STRUCTURAL REVIEW OF THE STATUTORY OFFICES OF THE HOUSE OF ASSEMBLY

The Honourable Robert A. Fowler
Review Consultant

October 5, 2023

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THE STATUTORY OFFICES
OF THE
HOUSE OF ASSEMBLY

THE REPORT AND RECOMMENDATIONS

The Honourable Robert A. Fowler

Review Consultant

Submitted to:

The Honourable John Hogan, K.C.
Minister of Justice and Public Safety and Attorney General
for the Province of Newfoundland and Labrador

October 5, 2023

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The Honourable John Hogan, K.C.
Minister of Justice and Public Safety
and Attorney General
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6

Dear Minister Hogan:

Pursuant to my appointment, and acting within the given Terms of Reference, I am pleased to present this Report of the Structural Review of the Statutory Offices of the House of Assembly.

I have been assisted in this undertaking by some exceptionally dedicated and talented people, all of whom have contributed collaboratively in a most professional manner around our boardroom table.

I also acknowledge the essential presentations and written submissions by those individuals and groups whose interest and comments helped mould this report and its recommendations.

I trust that what we have recommended will stimulate further discussions where necessary for the more efficient structure of the Statutory Offices of the House of Assembly.

Kindest regards,

Honourable Robert Fowler (R)
Review Consultant

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ACRONYMS

For purposes of clarity, the following acronyms may be used:

- AG = Auditor General
- ATIPPA = *Access to Information and Protection of Privacy Act*
- CEO = Chief Electoral Officer
- CR = Citizens' Representative
- CYA = Child and Youth Advocate
- HOA = House of Assembly
- HoAAIA = *House of Assembly Accountability, Integrity and Administration Act*
- IAC = Independent Appointments Commission
- IPC = Information and Privacy Commissioner
- LGIC = Lieutenant-Governor in Council
- MHA = Member of the House of Assembly
- OAG = Office of the Auditor General
- OCEO = Office of the Chief Electoral Officer
- OCR = Office of the Citizens' Representative
- OCYA = Office of the Child and Youth Advocate
- OIPC = Office of the Information and Privacy Commissioner
- OSA = Office of the Seniors' Advocate
- PHIA = *Personal Health Information Act*
- PSC = Public Service Commission
- SA = Seniors' Advocate

ACKNOWLEDGEMENTS

It is important, at the outset, to recognize the contributions of those who worked in the analytical and research fields, to bring forth this report and its recommendations.

It is also worth reflecting for a moment on what this Review is being asked to do. That is; to consider the structure of six statutory offices of the House of Assembly against the backdrop of nine specified terms of reference or issues.

This could not have been done without the exceptionally dedicated and talented people who made up this Review committee.

Adrienne Ding and Michael Collins served as my Legal Counsel. Ms. Ding brings a high level of expertise and experience to this project. Her laser focus, and ability to simultaneously evaluate conflicting ideas, and relay her legal opinions to this Review Committee kept us from straying or falling down a rabbit hole. She is an exceptionally competent lawyer, and we were fortunate to have her as Legal Counsel.

"Lawyers of the caliber of Michael Collins", as the Honourable J. Derek Green recently wrote, "are a credit to the legal profession and public life of this province". Those comments ring true for his work with the present Review. Mr. Collins' legal expertise, coupled with his humility and sense of duty, made him an indispensable influence as this Review Committee completed its work.

Diane Blackmore served as our Review Lead Administrator. In addition to her overall extensive administrative and organizational skills, Ms. Blackmore was responsible for the actual typing, formatting and design of the physical composition of the Report. Her ability to adapt as circumstances change, and multi-task when necessary, enabled this Review Committee to function as a single unit and without which we would not have been able to complete our mandate.

I also want to acknowledge the research skills of Gala Palavicini, a gold medal political science graduate of Memorial University, whose services we were fortunate to have engaged, and without whom the Review mandate would have been especially difficult to complete.

I would also like to acknowledge the valuable contributions made by Dr. Alex Marland, who offered important strategic insights in the initial stages of the Review. We were grateful for the benefit of his expertise.

I would, as well, acknowledge the cooperation and input of individual Statutory Officers themselves who, in a most positive manner, opened their offices to us, and made constructive comments and submissions. We are also grateful for the input of public servants, and elected members, on both sides of the political contest, who gave of their time and effort to assist in this Review. There were, also, members of the public and focused organizations who made individual and group submissions and presentations before our Review Committee, for which we were especially grateful when making our final report.

