



## Chapter 12

### Signals

*Protecting the integrity of government is crucial to the proper functioning of a democratic system.*

— Hon. Calvin F. Tallis<sup>1</sup>

#### A Basis for Broader Reflection

I have endeavored to cover the full scope of the issues of my terms of reference in the preceding chapters. While I do not wish to reach beyond my mandate in making recommendations, neither do I feel it appropriate to leave unaddressed important signals of concern or potential opportunities for improvement related to matters pertinent to financial administration in government generally. Accordingly, there are a number of matters that I bring forward with no specific recommendations but to ensure that the full benefit of this Commission’s research may be realized in the larger picture of public administration in the government of the province. In many respects, I believe the matters we have studied, the manner in which events unfolded and the extent of the underlying weaknesses identified provide reason to pause and reflect on matters beyond the narrow administrative framework of the House of Assembly - in short, to ensure we do not “miss the forest for the trees.”

As we have delved extensively into the “trees” of the administration of the House of Assembly, it is prudent to ask whether there were any signals or messages identified that might be symptomatic of issues prevalent in the overall financial administrative “forest” of the government generally. I raise these matters not to allege that a vast array of other problems necessarily does exist, but to underline my sense that some of the signals or deficiencies that we identified in the House of Assembly administration may not be unique to the legislature.

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<sup>1</sup> *R. v. Bertson*. [2000] SKCA 47, at para.25.

## **“Could This Have Happened Elsewhere in Government?”**

This question was asked of us many times through our consultation process. In fact, in some instances the issue arose not as a question, but as a definitive pronouncement: “This could not have happened elsewhere in Government.” Generally, the support for this proposition was related to the fact that the notion of autonomy and virtual independence, characteristic of the House of Assembly, is not prevalent in individual government departments in the executive branch. Accordingly, one might conclude *the exact same collection of circumstances could not exist elsewhere* in government. Across the executive branch there are extensive financial management policies, reporting practices and control mechanisms in place that were not present in the legislature. In fact, I have acknowledged the existence of such policies and controls. In the final analysis, however, the question is: are the controls effective in all cases? While not all of the failures outlined in Chapter 4 could be prevalent elsewhere, are there some that *could* be?

In this context, I believe it is worth reflecting on some of the specific control and accountability questions identified in Chapter 4 and to consider the potential for their occurrence in the broader context from front line administration up to top management in the executive branch of government. Accordingly, I pose the following questions as a basis for reflection:

- i. Are there other circumstances in the executive branch where front line administrative personnel feel overburdened and unable to cope properly through lack of resources as a result of successive rounds of fiscal restraint?
- ii. Are there other relatively small administrative units in government where segregation of duties is an ongoing practical challenge?
- iii. Are there circumstances where front line staff members approve claims or invoices for payment without appropriate review of the documentation?
- iv. Might there be circumstances where, notwithstanding that the Comptroller General legally is entitled to review documentation, there is minimal, or no compliance testing done due to lack of resources?
- v. Might there be cases where a supervisor approves items for payment first and then asks a subordinate to sign-off?
- vi. Might there be cases where the permanent head and the Comptroller General (perhaps even unknowingly) have approved the delegation of electronic signing authority to an individual in a location that does not have ready access to supporting documentation for payments?

