



NOVA SCOTIA

Report of the Auditor General to the Nova Scotia House of Assembly

August 2013

Review of MLA Samson's
Entitlement to Benefits as an
Outside Member

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July 29, 2013

Honourable Gordie Gosse
Speaker
House of Assembly
Province of Nova Scotia

Dear Sir:

I have the honour to submit herewith my Report to the House of Assembly under Section 18.1 of the Auditor General Act, to be laid before the House in accordance with 18.4 of the Auditor General Act.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'JR LaPointe', with a stylized flourish at the end.

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Table of Contents

| | |
|---------------------------------------------------------------------|----|
| Summary | 5 |
| Background | 7 |
| Review Objective and Scope | 7 |
| Legislation and Regulations Related to Outside Member Benefits..... | 8 |
| Significant Observations | 12 |
| Status as an Outside Member | 12 |
| Other Matters | 18 |
| Appendix | 23 |
| Summary of Location Analysis | 23 |

Review of MLA Samson's Entitlement to Benefits as an Outside Member

Summary

MLA Michel Samson currently meets the definition of an outside member under Section 2(1)(e) of the House of Assembly Act. He is therefore entitled to receive certain allowances and benefits under the House of Assembly Act and the House of Assembly Management Commission Act and its Regulations.

Based on our analysis, we concluded that Mr. Samson is not ordinarily resident in either Halifax or Arichat, but rather lives in both locations. On this basis alone he would not qualify for outside member benefits. However, the House of Assembly Act defines residency for the purpose of qualifying as an outside member within the meaning of the Elections Act. That Act requires that, if a clear single place of residency cannot be determined, an elections officer will decide residency for voting purposes.

On May 15, 2013, Mr. Samson obtained a letter from Elections Nova Scotia. This letter is dated subsequent to the April 15, 2013 decision by the Speaker of the House regarding Mr. Samson's residency, and after this Office's decision on May 1, 2013 to undertake this review. The letter states that, based on section 40 of the Elections Act, and for the purpose of elector registration, Mr. Samson is registered as a resident of Arichat.

Since the House of Assembly Act defines residency for the purpose of eligibility as an outside member in terms of residency within the meaning of the Elections Act, then on this basis Mr. Samson must be considered resident in Arichat for the purpose of the House of Assembly Act. As Arichat is more than 25 miles from the House of Assembly, Mr. Samson satisfies both conditions under the House of Assembly Act. Mr. Samson therefore qualifies as an outside member as defined in the House of Assembly Act.

We also concluded that Mr. Samson's current place of residence in Halifax does not meet the definition of leased premises under the current Regulations. He should not have been paid the outside member allowance to lease accommodations in the Halifax area because he is leasing a house and only apartments qualify under the current Regulations. We recommended that the Commission review the intent of the accommodation allowance, and update the definition of leased premises in the Regulations to reflect this purpose.



The need for this review emphasizes that the House of Assembly Management Commission must address the deficiencies in the current legislation. We recommended that the Commission conduct a thorough review of allowances and benefits to members to service their constituencies and attend House business in Halifax, decide what is fair and appropriate reimbursement, and revise the Regulations accordingly. We have further recommended that the Commission review the definition and the concept of an outside member, determine if it needs to be updated, and amend the House of Assembly Act and the House of Assembly Management Commission Act and Regulations to include the definition.

Review of MLA Samson's Entitlement to Benefits as an Outside Member

Background

- 2.1 Following questions from the media concerning his benefits as an outside member of the House of Assembly, the Honourable Michel Samson (MLA (Liberal) – Richmond) asked the Office of the Speaker to undertake a review of his living expenses. Mr. Samson's request to the Speaker, dated February 21, 2013, specifically raised three questions: is his primary residence in Arichat or Halifax; does his spouse enjoy a personal benefit as a result of the living allowance he receives; and is there any conflict in his rental agreement.
- 2.2 The Speaker replied to Mr. Samson's request on April 15, 2013. He concluded that Mr. Samson is resident in Halifax for purposes of the House of Assembly Act, and thus is not an outside member. Although not discussed in the Speaker's reply, this decision means Mr. Samson is ineligible for certain allowances as an outside member under the House of Assembly Management Commission Act and its Regulations. The Speaker also noted that, in his opinion, Mr. Samson's wife has not enjoyed a prohibited personal benefit as a result of the living allowance. Finally, the Speaker noted that the question related to Mr. Samson's rental agreement is a matter for the Conflict of Interest Commissioner.
- 2.3 On May 1, 2013, the Speaker asked the Auditor General to review Mr. Samson's entitlement to benefits as an outside member of the House of Assembly. The Speaker believed an independent party should consider this matter as Mr. Samson had questioned the Speaker's conclusion that he resides in Halifax. The Auditor General agreed to undertake this review.

