



Chapter 10

Allowances

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

— The Morgan Commission¹

Scope of the Review of Allowances

The terms of reference require me to conduct:

an assessment of Members of the House of Assembly Constituency Allowances to determine if they are the most effective and efficient vehicle to reimburse MHAs for expenses incurred during the normal execution of their duties.²

I have also been mandated to undertake a review of allowance regimes across Canada,³ determine whether proper safeguards are in place to ensure accountability and compliance with rules and guidelines governing payments of constituency allowances,⁴ and propose recommendations for appropriate “policies and practices,” taking into account “opportunities to enhance the accountability and transparency of MHA expenditures.”⁵

¹ *Morgan Report*, p. 19.

² Terms of Reference, Schedule “A,” item 1(i).

³ Item 1(ii).

⁴ Item 1(iv).

⁵ Item 4.

By “allowances”⁶ is meant allocations from the public treasury of money to, or for the use of, MHAs, other than by way of compensation, severance and pension benefits, to enable them to carry out their duties by defraying expenses they necessarily and reasonably incur as a result of performing their public functions. Unlike other payments of public money, such as salaries, MHAs are not *entitled* to the payment of allowances on the basis that they have been *earned*; rather, they may only expect payment of an allowance if they are able to *justify* payment by proving that there is a need to *reimburse* them or make payments on their behalf because expenditures must be, or have been made related to their work.

Judged by the amount of public commentary in 2006 and early 2007, the analysis of the allowance regime and the determination of its deficiencies are amongst the most controversial aspects to which this Commission’s work is directed. Arguably, it has been the allegations of impropriety, such as overspending and double billing, that have contributed greatly to a lack of public confidence in MHAs and the system in which they work. This lack of confidence has been manifested in public comments by responsible journalists and others referring to the “utter contempt in which the electorate is held by many of the people who sit in the House of Assembly”⁷ and using descriptions of MHAs who “feast lavishly” in the “public pork barrel,”⁸ or describing them as “opportunists, carpetbaggers and glad-handers.”⁹

It is in this area, then, that Members’ ethics and standards of public accountability for the use of public funds come into stark relief. If any allowance regime is to have any hope of finding public acceptance and confidence, it will have to be one that is understandable by both the public and the MHAs involved, operates in a transparent manner and is seen to be fair, both for the MHA and the public treasury, in the way it allows for access to public money. To design this is a significant challenge. Particularly challenging is not getting so immersed in detailed rules that the ultimate purpose of the whole project - service to constituents - is not obscured.

Overall Conclusion on the Existing Allowance Regime

The terms of reference require me to give an “assessment” of the existing allowance regime and to make a “determination” of whether safeguards are in place to ensure accountability and compliance. I will state my conclusions on those matters now. I can state

⁶ The use of the term “allowances” in this chapter excludes the type of “non-taxable allowance” that is explicitly dealt with in the *Income Tax Act* and that was discussed and dealt with as part of MHA compensation in the previous chapter.

⁷ Brian Jones, “Spending Scandal Reveals Politicians’ Profound Arrogance,” *The [St. John’s] Telegram* (January 12, 2007).

⁸ Jim Combden, “On the Verge of Political Chaos,” (Letter to the Editor), *The Independent*, (January 26, 2007), p. 6.

⁹ Craig Wescott, “Editorial,” CBC Radio’s *The Morning Show*, (February 6, 2007).

unequivocally that:

- The existing regime is *not* an “effective and efficient vehicle to reimburse MHAs for expenses”;
- There are *not* proper safeguards in place “to ensure accountability and compliance” with rules and guidelines;
- There are *no* sufficiently clear, understandable and effective guidelines in place to enable the system to operate with due regard to the objective of protecting public money; and
- The system is and will continue to be *ripe for abuse* if steps are not taken to reform it.

Having stated these things, I do want to record that since mid 2006, especially since the employment of the new Chief of Financial Operations in the House of Assembly, many important steps have been taken to improve the control and accountability systems applicable to the administration of constituency allowance claims. I have already referred to these developments in Chapter 7 on controls. Much, however, remains to be done. One of the main reasons for this is that the administrative staff of the House has had to continue administering a set of rules and guidelines that are fundamentally flawed. They are vague, incomplete and are no longer fully responsive to the needs of MHAs. They require a substantial overhaul.

Before considering any recommendations for change, however, I believe that it is important to consider the changes in the allowance regime that have occurred since the time of the Morgan Commission. I have made the point earlier in this report, but it is worth re-emphasizing, that an analysis of the post-Morgan developments demonstrates that a profound change occurred over the past 18 years in the way in which Members were given access to allowance money - a change from a restrictive, receipts-based regime of different categories of claim-types to a much more flexible, less accountable regime capable of easier access with less control over the types of expenditures that could be made.

The Morgan Commission: Principles and Recommendations

One of the goals of the Morgan Commission was to recommend a system of compensation and allowances that would encourage individuals of high calibre and with concern for the public welfare to be persuaded, without undue sacrifice, to seek election to the legislature. This meant, among other things, that it had to be recognized that persons who offered themselves for public office would have to have a reasonable assurance that the state would be prepared to ensure that such persons would be reimbursed their reasonable and legitimate expenses that they would be expected to incur in doing their job.

The 18 recommendations made by the Morgan Commission were, by virtue of the *Internal Economy Commission Act*, binding on the House. They resulted in some major changes with respect to the procedure for paying Members' allowances and expenses. Eight of the recommendations, relating to allowable expenses for travel, accommodations, meals, district offices and the like were assigned to the Commission of Internal Economy for determination of the maximum amounts allowable in each category. The amounts and guidelines later adopted by the IEC were developed through comparisons with other provincial legislatures and with specific consideration to travel and accommodation costs in our own province.

Effective January 1, 1990, the Morgan Commission abolished the old system of district allowances. In commenting on the need to ensure reimbursement of legitimate MHA expenditures, the Commission observed that, although honesty could not be legislated, the system should be structured in such a way that exposure to the attempt to defraud should be reduced to a minimum. The Commission recommended that receipts for virtually all expenditures should be required, and if no receipts were submitted for certain types of expenditures, some other form of verification should be provided.¹⁰

With respect to specific types of claims, the Commission dealt with them as follows:

(i) *Travel (Morgan Recommendations 8-11)*

The Morgan Commission recognized that while the House of Assembly was in session regular separation from family was a concern for many MHAs whose normal place of residence was beyond commuting distance from St. John's. It therefore recommended travel reimbursement as follows:

- While the House was in session and with the permission of the Speaker, MHAs whose homes and normal places of residence were beyond commuting distance from St. John's should be reimbursed for traveling expenses actually incurred and documented for one return home journey each week during the session;
- Because it was reasonable to expect that an elected Member would have to visit his or her constituency to attend many local functions, while the House was in session a Member normally residing in or near St. John's and who represented a constituency outside the St. John's area should, while the House was in session, be reimbursed for the traveling costs actually incurred and documented while attending such functions within the constituency. The IEC was tasked with the responsibility of developing guidelines for this purpose.

Because it was often necessary, when the House was not in session, for Members to

¹⁰ *Morgan Report*, p. 19.

visit St. John's frequently to lobby government departments and agencies on behalf of their constituents or to attend to other parliamentary duties, the Morgan Commission concluded that Members should be reimbursed for traveling costs actually incurred and documented for up to 25 return trips per year between their constituencies and St. John's or between St. John's and their constituencies.

The Commission also recognized that Members should be additionally reimbursed for traveling costs actually incurred and documented for traveling *within* their constituencies up to an annual maximum as determined by the IEC.¹¹

(ii) Meals and Accommodations (Morgan Recommendations 12 and 13)

The Morgan Commission concluded that Members should be reimbursed for reasonable expenses for accommodations and meals actually incurred while away from their normal places of residence attending to their parliamentary duties. The Commission felt that, while the House was in session, there should be no maximum per session. On the other hand, while the House was not in session, because of the discretionary nature of the periods of time involved during authorized visits, the Morgan Commission felt there was a need for the IEC to establish an annual maximum.

Prior to the Morgan recommendations, there had been no distinction made between the cost of accommodations and meals for those whose normal place of residence was within St. John's and those beyond commuting distance from St. John's, and between those who lived within their constituency and those who did not but lived in or near St. John's. These distinctions were drawn in other jurisdictions. The Morgan Commission felt they should be drawn in our province as well, and recommended the following:

- Members whose normal place of residence was beyond commuting distance should be reimbursed for reasonable expenses actually incurred for accommodations with receipts and meals without receipts;
- Members within 25 miles from St. John's should be reimbursed for meals only without receipts;
- Some consideration should be given to reimbursement of some meals for members in or near St. John's; and
- The maximum amount of per diems for accommodations and meals should be established by the IEC, and consideration should be given to those sharing

¹¹ Ibid., pp. 19-22.

accommodations and those clearly maintaining two regular houses, exclusive of a summer house.¹²

The Morgan Commission also felt it was important to allow for reimbursement to Members for travel-related expenses while in St. John's attending to House business and committee and constituency duties. Reasonable costs actually incurred for accommodation with receipts and for meals without receipts should be reimbursed.¹³

(iii) *Constituency Allowances (Morgan Recommendation 17)*

It was the Morgan Commission's belief that some accountable allowance should be granted to Members to help them in fulfilling their responsibilities to their constituents. It therefore recommended that each member be entitled to an "accountable constituency allowance" to assist members in meeting obligations to constituents when the House was not in session. The IEC was to determine the amount of this allowance. There was no formula or approach recommended to the IEC for setting the constituency allowance.¹⁴ As subsequent events have demonstrated, this absence of a recommended formula or approach was a weakness in the Morgan recommendations.

(iv) *Cost Implications*

The Morgan Commission recognized that a consequence of its recommendations would be an increase in cost to the province. However, the Commission justified the recommendations by stating that "if there was to be a good and efficient government and decisions that affect our daily lives to be made by competent and well qualified men and women, the Government must be prepared to pay for it."¹⁵

Changes in Allowance Structure Since the Morgan Commission

One of the notable features of the Morgan report is that, although its recommendations were by legislation meant to be binding. Ultimately they were not. The fact that a significant number of the recommendations left the setting of amounts and other details to the Commission of Internal Economy meant that considerable discretion was, in fact, delegated to subsequent decision of the IEC and subsequent decisions of the IEC expanded on this discretion. Furthermore, as Chapters 3 and 4 detail, from 1996 onwards the governing legislation was changed to accord discretion to the IEC to make essentially

¹² Ibid., pp. 22-25.

¹³ Ibid., p. 24.

¹⁴ Ibid., p. 31.

¹⁵ Ibid., p. 34.

whatever changes to the allowance scheme it deemed appropriate.

Morgan's recommendations 8 through to 11 dealt with the travel rules for Members and recommendations 12 and 13 dealt with per diems for Members. For these rules, there was a distinction made between Members who lived within or near St. John's and those whose residences were beyond commuting distance from St. John's. The commuting distance was originally set at 60 kilometres from the Confederation Building; in 1994-1995 this was changed to 40 kilometres.¹⁶

One of most significant changes to the travel and per diem rules came in 1996 with the implementation of the *Members' Travel and Constituency Rules, 1996*.¹⁷ The passage of these rules was made possible by amendments to the *Internal Economy Commission Act* that permitted the IEC to vary the allowance regime established by Morgan. The main difference between the new *Members' Rules, 1996* and the Morgan regime related to the provision of *block funding* for MHAs. This fundamentally changed the nature of constituency allowances and had major implications on the travel and per diem rules for Members. Members were now required to stay within their set constituency allowance maximum for all constituency-related expenses that included, among other things, their travel-related expenses. There was no longer a set number of trips per year but, rather, a maximum financial allocation by district that a Member was expected to work within for all types of travel when the House was in and out of session. Expenses incurred by a Member for transportation, accommodation and meals would be charged against the constituency allowance. It was now each Member's responsibility to manage his or her annual travel expenditures appropriately in order to stay within the budget allocated to that Member's district.¹⁸

Prior to the *Members' Rules, 1996*, Members received under the Morgan regime an accountable constituency allowance of \$7,500.00 per year to pay expenditures incurred in the performance of constituency business. This \$7,500.00 was to cover items such as:

- 1) office rental, equipment, supplies, staff (up to \$5,000.00);
- 2) information material, purchase of flags, pens, etc., Christmas cards (up to \$1,000.00); and
- 3) other items as approved by the IEC (up to \$1,500.00 without receipts).¹⁹

With the changes in 1996, this accountable constituency allowance became district-

¹⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1994 to March 31, 1995*, Schedule B, Recommendation No. 8, p. 12.

