



**House of Assembly
Newfoundland and Labrador**

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

Date: November 4, 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

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

Regrets:

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

Mr. Tom Osborne, Deputy Speaker

CM 2009-053 The minutes of the House of Assembly Management Commission meeting held on October 7, 2009 were approved as read.

CM 2009-054 The minutes of the House of Assembly Management Commission meeting held on October 20, 2009 were approved as read.

The Speaker reported the following authorizations for travel by other modes as provided for in Section 40 of the *Members' Resources and Allowances Rules*, for the period ending October 28, 2009:

1. Aircraft charter for Ms. Yvonne Jones, Cartwright – L'Anse au Clair, from Cartwright to Goose Bay on October 7, 2009 at a cost of \$2,162.31. The Member attended a forum in Cartwright and could not access a commercial flight to return to St. John's for meetings.
2. Aircraft Charter for Ms. Yvonne Jones, Cartwright – L'Anse au Clair, from St. Anthony to Forteau on October 10, 2009 as there was no commercial flight available that day for Member to get to her district. The flight was approved but not taken. It was cancelled by Ms. Jones.

CM 2009-055 The Commission deferred a decision respecting a request from Mr. Fraser March for the payment of legal services pending receipt of Justice O'Neill's perspective as to what extent Mr. March is expected to engage with him in the review proceedings.

Mr. Kelvin Parsons recused himself from the discussion on this issue.

The Commission was informed that a second draft of the Caucus Operational Funding Grants Policy is being completed and will be forwarded to each of the three caucuses for final review and comment. The policy will be brought to a subsequent meeting for Commission approval and adoption.

CM 2009-056 The Commission deferred a decision respecting the engagement of legal counsel to provide an opinion on the application of the *House of Assembly Accountability, Integrity and Administration Act* and the *Members' Resources and Allowances Rules* to ministerial or other expense and reimbursement policies until such time as the Commission considers the recommendations of the report of the Members' Compensation Review Committee.

CM 2009-057 The Commission considered the issue of potential recovery actions respecting possible discretionary allowance overpayments and directed that the Auditor General be asked for assistance in identifying details of possible overpayments.

The Commission was provided with a jurisdictional comparison on how other jurisdictions oversee Statutory Offices.

The Mid-Year Financial Reports for the April 1, 2009 to September 30, 2009 period were presented to the Commission for review.

CM 2009-058

The Commission approved the following transfer of funds:

From:

Subdivision 1.1.04.09 (HOA) Members' Resources – Allowances and Assistance - \$103,800

To:

Subdivision 4.1.01.01 Office of the Citizens' Representative – Salaries - \$ 36,000

Subdivision 4.1.01.05 Office of the Citizens' Representative – Professional Services - \$62,500

Subdivision 1.1.04.04 (HOA) Members' Resources – Supplies - \$1,000

Subdivision 1.1.04.06 (HOA) Members' Resources – Purchased Services - \$4,300

The Commission was informed of fifteen (15) Budget Transfers processed during the period from March 1, 2009 to September 30, 2009 for the House of Assembly and Statutory Offices.

Pursuant to paragraph 23(8)(c) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission was presented with the third report of the Audit Committee.

CM 2009-059

The Commission approved the 2008-2009 audited financial statements of the House of Assembly and its Statutory Offices.

The Commission considered the request from the Leader of the Third Party that Commission members provide 24 hour notice of non-attendance for a scheduled meeting of the Commission, except in cases of emergency. Commission members agreed to the request.

CM 2009-060

The Commission considered proposed Amendments to Subsections 26(4) and 26(5) of the *Members' Resources and Allowances Rules* related to payment of salaries for Constituency Assistants and deferred a decision until the Commission is provided with additional information detailing the implications of moving Constituency Assistants to the House of Assembly payroll.

CM 2009-061

Pursuant to paragraphs 13(3)(a.1) and 20(6)(b) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission approved the following Directive:

Where a Member of the House of Assembly becomes a parent because of birth or adoption of his or her child, a deduction of \$200 shall not be made under subsection 13(2) of the *House of Assembly Accountability, Integrity and Administration Act* for one regular Spring or Fall sitting of the House of Assembly

within a year of his or her child's birth or coming into his or her care.

This continues in effect until the implementation of a recommendation on this issue by the next Members' Compensation Review Committee.

- CM 2009-062** The Commission confirmed as permanent the position of Mediation, Communications and Policy Officer with the Office of the Information and Privacy Commissioner effective April 1, 2009.
- CM 2009-063** The Commission confirmed the classification of HL 18 (non-management) for the permanent position of Mediation, Communication and Policy Officer.
- CM 2009-064** The Commission confirms the current classification of HL 26 for the position of Assistant (Deputy) Information and Privacy Commissioner.
- CM 2009-065** The Commission approved the abolition of the position of Director, Members' Services (PCN 02381).

Adjournment: 12:30 p.m.

Hon. Roger Fitzgerald, MHA
Speaker and Chair

Wm. MacKenzie
Clerk and Secretary to the Commission

House of Assembly Management Commission

Briefing Note

Title: Fraser March Review – Updated November 9, 2009

Issue: Request from Mr. Fraser March regarding 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 Member 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.
- At its October 20, 2009 meeting, the Commission deferred a decision respecting a request from Mr. Fraser March for the payment of legal services pending receipt of further information respecting the estimated cost of the services. CM 2009-052 refers.
- The Clerk had a number of telephone conversations with O'Dea Earle, legal counsel for Mr. March, in which he requested a detailed estimate of the cost of services to be provided to Mr. March. Based on O'Dea Earle's current understanding of the Review process, they have submitted the following quote:

Randell Earle	35.00 hrs	@ \$250/hr	= \$ 8, 750.00
David Williams	100.00 hrs	@ \$140/hr	= <u>\$14, 000.00</u>
Total:			<u>\$22, 750.00</u>

- **At its November 4, 2009 meeting, the Commission deferred a decision respecting a request from Mr. Fraser March for the payment of legal services pending receipt of Justice O'Neill's perspective as to what extent Mr. March is expected to engage with him in the review proceedings. CM 2009-055 refers.**
- **Attached is the requested information from Justice O'Neill which includes indices of documentation and a copy of the correspondence between the former Speaker, Mr. Harvey Hodder, and Mr. Fraser March.**

Action Required:

- The Commission's direction is requested.

Drafted by: Wm. MacKenzie
 Date: October 19, 2009
 Updated: **October 23, 2009**
 Updated: **November 9, 2009**

The O'Neill Review

Honourable John J. O'Neill
Unit 009, Summerville Condominiums
386 Elizabeth Avenue
St. John's, NL, A1B 4S8

Contact Information:
729-5895 - Phone
729-5898 - Fax
e-mail - tmcdonald@nl.rogers.com

November 5, 2009

Office of the Speaker/Clerk of the House
House of Assembly
P.O. Box 8700
St. John's, NL
A1B 4J6

(By Fax - 729-4820)

Attention: Hon. Roger Fitzgerald, Speaker

Dear Sirs:

Re: O'Neill Review - Fraser March

This is to acknowledge receipt of your fax of November 4, 2009, attaching a copy of the unedited portion of the Management Commission meeting of November 4, 2009. Before addressing the issues raised in that meeting related to Fraser March, it would seem useful to advise of the Review process and progress to date.

The Review has entailed the collection and review of a significant amount of information. The amount of information deemed relevant or potentially relevant is reflected in the indexes to three volumes of materials annexed hereto.

A number of persons have been interviewed including the present Citizens' Representative and present and former members of the staff of that office. Meetings have been held with the Auditor General and staff, and a preliminary meeting was held with Mr. March. The Review has been attempting to compile the facts of the matters before it. Substantial progress has been made.

The Commission has put forward several questions

- What do I expect?
- Does Fraser March need legal counsel in order to participate
- Do I want legal briefs?
- Do I want oral submissions?