REVIEW TEAM

The Honorable Robert A. Fowler, Consultant:

The Honourable Robert Fowler was appointed to the Provincial Court of Newfoundland and Labrador as a Magistrate in 1977. Following his duties in Gander and Woody Point, he was appointed to the Provincial Court of Grand Falls-Windsor where he remained for 17 years. In 2000, he was appointed by the Government of Canada to the Supreme Court of Newfoundland and Labrador in Happy Valley-Goose Bay. In 2007, he transferred to St. John's where he sat in the Trial Division, and the Unified Family Court. Justice Fowler retired in September of 2020 after forty-four years as a Judge.

Michael Collins, Legal Counsel:

Mr. Collins was originally called to the bar in Ontario in 2010 and transferred to the Law Society of Newfoundland and Labrador in 2012. He is a civil litigator practicing with Tupman & Bloom LLP in St. John's, NL. His previous experience includes serving as a law clerk at the Supreme Court of Canada, a research lawyer at the Newfoundland and Labrador Court of Appeal, and Associate Counsel at the Commission of Inquiry Respecting the Muskrat Falls Project. Academically, Mr. Collins has co-authored several journal articles with the Honourable Malcolm Rowe and is a member of the Court of Appeal Rules Committee, the SS Daisy Committee, the Canadian Bar Association, and the Advocates' Society.

Adrienne Ding, Legal Counsel:

Ms. Ding was admitted to the Bar in Ontario in 2014, and the Bar of Newfoundland and Labrador in 2015. She is legal counsel with the firm of O'Dea Earle in St. John's where she practices labour and employment law and civil litigation. She also contributes to the legal profession as a member of the Judicial Advisory Committee, a board member of the Federation of Asian Canadian Lawyers (Atlantic Chapter), and a member of the Canadian Bar Association. Ms. Ding served as associate legal counsel to the Honourable Richard LeBlanc on the Commission of Inquiry Respecting the Muskrat Falls Project as well as legal counsel to the Honourable David Orsborn's 2020 Statutory Review of the *Access to Information and Protection of Privacy Act*. Ms. Ding was also employed as Research Assistant with the Supreme Court of Newfoundland and Labrador's Family and General Divisions, as well as the Canadian Judicial Council.

Diane Blackmore, Review Lead Administrator:

Ms. Blackmore has worked in the administrative field with the Government of Newfoundland and Labrador for approximately 40 years. She has extensive experience working with Commissions/Inquiries; i.e. the Commission of Inquiry Respecting the Muskrat Falls Project, the Commission of Inquiry Respecting the Death of Donald Dunphy, the Commission of Inquiry on Hormone Receptor Testing, the last three Newfoundland and Labrador Electoral Districts Boundaries Commissions, and the last two St. John's Urban Region (Agriculture) Development Area Review Commissions.

Dr. Alex Marland, Political Science Consultant:

Dr. Marland was Head of the Political Science Department at Memorial University. He is the author or lead editor of multiple books, including *First Among Unequals: The Premier, Politics, and Policy in Newfoundland and Labrador* (MQUP, 2014) and *The Democracy Cookbook: Recipes to Renew Governance in Newfoundland and Labrador* (MUP, 2017), as well as *Brand Command: Canadian Politics and Democracy in the Age of Message Control* (UBC, 2016) which won the Donner Prize and an Atlantic book award. From 2003 to 2006 he was a public servant in the Government of Newfoundland and Labrador. In July of this year, he assumed the inaugural Jarislowsky Chair in Trust and Political Leadership at Acadia University in Nova Scotia and has since relocated to that province.

Gala Palavicini, Researcher:

Ms. Palavicini holds a BA in Political Science and Russian Studies from Memorial University of Newfoundland. She was twice awarded the Senator Eugene Forsey Scholarship for excellence in Canadian government studies, received the University Medal of Academic Excellence in Political Science, and the Senator Joan Cook Convocation Award in Canadian Politics. She is currently an MA candidate in Political Science at Dalhousie University, as a Nova Scotia Graduate Scholar.