¹⁷ See *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1996 to March 31, 1997*, p. 12, June 12 meeting at minute 6. Hereinafter, "Members' Travel and Constituency Rules, 1996" will be referred to as "Members' Rules, 1996."

¹⁸ "Members' Rules, 1996," Schedule B in *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1996 to March 31, 1997*, p. 23.

¹⁹ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1990 to March 31, 1991*, Schedule B, Recommendation No. 17, p. 4. (This breakdown per category ceased in 1993-1994 until the new rules came in 1996).

specific and was no longer \$7500.00 for each MHA. A schedule outlining the allowances by district was attached to the *Members' Rules, 1996*. The maximum amount paid to each Member was to be used for constituency-related expenses as outlined above and also for all travel, accommodation and meal expenses. Total expenditures for MHAs for the fiscal year would be deducted from their maximum constituency allowance.²⁰

Under the *Members' Rules, 1996*, the IEC set the discretionary amount per MHA that was meant to cover miscellaneous expenses at \$2000.00, but claims could not exceed \$75 a day.²¹ The total amount claimed under the discretionary amount was to be deducted from the maximum constituency allowance for a Member's district. This discretionary amount was increased to \$3,600 at the start of the 1999–2000 fiscal year, with monthly payments not to exceed \$300.²² In the same fiscal year, on March 22, 2000, the IEC increased this amount yet again to \$4,800 for miscellaneous expenses without receipts and with no monthly limitation.²³ This discretionary amount remained until March 31, 2004 when the IEC revoked this rule and abolished the discretionary amount.²⁴

The 1999-2000 fiscal year also saw a change to the rule regarding property purchased and eventually owned by Members. Originally, any property valued at more than \$500 would have a depreciation factor of one third of its value applied each year and at the end of three years it would become the property of the Member. The IEC changed this rule in 1999-2000 so that property valued at more than \$1,000 would now be depreciated at one third of its value each year and at the end of three years would be the property of the Member.²⁵ In the 2003-2004 fiscal year this was reduced back to property valued at more than \$500.²⁶

The specific adjustments to the schedule of Members' constituency allowances went through a variety of changes that are outlined in more detail in Chapter 3. Again, as noted in Chapters 3 and 4, in addition to periodic adjustments in the level of the annual allowance, it appears that on several occasions the IEC approved one-time unbudgeted allowance increases late in the fiscal year. While the documentation approving these payments is far from clear, it appears that these were lump sum payments that were not to be supported by receipts.

²⁰ "Members' Rules, 1996," Rule 10 and 11, p. 27.

²¹ *Ibid.*, Rule 8(1), p. 26.

²² *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000*, p. 5, May 5 meeting at minute 2(2).

²³ *Ibid.*, p. 19, March 22 meeting at minute 2.

²⁴ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2003 to March 31, 2004*, p. 20, March 31 meeting at minute 1.

²⁵ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 1999 to March 31, 2000*, p. 8, June 23 meeting at minute 2.

²⁶ *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2003 to March 31, 2004*, p. 16, March 1 meeting at minute 4.

Current Allowance Regime

Assessing the structure of the current allowance regime proved to be a difficult task. The *Members Travel and Constituency Allowance Rules, 1996*, as amended and attached to the most recent report of the Commission of Internal Economy did not include all updates to the rules. The practice of the IEC, in the years following the original adoption of the *Members' Rules 1996* was not always to formally amend the rules themselves. After consultation with the House of Assembly staff, it is my understanding that there have been various rulings and decisions made by the IEC over the period of 1996-2006 that may or may not be recorded in the annual reports of the IEC.

Below is an overview of key components of the Members' allowances regime as it stood in fiscal year 2006-07, as confirmed by the current House of Assembly staff.

(i) *Resource Support*

Most MHAs have one constituency assistant located in his or her office. The constituency assistant is paid out of general House of Assembly funds. However, an MHA may fund additional support staff out of his or her constituency allowance. This is used by Members primarily to cover replacement staff when the regular constituency assistant takes vacation.²⁷

(ii) *Accountable Constituency Allowance*

Each MHA is also entitled to an accountable constituency allowance that varies in amount according to constituency. Appendix 10.1 outlines the current annual constituency allowance allocations by Member and district.²⁸

The purpose of the constituency allowance is described this way in the IEC's annual reports (in language taken from the Morgan report):

Each Member is entitled to an accountable constituency allowance. This allowance is for the payment of expenditures incurred in the performance of constituency business and may cover such items as office rental, equipment, supplies, secretarial and other support services, information material such as newspapers, advertising, purchase of flags, pins, etc., Christmas cards and other such items that may be approved by the Commission of Internal Economy.²⁹

²⁷ Confirmed by the Chief Financial Officer of the House of Assembly.

²⁸ Information supplied by officers of the House of Assembly.

²⁹ "Members' Rules, 1996" as amended for 2005-2006; see *Report of the Commission of Internal Economy for*

This is the only written guideline governing the general scope of expenditure, aside from travel and associated accommodation, that can be made and reimbursed from a Member's constituency allowance. It is predicated on the expenditure being made in relation to "constituency business."

There are no lists of allowable and non-allowable expenditures nor any specific guidelines capable of being analyzed and reviewed. Nor are the various decisions of the IEC over the years approving specific types of items in accordance with the allowance policy recorded in any location easily accessible by MHAs, let alone the public. This is one aspect that the Speaker and virtually all MHAs urged me to address. The position is well-summed up in a written submission from the current Speaker:

While there was no codification of the rules and while I had completed a lot of information thereto, we did operate on a tradition of some semblance of rules. While I was Speaker (late 2003 to the present), many instances abound where my opinion was obtained on the appropriateness of expenditures and based on my experience and my knowledge of best business practices, I would make a decision. In that time, many decisions resulted in claims being refused or adjusted. Each instance created a precedent. These decisions also reflected my knowledge of practices in other jurisdictions (which is fairly extensive). I spoke many times about the need for codification and had completed the research that I thought was the beginning of a process. I will not dwell on the reasons why progress was often hampered but it certainly was!

One of the great difficulties of administering a "fluid" system like this is that neither the MHAs concerned nor the staff of the House who have to examine and approve individual claims have a clear understanding of what is claimable around the margins of the allowance. For example, although the brief statement from the IEC annual report quoted above gives some examples of acceptable types of expenditures, it does not mention anything about donations to community groups or to individual constituents in need - yet these types of expenditures have been condoned by the IEC.

There have also been cases of claimed expenditure which, on the face of it, call for explanations as to why they would be regarded as having been incurred "in the performance of constituency business." In fact, it was the Auditor General's concern over purchases of artwork and quantities of liquor, among other things, by a Member in the course of a proposed legislative audit that appears to have been one of the motivating factors behind the amendments to the *Internal Economy Commission Act* in 2000 that were discussed earlier in this report. One of the difficulties with the existing regime is that the absence of detailed and clear guidelines as to what should be regarded as "constituency business" means that the

the Fiscal Year April 1, 2005 to March 31, 2006, p. 17.

debate as to whether a particular type of expenditure falls within or without the permitted range of expenditure must take place at a high level of abstraction - by reference to understandings of what relates to constituency business, a concept on which reasonable persons may differ in some cases. This is not helpful either for an auditor who is trying to determine if there has been compliance with policies in a given case, nor is it helpful for the Member who may be unsure as to whether to incur a particular expenditure and claim it, nor for the staff member tasked with having to approve or reject the payment of the claim.

Of course, there may be situations which, by any measure, do not appear to fall within any reasonable definition of constituency business. Even in such cases, however, what may appear obvious at first glance may be more complicated when examined more closely. Take one hypothetical example: an MHA makes a claim for the cost of underwear. At first blush (no pun intended), this may seem to be a clear case of an unacceptable expenditure. But, what if the reason for the claim was that the Member had been travelling on constituency business, the plane was delayed because of weather and the MHA's luggage had been misplaced or stolen? Would a modest purchase of underwear in such circumstances to tide the member over in an emergency *necessarily* constitute an inappropriate claim? Would there not be room, at least for argument, that such a purchase, in those special circumstances, was incurred in relation to constituency business? Certainly, the answer would not be crystal clear. An answer might depend on whether that sort of expense was covered by travel contingency insurance or whether the airline could be expected to assist or whether in comparable circumstances in the private corporate sector there would be a general expectation that such a claim would be regarded as business-related and claimable. Then again, it might still be arguable that even though the expense would not have been incurred but for the fact that the Member was travelling on constituency business, it is nevertheless one of life's contingencies that anyone might have to face and should be expected to pay for out of his or her own pocket.

While one cannot expect that every possible contingency could be dealt with in advance by a comprehensive definition - words often have a penumbra of unclear meanings - the current rules are so vague that little guidance can be had from them except in obvious core situations that have been established by precedent over time.

I was told that, in recent times - at least since the current Chief Financial Officer took over in mid 2006 - there has been considerable tension, leading in some cases to angry exchanges, created between individual MHAs and the staff of the House when the staff have questioned certain types of expenditure. This puts an unacceptable degree of pressure on the staff person struggling to apply the "guidelines" as best she or he can.

The other important aspect of the way in which the constituency allowance is presently structured is that there are no limits within the total maximum allowable restricting how expenditures can be made. Thus, a member could theoretically spend all of his or her constituency allowance on travel or, alternatively, spend all of his or her time in residence in the district and give all of the allowance away in donations. "Block funding," as it is called, does not channel expenditures into the categories of basic expenses that are fundamental to the proper, balanced performance of an MHA's duties.

Another aspect of block funding is that there are no controls on the ability of the MHA to spend his or her constituency allowance in a disproportionate way throughout the year. Unless the MHA is careful with budgeting the expenditures, they could all be spent well before the year is up. In the past, this has led to demands near the end of the year for additional funds.

(iii) *Equipment and Furniture*

All equipment and furniture for an MHA's office in the Confederation Building is supplied by the House of Assembly. Any equipment and furniture for offices outside the Confederation Building must be funded through the Member's constituency allowance.³⁰ Purchases of equipment and furniture valued at \$500 or more will be the property of the House of Assembly. Such equipment or furniture will have a depreciation factor of one third of its value each year, and at the end of 3 years will become the property of the Member.³¹

(iv) *Travel Expenses, Accommodations and Meals*

Travel expenses cannot exceed the constituency allowance maximum that is allocated to each Member's district. There is no specific budget within that allowance for travel and a Member could, as has already been noted, use his or her entire constituency allowance for travel-related expenses. The type of transportation allowed includes mileage, airfare and/or car rental. The kilometre rate for automobiles, up to December 31, 2006, was 33.42¢/km.³²

While the House of Assembly is in session, no daily meal allowance is to be paid to a Member who represents an urban St. John's district that is within commuting distance (40km) of the Confederation Building Complex; nor paid to a Member who lives on a full-time basis in the City of St. John's or the St. John's urban area.³³

A Member who maintains a permanent residence in his or her district and a second residence in the City of St. John's or the St. John's urban area is eligible to receive reimbursement:

- a. while the House of Assembly is *in session* only, for expenses up to \$50 a day for meals plus \$75 a day for accommodations, Monday to Friday of each week only; and

³⁰ Confirmed by Chief Financial Officer of the House of Assembly.

³¹ "Members' Rules, 1996" as amended for 2005-06; see *Report of the Commission of Internal Economy for the Fiscal Year April 1, 2005 to March 31, 2006*, Schedule B, p. 17.

³² Confirmed by Chief Financial Officer of the House of Assembly.

³³ *Ibid.*, Recommendation No. 5, p 18.

- b. while the House of Assembly *is not in session*, for expenses up to \$103 a day while in St. John's on constituency business.