Review Objective and Scope

- 2.4 The objective of this review was to determine Mr. Samson's eligibility to claim expenses as an outside member according to the House of Assembly Act, the House of Assembly Management Commission Act and its Regulations. We conducted the review during May to July 2013. It included the following procedures.
 - Analysis of Mr. Samson's expense claims for the period January 1, 2011 to February 21, 2013



- Review of documentation Mr. Samson provided to the Speaker's office and to this Office
 - Interviews with the following individuals
 - Chief Electoral Officer and members of his staff
 - Chief Clerk of the House of Assembly
 - Chief Legislative Counsel and members of his staff
 - Speaker of the House of Assembly and members of his staff
- 2.5 The House of Assembly Management Commission Act and its Regulations came into effect in June 2010 but were not fully implemented operationally until January 2011. Our review considered claims filed from that date to February 21, 2013.
- 2.6 We did not request responses to our recommendations due to the short timeframes involved in issuing this special report.
- 2.7 This review was conducted in accordance with Section 18(1) of the Auditor General Act and standards for review engagements established by the Canadian Institute of Chartered Accountants. A review provides a moderate level of assurance, and does not provide high, or audit, level assurance.

Legislation and Regulations Related to Outside Member Benefits

- 2.8 *Background* – The House of Assembly Act specifies the composition, powers and privileges of the House of Assembly. When an individual is elected, he or she becomes a Member of the Legislative Assembly or an MLA.
- 2.9 *Definition of outside member* – The House of Assembly Management Commission Act established the House of Assembly Management Commission, which replaced the Legislature Internal Economy Board. The Commission is responsible for financial and administrative policy for the House of Assembly and its members.
- 2.10 Section 2(1)(e) of the House of Assembly Act defines a category of members called outside members as “*a member of the House who is resident within the meaning of the Elections Act more than twenty-five miles distant from the place where the House ordinarily sits.*”
- 2.11 Section 40(1) of the Elections Act states: “*A person resides in the place where the person lives and to which, whenever absent, the person intends to return.*” and section 40(2) “*A person may reside in only one place at a time.*” Other stipulations noted in Sections 40(3) to 40(7) address temporary lodging and other matters; these are not relevant to this analysis.



- 2.12 Section 40(8) notes *“Where the rules set out in subsections (1) to (7) are not sufficient to determine the place where a person resides, the place where the person resides must be determined by the appropriate election officer with reference to all the facts of the case.”*
- 2.13 Thus, according to the legislation, where an MLA lives determines whether that MLA is an outside member. An MLA may live in only one place at a time, and it must be more than 25 miles from the House of Assembly. The House of Assembly Management Commission Regulations deal with members’ expenses, allowances and other matters. Those Regulations refer to the place where an outside member lives as *“...the place where the outside member is ordinarily resident...”* (section 26(1)(b)(ii)).
- 2.14 *Allowances and benefits* – Members of the House of Assembly are entitled to allowances as detailed in the House of Assembly Act and the House of Assembly Management Commission Regulations. Certain allowances are based on eligibility criteria listed in the legislation, including those benefits available to outside members.
- 2.15 Section 39(5) of the House of Assembly Act notes:
- “Each outside member, ... shall be paid out of the Consolidated Fund of the Province an amount to reimburse the member for reasonable travelling expenses incurred for fifty-two trips each year between the City of Halifax and the member’s constituency and for reasonable expenses incurred for accommodation and other reasonable expenses incurred as a result of being in the City of Halifax as a member, as determined by the Legislature Internal Economy Board.”*
- 2.16 Regulations do not provide a separate definition of an outside member. Rather, they refer to the House of Assembly Act. Section 3(1)(e) notes *““outside member” means an outside member as defined by the House of Assembly Act.”*
- 2.17 The Regulations and benefits related to outside members are listed in the following table. Other aspects of the Regulations which were not relevant to this review, such as references to the Premier or members of Executive Council, have been excluded.