Attached is a copy of the April 14, 2005 letter provided to Mr. March by the former Speaker. In it three main areas of concern were identified. Mr. March was asked to provide a response to these concerns. No response was ever provided. It is expected that Mr. March will present his response to the issues raised therein.

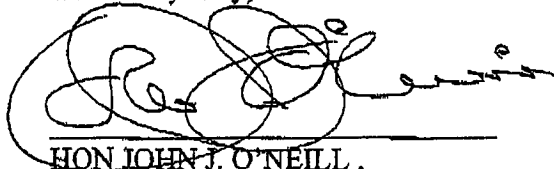
The question as to whether Mr. March requires legal counsel in order to proceed is a question best answered by Mr. March. Is he in a position to present me with the facts, or can same be better presented with the assistance of a lawyer on his behalf? It would appear that Mr. March would be more comfortable with the latter option.

I will accept and review legal briefs, if presented, and will receive oral submissions.

It would be impossible to provide any meaningful estimate of the time which Mr. March or his counsel may take to be heard.

We trust that this reply will be acceptable for your purposes.

Yours very truly,



HON JOHN J. O'NEILL .

/tmd/encl..

INDEX
INFORMATION BOOK 1

NOTE:

- Index compiled to Nov 4, 2009
- Any subsequent additions are to be added as attachment in chronological order with word "Addition" and the date of the Addition as appropriate
- Index is Cross-Referenced to Initial Affidavit of John Noel, former Clerk
- Abbreviations
 - Auditor General ("AG 1")
 - Excerpt from Auditor General's Jan. 26, 2005 Report ("AG 1")
 - Auditor General's March 7, 2005 Supplementary Report re: Cellular Telephones ("AG 2")
 - Citizens' Representative ("CR")
 - Citizens' Representative Act ("CRA")
 - Fraser March ("FM")
 - Internal Economy Commission (IEC")
 - John Noel ("JN")
 - Michael Harrington ("MH")
 - Newfoundland and Labrador Employer's Counsel ("NLEC")
 - Western Star ("Western")
- The IEC Minutes, the Information from IEC Files, and the CR's Agreement and Letters are highlighted as indicated
- The IEC Minutes over the period Dec. 2001 to and including Jan. 2005 are or will have been reviewed. Excerpt of any Minutes related to the CR or the CR's office are included.
- All Exhibits or Appendixes referenced in all Affidavits or Supplementary Affidavits filed in the Court Proceeding (2006 01 T. 2791), excepting case law, have been reviewed and are attached.
- Duplicated documentation has been eliminated
- The irrelevant portions of proceedings documented in Hansard have been eliminated

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INFORMATION BOOK 1

1. Interview
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 - b. Introduction Points and Questions
 - c. John Noel's notes of Dec. 5, 2001 Interview
 - d. Summary of Interview Key Points - taken Dec. 5, 2001 (with Sept. 29, 2009 fax cover attached)
2. Certified Minute - Journals of the House of Assembly certifying the Resolution of the House of Assembly to appoint FM - Dec. 13, 2001 (JN 1)
3. Ministerial Statement of Premier – Dec. 13, 2001
4. Order in Counsel OC 2001-745 appointing FM "from Feb. 1, 2002" – Dec. 14, 2001 (JN 2)
5. Excerpt from Minutes of IEC – Jan. 17, 2002 – salary and benefits of CR – order effective Feb. 1, 2002. Review of submission regarding staff and facilities of CR's office
 - a. Memo from Clerk to Members of IEC – Jan. 14, 2002 - re: Salary and Benefits for Citizens' Representative
 - b. Memo from Clerk to Members of IEC – Jan. 14, 2002 - re: Staff and Facilities for Office of Citizen's Representative
6. Citizens' Representative Agreement – Feb. 1, 2002 (JN 3)
7. Various Excerpts from Minutes of IEC
 - a. March 4, 2002 – reviewed 2002-2003 estimates of expenditures of new Office of CR and discussed CR's legal mandate
 - b. Mar. 6, 2002 – reviewed 2002-2003 estimates of expenditures of CR's office and approved same
 - c. May 8, 2002 – review of proposal to hire PR person. Decision deferred
8. CR's Letter to Speaker – June 7, 2002 – any rules under s. 45(1) of CRA
9. Speaker's Letter to CR – June 21, 2002 – will have s. 45(1) question placed on IEC agenda
10. Letter from Clerk of House to Clerk of Executive Counsel and to DM Justice – June 21, 2002 – to obtain direction and advise as to S. 45(1) CRA rules

11. CR's Letter to Speaker – Aug. 13, 2002 – lengthy letter following up on question regarding rules under 45(1) of CRA
12. Excerpt from Minutes of IEC – Aug. 22, 2002 – reviewed Aug. 13, 2002 letter. Agreed Speaker would write CR and ask CR to appear Aug. 29, 2002. Agreed press release be sent by Speaker outlining IEC surprise at receiving letter
13. Speaker's Letter to CR – Aug. 23, 2002 – IEC disappointed that CR didn't approach IEC earlier – calling CR to IEC meeting of Aug. 29, 2002
14. News Releases/Media
 - a. News Release – Aug. 23, 2002 – IEC addresses issues raised by CR
15. Clerk of House letter to CR – Aug. 28, 2002 – advises of IEC meeting time
16. Letter from ADM Justice to Clerk of House – Aug. 28, 2002 – provides materials on CR Rules in other jurisdictions
17. Excerpt from Minutes of IEC – Aug 29, 2002 – IEC members expressed displeasure in CR publicizing issues and agreeing that Clerk meet CR and staff to resolve issues
 - a. NTV News – Aug. 19, 2002 – 1st report card for CR's Office
 - b. Telegram – July 14, 2002 – Ombudsman's office swamped
 - c. Southern Gazette – undated – Give March Teeth
18. CR's Letter to Speaker – Sept. 5, 2002 - office matters
19. Letter to CR from Clerk of House – Sept. 10, 2002 – office matters
20. Clerk's Letter to Speaker – Sept. 26, 2002 - regarding rules under 45(1) and (2) CRA with copy of Ontario rules
21. CR's Letter to Speaker – Oct. 4, 2002 - lengthy letter regarding plans and policy
22. Letter to CR from Speaker – Oct. 11, 2002 – confirming no rules made under s. 45(1) of CRA and that nothing prevents CR from proceeding to determine procedure under s. 45(2) of CRA
23. Excerpt from Minutes of IEC – Oct. 9, 2002
 - directed Clerk to send letter to the 4 outside Statutory Officers of the House to receive approval of Speaker for travel outside province
 - reviewed authority of IEC to make rules under s. 45 CRA

- directed Speaker to advise CR of position on s. 45 CRA
- reviewed letter from CR (appears to be Oct. 4, 2002 letter)
- addressed staffing issues

