2002-03 were received.

There was, however, a range of decisions or occurrences that were inconsistent with the newly emphasized policy direction. Some examples include:

- A special payment to MHAs was approved in 2004 beyond the prescribed limits and guidelines;
- The IEC’s reporting and disclosure practices did not reflect the principles of transparency;
- Progress on strengthening the financial management framework was slow;
- Little progress was made in terms of providing guidance to MHAs; in particular, no Members’ handbook was produced;
- The external audit did not provide insight into the financial management and control environment; and
- The Auditor General issued reports on an array of troublesome findings.

Against this summary overview, it is important to explore the evolution of the various dimensions in this era in more detail.

(i) MHA Compensation and Allowances

(a) Reduced Allowances and Tighter Guidelines

Based on the Speaker's recommendations in his memorandum of March 1, 2004, the IEC approved a number of specific policy changes in respect of constituency allowances:

- Each Member's constituency allowance was to be reduced by 5% effective April 1, 2004.¹¹⁷
- The threshold for capital purchases (furniture and equipment) that could be retained by an MHA was reduced from \$1,000 to \$500. Items costing \$500 or more would be the property of the Crown and be depreciated over three years.¹¹⁸
- All expenditures from Members' Constituency Allowances would require receipts for reimbursement.¹¹⁹

The Speaker had recommended the 5% reduction in constituency allowances effective April 1, 2004, for the 2004-05 fiscal year in the interest of showing concern for the province's fiscal realities. The official minutes of the IEC for March 1, 2004, indicate that, in approving the 5% reduction, the IEC acknowledged the possibility of some reprieve toward the end of the year:

By order, the Commission agreed that there would be a five per cent reduction in Members' Constituency Allowances beginning with the new fiscal year. It was further agreed that if there were savings in other accounts at the end of the next fiscal year that the savings could be considered by the Commission for application to the Members' Constituency Allowances.¹²⁰

¹¹⁷ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 2.

¹¹⁸ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4(3).

¹¹⁹ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 20, March 31, meeting at minute 1. The IEC had decided on March 1, 2004 that the previous discretionary allocation of \$4,800 would be reduced to \$3,000, and paid in equal monthly amounts. However, on March 31, 2004, it was decided that the reimbursement of expenses without receipts would be discontinued entirely - a reversion to the fundamental principle enunciated in the Morgan Report.

¹²⁰ "Official Minutes of the Internal Economy Commission," March 1, 2004 meeting at minute 2, signed by the Clerk of the House of Assembly.

There is no indication that such an adjustment was considered or awarded to the MHAs toward the end of fiscal 2004-05; however, there was an adjustment subsequently approved for 2003-04.

(b) *Special Payments to MHAs*

On May 5, 2004 - the day after the legislation settling a public sector strike became law - someone within the House administration prepared a memorandum entitled "Re: Members Allowances from 2003-04," which read:

At this time there is approximately \$160,000 surplus remaining in the various accounts of the House of Assembly in 2003-04 fiscal year. All invoices for payment for this fiscal year have been or will be paid shortly.

If the Commission approves, the Commission could direct that each Member receive \$1500 plus HST for a total of \$2000 or \$2610 plus HST for a total of \$3000. This money will be charged to the old fiscal year as a discretionary amount for each member and Members will be reimbursed accordingly. However, if this policy is approved, each Member must submit his or her claim by Friday, May 14.¹²¹

On May 11, 2004, the Executive Committee of the IEC met and amongst other things, considered the prospect of recommending the payment of a one-time additional allowance to MHAs in respect of the 2003-04 fiscal year:

The Members agreed to raise with the full Commission the matter of Members Allowances for the 2003-04 fiscal year with the recommendation that the Members be allocated a onetime allowance from the old fiscal year estimates of approximately \$2500 each plus HST.¹²²

These are official minutes of the Executive Committee, signed by the Clerk, that have not been tabled in the House, nor, to my knowledge, were these minutes otherwise publicly disclosed.

This matter was subsequently discussed and approved at a meeting of the IEC on May 12, 2004. The minutes of that meeting make two separate references to it, implying that it was initially discussed with no decision, and then, subsequently, a decision was taken:

¹²¹ Unsigned and unaddressed memorandum provided to the Review Commission by the Speaker of the House from the files of the House with no indication as to its author.

¹²² Newfoundland and Labrador, Executive Committee of the Commission of Internal Economy, *Meeting and Minutes*, May 11, 2004 meeting at minute 2.

2. Members of the Commission discussed matters relating to Members' Allowances for the 2003-04 fiscal year and agreed that the matter would be resolved following consultation with the Minister of Finance and the House Leaders.¹²³

6. The Commission by order approved a proposal relating to Members' Constituency Allowances for the 2003-04 fiscal year. It was agreed that the proposal as submitted be approved for the period ending March 31, 2004.¹²⁴

In the first instance, it might be reasonable to enquire as to how a payment approved in May might get charged back to the prior fiscal year, which ended March 31, 2004. In that regard, it must be noted that, commencing in April 2004, there had been a broad-based strike of provincial public service employees in response to government's announced position that there should be no immediate increase in public sector wages. The strike lasted a month and ended when the legislature enacted the *Public Services Resumption and Continuation Act*,¹²⁵ ordering the employees back to work, legislating a two-year wage freeze for the fiscal years commencing April 1, 2004, and April 1, 2005, and stipulating increases of 2% and 3% respectively for the two subsequent years. That legislation was given Royal Assent on May 4, 2004. Since employees in the public service had been on strike for almost the entire month of April 2004, there was a considerable backlog in the review of documentation and processing of payments related to the fiscal year ended March 31, 2004. Accordingly, the Lieutenant Governor in Council extended to May 20, 2004, the cut-off date for back-charging expenditure to the accounts of the prior fiscal year ended March 31, 2004.