| House of Assembly Management Commission Regulations | |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section | Outside member allowance |
| 26(1) | Each outside member ...is entitled for attending a sitting of the House to <ul style="list-style-type: none"> (a) an amount on account of expenses, without receipts, for each day that the outside member is in attendance at the House while the House is in session at the same rate as is paid to civil servants; and (b) reimbursement in addition to that authorized by clause (a) for expenses, <ul style="list-style-type: none"> (i) with proper receipts for sleeping accommodation charges only, to a maximum of \$153.00 per night, or (ii) for travel by the shortest and most convenient route between the place where the outside member is ordinarily resident and the place where the House ordinarily sits at the rate set out in Section 50, incurred in attending the House while it is in session. |
| 26(4) | Notwithstanding subsection (1), where an outside member entitled to reimbursement pursuant to that subsection normally travels by motor vehicle on a daily basis between the Halifax-Dartmouth metropolitan area and the member's constituency to attend sittings of the House, <ul style="list-style-type: none"> (a) the first trip made during a week that the House is sitting is counted as one of the fifty-two trips referred to in Section 49 and the member is entitled to be reimbursed accordingly; and (b) for any additional trips made during that week to attend sittings of the House, the member is entitled to be reimbursed for travelling expenses by the shortest and most convenient route at the rate per kilometre set out in Section 50. |
| 26(5) | Subsection (4) does not apply to an outside member referred to in that subsection if the member leases premises for sleeping accommodation in the Halifax-Dartmouth metropolitan area. |
| Section | Leased premises |
| 27(1) | An outside member...is entitled to be reimbursed in a total amount not exceeding \$1499.00 per month for accommodation expenses in the Halifax-Dartmouth metropolitan area accounted for by proper receipts. |
| 27(4) | Accommodation expenses in subsection (1) consist of <ul style="list-style-type: none"> (a) apartment rental; (b) the cost of the parking at or near the apartment unit of one vehicle; (c) the cost of utilities provided to the apartment unit; (d) a security deposit; (e) the cost of keys or other security devices or services; (f) the cost of Internet, cable television and telephone service; (g) the cost of tenant insurance; and (h) the cost of the rental of appliances or furnishings. |
| Section | Attendance at Halifax |
| 44(1) | Subject to Section 49, each outside member ... is entitled to <ul style="list-style-type: none"> (a) an amount on account of expenses for each day at the same rate as is paid to civil servants; (b) reimbursement in addition to that authorized by clause (a) for travelling expenses calculated in accordance with Section 50, and expenses for sleeping accommodation charges incurred, for return trips between the place where the member is ordinarily resident and the former City of Halifax to attend in Halifax other than to attend a sitting of the House or one of its committees. |
| 44(2) | Sleeping accommodation charges incurred and claimed pursuant to subsection (1) must <ul style="list-style-type: none"> (a) be accompanied by proper receipts; (b) not be for more than two nights accommodation unless approved in advance by the Speaker; and (c) not exceed the government rate for the establishment where the member stayed. |
| Section | Restriction |
| 49 | Except as authorized by Section 26, no member may be reimbursed for travel expenses authorized by Sections 26 and 44 in excess of fifty-two return trips in the year between the place where the member is ordinarily resident and the former City of Halifax to attend in Halifax, other than for attendance at a meeting of a select committee, a special committee or a standing committee. |



| House of Assembly Management Commission Regulations | |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section | Calculation of travel expense |
| 50 | Each outside member of the House ... is entitled to be reimbursed out of the General Revenue Fund of the Province for claimed travelling expenses incurred for travel by the shortest and most convenient route between the place where the member is ordinarily resident and the place where the House ordinarily sits or the Committee is meeting at (a) 38.13¢ per kilometre; or (b) the cost of economy air fare plus normal airline ground transportation. |

- 2.18 *Interpretation of allowances* – The Regulations are not clear regarding certain aspects of MLA allowances, and therefore interpretation was needed in certain areas.
- 2.19 Section 26(1)(a) noted above refers to an amount on account for each day at the same rate as is paid to civil servants. While working away from home, civil servants are eligible for a per diem to cover the cost of meals. Government administrative staff told us the daily amount paid to members while in Halifax has always been considered a daily allowance. They interpret that this allowance is meant for each day in Halifax, and for the entire day.
- 2.20 Section 44(1) and 49 of the Regulations include the term “*attend in Halifax*” as a condition for claiming mileage. We interpret this to mean that the member is present in Halifax.
- 2.21 *Other allowances* – Besides allowances which outside members receive, all members are entitled to additional amounts.
- 2.22 *Constituency claims* – There are two types of claims associated with each constituency:
- claims related to maintaining a constituency office, for expenses such as rent and utilities; and
 - claims for work as an MLA within the member’s constituency (referred to as franking and travel claims).
- 2.23 Section 42(1) of the House of Assembly Management Commission Regulations notes:
- “Each member of the House is entitled to be reimbursed in a total amount not exceeding \$14,059*
- (a) in substitution for the franking privilege and for expenses incurred on account of postage or equivalent forms of distribution; and*
- (b) for expenses incurred on account of travel within the member’s constituency or in relation to the member’s duties as a member.”*