24. Letter to CR from Speaker – Oct. 17, 2002 – advising of decisions and directions of IEC meeting of Oct. 9, 2002

25. Various Excerpt from Minutes/Files of IEC

- a. Nov. 8, 2002 – CR to be included in Schedule “A.” of Public Service Commission Act
- b. Feb. 19, 2003 – reviewed estimates of CR’s office. Deferred decision
- c. Feb. 26, 2003 – approved estimates, agreed to relocation of office and expressed concern relating to complaints raised by Citizens’ with respect to the mandate and activities of the CR
 - i. Fax from B. St. Croix to Speaker asking that letter be copied to IEC members – undated
 - ii. Letter from B. St. Croix to Speaker as Chair IEC – dated Jan. 21, 2003; (also attached as Appendix T to CR’s 2002 Annual Report to House)
 - iii. Letter from Speaker to B. St. Croix – Jan. 22, 2003 - confirming letter sent to IEC members and advising of meeting next month
 - iv. Letter to Minister of Justice from Newfoundland and Labrador Employers Counsel (“NLEC”) – Jan. 29, 2003 - advising of concerns regarding CR’s undertaking home care review
- d. Mar. 19, 2003 – reviewed invoices for organizing public meetings. Expressed concern and said better communications with CR should be facilitated
- e. Apl. 9, 2003 – directed Clerk to assess submissions regarding auditing services for House and Offices of the House
- f. Apl. 30, 2003 – agreed to review the First Annual Report of the CR
- g. Mar. 24, 2004 – reviewed and approved new transportation policy to apply to all officers of the House
- h. Jan. 28, 2004 – reviewed 2004-05 estimates of expenditures of CR with CR in attendance and deferred decision
- i. May 26, 2004 – discussion respecting complaints raised by citizens against CR
 - i. Letter to Clerk of House from NLEC – March 17, 2004 – reiterating concerns regarding home care issue and enclosing copies of the following
 - ii. Letter to Minister of Justice from NLEC - Jan. 29, 2003 (see 25 c. iv)
 - iii. Letter to Minister of Justice – July 17, 2003 – follow up letter

- iv. Letter from Minister of Justice to NLEC – Sept. 16 2002 – States not a situation where S. 20 of CRA may be used and that the actions of the CR do not warrant his removal from office
 - j. Letter from NLEC to Min of Justice – Aug. 11, 2004 – follow-up letter – concern about release of CR report on Home care
 - k. Letter from Min. of Justice to NLEC – Aug. 20, 2004 – advising that referring matter to IEC
 - l. Letter from Min. of Justice to Clerk – Aug. 20, 2004 – referring matter to IEC
 - m. Letter to Min. of Justice from NLEC – July 5, 2005 – follow-up letter
 - n. Sept. 27, 2004 – reviewed the issue of cellular telephones and directed Clerk to sent Officers of the House cellular telephone guidelines
 - o. Jan. 12, 2005 - reviewed 2004-2005 estimates and deferred decision
26. Excerpts from Minutes of IEC – Jan. 12 & 17, 2005 – setting up meeting with and meeting AG (JN 4)
27. Auditor General's Initial Report – Jan. 26, 2005 - (JN 5) – Note - AG 1 moved to Information Book 2 – Tab 1
28. News Releases/Media
- a. Telegram - Jan. 27, 2005 – AG flays CR over “excessive” travel [costs]
 - b. Western - Jan. 27, 2005 – AG says CR's travel expenses are excessive
 - c. Telegram - Jan. 28, 2005 – Spending, conflict questions
 - d. Western - Jan. 28, 2005 – Speaker provides comments
 - e. Telegram - Jan. 28, 2005 – Editorial – It's called accountability, folks
29. CR's Letter to Speaker – Feb. 4, 2005 – suggesting retired ombudsperson (JN 6)
30. News Releases/Media
- a. News Release – Feb. 4, 2005
 - b. Telegram – Feb. 4, 2005 - Speaker wants AG to continue probe
 - c. Western – Feb. 4, 2005 - “Speaker requests further investigation...”
 - d. Telegram - Feb. 5, 2005 - “March calls for independent review”
 - e. Western – Feb. 8, 2005 - FM “wants independent review”
 - f. Telegram – Feb. 8, 2005 - Request denied
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32. News Releases Media
- a. News Release – Feb. 9, 2005 – copy of CR's letter of Feb. 9, 2005
 - b. Western – Feb. 10, 2005 – FM “wants legislature to appoint judge...”

- c. Western – Feb. 11, 2005 – [IEC] “says no further action on [FM] until they hear from [AG]”
 - d. Western – Feb. 12, 2005 – FM “defends travel”
 - e. Telegram – Feb. 13., 2005 – Dollars and sense”
33. Excerpt from Minutes of IEC – Feb. 10, 2005 – seeking legal counsel (JN 8)
34. CR’s Letter – Feb. 11, 2005 (JN Tab 10) – suggesting PAC review AG 1 (JN 10)
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42. Excerpt from Minutes of IEC – Mar. 3, 2005 – postponed any discussion respecting letters sent to CR until legal advice and AG 2 received
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- a. Western - Mar. 3, 2005 - FR “acknowledges error in one of his travel claim”
 - b. Telegram – Mar. 5, 2005 – Editorial – “The story gets curiouser”
 - c. Western - Mar. 5, 2005 – “A-G’s cellular phone report due Monday”
 - d. Telegram - Mar. 5, 2005 – “Cellphone report due Monday”
44. Auditor General’s Supplementary Report re: Cellular Phones - Mar. 7, 2005 (JN 14) – Note – AG 2 moved to Information Book 2 – Tab 2
45. News Releases/Media
- a. News Release – Mar. 7, 2005 10:00 a.m. CR will make himself available for comment following release of AG 2
 - b. News Release – Mar. 7, 2005 10:15 a.m. - AG releases AG 2

c. Telegram – Mar. 8, 2005 – AG, CR at odds

46. Mike Harrington (“MH”) Letter to Speaker – Apl. 11, 2005 (JN 15)
47. Excerpt from Minutes of IEC – Apl. 12, 2005 – meeting with legal Counsel.
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48. Speaker’s Letter to CR – Apl. 14, 2005 (JN 17) – Identifies 3 Main Issues and requests response
49. News Releases/Media
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 - b. Western – Apl. 16, 2005 - FM will have chance to bring concerns to IEC
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 - a. Western – Apl. 19, 2005 – FM considering civil suit
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54. Clerk’s Memo – May 12, 2005 – providing update and requesting meeting (JN 21)
55. Clerk’s Memo – May 17, 2005 – setting meeting for May 19, 2005 - MH to attend (JN 22)
56. Excerpt from Minutes of IEC – May 19, 2005 – directed MH to raise with CR’s lawyer whether wished to speak to IEC to discuss letter (JN 23)
57. Speaker’s Letter to CR – May 26, 2005 – asking if waiving right to meet IEC (JN 24)
58. CR’s Letter – May 27, 2005 - not waiving right to meet (JN 25)
59. Excerpt from Minutes of IEC – June 29, 2005 – directed Speaker to recommend that Lt. Gov. suspend for cause (JN 26)
60. Cabinet Directive – 2005-0324 – to suspend (JN 27)

61. Excerpt from Minutes of IEC – Aug. 18, 2005 – suspend with pay until the matter is resolved by the House (JN 28)
 - a. Letter to Speaker from MH – Aug. 16, 2005 – provides opinion re: suspension with or without pay
62. Clerk of Executive Counsel's Letter to CR – Aug. 30, 2005 – notifying of suspension (JN 29)
63. News Releases/Media
 - a. Western – Aug. 31, 2005 – FM suspended as CR
 - b. Telegram – Oct. 26, 2005 – Acting CR appointed
64. Speaker's Supplemental Documentation ~ Dec. 6, 2005 – This was a copy of AG 1 (JN 31)
65. Excerpt from Minutes of IEC – Dec. 7, 2005 – agreed the Speaker would table a report of various letters, a legal opinion, minutes of IEC, and correspondence relating to CR
66. Speaker's Report – tabled in House Dec. 7, 2005 (dated Dec. 6, 2005) – (JN 30)
There was no separate report - just copies of:
 - a. Minutes of IEC from June 12, 2005 to Aug. 18, 2005,
 - b. AG 1 and AG 2
 - c. MH's legal opinion
 - d. Letters to the Speaker from CR: Feb. 4, 9, 11, 14 (JN 12 only), 17, 2005 & March 1, 2005
 - e. Speaker's Apl. 14, 2005 letter to CR
 - f. Letters to Speaker from CR, Apl. 18 & 29, 2005, May 26 & 27, 2005
67. Minutes of House – Dec. 1, 2005 (JN 34)
 - a. Resolution (notice and debate) – Dec. 1, 5, 8 & 12, 2005
 - b. Speaker's Report tabled – Dec. 7, 2005
 - c. Speaker's Supplemental Document tabled – Dec. 8, 2005
68. Hansard – Dec. 1, 2005 – Notice of Resolution to Remove CR (JN 35)
69. Hansard – Dec. 5, 2005 – Moving Motion to Remove – Initial Debate until Point of Order Raised (JN 36)
70. Hansard – Dec. 7, 2005 – Tabling Speaker's report (JN 37)