EXECUTIVE SUMMARY

Terms of Reference: On December 5, 2022, the Terms of Reference for this Review were issued by the Minister of Justice and Public Safety to review the structure of six statutory officers of the House of Assembly and prepare a report including (but not limited to) recommendations on nine terms.

The Statutory Officers: As the six statutory officers at the center of this review may not be familiar to every reader, here is a simplified description of each office:

- The **Chief Electoral Officer** administers elections to the House of Assembly.
- The **Commissioner for Legislative Standards** administers the financial disclosure, conflict of interest, and code of conduct rules for the House of Assembly members, along with some other ethical and investigative roles.
- The **Citizens' Representative** investigates maladministration in provincial public sector bodies, whistleblower complaints, and harassment by the House of Assembly members.
- The **Child and Youth Advocate** investigates the treatment of children and youth within the province and advocates for provincial public sector bodies to provide appropriate services for children and youth.
- The **Information and Privacy Commissioner** is responsible for access to information and the protection of privacy within most provincial public sector bodies.
- The **Seniors' Advocate** analyzes systemic issues respecting seniors or services that are associated with seniors within the province.

Unlike most public officials, statutory officers can only be appointed after a resolution of the House of Assembly. Similarly, they can only be removed after a resolution of the House of Assembly, and only for limited reasons, such as misconduct or incapacity. These unusual characteristics aim to guarantee that statutory officers can act independently, without fear of the executive or legislative branches.

While maintaining the independence of the Statutory Offices, the Review process has always been aware that these agents of the legislature cannot and should not assume

that their role is to tell the government, that is, the executive branch, how to govern. Their role is to offer legitimate criticism and suggestions only.

One of the main challenges of this Review is how to ensure that statutory officers can act effectively and accountably without compromising their independence.

Statutory Offices Standing Committee: A comprehensive approach to oversight and structure of statutory offices is needed. At the centre of this comprehensive approach, I recommend the establishment of a "Statutory Offices Standing Committee" (or "Standing Committee") composed of legislators. This Standing Committee would oversee and manage various aspects concerning statutory offices, ensuring both independence and accountability.

The Standing Committee should have essentially the same structure as the existing House of Assembly Management Commission. The two bodies can hold their meetings back to back. The main difference between them is that, as a committee of the legislature, the Standing Committee will have certain legislative powers and privileges that will simplify its oversight function.

Characteristics of Statutory Officers:

- **Constitutional Role of Advocacy:** The Citizens' Representative, Child and Youth Advocate, and the Information and Privacy Commissioner, all have advocacy and investigatory functions. The Seniors' Advocate only has advocacy functions. In carrying out these functions, these offices are supplementing the traditional legislative duties of scrutinizing executive behavior and helping individuals navigate bureaucracy. They should not administer policy, or set their own policy agendas, different from that of the government.
- **Limits of Advocacy:** Statutory officers' advocacy is limited: they can only aim to persuade through information and reasoned argument. This limitation is ethical and not jurisdictional in nature.
- **Restructuring and Consolidation:** The mandates of the Citizens' Representative, Child and Youth Advocate, and Seniors' Advocate overlap. Although consolidating these offices into a single office could have potential benefits, such as reducing confusion and duplication, it would also have significant drawbacks, including administrative challenges and the potential loss of public confidence. Requiring these offices to collaborate and share resources would also risk duplication

and conflicts. After careful consideration, I conclude that the risks of restructuring these offices exceed the benefits. The six existing offices ought to remain separate.

- **Seniors and Complex Needs Advocate:** There are those in this Province who have complex disabilities and needs, with no ability to advocate for themselves. Many of these people are seniors, but not all. It is these people, who are often invisible and unheard, who need a special advocate. The Seniors' Advocate's mandate should be reconceived to focus on those who are unable to advocate for themselves due to age, health, or disability. Accordingly, the Office should be renamed as the Seniors and Complex Needs Advocate.
- **Investigatory Powers of the Seniors and Complex Needs Advocate:** The Seniors and Complex Needs Advocate should be given full investigatory powers for both systemic and individual advocacy to better address seniors' concerns, as well as the concerns of people with complex needs. This change would enhance the effectiveness of the Office's systemic advocacy work.
- **Dual Role of the Chief Electoral Officer and the Commissioner for Legislative Standards:** In the past, the same person has been appointed as both Chief Electoral Officer and Commissioner for Legislative Standards. These offices should now be separated. Their roles have expanded significantly over the years and combining them risks needless conflicts and disruptions.
- **Ethics and Integrity Commissioner:** The Commissioner for Legislative Standards should be renamed as the Ethics and Integrity Commissioner. Its mandate should be expanded to include whistleblower complaints in both the legislative and executive branches; harassment complaints against members of the House of Assembly; and the responsibilities of the current Commissioner of Lobbyists.