- 2.24 The base amount of \$14,059 may be adjusted for the size of each constituency. For example, the annual amount for Mr. Samson's constituency is the base amount; members in the largest constituencies (by geographical area) of Guysborough-Sheet Harbour, Inverness, and Victoria-The Lakes are entitled to \$18,558 per annum.
- 2.25 Travel amounts claimed under Section 42(1)(b) are for mileage incurred and are to be paid at the same travel rate paid to civil servants, "*...and must be accounted for by a proper log of the mileage with the dates and destinations of a trip and the number of kilometres actually and reasonably travelled in connection with the trip.*"
- 2.26 In this analysis, amounts on account of expenses are referred to as per diem claims; travel expenses to and from Halifax are referred to as mileage claims; and travel expenses within the constituency are referred to as constituency claims.

Significant Observations

Status as an Outside Member

Conclusions and summary of observations

Based on our analysis, we concluded that Mr. Samson is not ordinarily resident in either Halifax or Arichat, but rather lives in both locations. However, an outside member is defined in the House of Assembly Act within the meaning of the Elections Act. That Act requires that a person live in only one place at a time for voting purposes. It further requires that, if a single residency cannot be determined, then residency (for voting purposes) will be decided by an elections officer. In other words, where a person is registered to vote may determine where he or she resides for the purpose of eligibility as an outside member under the House of Assembly Act. Mr. Samson obtained a letter from Elections Nova Scotia on May 15, 2013, a date subsequent to the Speaker's decision on his residency and to us undertaking this review. The letter indicates he is registered as a resident of Arichat for voting purposes. As Arichat is more than 25 miles from the House of Assembly, Mr. Samson satisfies both outside member conditions under the House of Assembly Act. Therefore, he qualifies as an outside member and is entitled to receive related allowances and benefits under the House of Assembly Act and the House of Assembly Management Commission Act and its Regulations.

- 2.27 *Criteria for determining eligibility* – For the purpose of this analysis, we took the view that every newly-elected member cannot be considered an outside member until it is established that he or she is an outside member. To qualify



as an outside member, an MLA must meet the definition of outside member in the House of Assembly Act (described above). Otherwise, the MLA is not an outside member. If a member does qualify as an outside member, the MLA is eligible to claim specified financial benefits under the House of Assembly Management Commission Act and its Regulations.

- 2.28 *Outline of analysis* – Our overall conclusion is based on our analysis of the following questions.
1. Where does Mr. Samson's family ordinarily reside?
 2. Does an analysis of where Mr. Samson spends his days and nights support where he ordinarily resides?
 3. Can a review of other documents or information support where Mr. Samson ordinarily resides?
- 2.29 *Where does Mr. Samson's family ordinarily reside?* – While reviewing Mr. Samson's expenses, the Speaker and his staff, as well as staff at the Legislative Counsel Office, requested information from Mr. Samson regarding his wife's residency, and information related to their child to further support this residency. Mr. Samson did not provide this information when it was initially requested on February 28, 2013, but did at a later date – April 24, 2013.
- 2.30 The information provided to the Office of the Speaker regarding his wife included personal documents such as driver's license and federal tax and related documents, all of which noted the Arichat address. Other information such as his wife's personal physician and dentist, personal cheques, and employer indicated Halifax as the address.
- 2.31 Mr. Samson's wife is employed full-time in Halifax. Their daughter's child care provider lives in Halifax. It is reasonable, on this basis, to conclude that Mr. Samson's family ordinarily resides in Halifax.
- 2.32 *Conclusion* – We have presumed that Mr. Samson lives with his family unless there exists compelling evidence to the contrary. On that basis, he is ordinarily resident in Halifax.
- 2.33 *Does an analysis of where Mr. Samson spends his days and nights support where he ordinarily resides?* – To examine this question, we performed an analysis of Mr. Samson's claims from January 1, 2011 to February 21, 2013. The summary of this analysis is included as an appendix at the end of this report. In addition to the claims, we reviewed information Mr. Samson provided to the Speaker on April 24, 2013 related to his 2012 claims. We also requested and received similar information from Mr. Samson regarding his claims for 2011 and 2013.