In addition to the amounts set forth above, while traveling on constituency business in his or her district and being required to be away from home overnight, a Member is eligible to receive reimbursement for expenses up to \$50 a day for meals plus accommodations with receipts, or \$103 a day for meals and accommodations without receipts.³⁴

A Member who maintains a permanent residence in the City of St. John's or the St. John's urban area and another residence outside commuting distance (40km) of the Confederation Building Complex is, if the residence is within reasonable proximity of his or her district, and if the member files an affidavit in the Office of the Clerk stating his or her accommodation circumstances, eligible to receive reimbursement for:

- a. while the House of Assembly is *in session only*, for expenses up to \$75 a day for accommodations, Monday to Friday of each week only; and
- b. while traveling to his or her *district on constituency business* and being required to be away from home overnight, for expenses up to \$50 a day for meals plus accommodations with receipts, or \$103 a day for meal and accommodations without receipts.³⁵

Where a Member maintains a residence in the City of St. John's or the St. John's urban area and a second residence outside the City of St. John's or the St. John's urban area and wishes to claim under the rules, he or she must maintain an affidavit with respect to the current status of his or her accommodations on file in the Office of the Clerk.³⁶

One could be forgiven for feeling confused about the impact of the foregoing rules on reading them for the first (and perhaps the second and third) time. The need to clarify them is self-evident.

³⁴ Ibid., Recommendation No. 6 (1) and (2), p. 19.

³⁵ Ibid., Recommendation No. 6(3), p. 19.

³⁶ Ibid., Recommendation No. 6(4), p. 19.

Anomalies

In the course of my review, I was made aware of a number of circumstances under the existing regime that appeared to operate unfairly to the MHA concerned or to the public treasury. I will mention two of them.

An MHA who resides in a district outside of the St. John's region, but who nevertheless has to be present in St. John's when the House of Assembly is in session,³⁷ is entitled to reimbursement for accommodations and meals only while the House is "in session." This has been interpreted as excluding weekends, even though the member is required to be back in St. John's for continuation of the session the following week. Often it is not convenient for the MHA to return home to the district on the weekend. If the MHA stays in St. John's over the weekend, the costs associated with the stay will not be claimable.

Yet, the member is entitled under the rules to travel back to his or her district during the weekend break and the travel costs will be claimable. Those costs may often be greater than what it would cost the member to stay in St. John's and pay accommodations and meals. However, because travel back to the district is covered and the stay in the City is not, there is a great incentive for the member to travel home even though the amount of time he or she will be able to spend in the district before having to return to the House might be very small. The result is that the public treasury loses. It would be cheaper to allow the member to stay in St. John's over the weekends rather than, in effect, to "force," or at least encourage, him or her to spend more money travelling, perhaps for no good purpose.

In my view, it is not unreasonable for an MHA to consider it appropriate to stay in St. John's on a weekend during a session of the legislature that may extend over several weeks. Constituency business can still be done through telephone and other communications devices. There may well be reading and preparation that has to be done for the session's continuation the following week. Any reimbursement system that is counterproductive with respect to the spending of public money clearly is in need of an overhaul.

I am therefore prepared to make the following recommendation:

Recommendation No. 64

Accommodation and meal allowance rules should be structured in such a manner that Members whose primary residence is in a district outside of

³⁷ Order 19 of the *Standing Orders of the House of Assembly* provides: "Every member is bound to attend the service of the House, unless leave of absence has been given to him or her".

reasonable commuting distance from St. John's and who remain in St. John's over one or more weekends while the House of Assembly is in session should be able to claim reasonable accommodation and meal expenses, as determined by rules established by the House of Assembly Management Commission, during such periods.

A second anomaly relates to MHAs who are also Ministers and who, because of the continuing nature of their ministerial duties, are required to live in St. John's,³⁸ even though their permanent residence - and their family - remains in their district. Under the existing regime, a Member who travels from his or her district to the capital when the House is not in session is entitled to accommodations, meals and car rental while in St. John's. However, where the Member is also a Minister, the rules are interpreted to preclude the ability to claim for hotel expenses and meals when in the City on the theory that, because the Minister is "required" to live in St. John's, he or she must be treated as in fact living there and, accordingly, should not be entitled to accommodations, meals and other expenses when living "at home." The obverse of this situation leads to the conclusion that when the MHA returns to the "real home" in the district, he or she is regarded as on travel status and is entitled to claim hotel, meal and car rental costs even though there would be no need of them, because he or she will, in fact, be living or eating at home and driving his or her own car while there.

This also is an anomalous situation. It occurs because, for ministerial purposes, the MHA is regarded as living in St. John's, but for other purposes he or she is regarded as living in the district. As a result, the Member may be deprived of an ability to make a claim. I was told that, to get around this problem, some Ministers felt forced to file an accommodation affidavit to the effect that their "permanent" residence was in St. John's when, in fact, what was being maintained in the City in reality was a secondary residence and the residence that was regarded as "home" and where the family lived remained in the district. In this way, they are then entitled to claim certain per diem amounts when in their district that could be used indirectly to partially subsidize the expenses in St. John's.

It has not been suggested that it is unreasonable for a Member to be reimbursed directly for expenses in such circumstances. Clearly, no Member ought to be put in a position of having to pretend a state of facts that is untrue simply to access a scheme that should be designed to provide reasonable protection against expenses legitimately incurred.

³⁸ It is commonly thought that a Minister of the Crown is "required" by Cabinet Directive to live in St. John's when the department for which he or she responsible is located there. However, at my request, a search of the records of the Executive Council was undertaken and a copy of such a directive was not located. Nevertheless, it can be said that there is certainly an "expectation" that a minister live near where his or her department is located. Certainly, this makes sense from a practical point of view.

The matter is complicated, however, by the fact that there is a set of rules for Ministers and an additional regime for Members who are not Ministers. The two apparently do not mesh. It is not my mandate to make recommendations respecting expense allowances for Ministers. Those matters are dealt with as part of executive policy, not as part of the House administration. Nevertheless, the matter should be addressed. My approach to the matter is to design a set of rules that will provide reimbursement of reasonable and legitimate expenses whenever MHAs are on constituency business and wherever they may be residing. It will be up to the Executive to design a set of rules for Ministers that acts as an overlay on those rules and is not counterproductive to them.

I recommend:

- Recommendation No. 65***
- (1) The rules respecting allowances should be designed on the basis of what is the most appropriate regime to assist Members of the House of Assembly in carrying out their constituency and other duties as Members without reference to other expense reimbursement regimes that might also be applicable to them in other capacities; and***
 - (2) All other expense reimbursement regimes, such as those applicable to Ministers or Parliamentary Assistants, should be designed in such a manner that they complement the floor of allowances applicable to MHAs as Members, and do not permit, as a result of the rules or their application, double claiming for the same expense or leaving legitimate expenses not reimbursed.***

Members' Views on Constituency Allowances

It may be of interest to review what the Members themselves said, in the survey of their opinions taken in fall of 2006,³⁹ about some aspects of the allowances issue.

There was a substantial response rate for the survey: 36 of 48 members or 75% of the members completed the questionnaire. All in all, the questionnaire seemed to be of greater interest to government members than to opposition members: 74% of government members filled out the questionnaire as opposed to 61% of the opposition.

Women members were more interested in making their views known: 80% of them completed the questionnaire in comparison to 68% of men. Women in a variety of riding

³⁹ See Appendix 1.5 for a copy of the Survey, and Appendix 1.6 for a tabulation of results.

types were also maximally involved. All women in the categories of rural women, whether in cabinet, on the government side of the House, or in opposition, and urban women in cabinet completed the questionnaire. This stood in marked and somewhat surprising contrast to the 22% of rural men and 33% of urban male cabinet members and 50% of urban male government members who completed the survey.

There was more knowledge of this Commission's business than with the Morgan Commission report. Nearly 70% of respondents declared themselves to be completely or almost completely familiar with this Commission's terms of reference. In contrast, the report of the Commission which established an 18-year old regime under which the members operated (the Morgan Commission) was not very familiar to the members: 22 of 36 members were "only in general," "a little," or "not at all familiar" with it. Despite this, there was general support (completely or somewhat supportive) for the Morgan recommendations.

The issue of how to provide space for constituency offices shows something approaching consensus as well. A majority (21 or 58%) find that the level of compensation for constituency office support to them as MHAs to be not adequate, with less than a third finding it adequate. Two thirds exactly believe that MHAs should have publicly-funded space in a government building to provide service to their constituents, but 75% moreover feel that if this is not available for reasons of community size or circumstances, reasonable alternatives should be explored and offered (implicitly at public expense). On the other hand, freedom to shift money around between different heads of expenditure if a member rejects having a constituency office is rejected by nearly half (47%).

Discretion rates vary highly. Fully 94% believe strongly or moderately (72% strongly) that the block funding arrangement for travel and constituency allowances should be continued, and 92% strongly or moderately (69.44% strongly) believe that there should be a reasonable proportion of MHA compensation designated for discretionary expenses.

There is also significant consensus in another important area of the compensation regime question, when one compresses strong and moderate agreement together. Nearly three quarters (72%) believe that there should be receipts for all expenditures by members where they are to be compensated.

When ranking and evaluation exercises were completed, members were fairly diffuse in their opinions, but gave some emphasis to these matters. Aspects of Members' compensation that deserve the most attention and corrective action, according to respondents, are: constituency allowances;⁴⁰ travel reimbursement,⁴¹ and finally, indemnity.⁴²

⁴⁰ 11 and 5 ranks of 1 and 2, respectively.

⁴¹ 4 and 6 ranks of 1 and 2 respectively.

⁴² 5 and 2 ranks of 1 and 2 respectively.

Review of Allowance Regimes in Other Jurisdictions

In the course of its work, the Commission staff reviewed the allowance regimes of each of the other provincial and territorial jurisdictions in Canada, as well as the federal system. A summary of those regimes is contained in Appendix 10.2. This comparative analysis disclosed that there is not a lot of consistency across jurisdictions. In the end, each jurisdiction has had to tailor its regime to fit its own circumstances. Nevertheless, the examination was useful and enlightening. While not presenting one clear model that was capable of wholesale importation into this province, there were many important ideas and concepts that helped in conceptualizing what I believe will be a significantly better regime than what we have now.

Basic Requirements of a New Regime

In Chapter 9 I argued for the idea of treating the elected Newfoundland and Labrador politician as a full-time professional.⁴³ The acceptance of this concept has a number of implications. On the one hand, there is an expectation that the politician will adhere to high standards of professional conduct and seek out and undergo the training necessary to fulfill the administrative aspects of the job. These matters, especially the expectation that the politician take primary responsibility for the management of public resources over which he or she is given control, have been discussed in general terms in previous chapters, in particular Chapter 5. There - in Recommendation No. 3(a) - I expressed the view that a proper regime providing for claims for reimbursement for expenditures made in performance of constituency duties should place ultimate responsibility on the MHA for compliance with the applicable allowance regime. The nature and extent of that responsibility should be spelled out clearly in the rules constituting the regime.

Another aspect of being treated as a professional is that there is the expectation that he or she will be provided with the resources necessary to be able to discharge professional duties ethically and responsibly.

The MHA must be given the means necessary to do the work entrusted to him or her. This means that there should be public subsidization of administrative office space, realistic operational resources, and travel allowances sufficient to enable the Member to service the constituency for which he or she has been elected. As well, provision should be made to ensure that other reasonable and legitimate expenses incidental to carrying out an MHA's functions are covered. In incurring legitimate expenses in carrying out public functions, the MHA should not be expected to do so at serious personal financial sacrifice.

In Chapter 5 I also expressed the view in Recommendation No. 3(c) and (d) that a proper allowance regime should be clear and understandable in operation. This is important

⁴³ Chapter 9 (Compensation) under the heading "The Job of a Member of the House."

not only for the MHA but also for the officials administering the regime in processing claims. As well, clarity and comprehensibility is important to vindicate the value of transparency for the public so as to maintain confidence in the system. It follows, therefore, that a proper regime should contain detailed rules and examples of permitted expenditures so as to eliminate as much uncertainty as possible in the operation of the regime.

