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# *Scandal and Reform in the Newfoundland and Labrador House of Assembly*

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by Alex Marland

*In 2006 Newfoundland and Labrador was rocked by news of a spending scandal in the provincial legislature. Dozens of Members of the House of Assembly (MHAs)—sitting, retired, leaders, ministers, critics, backbenchers—from all three political parties had spent money in a dubious manner for more than a decade. This article looks at the details of the scandal and the subsequent reforms outlined by a special commission. It concludes that while confidence in the Office of the Auditor General and the current Premier increased, the public's trust in politicians and government was seriously eroded.*

Beginning in 1989, members of Newfoundland and Labrador's legislature were allocated an annual "constituency allowance" to offset costs associated with performing their duties, such as office equipment, newspaper subscriptions, and miscellaneous business supplies. The available allowance varied, with St. John's representatives each drawing up to \$14,400 annually, whereas Members of the House of Assembly (MHAs) in some geographically vast and distant ridings accessing up to \$84,800 per year (2006 figures). To access these funds members were required to submit expenditure claims and supporting documentation to the legislature's Director of Financial Operations. This public servant was tasked with approving, correcting, or rejecting each claim. If approved the expenditure amount was reimbursed to the member.

Between the fiscal years 1989-90 and 2005-06 approximately 18,400 claims for nearly \$25 million were processed for 115 MHAs.<sup>1</sup> This suggests that, on average, every member had been reimbursed \$216,960 for 160 ap-

proved claims. However some of them held office for less than a year while others were responsible for large sums. Moreover, there were serious accounting issues, much of which centered on a handful of officials.

The arbitrary nature of the constituency allowance expense process was, in hindsight, a major problem. MHAs and their legislative staff frequently sought guidance from the legislature's staff as to what goods and services could be claimed as well as about the requirements for supporting documentation (e.g., receipts). According to the Auditor General, the Clerk of the House of Assembly "concentrated on parliamentary matters and delegated the weight of financial management to the Director of Financial Operations". House staff provided inconsistent advice and even prepared some members' claims. The result was a mishmash of expenditures that were at times unethical or fraudulent.

## **Inappropriate and Questionable Spending**

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Constituency allowances were established in 1989 upon the recommendation of an independent commission. Gradually, elected officials adjusted compensation practices in their favour, and when challenged would evoke the principle of legislative independence. By 1996,

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some of the original framework safeguards were being replaced by block funding for MHAs.

In 2000, the Office of the Auditor General discovered that claims for artwork and wine had been processed for a sitting Cabinet Minister.<sup>2</sup> This was brought to the attention of a bipartisan (Liberal and Progressive Conservative) committee known as the Commission of Internal Economy (IEC)—of whom the Minister in question was one of seven members. The IEC ruled that constituency expenditures would be off limits to the Auditor General. Furthermore it coordinated an amendment to the *Internal Economy Commission Act* which eliminated the need for adequate proof of payment when claims were submitted. There was consequently no scrutiny in subsequent years when financial data were tabled in the legislature incorrectly indicating that members were spending within their approved limits.

In early 2006, with the approval of Premier Danny Williams, the Office of the Auditor General began examining constituency allowance spending. During that summer, the government auditor issued several preliminary reports, followed by a final report in September 2007. Spending was grouped into nine categories: advertising and promotion, discretionary, donations, entertainment, office expenses, per diems, travel, vehicle mileage, and unallocated (lacking sufficient documentation). A wide range of inappropriate and questionable spending was identified.

#### a) Additional Allowances

In 2004 the Commission of Internal Economy authorized a \$2,875 top-up payment which all but two of the legislature's 48 members accepted. This type of additional remuneration had been awarded in past years and the Clerk had been expressly urged by the IEC to keep the minutes of its meetings vague. Such a discretionary payment would otherwise have been taxable income.

#### b) Alcohol

Approximately \$120,000 in constituency allowance funds had been spent by 57 MHAs on alcohol purchased at retail stores. This does not include drinks consumed in restaurants. The Auditor General noted that one MHA had been personally reimbursed just over \$34,000 for alcohol. This included purchases made outside the province and receipts submitted with the details blacked out.

#### c) Capital Assets

Nearly \$1 million of constituency allowance funds were spent on business items with long term use, such as computers and mobile phones. The IEC deemed that any such capital assets belonged to the legislature for the first three years at which point the MHA became the sole

owner regardless of any remaining market value. This depreciation policy was particularly inappropriate for artwork and furniture.

#### d) Donations

Almost all (108) MHAs since 1989 had used their constituency allowance to make donations totalling nearly \$1.5 million. This tended to encompass a wide range of localized purposes, including school activities, community festivals, clothing, household goods, passport fees, raffle tickets and even the transportation of human remains. This spending implied that government funds were given primarily to supporters or used to influence constituents' political preferences. As well, just over \$50,000 was given to registered charities, which raised the possibility of deductions being made on personal income tax forms.