Competencies: Statutory officer positions demand a wide range of skills, each of which could be learned in several ways. As a result, the recruitment and appointment process should not focus on minimum qualifications. Instead, the process should assess candidates against the attributes of an ideal candidate. These attributes should be approved by the Standing Committee and gathered in consultation with key people that have knowledge of the office and its functions. Candidates should be expected to identify areas for improvement or gaps in knowledge and set out plans to address them.

Recruitment and Appointments: Statutory officers should be recruited through a merit-based process administered by the Standing Committee and independent of the executive branch. Clear timelines should be established to prevent delays. More effort should be dedicated to recruiting candidates, including candidates from outside the province, to ensure a strong applicant pool.

Acting Appointments: Acting appointments are vital for ensuring the uninterrupted functioning of statutory offices. The Standing Committee should be responsible for making acting appointments in a timely manner and preparing redundancy plans as needed. It should also ensure that acting officers are independent of government.

Tenure, Reappointments, and Performance Reviews: Most statutory officers should be appointed for six-year terms, with a maximum of two terms and a presumption of reappointment.

The Statutory Offices Standing Committee should conduct a performance review prior to reappointment to ensure that officers are not without some degree of accountability. Reappointment should be automatic unless the Standing Committee recommends that a new competition be held and a two-thirds majority of the House adopts this recommendation. This presumption of reappointment is designed to balance security of tenure while allowing for a change in leadership when needed

This process should be modified slightly for the Chief Electoral Officer, whose responsibilities are tied to the election cycle. Instead of two six-year terms, each term for the Chief Electoral Officer should encompass two general elections plus an additional 12 months. Provided there are adequate performance review measures, there should be no limit to the number of terms that a Chief Electoral may serve.

Removal and Suspension: The Standing Committee should be responsible for reviewing complaints against statutory officers fairly and impartially; suspending statutory officers; and recommending removal to the House. I have provided detailed recommendations to ensure that this process can proceed fairly and efficiently in the future.

Compensation: At the moment, statutory officers' compensation is determined through a somewhat opaque and subjective process. In the future, officers' compensation should be tied to the average of deputy ministers' salaries, determined annually by the Standing Committee.

Reports: Statutory officers' annual reports should be presented to and reviewed by the Standing Committee. In addition, statutory officers should be able to make special reports to bring specific issues to the House of Assembly's attention. Statutory officers' reports should not be screened before issuance, but the Standing Committee should be able to respond or provide commentary to public reports when appropriate.

Managing Conflict: While the complaint process addresses any concerns about misconduct, questions may also arise about whether statutory officers are exceeding their mandate. These questions can easily cause conflict between statutory officers and the executive branch or governing party. To address these concerns without compromising the officers' independence, I recommend a process for referring questions about the scope of an officer's mandate to the Standing Committee, which can then appoint an independent referee to resolve them.

I also recommend that statutory officers should meet regularly with the public servants and ministers that they deal with regularly, and MHAs should be informed about the statutory officers through orientation.

Administrative Oversight: The existing model designates these functions to the Clerk of the House of Assembly, with oversight by the Management Commission. This administrative oversight structure is satisfactory and should not be changed.

Sharing Office Space and Other Resources: Decisions regarding office space allocation and resource sharing involve too many practical considerations and trade-offs to be resolved at the level of principle. They should be addressed through the annual budget process.

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PART I - INTRODUCTION

TERMS OF REFERENCE

On December 5, 2022, the Provincial Government announced its intention to conduct a Structural Review of the Statutory Offices of the House of Assembly; more specifically, the offices of the: Chief Electoral Officer, Child and Youth Advocate, Citizens' Representative, Commissioner for Legislative Standards, Information and Privacy Commissioner, and Seniors' Advocate.