In essence, a proper regime should serve three purposes:

- provide adequate resources to MHAs to assist them to fulfill their public duties and responsibilities for the benefit of the citizens they serve;
- promote accountability and transparency with respect to the expenditure of public funds; and
- facilitate public understanding of the use of public funds by MHAs in the fulfillment of their obligations.

In fulfilling those purposes, any new allowance scheme should:

- be based on principle rather than expediency;
- be clear and understandable in application;
- be capable of being administered in a manner that will control abuse;
- provide a means whereby only reasonable and legitimate expenses relating to constituency business will be reimbursed or paid for; and
- operate fairly both to the MHAs concerned as well as to the public purse and, accordingly, not produce anomalies in operation.

General Principles

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

(i) *Personal Responsibility*

The first and most important principle that must be underscored in any allowance regime is that of *personal responsibility* of the MHA in the incurring of expenses and the making of claims for their reimbursement from public funds. The Member has to be alert to ensure that the purposes of the regime are not subverted. I will repeat what I wrote in Chapter 5:

It is not sufficient, I would suggest, in cases of doubt to “take a chance” and make a claim, hoping that others will take the responsibility for allowing or disallowing it. In the end it has to be a matter of judgment and conscience on the part of the MHA, recognizing that what he or she is dealing with is not his or her own money.

That means that the MHA has to be proactive to maintain proper controls over the record-keeping in the constituency office and to instruct his or her constituency assistant to whom the task is delegated as to the manner in which the claim process should be carried out. Even where delegation does occur, if something goes wrong the MHA should not be allowed to hide behind that delegation to disclaim personal responsibility. There must be a recognition that responsibility rests with the MHA. The detailed rules constituting the regime should make this abundantly clear.

Accordingly, I recommend:

Recommendation No. 66

- (1) *The rules respecting allowances should stipulate that the Member of the House of Assembly making or incurring an expenditure is the person responsible for compliance with requirements for claims, payments and reimbursements of expenses under the allowance regime and that the Member is not relieved of that responsibility even if:*
 - (a) *he or she delegates that responsibility to another person;*
 - (b) *the claim is accepted for payment by an official of the House;*
 - (c) *the claim is ultimately paid.*
- (2) *Members should be required to maintain proper records pertaining to claims and should be responsible for operating their constituency offices and engaging and training support staff in a manner that will facilitate compliance with the requirements of both the letter and the spirit of the allowance regime;*

- (3) *In keeping with the notion of personal responsibility, the Clerk of the House, the House of Assembly Management Commission and an auditor of the House should be able to require a Member to certify that an expense that he or she is claiming, or has claimed, has actually been incurred in compliance with the rules of the allowance regime;*
- (4) *Where a Member makes an expenditure or a commitment to an expenditure that exceeds a maximum allowable or is otherwise inappropriate, he or she should be personally responsible for the payment of that expenditure; and*
- (5) *The rules of the allowance regime should state that where through inadvertence or otherwise a claim is paid when it should not have been, the Member is liable to repay that amount to the public treasury.*

(ii) Constituency Business

I noted earlier that one of the problems with the existing regime - as well as with the recommendations of the Morgan Commission - was that there was very little guidance given as to what types of expenditures should be reimbursable or not. All that was provided was the general statement that the constituency allowance was to be used for “payment of expenditures incurred in the performance of constituency business” without defining what constituency business entailed.

The reimbursement scheme is, in the end, a *purpose-based* scheme: the ability to claim reimbursement depends on the legitimacy of the purpose of the expenditure, which must be related to the proper performance of the MHA’s public functions. While it is nice to be provided with a list of approved *types* of expenditures, in reality many categories of expenditure are, in the abstract, not necessarily appropriate unless they can ultimately be grounded back into a justification related to legitimate constituency work. For example, to claim reimbursement for written communications such as newsletters to constituents may or may not be appropriate, depending on whether they relate to matters of interest or at issue in the community with which the MHA is concerned or expressing an opinion as part of his or her constituency work. On the other hand, to claim reimbursement for written communications to constituents designed for party promotion or re-election would not be appropriate.

Most other provinces and territories have not set out in their legislation or regulations any comprehensive definition of what would constitute legitimate constituency business. This is perhaps understandable, given the difficulty of formulating a clear and detailed enough description that would be capable of easy application. Nunavut and the Northwest

Territories have attempted to formulate a definition. Nunavut defines “constituency work” as: “any work directly connected with a member’s responsibilities as a member in relation to the ordinary and proper representation of his or her constituents.”⁴⁴ The Northwest Territories’ definition is essentially the same except, instead of referring to representation of constituents, it refers to representation of “members of the public.”⁴⁵ In Manitoba, regulations made under the *Legislative Assembly Act*⁴⁶ simply indicate that payments from a Member’s constituency allowance must be for “non-partisan” service to constituents and must be made at arm’s-length.⁴⁷

The approach taken by most other jurisdictions has, instead, been to attempt to describe the types of purposes for which expenditures should *not* be regarded as appropriate. In that regard, such things as expenditures for “political” purposes or expenditures to supplement a Member’s income or to acquire equity in property or for items that are personal in nature are most often stated as being inappropriate.

Notwithstanding the difficulties associated with the problem of definition, I believe it is important to attempt to define the parameters of legitimate *constituency business*. It is important not only because it may help resolve uncertainties in some cases, but also because it will underline the fact that *all* expenditures, at bottom, must be legitimately related to the work of the MHA for the constituency. I recognize, of course, that no general definition will be sufficient in itself to resolve all questions of legitimacy of expenditure. There will always be some subtle nuances of activities in the penumbra of the definition that may be difficult to categorize one way or the other. There is a role, therefore, for also providing specific examples of activities that would, in normal circumstances, fall both within and outside the line. Nevertheless, the rules should be expressed to emphasize that the fundamental justification for *any* expenditure is service of constituents.

As a corollary to stating a principle of what *is* a legitimate purpose, there is also, I believe, a role for stating what purposes are *not* legitimate. In so doing, there will be a greater likelihood that the parameters of permissible activities will be made clear.

⁴⁴ *Legislative Assembly and Executive Council Act (Nunavut)*, S. Nu. 2002, c. 5.

⁴⁵ *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22, s.1.

⁴⁶ C.C.S.M., c. L-110.

⁴⁷ *Members’ Allowance Regulation*, Manitoba Gazette, Part I, Vol. 133, No. 31 (July 31, 2004), ss. 10(1) provides for an annual allowance payable “for authorized expenses for non-partisan access and service to constituents.” Subsection 10(3) defines “non-partisan” as follows: (a) without reference to any word, initial, colour or device that would identify a political party; (b) free of any solicitation for money or votes on behalf of a person or political party; (c) free of any statement advocating that money or votes not be given to a person or political party; and (d) free of any statement advocating that a person (i) join or not join a political party, or (ii) continue to be, or cease to be, a member of a political party.

Accordingly, I recommend:

Recommendation No. 67

- (1) The rules respecting allowances for Members of the House of Assembly should provide that allowances may only be used exclusively and necessarily in relation to “constituency business,” which should be defined as: any activity directly connected with a Member’s responsibilities in relation to the ordinary and proper representation of electors and their families and other residents in the constituency; and***
- (2) The rules should also provide that a claim against an allowance should not be made if it relates to:***
 - (a) partisan political activities;***
 - (b) a personal benefit to a Member or an associated person of a Member; or***
 - (c) a matter that calls into question the integrity of the Member or brings the House of Assembly into disrepute.***

(iii) Clarity

The fact that it was difficult for the Commission staff to ascertain with certainty the exact scope of the current rules respecting allowances underscores the unsatisfactory nature of the current regime and the need for a clear statement of the applicable rules. There was virtual unanimity in the submissions we received from MHAs that they wanted “clear, detailed guidelines” of what was permitted and what was not. Clarity is also important for the staff of the House who have to administer the rules and decide, in a given case, whether a claim should be honoured.

There is, therefore, a case to be made for attempting to set out lists of the *types* of expenditures that would often be regarded as acceptable. As noted above, however, there is one very important caveat: the overriding determination of the acceptability of a particular expenditure is not its type but its *purpose*.

Subject to this caveat, broad categories of expenditure could be stated in the allowance rules and these could be supplemented, from time to time, by inclusion in a Members’ manual or other material provided to Members, of directives of the House of Assembly Management Commission or rulings of the Speaker in particular situations to be used as guides in future cases.

Accordingly, I recommend:

Recommendation No. 68

- (1) The rules respecting allowances for Members of the House of Assembly should, subject to the overriding requirement that an expenditure be for a proper purpose, contain lists of types of expenditures that would normally qualify for reimbursement;***
- (2) The rules should also contain examples of types of expenditures that would normally be regarded as not qualifying for reimbursement; and***
- (3) Where the House of Assembly Management Commission issues directives clarifying the rules respecting the acceptability of types of expenditure for reimbursement, or the Speaker makes rulings in respect of such matters, those directives and rulings should be included in the Members' Manual and should be brought to the attention of each Member in a timely manner.***

(iv) Control of Abuse and Convenience of Administration

The adoption of a number of other basic principles could assist in the control of abuse of the allowance system. They could also lead to convenience of administration.

Earlier I expressed the view that the adoption of *block funding* by the Commission of Internal Economy in 1996 fundamentally changed the nature of constituency allowances as recommended by the Morgan Commission. In particular, it changed the travel rules by wrapping them into an overall budget for constituency expenses and removing them from their own separate regime with its own rules. Although arguably giving greater flexibility to the Member, including all types of expenditure within one budget led to a number of other difficulties: potentially unbalanced expenditure across the range of potential types of constituency expenses; greater difficulty for House staff to monitor the expenditures; and restricting legitimate travel by virtue of the maximum cap on the allowance budget that had not necessarily been set by reference to a proper estimate of expense for travel.

The more Members are constrained by broad categories of constituency expenses, such as office accommodation, travel and communications, the greater will be the control that may be able to be exercised over the associated public expenditure. Notwithstanding the fact that a majority of MHAs appear to favour retention of the block funding arrangement,⁴⁸

⁴⁸ See Appendix 1.6 (Survey Results), Item 44 where 94% of respondents either strongly or moderately agreed with the proposition that "The block funding arrangement for travel and constituency allowances should be

I believe it should be done away with.

Another problem in the past was the lack of clarity and consistency with respect to the type of original documentation that would be required to justify the payment of an allowance claim. As has already been noted, there was also a portion of the allowance that was payable without any receipts at all, and certain year-end payments were also made payable without the requirement for any justification in relation to actual use on constituency business. Stipulation of a requirement for receipts - and the type of receipts - for every expenditure would also assist in control.⁴⁹

Finally, the degree to which payments can be committed and made through the offices of the House, rather than by the Member himself or herself, will also affect the ability of the House to ensure the proper use of allowance money. Some jurisdictions now promote a policy of encouraging most standard expenditures, such as equipment purchases, telephone lines, stationery and pins and certificates to be made through the offices of the House rather than *ad hoc* by the Member. The benefits are significant: there will be greater monitoring and control over the type and extent of expenditure before it is made; consistent purchasing policies, including tendering and requests for proposals, can be applied; and economies can be achieved by bulk purchases.

Accordingly, I am prepared to recommend:

Recommendation No. 69

- (1) The use of block funding as the basic means of administering the allowance regime should be done away with;***
- (2) Broad categories of allowances should be established, each with its own set of rules and controls appropriate to the control and administration of each type of expenditure;***
- (3) All expenditures for which an allowance claim is made should be supported by original receipts except where the claim is based on mileage or a standard daily amount allowed for meals;***
- (4) The nature of the original receipts that should be acceptable should be defined by the House of Assembly Management Commission in***

continued.”