71. Hansard – Dec. 8, 2005 – Debate on Motion (JN 38)
72. Hansard – Dec. 12, 2005 – Debate and Vote on Motion (JN 39)
73. Minute of House certifying Resolution of Dec. 12, 2005 – to remove CR (JN 32)
74. Order in Counsel – OC 2005-676 respecting removal of CR – Dec. 15, 2005 (JN 33)
75. News Releases/Media
 - a. Telegram – Dec. 2, 2005 – House to debate March's future
 - b. Telegram – Dec. 6, 2005 – Delay in debate on March's fate
 - c. Western – Dec. 6, 2005 – Worry of legal proceedings keeps report's findings under wrap
 - d. Telegram – Dec. 8, 2005 – Legal review critical of March
 - e. Telegram – Dec. 9, 2005 – Parties differ on March's fate
 - f. Western – Dec. 13, 2005 - House closes book on FM
 - g. Telegram – Dec. 13, 2005 – Marching orders
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6. Cell Phone Bills – Mar. 14, 2002 to Jan. 14, 2005 – with Analysis
7. Home Care Workers Issue – CR Memorandum and related letters
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3. Judgment - April 26, 2007
4. Respondent's Supplementary Memorandum of Argument - March 8, 2007
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 - a. CR Letter to Speaker - June 7, 2002 - any rules under S. 45 (1) CRA?
 - b. Speaker Letter to CR - June 21, 2002 - saying sent on to IEC
 - c. Letter from Clerk of House to Clerk of Executive Council and Deputy Minister of Justice - June 21, 2002 - seeking direction with respect to S. 45(1) CRA
 - d. Letter from CR to Speaker - August 13, 2002 - lengthy letter requesting consideration of a number of issues including need for policy and procedures, extra staffing, legal assistance etc. concluding launch of CR office has been a disaster
 - e. Letter from Speaker to CR - August 23, 2002 - references release of August 13, 2002 letter to media and directing a meeting with the IEC
 - f. Letter from Clerk of House to CR advising of IBC meeting time
 - g. Letter from Clerk of House to CR - August 28, 2002 - material from Stephen Ring - CR's Rules and relevant information from other Provinces
 - h. Excerpt for IBC Minutes - August 29, 2002
 - i. Letter from CR to Speaker - September 5, 2002 - Re: Additional Resources for the CR Office
 - j. Letter from Clerk of House to Bill Murray - September 10, 2002 - directing surplus funds to be used for hiring staff
 - k. Letter from Clerk of House to Speaker - September 26, 2002 - relates to S. 45 (1) CRA and provides Ontario Guidelines.
 - l. Letter from CR to Speaker - October 4, 2002 - lengthy letter regarding plans and policy
 - m. Letter from Speaker to CR - October 11, 2002 - advising that no rules have been contemplated under S. 45 (1) of CRA
 - n. Letter from Speaker to CR - October 17, 2002 - advising of decisions and directions arising from October 9, 2002 IEC meeting
6. Applicant's List of Authorities - February 21, 2007

7. Affidavit of Fraser March (with Attachments) – February 21, 2007
 - a. Ministerial Statement, Premier Grimes – December 13, 2001
 - b. CR Letter to Speaker Snow, October 4, 2002 – Citrep Office – background and recommendations (same as 5 l. above)
 - c. Roger Grimes Letter – April, 22, 2005
 - d. Gerry Reid Letter – January 26, 2006
 - e. Judy Foote Letter – February 21, 2006
 - f. Kevin Aylward Letter – April 15, 2006
 - g. Speaker's Letter to CR – October 11, 2002 ~ confirming no rules passed under s. 45 (1) of CRA (same as 5 m. above)
8. Applicant's Brief of Fact and Law – February 21, 2007
9. Amended Originating Application – January 19, 2007
10. Respondent's Memorandum of Argument – November 1, 2006
11. Interlocutory Application (Inter Partes) – October 30, 2006
12. Affidavit of John Noel – October 30, 2006 (with Index to 2 Volumes of Attachments – these are cross referenced in Information Book 1)
13. Originating Application – June 9, 2006



HOUSE OF ASSEMBLY
NEWFOUNDLAND & LABRADOR

OFFICE OF THE SPEAKER
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P.O. BOX 3700
ST. JOHN'S, NF
A1B 4J6

April 14th, 2005

COPY

PRIVATE & CONFIDENTIAL

Mr. Fraser March
Citizens' Representative
Office of the Citizens' Representative
Province of Newfoundland and Labrador
4th Floor, Beothuck Building
20 Crosbie Place
P.O. Box 8400
St. John's, NL A1B 3N7

Dear Mr. March:

The Internal Economy Commission of the House of Assembly has met for the purpose of considering the Report of the Auditor General dated January 26, 2005 as supplemented on March 7, 2005 by an analysis of cellular telephone records of your office. The Auditor General's Report reviewed the operations of your office for the period February 1, 2002 to June 30, 2004. The Commission has also retained Michael F. Harrington, Q.C. as outside legal counsel to provide advice to the Commission. His mandate has included not only the contents of the Auditor General's Report but the issues surrounding the investigation of the home care sector which resulted in correspondence to this office regarding not only issues of jurisdiction but also issues of lack of impartiality and conflict of interest by you in proceeding with the investigation.

The Commission has also considered your correspondence of February 4, 9, 11, 14 (2 letters) and March 1, 2005. While some of your correspondence deals with certain issues arising from the Auditor General's Report, it is necessary to respond to your specific request that these matters be reviewed or negotiated in whole or in part by a judge or a third party mediator or arbitrator. The Commission is responsible for the oversight of your office on behalf of the House of Assembly pursuant to the provisions of the *Citizens' Representative Act* (the "Act"). The Commission accepts the responsibility for making a recommendation as to whether any action is required arising from the Auditor General's Report on the operations of your office and the issues arising out of the investigation of the home care sector. The Commission does not believe it is necessary or appropriate that some or all of these responsibilities be delegated or assigned to some other party.

The Commission in consultation with legal counsel has identified three main issues for its consideration:

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1. Did you carry on a business while engaged as Citizens' Representative contrary to Section 4.(2) of the Act?
2. Did you submit and receive payment for private vehicle travel usage which was not eligible for reimbursement or was improperly claimed for the period February 1, 2002 to June 30, 2004?
3. Did you lack impartiality, act in a biased manner or place yourself in conflict of interest in your leadership of an investigation into the home care sector contrary to the Mission Statement of your office, the expectations of the Members of the House of Assembly and the provisions of the *Conflict of Interest Act*?

The Commission has requested that I advise you of the concerns it has respecting your conduct arising from the Auditor General's Report as well as from the enquiries made with regard to the investigation of the home care sector. The Commission proposes that you would have an opportunity to meet with the Commission as expeditiously as possible in order to have the opportunity to address the concerns that have been identified and make whatever representations you wish to make at that time. The Commission will have its legal advisor in attendance. You will have the right to have a legal representative present if that is your wish. If you would prefer to respond to the concerns of the Commission in writing as opposed to having the opportunity to meet with the Commission itself, this would be an acceptable alternative provided that your response is provided without undue delay. The Commission is proposing a meeting with you to take place beginning 7:00 p.m., Wednesday, April 20, 2005 at the Office of the Speaker or that you make your written reply to the Commission by 5:00 p.m. that day.

