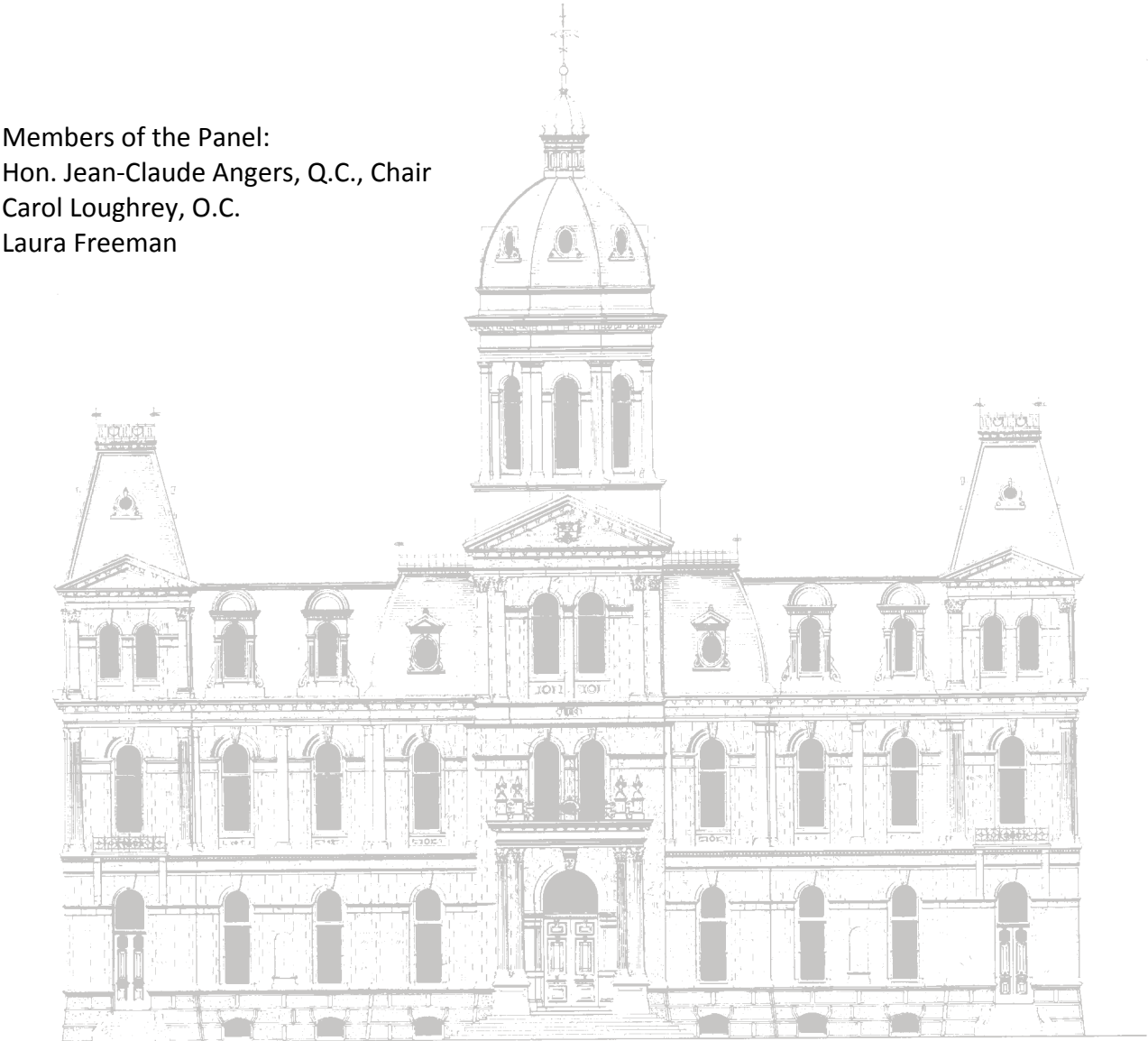


REPORT OF THE MLA PENSIONS REVIEW PANEL

Submitted to the
Speaker of the Legislative Assembly
Hon. Dale Graham

March 15, 2011

Members of the Panel:
Hon. Jean-Claude Angers, Q.C., Chair
Carol Loughrey, O.C.
Laura Freeman



March 15, 2011

To the Honourable Dale Graham
Speaker of the Legislative Assembly
Legislative Assembly of New Brunswick
706 Queen Street
Fredericton, New Brunswick

Honourable Mr. Speaker,

We have the honour to present you with our report of the MLA Pensions Review Panel prepared in accordance with the Terms of Reference and Mandate provided to us by your Office.

Respectfully submitted,

J.-C. Angers, Q.C.

Carol Loughrey, O.C.

Laura Freeman

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Appointment and Mandate

1. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, shall establish an independent panel to be known as the MLA Pensions Review Panel to review all aspects of MLA pensions including Members' re-establishment allowances.
2. The Panel shall be comprised of three individuals who are independent, neutral and knowledgeable persons from private life. Preferably, the Panel shall consist of a professional with a legal designation and experience, a professional with a relevant financial designation and experience, and an interested member of the public.
3. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, shall appoint one of the three Panel members to serve as Chair.
4. The Clerk of the Legislative Assembly shall provide administrative services and support to the Panel as required. The Panel may seek the assistance of consultants to provide it with advice and analysis and to ensure an arm's length relationship with the Legislative Assembly.

The Speaker, on the recommendation of the Clerk of the Legislative Assembly, will approve funding for the Panel. The Panel will ensure expenditures do not exceed the allotted funds.

5. The Panel shall be guided by the following principle respecting MLA compensation:

Members of the Legislative Assembly should be compensated at a fair and reasonable level to ensure that capable individuals continue to offer themselves for public service. Compensation levels should not be so small as to discourage qualified candidates from running, or so generous as to be a major inducement for seeking office.

The underlying motivation for election must be to serve and improve the well-being of the people of New Brunswick. The requirement to be available and accountable 24 hours a day, seven days of a week, coupled with the lack of job security associated with an election every four years, ensures that only certain individuals will interrupt a career and consider running for public office. A position of such importance in our democratic system, with wide ranging responsibilities, should be fairly compensated in order to attract qualified and committed individuals.

6. Within six months after the MLA Pensions Review Panel is established, the Panel shall deliver a report to the Speaker that sets out any recommendations for change it determines should be made to MLA pensions and re-establishment allowances.

7. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, may approve honoraria and reasonable expenses to attend meetings for members of the Panel, including the Chair.
8. An appointment of an individual to the Panel terminates on the day the report is filed with the Speaker of the Legislative Assembly and laid before the Legislative Assembly unless the appointment is earlier revoked or otherwise terminated.

Composition of Review Panel

Hon. Jean-Claude Angers, Q.C.