Following the IEC's decision to approve the extra payment on May 12, 2004, 46 MHAs submitted claims for \$2,875 (2,500 + HST), which were effectively back-dated to March 31, 2004.¹²⁶ The claims were quickly processed, with no documentary support for the expenses in most cases.¹²⁷ Cheques were issued to the respective MHAs.

The two references in the May 12, 2004, minutes of the IEC were included in the Report of the Commission of Internal Economy for the fiscal year April 1, 2004, to March 31, 2005 (which was not tabled until May 17, 2006). As is evident from their language, these minutes did not describe the substance of the decision in any way. The amount of the payment was not disclosed; nor was the fact that it was available to all MHAs; nor the fact that it was to be claimed with no receipts. Also, there is no reference to this payment in either Schedule B of that report, which lists the salaries, allowances and guidelines, or Schedule C, which lists the maximum amount allowed for constituency allowances

¹²³ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2004 to March 31, 2005*, p. 6, May 12, 2004 meeting at minute 2.

¹²⁴ *Ibid.*, at minute 6.

¹²⁵ R.S.N.L., c.P-44.1.

¹²⁶ The Member for Topsail and the Member for Humber West did not submit claims for the payment.

¹²⁷ The staff of the Commission reviewed some of the claims, but not all. There was no documentary support provided for any of the claims examined.

compared with the amounts claimed for the 2004-05 fiscal year. It *was*, however, noted that the maximum allowed for each district in Schedule C of that report was adjusted downward from the previous year to reflect the 5% reduction for 2004-05, approved by the IEC on March 1, 2004.

It might be argued that the approval of the payment, coming as it did around year-end raised the question as to which annual report of the IEC (2003-04 or 2004-05) might best reflect it. The fact is *neither report mentioned it*. This special payment, while approved in mid-May 2004, was deemed to be applicable to the 2003-04 fiscal year. Accordingly, it could have been reflected in the IEC report pertaining to that year as a “subsequent event”; yet the Report of the Commission of Internal Economy for that year made no reference to the special payment, either as a subsequent event or in any of the schedules.

As the Commission staff and I considered the implications of these events, the inevitable questions arose: Where did the idea of the payments come from? Who initiated it? As in the case of some other significant questions (Who initiated the Bill to achieve the amendments to the *Internal Economy Commission Act* in 2000? Who proposed and made the decision to dispense with an external audit for fiscal year 2000-01? What was the nature of the adjustment to Members’ constituency allowances approved for 2001-02 on March 6, 2002? What was the nature of the additional allocations to Members’ constituency allowances for 2002-03 approved on February 26, 2003?). Documentation is lacking and memories on these crucial matters are vague.

The memo of May 5, 2004 - which is the first indication of an interest in making the payments in respect of 2003-04 - is not signed nor is the person or body to whom it is directed named. Although the document was only recently found by the Speaker in a file in the House records and provided to me, I have not been able to determine definitely who the author and intended recipients were. It is clear, however, that the author would have to have been someone who was knowledgeable about the accounts and finances of the House. Given the isolation of the House financially from the rest of government, it is very likely that the author was a member of the IEC or the House staff; and given the nature of the subject matter, it is likely that the memo was intended for the use of the IEC.

I am satisfied, however, that no matter how the memo came into existence, one or more persons connected with the IEC were interested in the financial ability of the House accounts to sustain a \$2,000 to \$3,000 discretionary payment to each Member in the aftermath of the public sector strike.

It is hard to accept that the connection with the recently settled strike could not have been present in the thinking of at least some of those considering the possibility of making these payments to MHAs. The memorandum was written only one day after the legislation settling the strike became law. As well, the memo refers to the potential of charging the payment back to “the old fiscal year.” This was only possible at that time of year because the cut-off date for charge-backs had been extended to May 20, *precisely because* of the unsettled situation resulting from the strike.

Regardless of the lack of definitive answers as to the origin of these events, it can be said in summary, that six weeks after the end of the 2003-04 fiscal year, when the March 31, 2004, fiscal year-end closing of the accounts had been delayed due to the impact of a major public sector strike in response to a wage freeze:

- The IEC approved a “one-time allowance” of \$2,875 for all MHAs, completely unrelated to the allowed maximums and the IEC rules;
- The authorization for the payments was made by order without at the same time amending the *Members’ Constituency Allowances Rules, 1996*;
- The nature, amount and application of the special payment was not reported in the IEC reports to the House, and neither, to my knowledge, was it publicly disclosed elsewhere until the report of the Auditor General on January 31, 2007;
- A number of these claims were examined by the research staff of this Commission, and in no case reviewed was there documentary support for the expenses;
- The notion of payments without supporting receipts was contrary to the new policy approved by the IEC only six weeks previously, on March 31, 2004;
- The change in policy on March 31, 2004, requiring receipts, was noted in the 2003-04 IEC annual report in contradistinction to the failure to note in the same report that the one-time payment was authorized without receipts;
- Forty-six MHAs submitted claims for \$2,875 in mid-May effectively back-dated to March 31, 2004, and the claims were made without submitting supporting receipts.