⁴⁹ In the survey administered to MHAs by inquiry staff, 72% of respondents either strongly or moderately agreed with the proposition that “There should be receipts for all expenditures by Members where they are to be compensated.” See Appendix 1.6 (Survey Results), Item 47.

rules issued by it, and where, in exceptional cases, it is deemed appropriate to accept some lesser form of verification, such as affidavits with a reasonable explanation where a receipt has been lost, the Commission should define the nature of such alternative verification in the rules; and

(5) *To the extent reasonably possible, the Commission should require that:*

(a) *expenditures in relation to allowances be coordinated in advance with House of Assembly staff, and that payments to suppliers be made directly by the House rather than by the Member with subsequent claim for reimbursement; and*

(b) *payments to Members by way of reimbursement of expenses be made by direct deposit to Member's bank accounts.*

Categories of Allowances

In accordance with recommendation No. 69(2), it is appropriate to consider the categories of allowances that should be part of the new allowance regime. There are some natural divisions: office accommodation; operational resources; and travel and living expenses. The first two categories can, to a great extent, be standardized according to what is regarded as appropriate reasonable levels of resources that should be provided to every Member. Each Member should be treated the same in terms of what he or she is provided with. There should not be any arbitrary maximum dollar amounts applied to these categories. What is important is that each be provided with a certain basic level of assistance to do their jobs properly. The costs may vary according to district and may vary from year to year or even within a year. In many cases they will be able to be paid directly by the House on the MHA's behalf rather than by the MHA who would then have to make a subsequent reimbursement claim.

The third category - travel and living expenses - is much more MHA - and district-specific. The costs may vary significantly depending on each MHA's individual representational style and in terms of the distance of the district from the capital and from where the MHA maintains his or her permanent residence. It will also depend on the geography of individual districts and how difficult it is to travel throughout them. In this area, claims for reimbursement will generally have to be made by the individual MHA rather than have direct payments made by the House on the MHA's behalf. Different rules dealing with how to ensure sufficient flexibility to enable each MHA to service his or her district adequately can be developed if this category is segregated from the others.

There will, of course, also be a need for a residual category of expenditure to catch

other types of legitimate expenses that do not fit any defined category. This is the area that will continue to resemble the existing constituency allowance. By exempting out major expenditures relating to office operation and travel and accommodation - frequently the most significant under the existing regime in terms of dollars spent - the difficulties of administering this category of claim will be reduced because the amounts needed and available will be much smaller. As well, the fact that the rules will have a general definition of constituency business and lists of examples of permitted and forbidden types of expenditures to assess the validity of given claims should again reduce the frequency of the types of problems experienced with the existing regime.

I therefore recommend:

<p><i>Recommendation No. 70</i></p> <p><i>(1) The types of allowances available to Members of the House of Assembly to defray legitimate expenses associated with constituency business should be broken down into the following categories:</i></p> <ul style="list-style-type: none"><i>(a) office allowances;</i><i>(b) operational resources;</i><i>(c) travel and living allowances;</i><i>(d) a residual, constituency allowance; and</i> <p><i>(2) Each category of allowance should be dealt with separately in rules adopted by the House of Assembly Management Commission with conditions attached to their use being adopted to ensure proper administration and control as may be appropriate to each separate category.</i></p>

The adoption of this type of allowance regime will, in fact, bring the regime much closer in *concept* to the regime that was originally recommended by the Morgan Commission in 1989 before its principles were subverted by the amendments to the legislation and by decisions of the Commission of Internal Economy over the succeeding decade that I have discussed previously. The new regime I am recommending is not, however, simply “Morgan revisited.” As I noted, Morgan left many of the details of how allowances were to work as well as the levels of those allowances to the IEC to determine. I believe, on the other hand, that those details should be set right from the start to ensure they are consistent with the initial philosophical intent of this report’s general recommendations. I have tried to do that.

I do not propose to discuss in detail in this report each condition, restriction and rule that I believe should apply to each category of allowance. I have, however, caused to be drafted a detailed set of rules that I believe should be adopted by the new House of Assembly Management Commission. They are contained in Schedule II in Chapter 13. They should be treated as having been part of the recommendations that I am making in this chapter. Instead, I will limit the text of this chapter to a discussion of some of the general principles

that I believe should underpin the operation of the detailed rules of each category.

Office Allowances

Under the present arrangement, an MHA can be provided with office space in the area of his or her caucus offices in the Confederation Building in St. John's. The costs associated with this office are paid for out of the general House of Assembly budget. An MHA is also entitled to rent space and operate an office at a location in his or her district, but the costs of that operation must be paid for out of the MHA's constituency allowance. An MHA who is also a Minister of the Crown is also provided with space for a constituency office in the department where his or her ministerial office is located.

A Member is only allowed to hire one constituency assistant to operate any or all of those offices. If a Member decides to operate an office in the constituency, the assistant will usually operate out of that office, providing a local conduit to the Member for citizens from within the district. In such circumstances, the office maintained within the Confederation Building caucus area will essentially be unsupported. The Member, while in St. John's, must therefore rely on the good nature of the other caucus staff to do any administrative work.

One of the problems with maintaining an office in the constituency is that, with the cost coming out of the Member's constituency allowance, the Member is constantly faced with having to make a trade-off of those costs against spending the allowance on such other equally important things as travel to and from the district. In the survey administered to MHAs by inquiry staff 58% of respondents either strongly or moderately disagreed with the proposition "I find the level of compensation provided for constituency office support to me as an MHA to be adequate."⁵⁰

In my view, a Member should not have to choose between maintaining an office in the constituency and in the Confederation Building or between trading off office operation costs against other legitimate allowance expenditures. Proper office and administrative support should be provided to enable the professional politician to do his or her job effectively. Accordingly, a Member should be entitled to set up an office in his or her district *and* have an office in the Confederation Building without having to juggle scarce allowance funds to enable that to happen. A proper office arrangement should be regarded as part of the standard resource allocation that should be made available to every MHA. The cost should come out of the general budget of the House and not out of an overall capped constituency allowance of the Member. This is not to say that every MHA *must* operate an office in his or her constituency. In the case of MHAs representing districts in the St. John's area, for example, it may be deemed unnecessary to maintain an office in addition to the one in the Confederation Building. Nevertheless, every Member should have the option, if he or she deems it in the best interests of his or her work, to open and maintain a district office.

⁵⁰ Appendix 1.6 (Survey Results), Item 35.

Control over the costs involved can be achieved by the stipulation of maximum amounts that may be spent on individual types of expenditure within the general category, as well as by the development of standard specifications for what will be allowed, requirements for tendering or requests for proposals, standardized terms for space and equipment leases and a requirement that all major contracts, like lease agreements, be entered into and signed by the Speaker on behalf of the individual member. In addition, Members should be encouraged to utilize suitable space in Crown-owned buildings in the district where they are available.

With respect to office space in the Confederation Building, if a Member chooses to have his or her constituency assistant work in the district, I do not think it necessary that an additional full-time assistant should be provided in the Confederation Building office. The Member should, however, have access to basic secretarial and administrative assistance from time to time while in St. John's. This can be provided by means of each caucus being allotted an additional number of "pool" assistants who would be available to provide that work periodically as needed.

I was also struck by the disparity in quality of office accommodation in the Confederation Building as between government and opposition caucuses. I recognize that with each election the government may change and, even if it does not, that the numbers in the respective caucuses will likely vary with each new General Assembly. There may always have to be some renovation on an almost continuous basis. Nevertheless, the standard of construction ought to be the same for all parties. All MHAs, *qua* members, no matter what side of the House they may be on at any point in time, should be treated equally in terms of the facilities that should be made available to enable them to do their work as constituency representatives. From the tour I undertook of the existing office spaces, that is certainly not the case now.

The Speaker is ultimately responsible for making space available to Members within the precincts of the House. He or she should ensure that all Members are provided with the same general level of office facilities.

An issue that involved some public discussion during the course of this inquiry was the renting of constituency office space owned by Members or by companies owned or controlled by Members. There is an obvious potential conflict of interest in such arrangement, especially where the MHA concerned is responsible for negotiating the terms of any such lease. I recognize that in some rural districts there may not be much suitable office accommodation available to choose from. The Member's property may be "the only game in town." Nevertheless, the perception of impropriety that is present when an elected member spends public money on himself or someone with whom the member may be associated requires, I would suggest, a different arrangement. The fact that the Member asserts that the rental is at less than market value and that the cost will be higher elsewhere is not a sufficient justification - one can never know for sure unless other options are explored; nor is the fact that he or she discloses the arrangement and receives the blessing of the Speaker or the IEC sufficient. Maintenance of confidence of the electorate in the propriety

of the Member requires a rule that a Member may not rent from or enter into other financial dealings with himself or herself or an associated person.

I therefore recommend:

Recommendation No. 71

- (1) Every Member of the House of Assembly should be entitled to office accommodation in the Confederation Building complex in the area of the offices of the party caucus to which that Member belongs;***
- (2) The Speaker should be required to ensure that the quality and size of office accommodation in the Confederation Building complex for an MHA of one political party is not materially different than that for an MHA of another political party;***
- (3) Every Member should also be entitled to set up and operate an office in his or her constituency, subject to such restrictions, conditions and controls as may be stipulated from time to time in general rules made by the House of Assembly Management Commission. In the alternative, each MHA should be entitled to:***
 - (a) rent short-term accommodation in the district to facilitate meetings with constituents from time to time; or***
 - (b) operate an office from his or her residence provided he or she does not pay rent to himself or herself or a spouse or other associated person;***
- (4) The costs of setting-up, maintaining and operating a constituency office should be paid by the House of Assembly out of the House budget;***
- (5) The House of Assembly Management Commission should provide funds to each party caucus to enable sufficient numbers of secretarial assistants be made available on a shared basis to Members whose constituency assistants work in the district and not out of the Confederation Building office; and***

(6) *No Member should be permitted to rent property for a constituency office that is owned by the Member or a person not at arm's length with or related to or associated with the Member, or in which any of such persons may have an interest; nor should the Member be permitted to enter into other financial dealings relating to the constituency office that involve himself or herself or other associated persons.*

Office Resources and Operations

As in the case of the constituency office itself, each Member should be provided with a standardized package of equipment, including office furniture, computer, data communication devices, printer and telephone and facsimile services, to enable him or her to serve constituents properly. These items should be provided as a matter of course from the House budget as opposed to an individual MHA's allowance.

I do not believe it is justifiable that a rule under the existing regime that assets acquired by a Member from public funds valued at \$500 or more are to be depreciated over three years, and that at the end of that time they become the property of the Member. Property purchased with public money should be and always be regarded as public property so long as it has any useful life. It should be marked as public property and an inventory of its existence and location should be kept. The Member who has been entrusted with the asset should be responsible for it at all times and be made to account for it. There should be standard procedures in place to enable decisions to be made on a principled basis as to when and how assets should be disposed of and replaced.

In the past, issues have arisen respecting the appropriateness of Members purchasing artwork, ostensibly to decorate constituency offices. Under the three-year depreciation rule, this effectively meant that the Member could acquire a personal art collection over time at public expense. This is inappropriate for at least two reasons. First, it is inappropriate that public money should be used to fund personal acquisitions of this nature. Secondly, even if the artwork were to be kept indefinitely for public use, it is an inappropriate way in which to acquire artwork for public purposes as it depends on the whim and personal taste of the individual MHA rather than on any coordinated government acquisitions policy, such as the already existing government art procurement program. While it is not inappropriate for a Member to want to decorate a constituency office in a modest, receptive and tasteful way, the way to achieve that is to allow MHAs to select, on temporary loan, pieces of art that have already been purchased by government through the existing procurement program as a means of supporting the arts community.

I must emphasize the importance of maintaining proper inventory control over all property purchased by or for MHAs for use in constituency business. I was told in the course of this inquiry that large numbers of significant pieces of equipment such as photocopiers

and fax machines - some of which were under lease with monthly payments still being made - could not be readily located. No one seemed to know where this equipment was or who was responsible for it. There was no proper documentation in the records of the House that could clearly answer these questions. This is obviously an unacceptable situation. The Clerk of the House should be required to maintain proper inventory records and specific responsibility should be placed on each Member to account for the assets acquired for and used in his or her constituency office.