Chair: Hon. J.-C. Angers, Q.C., Member of the bar since 1965, retired judge of the Court of Appeal and the Court of Queen’s Bench in New Brunswick, retired member of the Pensions Appeal Board under the Canada Pension Plan, has served as Administrator of the Province, as member on the Board of Governors of the Université de Moncton, on the Executive Committee of Collège Saint-Louis, on various Committees of the Law Society, lecturer in legal topics at different institutions in New Brunswick.

Carol Loughrey, O.C.

Carol Loughrey became a Chartered Accountant in 1972 and was Chair and CEO of the Canadian Institute of Chartered Accountants in 1994-5. She has been named a “Fellow” of both the New Brunswick and Ontario Institutes. She holds a Bachelor and Master of Business Administration. She was named an Officer of the Order of Canada in 2004 in the category of Industry/Commerce/Business. She was a tenured associate professor of accounting and assistant dean at UNB and was a provincial deputy minister including 7 years as Comptroller. She has worked as a professional accountant and as a business owner. She has been president of local, provincial and national volunteer organizations.

Laura Freeman

A public servant in the New Brunswick government for over 30 years, with a Liberal Arts BA and MA, Laura Freeman served as the deputy minister of the Office of Human Resources, as an assistant deputy minister in the Department of Finance and an assistant deputy minister in the Department of Health and Community Services. Prior to that, she held various management and staff positions in several different departments. She has been active in the community, supporting local charities and non-profit organizations in various capacities. She currently works as an international consultant, with the Institute of Public Administration of Canada, leading projects in governance, human resource management and public sector management capacity development.

Acknowledgements

During the course of our work over the past six months, we have been fortunate to have had on-going assistance with our review of material on pension benefits. We have also appreciated the access we have had to compensation experts, who have willingly shared their knowledge and expertise. We would like to acknowledge in particular the Clerk and staff of the Legislative Assembly, as well as the staff from the Office of the Comptroller, the Office of the Auditor General and the Office of Human Resources.

Executive Summary

The MLA Pensions Review Panel was established by the Speaker, on the recommendation of the Clerk of the Legislative Assembly, and in accordance with the Terms of Reference adopted by the Legislative Administration Committee on August 20, 2010 (see Appendix i). The Panel's three members, appointed September 15, 2010, were asked to deliver a report to the Speaker within six months that would "set out any recommendations for change it determines should be made to MLA pensions and re-establishment allowances" (see article 6 of the Mandate letter in Appendix i).

The Review Panel was guided by the following principles:

- Fair and reasonable compensation to attract competent persons to seek office, but not a major inducement for seeking office
- Recognition that the job of an MLA is demanding and carries with it significant responsibilities to the public
- Transparency, simplicity and accountability

The review process started with the Panel's examination of the Report of the MLA Compensation Review Commission 2007 by the Hon. Patrick A.A. Ryan, Q.C. The Commission had recommended that a comprehensive review of MLA pensions be carried out at some time "in the reasonable future," by a three-person panel (Ryan Report, page 123).

The Review Panel had at its disposal the results of the public consultation process carried out by the 2007 Compensation Review, as well as surveys of MLAs and former Members. It also had the most currently available comparative information on the key features of pension plans for members of legislative assemblies across the country and at the federal level. The Review Panel also studied other relevant material on pensions and had meetings with compensation experts.

The key findings and conclusions include:

- The increase in the annual MLA indemnity (salary) from \$45,347 to \$85,000 and increases in the salaries of ministers (as "minister" is defined in the *Members' Pension Act*, S.N.B. 1993, c. M-7.1), effective April 1, 2008, resulted in a substantial increase in the MLA pension benefits, without any change being made by the Legislature to the pension legislation which governed those benefits.
- In comparison with pension benefits for MLAs in other Canadian jurisdictions, New Brunswick's pension benefits, which were set out in the *Members' Pension Act* and based on a much lower indemnity, were now much more generous than the norm.

A review of trends in pension reform in Canada revealed that the trend from the 1990's onward of replacing defined benefit plans for MLAs with defined contribution plans led British Columbia, Manitoba, Ontario and Saskatchewan to move to defined contribution plans. Alberta dropped pension coverage for MLA's in 1993. Newfoundland and Labrador independent compensation review commissions appear to have at least considered a defined contribution plan in 2007 and again in 2009 but the end result was a few changes to their defined benefit plan to make it more comparable with other provinces. Independent reviews in both British Columbia and Manitoba led to the re-establishment of defined benefit plans in 2007. Therefore, 7 provinces, the 3 territories, and the federal government have defined benefit plans; 1 of the 7 provinces (Manitoba) has both defined benefit and defined contribution plans; 2 provinces have defined contribution plans; and 1 province has no MLA pension plan.

In reviewing the key features of the New Brunswick MLA pension plan in comparison to plans for Members in other jurisdictions, the following findings are important:

- The benefit rate, 4.5%, for New Brunswick MLA pensions was among the highest in Canada.
- Changes to the re-establishment allowance approved in 2008 made it considerably more generous than before.
- On the other hand, the contribution rate for MLAs toward the funding of their pension, 9%, was comparable to that of other provinces.
- The length of time an MLA must serve in order for their pension to be vested was longer than the norm.

The MLA Pensions Review Panel has made 15 recommendations, including:

- Reducing the benefit rate for accrual of pension benefits from 4.5% to 3% per year of service (the same rate as the New Brunswick ministers' pension), to a maximum of 75% of the average annual indemnity for MLAs and to a maximum of 75% of the average annual salary for ministers
- Changing the vesting requirements for MLA pension eligibility from 8 sessions of service to 6 years of service and being elected twice
- Maintaining the contribution rate of 9% for an MLA pension and increasing the contribution rate for a minister's pension from 6% to 9%
- Eliminating the ability of an MLA or a minister to retire, with a reduced pension, before age 55
- Changing the maximum annual adjustment to a pension to account for any inflation from 6% to 5%
- Reducing the transition (formerly the re-establishment) allowance to a maximum period of four months and excluding those eligible for an immediate unreduced pension from receiving a transition allowance
- Implementing the proposed changes, transparently and expeditiously to address the impact from the increased MLA indemnity and ministers' salaries in 2008

Report

Introduction

On September 15, 2010, we were appointed to constitute an MLA Pensions Review Panel. These appointments were made on the recommendation of the Clerk of the Legislative Assembly and in accordance with the Terms of Reference adopted by the Legislative Administration Committee (see Appendix i). Our mandate was to “review all aspects of MLA pensions including Members’ re-establishment allowances.” We were asked to deliver a report to the Speaker within six months of our appointment.

Our mandate also provides guidelines to assist us in accomplishing our duties. These guidelines are contained in Article 5 of our mandate. In addition, we have considered that any proposed plan should be transparent, simple and accountable.