#### e) Double Billing

The lack of internal controls contributed to 88 MHAs claiming a total of nearly \$200,000 twice. Constituency allowance payments were sometimes approved for original invoices, for copies of invoices, and again when proof of payment was submitted. In some instances the same expense appeared more than once on the same claim form. A further \$17,000 had been claimed through departmental accounts by Ministers, Parliamentary Secretaries and Parliamentary Assistants and then again through their constituency allowances.

#### f) Excess Allowance Claims

The Auditor General's most serious allegation was that five MHAs had been remunerated for excess constituency allowance claims totalling nearly \$1.6 million. He also questioned the legitimacy of some payments totalling just over \$2.8 million to four companies. Roughly half a million items such as lapel pins, refrigerator magnets and key chains had supposedly been purchased since 1999, as well as \$69,000 spent on 79 customized MHA gold rings displaying the provincial coat of arms.<sup>3</sup>

#### g) Excess Discretionary Allowance

Until 2004-05, members were allotted a supplementary "discretionary allowance" that was non-taxable and for which no receipts were required. This allowance was for miscellaneous expenses. However, thirty-three MHAs collectively received just over \$200,000 beyond their discretionary limit, with four of them being responsible for roughly \$177,000 of such excess claims.

#### h) Insufficient Documentation

The Auditor General identified \$5.4 million in constituency allowance payments that involved unsatisfactory

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documentation, such as a photocopied cheque, an undated claim form, or a credit card transaction. There were many vague details, such as the instance of a non-descript convenience store bill for \$798, or airfare receipts with no itinerary information. The same five MHAs who were cited for excess constituency allowance claims allegedly received \$534,000 backed by no documentation at all.

#### i) Office Rental and Equipment

There were three instances totalling nearly \$50,000 where MHAs had drawn on their constituency allowance for rents and/or expenses (e.g., renovations) associated with a property that they owned or had a financial stake in. Furthermore, invoices were the only documentation available regarding the legislature's leasing of office equipment such as photocopiers (16 of which could not be located), fax machines and shredders. There was no tendering process for this and all purchases were made through the same supplier at a cost higher than market value.

#### j) Partisan Spending

A comparatively small figure of \$11,000 was deemed to have been spent on party-oriented activities, such as political meetings, fundraising events and post-election advertising.

#### k) Personal Items

Fifty-seven MHAs spent nearly \$162,000 of constituency allowance monies on merchandise and services that was likely for personal benefit and which private citizens purchase with after-tax money. A wide variety of items were claimed, including building supplies, family airfare, bicycle tune-ups, cookware, flowers, perfumes, sunglasses, lottery tickets, cigarettes and underwear. One member alone was reimbursed nearly \$63,000 for goods such as artwork and a \$319 Cartier pen.

#### l) Travel

There were generally poor reimbursement procedures for vehicle mileage. Claims were processed even when basic details such as dates of travel or destination were omitted. A gradually increasing distance between St. John's and an electoral district was found as were calculations which suggested that one member's drive originated in the ocean. Four MHAs were compensated nearly \$58,000 for using their personal vehicles while concurrently charging for a leased vehicle. Two other MHAs claimed nearly \$7,000 for travel that never took place, for vehicle mileage when in fact the member had flown, and for St. John's restaurant claims that conflicted

with travel claims which stated that the member had been elsewhere.

#### m) Sales Tax

The calculation of an MHA's remaining constituency allowance often did not include the Harmonized Sales Tax (HST). As a result it was common for the available limit to exceed the intended limit.

#### *Hey taxpayers!*

*(Song on St. John's radio station 94.7 CHOZ-FM, October 2007)*

*Hey taxpayers! Might have known.  
Tell me where you get the money from.  
Constituency allowance.  
Constituency allowance.  
Constituency allowance.  
If a guy walks in with new socks and  
shoes – constituency allowance!  
And if a guy walks in with a case of  
booze – constituency allowance!  
If a guy got magnets on his fridge –  
constituency allowance!  
And if he hops on a plane with the wife  
and kids – constituency allowance!*

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#### The Green Report and the Accountability Act

In between the Auditor General's reports Premier Williams created an arms-length commission to review the legislature's policies regarding members' compensation levels and spending controls. In July 2006, Chief Justice Derek Green of the province's Supreme Court began work on a report that would be released the following May. The Green commission concluded that there had been a "broad-based systemic failure" in the House of Assembly's administration and that the public interest had not been at the forefront.<sup>4</sup> Fully 80 recommendations (which alone accounted for 52 of the weighty report's 674 pages) were made, including advice to enact a draft bill. Some of these are summarized here.

##### a) Clearer Standards and More Accessible Information

- Circulate organizational charts, policy information, job descriptions and lists of the types of expenditures that qualify as a constituency allowance expense.

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Items not qualifying for reimbursement should include artwork, donations, gifts, raffle tickets and other people's travel costs.