I was appointed as the Consultant for the Review and was asked to prepare a report, including recommendations, based on the Terms of Reference as set out below:

> *The Consultant shall review the structure of the Statutory Offices of the House of Assembly, with the exception of the Office of the Auditor General, and prepare a report that includes recommendations for the following:*
>
> 1. *The minimum required competencies for each statutory officer;*
> 2. *The number of statutory offices and whether a statutory officer could fulfil the obligations of more than one statutory role; which offices/statutory officers could be combined based on common objectives, functions, qualifications, clients etc.;*
> 3. *Whether each Statutory Office requires the dedication of a full-time statutory officer or whether it could be part-tine or on an as-needed basis;*
> 4. *How each statutory officer should be recruited, appointed, reappointed, compensated, disciplined, and removed from office;*
> 5. *How to manage conflicts which arise between Statutory Offices, who should investigate alleged misconduct of a statutory officer, and how that investigation should be conducted (internally, externally, independent ADR etc.).*
> 6. *Whether and how quality assurance and performance of each statutory officer/Statutory Office should be measured and overseen;*
> 7. *What is an appropriate administrative oversight model for the Statutory Offices, inclusive of financial management, human resources management, information management, procurement, and any other "back office" functions[and] structure;*
> 8. *Whether physical space and administrative functions could be shared among Statutory Offices; and*

9. *Where reports from each Statutory Office should be directed, such as whether any of the reports of the Statutory Offices should go to a standing or select committee of the House of Assembly for review and analysis.*

The Consultant may seek input from current and former statutory officers, the Clerk of the House of Assembly, the Clerk of the Executive Council, the Management Commission of the House of Assembly and any others that may be necessary to inform the Terms of Reference.

The interpretation of these Terms of Reference raises three significant points. First, the Terms of Reference require me to provide recommendations for each of the nine numbered items. However, they do not limit me to the numbered items. They allow me to make other recommendations flowing from my review of the structure of the statutory offices, and I have done so.

Second, I do not believe a review of the structure of the statutory offices encompasses a review of the statutory offices' current management, internal organization, policies, or performance. This Review is focused on the higher level structure of the offices, the legislative framework within which officers make management and policy decisions, not the particular decisions that the current officers have made.

Nor am I asked to consider specific issues or controversies about the statutory offices or officers. This Review is not a fault-finding mission or an examination into the behavior of any person: it is a forward-looking policy review.

Third, during this Review I have heard and read some doubts, both in interviews and within the scholarly literature, about the value or appropriateness of some officers' mandates. For example, some believe that independent ombuds officers or advocates should not exist at all. Considering these perspectives has enriched my understanding of the issues at stake. However, I do not feel it is necessary or useful for me to comment on them.

The Terms of Reference ask me to review the *structure* of the statutory offices, including the number of offices and whether offices could be combined. That includes considering, for example, whether the Information and Privacy Commissioner's functions could be better carried out by the Citizens' Representative. It does not ask me whether the Information and Privacy Commissioner's functions should be carried out at all or whether the Province needs access-to-information or privacy laws.

I do not believe the Terms of Reference limit me from considering the scope of the statutory officers' mandates insofar as that question arises from my review. I have not shied away from making recommendations about how the officers' mandates could be better focused. But I have started from the premise that the statutory offices' functions are, at a very high level, worthwhile and appropriate for independent statutory officers.

References:

- Newfoundland and Labrador, Government of Newfoundland and Labrador News Release, *Public Advisory: Review of Statutory Offices to be Conducted; Minister Hogan Available to Media*, (5 December 2022), online at https://www.gov.nl.ca/releases/2022/jps/1205n02/.

ADMINISTRATIVE ORGANIZATION

In order to carry out the mandate as set out in the Terms of Reference, it was critical to assemble a team to complete the research and develop the report. The people selected to do this came highly recommended and, indeed, most had experience with previous inquiries.

It took a little longer than expected to obtain office space and supplies to actually conduct the interviews and accommodate our personal working needs, however, that was remedied when space became available on Duckworth Street in St. John's, in what was known as the old museum building, and which had been converted to government office space. The boardroom in this building is quite adequate and the majority of in-person submissions and interviews were conducted there.

In total, the Review committee conducted interviews with 33 people, seven of the interviews at the Review's office either in-person, Zoom or telephone. We were also fortunate to have been granted the time and opportunity to attend each of the statutory offices and meet with statutory officers in an open and candid fashion. The same could be said for other participants who shared their thoughts and suggestions with us and made significant observations on the Review's Terms of Reference.