The manner in which this decision was taken and implemented raises two fundamental concerns: it was done contrary to previously adopted principles, and there was no public disclosure. The IEC’s approach to sanctioning this type of payment and failing to report was fundamentally inconsistent with the policy thrust it had initiated in March 2004:

Trust and confidence is fostered where public disclosure and transparency permeates the principles upon which public funds are received and where the expectation of public accountability and disclosure is understood and practiced.¹²⁸

The action was taken in May of 2004 (in relation to 2003-04) when, on March 1, 2004, the IEC had decided to reduce the level of constituency allowances by 5% effective April 1, 2004, to “show concern for the fiscal realities of the province.” In addition, on March 31,

¹²⁸ Memorandum from the Speaker of the House of Assembly to the Members of the House of Assembly, entitled “Accountability and its relevance to Members’ Constituency Allowances,” (March 1, 2004).

2004, the IEC had decided that “all expenditures from the Members’ Constituency Allowances be reimbursed on the basis of receipts.” Accordingly, the manner in which the special payments to MHAs were approved, contrary to the established rules, and without public disclosure at a highly sensitive time during which the legislature had used its powers to freeze the compensation of all public servants, raises questions as to the judgment and prudence exercised by IEC members in approving this payment in the manner it did.

(c) Overall Adjustments to Constituency Allowances and Sessional Indemnities

With respect to the prescribed maximum constituency allowances (setting aside the issue of the special payment) following the 5% reduction in effective April 1, 2004, there was no across-the-board adjustment in allowances in the 2005-06 fiscal year. However, in preparing the budget for the 2006-07 fiscal year, the IEC ordered, on October 31, 2005, that the 5% reduction in Members’ Constituency Allowances, which was instituted effective April 1, 2004, should be reversed in the 2006-07 fiscal year.¹²⁹ Then, on May 15, 2006, the IEC ordered that the sessional indemnities and salaries of Members be increased effective July 1, 2006, by the same percentage as awarded to employees who work for the executive branch.¹³⁰

In June of 2006, the reports of the Auditor General were released, indicating serious concerns with respect to the administration of constituency allowances, payments made to certain MHAs, as well as payments made to certain suppliers. These reports will be addressed in a separate section of this report.

(ii) The Administrative Environment 2004-2006

(a) Changed Direction

In some very important respects, the policy emphasis within the administrative structure of the House of Assembly changed in 2004. This was presaged most notably by the adoption of the framework and policies set out in the Speaker’s policy paper, “Accountability and Its Relevance to Members’ Constituency Allowances,” as previously mentioned. The indications of this change in approach became evident early in 2004 and continued at varying paces through to the end of 2006:

¹²⁹ “Official Minutes of the Internal Economy Commission,” October 31, 2005 meeting at minute 7(a), signed by the Clerk of the House of Assembly.

¹³⁰ “Official Minutes of the Internal Economy Commission,” May 15, 2006 meeting at minute 3, signed by the Clerk of the House of Assembly.

- Tighter guidelines were restored with respect to the purchasing and ownership of furniture and equipment for Members' offices;
- The IEC requested that Members and staff of the House of Assembly become "knowledgeable" with respect to the *Conflict of Interest Act*;
- The IEC invited the Auditor General to audit the accounts of the House, including constituency allowances, as of April 1, 2004;¹³¹
- The IEC revoked the order issued on May 16, 2000, which had effectively denied the Comptroller General access to documentation for payments under Members' Constituency Allowance accounts. Accordingly, the Comptroller General's Office was given access to supporting documents for MHA claims for testing and pre-audit work for all future claims;¹³²
- The IEC directed that a Members' manual be prepared to, among other things, set out clearly all the rules and procedures applicable to expenditures from Members' constituency allowances; and
- The IEC directed that the Director of Financial Operations provide each Member with a monthly written statement showing the status of the Member's Constituency Allowance account and that this process be computerized.¹³³

In addition, during 2004, at the request of the Office of the Clerk of the House of Assembly, the Professional Services and Internal Audit Division of the Comptroller General's Office conducted an assessment "to review the current policy and procedures relating to the Members' Constituency Allowance and to suggest additional guidelines for consideration by the Office of the Clerk." The draft report resulting from this study was dated December 17, 2004, and it contained a range of *suggested guidelines* related to a number of aspects of members' travel expenses, per diem allowances, entertainment expenses and general constituency expenses.¹³⁴

In the course of the foregoing review, the Professional Services and Internal Audit Division also reviewed the "administrative procedures in the Office of the Clerk with respect to the adjudication of Members' claims." In this regard, it prepared a further draft report,

¹³¹ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 17, March 1 meeting at minute 4(8).

¹³² *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2004 to March 31, 2005*, p. 5, April 1 meeting at minute 3.

¹³³ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4(4).

¹³⁴ *Newfoundland and Labrador, Professional Services and Internal Audit Division, "Proposed Guidelines for Members' Constituency Allowances,"* (Draft: For Discussion Purposes Only), (St. John's: Office of the Comptroller General, December 17, 2004).

which indicated: lack of detailed rules and the potential for inconsistent application of policies; lack of a documented policy on what constituted acceptable supporting documentation for expenses; and the absence of a documented policy on “eligible” expenses related to furniture and equipment.¹³⁵ Various recommendations were made with respect to the need to document policies. The report also included some specific recommendations related to documentary support for payments, including the following:

All members’ expenditures should be supported by appropriate proof of payment along with the “original” of the invoice. Credit card receipts/statements alone should not be accepted as they do not provide adequate detail of the expense item. As well this could result in other supporting documents for the same expense being submitted for duplicate payment.¹³⁶

With respect to more general administrative accounting controls, the draft report provided a general commentary before listing a number of recommendations for consideration:

Officials with the Clerk’s office follow normal protocol in the review, approval and data entry of Members’ claims and also financial transactions related to Offices maintained by Officers of the House. As part of our review, the Office of the Clerk had requested that general audit guidelines be provided in the processing of financial transactions.¹³⁷