The creation of our Panel results from recommendations contained in the Report of the MLA Compensation Review Commission 2007 by the Honourable Patrick A.A. Ryan, Q.C. That report recommended a major change in MLA compensation such that allowances to MLAs which were not taxable were to become taxable and part of the indemnity. The recommendation was given effect in 2008 resulting in a major increase in the indemnity for MLAs upon which their pension was based. Judge Ryan had foreseen this increase and recommended the establishment of a Commission to study its effect on pensions.

In order to perform our task, we studied the Compensation Review of 2007 which included results of public consultations and surveys of actual and former MLAs. We also studied comparative information on key features of pension plans for Members of legislative assemblies across the country and at the federal level. We met with compensation experts and studied other relevant material on pensions in this country.

Our report will describe the situation regarding pensions for MLAs which exist in New Brunswick at the present time. In the second part we detail our proposed plan for pension and re-establishment allowances. Finally, we will comment on the implementation of our recommendations should they be accepted.

For ease of comparison with figures used in the Ryan Report, we have used the indemnity that Judge Ryan used, i.e., the 2007 indemnity of \$45,347 for calculations in our report, even though the indemnity increased to \$46,934 on January 1, 2008 before being increased to \$85,000 on April 1, 2008. This increase was in accordance with s. 25(1) of the *Legislative Assembly Act*, R.S.N.B. 1973, c. L-3. The indemnity will be adjusted automatically by the amount of the average change

in the industrial aggregate for each 12-month period commencing January 1, 2011 (s. 25(1.1)).

To facilitate the reading of our report we will initially describe the meaning of certain keywords used in this report.

Definitions

Defined Benefit Plan:

A **defined benefit plan** guarantees a certain payout at retirement, according to a fixed formula which usually depends upon the member's salary and the number of years' membership in the plan.

Defined Contribution Plan:

A **defined contribution plan** will provide a payout at retirement that is dependent upon the amount of money contributed and the performance of the investment vehicles in which the money is invested until retirement.

Indemnity:

An **indemnity** is the amount of the annual MLA income upon which pension contributions and pension benefits are based.

Minister:

As defined in the *Members' Pension Act*, "**minister**" means a Member who is a member of the Executive Council, the Speaker or a Deputy Speaker of the Legislative Assembly, and the Leader of the Opposition or a leader of any other registered political party in the Legislative Assembly.

Reduced and Unreduced Pension:

Pension terms normally define the age at which one can start receiving an **unreduced pension**. An unreduced pension refers to the *full* benefits of one's pension. Often there are provisions to receive the pension at an earlier age if the amount of the pension is reduced, thus one receives a **reduced pension**. The amount of the reduction is dependent on how early the pension is taken and that reduction permanently lowers the amount of pension the person receives annually.

Registered Portion of a Pension Plan:

In order for a pension plan to be considered a **registered** pension plan, the pension plan must comply with the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and its regulations with respect to age of retirement for an unreduced pension, what constitutes pensionable service, the range of acceptable contribution rates and benefit rates used to generate the pension benefits, the type of investments that can be made with the pension plan fund, etc. If the pension plan is accepted by the Canada Revenue Agency as a registered plan, the pension contributions made by the employee are tax deductible.

Unregistered Portion of a Pension Plan:

If certain features in a pension plan do not comply with the *Income Tax Act* and its regulations, such as excess contribution or benefit rates or a lower age limit for an unreduced pension, that portion of the pension plan that does not comply is declared to be an **unregistered** portion. It loses the favourable tax treatment of the registered portion and contributions are not tax deductible.

Vesting:

Vesting is to give an immediately secured right of present or future benefit. One has a vested right to an asset that cannot be taken away by any third party, even though one may not yet possess the asset. In this case it relates to the ability to get a pension when one has reached the appropriate age even if employment has discontinued with the employer before that age.

Existing Situation

There are currently two pension plans providing pensions for New Brunswick MLAs. The first, often referred to as the “Old Plan,” governed by the *Members Superannuation Act*, R.S.N.B. 1973, c. M-8 was replaced in 1993 by the “New Plan,” governed by the *Members’ Pension Act*, S.N.B. 1993, c. M-7.1.

The Old Plan for New Brunswick MLAs no longer has any active members contributing to it, as of the provincial election of September 2010. The New Plan is the primary focus of the pension review being carried out by the Pensions Review Panel. However, it is important to place the New Plan changes in the context of the Old Plan to fully appreciate the significance of the changes that were made.

Old Plan (*Members Superannuation Act*)

In simple terms, under the Old Plan, an MLA who had contributed 9% of their annual indemnity and had served at least 10 sessions could retire and begin to immediately draw an unreduced pension, regardless of their age. The amount of pension was 4.5% of the average annual indemnity for the three successive years in which the indemnity was the highest multiplied by the number of sessions served in the Legislature.

The average annual pension actually received by the 70 retired MLAs or their survivors, was \$29,262, according to the last actuarial valuation, received in 2009, which was based on information as of April 1, 2008. The average age of the retirees was 73.6 years at the time of the actuarial valuation. Those who had served fewer than 10 sessions were not eligible for a pension; their contributions and interest were refunded to them.

At the end of December 2010, there were no active, contributing members in the Old Plan. There were 3 inactive members who were not drawing pensions – 2 whose pension is vested and 1 whose pension is not vested. There were 67 retirees in receipt of a pension, 47 were former MLAs and 20 were survivors.

The Old Plan was replaced in order for the MLA pension plans (and the legislation governing them) to comply with the federal *Income Tax Act* and Regulations. As part of the move to the New Plan and the new legislation in 1993, the rules under the Old Plan were “grandfathered” for those MLAs covered by that Plan who chose to remain in the Old Plan. All subsequently elected MLAs were subject to the New Plan.

New Plan (*Members' Pension Act*)

The New Plan was structured into two parts, to comply with the *Income Tax Act*: a “registered” portion and an “unregistered” portion. This was a significant change. Some other changes in the New Plan were also significant, such as: setting a specific age, the age of 60, as the earliest age that an MLA was eligible to retire with an unreduced registered pension and specifying that the registered portion of the pension of an MLA who retired earlier than age 60 would be reduced for each month they retired before the age of 60. Under the New Plan, MLAs continue to make a contribution of 9% of their annual indemnity toward their future pension. As in the Old Plan, the pension they are entitled to receive when they retire is calculated using a benefit rate of 4.5% of the average annual indemnity for the three successive years in which the indemnity was the highest multiplied by the number of sessions they have served as an MLA. However, the calculation for determining the total annual pension for each MLA was arrived at in a two-step process. In the first step, the registered portion is calculated by multiplying the average annual indemnity for the three successive years in which the indemnity was the highest by 2% and then multiplying the registered portion by the number of sessions served in the Legislature. In the second step, the unregistered portion is calculated by multiplying the average annual indemnity by 2.5% and then by the number of sessions served. As noted above, the amount of the registered portion of the pension for an MLA, if they retire early, is reduced by 5% for each year before they reach age 60. The unregistered portion of the pension is reduced by 5% per year before age 55. It should also be noted that under the *Members' Pension Act* there is no restriction on the age at which an MLA can start drawing a reduced pension.

