

## House of Assembly Management Commission

### Briefing Note

**Title:** Fraser March Review

**Issue:** Request from Mr. Fraser March re Legal Services

**Background:**

- The Minister of Justice announced, through a January 22, 2009 press release (copy attached as Appendix A), that he had requested the House of Assembly Management Commission to endorse the introduction of a resolution in the House of Assembly to conduct an independent review of the case of Mr. Fraser March. The Government House Leader introduced a resolution, on behalf of the Minister of Justice, at the Commission's January 27, 2009 meeting (copy attached as Appendix B).
- At its May 13, 2009 meeting, the Commission voted to endorse "the introduction of a resolution in the House of Assembly to appoint a retired Supreme Court Justice to conduct an independent and impartial review into the circumstances of Fraser March's removal from office, which review will include the opportunity for Fraser March to be heard." **CM 2009-025** refers.
- On May 28, 2009 the House of Assembly voted to adopt a Resolution to establish the Review (copy attached as Appendix C). The Terms of Reference for this Review directed that it would include "the opportunity for Mr. March to be heard by the retired Justice".
- Mr. March has written the Clerk "to request, based on fairness and judicial equity, that the House of Assembly pay for legal services that will reasonably be required on [his] part in order to properly participate in this House of Assembly review"(letter attached as Appendix D).
- Retired Justice John O'Neill officially commenced his Review on October 1 and must complete his work within two months – i.e., by November 30, 2009. Given these timelines, Justice O'Neill is of the view Mr. March's request must be decided expeditiously.
- The Commission has addressed requests by Members to pay for legal services in the past, but has never adopted an explicit policy, so the requests have been decided on a case-by-case basis. The Commission, historically, has required that approval for payment be sought in advance and that the matter relate directly to the duties of a Member of the House of Assembly. A summary of recent requests to the Commission is attached as Appendix E.

- These previous Member requests and Commission decisions do not appear to provide a precise precedent for Mr. March's request. In the current case, the Commission played a direct role in establishing the Review of Mr. March's case, including his opportunity to be heard. In Mr. March's view, his involvement in the Review will require legal services "in order to properly participate". Declining to provide legal services could be perceived as contributing to a lack of procedural fairness with respect to the Review.

**Action Required:**

- The Commission's direction is requested.

Drafted by: Wm. MacKenzie  
Date: October 19, 2009

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Justice

January 22, 2009

### Minister of Justice Requests Review into Case of Former Citizens' Representative

The Honourable Tom Marshall, Minister of Justice and Attorney General, announced today that he has requested the House of Assembly Management Commission to endorse the introduction of a resolution, during the next session of the House of Assembly, to conduct an independent review into the case of former Citizens' Representative Fraser March.

"I have asked the Government House Leader to request the Management Commission of the House of Assembly to endorse the introduction of a resolution during the spring session that will allow for an impartial and independent review into the circumstances of Mr. March's tenure as Citizens' Representative," said Minister Marshall.

Mr. March was appointed Citizens' Representative in December 2001. A 2004 report of the Auditor General raised concerns relating to travel expenses in the Office of the Citizens' Representative. The Internal Economy Commission of the House of Assembly conducted a review of the concerns raised by the Auditor General and subsequently, Mr. March was removed from his position by a vote of House of Assembly December 12, 2005. On April 26, 2007, the Trial Division of the Supreme Court of Newfoundland and Labrador dismissed an application by Mr. March and concluded that due to parliamentary privilege, the motion passed in the House of Assembly was immune from judicial review.

"It is important, in the interests of natural justice, that Mr. March be provided the opportunity to have his case reviewed. To that end, I am requesting a review by a retired judge," said Minister Marshall. "While I support and respect the ruling of the Trial Division of the Supreme Court of Newfoundland and Labrador I believe this review to be necessary and in the best interest of the Office of the Citizens' Representative."

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1:35 p.m.

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**Resolution**

WHEREAS in December 2001, the Lieutenant – Governor in Council on resolution of the House of Assembly appointed Fraser March as the Citizens' Representative, pursuant to section 3(1) of the *Citizen's Representative Act*.

AND WHEREAS in 2004 the Auditor General advised the Speaker of the House of Assembly of concerns relating to travel expenses in the office of the Citizens' Representative and in the following months the Internal Economy Commission conducted a review of the Auditor General's concerns.

AND WHEREAS on December 1, 2005 the Government House Leader in the House of Assembly gave notice that he would be introducing a resolution recommending Fraser March's removal from office for cause.

AND WHEREAS on December 12, 2005, during debate on the resolution a member moved that the resolution be amended to provide Fraser March with "an opportunity to state his case to the House of Assembly before a vote is taken regarding his removal...". Following debate the amendment was defeated, and the House of Assembly by a majority then passed a resolution that Fraser March be removed from the office of Citizens' Representative. By Order-in-Council, the Lieutenant-Governor in Council removed Fraser March from office, effective December 12, 2005.

AND WHEREAS on April 6, 2007 Justice Orsborn of the Supreme Court, Trial Division, dismissed an Application by Fraser March and concluded that the resolution and the manner in which it was debated was immune from judicial review due to Parliamentary privilege.

AND WHEREAS Fraser March has requested that there be an independent and transparent review of the circumstances surrounding his dismissal, and that as a result of Justice Orsborn's ruling, such a review is not possible through the judicial process.

BE IT RESOLVED that this Commission endorse a resolution in the House of Assembly, when it next sits, to appoint a retired Supreme Court Justice to conduct an independent and impartial review into the circumstances of Fraser March's removal from office, which review will include the opportunity for Fraser March to be heard.