- Clarify the duties of the Clerk of the House in legislation, including responsibility as the chief administrative and being the financial officer reporting to the Speaker.
- Establish a code of conduct for elected officials, publish standards of behaviour for legislature staff, and prepare a manual for MHAs.
- Post financial information concerning the legislature online, including constituency allowance expenditures. MHAs' financial information should be subject to access to information requests.
- Prepare a strategic plan for the legislature that identifies goals and risks.
- Replace the IEC with a restructured House of Assembly Management Commission whose meetings are open to the public and whose discussions are recorded in *Hansard*. Membership should include a third party (currently the New Democratic Party).
- The Clerk of the House should be the legislature's accounting officer and provide periodic financial statements to MHAs.

b) Stricter Controls, Monitoring, and Enforcement

- Create an Audit Committee whose duties should include reviewing internal controls.
- Establish a Commissioner for Legislative Standards and introduce a whistleblower disclosure program.
- Have the *Financial Administration Act* apply to the legislature, which should be subject to regular audit processes. Make it an offence to fail to document or retain records of administrative decisions.
- Improve computer security procedures and provide staff training.
- Property such as furniture should be physically marked as belonging to the legislature. The Clerk should maintain an updated inventory report.
- Provide money to MHAs to set up constituency offices, including at their personal home, as long as they do not benefit from rent monies.
- Review the legislature's purchasing practices. The legislature should be generally guided by the *Public Tender Act*, including compensating MHAs for expenses only when a limit in a separate account has not yet been reached.

c) Increased Difficulty to Adjust MHAs' Compensation

- Allowances should be used for constituency business rather than for personal or family benefit.
- Compensation for MHAs and legislature staff should be set out in legislation which will require a minimum

of three session days to change. Management Commission motions to change members' allowances must be published online and not voted upon until the next meeting. Salaries for MHAs should not be changed until after a general election.

- Eliminate MHAs' non-taxable allowance by integrating this into their taxable base salary and establish a new pension plan structure for future members.
- Ensure that members are ultimately accountable for any allowance claims or associated overspending.
- MHAs' pay should be docked \$200 for each sitting day they miss at the legislature, unless there is an acceptable reason.

The Green report also recommended that restrictions should be placed on the manner in which the Auditor General communicates any questionable spending data. Rather than holding regular news conferences to reveal and explain the latest improprieties, as was common in mid-2006, the Office of the Auditor General must henceforth provide information exclusively in its annual reports, as part of committee proceedings, or upon request of the House of Assembly Management Commission. Accordingly, when he released his final report in September 2007, Auditor General John Noseworthy deferred all media requests to elected officials. Unfortunately the many representatives of all three parties tended to avoid or refuse comment.

### Moving Forward

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Efforts are underway to improve accountability and transparency in the Newfoundland and Labrador legislature. The *House of Assembly Accountability, Integrity and Administration Act*<sup>5</sup> was passed in June 2007 within weeks of Justice Green submitting his draft legislation. The House of Assembly Management Commission has been struck. In October, a Members' Handbook<sup>6</sup> and a Member's Allowances Rules Manual<sup>7</sup> were circulated to MHAs and their staff, and were made publicly available online. Further action is likely such as whistleblower legislation.

Disciplinary and punitive action is ongoing. Four now-former MHAs (two Liberal, one NDP and one PC) and the legislature's now-former Director of Financial Operations have been charged by the Royal Newfoundland Constabulary with offences such as fraud over \$5,000, uttering a forged document and/or breach of trust. These individuals and other members, most notably the former Finance Minister, have been sullied in the mass media. Some sitting and former MHAs have already repaid questionable payments and others have made arrangements to do so. A handful of former mem-

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bers face government efforts to recoup monies owing while many more are unlikely to return legal but unpalatable payments.

This episode reminds us that, without sufficient scrutiny, government officials can engage in behaviour that they deem appropriate but which is clearly out of line with public preferences. The local political culture, a lack of fiscally-minded interest groups and Premier Williams' decisive action may help explain why the public furor was relatively contained. In fact, turnout in the subsequent election dipped rather than plunged, and the PCs were returned with an even stronger majority. Nevertheless, the constituency allowance scandal is clear evidence that there is reason to be concerned when an Auditor General is prevented from reviewing government finances, particularly amid all-party silence.

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## Notes

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1. Office of the Auditor General, Report of the Auditor General to the House of Assembly on a Review of Constituency Allowance Claims, 1989-90 through to 2005-06 (Sept. 2007), p.1.
2. Office of the Auditor General, Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies (Jan. 2007).
3. Office of the Auditor General, Payments Made by the House of Assembly to Certain Suppliers (June 2006).
4. J. Derek Green, Rebuilding Confidence: Report of the Review Commission on Constituency Allowances and Related Matters (May 2007): p.4-4.
5. Government of Newfoundland and Labrador, House of Assembly Accountability, Integrity and Administration Act (2007).
6. House of Assembly, Members' Handbook (Oct. 2007).
7. House of Assembly, Members' Resources and Allowances Rules Manual (Oct. 2007).