



**House of Assembly
Newfoundland and Labrador**

**Minutes of the House of Assembly
Management Commission**

Date: November 18, 2009

Location: House of Assembly Chamber

Time: 9:00 a.m.

Members Present:

Hon. Roger Fitzgerald, Speaker

Mr. William MacKenzie, Clerk of the House of Assembly

Mr. Tom Osborne, Deputy Speaker

Hon. Joan Burke, Government House Leader

Mr. Kelvin Parsons, Opposition House Leader

Ms. Beth Marshall, MHA (PC) Topsail

Hon. Jerome Kennedy, MHA (PC) Carbonear – Harbour Grace

Ms. Lorraine Michael, MHA (NDP) Signal Hill - Quidi Vidi

Other:

Marlene Lambe, Chief Financial Officer

Ms. Marie Keefe, Policy and Communications Officer

Invited Guests:

Mr. Joe O'Neill, Chair, Members' Compensation Review Committee

Ms. Cathy Bennett, Committee Member

Mr. Brian Barry, Committee Member

Regrets:

Ms. Yvonne Jones, MHA (L) Cartwright - L'Anse Au Clair

CM 2009-066

The minutes of the House of Assembly Management Commission meeting held on November 4, 2009 were approved as read.

CM 2009-067

The Commission approved the payment of legal fees, to a maximum of \$20,000, for Mr. Fraser March to participate in Justice O'Neill's Review of Mr. March's removal from office.

The Members' Compensation Review Committee attended the meeting to provide information on the recommendations of the MCRC report and to respond to questions by the Commission.

Adjournment: 10:55 a.m.

Hon. Roger Fitzgerald, MHA
Speaker and Chair

Wm. MacKenzie
Clerk and Secretary to the Commission

**House of Assembly Management Commission
Briefing Note**

Title: **Members' Compensation Review Committee Recommendations:
Salaries and Allowances**

Issue: **Possible Legislative Amendments**

Background:

- Recommendations of the Members' Compensation Review Committee (MCRC) respecting salaries and non-taxable allowances require legislative amendments to the *House of Assembly Accountability, Integrity and Administration Act* (the Act). Paragraph 16(5)(a) of the Act outlines the process for the Commission to follow respecting any required amendments:

5) The speaker, upon receipt of the report containing the recommendations of the members' compensation review committee, shall refer the recommendations to the commission as soon as possible and the commission, after consideration of the recommendations, shall accept or modify them and

(a) submit the recommendations, as accepted or modified, relating to salaries and non-taxable allowances and other matters that may be necessary to be implemented by legislation, to the Minister of Finance or Justice, or other appropriate minister, for the preparation of a Bill to amend this Act or another Act accordingly.

- The Commission has traditionally requested the Government House Leader, as a member of the Commission, to bring legislative matters to Cabinet on its behalf. Cabinet would then exercise its authority with respect to the preparation and introduction of an amending Bill. Given the timeframes for the Fall sitting, the Commission will have to submit its request to Cabinet very soon, in order to have a Bill prepared for consideration before the House adjourns.
- The MCRC made four recommendations respecting salaries and one respecting "non-taxable allowances". If the Commission accepts these without modification, the proposed amendments as drafted by the Law Clerk (see attached), would serve as a basis for an amending Bill. Final wording in the Bill would be subject to editing by the Office of Legislative Counsel.

- At its November 4, 2009 meeting, the Commission queried whether the legislative amendment regarding the automobile allowance for the Speaker, Opposition Leader and Leader of the Third party should have retrospective application. Otherwise, the estoppel issue will have to be addressed to determine whether monies already paid should be recovered. A possible solution would be to make the amendment retroactive to June 14, 2007.

Action Required:

- The Direction of the Commission is requested.

Drafted by: Marie Keefe
Date: November 26, 2009

Approved by: Wm. MacKenzie

RECOMMENDATIONS AND PROPOSED AMENDMENTS

Salary

MCRC Recommendations

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

Proposed Amendments

1. Subsection 11(1) of the *House of Assembly Accountability, Integrity and Administration Act* is repealed and the following is substituted:

Salaries, expenses, severance and pensions

11(1) A member is entitled to be paid an annual salary of \$95,357 payable in 26 equal installments.