Our Review team was headed up by myself, a retired Supreme Court Judge. As such, our Review was independent of government. Any requirements for clarifications on administrative matters were conducted by and through our Chief Administrative Officer or Legal Counsel.

OPERATIONAL METHODOLOGY

The Review's operational methodology consisted of the following steps and components:

Terms of Reference and context of the Review: In the initial stages, the Review team reviewed the scope of the Terms of Reference and studied the contextual background pertaining to the announcement of the Review.

Historical research: The initial research effort included a broad study of the Westminster parliamentary model of government and its evolution in Newfoundland and Labrador. This was an important basis for establishing the values and context of the Review.

Jurisdictional scan: In order to obtain a complete understanding of where we are in this Province, it was necessary to conduct a jurisdictional scan of legislative officers/agents across Canada, including the federal parliamentary officers. The scan also included a more in-depth examination of a sampling of legislative officers. We looked at the administrative structures of these offices, their mandates and enabling legislation, their reporting and oversight mechanisms, and the appointment and removal procedures of the officers. As well, the Review researchers looked at the structures for legislative agents in the United Kingdom and New Zealand. (Appendix 9)

Literature review: Another research component was the literature review, which canvassed academic papers, studies, and publications on the topic of legislative agents. We also studied a number of reports and papers from jurisdictions that commissioned similar reviews of legislative agents in the past.

Establishing procedural guidelines and planning: In the next phase of preparations, we identified areas of investigation and determined how best to collect information from participants. We developed the Review's Procedural Guidelines (Appendix 2), which set out the rules for the collection of written and oral submissions and establishing the Review's records.

One feature that became abundantly clear in the planning stage was the need for procedures to preserve participants' anonymity. The Review received multiple requests early on from participants who wished to provide submissions on an anonymous or confidential basis. In recognition of the political and personal environment in which statutory officers operate, my team and I felt it appropriate to collect submissions on a

not-for-attribution basis. In this report, we have chosen to preserve the anonymity of all participants that we interviewed as well as participants that requested that their written submissions remain anonymous.

Identifying participants for submissions: In tandem with developing the procedural guidelines, the Review team identified key individuals to invite to participate in the Review. The Terms of Reference invited me to consult with the Clerk of the House of Assembly, the Clerk of the Executive Council, the Management Commission of the House of Assembly, and any others that may be necessary to inform the Terms of Reference. In addition to this list, I chose to invite participation from the current statutory officers (and former statutory officers), the Speaker of the House of Assembly (and former Speakers), the Independent Appointments Commission (and former members), and all members of the House of Assembly (and former members).

The Review team also found it appropriate to invite commentary from the members of the public to ensure that the Review benefitted from a full range of perspectives. We were interested in collecting comments from current or former employees or clients of the statutory offices, public servants with experience with the statutory offices, as well as informed members of the public in general.

Collecting written and oral submissions: A call for written submissions was published on April 12, 2023, followed by a press conference to facilitate public engagement. The Review also set up a website and Twitter account (@NLStatReview) to engage with participants.

In total, the Review received 25 written submissions. The Review received written submissions from statutory officers, the Official Opposition, MHAs from various parties, interest groups, and private citizens. The Review also interviewed 33 individuals either in-person, by videoconference or by telephone. Some interviews were conducted offsite at the statutory offices and other locations.

What We Heard: Following the written submissions and the interviews, the Review team compiled a summary of comments into a "What We Heard" document (Appendix 8). Comments were assembled and presented on a not-for-attribution basis. The document was made accessible on the Review's website and interested parties were given an opportunity to provide responses.

Drafting and further research: In addition to the steps and actions outlined in this section, the Review team invested substantial efforts in researching, studying, and exploring the various suggestions and ideas presented to the Review. The final stages of the Review consisted of drafting and editing the Review's report.

STRUCTURE OF THE REPORT

The overall format of the Review is as follows:

Part I sets out the "Terms of Reference" and provides information on the Review's team members, the administrative structure of this Review, and the Review's methodology.