While this commentary indicates that the office was following “normal protocol in the review, approval and data entry” processes, the draft report goes on to list 15 recommended points for consideration in respect of “internal controls and procedures in the processing of expense claims/transactions,” including:

n) Ensure all transactions are recorded in the correct accounts and that sufficient funds/budget exist in these accounts.

o) Systems reporting should be utilized to monitor financial transactions for all accounts maintained by the Office to enhance financial management.”¹³⁸

The Clerk formally acknowledged receipt of the draft reports, and I was told the Comptroller General met with the Clerk and the Speaker concerning these reports. Yet it appears that no definitive follow-up action was taken on them - by either the administration

¹³⁵ *Newfoundland and Labrador, Professional Services and Internal Audit Division, “A Review of the Constituency Allowance Policy and Procedures for Members of the House of Assembly,”* (Draft: For Discussion Purposes Only), (St. John’s: Office of the Comptroller General, December 17, 2004).

¹³⁶ *Ibid.*, p. 4 at para. B, recommendation 1.

¹³⁷ *Ibid.*, p. 5 at para. D.

¹³⁸ *Ibid.*, p. 6.

of the House or the Office of the Comptroller General.

From an organizational perspective, commencing in December of 2003, the IEC had begun discussing the need to examine the administrative and management framework of the House of Assembly in a broad sense.¹³⁹ The Clerk was asked to explore the retention of consulting services to assist with preparing recommendations on an “administrative and management structure.” However, it appears that no definitive progress was made in this regard in the months following.

Subsequently, in January of 2005, matters related to the administration of the affairs of the House were discussed in a rather different context. The IEC minutes of a meeting with the Auditor General at that time concerning the administration of travel expenses of the Offices of the Citizens’ Representative and the Child and Youth Advocate noted the following:

The Auditor General described matters relating to the accounting procedures in the Clerk’s Office and the need for additional staff which the Commission declared would be a priority item during the forthcoming budgetary discussions.¹⁴⁰

At the subsequent meeting of the IEC in February 2005, the administrative framework of the House was again discussed:

Members of the Commission reviewed the structure of the Clerk’s Office in particular the financial accountability of the House of Assembly and its statutory offices. Direction was given to propose a new office framework for the Clerk’s Office and to provide further details to the Commission regarding the proposal for a chief financial officer.¹⁴¹

Notwithstanding this decision, a considerable period of time passed before it was fully implemented. Eventually, a new position of Chief Financial Officer was approved, advertised and ultimately filled, with effect from May 8, 2006.¹⁴²

(b) Slow Progress on Ongoing Issues

The process of beginning to address the administrative framework of the House of

¹³⁹ “Official Minutes of the Internal Economy Commission,” December 16, 2003 meeting at minute 12, signed by the Clerk of the House of Assembly.

¹⁴⁰ *Report of the Commission of Internal Economy for the Fiscal Year, April 1, 2004 to March 31, 2005*, p. 14, January 17 meeting at minute 1.

¹⁴¹ *Ibid.*, p. 17, February 10 meeting at minute 12.

¹⁴² “Official Minutes of the Internal Economy Commission,” May 3, 2006 meeting at minute 1, signed by the Clerk of the House of Assembly.

Assembly had taken a considerable amount of time. In the interim, as well, some of the well-intentioned initiatives of the IEC were not implemented.

By the summer of 2006, for example, the Members' manual had still not been prepared. Members had not yet been provided with monthly statements outlining the status of their constituency allowances.¹⁴³ While the Comptroller General was given full access to House of Assembly documentation and the records supporting MHAs' constituency allowance claims, he indicated to this inquiry that he did not have sufficient staff to perform any ongoing internal audit or pre-audit functions. Accordingly, there was no effective change in the claims review procedure.

Members' expenditures were not tracked in individual accounts, on government's accounting system, against their respective prescribed maximum.¹⁴⁴ It also became clear that through to the summer of 2006 there was effectively no compliance testing: nor were there effective controls in place to prevent an individual from being paid in excess of the prescribed maximum for his or her constituency. As long as there were sufficient funds in the global Allowances and Assistance account (which totals over \$5 million), and the claim was approved by administrative staff, it could be paid irrespective of whether the individual MHA was over his or her limit.

The Commission's staff were told that, up to June of 2006, the record of individual MHA expenditures on constituency allowances, relative to the prescribed maximums, as noted previously, continued to be maintained "off-line" on a computer spreadsheet, maintained solely by a single staff member. It appears that there was no back-up copy of this data, and it was also suggested that the original information had been "over written" or destroyed in some cases.

The appointment of a new Chief Financial Officer of the House of Assembly in May of 2006, while long in coming, clearly signaled a definitive step forward in enhancing the administrative capability of the administration of the House. In the summer of 2006, work was commenced on the design and implementation of financial controls, claims policies and guidelines, as well as the reporting framework for MHA allowance statements. Unfortunately, the pace of progress was complicated by the troublesome revelations of the Auditor General in late June and July.

I am very much aware that, notwithstanding the findings of the Auditor General and the ongoing tasks that have been required to respond to those findings, work has continued with the new Chief Financial Officer under the direction of the IEC and a newly appointed Clerk of the House of Assembly. New forms and rules have been put in place. Additional clerical personnel have been added, and it appears that the implementation of the system to

¹⁴³ I understand that since October 2006 this process has been started and Members receive statements regularly.