2. Subsection 12(1) of the Act is repealed and the following is substituted:

Other remuneration

12(1) A member who also holds one of the following positions shall be paid an additional salary as follows:

(a) speaker, \$54,072;

(b) deputy speaker and chair of committees, \$27,033;

- (c) deputy chair of committees, \$13,517;
- (d) leader of the opposition, \$54,072;
- (e) opposition house leader, \$27,033;
- (f) deputy opposition house leader, \$18,457;
- (g) leader of a third party, \$18,918;
- (h) party whip, \$13,517;
- (i) caucus chairperson, \$13,517;
- (j) chairperson, public accounts committee, \$13,517; and
- (k) vice chairperson, public accounts committee, \$10,333.

3. Subsections 15(2) and (3) of the Act are repealed and the following is substituted:

- (2) The salary of a member under subsection 11(1) and the salaries for positions referred to in subsection 12(1) shall not be adjusted except in accordance with recommendations of the first members' compensation review committee appointed after the coming into force of this subsection.

Note:

The existing subsections 15(2) and (3) relate to the manner of adjusting salaries until the MCRC is first appointed and to the requirement for the first MCRC to set a new means of providing for periodic increases. Consequently, these subsections are now "spent" and must be removed to be replaced with the MCRC recommended means of dealing with MHA salary increases. This forces the next MCRC to address this as recommended by current committee. Instead of referring to the "coming into force of this subsection" we could state a fixed date, i.e. "after December 31, 2009". This would have the same effect but would be a clear date stated in the statute.

- (3) The appropriateness of the manner of providing for periodic increases for members' salaries during the period between the appointments of subsequent members' compensation review committees shall be dealt with by those committees.

Note:

This wording is currently in the latter part of the existing 15(3). The current introductory wording to this subsection refers to the lapsing of the existing subsection (2) once the present MCRC has submitted its recommendations and has been removed from the proposed subsection (3).

Automobile Allowance

MCRC Recommendations

The necessary steps should be undertaken to confirm the automobile allowance that was in place for the Office of the Speaker of the House of Assembly, the Leader of the Opposition and the Leader of the Third Party before 2007.

Proposed Amendments

1. Paragraph 11(4)(a) of the Act is amended by adding immediately after the word “amounts” the words “of allowances and expenses”.

Note:

If, as the MCRC recommends, adjustments in Intra-constituency allowances (the Schedule) are to be addressed by the Commission, then allowances, from which expenses are paid, should be specifically mentioned in 11(4).

2. Subsection 15(1) of the Act is amended by deleting the words “non-accountable allowance” and substituting the words “non-taxable allowance”.

Note:

This amendment will address Recommendation 5 on Allowances, found at page 38 of the MCRC Report, as the Ministerial automobile allowance is fully taxable.

3. Section 15 of the Act is amended by adding immediately after subsection (5) the following:
 - (6) In subsection (1), “non-taxable allowance” means an amount which would be considered to be a non taxable allowance under the *Income Tax Act* (Canada).

Note:

This subsection provides a definition for the term “non-taxable” proposed for subsection 15(1).

4. Subparagraph 20(6)(a)(i) of the Act is repealed and the following is substituted:
- (i) the allowances and the amounts which members may claim for reimbursement or payment for reasonable and legitimate allowances, expenses and entitlements under subsection 11(4) and the manner in which those allowances and expenses shall be calculated, claimed, substantiated and paid,”

Note:

This subparagraph refers back to subsection 11(4) which is proposed to be amended to refer to allowances and therefore the language in subparagraph 20(6)(a)(i) should be similar. Although not directly recommended by MCRC, the proposal brings some clarity to the allowance/expense issue. One cannot refer to differing expenses without also referring to differing allowances as the expense regime is subject as well to allowance caps.

5. Section 20 of the Act is amended by adding immediately after subsection (8) the following:

- (9) The commission may, by directive, approve the adoption of allowance and expense allocations and policies for the speaker, leader of the opposition and leader of a third party at the same level applicable to ministers, for the purpose of reimbursing expenses related to the duties and obligations of the offices of the speaker, leader of the opposition and leader of a third party.