Accordingly, I recommend:

Recommendation No. 72

- (1) The House of Assembly Management Commission should, as part of its rules respecting allowances, and subject to such restrictions, conditions and controls as may be stipulated from time to time, make available a standardized package of office equipment and other resources to each Member to enable the member to serve constituents properly;***
- (2) The standardized package should include: basic office furniture; telephone and facsimile services; computer; data communication devices; photocopier; printer; scanner; internet services; and such other items as may be approved by way of general directive of the Commission;***
- (3) All property acquired by or for a Member should remain the property of the House and be identified as such by appropriate markings;***
- (4) The Clerk should be required to maintain and update an inventory report of all House assets entrusted to each Member;***
- (5) It should be stated in the allowance rules that each Member is responsible personally for all items entrusted to him or her and should account annually or on demand to the Speaker for such items;***
- (6) A Member should not be permitted to purchase artwork or crafts with public money, but should be allowed to participate in the government art procurement program for the purpose of selecting items on a temporary loan basis to be used for decorating a constituency office;***

- (7) *Disposal and replacement of House assets entrusted to a Member should be undertaken in accordance with a general policy established by the Commission and embodied in rules of the Commission; and*
- (8) *To the extent possible, arrangements for the acquisition of office equipment, data communication devices and telephone lines by lease or purchase should be made and coordinated by the House rather than undertaken by individual members on an ad hoc basis.*

Travel

The Morgan Commission recognized the importance of ensuring that MHAs had adequate resources to be able to travel between their districts and the Confederation Building “to be able to attend effectively to the needs of their constituents” and “to visit St. John’s frequently to lobby government departments and agencies on behalf of their constituents or to attend to their parliamentary duties.”⁵¹

The Commission implicitly recognized the futility of trying to determine a realistic fixed annual amount that should be used for travel, especially given the differing geographies of individual districts, disparate transportation systems in the province and differing distances from St. John’s. It therefore recommended, instead of focusing on a maximum annual expenditure *amount* for each district, that control be achieved generally by limiting the travel by reference to a standard number and frequency of trips, regardless of what the actual total cost might be. The specific details and rules as to how part of this regime was to work were consigned to the Commission of Internal Economy to develop “guidelines.”

As to travel *within* a Member’s district, the Morgan Commission also recognized its importance in keeping the Member in touch with the needs of the local communities. It decided, however, that the traveling costs should only be paid up to an annual maximum to be determined by the IEC.

The Morgan regime ultimately depended, for its day-to-day operation, on the development of another sub-level of rules by the IEC. As has been seen, the IEC ultimately determined, following the 1996 amendments to the governing legislation, to scrap the “number and frequency of trips” concept and, instead, to wrap the cost of travel into a global allowance for each MHA, thereby putting the cost of travel into direct competition with all the other financial demands on the allowance. I received a number of representations from

⁵¹ *Morgan Report*, p. 21.

MHAs that they were experiencing difficulties with the current system. They complained that their constituency allowance often underestimated the amounts that would be necessary to travel sufficiently to service their districts. As a consequence, they said they were frequently short of money in their constituency allowance, especially near the end of the fiscal year, to enable them to travel to and from their districts. Rather than cutting back on the frequency of their travel and restricting contact with constituents, they would often simply not claim for other legitimate claimable expenses to enable them to keep traveling. The result was that they ended up paying some expenses related to their work out of their own pockets.

A system that requires elected representatives to pay legitimate expenses necessarily incurred in properly working on constituency business out of their own pockets is not adequate. As a general principle, MHAs should have sufficient resources to be able to travel between their districts and St. John's on constituency business, whether the House is in session or not, and also to travel within their districts. This should be so whether the Member lives in his or her district or not.

Some may argue that a Member should always live in the district to remain close to those whom he or she serves. Others may argue that it is important that the Member live close to the capital, especially when the House is in session. As well, if the MHA is also a Minister of the Crown, it will be almost essential to reside near the seat of government. Some Members try to get the best of both worlds by maintaining their original home in the district but also maintaining a secondary residence near the capital. Others chose to move their permanent residence to St. John's and use temporary accommodation when visiting the district. Others have, for a variety of personal and family-related reasons, chosen to live neither in their district nor in the capital region.

There is no "one size fits all" solution to this issue. The situation is unlike many types of occupations where the employee is expected to move to the city where the job is; in such circumstances the employer would not be expected to pick up the cost of daily transportation from another city. In the case of the MHA, however, the job is not located in one place. It can equally be said to be in the district as in St. John's where the House of Assembly is. Even within the district, there is no one locus - the whole of the district's area is the job venue. For that reason, it is not unreasonable to provide for reimbursement of travel costs in a variety of circumstances and even to recognize that it may well be reasonable in some situations that a Member operate out of, and travel to and from, a secondary residence, as well as his or her permanent residence.

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

With respect to travel between the district and St. John's, this can best be achieved, I believe, by reverting to the Morgan Commission concept of determining a reasonable number and frequency of trips for travel between each district and then funding those trips

regardless of the cost. This approach is used by a number of other jurisdictions. It also does not place the cost of travel in competition with other resources that need to be used for other purposes. The details of how this will work are set out in the draft rules attached to this report in Chapter 13. I believe that it is important that the detailed rules be determined at the outset, rather than leaving them to later consideration by the IEC as was done in the past.

It should also be noted that the rules respecting travel between the district and St. John's should only apply where the Member lives in the district and his or her residence is not within commuting distance of the Confederation Building. The Member should not be entitled to reimbursement of the cost of local commuter travel to and from St. John's any more than any other person traveling to and from work would be entitled to payment of such expenses.

I recognize that one of the reasons given for the IEC decision to move to a block funding arrangement in 1996 was the perceived difficulty of estimating, for House budget purposes, what the total annual cost of travel would be. While it may be true that there may be greater difficulties presented with such a requirement than would be presented if all the House budgeters had to do was add up maximum allowances amounts for each district, I do not believe that that is a sufficient justification for adopting the block funding concept with all its other problems. Estimates are made for travel budgets in other parts of government. I am sure they can be done within the House as well.

With respect to travel within a district, on the other hand, I believe the needs of the district and the disparities in transportation infrastructure, especially in rural areas, will continue to require an estimate, based on the peculiarities of each district, of a maximum amount that can be spent. In this regard, I specifically sought input from MHAs in rural areas as to the difficulties associated with servicing their individual districts. Many responded. I have attempted to take that information into account in developing what I believe to be a reasonable estimate of the costs associated with travel within each district. Where a Member did not respond with district-specific information, I have tried nevertheless to make an estimate based on the best information I could obtain. I have set out those figures in Chart 10.1. They should be incorporated in the allowance rules adopted by the new House of Assembly Management Commission. The detailed calculations and the assumptions that led to the recommended numbers in Chart 10.1 are set out in Appendix 10.3. Where a strong case can be made, in respect of individual districts, that an amount is not adequate or is based on wrong assumptions, it would be open to the Commission on application by a Member, to amend the amounts accordingly in accordance with the procedures governing its operation.

Chart 10.1

House Operations		
Estimates of Intra-constituency Costs		
Riding No.	Riding Name	Total
1	Baie Verte	\$12,600
2	Bay of Islands	15,600
3	Bellevue	16,400
4	Bonavista North	12,600
5	Bonavista South	12,600
6	Burgeo & LaPoile	14,100
7	Burin-Placentia West	10,200
8	Cape St. Francis	9,000
9	Carbonear-Harbour Grace	9,600
10	Cartwright-L'Anse au Clair	49,200
11	Conception Bay East & Bell Island	9,600
12	Conception Bay South	9,000
13	Exploits	12,600
14	Ferryland	12,600
15	Fortune Bay - Cape La Hune	59,600
16	Gander	9,600
17	Grand Bank	15,000
18	Grand Falls - Buchans	11,400
19	Harbour Main - Whitebourne	8,600
20	Humber East	7,900
21	Humber Valley	15,000
22	Humber West	10,200
23	Kilbride	9,000
24	Labrador West	9,600
25	Lake Melville	10,000
26	Lewisporte	11,500
27	Mount Pearl	7,500
28	Placentia & St. Mary's	14,400
29	Port au Port	8,500
30	Port de Grave	9,600
31	St. Barbe	12,600
32	St. George's - Stephenville East	9,600
33	St. John's Centre	7,500
34	St. John's East	7,500
35	St. John's North	7,500
36	St. John's South	7,500
37	St. John's West	7,500
38	Signal Hill - Quidi Vidi	7,500
39	Terra Nova	12,800
40	The Straits & White Bay North	12,600
41	Topsail	7,500
42	Torngat Mountains	45,900
43	Trinity - Bay de Verde	10,800
44	Trinity North	10,200
45	Twillingate - Fogo	12,300
46	Virginia Waters	7,500
47	Waterford Valley	7,500
48	Windsor - Springdale	9,000
Total		\$626,400

I recommend:

Recommendation No. 73

- (1) ***Rules respecting allowances adopted by the House of Assembly Management Commission should contain provision for reimbursement of the cost of travel by a Member of the House:***
- (a) ***between the Member's permanent residence and the Confederation Building, provided it is outside reasonable commuting distance;***
 - (b) ***between the Member's constituency and the Confederation Building, provided it is outside reasonable commuting distance;***
 - (c) ***within his or her district;***
 - (d) ***to another district in relation to matters affecting his or her district;***
 - (e) ***to attend conferences and training courses; and***
 - (f) ***to other parts of Canada on matters related to constituency business.***

- (2) *It should be a condition of reimbursement for travel that the Member must be engaged in constituency business and the travel must be outside of commuting distance of the Member's permanent residence;*
- (3) *The limits on travel between district and the capital should not be determined by a maximum allowance, but by rules governing the number and frequency of trips;*
- (4) *Travel within a particular district should be limited by a maximum allowance determined specifically in relation to the special circumstances of each particular district affecting the modes and extent of travel required to provide reasonable contact between the Member and constituents. The specific amounts applicable to each district should be stipulated in rules adopted by the Commission and updated by amendment from time to time.*

Accommodations and Meals

In many respects, allowances for accommodations and meals go hand in glove with travel expenses. Whenever there is constituency travel that keeps a Member away from his or her permanent or secondary residence (if any) overnight, there will be a need to provide reimbursement of the cost of accommodations and related expenses such as meals.

As a means of controlling costs in this area, the Member should be limited to a specified number of accommodation nights per year; as well, maximum rates per night that could be claimed should be stipulated. I am recommending an amount of up to \$125 per night. Receipts should be required.

With respect to meals, there should also be a daily maximum that can be claimed. The amount should be set artificially at an amount lower than what would be reasonably necessary to pay the full costs of daily meals. This is because a Member living at home would have some costs related to meals. By eating out those costs are saved. An amount of \$50 per day is, in my view, reasonable. It is generally in-line with government executive expense allowances and is the same as the meal allowance currently applicable to MHAs.

I am not satisfied that receipts should be required for meal expenditures. The amount of paperwork in processing and checking such claims is considerable. The small amounts, controlled in any event by the total number of overnights that can be spent on travel per year, do not justify the administrative costs associated with their processing. The Member should be entitled to claim meals on the basis of a per diem amount without receipts provided, of course, that he or she can demonstrate that the meals were eaten while on travel status on constituency business.

I recommend:

- Recommendation No. 74***
- (1) The allowance rules adopted by the House of Assembly Management Commission should provide for claims, supported by receipts, for accommodation while on travel status on constituency business on the basis of a maximum accommodation amount per night and a maximum number of nights per year; and***
 - (2) The allowance rules should also provide for claims for maximum per diem amounts for meals, without receipts, while on travel status on constituency business.***

The rules with respect to when claims can be made for travel, accommodations and meals and how they intersect with each other will inevitably have to be very detailed if controls over their use are to be maintained. The specific rules I am recommending in this regard are set out in Part VI of the draft rules in Schedule II in Chapter 13. They will no doubt require some getting used to. As an aid to understanding their operation, I have attempted to set out in Chart 10.2 the nature of the claims that can be made in the varying circumstances that are contemplated, along with references to the sections of the specific recommended rules that apply in those circumstances. In this regard, Chart 10.2 deals with 4 different categories of MHAs (referred to in the chart as MHA #1, #2, #3 and #4) to reflect the varying application of the rules depending on the location and type of residence maintained by each MHA.