- vii. Could there be other situations where an individual with such electronic signing authority releases payments without having reviewed the documentation?
- viii. Are there other situations where administrative staff in a government department manage sub-accounts within large subheads in a manner which is less than appropriate, but where the management and structure of the internal departmental accounts is not addressed by the Comptroller General or Treasury Board - as long as the overall level of funds "voted by the House" is not exceeded?
- ix. Are there other situations in government where there have been consistent overruns from the original budget on individual expenditure votes that have not been scrutinized, due to the fact that they are considered "immaterial" in the context of the overall budget? Does the larger notion of "materiality" limit the extent of expenditure variance analysis - for example: might there be overruns from an original budget of \$100,000 to \$500,000, or more in individual accounts that are not analyzed by Treasury Board (Budget Division) staff because they are considered immaterial in the context of the \$5 billion budget?
- x. Are there other situations where the "revised" expenditures tabled with the budgetary estimates have consistently underestimated the actual expenditures ultimately recorded in the respective account? Does the trend in "revised" expenditures relative to the original budget get reviewed and analyzed on an ongoing basis?
- xi. Are there cases where a large account (subhead or subdivision voted by the legislature) is managed by a department according to various sub-accounts? Is it likely that such sub-accounts are not monitored on an ongoing basis by the Comptroller General or Treasury Board? Within such sub-accounts, might there be individual accounts that have consistently recorded significant expenditure overruns that have been masked by savings in other areas, gone unchallenged by Treasury Board or the Comptroller General, and have not been publicly disclosed?
- xii. Are there Deputy Ministers or other permanent heads whose focus is almost entirely concentrated on the policy formulation and program delivery aspects of their positions, and who have effectively delegated the overall financial management and administrative role to an Assistant Deputy Minister or Director of Financial Operations - based on "*total confidence*" and "*blind faith*"? Do all Deputy Ministers take ownership of the financial management and internal control functions within their departments? Would they be comfortable today certifying that appropriate systems of internal control are in place and are functioning effectively in their respective departments?
- xiii. Are transfers of funds amongst subheads voted by the legislature regularly processed within departmental budgets without substantive review or objective

analysis other than the internal analysis done by departmental management personnel, who may have originated the transfer in the first place?

- xiv. Would the regular annual financial statement audit process for a government department likely detect individual internal control or system weaknesses and compliance difficulties, or would such matters likely only be uncovered in more extensive legislative audits that are conducted infrequently?

The questions posed above are meant to be thought-provoking examples only. There are many more questions of a similar nature that might be asked as well. While I do not propose to list them all, or to answer them, I believe they bear *sober reflection in the larger context of government as a whole* to ensure that, to the maximum extent possible, we learn from the troublesome experiences in the House of Assembly that gave rise to the appointment of this Commission.

*All* of the failures identified in the House would not likely be found concentrated in a single operational unit elsewhere in government. On the other hand, I am not at all convinced that many of the administrative weaknesses identified in the course of my review are unique to the House of Assembly administration. To the extent such circumstances exist in the executive branch of government, either individually or in combination, there exists potential cause for concern. I leave it to government to determine the measures, if any, it deems necessary to identify and address them.

### **Delegation of Authority and Effective Control of Public Money**

At the risk of delving too far into some of the questions outlined above, I feel it is appropriate to offer some general observations on the overall control framework in government. Through the course of my consultations I was confronted by questions such as:

Irrespective of the financial management approach within the House, how could such an array of weaknesses go undetected by the central control functions of government? Why didn't the Comptroller General or Treasury Board detect at least some of these difficulties and address them?

As I pursued the answers to these questions, I was told that much of the monitoring, analysis and control responsibility that I might have expected to reside with the office of the Comptroller General and Treasury Board staff had effectively been delegated to the management and administrative staff of the House. It was emphasized to me that this was consistent with the practices followed throughout government in relation to the delegation of responsibility to the Deputy Ministers and, accordingly to various levels of management in the line departments. Such areas of delegated authority include: approval of signing authorities; various types of transfers of funds; budgetary variance analysis; the determination of how accounts are subdivided; and the determination of the control mechanisms, if any, put in place to ensure compliance with appropriate regulations, authorities and spending limits. In several respects (not all), the remoteness of the central

control agencies of government from the operations of the House was described to me as being no different than the relationships that today exist between Treasury Board, the Office of the Comptroller General and departments throughout the executive branch of government. While I did not research the issue, it was suggested to my research staff that this approach to delegation was not out of line with practices followed in other Canadian jurisdictions.

It was explained to me that this increased autonomy and responsibility at the departmental level had evolved as a result of a perceived need to improve the responsiveness and operational effectiveness of the departments in delivering government programs - a desire to reduce the constraints and *red tape* of a system that might have been perceived to be overly bureaucratic and unresponsive through excessive centralization.

In addition, I was told that the Comptroller General and staff responsible for the Treasury Board function today feel they do not have the resources to monitor and evaluate effectively the various controls, accounting practices, signing authorities and ongoing budgetary variances at the departmental level. Furthermore, there is a sense that they do not have the authority to intervene. For example, in relation to accounting practices and the method of maintaining accounts below the level reported in the public accounts, while there may be circumstances where the Comptroller General's office might recommend corrective measures or controls be instituted, these officials may not feel they have the authority to prescribe or direct that such action be taken. There is a sense that such an approach by the Comptroller General would meet strong resistance from departmental officials.