Note:

This brings clarity to issue of allowances and is a part of the issue referred to at recommendation 5 on allowances found on page 38. The allowance and expense amounts stated in the Act and rules generally relate only to expenses for MHAs in carrying out their duties as MHAs. However, the Commission should have its authority to determine officer holder allowances and expense amounts stated clearly.

It is proposed that the sections on salaries, subsections 11(1) and 12(1), come into force on the date the bill is passed and that all other amendments shall be considered to come into force on June 14, 2007.

House of Assembly Management Commission

Briefing Note

Title: **Members' Compensation Review Committee Recommendations:
Pensions**

Issue: **Possible Legislative Amendments**

Background:

- Recommendations of the Members' Compensation Review Committee (MCRC) respecting pensions require legislative amendments to the *House of Assembly Accountability, Integrity and Administration Act* (the Act). Paragraph 16(5)(a) of the Act outlines the process for the Commission to follow respecting any required amendments:
 - 5) *The speaker, upon receipt of the report containing the recommendations of the members' compensation review committee, shall refer the recommendations to the commission as soon as possible and the commission, after consideration of the recommendations, shall accept or modify them and*
 - (a) *submit the recommendations, as accepted or modified, relating to salaries and non-taxable allowances and other matters that may be necessary to be implemented by legislation, to the Minister of Finance or Justice, or other appropriate minister, for the preparation of a Bill to amend this Act or another Act accordingly.*
- The Commission has traditionally requested the Government House Leader, as a member of the Commission, to bring legislative matters to Cabinet on its behalf. Cabinet would then exercise its authority with respect to the preparation and introduction of an amending Bill. Given the timeframes for the Fall sitting, the Commission will have to submit its request to Cabinet very soon, in order to have a Bill prepared for consideration before the House adjourns.
- The MCRC made three recommendations respecting pensions. If the Commission accepts the recommendations without modification, the proposed amendments as drafted by the Law Clerk, in consultation with the Office of the Legislative Counsel (see attached), would serve as a basis for an amending Bill. Final wording in the Bill would be subject to editing by the Office of Legislative Counsel.

- At its November 18 meeting, the Commission queried whether the accrual rates reflected in the legislation are an accurate reflection of the Member's benefit if the pensionable salary is capped at 81.2 % of the maximum salary paid to a Member. It was suggested that a possible solution is to adjust accrual rates downward to reflect the member's actual entitlement. However, other compensation amounts which factor into the MHA pension calculation (other office holders, parliamentary secretaries, etc.) are based on 100% of salary and to adjust the accrual rate lower would not be an accurate reflection of the entitlement. The formula for calculating pensions in a defined benefit plan has three components: the accrual rate, which is fixed for all members, and two variable components, salary and years of service. It is not viable to have different accrual rates for each member of a pension plan. The accrual rate is constant even if salary amounts to be used in the calculation of the benefits are varied.
- A comparison of MHA pension benefits under the current plan and the proposed new plan is attached.

Action Required:

- The Direction of the Commission is requested.

Drafted by: Marie Keefe
Date: November 26, 2009

Approved by: Wm. MacKenzie

RECOMMENDATIONS AND PROPOSED AMENDMENTS

Pensions

MCRC Recommendations:

1. The current MHA pension plan accrual rate should be reduced from its current level of 5% per year for the first 10 years and 2.5% per year from year 11 to 20, to 3.5 % per year for each year to a maximum of 20 years. The effect of this recommendation will reduce the current maximum pension accrual from 75% to 70%. Currently there is no maximum accrual for the Public Service Pension Plan, Teachers Pension Plan or the Uniformed Services Pension Plan.
2. The current MHA pension plan eligibility criteria be eliminated and replaced with the following:
 - An MHA shall be eligible for pension entitlement at the age of 55 years provided that MHA has at least 5 years service as an MHA and has served in at least two General Assemblies.
 - An MHA may elect to take a pension between the ages of 50 and 55 years with a minimum of 5 years as an MHA and having served in at least two General Assemblies. In this event the MHA pension shall be reduced by 6% for each year less than the age at which the unreduced pension would commence.
3. The changes recommended in numbers 1 and 2 above commence as of the date of the coming into force of the legislation to give effect to those amendments. This would mean that these proposals will apply to MHAs first elected after the commencement of these amendments.