¹⁴⁴ I understand that this is being done as of October 2006.

provide monthly statements to MHAs is now well advanced, if not up and running.¹⁴⁵

(c) *Transparency and Accountability*

It is evident from the foregoing discussion that, since early 2004, the IEC had begun to adopt a more structured approach to its operations. Meeting agendas were circulated in advance, and minutes were circulated following meetings, rather than a year after the fact with the draft IEC report, as had been the prior practice. However, it is questionable as to whether the IEC has still met the standard of transparency and accountability they had set for themselves in March 2004, when they adopted the Speaker's policy paper. The *Internal Economy Commission Act* stipulates in subsection 5(8) that;

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

The IEC minutes are the record of the decisions of the IEC. These minutes have been generally tabled as part of the IEC's annual report to the House 12 to 14 months after the end of the respective fiscal year to which the report relates. This means that, at best, decisions are a year old before they are made public. Furthermore, decisions taken in the first quarter of a given year are almost two years old before they are tabled.

A further dimension of the issue relates to the nature of disclosure contained in the report that is eventually tabled. As is evident from what I have written earlier, in some cases the minutes, as contained in the publicly disclosed IEC report, do not communicate the substance of what was decided; rather than providing transparency, various minutes are decidedly opaque. One of the most significant examples of this type of transparency concern is evident in the treatment of the previously explained special payment approved for all members in May 2004.

I understand that there may be cases, when the IEC is dealing with certain sensitive matters involving personal privacy considerations, where disclosure must be limited. Such concerns do not apply in relation to policy decisions, however, or to decisions of general application made with respect to such matters as the general level of benefits or allowances applicable to all MHAs, or the guidelines for payment of public monies to MHAs.

¹⁴⁵ See Chapter 7(Controls) for further discussion of these very positive developments.

(iii) Audit of the House of Assembly

I have noted previously that, in March 2004, the IEC decisions of 2000 denying both the Auditor General and the Comptroller General access to documentation were rescinded. The Auditor General was invited to audit the accounts of the House, including MHA allowances, commencing with the fiscal year that started April 1, 2004.

The Auditor General first examined the accounts of the Offices of the Citizens' Representative and the Child and Youth Advocate and, in January 2005, provided his observations to the IEC. Concerns raised during these audits were addressed in due course, and I will not delve into them. Subsequently, the Auditor General commenced his review of the more direct operations of the House of Assembly. This review ultimately led to the series of reports tabled in the period from June 2006 to January 2007.

Before turning to the Auditor General's reports on the House, however, it is appropriate for the purpose of context to consider briefly the earlier reports of the external auditors that were actually received in 2005.

(a) The External Audits of 2001-02 and 2002-03

The first two of the three audits for which external auditors were retained in June 2003 (in respect of the 2001-02 and 2002-03 fiscal years) were received by the House in June of 2005. As was noted previously, the auditor's reports in both cases were unqualified.

In reviewing the results of these audits, I have been told that the audit assignment was basically to focus on "attest audit assurances, and financial statement preparation, relating to the annual statements of expenditure and related revenue and the schedules of assets and liabilities of the House of Assembly."¹⁴⁶ I am also very much aware that there is an extensive array of information now available to us that may not have been apparent to the auditors in the course of a routine financial audit. Accordingly, it is important not to lose perspective or take matters out of context with the environment and knowledge base which existed when the audit work was undertaken.

These audits were clearly "financial statement" audits "to support the Auditor General's attest audit opinion on the Financial Statements and Public Accounts of the Province."¹⁴⁷ They were not legislative or compliance audits or investigative audits; nor were they forensic audits, which would have brought into play a different array of analytical

¹⁴⁶ Draft Contract, Schedule A, appended to the letter from Clerk of the House of Assembly to External Auditors, (June 24, 2003), *Re: Request for Proposals - Audit the Accounts of the House of Assembly*. The final signed contract cannot be located. No one has suggested, however, that the final engagement contract differed materially from the draft.

¹⁴⁷ *Ibid.*

and testing procedures and techniques. Furthermore, the auditors have told us that they were not provided with any internal or external indication that there might be any particular concerns or irregularities that should have been focused on; neither were the auditors asked to undertake any specific audit testing.

Some of the observations made through the course of our review of the audit process and the associated documentation and results include the following:

- The auditors determined that the total expenditures on constituency allowances as recorded on the government accounting system did not reconcile with what would have been expected based on the calculations of the maximum allowances and the figures in IEC reports. A difference, beyond the auditors' materiality threshold, was identified by the auditors in both audit years.¹⁴⁸ Staff of the House explained that in both years the difference related to year-end payments to MHAs approved by the IEC because "there was extra money left in the budget." The auditors indicated that they had been shown documentation approving these payments but were not provided with a copy for their files.

The Commission staff and I have still not been able to locate a document in the records of the IEC specifying the amounts so authorized; nor have we been able to verify whether in fact the payments as described to the auditors were actually made to all MHAs, as the auditors did not select any of the items for testing and were unable to provide any further details regarding whether or not these specific payments to MHAs were actually made as indicated. While the IEC may have properly authorized additional payments, the nature and amounts were not disclosed. In fact, to the extent that additional payments were authorized and actually paid, the payment schedules to the IEC reports (Schedule C) for 2001-02 and 2002-03, which had been tabled publicly in the House before the audits were finalized were in error and arguably misleading to the House. As noted above, the auditors indicated that they had identified that the amounts reflected in the publicly tabled IEC reports yielded a total expenditure that was materially less than the expenditures reflected in the public accounts for constituency allowances, but as they believed that they had received adequate explanations, they did not feel it was necessary to inform the IEC of the differences.

- The audit testing performed by the auditors did not include any testing to confirm that payments made to MHAs were in compliance with the maximum allocation for the respective districts as prescribed by the IEC. The auditors are of the opinion that that type of compliance testing was not required, given the nature of the financial audit mandate.