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

THIS IS TO CERTIFY that the Honourable the House of Assembly of the Province of Newfoundland and Labrador adopted the following Resolution on May 28, 2009:

**"WHEREAS** pursuant to subsection 3(1) of the Citizens' Representative Act and following a resolution of the House of Assembly on December 13, 2001, the Lieutenant-Governor in Council, by Order in Council dated December 14, 2001, appointed Mr. Fraser March to serve as the Citizens' Representative commencing on February 1, 2002;

**AND WHEREAS** the Auditor General in his Report on Reviews of Departments and Crown Agencies for the Year ending March 31, 2004, as submitted to the Speaker on January 26, 2005, identified a number of concerns relating to the operations of the Office of the Citizens' Representative;

**AND WHEREAS** the said Auditor General Report contained the written response of the Citizens' Representative with respect to the identified concerns;

**AND WHEREAS** the Internal Economy Commission of the House of Assembly conducted a review of the concerns raised by the Auditor General, hired an independent legal consultant to advise the Internal Economy Commission respecting those concerns and offered Mr. March himself, or through his solicitor, four opportunities to present his case before the Commission, which he declined;

**AND WHEREAS** on June 29, 2005, the Internal Economy Commission directed the Speaker to recommend to the Lieutenant-Governor in Council that pursuant to subsection 7(1) of the Citizens' Representative Act the Citizens' Representative be suspended;

**AND WHEREAS** on August 30, 2005 the Lieutenant-Governor in Council temporarily suspended, with pay, the Citizens' Representative from his duties pursuant to section 7 of the Citizens' Representative Act;

**AND WHEREAS** on December 12, 2005, the House of Assembly, by a majority vote of its Members passed a resolution that Mr. March be removed from the Office of the Citizens' Representative;

**AND WHEREAS** following the said Resolution the Lieutenant-Governor in Council, under section 6 of the Citizens' Representative Act, issued an Order in

Council removing Mr. March from the Office of Citizens' Representative effective December 12, 2005;

**AND WHEREAS** on April 6, 2007, Justice David Orsborn of the Supreme Court Trial Division dismissed an Application by Mr. Fraser March and concluded that the Resolution and the manner in which it was debated by the House of Assembly was immune from judicial review due to Parliamentary Privilege;

**AND WHEREAS** Mr. March has requested that there be an independent review of the circumstances surrounding his removal;

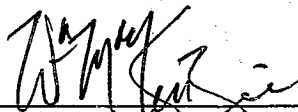
**AND WHEREAS** the Minister of Justice, on January 22, 2009 announced that he had asked the Government House Leader to request that the Management Commission of the House of Assembly endorse the introduction of a Resolution during the next session of the House of Assembly, to conduct an independent review of the case of the former Citizens' Representative, Mr. Fraser March;

**AND WHEREAS** on May 13, 2009, a majority of the House of Assembly Management Commission members resolved that the Commission endorse a resolution in the House of Assembly to appoint a retired Supreme Court Justice to conduct an independent and impartial review into the circumstances of Fraser March's removal from office, which review will include the opportunity for Fraser March to be heard;

**THEREFORE BE IT RESOLVED** that the House of Assembly Management Commission select a retired Supreme Court Justice who shall be appointed to conduct a review of the actions of Mr. Fraser March that led to his removal from the Office of the Citizens' Representative;

**AND BE IT FURTHER RESOLVED** that the terms of reference for the said review shall be as follows:

1. The retired Justice is authorized to undertake an independent review and evaluation of the actions of Mr. Fraser March with respect to the decision to remove him from the office of the Citizens' Representative
2. The review shall include the opportunity for Mr. March to be heard by the retired Justice.
3. The retired Justice is authorized to produce an opinion as to whether or not, there was sufficient cause to remove Mr. March from office.
4. The review shall be completed within two months, at which time the retired Justice shall issue a written report to the Speaker for distribution to Members of the House of Assembly."



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William MacKenzie  
Clerk of the House of Assembly

FRASER MARCH  
MEDIATION/DISPUTE RESOLUTION

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2009/10/12

Clerk of the House  
House of Assembly  
P.O. Box 8700  
St. John's, NL.  
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Dear Clerk:

I was dismissed from the position of Citizens' Representative by a vote of the House of Assembly on 2005/12/13.

This year the House of Assembly decided to review my dismissal.

I have been notified by Tobias McDonald Law offices that you have made an appointment to deal with this review.

While I have not received any notification from the House of Assembly, I am proceeding on the notion that information received from Mr. McDonald is correct.

This is to request, based on fairness and judicial equity, that the House of Assembly pay for legal services that will be reasonably required on my part in order to properly participate in this House of Assembly review.

I will be represented by the law firm of O'Dea Earle in this matter.

Sincerely,

Fraser March

CC: Legislative Counsel.

**MHA Requests for Payment of Legal Services since 1993**

- 2005 - Mr. Eddie Joyce – concerning matters which arose following the 2003 General Election. Declined.
- 2006 - Mr. Eddie Joyce and Mr. Kelvin Parsons – concerning alleged defamation by CBC News. Approved.
- 2006/07 - Solicitors for Mr. Wally Andersen, Mr. Randy Collins and Mr. James Walsh (as well as Mr. Bill Murray) – respecting Auditor General Report and criminal charges. Declined.
- 2007 - Mr. John Hickey – concerning alleged defamation by a former Member. Approved for initial review; subsequent steps to be re-evaluated.
- 2008 - Ms. Lorraine Michael – concerning the interpretation of paragraph 12(1)(g) of *House of Assembly Accountability, Integrity and Administration Act*. Declined.