2.34 *Background to analysis of days and nights* – We initially identified each day as either being in Halifax, in Arichat, or at another location. The following is a summary of this information for the period under review.

| Location | # of Days |
|----------------|-----------|
| Halifax | 406 |
| Arichat | 274 |
| Other location | 103 |
| Total | 783 |

2.35 There are certain days when Mr. Samson was required to be in Halifax and attend to duties as an MLA.

- Days when the Legislature was sitting
- Days when he attended a meeting as a member of a committee of the House
- Days when he attended the Nova Scotia Liberal Party's annual general meeting

2.36 We classified these days as Halifax House business (confirmed). Since the House does not keep a record of who attends each day, we presumed Mr. Samson was in attendance every day the House was sitting. We verified his attendance at committee meetings with staff at the Office of the Speaker. We also verified dates when the Liberal party held its annual general meeting with the Liberal Caucus Office.

2.37 We confirmed information related to other locations through invoices and receipts attached to travel claims. Mr. Samson provided his vacation dates. We decided that days spent in other locations were not relevant to an analysis of where Mr. Samson ordinarily resides. Therefore, those days were excluded from our analysis.

2.38 For each return trip between Arichat and Halifax, we assumed Mr. Samson slept in Halifax after the commute to Halifax and slept in Arichat after the commute to Arichat.

2.39 Per diem claims could only be made when Mr. Samson was present in Halifax. As discussed earlier, government administrative staff consider a per diem claim to mean a claim related to the entire day. Therefore, for purposes of this analysis, Mr. Samson was considered to be in Halifax for the entire day. This decision was made regardless of the presence of a constituency claim for any activity in Arichat on the same day as a per diem was claimed.

2.40 Days in which there was a mileage claim, per diem claim or constituency claim were all confirmed through review of Mr. Samson's submitted claim



forms. Days for which no claim was made were classified as either Likely in Halifax or Likely in Arichat, based on where Mr. Samson was before and after that day, as confirmed by a mileage or constituency claim.

- 2.41 Work conducted in Halifax or Arichat was not relevant in determining where Mr. Samson ordinarily resides. Mr. Samson may engage in some MLA-related activity on a large number of, or even most, days in both locations. Eliminating these days would eliminate most days from the analysis and render it meaningless.
- 2.42 We took two approaches to analyze the remaining dates by considering where Mr. Samson spent his days and where he spent his nights. This helped overcome any potential bias in using only one approach.
- 2.43 *Analysis of days and nights* – Based on the evidence we examined, we assigned the remaining dates to the following categories in our analysis.
- Halifax (confirmed)
 - Likely in Halifax
 - Arichat (confirmed)
 - Likely in Arichat
- 2.44 Since we excluded from our calculation days when Mr. Samson was required to be in Halifax or was in another location, the total remaining days will not equal total days for that year. In addition, the number of days and the number of nights will not be the same because there are 36 confirmed days spent in Halifax or another location on House business, or at an unconfirmed location, when the night was spent either in Arichat or Halifax.

| Location | # of Days | # of Nights |
|----------|-----------|-------------|
| Halifax | 265 | 239 |
| Arichat | 274 | 336 |
| Total | 539 | 575 |

- 2.45 *Conclusion* – Both these analyses suggest that Mr. Samson divides his time between Halifax and Arichat. While a greater number of nights are spent in Arichat, days are fairly evenly divided between Halifax and Arichat. This analysis does not support that he ordinarily resides in either Arichat or Halifax but rather that he lives in two locations.
- 2.46 *Can a review of other documents or information support where Mr. Samson ordinarily resides?* – In addition to information reviewed in examining where Mr. Samson spends his days and nights and where his family ordinarily resides, we also reviewed other information provided by Mr. Samson to the Office of the Speaker and to this Office.