From the Treasury Board perspective, the Treasury Board Secretariat, as such, no longer exists. The central financial management, analysis and authorization capability contemplated by the *Financial Administration Act* has been scaled back from previous levels and is entirely performed by the Budget Division, which is now part of the Department of Finance. In speaking with officials of this division, there is the sense that "we have a five-billion dollar budget to monitor and manage, and while we do analyze significant variances, we just don't have the resources to address every two or three hundred thousand dollars variance." There is an expectation that the departments have the mandate to manage their budgets and that they are expected to be on top of the variances at that level. Therefore, the focus of Treasury Board's analytical arm (the Budget Division) appears to be on the bigger numbers and program areas with the most *material* expenditure requirements. While this might initially appear understandable, it presents a troublesome notion. It implies the absence of objective scrutiny on spending practices and budgetary variances which fly under the radar of *materiality*. In the context of a \$5 billion budget, numbers that might otherwise appear significant - up to \$500,000, as we observed in the House of Assembly - might be considered immaterial.

The impact of this pendulum swing to decentralization is compounded by fiscal restraint. In earlier chapters I highlighted the impact of the curtailment of the pre-audit and internal audit capability of the Comptroller General on the control environment. These reductions in pre-audit and internal audit capability affect the rest of government as well as the House of Assembly. I have just noted how the level of analytical capacity to support the financial management functions of Treasury Board has been reduced. I was also told the

same may be true in varying degrees throughout the departments of government. In times of financial restraint, it was suggested to me, the financial people were the first to go because their removal was not as sensitive as the elimination of positions with front line program delivery responsibility.

Undoubtedly, the move toward increased delegation of responsibility to the departments was well-intentioned, yet there are no indications that it was accompanied by a corresponding strengthening in the financial management capability at the departmental level. On the contrary, there are indications that the financial management capability of the departments has been watered down by cutbacks induced by fiscal restraint. It was suggested that in some cases “the financial shop has been gutted out.” Furthermore, in the course of our consultations, it was suggested that some of the Deputy Ministers who now shoulder these financial responsibilities, and whose capabilities and strengths are recognized in many important respects, may not be sufficiently conversant in systems of internal control and the principles of financial management to perform the full scope of their financial oversight role to the desired standard. It was not within my mandate to assess the extent or validity of these assertions, but I feel obligated to draw government’s attention to the fact that these sentiments do exist. Indeed, one sensed that it might be especially difficult at this stage to expect some of the deputies to perform the accounting officer and management certification functions similar to those I have recommended for the Clerk of the House.

I am convinced that the preservation of an effective financial control environment requires the dedication of the necessary resources at the operational level, as well as an appropriate degree of objective monitoring, assessment and analysis by persons other than those who directly incur and/or authorize the expenses. In my judgment, the *Financial Administration Act* is intended to ensure that appropriate standards are maintained in relation to the control of, the spending of, and the accounting for public monies under that *Act*. The overall responsibilities to ensure that these standards are established and maintained are assigned to the Treasury Board and the Comptroller General. I do not accept that these are discretionary determinations to be established with varying degrees of emphasis and quality by 15 to 20 departments of government.

Accordingly, I believe there are signs the pendulum of delegation may have swung too far. There are indications that the effectiveness of the financial management role of the Comptroller General and the Treasury Board has diminished to something less than contemplated in the *Financial Administration Act*. There are indications that the financial management function of government may be under-resourced, both at the departmental level and at the central agency level. To the extent that these observations are valid, some of the inadequacies found to be prevalent in respect of the management of financial affairs of the House of Assembly, might therefore be also present in the departments of the executive branch of government.