¹⁴⁸ Indicated to the staff of this Commission as \$125,000.

- In the course of sample testing, the auditors examined two claims of one MHA that in the aggregate were greater than the MHA's total allowed annual constituency allowance; but the claims individually appeared to be in order to the auditor, and the auditor did not check against the total annual allowance for the constituency as, again, it was not considered part of the audit mandate.
- The auditors identified potential difficulties associated with the lack of segregation of duties but recognized that this is always a problem in a work environment with a limited number of staff. They indicated to this Commission's research staff that, having examined this issue, they satisfied themselves that adequate, compensating controls were in place. They did not notice any documentation that appeared to them to be signed twice for authorization by the same individual. Also, the auditors indicated that they were unaware that a subordinate was actually signing to approve documents that had been initially signed by that person's supervisor. They were under the impression that both staff members were at the same level.
- During the course of the audit, the auditors did not contact the office of the Comptroller General, who maintained the overall accounting system. I understand that the auditors had been told that the House operated as an autonomous body and that they would be able to obtain all the information they required from the staff of the House.
- The auditors did not issue a management letter outlining any issues of concern requiring management's attention. Nor was there an audit meeting held between the auditors and the staff of the House or the IEC to express any manner of concern arising from the audit. The auditors emphasized that their focus was on conducting a substantive audit for financial statement purposes and not on testing controls. They indicated to the staff of the Commission that the several policies and practices they observed in the administration of the House of Assembly were what they would consider common to find in auditing small organizations.
- A member of the audit team was aware, and, from that individual's observation, people who worked in and around the House of Assembly were aware, that the Director of Financial Operations had a relationship with one of the suppliers of merchandise for the Members. The auditor did not feel this issue to be the kind of thing that merited comment.
- I was told that the auditors did not perform any tests centered around the detection of potentially fraudulent activity. In this regard, I understand as well that the Canadian Institute of Chartered Accountants' (CICA's) standards for testing for fraud were effective with respect to audits of financial statements and other financial information relating to periods ending on or after December 15, 2004. Accordingly, the auditors explained that the current auditing standards and processes were not in effect for the time periods covered by these audits.

Clearly, there were substantive, unanticipated delays through the audit process. The

audited statements were dated October 29, 2004 (15 months after the auditors were engaged), but the actual statements were not delivered until June 2005, almost two years after the auditors were appointed. The auditors informed the Commission that there were delays in gaining access to certain types of information. The staff of the House were said to be very busy. The auditors indicated that material that they might have expected to review electronically was only available in paper form, which led to delays. The auditors indicated that the calculation of annual leave and severance pay entitlements by staff was a protracted, and error-prone process that contributed to the delays. The auditors told us that there was limited use of computers in the business of the House. All these factors undoubtedly contributed to what in the final analysis were excessive delays for a task of this nature.

I believe it is important to review the foregoing audit process, to determine what was identified and what was not. In the final analysis, however, my focus must be on ensuring that we learn from the process and that the audit mandate and process of the future is clearly reflective of the requirements and expectations of the House. In that regard, it may be concluded that it is certainly necessary to clarify the audit mandate in the future and prescribe specific procedures and reporting requirements.

(b) Auditor General's Reports

Pursuant to the decision of the IEC in 2004 to invite the Auditor General to again audit the accounts of the House, he began in January 2006 to focus directly on the financial and administrative operations of the House (in particular, its systems of control) and the administration of constituency allowances of members.

In addition to conducting general audit work, the Auditor General issued the series of reports that have already been identified in the period from June 2006 to January 2007. Those reports, as is now well known, covered the following broad topics: (i) excess constituency allowance claims; (ii) payments made to certain suppliers; (iii) control deficiencies in House Administration; (iv) conflicts of interest issues; (v) double-billing issues; and (vi) disclosure of additional year-end allowance payments. I will deal briefly with each of these topics in turn.

1. Excess Constituency Allowance Claims

In the period from June 22 to July 4, of 2006, the Auditor General submitted four individual reports dealing respectively with the identification of excess constituency allowance claims by three current MHAs and one former MHA.¹⁴⁹ The reports were fairly brief, but they identified the extent of alleged excess allowances claimed in each instance, and provided schedules illustrating the details on the excess claims made by the individuals concerned.

¹⁴⁹ See Chapter 1, footnote 12.

The Auditor General subsequently issued supplementary reports in relation to each of the four individuals named earlier in the summer, as well as a report that indicated findings of a similar nature in respect of an additional MHA. Overall, the reports identified issues spanning a period nine years, with differing amounts and differing time periods, depending on the respective individuals.

In all cases, the Auditor General recommended that the Lieutenant-Governor in Council refer the matter of excess constituency allowance claims to the Department of Justice. This reference was made and, as a result, a police investigation was launched and is currently ongoing.