- 2.47 In response to a request from the Speaker, Mr. Samson provided copies of certain information. He also showed staff from the Office of the Speaker certain documents but did not provide copies. Staff viewed these items and we reviewed their notes as part of our work.
- 2.48 The following documents provided by Mr. Samson show an address in Arichat.
- Driver's license
 - Vehicle registration
 - Health card
 - Banking and credit card statements
 - Notice of assessment
- 2.49 Certain other documents related to Mr. Samson's Arichat property are mailed to that address: power, fuel and telephone bills; and property tax assessments. Mr. Samson also identified a personal accountant in Sydney, and a physician and dentist in Arichat.
- 2.50 *Conclusion* – While the information provided identifies an Arichat residence, it is not definitive. The choice of address on documents such as notice of assessment is up to the individual. Individuals identified as providing professional services, such as accountants, may not be the primary provider of that service. While this documentation points to Arichat as a residence, the quality of this evidence is weak and the results of our analysis are inconclusive.
- 2.51 *Overall summary of analysis* – We performed three separate analyses to arrive at our overall conclusion.
- 2.52 We reviewed evidence with respect to the residence of Mr. Samson's family and concluded that his family ordinarily resides in Halifax. Assuming Mr. Samson resides with his family, then it is reasonable to conclude that he too ordinarily resides in Halifax.
- 2.53 Secondly, we analyzed where Mr. Samson spends his nights and where he spends his days, after excluding those days and nights in which we confirmed he was in Halifax or in another location on House business, or in which he indicated he was in another location. While on this basis he spends more nights in Arichat than in Halifax, his days are fairly evenly divided between Halifax and Arichat. Therefore, based on this analysis, we concluded that he does not ordinarily reside in either Halifax or Arichat but rather lives in two locations.



- 2.54 Finally, we concluded that while other documents and information provided by Mr. Samson point to Arichat as being a residence, the low level of objectivity renders this evidence inconclusive.
- 2.55 *Overall conclusion on residency* – Based on our analysis, we concluded that Mr. Samson does not live in either Halifax or Arichat, but rather divides his time between the two and lives in both locations. Section 2(1)(e) of the House of Assembly Act requires us to determine where Mr. Samson resides within the meaning of the Elections Act. Section 40 of the Elections Act deals with residency. Section 40(1) of the Elections Act states “*a person resides in the place where the person lives and to which, whenever absent, the person intends to return.*” Our conclusion with respect to this section is that Mr. Samson lives in both Halifax and Arichat.
- 2.56 *Overall conclusion on eligibility as an outside member* – However, section 40(2) of the Elections Act states that a person may reside in only one place at a time, presumably for the purposes of that Act. This is a provision within the Elections Act to limit a resident to one vote. Given our conclusion that Mr. Samson lives in both Halifax and Arichat and therefore does not live in only one location, it is not possible for us to satisfy section 40(2). Sections (3) to (7) do not apply.
- 2.57 Section 40(8) states that when the rules in sections 40(1) to 40(7) of the Act are not sufficient to determine where a person resides, that will be determined by the appropriate election officer. For our purposes, if no such explicit determination is made, then the conclusion with respect to 40(1) stands.
- 2.58 Subsequent to our decision on May 1, 2013 to undertake this review, Mr. Samson obtained a letter from Elections Nova Scotia regarding his residency for voting purposes. This letter, dated May 15, 2013 and therefore dated subsequent to the Speakers’ decision as well, states that Mr. Samson provided Elections Nova Scotia with statements regarding his residency and copies of his identification. The letter concludes:
- “Based on our role in administering the Act and, in particular, Section 40, for the purposes of election registration, you are registered as a resident of Arichat. Until we are notified of a change in your address, you will remain on the Nova Scotia Register of Electors at that address.”*
- 2.59 Therefore, Mr. Samson has been determined by an election officer to be a resident of Arichat for voting purposes.
- 2.60 This establishes Mr. Samson’s residency within the meaning of the Elections Act. This in turn establishes Mr. Samson’s residency for the purpose of eligibility to be classified as an outside member under 2(1)(e) of the House of Assembly Act, irrespective of any other facts related to his residency.



- 2.61 Since Arichat is, as well, more than 25 miles from the House of Assembly, Mr. Samson meets both conditions to qualify as an outside member.
- 2.62 Therefore, we concluded Mr. Samson is an outside member and is entitled to receive related allowances and benefits as detailed in the House of Assembly Act and the House of Assembly Management Commission Regulations.

Other Matters

Conclusions and summary of observations

We recommended that the House of Assembly Management Commission conduct a thorough review of allowances and benefits to members to service their constituents and attend in Halifax, determine what is fair and appropriate reimbursement, and revise the Regulations accordingly. The definition of an outside member needs to be clear, unambiguous, and fully described within the legislation and regulations. Further, regardless of whether or not Mr. Samson is an outside member, he should not have been paid an allowance for his leased premises in Halifax as only an apartment, not a house, qualifies for reimbursement under the current Regulations. We recommended that the Commission review the intent of the accommodation allowance, and update the definition of leased premises in the Regulations to reflect this purpose. We also recommended that the purpose of per diem amounts and constituency travel be reviewed. The purpose should be fully described and specifically state the nature of amounts to be reimbursed. Finally, we recommended that the Office of the Speaker seek repayment from Mr. Samson for inappropriate claims listed in this report.