## **Accountability and the Public Accounts Committee**

In Chapters 4 and 5 I expressed my concern over the failure of the Public Accounts Committee of the legislature to exercise a sufficiently active role in holding government “accountable for the stewardship of public assets and the spending of public funds.”<sup>2</sup> In my recommendations I have addressed the legislative direction that I believe is appropriate to confirm and reinforce a financial oversight role for the PAC in respect of the administration of the financial affairs of the House. In the *broader context*, one cannot help but question the degree of inactivity and inattentiveness of our PAC in recent years in relation to the overall financial affairs of government generally. During the last three years, which saw provincial expenditures totalling in the order of \$15 billion, there have been successive Auditor Generals’ reports identifying various matters of concern - yet the PAC has only held only two public hearings in that period.

In Chapter 5 I explained the level of importance assigned to the Public Accounts Committee under the British Parliamentary System in providing “assurance that the Government handles its finances with regularity and propriety.”<sup>3</sup> I also noted that, years ago, the Public Accounts Committee in this province was far more active than it has been for the past several years. To my knowledge, the Committee’s mandate has not changed. I note that its members are paid an extra salary in recognition of their role and the expectation that it will be performed.

Accordingly, as government and Members of the House reflect on my recommendations in respect of the proposed role for the Public Accounts Committee in relation to the legislature, they may wish to do so by giving consideration as well to the broader context of the revitalizing of the overall role and responsibilities of the PAC in the stewardship of the province’s finances.

## **Claims Processing and Overlapping Claims**

In Chapters 3, 4 and 7 I have identified a number of issues associated with the potential for “double billing” and “double payment” of MHA claims, and I have recommended various measures to address the concerns identified. However, the potential for duplicate payments is likely the greatest in circumstances where claims are submitted to different payment centres for processing.

The most obvious situations that could give rise to problems are, as noted in Chapter 7, those where a Cabinet Minister may submit claims to the administration of his or her department (as Minister) and also to the administration of the House of Assembly (as

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<sup>2</sup> *Financial Management Handbook of the Office of the Comptroller General*, p. 6.

<sup>3</sup> C.E.S. Franks, “The Respective Responsibilities and Accountabilities of Ministers and Public Servants;” p. 177-178.

Member). The potential for multiple payments is of course increased further in situations where a Member who is a Cabinet Minister holds more than one portfolio - in such cases the individual might be in a position to submit claims to three or more administrative units for payment. The potential for duplicate payments in this regard may soon be reduced considerably if the new Iexpense computerized claims processing system being introduced in government is deemed suitable for the processing of MHA claims as well as ministerial claims.

Should the new Iexpense system not provide sufficient interface and controls, government might ultimately wish to consider a move to a *centralized claims administration and processing unit* for all of government that would process the expense claims for MHAs in respect of their role as Member as well as the claims of all Cabinet Ministers (albeit, perhaps, according to different rules as may be applicable to different reimbursement regimes). In such a situation, the same administrative unit would have visibility, access and analytical capability to review all claims made by respective individuals (both as Ministers and MHAs), and to perform the necessary cross-checks to avoid duplicate payments.

While these processing options can be assessed at the administrative level, there is an additional dimension of this issue to be addressed from a policy perspective. It relates to *overlapping entitlements*. Through the course of addressing my mandate, I have focused on recommending a comprehensive allowance entitlement framework for *all* Members - *as MHA's*. I emphasize that I have *not addressed* the allowance framework or expense reimbursement entitlement of Cabinet Ministers - *as Ministers*. The treatment of ministerial expenses is not within my terms of reference, yet, there are at least two circumstances affecting reimbursement of ministerial expenses on which I believe I should comment.

In the first place, there may be circumstances in which Members who are also Cabinet Ministers can make *overlapping claims*. There may be circumstances in which the rules might permit an individual to claim an expense or a per diem allowance as *either* a Member *or* as a Cabinet Minister. This presents two issues: i) safeguards must be put in place to ensure the individual is only reimbursed once (for example, an individual should only be able to claim one per diem allowance for a given day), and ii) safeguards must be put in place to ensure that the Cabinet Minister does not derive an advantage in relation to funding constituency expenses compared to the Member who is not a Minister.

It is also to be noted that if the recommendations in this report regarding access to information respecting MHA spending on allowances are adopted, there will be two different regimes in place with ministerial expenses being subject to greater degrees of secrecy than constituency expenses. There will, therefore, be a greater degree of difficulty in achieving accountability for ministerial expenses.