The extent of the excess constituency allowance claims, as reported by the Auditor General in relation to the nine years, amounted to almost \$1.6 million. Chart 3.13 prepared by my inquiry staff, summarizes the data contained in the Auditor General's reports:

Chart 3.13

Summary of Excess Constituency Allowance Claims

(prepared from data provided in the Auditor General's reports June 26, July 4th, and December 5th, 2006)

Claimant	Excess Claims by Year									Total Excess Claims
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	
A ¹⁵⁰	n/a	5,056	5,616	12,144	118,195	128,274	198,368	n/a	n/a	467,653
B	9,496	16,385	22,064	19,699	33,577	46,768	90,459	44,837	61,180	344,465
C	n/a	n/a	11,466	14,387	37,327	88,962	107,299	43,571	55,586	358,598
D		6,904	11,739	9,954	41,805	130,130	98,039	n/a	n/a	298,571
E	6,556	14,136	27,010	25,425	17,526	10,494	16,139	n/a	n/a	117,286
Total	16,052	42,481	77,895	81,609	248,430	404,628	510,304	88,408	116,766	1,586,573

Chart 3.13 indicates that the total annual amount of excess claims ran up to approximately \$400,000 and \$500,000 in the fiscal years 2002-03 and 2003-04 respectively.¹⁵¹

¹⁵⁰ The Claimants are listed in the order in which the respective reports were initially submitted by the Auditor General

¹⁵¹ I note as well that, at the request of the Lieutenant-Governor-in-Council, the Auditor General is currently conducting an audit of the appropriateness of expenses charged by MHAs to their constituency allowances for all of the years dating back to fiscal year 1989-90. This further audit is expected to take several more months to complete.

The reports of the Auditor General on excess constituency allowances offer no observations on how such excess payments could have occurred. However, following the release of the first report on “Excess Constituency Allowance Claims” by an MHA, the Auditor General did issue another report, entitled “Payments Made by the House of Assembly to Certain Suppliers.” This report outlined further specific matters of concern, and provided some general insight into the financial management and control environment observed through the audit processes.

2. Payments Made to Certain Suppliers

The report of the Auditor General issued on June 27, 2006, focused on concerns related to payments made to certain suppliers of the House of Assembly and, in particular, identified:

1. Circumstances surrounding payments totaling \$2,651,644, made from April 1998 to December 2005, to three companies ..., which have led me to question the legitimacy of at least a portion of these payments.
2. Inappropriate payments totaling \$170,401, made during the period April 2001 through to December 2005, to ... a company owned by the former Director of Financial Operations at the House of Assembly, and/or his spouse.¹⁵²

As in the case of the excess constituency allowance findings, the Auditor General indicated his concern that the activities may “involve improper retention or misappropriation of public money or another activity that may constitute an offence under the Criminal Code or another Act.”¹⁵³ Pursuant to his recommendation, matters surrounding the legitimacy of payments to the suppliers were referred to the Department of Justice.

In the same report, the Auditor General also indicated that the three companies to which payments totaling \$2,651,644 had been made appeared to be related.¹⁵⁴ He summarized the nature of the payments to the three companies that were the focus of his concerns:

- Payments to the three companies were indicated as being for the purchase of similar items – many were low value novelty items such as lapel pins, fridge magnets and key chains; however I also identified some more expensive items such as 79 Customized MHA Gold Rings (Newfoundland Coat of Arms) costing \$750 plus HST each ...

¹⁵² *Report of the Auditor General to the House of Assembly on Payments Made by the House of Assembly to Certain Suppliers* (June 27, 2006), p. 1.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, pp. 1-2.

- All officials questioned at the House of Assembly indicated surprise with the significant cost and the extent of the quantities being purchased. One official who was in a position to observe deliveries to the House of Assembly was at a loss to know how the quantity of products could be received without his knowledge.
- ... total payments each year to the three companies has increased dramatically since 1999. For example in just under four years there was a 282% increase in payments to these companies from total payments of \$170,570 for the 12 months ended 31 March 2002 to total payments of \$652,293 for just the nine months ended 31 December 2005.¹⁵⁵

The Auditor General then proceeded to describe certain deficiencies and inadequacies in the financial management and administrative process observed in his audit. I regard this commentary in the report as being broadly symptomatic of the management and control deficiencies that appear to have evolved in the overall administration of the House of Assembly. It therefore bears consideration in the broader context, including, in particular, the administration of constituency allowance payments to MHAs.

3. Control Deficiencies

This heading, while not used by the Auditor General, would seem to be a reasonable manner in which to characterize the findings he outlined in explaining the shortcomings of the administrative processes described in relation to the questionable payments:

- Internal controls relating to purchases were basically non-existent:
 - no segregation of duties - the former Director of Financial Operations ordered goods, indicated receipt of the goods and approved company invoices for payment; and
 - although payment authorization was made on the Government's financial management system, it was most often performed by an official without seeing the original documentation ...
- Contrary to Government rules:
 - no tenders were called and no quotes or other reasonable basis were documented to support prices being charged on company invoices; and
 - purchase orders were not always issued, especially in more recent years ...

¹⁵⁵ Ibid., p. 2.

- In many instances there was inadequate documentation provided on the invoices to support either which member of the House of Assembly the goods were purchased for or whether payments were correctly charged to other parts of the House of Assembly. More than half (52%-\$1,389,324) of the total payments of \$2,651,644 were charged *to various House of Assembly accounts other than constituency allowances for members ...*
- Each year the former Director of Financial Operations indicated he would overwrite the spreadsheets used to record Members' constituency allowance payments. As a result, the audit trail relating to the spreadsheets was effectively eliminated. Although overwriting the spreadsheet files slowed the audit process, by reviewing cancelled cheques and other documentation my staff was able to reconstruct total payments made to and/or on behalf of Members of the House of Assembly relating to their constituency allowances.¹⁵⁶

4. *Conflict of Interest*

In describing payments made to one supplier, the Auditor General identified a potential conflict of interest situation in relation to a staff member and certain MHAs under review as a result of the reports related to excess constituency allowance claims:

I am concerned about a conflict of interest situation identified during the review. In this case, direct payments totaling \$122,398 were made through the House of Assembly during fiscal years 2002 through to 2005 to ... a company owned by the former Director of Financial Operations, and/or his spouse. I note that a significant portion of these payments were approved by persons without seeing the original documentation ...