Chart 10.2

Summary of Members' Travel and Living Allowance

(References to section numbers are to sections in the draft *Members' Resources and Allowance Rules*, Schedule II, Chapter 13)

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
<p>MHA #1</p> <ul style="list-style-type: none"> • PR within Capital Region • SR, TA or PA in Constituency <p>SECTION 32 & 36</p>	<p>One way trip to Capital Region per week (s. 32(2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • \$0 (s. 32(1)) <p>Meals</p> <ul style="list-style-type: none"> • \$0 (s. 32(1)) 	<p>One way trip to Constituency per week (s. 32(2)(a))</p> <p>Accommodation up to Max of 3 nights per week</p> <ul style="list-style-type: none"> • up to \$125 w/ receipts (s. 32(2)(b)(i)); or • \$25 for private accommodation (s. 32(2)(b)(ii)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 32(2)(c)) 	<p>20 one way trips to Capital Region (s. 36 (2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • \$0 (s. 36(1)) <p>Meals</p> <ul style="list-style-type: none"> • \$0 (s. 36(1)) 	<p>20 one way trips to Constituency (s. 36 (2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • up to \$125/night w/ receipts up to 35 nights per year (s. 36(2)(b)(i)); or • \$25 for private accommodation up to 35 nights (s. 36(2)(b)(ii)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 36(2)(c)) 	<p>Transportation costs within Constituency as determined under (s. 38(2)(a))</p> <p>Accommodation</p> <ul style="list-style-type: none"> • up to \$125 w/ receipts; or • \$25 for private accommodation (s. 38(b)) <p>Meals</p> <ul style="list-style-type: none"> • \$50 w/o receipts (s. 38(c))

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
MHA #2 <ul style="list-style-type: none"> PR in Constituency SR, TA or PA within Capital Region SECTION 31 & 35	One way trip to Capital Region per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> Up to \$125 w/ receipts (s. 31(1)(b)(i)); or \$25 for Private accommodation (s. 31(1)(b)(ii)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 31(1)(c)) 	One way trip to Constituency per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> \$0 (s. 31(2)) Meals <ul style="list-style-type: none"> \$0 (s. 31(2)) 	20 one way trips to Capital Region (s.35(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 35(b)(i)); or \$25 for private accommodation up to 35 nights (s. 35(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 35(c)) 	20 one way trips to Constituency (s. 35(a)) Accommodation - \$0 (s. 31(2)) Meals - \$0 (s. 31(2))	Transportation costs within Constituency as determined under (s. 38(2)(a)) Accommodation <ul style="list-style-type: none"> up to \$125 w/ receipts; or \$25 for private accommodation (s. 38(b)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 38(c))

PR = Permanent Residence **(section 28(d))**
 SR = Secondary Residence **(section 28(f))**
 TA = Temporary Accommodation **(section 28(g))**
 PA = Private Accommodation **(section 28(e))**
 HOA = House of Assembly

Meal per diems will be prorated for part days **(s. 29(7))**
 Approved modes of travel & requirements outlined at **section 40**
 Accommodation expenses outlined at **section 41**
 Maximum intra constituency travel allowance in respect of an electoral district is set out in **Schedule A**

Chart 10.2 (Continued)

Summary of Members' Travel and Living Allowance

(References to section numbers are to sections in the draft *Members' Resources and Allowance Rules*, Schedule II, Chapter 13)

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
<p>MHA #3</p> <ul style="list-style-type: none"> • Capital Region/Urban Area • PR in Capital Region • NO SR, TA or PA <p>SECTION 29</p>	<p>Accommodation</p> <ul style="list-style-type: none"> • \$0 <p>Meals</p> <ul style="list-style-type: none"> • \$0 <p>(s. 29(5))</p>	<p>N/A</p>	<p>Accommodation</p> <ul style="list-style-type: none"> • \$0 <p>Meals</p> <ul style="list-style-type: none"> • \$0 <p>(s. 29(6))</p>	<p>N/A</p>	<p>Only mileage</p>

Residence Location	HOA in Session (MHA in Capital Region) Sessional Travel	HOA in Session (MHA in Constituency) Sessional Travel	HOA Not in Session (MHA in Capital Region) Intersessional Travel	HOA Not in Session (MHA in Constituency) Intersessional Travel	Intra-Constituency Travel SECTION 38 Schedule A
MHA #4 <ul style="list-style-type: none"> PR not in Constituency and not within Capital SR, TA or PA within Capital SECTION 33 & 37	One way trip to Capital region per week (s. 31(1)(a)) Accommodation <ul style="list-style-type: none"> Up to \$125 w/ receipts (s. 31(1)(b)(i)); or \$25 for private accommodation (s. 31(1)(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 31(1)(c)) 	One way trip to Constituency from either Capital region or PR per week (s. 33(a)) Accommodations up to max 3 nights per week <ul style="list-style-type: none"> up to \$125 w/ receipts; (s.33(b)(i)); or \$25 for PA (s. 33(b)(ii)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 33(c)) 	20 one way trips from PR to Capital (s.35(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 35(b)(i)); or \$25 for private accommodation up to 25 nights (s. 35(b)(ii)); or Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 35(c)) 	20 one way trips from PR to Constituency (s. 37(a)) Accommodation <ul style="list-style-type: none"> up to \$125/night w/ receipts up to 35 nights per year (s. 37(b)(i)); or \$25 for private accommodation up to 35 nights (s. 37(b)(ii)) Meals \$50 w/o receipts (s. 37 (c))	Transportation costs within Constituency as determined under (s. 38(2)(a)) Accommodation <ul style="list-style-type: none"> up to \$125 w/ receipts; or \$25 for private accommodation (s. 38(b)) Meals <ul style="list-style-type: none"> \$50 w/o receipts (s. 38(c))

- PR = Permanent Residence **(section 28(d))**
 SR = Secondary Residence **(section 28(f))**
 TA = Temporary Accommodation **(section 28(g))**
 PA = Private Accommodation **(section 28(e))**
 HOA = House of Assembly

Meal per diems will be prorated for part days **(s. 29(7))**
 Approved modes of travel & requirements outlined at **section 40**
 Accommodation expenses outlined at **section 41**
 Maximum intra constituency travel allowance in respect of an electoral district is set out in **Schedule A**

Residual Constituency Allowance

In addition to office accommodation and operation, travel and associated accommodation and meal expenses, there will always be other types of expenses that an MHA will legitimately incur from time to time while working on constituency business. A means should be provided for reimbursement of these expenses as well. This is where the definition of *constituency business* will remain particularly important as the basic guide to determining whether a claimed expense in this residual category should be reimbursed. By including in the rules, as recommended in Recommendation No. 68, lists of types of expenditures that may qualify, as well as those that will not qualify for reimbursement should make decision making as to the appropriateness of reimbursing a particular expenditure easier not only for the Member concerned, but also for the officials having to accept or reject the claim.

One type of expenditure that had achieved some notoriety at the time of the appointment of this inquiry was expenditure on refrigerator magnets containing telephone numbers and other contact information for the local MHA for distribution to constituents. In principle, there should be nothing inappropriate in this practice. It is a useful form of communication by the MHA to citizens as to how to access him or her. It would be otherwise, however, if the information contained on the magnet contained partisan political information, such as the political party to which the Member belonged or solicited support for that party. Use for such purposes would offend the principle, referred to earlier, that allowance funds should be used for non-partisan purposes only. To allow otherwise would be to use public funds to support an incumbent politician to the disadvantage of other potential contenders for the seat. Proper expenditure for items like fridge magnets can therefore be regarded as a legitimate charge against the communications budget for office operations referred to earlier if used to impart access - type information and not partisan messages.

Another area that appeared to be controversial involved expenditure on certificates of recognition from an MHA to constituents or groups, and the provision of promotional items like provincial pins and flags to district sports teams and other groups that travel to other areas and want to be able to give away or trade favours with the persons with whom they compete or otherwise interact. I was told that this was a common practice and that there was considerable pressure placed on MHAs to provide these items. A number of years ago, the government, through the department promoting tourism, made standard items available to MHAs to give to constituents, or the department itself provided them directly. More recently, that practice was cut out as an austerity measure. However, the demand did not cease, and MHAs felt pressure to continue to provide these items out of their individual constituency allowances.

One of the problems with the current arrangement is that there is no consistency of demand across districts and no consistency in the type or cost of the items provided or in the type of activity that will or will not be supported. Some MHAs are prepared to provide very

expensive pins and other promotional items. As well, with respect to certificates of recognition, some will provide elaborate plaques or trophies, while others are more restrained in what is given.

It is not unreasonable that groups or community organizations - and perhaps individuals - who have made an important contribution to the community or have achieved some important milestone or accomplishment should be recognized by the local MHA on behalf of the government in a modest way. It would be inappropriate, however, for lavish recognition to be made that would be costly to the public purse. Similarly, a modest level of support to sports teams and other groups by providing provincial promotional material may be justifiable, but there has to be restraint from a cost perspective with respect to what is provided. Under the current system, there is no control (except the theoretical control of the upper limit of the MHA's global constituency allowance) over what is provided, how much money is spent, and who will be favoured with the recognition or support and who will not.

In my view, expenditures on such items are not appropriate to be claimed under an MHA's individual constituency allowance. Instead, the House of Assembly Management Commission should be responsible for setting modest standards for such matters, developing standardized styles of certificates and pins, purchasing the items in bulk out of the general House budget and providing them in reasonable amounts to MHAs as required for identified purposes. I recognize that the Auditor General, in his report on *Payments Made by the House of Assembly to Certain Suppliers* and in his annual report dated January 31, 2007 expressed serious concern over lack of controls in the House leading to apparent abuse of its purchasing procedures. I am satisfied, however, that if the recommendations respecting internal controls made in Chapter 7 are implemented, proper purchasing procedures will be in place. Henceforward, there should not, therefore, be cause for concern about improper spending on certificates, pins and the like.

Accordingly, I recommend:

Recommendation No. 75

- (1) In accordance with recommendation No. 70(1)(d), a residual category of constituency allowance should be made available to each MHA to defray other expenditures necessarily incurred in relation to constituency business;***
- (2) The allowance rules adopted by the House of Assembly Management Commission should contain a list of expenditures that would normally qualify for reimbursement if spent on constituency business, including:***
 - (a) meals (but not alcohol) for meetings with constituents or other members of the public;***

- (b) *memberships in community organizations;*
 - (c) *magazine, newspaper and journal subscriptions;*
 - (d) *travel, accommodations, meals and registration fees for conferences and training courses for the MHA or his or her constituency assistant, if approved by the Speaker; and*
 - (e) *expenses associated with attending meetings or hearings involving advocacy on behalf of a constituent;*
- (3) *The allowance rules adopted by the Commission should contain a list of expenditures that will not qualify for reimbursement, whether or not they can be said to be related to constituency business, including:*
- (a) *the acquisition, creation or distribution of anything that uses a word, initial or device that identifies a political party;*
 - (b) *artwork and crafts;*
 - (c) *sponsorship of individuals or groups;*
 - (d) *donations;*
 - (e) *raffle or other tickets;*
 - (f) *hospitality other than meetings listed in recommendation (2)(a) above;*
 - (g) *gifts;*
 - (h) *items of a personal nature;*
 - (i) *travel costs for constituents;*
 - (j) *travel costs for spouses or dependents; and*
 - (k) *financial assistance for constituents;*
- (4) *Non-partisan information relating to the availability of an MHA to his or her constituents, in the form of fridge magnets or other means of communication, should be able to be purchased as part of the MHA's budget respecting office operation; and*
- (5) *The Commission should develop standards for creation and distribution of certificates of recognition and provincial promotional material that may be given by MHAs to individuals or groups in the district, and should arrange to have such material purchased in bulk and on hand for reasonable use by each MHA.*

It will be seen from Recommendation No. 75(3)(c),(d),(e),(f),(g),(i) and (k) above that I do not believe it to be appropriate to claim expenditures relating to donations or financial assistance to groups or individuals against an MHA's constituency allowance. This was perhaps the most controversial issue that presented itself concerning the scope of the constituency allowance. Strongly held views were expressed by MHAs both in favour of

and in opposition to the practice of spending public money in this way. Because of the importance it assumed, I have devoted the next section of this report to the issue. I will refer to all of these types of expenditures compendiously as “donations.”