If an MLA serves fewer than eight sessions, they are entitled to receive their contributions and the interest when they cease to be a Member of the Legislative Assembly. It should be noted that the term “session” is defined in the *Members Superannuation Act* and *Members' Pension Act* as “a session of the Legislative Assembly,” however there have been different interpretations of how long a session is. Normally, there is one session per year, but there are some exceptions to that rule. For the purposes of the eligibility of an MLA to a pension, it is assumed that it is likely to represent a year, therefore the change from ten to eight sessions under the *Members' Pension Act* effectively sets 8 years, i.e., two elections, as the length of service as an MLA as the qualifying period for a vested pension. The average annual pension which the 17 retired MLAs or their survivors actually received, as recorded in the 2009 actuarial valuation was \$21,399. Their average age was 67.2. There were 51 active members of the New Plan at the time of the actuarial valuation.

At the end of December 2010, the number of active, contributing members in the New Plan was 55. In addition there were 7 inactive members who are not drawing pensions, 5 whose pension has vested and two whose pension has not vested. There were 22 former MLAs and two survivors drawing pensions under the New Plan.

Ministers

Those MLAs who also served as ministers, if they served as a minister for at least six months, receive an additional pension that is based on their time as a minister. It should be noted that under the *Members' Pension Act*, the term "minister" includes members of the Executive Council, as well as the Speaker, the Deputy Speaker, the Leader of the Opposition and the leader of any other registered political party in the Legislative Assembly. Basically, the most substantial difference between the pension requirements for ministers under the Old Plan and the New Plan is the requirement under the New Plan that they be at least age 60 to retire with an unreduced registered pension. It is also structured into two parts, a "registered" portion and an "unregistered portion" to comply with the *Income Tax Act*. If they retire before age 60, the registered portion of their ministerial pension is reduced by 5% for each year they are under age 60. The unregistered portion is reduced by 5% per year before the age of 55. They are required to contribute 6% of their minister's salary annually toward their pension. This is in addition to the 9% contribution rate on their MLA indemnity. They cannot begin to draw their ministers' pension until they also begin to draw their MLA pension.

The amount of the ministerial pension benefit is calculated in two steps, by using a benefit rate of 2% for the registered portion and 1% for the unregistered portion, and multiplying their average annual salary as a minister over the three successive years when that salary was the highest by these two rates and by the number of years they served as a minister.

The average annual minister's pension actually received by the 15 retired ministers was \$9,578 under the Old Plan and \$4,797 for the 14 retired ministers under the New Plan, as recorded in the 2009 actuarial valuation. MLAs and ministers are entitled to annual indexing of their pensions after they retire at the rate of increase in the Consumer Price Index to a maximum of 6%.

At the end of December 2010, there were 19 active members contributing to the ministers' pension under the New Plan. There were 22 inactive former ministers – 17 were vested and 5 were not vested. There were 20 former ministers and 1 survivor receiving the minister's pension benefit.

Under both the Old Plan and the New Plan, a survivor's pension is paid to the spouse of an MLA/minister who is eligible to receive a pension immediately upon the death of an MLA or minister. The amount of the survivor's pension is 50% of the amount of the MLA/ministers' pension. If there is no surviving spouse, but there are dependant children, 50% of the pension is divided in equal shares among the dependant children.

Proposed Plan

A. Pensions

Introduction

There are a few key features that underlie any pension plan and we have chosen to deal with each individually and make recommendations on each. We have reviewed each feature using the lens of our 3 key principles:

- Fair and reasonable compensation to attract competent persons to seek office, but not a major inducement for seeking office
- Recognition that the job of an MLA is demanding and carries with it significant responsibilities to the public
- Transparency, simplicity and accountability

1. Benefit Rate

The current benefit rate of 4.5% of the annual indemnity for MLAs is the highest in Canada with the exception of Nova Scotia at 5%. The 2008 increase in indemnities and ministers' salaries in New Brunswick makes New Brunswick remuneration for MLAs and ministers comparable to other provinces. It is our view that the benefit rate of 4.5%, which applied to a lower indemnity, should be reduced. Newfoundland and Labrador and British Columbia, have a benefit rate of 3.5%. Quebec has 4% and Nova Scotia has 5% to a maximum of 15 years. The Federal Government reduced their benefit rate to 3% for members of the House of Commons as of 2001.

At the time the *Members' Pension Act* was enacted in 1993 there were two main components to what was considered the pay package for MLA's – the taxable indemnity and the non-taxable, non-accountable allowance. The 2007 Ryan Report recommended that the non-taxable, non-accountable amount be converted into part of the taxable indemnity, which would produce a taxable indemnity of \$81,785. Judge Ryan suggested that this should be topped up to \$85,000 to make the MLA indemnity comparable with other provinces. This was adopted as of April 1, 2008 without making any changes to the *Members' Pension Act*. Thus an annual pension accrual benefit of 4.5% of what in 2007 had been an indemnity of \$45,347 became a 4.5% accrual of benefit on \$85,000 (see Appendices ii and iii for a more detailed analysis of the impact of the *Income Tax Act* on New Brunswick MLA pensions and the impact of the Ryan Report salary recommendations on the MLA pension plan). This change not only substantially increased the amount of unfunded pension liability for this pension plan on the books of the Province, it also substantially added to the annual pension expense.

Any changes to be made to the MLA pension benefits were deferred to a future review by an independent commission. The 2007 Ryan Report recommended that this happen “at some time in the reasonable future” (Ryan Report, p.123).

Several jurisdictions limit the maximum service that can be counted in accruing pension benefits. The maximum service ranges from 15 years in Nova Scotia to 35 years in Manitoba. The federal government has set a maximum of 75% of the Member of Parliament salary as the limit for accruing benefits. In the case of New Brunswick, where we currently have no limit on pensionable service, MLAs who have 23 years of service would receive a pension at age 60 that would exceed the amount of the average of the three highest successive years and increase from there. It is our view that the pension benefit should not exceed 75% of the annual indemnity and the same maximum should be applied to the minister’s salary. It is also our view that pension contributions by MLAs and ministers should continue after the ceiling of 75% is reached, because it is expected that both the indemnity and ministers’ salaries will continue to rise periodically to keep pace with the average industrial wage, thereby increasing the value of the pension at retirement.