Furthermore, the Clerk of the House of Assembly indicated that, after writing all staff including the former Director in February 2004 advising that they had a responsibility to disclose any conflict of interest activity, he received written notification from the former Director that business activity between ... [the company] ... and the House of Assembly would cease. However I found that the Director appeared to circumvent this commitment by having ... [the company's] ... transactions go from direct payments recorded in Governments financial management system (FMS) to transactions directly with the various Members of the House of Assembly which were then claimed through their constituency allowance and therefore undetectable through FMS.

¹⁵⁶ Ibid., p. 3.

I note that two Members presently under review had direct purchases totaling \$48,003 from ... [the company] ... during the period April 2004 to December 2005 (i.e. subsequent to the commitment by the former Director).¹⁵⁷

The alleged conflict of interest situation adds a further dimension to the wide spectrum of financial management and control issues that emerged from the Auditor General's reports.

5. *Double Billings*

On January 8, 2007, the Auditor General issued two reports in which he identified situations of alleged "double billing" by two MHAs. The term, "double billing" refers to instances where it is alleged that an MHA had "submitted claims and received reimbursement for items that had already been claimed ... and reimbursed."¹⁵⁸

In both cases, the Auditor General recommended that the matters be referred to the Department of Justice. This was done and, in one case, a decision has been made not to lay any criminal charges. In the other case, the review is still ongoing.

Quite apart from the specifics of these individual situations, the allegations of double billing raise considerations with respect to the onus on the MHA to maintain appropriate records and file claims correctly - to avoid double billing - and the responsibility that resides with the House administration to ensure that payments are only made in compliance with the rules - to avoid double payment.

6. *Disclosure of Additional Allowances*

On January 31, 2007, the Auditor General issued his report entitled *Reviews of Departments and Crown Agencies* for the year ended March 31, 2006. That report reviewed the contents of the other reports issued by his office since the summer of 2006. In addition, it highlighted the IEC's decision on May 12, 2004, to make an additional payment to each MHA of \$2875 (\$2,500 + \$375 HST), which has previously been discussed in this chapter. I was particularly interested in the Auditor General's commentary on it in relation to disclosure considerations:

Minutes of IEC meetings, which are tabled in the House of Assembly as part of the IEC annual report for public examination, are so vague on this matter that it is not possible for the public to know that each Member was to receive an additional allowance of \$2,875.¹⁵⁹

¹⁵⁷ Ibid., pp. 3-4.

¹⁵⁸ *Report of the Auditor General to the House of Assembly on Double Billings by Ms. Kathy Goudie, MHA* (January 8, 2007), p. 1. See also *Report of the Auditor General to the House of Assembly on Double Billings by Mr. John Hickey, MHA* (January 8, 2007)

¹⁵⁹ *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies for*

The Auditor General also commented on the approach to the preparation of the minutes of the IEC as described to him by the former Clerk of the House:

I spoke with the former Clerk of the House of Assembly who advised me that, in prior years, the IEC suggested to him that the IEC minutes should be kept vague on financial matters such as additional allowances to Members.¹⁶⁰

This commentary stands in stark contrast with the emphasis on the principles of transparency and accountability endorsed by the IEC in March of 2004. However, it corresponds with the commentary provided to me by the Director of Financial Operations concerning instructions from the IEC to staff of the House of Assembly in relation to disclosure of additional payments in the year-end IEC reports.¹⁶¹

(c) Overview of the Auditor General's Findings

The examination of the recent findings of the Auditor General in the context of the extensive review in this chapter is as revealing as it is troublesome. In retrospect, the review of the historical context in this chapter, had it been possible to undertake it earlier with openly disclosed information, may have provided early signals of difficulty that evolved into the array of alleged deficiencies highlighted in the Auditor General's reports. In short, the range of alleged difficulties identified can be summarized as encompassing:

- payments to certain MHAs in multiples of the allowed amounts;
- payments to certain MHAs in excess of the amounts reported to the House;
- MHA overpayments not detected by management or the Comptroller General;
- no reconciliation of IEC reports on MHA compensation to financial management system records;
- no internal controls over purchases;
- no segregation of duties in key financial functions;
- blind authorization of payments - without access to supporting documentation;
- no tenders or quotes for purchases;
- no purchase orders and no commitment control process;
- payments made with inadequate (non-existent) documentation;
- no control over data security - no back-up or data access controls;
- audit trail destroyed;

the Year Ended March 31, 2006, (January 31, 2007), Chapter 2.1, part 2, p. 29.

¹⁶⁰ *Ibid.*, p. 29.

¹⁶¹ A staff member of the House of Assembly indicated to me that when members were given an increase, staff were directed to implement the payments and the IEC verbally instructed that the additional payments not be reflected in the year-end report. I note this was a general comment, and it did not specifically identify this particular IEC decision.

- lack of attention to potential conflict of interest prior to 2004;
- indications of ongoing conflict of interest, through processes possibly intended to avoid detection;
- overpayments, and other irregularities, not detected in financial statement audit processes;
- incidents of double billing and double payments; and
- special payments to MHAs not publicly disclosed.

The specific findings of the Auditor General are clearly cause for serious concern. They add further context to my broad-based concerns resulting from this Commission's extensive examination of the evolution of the administrative environment; the legislative framework; the decisions of the IEC; the basic record-keeping and reporting processes in the House; the relationship of the administration of the House to the executive branch; the audit process itself; and the role of independent auditors and the Auditor General in the financial affairs of the House.

I will first of all confront the multi-dimensional failures of the past and then proceed to recommend a range of measures to address them.