I would like to turn now to the specific concerns raised under the three issues identified in this letter so that you may prepare a reply. The Commission has already fully reviewed and considered the responses that you provided to the Auditor General and also the contents of your various correspondence to my office.

ISSUE NO. 1

COMPLIANCE WITH SECTION 4.(2) OF THE ACT

The notes of the interview committee in December, 2001 reflect your indication that you needed a couple of months to disengage yourself from approximately 23 labour arbitration cases in which you had been named as Employee Nominee. However, the invoices referred to in the Auditor General's Report show work being performed for NAPE as late as June, 2002. Copies of the invoices with accompanying correspondence are enclosed. There are invoices as late as January 6, 2003 for set up fees for arbitration boards which do not indicate a date when the service was provided but the lateness of the invoices would suggest the work was performed after June, 2002. The invoice dated August 12, 2002 respecting the Hours of Work Study chaired by Dr. Phil Warren indicates that the meetings of the Study group did not commence until January, 2002. Your appointment had been confirmed by the House of Assembly on December 13, 2001. You continued with the Study until June, 2002 and it is noted in the invoice that in August, 2002 your mandate was transferred to David Curtis, a former president of NAPE. The Commission is concerned as to why this mandate was not turned over to Mr. Curtis immediately after the resolution of the House of Assembly appointing you on December 13, 2001.

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None of the other invoices indicate that work had commenced in any substantive way prior to your appointment with the single exception of the Willis Parsons case where an initial hearing had taken place prior to your appointment on December 13, 2001. This raises the question of why you had not resigned immediately from all of the other arbitration appointments with the exception of the Willis Parsons case and even raises the question of whether or not the Willis Parsons case could have been recommenced with a new employee nominee since only one day of evidence had been presented at that point.

The Commission also has noted that your correspondence to NAPE advising the Union that you could no longer provide services did not occur until October 15, 2002 and the reason given was "excessive workload" and not the requirements of Section 4.(2) of the Act.

The Commission has been unable to verify your suggestions that former Speaker Snow had verbally and in writing confirmed to you that you were entitled to continue to conclusion all outstanding files for which your services were retained prior to your appointment. Former Premier Roger Grimes has also indicated that he did not provide any verbal confirmation to you that you could continue with this work for NAPE after your appointment.

Your written reply to the Auditor General states:

"This matter was dealt with by the hiring committee of the Executive Council, Lieutenant Governor In Council, the House of Assembly and the Citizens' Representative prior to Fraser March accepting the position of Citizens' Representative. At this time the Citizens' Representative had 43 projects ongoing in his labour relations consultation business which operated under the title Fraser March - Mediation/Dispute Resolution. It was agreed by the noted parties on advice from the Department of Justice (the Department of Justice initially provided advice to the Citizens' Representative but had to cease this practice after three months of operation because of the relationship between Justice and other Government departments) that Fraser March would be expected, barring unforeseen circumstances, to separate himself from these private business matters by June 30, 2002." (see page 56 of the Auditor General's Report)

We have been unable to confirm any advice to this effect from anyone in the Department of Justice. You may wish to clarify exactly who provided such advice. In any event, the Commission questions why you would have sought and relied upon such advice when you were appointed by the House of Assembly with oversight by the Commission and ought to have had a clear understanding with this office and the Commission regarding the continuance of any work on behalf of NAPE following your appointment.

In statements made to VOCM open line on January 24, 2003 you stated the following:

"But I want to point out to people that not only am I not allowed to be part of any union activity, I am not allowed to be part of any business activity, I am not allowed to rent an apartment. I mean, I'm an officer of the House of Assembly and that's the function I'm carrying out right now. And any other feelings that I have that are political or businesslike, I've just got to bury. I'm really no different than a person who becomes a justice of a court and, or the Auditor General. And so I make the same kind of report to the House of Assembly as the Auditor

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General. Now the House of Assembly can listen to me or the House of Assembly can ignore it, but in my deliberations I cannot represent anybody, alright?" (underlining added)

The Commission has noted in particular the comments which you made to the effect that in your role as Citizens' Representative you were not allowed to be part of any union activity and not allowed to be part of any business activity.

This comment was made in the context of a public controversy over your home care sector investigation. However, the Commission is concerned as to how these statements are reconciled with your consulting activities during 2002 for NAPE as reflected in the invoices referred to by the Auditor General. The Commission is also concerned that you had staff in your office preparing typed invoices for submission on your behalf to NAPE for this personal consulting work.

ISSUE NO. 2

REIMBURSEMENT CLAIMS FOR PRIVATE VEHICLE TRAVEL ALLOWANCES

The Report of the Auditor General identified concerns with regard to your private vehicle usage claims. One concern identified is the fact that you claimed private vehicle usage allowance for travel from Blaketown to St. John's and return. You suggest that it was agreed that you would have a residence in St. John's when your office was established in St. John's. You suggest in your response to the Auditor General that you had a residence in St. John's following your appointment although during the period July and August of 2004 you were moving from one St. John's location to another. You went on to say that while you technically had a St. John's residence and that you had moved in with friends you also spent most of your nights in Blaketown. You in fact state in a reply to the Auditor General that a St. John's residence was maintained but that in fact you only spent the amount of time absolutely necessary in St. John's and spent "every minute possible in Blaketown".

Your Employment Contract noted that your residence was Blaketown. Your public service payroll employee information form signed February 2, 2004 indicated that Blaketown was both your "cheque address" and "personal address". In your invoices to NAPE for professional services (which were typed at your office in St. John's), you noted your address as being a Blaketown post office box.

The Commission understands that at no time was your staff notified of a civic address in St. John's that would represent your St. John's residence where you could be contacted. The only St. John's address given to staff was a post office box address. The explanation given to the Auditor General appears confusing and inconsistent with what otherwise appears to be the stated residence in Blaketown on so much of the documentation surrounding your employment.

The Commission has also received information that from the period February 1, 2002 to September, 2004, you made private vehicle usage claim submissions through your office that were reviewed by the former manager of operations. We understand from this former employee that she advised you on one specific occasion that a claim for private vehicle usage between your residence in Blaketown and the St. John's office was not eligible for reimbursement. We understand from her that you withdrew the claim.

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Nevertheless, the Commission is aware that following the departure of the manager of operations in September, 2002, the Auditor General has reported that during the period from April 1, 2003 to June 30, 2004 (see page 50 of his Report) you indicated that your permanent residence was in Blaketown and further that you claimed private vehicle usage allowance to and from your residence totalling \$4,190.00 with trips commencing 7:00 a.m. and earlier and ending 7:00 p.m. or later. The Commission is having difficulty reconciling the findings of the Auditor General concerning those 2003-04 claims and payments with a withdrawal of a 2002 vehicle usage claim upon the advice provided from the former manager of operations.

In your letter dated March 1, 2005, you acknowledge a "grievous and significant error related to travel in one travel claim". You acknowledge that you submitted an erroneous claim for private vehicle usage for a return trip by car to Port aux Basques and return on September 23 and 24, 2003.

You suggest in your letter that this matter came to light as a result of your independent investigation of the 76 travel claims that were reviewed by the Auditor General.

However, the Commission understands from the Auditor General's office that even though his report on this particular trip focuses on the use of cell phones in Nova Scotia on September 23, 2003 (see pages 4 and 5 of the Supplementary Report - March 7, 2005) it is the Commission's understanding that the Auditor General discussed this anomalous situation with you in relation to your claim for the St. John's to Port aux Basques round trip during a meeting in mid February, 2005. The Commission is concerned that not only do you acknowledge on page 2 of your March 1, 2005 letter that you believe this to be "an error of such magnitude as to warrant the attention of the House of Assembly" but your explanation as to how you uncovered this error is inconsistent with the information the Commission has received from the Auditor General.