These concerns, raised by Members during our consultation process, indicate that the possibility exists that Ministers could effectively charge some constituency-related expenses to their respective departments as departmental expenses, particularly where, for example, a visit to their district involves both constituency and ministerial work. Accordingly, this component of their expenses, coupled with their regular constituency allowances as an

MHA, would have the effect of indirectly increasing the overall amount of public money they were able effectively to spend on constituency work - thus providing them with a financial advantage relative to the level of funding available to the “regular” MHA.

The second circumstance relating to reimbursement of ministerial expenses on which I wish to comment relates to the opposite side of the “financial advantage” coin. Just as the combined operation of MHA and ministerial reimbursement rules should not give a financial *advantage* to MHAs who are also Ministers when it comes to constituency work, they should also not result in a financial *disadvantage*. In the “Anomalies” section of Chapter 10 I referred to one “anomaly” that appeared to affect Ministers adversely<sup>4</sup> where a Minister whose principal family residence is in a constituency outside the capital region is effectively required to live in St. John’s to enable him or her to perform ministerial duties properly. I was told that the rules respecting constituency allowances and ministerial allowances, particularly in relation to travel and meals, were applied inconsistently, with one set of rules treating the Minister as living in St. John’s and the other treating him or her as living in the district. As a result, it was difficult for legitimate expenses to be reimbursed under either set of rules.

Clearly, the rules respecting reimbursement of legitimate constituency and ministerial expenses should be applied consistently so that Ministers in the position I described are not unfairly financially disadvantaged. There may well be other circumstances where the two sets of rules do not effectively mesh. The recommendations I have made respecting a new allowance regime should, I hope, address most of these issues. However, I believe the new allowance regime should be reviewed against the reimbursement rules for Ministers to ensure that any other potential anomalies are eliminated.

The point of this discussion is that the Executive Council should carefully consider the expense reimbursement rules for MHAs when formulating reimbursement rules for Ministers (and for others such as parliamentary assistants) to ensure that when the ministerial rules are overlaid on the constituency rules neither financial advantage nor financial disadvantage results. The MHA rules - which, of course, apply to all MHAs, whether Ministers or not - should be regarded as a floor, with the ministerial rules being designed to dovetail appropriately with those rules.

### **Lack of Employment Standards for Political Support Staff**

In my consultations with MHAs, concern was raised with respect to the terms and conditions of employment of political officials of the House of Assembly - assistants to MHAs, as well as research and support staff of the respective caucuses. I understand that these officials, while paid a salary out of public funds, are employed on a contractual basis for the benefit of the MHAs or representatives of the respective caucuses. They are not

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<sup>4</sup> See Chapter 10, under the heading “Anomalies.”

considered members of the public service and they are not included in a bargaining unit. Accordingly, they are not deemed to be covered by government's general employment policies and practices, nor are they covered by any collective agreement.

As is the case with MHAs, I understand it is not at all uncommon for the political support staff to be generally required to attend to constituency business, including traveling on nights and weekends outside of what might be regarded as normal business hours in other disciplines. While the need for flexibility is recognized, it appears that there are no consistent employment practices or policies established to govern the working conditions or benefit entitlements of these people.

There are also greater concerns with respect to continuity of employment in these positions than might be expected in the public service generally. By the very nature of the political process, these positions are periodically subject to turnover depending on election results. The assistant's employment fate is often determined by the election success (or defeat) of the MHA for whom he or she is working. In this regard, I was told that the practices with respect to notice of termination of employment and severance, as well as opportunities for employment elsewhere in government, were at best inconsistent, and at worst inconsiderate and unfair, leaving the assistant vulnerable to the relative benevolent influence (or lack thereof) of individual politicians.

I acknowledge that those who become involved in the political process should do so with their eyes open to the uncertainties associated with it, and to the requirements for flexibility in responding to the needs of constituents. However, the concerns raised through our consultations might cause one to reflect on the extent to which the employment arrangement should be completely open-ended, or whether there should be some general guidelines to provide for equity and consistency in the employment practices applicable to the people engaged in these important functions that ultimately support the parliamentary process.