Recommendation: We recommend that the rate of accrual of pension benefits for MLAs be an effective rate of 3 percent per year of service to a maximum of 75% of the member’s average annual indemnity plus a maximum of 75% of the average minister’s salary. Two percent complies with the *Income Tax Act* and a supplemental amount of 1% is added to reflect the normally short-term nature of the employment and the loss of progress in the MLA’s career by taking this time out to serve. Accrual of benefits on the ministers’ salary would remain at 3% as it is currently. Contributions by MLAs and ministers toward their pension would continue after the 75% cap is reached. This recommendation is subject to s. 5(3) of the *Members’ Pension Act*.

2. Vesting and Years of Service

A pension “vests” when one receives the right to receive the pension at a future time. Currently the MLA pension “vests” after the individual has served as an MLA for 8 “sessions”.

The use of the term “sessions” is a carry-over from former days when being an MLA was considered a part time job. That is no longer the case. The term also leads to confusion as to what is meant by a “session.” Thus it would be more reasonable and clear to measure their term of service in terms of years, i.e., any 12-month period. However to change it to 8 years would be unduly harsh since the normal time for a pension to vest is less. In other provinces the pension vests more quickly with none exceeding 6 years.

In terms of a minister's salary portion of remuneration, the pension vests if the minister has met the requirements for vesting as an MLA and also has served at least 6 months as a minister.

Recommendation: We recommend that the word “years” meaning any 12 month period should replace the word “session.” We recommend that the MLA pension should vest after 6 years and the Member having been elected twice. A minister's pension should vest after 6 years of being an MLA and 6 months of being a minister.

3. Eligibility for Unreduced Pension

Currently one must be 60 to get the unreduced MLA or minister registered portion of pension and 55 to get the unreduced unregistered portion. Other provinces require ages that range from 55 to 65 (British Columbia).

Recommendation: We recommend the age of eligibility for an unreduced pension be 60 for both ministers and MLAs and for both the registered and unregistered portions of the pension.

4. Eligibility for Reduced Pension

Currently there are two different provisions for receiving a reduced pension – one for the registered portion of the pension and one for the unregistered portion.

Recommendation: We recommend that the eligibility of ministers and MLAs for a reduced pension be set at age 55 and that there be no eligibility for a reduced pension below age 55. This applies to both the registered and unregistered portions of the pension.

5. Reduction Percentage

The current reduction rate is 5% per year, calculated monthly, if the pension is received before the eligible age for an unreduced pension. Although the reduction can be as high as 6% (Newfoundland and Labrador and Nova Scotia), other provinces range from 1 to 3%. We believe that the current rate of a 5% reduction per year in the pension between the ages of 55 and 60 seems reasonable in the current context and foreseeable future for both the registered and unregistered portions of the pension.

Recommendation: We recommend that the reduction amount for both MLA pension and ministers' pension be 5% per year if the pension is taken between age 55 and 60. This applies to both the registered and unregistered portions of the pension.

6. Pension Base

Using three successive sessions during which the indemnity was highest (s. 10(2) *Members' Pension Act*) is the current approach in New Brunswick to calculate the base amount. Other provinces use "best" or "highest," not "successive." We find the approach in New Brunswick reasonable provided that the word "sessions" be changed to "years."

Recommendation: We recommend that the benefit should be calculated based on the three successive years during which the MLA indemnity and minister salary are the highest.

7. MLA/Minister Contribution

The current 9% rate on Members seems reasonable and comparable with other provinces. The two provinces with a defined benefit pension plan for MLAs that have higher rates than 9% are British Columbia – 11% and Nova Scotia – 10%, both of which have higher benefits than our proposed rate. The contribution rate of 6% on the minister's salary is lower than other provinces, based on the comparative information provided to us. It is justifiable, in our view, to increase the contribution rate to 9% for the ministers' pension, which makes it consistent with the MLA contribution rate.

Recommendation: We recommend that the contribution rate be 9% of MLAs' annual indemnities and 9% of ministers' annual salaries.

8. Termination Provisions

Currently Members' contributions are refunded with interest if the pension has not vested at the time they cease to be a Member. A Member subsequently re-elected has the option of buying back, within one year of being re-elected, previously refunded service contributions under s. 6 of the *Members' Pension Act*.

Recommendation: We recommend that current provisions of termination prior to vesting be retained (s. 6 of the *Members' Pension Act*).

9. Survivor Benefits

A survivor's pension is paid to the spouse of an MLA/minister immediately upon the death of an MLA or minister who is eligible to receive a pension benefit. The amount of the survivor's pension is 50% of the amount of the MLA/minister's pension. If there is no surviving spouse, but there are dependant children, 50% of the pension is divided in equal shares among the dependant children.

Recommendation: We recommend that survivor benefits should remain at 50% to the surviving spouse or if no surviving spouse, to the dependant children, as provided for in ss. 13 and 14 of the *Members' Pension Act*.

10. Indexation

In the current legislation there is provision for an annual adjustment to reflect a change in the Consumer Price Index to a maximum of 6% of pension (*Members' Pension Act* s. 14.1(2)). This is comparable with other jurisdictions. A maximum of 5% seems reasonable to us in the current context and foreseeable future.

Recommendation: We recommend changing the annual Consumer Price Index adjustment to a maximum of 5%.

11. Stacking versus integration with Canada Pension Plan

The MLA pension plan is stacked with the Canada Pension Plan. Stacking means that members are eligible to receive both their full Canada Pension Plan benefits and the accrued benefit under this pension plan. If the pension plan is integrated (as is the public service) then members would receive an amount that when added to their CPP would roughly equal their accrued benefit.

Almost all provinces stack MLA pensions with the Canada Pension Plan. Only Newfoundland and Labrador does not.

Recommendation: We recommend that MLA pensions continue to be stacked rather than integrated with the Canada Pension Plan.

12. Suspension of pension

Subsection 18(2) of the *Members' Pension Act* sets out conditions under which one's entitlement to receive a pension is suspended, such as when one is employed full-time in the Public Service or appointed as a Senator. We believe the conditions under which suspension should be required should be extended so that those who are incarcerated as a result of a conviction for an indictable offense do not continue to receive a pension from the public purse during their incarceration.

Recommendation: We recommend that another condition for suspension of pension under s. 18(2) of the *Members' Pension Act* should be a person incarcerated as a result of a sentence of imprisonment imposed as a result of a conviction for an indictable offense.

B. Transition and Retraining Allowances

Introduction

It is customary in the business world to allow employees who are laid off an amount of money to enable them to have some income for a time until they obtain other remunerative employment. This custom extends to elected Members of legislative assemblies in this country. It may be called severance pay, re-establishment or transition allowance. It should be noted that this transition allowance (as we will call it) ought not to be considered a benefit or reward or bonus. It is an amount usually necessary to enable a former employee to find gainful employment without substantial loss of income pending the finding of other work. We are satisfied that a transition allowance is justifiable for former Members of the Legislative Assembly in New Brunswick.