There is also an example of a private car usage claim which is double the actual distance (see page 51 of the Auditor General's Report) which you acknowledge has no explanation. The Auditor General's Report also is concerned about the inconsistency in the logging of distance travelled and the submission of a number of claims where there is one total distance amount claimed for visits to as many as a dozen destinations including two Nova Scotia destinations without any breakdown of the distances between destinations and a determination as to whether they were legitimate visits to prospective clients as opposed to personal business. The total claim is for \$1,150.00 representing 3,652 kilometres travelled (see page 51 of the Auditor General's Report).

The Commission finds it difficult to resolve the justification for this claim particularly when a single overall distance allowance figure is claimed not only for destinations within the Province but also two destinations in Nova Scotia. The Commission has a lingering concern as to why these discrepancies or deviations to extra-provincial destinations occurred without discussion and approval by the Commission before you accepted payment of these allowances. The Commission is concerned that not only was the claim for the period September 23 and 24, 2003 erroneous, there was no discussion with my office or with the Commission regarding the manner in which you travelled to Halifax, picked up your family vehicle and ultimately drove it back to your home in Blaketown with no discussion or approval from this Office or the Commission respecting the legitimacy of making any claim for an allowance for any portion of the trip in question. The Commission wonders how it could be that a round trip allowance claim was made

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from St. John's to Port aux Basques and return in these circumstances. You acknowledge in your March 1, 2005 letter that there is no explanation for the erroneous claim.

ISSUE NO. 3

WAS THE CITIZENS' REPRESENTATIVE'S LEADERSHIP OF A STUDY OF THE HOME CARE SECTOR CONSISTENT WITH THE MISSION STATEMENT OF THE OFFICE OF CITIZENS' REPRESENTATIVE AND A CONFLICT OF INTEREST

The Commission is aware that shortly after your appointment, you announced the intention of your office to conduct an investigation of the home care sector paying particular attention to the plight of unorganized personal home care workers. This investigation was met by public criticism by private operators of personal care homes in various parts of Newfoundland. The Commission understands that you as a private consultant following your employment with NAPE had represented a union other than NAPE in a failed attempt to organize the personal care homes. It is understood you later were retained by NAPE to assist in organizing workers in this sector.

The Commission is advised that on or about June 1, 2001, (approximately 6½ months prior to your appointment by the House of Assembly) you convened a meeting at the College of the North Atlantic facility in Placentia attended by home care workers in that area in which you facilitated the election of a three member working committee with respect to NAPE's organizing drive for certification of these workers in the Placentia area. The Commission is further advised that NAPE union membership cards were handed out by you to the working committee which you established for use in the organizing effort.

The Commission is further advised that shortly thereafter two additional committees were also established by you in the Carbonear and New Harbour areas. The Commission further understands that in July, 2001 you convened a meeting of the three committees at the College of the North Atlantic facility in Carbonear to jointly formulate an organizing strategy.

The Commission is aware of the fact that your pre-appointment involvement with the organizing efforts of home care workers was acknowledged in the House of Assembly on December 13, 2001 when your appointment was authorized by a resolution of the House.

You were present in the gallery on that occasion and you were congratulated by the leaders of all parties including the Premier. The Leader of the New Democratic Party said the following:

"I think there may be only one group in this Province that have some regret that Fraser March will be the Citizens' Representative, and that would be the home care workers in the Province for which Fraser most recently has been active in advocating on their behalf. They may feel the regret that they have lost a champion, but I am sure that there will be others to come forward to assist them in their cause."

Given the Mission Statement of your office that states that "decisions, acts or omissions by the Government of Newfoundland and Labrador are investigated in an analytical, impartial and timely manner for the citizens of Newfoundland and Labrador", and the expectations of Members of the House as articulated by the Leader of the New Democratic Party, the

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Commission is attempting to reconcile your post appointment activities in organizing public meetings to aid the efforts of NAPE in organizing for the purpose of seeking certification of the personal home care workers.

The Commission has been advised that the "public forums" that were announced as part of your investigation were on a number of occasions limited to only attendance by home care workers with representatives of employers of home care workers and other members of the general public were refused admission to what were purported to be public meetings.

The Commission has been advised that on November 13, 2002 you issued a memorandum from your office, a copy of which is enclosed, that explained the plans of your office respecting the proposed investigation into the working conditions of home care workers in the Province. This memorandum was not a public document but was a private communication issued to the three home care workers who had been elected as members of the working committee which you established on June 1, 2001 at the meeting of the home care workers at the College of the North Atlantic in Placentia to further the organizing drive by NAPE of the private employers of these workers in that area.

The Commission has noted that your memorandum advised the three NAPE committee members that the investigation would focus on alleged discrimination against health care workers "in the Newfoundland and Labrador public service in matters of pay and benefits". The Commission is aware that the matter of pay and benefits are issues for collective bargaining should a union be certified. The Commission is having difficulty reconciling the characterization of home care workers as members of the public service when the affected parties were making representations that they were the private employers of home care workers and were being subject to a private sector organizing drive by NAPE.

In the second paragraph of your memorandum you stated that prior to the investigation there would be a series of public forums where home care workers would be given an opportunity to explain their workplace problems. You indicated that the cost of these public forums would be the responsibility of your office. The Commission is aware that these public forums were exclusively for home care workers and attendance by any other members of the general public was prohibited. These meetings were chaired by you and we believe that when controversy arose regarding the exclusion of people seeking to attend, you stated that parties other than home care workers were barred in order that you could have frank dialogue with the workers.

The Commission is concerned that the manner in which you were conducting this investigation against the backdrop of your pre-appointment organizing efforts for NAPE as well as your ongoing communication with parties directly involved with the organizing drive demonstrated a lack of impartiality and bias in favour of home care workers efforts to organize to the perceived prejudice of the private employers affected. The Commission is also having difficulty reconciling how your conduct of this investigation was consistent with your statutory mandate.

The Commission is also aware of the fact that you are a public officeholder under the *Conflict of Interest Act*.

Section 9 of the *Conflict of Interest Act* prescribes:

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"A public officeholder shall not engage in an activity (a) that interferes with or adversely influences the performance of his or her duties or is likely to do so; (b) that places him or her in a position of conflict of interest, or is likely to do so; and (c) in which he or she may acquire an advantage derived from employment as a public officeholder."

Given your lengthy employment with NAPE, your consulting services for NAPE and prior to and following your appointment as Citizens' Representative in particular your assignment to spearhead the organizing drive by NAPE of home care workers prior to your appointment as Citizens' Representative raises concern as to whether your activities are inconsistent with Section 9.

The Commission recognizes that the concerns relating to your leadership of the investigation of the home care sector did not form part of the Auditor General's Report but it is nevertheless an issue that was brought to the attention of the Speaker by private sector employer representatives that caused the Commission to enquire further into this matter.

Now that the Commission through this letter is providing you with the basis of its concerns regarding the three issues which I have listed, this will allow you to prepare a response should you elect to avail of the opportunity. Your correspondence indicated that the Auditor General's Report had placed a cloud over your office which you wish to have dealt with without delay. Your letter of March 1, 2005 indicated that you would complete pressing work by March 8, 2005 and would proceed on leave until you receive further instructions from the House of Assembly. The payroll records of this office, however, indicate that you only remained on leave for two days before returning to your office. The Commission agrees with you that this matter must be addressed without delay and as a result we would hope that a meeting on the evening of April 20, 2005 will be convenient for you and your counsel if you choose to avail of the opportunity to meet with the Commission. If this proposed date is not convenient for a meeting with the Commission or your submission of a written response, please advise me of an alternate date within the next ten to fourteen days keeping in mind our joint concern that this matter needs to be resolved as quickly as possible. Your early reply would be appreciated.

Sincerely


Harvey Hodder, M.H.A.