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- 2.63 *Introduction* – During our review of Mr. Samson's entitlement to benefits as an outside member, several additional matters came to our attention. These are detailed in the following paragraphs, along with our recommendations for improvements where applicable.
- 2.64 *Deficiencies in legislation and regulations* – Chapter 4 of the February 2010 Report of the Auditor General (Office of the Speaker: Members' Constituency and Other Expenses) included recommendations for the review of Members' constituency and other expenses, and for clear rules related to per diems. It is evident from this review of Mr. Samson's entitlement to benefits as an outside member that additional work is needed. In addition, certain definitions within the Act and Regulations need to be clarified and modernized.
- 2.65 *Outside member* – The current House of Assembly Act defines outside member in terms of another Act – the Elections Act. The Elections Act was written to determine voter eligibility only; it does not specifically define an outside member. Determining eligibility to receive thousands of dollars in taxpayer-paid benefits and allowances as an outside member is a significant



matter. The House of Assembly Act, the House of Assembly Management Commission Act and its Regulations should clearly define the term outside member.

- 2.66 Several additional issues related to the definition of outside member have been raised during the past few months. The current definition allows an individual to be eligible for these benefits if the member is resident “... *more than twenty-five miles distant from the place where the House ordinarily sits.*” This distance is an outdated limit and does not consider the daily commute of many Nova Scotians to their place of work. The distance noted should be updated.
- 2.67 The current Regulations do not contemplate that a member may live in one constituency but represent another. Travel claims are only allowed between the constituency and Halifax. Members cannot be reimbursed for travel from their residence to their constituency. It is not clear whether a member who lives outside the constituency he or she represents should receive financial support to travel and stay in his or her constituency.
- 2.68 A full analysis of all benefits available to outside members may be needed. For example, it may be more cost-effective for outside members to stay in hotels during those periods when they are required to be in Halifax, such as for attendance when the House is sitting.

Recommendation 2.1

The House of Assembly Management Commission should conduct a thorough review of allowances and benefits allowed to members to service their constituents and attend House business in Halifax, describe what is fair and appropriate reimbursement, and revise the Regulations accordingly.

Recommendation 2.2

The House of Assembly Management Commission should review the definition of an outside member, determine if it needs to be updated, and amend the House of Assembly Act and the House of Assembly Management Commission Act and Regulations to include the definition.

- 2.69 *Leased premises in Halifax* – An outside member is entitled to a monthly accommodation allowance under sections 27(1) and 27(4) of the House of Assembly Management Commission Act Regulations. This monthly allowance totals \$1499 and is for rent, utilities and other related accommodation expenses.
- 2.70 When the Act and Regulations were changed in 2010, the definition of leased premises changed. Under the previous legislation, leased premises were widely-defined as accommodation expenses. Under the new Regulations,

accommodation expenses which are eligible for reimbursement are limited to apartment rental and related costs.

- 2.71 Mr. Samson rents a house in Halifax and has received the monthly accommodation allowance for this house rental. We understand the lease for this house was negotiated prior to the change in Regulations. However, there is no provision in the Regulations to allow prior rental arrangements to continue if they do not comply with the new Regulations.
- 2.72 Therefore, regardless of whether Mr. Samson is or is not an outside member, his current leased premises in Halifax do not qualify for this allowance under the current Regulations. Mr. Samson should not have been paid this allowance because only apartments qualify for reimbursement.
- 2.73 The current definition of leased premises narrowly restricts a member to renting apartments only. The definition could be expanded to include leased accommodations in general. This would have no impact on the amount of the monthly allowance, but would increase options to outside members in deciding where to live while in Halifax.
- 2.74 We believe the intent of the Regulations is to allow outside members to stay in Halifax on those occasions when they must be away from their home constituency. This may or may not be adequate in the modern environment.

Recommendation 2.3

The House of Assembly Management Commission should review the intent of the accommodation allowance, and update the definition of leased premises in the House of Assembly Management Commission Regulations to reflect this purpose.

- 2.75 *Constituency claims* – During our review of Mr. Samson's constituency travel claims, we noted numerous claims for travel between his home in Arichat and his constituency office. Our understanding from staff at the Speaker's Office (who approve MLA claims) is that not all members claim this travel. As well, we understand that some members who live closer to the House (and thus do not meet the definition of an outside member) also claim travel to the legislature under their franking and travel allowance.
- 2.76 We question the appropriateness of claiming mileage to travel from a member's home to a constituency office. Under section 42(1) of the House of Assembly Management Act Regulations, travel claims within a member's constituency are "*For expenses incurred on account of travel within the member's constituency or in relation to the member's duties as a member.*" While this travel may be related to a member's duties, it is no different from the daily commute of many Nova Scotians to perform their jobs. The



Regulations need to be more explicit regarding the nature and purpose of amounts allowed to be claimed as constituency travel.