Proposed Amendments

1. Paragraph 2(1)(g) of the *Members of the House of Assembly Retiring Allowances Act* is repealed and the following substituted:
 - (g) “MHA salary” means
 - (i) for members elected before the 46th General Assembly
 - (A) the salary authorized by the Legislature to be paid to an MHA up to June 30, 2007,

- (B) with respect to time served as a member after June 30, 2007, 81.2% of the salary to be paid to an MHA under subsection 11(1) of the *House of Assembly Accountability, Integrity and Administration Act* as may be varied by that Act, and
 - (C) an amount that the Minister of Finance may prescribe in a directive under this Act,
 - (ii) for members elected for the first time to the 46th General Assembly before January 1, 2010
 - (A) with respect to time served as a member after June 30, 2007, 81.2% of the salary to be paid to an MHA under subsection 11(1) of the *House of Assembly Accountability, Integrity and Administration Act* as may be varied by that Act, and
 - (B) an amount that the Minister of Finance may prescribe in a directive under this Act, and
 - (iii) for members elected for the first time after December 31, 2009
 - (A) the salary authorized to be paid to an MHA under subsection 11(1) of the *House of Assembly Accountability, Integrity and Administration Act* as may be varied by that Act, and
 - (B) an amount that the Minister of Finance may prescribe in a directive under this Act;
- 2. Section 19 of the Act is amended by adding immediately after subsection (2) the following:
 - (2.1) Notwithstanding subsections (1) and (2), a vested member elected after December 31, 2009 who is no longer an MHA or a minister may, on application, receive a supplementary allowance if
 - (a) the member has paid the contributions for service required under this Act; and
 - (b) the member has reached the age of 55 years.

(2.2) Notwithstanding subsection (2.1), a vested member elected after December 31, 2009 who is no longer an MHA or a minister may, on application, receive a reduced supplementary allowance calculated in accordance with subsection 20(2.2) if

(a) the member has paid the contributions for service required under the Act; and

(b) the member has reached the age of 50 years.

3. Section 20 of the Act is amended by adding immediately after subsection (2) the following:

(2.1) Notwithstanding subsection (2), the annual amount of the supplementary allowance paid to a member who first served as an MHA or minister after December 31, 2009 shall be calculated by adding the following amounts:

(a) for each year of MHA service, 3.5% of his or her base MHA salary;

(b) for each year of minister's service, 3.5% of his or her base minister's salary; and

(c) for each year of other service, 2% of his or her base MHA salary.

(2.2) For the purposes of subsection 19(2.2), the retiring allowance awarded under subsection (2.1) shall be reduced by 6% for each year that the member's age is less than the age of 55 years.

Comparison of MHA Pension Benefits
Old MHA Pensions Plan vs New MHA Pension Plan

Example 1:
Member with 8 years service
Member's average salary is \$100,000

	Old Plan	New Plan
Formula	$\$100,000 \times 81.2\% \times 5\% \times 8$ years	$\$100,000 \times 3.5\% \times 8$ years
Pension Entitlement	\$32,480	\$28,000
Earliest Possible Eligibility	Age 52	Age 55

Example 2:
Member with 12 years service
Member's average salary is \$100,000

	Old Plan	New Plan
Formula	$\$100,000 \times 81.2\% \times 5\% \times 10$ years + $\$100,000 \times 81.2\% \times 2.5\% \times 2$ years	$\$100,000 \times 3.5\% \times 12$ years
Pension Entitlement	\$40,600 + 6,090 = \$44,660	\$42,000
Earliest Possible Eligibility	Age 48	Age 55

Example 3:
Member with 16 years service
Member's average salary is \$100,000

	Old Plan	New Plan
Formula	$\$100,000 \times 81.2\% \times 5\% \times 10$ years + $\$100,000 \times 81.2\% \times 2.5\% \times 6$ years	$\$100,000 \times 3.5\% \times 16$ years
Pension Entitlement	\$40,600 + \$16,240 = \$52,780	\$56,000
Earliest Possible Eligibility	Age 44	Age 55

Notes:
Under the old plan, member is entitled to unreduced benefit when age + service = 60
Under the new plan, member is entitled to an unreduced benefit from age 55.