Speaker



MEMO

To: Members of the House of Assembly Management Commission

From: Clerk of the House of Assembly

Date: November 15, 2009

Subject: Memo re Meeting with Members' Compensation Review Committee

The Speaker has asked that I review the Report of the Members' Compensation Review Committee (MCRC) and provide some comments to the Commission prior to its meeting with the MCRC scheduled for November 18, 2009. I have also included some comments on the processes involved in addressing MCRC recommendations and the authority of the Commission in this regard.

Attached below are some comments which the Commission may find helpful in its meeting with the MCRC and which may assist in clarifying the MCRC's intentions respecting certain recommendations. These comments may serve as starting points for discussion and are not intended as recommendations in response to the Report's recommendations.

Matters respecting salaries and pensions require legislative amendments. Once the Commission has decided its response to these recommendations, it will refer them to a Government Minister – traditionally, the Government House Leader – to prepare amending Bills. If the Commission wishes to have these introduced in the upcoming Fall sitting, decisions will have to be made soon, preferably at the November 18 meeting.

Decisions respecting severance pay and allowances are within the authority of the Commission and therefore do not face the same deadlines as legislative amendments.

The *House of Assembly Accountability, Administration and Integrity Act* authorizes the Commission to “accept or modify” MCRC recommendations. Subsections 16(5) and 16(6) state:

(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; and

(b) place the remaining recommendations, as accepted or modified, on the agenda of a subsequent meeting of the commission, for the adoption of appropriate rules implementing those recommendations.

(6) *A modification of the recommendations of a members' compensation review committee which may be made by the commission with respect to salaries, non-taxable allowances or other amounts for which a member may be entitled to claim reimbursement or payment on his or her behalf for reasonable and legitimate expenses, shall not exceed the maximums recommended by the committee in that regard.*

There has been some confusion respecting the Commission’s authority to modify recommendations. Green clearly contemplated the possibility of the Commission making modifications, as noted in the two subsections above. With respect to the limitations placed on the Commission by subsection 16(6), the Law Clerk advises that this statutory limitation addresses only dollar amounts or levels. The essence of that subsection reads as follows [emphasis added]:

A modification ...which may be made by the commission with respect to salaries, non-taxable allowances or other amount... shall not exceed the maximums recommended....

This is confirmed by Green’s Recommendation 63(5):

The Commission should have the power to modify the review committee’s recommendations, but only in a manner that would not exceed the maximum amounts recommended by the committee to be paid. [p. 9-48; emphasis added]

[Note that the Green Report section with the recommendations which lead to Section 16 of the Act and the creation of an MCRC - “Future Reviews of Salary and Benefits Levels”, pp. 9-43 to 9-48 – discusses Member salary only. Commission members may wish to review that section of the Green Report for context.]

Therefore, while the Commission may or may not choose to modify any recommendation, it is important for this and future Commissions to note that it has the statutory authority to do so, save for exceeding recommended “maximums”. As an example, the \$53 daily amount recommended for secondary accommodation cannot be exceeded, but the application of the recommendation may be modified.

In the section below, I have included the MCRC Report recommendations verbatim **in bold**, using the Report headings and numbering, with comments following each.

Salaries

- 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.**

To effect changes to MHA and office-holder salaries requires legislative amendments to the *House of Assembly Accountability, Integrity and Administration Act* (the Act). If this recommendation is accepted, the Commission would forward its decision, pursuant to paragraph 16 (5) (a) of the Act, to the Government House Leader for introduction of an amending Bill.

Note that the salaries for offices/positions noted in subsection 12(1) of the Act would also be reduced.

If the Commission accepts this recommendation, subsections 11(1) and 12(1) of the Act will require amendment, such as the following:

Subsection 11(1) 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.

Subsection 12(1) 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.

- 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.**

If the Commission accepts this recommendation, the Act will require amendment.

Subsection 15 (2) of the Act currently includes a temporary measure to adjust salaries by the same percentage applied to government's executive pay plan, but delayed by one year. Subsection 15 (3) provides for a Members' Compensation Review Committee to establish a more permanent salary adjustment mechanism.

A possible legislative amendment to the Act to implement this recommendation follows:

(2) Subsection 15(2) and (3) 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.

This amendment would freeze salaries until the next Members' Compensation Review Committee report is actioned.

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.

No specific action required. Salary changes would become effective with Royal Assent.

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.

Subsection 16 (1) of the Act states; *"Beginning with the Forty-Sixth General Assembly, the House of Assembly shall, at least once during each General Assembly, by resolution appoint... ."* This existing provision does not stipulate a time frame for appointment of a committee and allows the House to determine when it shall be appointed.

The Commission could choose to leave the timing of committee appointment open for the next General Assembly to decide. If, however, the Commission wants to ensure that this recommendation is met, then subsection 16 (1) of the Act would require amendment to confirm that the next committee would be appointed six months after the next general election, scheduled for October 11, 2011. The committee would therefore have to be appointed by April 11, 2012.

Pensions

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.

Amendments would be required to the *Members of the House of Assembly Retiring Allowances Act*, administered by the Department of Finance. The Commission would submit its decisions, pursuant to paragraph 16 (5) (a) of the Act, to the Minister of Finance (or Government House Leader) for preparation of a Bill.

- 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.

As per No. 1 above.

- 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.**

Amendments to the *Members of the House of Assembly Retiring Allowances Act* would come into effect upon Royal Assent of the amending Bill. The Bill would include a clause distinguishing between Members elected before and after the coming into force of the amendments.

Severance Pay

- 1. The current provisions for the payment of severance to an MHA remain unchanged.**

Pursuant to paragraph 11 (3) (a) of the Act, policy respecting severance pay is established by Directive of the Commission and does not require any legislative action.

If the severance pay recommendations are accepted, a policy on severance pay will be developed for Commission approval. This policy would confirm various current provisions, clarify the definition of “salary” as recommended by Green in

the same manner as for pensions (i.e., as 81.2% of actual), and address the Commission's decision respecting Recommendation #2, below.

- 2. An MHA who voluntarily resigns prior to a general election for reasons other than his or her own serious illness or a serious illness in his or her immediate family shall not be eligible for Severance Pay.**

Current provisions respecting MHA severance pay do not include any qualification respecting the reason for the resignation and are based solely on length of service, as is the case in the public service. The only province which currently has a similar provision is Manitoba (see Appendix H of Report), in its "Termination Allowance".

To implement this provision, a precise definition of "serious illness" would have to be developed or else a means by which a medically qualified individual would be authorized to certify that an illness was "serious". The determination could not reasonably be made by the Speaker or House of Assembly Service staff.

Similarly, a definition of "immediate family" would have to be adopted. Various government policies, such as that respecting bereavement leave, include such definitions and could be used in this instance.

Note that under this recommendation, a Member might resign for various family-related reasons other than serious illness, with no arrangement for alternative employment. The Commission may wish to ask the MCRC if it considered recommending other acceptable reasons for resignation beyond serious illness.

Allowances

- 1. An MHA whose district is in excess of 4 hours driving time from the capital region by the most direct route shall be entitled to one night accommodation while enroute to his/her district while the House is in session.**

The MCRC only received representation on this matter of overnight accommodations in the case of traveling from the capital region when the House is in session. The discussion in the MCRC Report points out that there is an issue of Members' safety in the current situation. Similar safety concerns might also apply to travel to the capital region and when the House is not in session. The Commission may wish to ask for the MCRC's view on applying this recommendation in those other circumstances.

Given variations in driving speed, road conditions, etc., the Commission may wish to examine alternatives to the “4 hours driving time” provision for determining eligibility.

Implementation of this recommendation would require Rule amendments.

2. The allowable expense for an MHA for accommodation in a secondary residence should be fixed at \$53 per night for each night the MHA is required to be in the capital region attending to constituency business.