As with other points raised in this chapter, it is beyond my mandate to recommend a policy framework to address this situation. However, this is an area where I sensed there are very genuine concerns amongst MHAs who point to a need to introduce policies or guidelines to ensure fairness and equity for people who could find themselves lost or forgotten in the political process. Accordingly, the House of Assembly Management Commission may wish to reflect on these observations and consider establishing appropriately focused policy parameters to govern employment conditions of political support staff.

### **Interdepartmental Co-operation in Sharing of Transportation Costs**

One MHA pointed out that, in his experience, there are times when an MHA could, if arrangements were appropriately made, accompany another government professional - such as a doctor - on a fixed wing or helicopter flight to a remote community. The possibility of joining such a flight often comes to the MHA's attention at the last minute. This is

understandable, particularly when the flight involves a medical emergency. However, there are other flights that are planned well in advance, and if there was appropriate interdepartmental co-operation, this could facilitate travel to some remote areas for no additional cost. It is therefore both in the interest of better serving constituents and cost saving to undertake a review of planned travel of those departments that are involved in providing such services, and to establish a protocol for communication between the described departments and MHAs having constituencies with remote communities in order to facilitate and reduce the cost of MHAs' travel to such communities.

## **Caucus Funding**

There can be no doubt that for an opposition to do its job in the House and on House committees effectively, its MHAs have to have sufficient levels of support in the form of administrative assistance and research capability.

A number of opposition MHAs expressed concerns about the levels of funding provided by the House to the caucus offices, particularly with respect to the levels of funding for research purposes. These expressions of concern took two forms. First, it was pointed out that a special arrangement had been made to accommodate the third party in the House to enable a floor of funding to be made available for such purposes, but that this arrangement had not been applied to the Official Opposition. The rules presently in place contemplate the provision of \$20,000 of such funding per caucus member. In the case of the third party, with (until recently) two members in the House, that would have meant only \$40,000 - not a large amount to engage additional personnel with research capability and defray all associated costs. Notwithstanding those general rules, however, the Commission of Internal Economy ordered that, for the current General Assembly only, the third party ought to be given a floor amount of \$100,000 to be allocated and spent by the third party caucus as it thought best.<sup>5</sup>

It was suggested to me that a floor amount of \$100,000 should also be made available to the Official Opposition caucus over and above the \$20,000 per member that it would otherwise be entitled to. If that were to be the case, that would result in a more generous formula than that applied to the third party. I understand that the order of the IEC providing the floor of \$100,000 to the third party was interpreted as not being *additional* to the per member allocation. In other words, the third party would not receive any per member allocation until the number of its caucus members multiplied by \$20,000 would exceed \$100,000. Applying that formula to the Official Opposition would mean that it should not be entitled to an additional \$100,000, because the number of its existing members times \$20,000 would already exceed the floor.

Having said that, however, I believe it is time to review the funding arrangements for

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<sup>5</sup> "Official Minutes of the Internal Economy Commission," November 29, 2004 meeting at minute 2(1) (a). This order was made retroactive to April 1, 2004.

all opposition parties to ensure that adequate arrangements are in place for them. It is essential that they have sufficient resources to be able to carry out their vital democratic functions. I have not been able, as part of the work of this inquiry, to do a cost analysis of what would be required. The House of Assembly Management Commission should, I believe, undertake such a study directed at determining appropriate funding levels, taking into account submissions from the caucuses concerned and the practices in other Canadian jurisdictions.

The second concern I have with respect to caucus funding relates to the third party's role generally.<sup>6</sup> To qualify as a "parliamentary group" within the *Standing Orders* of the House, the practice has been to recognize such a group only if that party contested two-thirds of the number of seats in the House in the preceding general election and has elected three members at that election or in a subsequent by-election.<sup>7</sup> Notwithstanding that position, past rulings of the Speaker have accorded certain rights to the New Democratic Party in the House so long as it has two members in the House.<sup>8</sup>

It would be inappropriate, and certainly not within my terms of reference, for me to comment generally on how the status of a third party should be treated with respect to its parliamentary role. That is a matter within the privileges of the House. I believe it is a different matter, however, with respect to how the House of Assembly Management Commission should treat a party that has minimal representation in the House with respect to *financial* matters.