In addition to a transition allowance, it is customary in most provinces to allow an amount for re-training or career counselling. This amount permits former members to update themselves in their former occupation or to re-train in a somewhat similar or new occupation. We are satisfied that such an allowance with guidelines is also justifiable for our former Members.

13. Transition Allowances

Present Situation in New Brunswick

In New Brunswick the transition allowance is referred to as a re-establishment allowance and is found in the *Legislative Assembly Act*, R.S.N.B. 1973 at s. 32.2. Briefly, a person who is a Member immediately before the assembly is dissolved and who does not, for any reason, become a Member of the next assembly, receives 1/12 of his/her annual indemnity for each session served up to six. (It used to be eight but was reduced to six in 2008 following the Ryan recommendation.)

Any person who resigns or ceases to be a Member before the assembly is dissolved receives 1/24 of his/her annual indemnity up to six sessions. In other words, one half of what the other Member receives. If the Member dies or resigns because of illness, it is the 1/12 payment. Until repealed in 2008, no re-establishment allowance was payable to Members to whom a pension "is or will be payable." Currently, a former Member can receive a transition allowance and start receiving a pension. Thus before the increase in indemnity, a Member could receive as much as 1/12 of \$45,347 or \$3,779 monthly x 8 (maximum) which equals \$30,232. After the increase, a Member may receive as much as 1/12 of \$85,000 or \$7,083 monthly x 6 (maximum) which equals \$42,498.

Other Jurisdictions

In most provinces, transition allowances are equivalent to one month of salary per session served up to a maximum of twelve months. Some provinces use the 1/12 system of annual salary, as in New Brunswick, which in fact is the same as one month's salary.

One jurisdiction, Yukon has a fixed amount. It is called a severance allowance and is fixed at 25% of the aggregate of the salary, indemnity and expense allowances received by the member during the preceding year.

A transition allowance is necessary to enable certain Members time to find another remunerative occupation. This, of course, depends on the age, years of service, education, training, qualifications and experience of the Member involved. It is necessarily very subjective as it depends on each individual.

It is also important to balance the need for some to be compensated while reasonably looking for other occupation against the payment to those who are already compensated in other employment or those not seriously seeking other employment. In other words, we must balance, on the one hand the interest of the taxpayers in not compensating those who ought not to be compensated against the interest of former Members who reasonably need to be compensated. However, we are of the opinion that, in general, people who have been away from their regular employment for 4 years or more would need some time to reorganize their sources of income.

As noted previously, most other provinces allow one month of salary for each year or session served up to a maximum of 12 months, without terms or conditions, to justify the 12 months. In British Columbia, the transition allowance is the basic monthly salary for a minimum of four months up to the date he/she is re-employed or to a maximum of 15 months, whichever comes first.

We do not favour a system with an unchecked maximum of 12 months transition allowance. Such system would as a rule favour the former Member to the detriment of the taxpayer not to mention the effect it would have on the incentive to find other employment. On the other hand the procedure used to check the real needs of former Members would be arduous, as it would involve an independent committee or board to gather evidence and study individually the needs of each Member involved with respect to their age, years of service, qualifications, general ability, desire and efforts made to seek other employment.

We are of the opinion that such a difficult and subjective determination must be avoided. The amount for transition allowance should be fixed, simple and easily determinable. Moreover, a Member who resigns or chooses not to re-offer has the opportunity to seek an alternate occupation, thus, only a minimum amount is justified.

Recommendation: We recommend that a transition allowance in an amount equal to four months of the monthly indemnity be paid to the person who was a Member immediately before the assembly was dissolved, had been a Member for at least four years and is defeated in the following election. Therefore, the amount would be: 4 x the monthly indemnity of \$7,083 = \$28,333.

Any Member who resigns before the assembly is dissolved, or does not re-offer or otherwise ceases to be a Member for any reason other than defeat at the polls will be paid an amount equal to the monthly indemnity for a period of one month. The provision dealing with death and illness contained in s. 32.2(4.1) of the *Legislative Assembly Act* would be retained but for a period of four months.

Those Members who have served fewer than 4 years would be entitled to receive one month's indemnity per year of service.

The transition allowance would be payable immediately in a lump sum or by installment payments to be paid within four months of polling day.

Finally, a Member who is eligible to receive an unreduced pension immediately upon retirement is not eligible for the transition allowance. However, a Member who is eligible to receive a reduced pension may be paid a transition allowance upon the condition that the Member will not draw a pension benefit until four months after polling day.

Note: The figures used here are based on the indemnity of a Member; in the case of a minister, as defined in the *Members' Pension Act*, the figures would be adjusted accordingly.

14. Retraining or Career Counselling Allowance

Present Situation in New Brunswick

Subsection 30.02(1) of the *Legislative Assembly Act* provides reimbursement to a maximum of \$5,000 for expenses incurred with respect to career counselling or retraining, subject to terms and conditions as may be prescribed by the Legislative Administration Committee. Most other jurisdictions have similar provisions, some with a higher amount.

As indicated earlier, we find this allowance justifiable mainly because a claim for this allowance must be supported by proper documents and receipts and is subject to terms and conditions.

RECOMMENDATION: We recommend that the retraining or career counselling allowance up to a maximum of \$5,000.00 as specified in s. 30.02(1) of the *Legislative Assembly Act* be retained.

Note: Since that amount is intended to cover the costs of retraining or career counselling, it would not disqualify the member from receiving the transition allowance.

15. Implementation

In our opinion the government should make every effort to reverse the “pension bonus” which was the direct result of converting the non-taxable non-accountable expense allowance to indemnity. As our calculations elsewhere show, this had the impact of almost doubling the benefit an MLA would receive upon retiring (see Appendix iii and iv).

Because this was in place from April 1, 2008 until the time of the election in the fall of 2010 this was a major windfall for MLAs who did not return for whatever reason and were eligible to receive pensions. Most of their three successive years used to calculate their pension benefits would have been at the higher base of \$85,000. For MLAs re-elected to the Legislature, they will have accrued by April 1, 2011 a minimum benefit that they will receive from age 60 until their death of \$11,475 per year for those three years of service alone. With no cap on the amount that accrues as pension benefits, former long serving MLAs could receive more than their former annual indemnity as pension.

***Recommendation:* We recommend that action be taken on the recommendations in this report as soon as possible. We also recommend that proper implementation procedures and their legal effect be developed and approved.**

Conclusion

The changes in the MLA indemnity and ministers' salaries without proper regard to the impact on the costs of the pension plan has resulted in millions of dollars of added debt and substantial increases in the annual expense related to this pension plan. It is particularly unfortunate that this has come at a time when the government is facing the possibility of serious cutbacks to services that citizens consider essential.

It is clear that this is a contentious issue for New Brunswickers. It was our intention to develop a plan that was reasonable and fair relative to other governments in Canada and relative to the nature of the work and time frames involved. We believe that this plan does that.

Respectfully submitted,

J.-C. Angers, Q.C.