Recommendation 2.4

The House of Assembly Management Commission should review the purpose of constituency travel and update the Regulations to ensure the purpose is fully described and specifies the nature of travel to be reimbursed.

- 2.77 *Per diem claims* – Changes made to the existing Regulations in June 2010 linked per diem claims to amounts paid to provincial civil servants, but further clarification is required.
- 2.78 Amounts paid to civil servants relate to three meals per day and there are clear rules around claiming these meals, particularly breakfast and dinner. It is our understanding that the pre-2010 allowance of \$84 per day was considered a daily amount and not related to three meals. We were informed the link to the civil servant amount was only to establish the reduced amount (\$38 per day), not to require the amount to relate to three meals.
- 2.79 This daily allowance is paid for attendance in Halifax which is not defined in the Regulations. The reasons to be present in Halifax can vary from attending a meeting with a caucus leader, to picking up mail in a caucus office, or simply to be at home. A clearer definition of the eligibility for this allowance should be included in the Regulations.
- 2.80 When per diem rules are updated, the Acts and Regulations will also need to be updated; policies and procedures to review and pay claims will require revision. This would clarify the Regulations and ensure eligibility for reimbursement can be consistently applied.

Recommendation 2.5

The House of Assembly Management Commission should review the purpose of per diem claims and update its Regulations to ensure the purpose is fully described and specifies the nature of per diem amounts to be reimbursed.

- 2.81 *Inappropriate travel claims* – During our review of claims between January 2011 and February 21, 2013, we identified three claims submitted which we considered inappropriate. These related to constituency claims made while on vacation or claiming two per diems on one day. While the amounts are not significant, they should be repaid to the Office of the Speaker.
- 2.82 *Travel claim before and after vacation* – In March 2011, Mr. Samson claimed mileage from Arichat to Halifax; and on March 18, he claimed mileage to return to Arichat. However, during our review, he told us that he was on vacation, out of the country, from March 11 to March 18.



- 2.83 Further, on August 16, 2012, Mr. Samson claimed mileage to come to Halifax, although he told us he went on vacation from August 17-19. He returned to Arichat on August 20, 2012.
- 2.84 We believe such claims are not appropriate. Taxpayers should not pay for transportation from and to Arichat at the start or end of vacation trips. Mr. Samson should reimburse the province the \$503.32 claimed for inappropriate mileage for these trips.

Recommendation 2.6

The Office of the Speaker should seek repayment from Mr. Samson for inappropriate claims listed in this report.



Appendix

Summary of Location Analysis

| Location | # of nights | # of days |
|-----------------------------------------|-------------|------------|
| Halifax House business (confirmed) | 115 | 141 |
| Halifax (confirmed) | 195 | 222 |
| Likely in Halifax | 44 | 43 |
| Arichat (confirmed) | 303 | 241 |
| Likely in Arichat | 33 | 33 |
| Other location MLA business (confirmed) | 41 | 52 |
| Other | 52 | 51 |
| | 783 | 783 |

| Definition | |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Halifax House business (confirmed) | In Halifax to attend the following: <ul style="list-style-type: none"> • Sitting of the House • Select or standing House Committee meeting • NS Liberal Party Annual General Meeting |
| Halifax (confirmed) | In Halifax other than to attend House business confirmed by mileage or per diem claim |
| Likely in Halifax | Considered likely to be in Halifax based on location and activity on day prior and subsequent to specific day |
| Arichat (confirmed) | In Arichat confirmed by mileage or constituency claim |
| Likely in Arichat | Considered likely to be in Arichat based on location and activity on day prior and subsequent to specific day |
| Other location MLA business (confirmed) | To attend meetings and conferences outside of Halifax, confirmed by mileage or per diem claim |
| Other | Other location; unconfirmed |

Generally, where Mr. Samson spent his days was determined by the presence of a claim. He was considered to be in the location for the entire day when a per diem was claimed. He was considered to be in Arichat for the day when there was a constituency claim, unless there was a per diem claim in another location. If there was a mileage claim but no constituency or per diem claim, Mr. Samson was considered to be where he travelled to, for the day.



• • • Office of the Auditor General • • •