In Chapter 6 I recommended that a third party ought to be represented on the IEC even if it had only one member elected to the House.<sup>9</sup> In like manner, it seems to me that a third party ought also not to be constrained by minimum-member rules with respect to being provided sufficient floor funding to enable it to perform its parliamentary functions. Even a party represented by only one member in the House should have access to basic resources, over and above those available to him or her *qua* member, to enable research and other administrative functions to be carried out. It is not an objection to such an arrangement that it would open up the provision of extensive resources to "fringe" movements or non-affiliated individuals who manage to get one member elected to the House. The arrangement could be limited to only those persons or groups who meet the criteria for registration and are registered as a political party under the provisions of the *Elections Act, 1991*.

Inasmuch as the present funding arrangement for the existing third party (which, as I read the order, was not expressly made contingent on the third party continuing to have a minimum of two members in the House) was, by the terms of the order of the IEC referred to

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<sup>6</sup> For this purpose, I assume that the third party is a registered party under s. 278 of the *Elections Act*, S.N.L. 1992, c. E-3.1

<sup>7</sup> *Standing Orders of the House of Assembly*, Appendix (Practice Recommendation 2).

<sup>8</sup> See reference to a ruling of Speaker McNicholas in 1987, in Practice Recommendation 2 attached to the *Standing Orders*.

<sup>9</sup> Recommendation 30(2).

previously, only intended to last for the duration of the current General Assembly, the issue of the continued funding of the third party will have to be re-addressed after the next election if only a limited number of persons in that party are elected. If the matter is addressed, I would encourage the House of Assembly Management Commission to give consideration to the forgoing discussion in arriving at an appropriate formula for funding of the third party at an acceptable level to enable it to discharge its parliamentary duties effectively.

### **Advancing to “Best Practices”**

The recommendations in this report have been designed to facilitate the advancement of the administration of the House of Assembly to a “best practices” standard as stipulated in the terms of reference. The recommended approach represents a significant departure from the past, as well as a significant departure from existing practices, not only in the House of Assembly, but also in the executive branch of government.

It is important to appreciate that the rationale for many of my recommendations is not based solely on the unique circumstances of the House of Assembly. In many respects, the underlying thrust of the best practices approach is generic. The principles might be considered universally applicable. To note some of the more prominent examples: high ethical standards emanating from a strong tone at the top; the importance of a code of conduct; clear articulation of accountability; increasing access to government information; executive due diligence responsibility; ongoing financial performance review and analysis; management certification of compliance; an ongoing obligation for full, true, plain and timely disclosure; “whistleblower” protections; and a formalized procedure for objective input into the audit process. My recommendations reflect research encompassing trends in various jurisdictions, new policy directions in Canada that have evolved following the Gomery Inquiry with the *Federal Accountability Act*, and international regulatory and corporate governance trends following the Enron and WorldCom scandals. Many of those trends are, in fact, evident in non-legislative areas of government, and I have adapted them for application to the legislative branch.

I note as well that there has been a backlash against the extent of certain regulatory trends in the private sector, with some taking the position that the regulators have gone too far - that they have overdone it by placing *micro-managing* control mechanisms, undue reporting burdens and governance responsibilities on organizations at a disproportionately high cost. I understand those concerns. In our exuberance to regain control, we must not let the remedies surpass the requirements of practical and meaningful standards of transparency, compliance and accountability and degenerate into counterproductive activities. Given the events that were the catalyst for this inquiry, and given the lack of accountability and transparency that has become evident from our investigations, I am satisfied that, in the context of the political affairs in this province, we have not gone too far in the recommendations that have been made. Credibility must be re-established. The process has begun, but we still have a long way to go. Many of the most basic ingredients of control, accountability and governance were missing. I am convinced that, given our experience and the imperative that public confidence be restored, a comprehensive regime is vital.

In the broader context as well, it must be acknowledged that, should government and the Members of the House accept and proceed to implement my recommendations, the legislative branch will, in many respects, progress to standards beyond those currently in place for the executive branch of government in this province. It may be that these same standards, issues of principle and best practices, and the means to address them, are already being assessed by government in another forum in terms of their potential application to the executive branch. But to the extent they are not, government and Members may wish to ask themselves “Why not?”