Carol Loughrey, O.C.

Laura Freeman

Appendix i

Terms of Reference

Adopted by the Legislative Administration Committee on August 20, 2010.

Background

In March 2007, the Legislative Administration Committee mandated the MLA Compensation Review Commission to undertake a review of the indemnities, expenses and pensions payable to Members of the Legislative Assembly. The Honourable Patrick A.A. Ryan, Q.C. a retired Justice of the Court of Appeal of New Brunswick and the province's Conflict of Interest Commissioner, was commissioned to conduct the review and to report to the Speaker of the Legislative Assembly. His report was filed with the Speaker on January 14, 2008. With the exception of the recommended change to the vesting period for Members (from 8 sessions of pensionable service to 6 years of pensionable service), the report's recommendations were implemented through amendments to the *Legislative Assembly Act* adopted by the Legislative Assembly on April 28, 2008.

One of the key changes to be adopted was the recommendation to convert the Member's non-accountable and non-taxable expense allowance into taxable income and to add the amount to the base salary of Members. Effective April 1, 2008, the annual indemnity or salary of a Member was established at \$85,000. By combining the indemnity and the tax-free allowance into taxable income, pension benefits rose without any changes being made to pension legislation. Pensions are now based on a total indemnity of \$85,000 compared to the previous indemnity of \$45,349 (2007 rate). A Member who qualifies for a pension after serving eight sessions, will receive a pension based on 4.5 % times the average indemnity during the three highest successive years, times the number of sessions of pensionable service. There are no caps on the number of sessions of pensionable services that can be used to calculate a Member's pension and no limits on pension benefits that a Member can receive under the *Members' Pension Act*.

On the matter of Member's re-establishment allowances it appears there may have been some ambiguity as to whether the re-establishment allowance should have been made available to retiring Members who are entitled to Members pension benefits immediately upon ceasing to be Members.

The 2007 MLA Compensation Review Commission recommended the adoption of a policy for a mandatory review of MLA compensation at regular intervals, such as following a general election. Pursuant to changes made to the *Legislative Assembly Act*, the next review of MLA compensation and benefits will take place after the 2014 provincial election and after every election thereafter. The Commission also recommended that a comprehensive review of MLA pensions be carried out at some time in the reasonable future. As stated by the Honourable Patrick A.A. Ryan, Q.C. in his report: "Because pensions are so important to the 'thinking person's' consideration on whether to enter the political arena, it is essential to have a full review of the pension plan available to the

elected Members in New Brunswick”. The Commission recommended that pension changes should only be made upon the recommendation of a three-person panel commissioned specifically to address the plans already in operation, their effectiveness, the cost of administration, why changes are recommended, vesting, early access to a pension, among the other things pertinent to a pension scheme.

The Legislative Administration Committee has agreed that it is in order for such a review to be undertaken at this time. Such a review will also encompass a review of Members’ re-establishment allowances.

Appointment and Mandate

1. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, shall establish an independent panel to be known as the MLA Pensions Review Panel to review all aspects of MLA pensions including Members’ re-establishment allowances.
2. The Panel shall be comprised of three individuals who are independent, neutral and knowledgeable persons from private life. Preferably, the Panel shall consist of a professional with a legal designation and experience, a professional with a relevant financial designation and experience, and an interested member of the public.
3. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, shall appoint one of the three Panel members to serve as Chair.
4. The Clerk of the Legislative Assembly shall provide administrative services and support to the Panel as required. The Panel may seek the assistance of consultants to provide it with advice and analysis and to ensure an arm’s length relationship with the Legislative Assembly.

The Speaker, on the recommendation of the Clerk of the Legislative Assembly, will approve funding for the Panel. The Panel will ensure expenditures do not exceed the allotted funds.

5. The Panel shall be guided by the following principle respecting MLA compensation:

Members of the Legislative Assembly should be compensated at a fair and reasonable level to ensure that capable individuals continue to offer themselves for public service. Compensation levels should not be so small as to discourage qualified candidates from running, or so generous as to be a major inducement for seeking office.

The underlying motivation for election must be to serve and improve the well-being of the people of New Brunswick. The requirement to be available and accountable 24 hours a day, seven days of a week, coupled with the lack of job security associated with an election every four years, ensures that only certain individuals will interrupt a career and consider running for public office. A position of such importance in our democratic system, with wide ranging responsibilities, should be fairly compensated in order to attract qualified and committed individuals.

6. Within six months after the MLA Pensions Review Panel is established, the Panel shall deliver a report to the Speaker that sets out any recommendations for change it determines should be made to MLA pensions and re-establishment allowances.
7. The Speaker, on the recommendation of the Clerk of the Legislative Assembly, may approve honoraria and reasonable expenses to attend meetings for members of the Panel, including the Chair.
8. An appointment of an individual to the Panel terminates on the day the report is filed with the Speaker of the Legislative Assembly and laid before the Legislative Assembly unless the appointment is earlier revoked or otherwise terminated.

Appendix ii

Analysis of the Impact of Federal Changes on New Brunswick MLA Pensions

When the New Plan was put in place in 1993, it is assumed that the intent was to duplicate the benefits of the Old Plan as much as possible, thus avoiding any material change in what the MLAs were expecting to have as a pension plan. In order to do so and comply with new requirements under the *Income Tax Act*, the New Plan distinguished between a “registered” portion and an “unregistered” portion of the MLA and ministers’ pensions. Perhaps the most significant changes that could not be avoided in the New Plan were the requirements to be age 60 in order to draw the unreduced “registered” portion of the pension and a 5% reduction per year in the “registered” pension for retirement before the age of 60.

Other measures were taken in order to protect the benefits that were available under the Old Plan and still ensure that the MLA pension under the New Plan complied with the federal legislation. If the pension plan complied with federal legislation and was deemed to be a “registered” plan under the federal *Income Tax Act*, the 9% contribution rate made by MLAs to their pension plan would be tax deductible, clearly a benefit that should be preserved. It should be noted that there was no change in the MLA indemnity. It remained at \$35,807. The 9% contribution rate on that indemnity was within the maximum under the federal legislation, so it was maintained at that level. However, the benefit rate did not comply. “Registered” pension plans were to have a benefit rate that did not exceed 2% of income per year of service. Since the benefit rate under the Old Plan had been 4.5% of the annual indemnity, a portion of the MLA pension was not going to comply. There was no increase in the amount of the indemnity and no change in the contribution rate (9%). However, there was a substantial reduction in the benefit that would accrue.

Such a change was not considered to be fair, considering the relatively low indemnity that MLAs were receiving. The Report of the MLA Compensation Review Commission, 2007 by Hon. Patrick A.A. Ryan, Q.C., clearly documented that the New Brunswick MLA indemnity, per se, (i.e., their taxable income) had not kept pace over the years, either with the average per capita income of New Brunswickers or with the compensation of MLAs in most other Canadian provinces. The Ryan Report recommendation essentially called for the conversion of non-taxable allowances of MLAs into indemnity, plus a one-time 3.93% increase, which brought the indemnity into line with other jurisdictions.