Section 28 of the Members’ Resources and Allowances Rules provides the following definitions:

(f) "secondary residence" means a residence that is not a permanent residence but is owned or leased by the member and is available for occupancy by the member but does not include a seasonal or recreational dwelling or cabin

(g) "temporary accommodation" means short-term, temporary or transient accommodation such as a hotel, motel, bed and breakfast or boarding house.

This recommendation would mirror the secondary accommodations policy under the Ministerial Expense Reimbursement Policies. This approach to accommodations, theoretically, would encourage Members to rent secondary accommodations and avoid the use temporary accommodations. Cost savings would likely result compared to the current regime of reimbursing full hotel costs.

Note that the discussion in the MCRC Report (p. 35) addresses secondary accommodations when the House is in session, although the actual recommendation is stated more generally. If this provision were only to apply when the House is in session, Members may have to revert to temporary accommodations for the maximum 50 nights in the capital region when the House is not in session. If this were the case, it could result in Members continuing to use temporary accommodations year-round, as the following example indicates:

House in session, annual nights in capital (13 weeks, 5 nights per week)	-	65
Annual amount - 65 nights @ \$53.00	-	\$3,445.00
Monthly average (\$3,445.00 ÷ 12)	-	\$ 287.00

If the secondary accommodation rate of \$53 was applied when the House is not in session, then an additional 50 nights are eligible:

Annual nights in capital, House in session	-	65
Annual nights in capital, House not in session	-	50
	Total	- 115
Annual amount - 115 nights @ \$53)	-	\$ 6,095.00
Monthly average (\$6,095 ÷ 12)	-	\$ 508.00

In the above example, the 115 nights would cost \$6,095 annually. If temporary accommodations at \$140/night were selected instead, the cost would be \$16,200 (115 x \$140).

Currently, 11 Members utilize the existing secondary accommodations regime of the Members' Resources and Allowances Rules, with daily amounts ranging from \$15.05 to \$69.04. One of the 11 Members receives a secondary accommodation rate greater than \$53, so implementing this recommendation would result in one Member receiving a reduced daily amount.

Secondary accommodations, in the current Rules, are permitted in the District for Members who do not maintain their permanent residence in their District. The Commission may wish to clarify this point with the MCRC.

Implementation of this recommendation would require Rule amendments.

3. The specific district allowance allocation amount in the Schedule to the Rules should be reviewed on an annual basis. Changes to the specific amounts in each of the 48 districts outlined in the Rules, should be considered by the House of Assembly Management Commission on the basis of:

- a) **A submission made by the respective MHA outlining the rationale for requesting the change.**
- b) **Any changes of an unforeseen nature that may have occurred in a specific district that is likely to have a significant impact on the district and its constituents.**
- c) **The appropriateness of the existing specific district allocation based on the experience of MHA expenditure in the previous year.**

This recommendation outlines the means of effecting changes to the district-specified Intra-Constituency allocations attached as a Schedule to the **Members' Resources and Allowances Rules**. The Commission could adopt a policy, rather than Rule amendment, to implement this recommendation.

As the MCRC notes in its Report, the current allocations do not reflect the electoral district boundary changes made in 2007 to the *House of Assembly Act*. Adjustments may be requested in certain adjacent districts such as St. Barbe/Humber Valley and Burgeo-LaPoile/Fortune Bay – Cape La Hune. A Member would submit a request for any change to the Commission.

Note that the rule-amending process which would apply in increasing this allowance is that outlined in subsection 20(7) of the Act, rather than the more commonly used rule-amending process of subsection 15(5). Subsection 15(5) applies when an individual expense item, such as cost of hotel room, is being amended. However, when an annual allowance is being increased, the formula of subsection 20(7) applies:

20(7) A change shall not be made to the level of amounts of allowances and resources provided to members except in accordance with a rule and, notwithstanding section 64, that rule shall not be effective unless first laid before the House of Assembly and a resolution adopting it has been passed. [emphasis added]

Therefore, if the Commission approved a Member's request for an intra-constituency allowance increase, a Resolution confirming the increase would have to be passed by the House.

- 4. MHAs, whose districts require the use of modes of travel other than those expressly outlined in the Rules should be permitted to use those modes of travel without having to seek prior approval of the Speaker, provided the necessary funding exists in the MHA's budget. Reimbursement for the use of such modes of travel will be made following the submission of acceptable receipts in accordance with the Rules.**

Section 38 of the Members' Resources and Allowances Rules permits travel by ATV, boat, snowmobile or helicopter for intra (including extra) constituency travel with the prior approval of the Speaker, in accordance with Section 40. The effect of this recommendation would be to allow those Members to do so within their Intra-Constituency allocation and in accordance with all other Rules, without seeking the Speaker's permission. All requests made to the Speaker to date have been approved.

Section 40 of the Rules establishes the general modes of travel (motor vehicle, rental vehicle, commercial aircraft, bus, ferry and taxi) for Members to use. It also permits the Speaker to approve other modes upon receiving written proposals in advance. If this recommendation is applied to other modes of travel, such as chartering a plane, for House in Session and House not in Session travel, it would allow Members to do so without seeking the Speaker's permission. Unlike Intra-(including extra) Constituency travel, House in Session and House not in Session travel is not restricted to an annual allocation.

Implementation of this recommendation would require Rule amendments.

5. 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.

The Comptroller General, upon advice from the Department of Justice, determined that the term “non-accountable allowance” of subsection 15 (1) of the Act precluded those three officers from receiving the automobile allowance under the Ministerial Expense Reimbursement Policies. To effect this recommendation, a legislative amendment to the Act would be required, such as the following:

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

For greater clarity, the term “non-taxable” could be defined, as follows:

Section 15 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).

At its November 4, 2009 meeting, the Commission briefly discussed whether a legislative amendment respecting this matter could have retroactive application to confirm the practice followed since October, 2007. If the Commission wished to proceed in this manner, the Office of Legislative Counsel could be consulted on possible amendments.

Other Recommendations

MHA information available and accessible to the public.

- A. The following information should be placed on the House of Assembly website;**
- **The MHAs’ total annual compensation including amounts received for performing additional duties on committees etc.**
 - **A copy of the MHAs’ declaration of attendance in the House of Assembly as required by subsection 13(5) of the Act.**
 - **The current Member Accountability and Disclosure Reports be continued with detailed notes ensuring the expenditures are easily understood by the electorate.**

The House of Assembly website can accommodate this information in a readily-accessible manner.

Current total annual compensation is included in the Speaker's Annual Report. The Commission may wish to confirm if the intention was to provide quarterly summaries of Members' total compensation, or simply the annual amount.

The Commission may wish to enquire as to whether a single table summarizing annual attendance of all Members would suffice, as an alternative to posting 48 PDF files.

The Introduction to the Member Accountability and Disclosure Reports, which explains the various categories, is currently being revised.

B. This information should be readily accessible for any member of the public who wishes to view it at his or her convenience.

C. The information except as otherwise stated should be updated on a quarterly basis.

If the Commission decides to post Members' report on a quarterly rather than semi-annual basis, the Publication Scheme, at least, would require amendment by the Commission. It may also be desirable to amend Sections 11 and 12 of the Rules which address the current semi-annual report process.

Renaming of Constituency Allowances

The Committee recommends that the title of Constituency Allowances be renamed to be "Reimbursement of Expenses". This title will avoid confusion among the electorate and will more accurately reflect the current Rules structure.

The Commission may wish to have a full discussion with the MCRC on this recommendation. Depending on the degree to which the term "allowance" is to be avoided, both the Act and Rules could require significant re-write.

Time for Appointment of the next Members' Compensation Review Committee.

While it would normally be expected that the next review committee will be appointed in four years, we recommend consideration be given to the appointment of that committee within two years from the date of the report of this Committee. We make this recommendation because we believe the benefit of two more years experience will greatly assist that committee in its review while at the same time ensuring any difficult issues that may arise during that period are addressed in a timely manner.