Donations

Substantial amounts of public money have been spent by many MHAs from their constituency allowances by way of *donations* to individual constituents or groups. These expenditures come about in a variety of circumstances. I have noted in Chapter 9 that the job of a politician in this province appears to involve the dispensation of largesse in the community. In the run of a year, an MHA may be expected to provide hospitality, including rounds of drinks, at community events; to contribute with cash donations to sponsorship of individuals or groups, especially cultural or sports groups, who are competing away; to provide financial assistance to constituents who need food, clothing or supplies or who need help traveling to a major centre for medical treatment; to buy raffle tickets at community events; and to buy items for sale at community events as a means of supporting those activities.

Oftentimes, especially with cash donations to community groups, the donations are made at the end of the fiscal year by MHAs who had money left in their constituency allowance account and felt that this was an appropriate way to spend the remaining funds.

A substantial number of MHAs argued that the nature of political life in Newfoundland and Labrador is such that it is necessary that such expenditures be condoned.⁵² In fact, some said that their lives as elected members would be intolerable if those expenditures were not permitted. They talked in terms of the tremendous pressure placed on politicians to make donations and give financial support within the community. They said it was expected of the politician and that if he or she did not “play the game” there would be consequences at the polls. They also argued that such expenditures, judiciously

⁵² In the survey administered to MHAs by inquiry staff, the following percentages of respondents indicated that they considered the following types of expenditures to be “appropriate”:

Most charitable donations	75%
Grants to local sports teams	72%
Grants for team uniforms	72%
School scholarships	83%
School fundraisers	78%
Subsidization of youth trips	81%
Financial aid for medical transportation of constituents	61%
Advertisements in a program for cultural, sports or other groups	72%
Gifts to commemorate a 100 th birthday or 50 th wedding anniversary	75%
Emergency financial aid for constituents in need	53%
Provincial flags and lapel pins	83%

See Appendix 1.6 (Survey Results) under the heading “Appropriate and Inappropriate Uses of MHA Compensation.”

applied, made an important contribution to the community. How could an MHA, it was said, turn down a request for food or medicine for an impoverished constituent? They pointed out that government social programs were often inadequate and citizens sometimes “fell through the cracks.” The MHA was in the best position to know who the deserving ones were and to take steps to fill the void. The point was also made by some opposition Members that the ability of an opposition MHA to provide “social service” types of donations was especially important because there was a perception that government Members, especially if they were also Ministers, had an easier time accessing government programs for their constituents. The ability of opposition Members to make discretionary donations was one way in which this perceived imbalance could be righted.

Notwithstanding these arguments, I believe these practices belong to another age. It is an age we should leave. They are reminiscent of Governor Williams’ description of the politician at the beginning of the twentieth century quoted by S.J.R. Noel in Chapter 9 as:

one who has to look after [constituents’] personal interests in every detail. He must be ready to watch over them when they are ill and get them free medical treatment; he must get them free tickets for the seal fishery ... employment on the railways, free passes from place to place, billets for their sons and daughters ... In short there is nothing too ridiculous for electors to expect of the member.⁵³

In Chapter 9 I sketched out the concept of the professional politician as the basis of the role of the MHA for the future. The notion of the politician as a professional is inconsistent with these customs. Accordingly, these types of expenditures should not be made from public funds. Let me explain why.

First and foremost, the practice of making financial contributions and spending in this way supports the unacceptable notion that the politician’s success is tied to buying support with favours. Such things, especially the buying of drinks, tickets and other items at events, has overtones of the old practice of *treating* - providing food, drink or entertainment for the purpose of influencing a decision to vote or not to vote. As I wrote in Chapter 9, it demeans the role of the elected representative and reinforces the view that the standards of the politician are not grounded in principle. In fact, I would go further. The old practice of treating was usually undertaken using the politician’s own funds or his or her campaign funds. To the extent that the current practice involves the use of public funds, it is doubly objectionable.

Related to the notion of using public funds to ingratiate oneself with voters is the unfair advantage that the ability to do that gives to the incumbent politician over other contenders in the next election.

⁵³ Quoted in Chapter 9 (Compensation) under the heading “The Job of a Member of the House”.

Even if it were deemed acceptable to make certain kinds of donations, such as those to “worthy causes” like cultural groups or sports teams, the practice by its nature is open to inequitable application and leaves the politician susceptible to allegations of discrimination. A grant to the local soccer team and not to the baseball team may be perceived as nepotism if the politician’s uncle happens to be the coach of the soccer team. Often it is the “squeaky wheel” that gets the attention, yet there may be many other worthy causes that could equally benefit from support, but may not be known to the politician. In these circumstances, it is difficult to treat all claimants fairly. In principle, a system of financial support to the community using public funds should only be operated on a basis that is fair to all, and perceived to be fair to all. All groups should have the opportunity to compete on a level playing field, something that is not followed when political discretion is concerned.

I recognize that there is a natural tendency to want to help those facing the misfortune of financial or personal hardship. It is no doubt hard for a public figure like a local politician to face an indigent constituent and not provide medical travel assistance or basic necessities of life when the constituent is facing an emergency. Nevertheless, making financial contributions, even in such circumstances, is subject to the same objection, discussed earlier, of inconsistent and inequitable treatment. As well, there should be government assistance programs in place for dealing with such matters. The role of the MHA in such circumstances should surely be to advocate on the constituent’s behalf with the appropriate government agencies for proper assistance or, if there is no such program, to lobby for its implementation in deserving cases. There is, of course, nothing to prevent an MHA, just as in the case of any citizen, from acting out of humanitarian concern and making a contribution out of personal funds. The use of public funds, however, is inappropriate.

A number of the foregoing points were made by a former long-serving Member from a rural constituency in a written submission to me. They are worth quoting:

Any representation I made on behalf of my constituents for the purpose of furthering their efforts with regard to community projects was centered on the availability of existing Government programs. I was seldom, if ever solicited for significant donations to worthy projects in the District ...

Indeed during the Government [of the 1970s and early 1980s], the idea of a Constituency Allowance was never mooted. I would like to think that I would have resisted it, on principle. However, when principle and money collide, the latter is often the victor.

I am sure that significant numbers of citizens feel hoodwinked and cheated by the fact that MHA’s availed of the Constituency Allowance to ostensibly make personal donations to worthy causes. It also raises confusion in some areas where a Government Member or an Opposition Member is making a donation to a cause which does not fit into the Government’s ordinary funding objectives. In other words there is inconsistency throughout the Province. I believe this tends to heighten cynicism among the electorate. It is hard being a politician anywhere, but when the citizenry is provided with

“proof” of inconsistency and apparent favoritism, it tends to bring the whole system into disrepute.

As noted in the foregoing quotation, the making of donations, even to recognized charitable entities, is an important matter of public policy because it amounts to being charitable with other people’s (the electorate’s) money. Public policy is also engaged because the priorities and agenda of the group donated to may differ from those of government. Furthermore, when the donation is made to a registered charity one cannot be sure that the Member is not using the receipt from the charity for income tax purposes.

It has also been suggested that the practice of making donations in the various circumstances just described is, in effect, a “slippery slope.” As the practice becomes better known, there is a tendency for the extent of the demands to become more and more incessant, putting greater pressure on the MHA and on the public treasury to fund these “off balance sheet” social service programs. A number of MHAs stressed this point to me. One experienced current Member inferentially confirmed this when he observed that decades ago, when he was first elected, he experienced very little demand for him to make donations, but he has felt increasing pressure to do so as the years have gone by. In fact, it is not uncommon for supplicants to stress to a Member that the former Member or the Member in the neighbouring district has always been “fully supportive,” the clear implication being that the expectation is that the Member should be also.

The basic trend in the United Kingdom and in Canada is not to permit donations out of Members’ allowances. The situation in the Canadian provinces and territories is summarized in Appendix 10.4. This trend represents best practice. It should be adopted here.

In recommending a prohibition on the making of donations, I recognize that, initially, until the new policy becomes well-known, MHAs may experience uncomprehending negative reaction from constituents on being told that their expectations of direct support can no longer be fulfilled. It is important that these community expectations be dispelled. The Speaker therefore should be tasked with making appropriate public notifications advising the residents of the province that Members are henceforth prohibited from engaging in these practices.

As in the case of any citizen, Members should be able to make a donation privately from personal funds to whomever they consider needs it. One has to be careful, however, to ensure that more wealthy Members should not be able to obtain an advantage in promoting their own political position by making substantial personal donations, thereby placing financial pressure on less well off Members to do the same. In my view, the effects of this potential inequity can be reduced by requiring that when a Member makes a personal donation he or she should do so without reference to the fact that he or she is a Member of the House; in other words, it is to be made in a personal capacity only. It is true that many people might nevertheless recognize the name and make the connection with the Member’s public position. There is little that can be done about that if the connection is made from general knowledge in the community. However, the Member should not actively promote

dissemination of information about the connection when making the donation.

I am therefore prepared to recommend:

Recommendation No. 76

- (1) Members of the House of Assembly should be prohibited from making donations and other gratuitous payments to or on behalf of individuals, charities, community groups or agencies using their constituency allowance or other public money;***
- (2) A Member should be prohibited from making donations or gratuitous payments out of his or her own funds unless:***
 - (a) the donation is expressed to be made in his or her personal capacity without any reference to the fact that he or she is a member of the House;***
 - (b) if there is to be a public acknowledgement of the donation or payment attributing it to the Member, the Member stipulates that there is to be no reference in the acknowledgement that he or she is an MHA or a member of a political party;***
- (3) Upon adoption of a rule dealing with prohibitions on donations and other gratuitous payments, the Speaker should forthwith cause notification to be published to the residents of the province informing them of the restrictions placed on Members in this regard.***

Costs and Budgeting

I have already noted that the House staff might experience greater difficulty in budgeting for the allowances that have been recommended than under the existing regime. Nevertheless, I do not believe that the problems are insuperable. Members should be required to assist in the process, especially in relation to estimating travel costs associated with the particular district that each Member represents. Annually, as part of the budget process, each Member should be required to prepare an estimate of what he or she believes is an amount necessary to allow for adequate travel in relation to that Member's district. That information can then be used in developing the House's overall budget.

Accordingly, I recommend:

Recommendation No. 77

- (1) Each member of the House of Assembly should be required to submit to the Clerk an estimate of the amount of money he or she reasonably estimates will be required by him or her for travel in the following fiscal year reflecting the principles and parameters set out in the rules; and***
- (2) The figure so submitted should be taken into account by the House staff and the House of Assembly Management Commission in developing the House's budget for the following year.***

In making the recommendations in this chapter, I was concerned about the additional costs that would be associated with the new regime. I felt intuitively that the new allowance arrangements would be more costly than the old. The question was: how much and could it be afforded?

I therefore asked the commission staff to attempt to cost out the new regime using reasonable assumptions. The results of that costing, together with the assumptions on which the costing is based, are set out in Appendix 10.5. While the result is only a rough estimate, it is, I believe, a useful indication of the order of magnitude as to what will be entailed financially in substituting the recommended regime for the existing one. On this analysis, it is estimated that the new allowance arrangement could cost approximately \$577,000 more than the legitimate charges under the existing regime should the maximum allowed expenses be incurred and claimed in each case and if the general living arrangements for existing MHAs do not materially change after the next election. This assumes that each MHA will opt to operate an office in his or her constituency as well as in the Confederation Building. As noted periodically, it is likely that some MHAs, especially St. John's MHAs, will not opt for the second office. The additional costs will therefore be correspondingly less.

Although the recommended allowance regime will be more costly, I believe that, if the other recommendations in this report respecting responsibility, structure, controls and audits are implemented, there will be a better chance that value for money will be obtained than under the present system. The extra cost is worth it. I fully agree with the comment in the Morgan Commission quoted in the epigraph at the beginning of Chapter 9: "if we want good and efficient government and decisions that affect our daily lives to be made by competent and well qualified men and women, we must be prepared to pay for it."