The change made in 1993 established the supplementary unregistered portion, called a “supplementary allowance” (*Members’ Pension Act*, ss. 21-29) to address the fact that the benefit rate limit of 2% under federal legislation would effectively cut the MLA pensions by more than 50%. The supplementary pension was a means of accruing the additional 2.5% benefit to bring the total benefit to the 4.5% rate on the indemnity which had been in place for a number of years. It

also allowed for an unreduced supplementary pension at age 55. Taken before that age, the supplementary pension was reduced by 5% per year. The supplementary portion was a legal solution that respected the federal legislative requirements with respect to registered pension plans. It also had the effect of ensuring the unreduced pension for MLAs would be approximately the same amount that it had been under the Old Plan and the New Plan would still comply with federal legislation. It should be noted that this same approach, i.e., establishing a supplementary component, is consistent with changes made in other provinces to comply with the changing federal legislative requirements governing pensions.

There were two other important measures included in the New Plan. The number of sessions that an MLA was to serve to be eligible for a pension was decreased from 10 to 8. Also, as of legislative changes made in 1997, both the Old Plan and New Plan provided for the annual indexation of MLA pensions based on the Consumer Price Index, to a maximum of 6%.

Appendix iii

Analysis of the Impact of the Ryan Report on the MLA Pension Plan

The Ryan Report on MLA Compensation led to a significant increase in the indemnity of MLAs in 2008. The indemnity went from \$45,347 in 2007 to \$85,000 in 2008. Judge Ryan notes that the increase was only an effective increase of 3.93%, because most of the increase did not significantly change the amount of money that MLAs received; it was essentially a conversion of the MLA's non-taxable allowances into salary that would be taxable. The non-taxable allowances were not treated as taxable income and were not considered pensionable income. The higher indemnity was pensionable. The impact of that change is significant, however, because of the impact it had on the pension. It changed the amount of the MLA's income that was deducted annually as a pension contribution, because the 9% contribution rate was applied to the higher indemnity. More importantly, it had the effect of substantially increasing the pension of MLAs even though the Ryan Report did not make a recommendation on what should be done with respect to that. The Ryan Report, instead, recommended that the "whole issue should be looked at by an independent three-person Commission at some time in the reasonable future" (Ryan Report, p. 123). The Ryan Report also led to substantial increases in the salaries of ministers, as that term is defined in the *Members' Pension Act*. In the case of the salary of Cabinet Ministers, for example, the salary increased 29.9% going from \$40,490 to \$52,614.

The increase in the MLA pension resulted from the increase in the indemnity. In effect, the benefit rate of the pension was 2% of that low indemnity (\$45,347) plus 2.5% of that same indemnity for a total annual accrued benefit of \$2,041. If this amount is then multiplied by the minimum number of sessions for a vested pension, i.e. 8, the total minimum annual pension is \$16,324. However, using that same approach to calculate the pension, i.e., multiplying the higher indemnity (\$85,000) by 2% and multiplying that same indemnity by 2.5%, gives a total of \$3,825. Multiplying that figure by 8 (sessions) results in a total minimum annual pension of \$30,600 a year, almost double the pension that MLAs had been receiving, when in fact the amount of money MLAs earned had not substantially changed when the non-taxable allowances were converted into salary.

Appendix iv

Cost Comparison for MLA/Minister Pension Plan Scenarios

In order to illustrate the differences in the pre-2008 pension, the pension after the changes of April 1, 2008, and what we are proposing, we have done a comparison of how much pension would accrue for 8 years of service as an MLA. Note that 8 sessions is the minimum service required currently for an MLA to receive a pension, i.e. for the pension to vest. In this analysis we use the term “years” as interchangeable with “sessions.” In our recommendations the pension would vest in 6 years. Also note that 8 years in the comparison below, is an example and that currently members can accrue any number of years of service, resulting in substantially more pension.

<p><u>Before 2008 MLA Pension</u></p> <p>Registered: \$45,347 x 2% x 8 years = \$7,256/year</p> <p>Unregistered: \$45,347 x 2.5% x 8 years = <u>\$9,069/year</u></p> <p>Total Minimum MLA Pension: \$16,325/year</p>	<p><u>Before 2008 Minister Pension</u></p> <p>Registered: \$40,490 x 2% x 8 years = \$6,478/year</p> <p>Unregistered: \$40,490 x 1% x 8 years = <u>\$3,239/year</u></p> <p>Total Minister Pension: \$9,717/year</p>
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Total Previous MLA/Minister Pension: \$16,325 + \$9,717 = \$26,042/year assuming 8 years of service in both positions

<p><u>Current MLA Pension</u></p> <p>Registered: \$85,000 x 2% x 8 years = \$13,600/year</p> <p>Unregistered: \$85,000 x 2.5% x 8 years = <u>\$17,000/year</u></p> <p>Total Minimum MLA Pension: \$30,600/year</p>	<p><u>Current Minister Pension</u></p> <p>Registered: \$52,614 x 2% x 8 years = \$8,418/year</p> <p>Unregistered: \$52,614 x 1% x 8 years = <u>\$4,209/year</u></p> <p>Total Minister Pension: \$12,627/year</p>
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Total Current MLA/Minister Pension: \$30,600.00 + \$12,627 = \$43,227/year assuming 8 years of service in both positions

<p><u>Proposed MLA Pension (for 8 years)</u></p> <p>Registered: \$85,000 x 2% x 8 years = \$13,600/year</p> <p>Unregistered: \$85,000 x 1% x 8 years = <u>\$6,800/year</u></p> <p>Total MLA Pension: \$20,400/year</p>	<p><u>Proposed Minister Pension (for 8 years)</u></p> <p>Registered: \$52,614 x 2% x 8 years = \$8,418/year</p> <p>Unregistered: \$52,614 x 1% x 8 years = <u>\$4,209/year</u></p> <p>Total Minister Pension: \$12,627/year</p>
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Total Proposed MLA/Minister Pension: \$20,400 + \$12,627 = \$33,027/year assuming 8 years of service in both positions

Basic Costing Information*

Previous (pre-2008 Ryan Report) Pensionable Income Base:	
MLA Indemnity	\$45,347
Cabinet Minister Salary	\$40,490
Current (2008) Pensionable Income Base:	
MLA Indemnity	\$85,000
Cabinet Minister Salary	\$52,614

* In accordance with the Ryan Report the non-taxable, non-accountable allowance of \$22,534 which was received prior to the changes made on April 1, 2008, was converted to a taxable amount of \$36,438 and added to the indemnity plus an additional amount to bring it to \$85,000.