Part II provides a brief overview of the operation of the Newfoundland and Labrador government. This part is not intended to be an exhaustive study on the subject but rather a context of the issues surrounding statutory offices within the government complex. Part II will also describe the specific statutory offices of Newfoundland and Labrador that are the subject of this Review, including the history and establishment of these offices as well as their powers, duties and responsibility. This part will also touch on the relevant administrative bodies associated with them, including the Independent Appointments Commission, and the House of Assembly Management Commission.

Part III tackles the definition of "statutory offices" or agents of the legislature, including where and why they fit into the legislative branch of government. This includes discussion of the independent status of these offices, how that independence is to be defined, and the essential components of independence. This leads to the issue of accountability and the balance necessary to achieve it within the independent sphere of the statutory offices.

Part IV presents my observations, analysis, recommendations, and reasoning for the topics and issues set out in the Terms of Reference and other pertinent issues. Throughout each section there is a brief summary of any recommendations or suggestions.

I have made recommendations in forms that seem appropriate, whether they involve changes to legislation, policies, codes of conduct, or public servants' or statutory officers' own practices. I trust that, if these recommendations are seen as worthwhile, they can be brought to the attention of those bodies or persons responsible to implement them.

It is not my intention to make suggestions in relation to the wording of amendments to legislation, standing orders, or other written instruments. Although I have worked hard to anticipate how my recommendations will work in practice, both at a legislative and administrative level, I believe it would be better to trust the final wording and details to legislative counsel, the House of Assembly Law Clerk, and the other experts who will be responsible for implementing and administering my recommendations.

Further, in some sections, I have made suggestions that are not formal recommendations. These are intended to simply inform the conduct of the function or activity involved.

I was fortunate to receive numerous and thoughtful submissions for which I am grateful. I was not able to respond specifically, and in detail, to every submission that the Review received. However, I have considered and benefited from each.

Part V contains a summary list of the recommendations made in this report.

Part VI and VII are the report's bibliography and appendices.

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PART II – BACKGROUND

WESTMINSTER AND PARLIAMENTARY SYSTEM IN NEWFOUNDLAND AND LABRADOR

It is not within the mandate of this Review to offer a textbook approach to the historical complexities and subsequent evolution of the Newfoundland and Labrador governmental system. However, the Review is focused on the relationship between the executive and legislative branches, and some background is appropriate.

As are all other Canadian provinces, Newfoundland and Labrador is a unicameral, Westminster-based parliamentary system. "Unicameral" means that, unlike at the federal level, Newfoundland and Labrador does not have a Senate, or a higher chamber. "Westminster-based" means that the relationship between the three branches of government (legislative, executive, and judiciary) reflect the practices that developed in the United Kingdom Parliament at Westminster.

The Executive Branch

On paper, the executive branch is centred around the Lieutenant-Governor. Most consequential decisions are formally made by the Lieutenant-Governor, either alone or "in Council". This reflects the United Kingdom constitution, where the executive branch is still theoretically directed by the King.

Provincially, constitutional conventions have left the Lieutenant-Governor with effectively no decision-making authority. Convention requires the Lieutenant-Governor to exercise their powers on the "advice" of the Premier. As well, convention requires the Lieutenant-Governor in Council to exercise their powers on the "advice" of Cabinet. Thus, the executive branch, often called simply the "government", actually consists of the Premier and Cabinet, so that Cabinet is often simply called the Lieutenant-Governor in Council.

Unlike in presidential systems, the Premier is not elected. The Premier is invited to form a government by the Lieutenant-Governor. The invitation must be extended to a party leader who is likely or certain to command the "confidence of the House". The invited Premier is responsible to "form a government" by advising the Lieutenant-Governor to appoint ministers. This government can last as long as it can retain the

"confidence of the House", meaning that it cannot lose a budget vote, an explicit motion of no confidence, or a motion that the government decides to treat as a test of confidence.

Taken together, the Premier and the ministers form Cabinet. Cabinet is entrusted with coordinating and carrying out most policymaking processes, including the creation of a cohesive policy agenda and the successful implementation of policy solutions. It operates under the conventions of solidarity (Cabinet members must either defend Cabinet decisions in public or resign) and secrecy (Cabinet deliberations are confidential).

Cabinet, led by the Premier, holds the authority to initiate legislation, establish budgets, and make use of the funding provided, thereby governing the Province. It is supported by a group of public servants called the Executive Council.

In addition, each minister is usually assigned to one or more government departments or policy portfolios, such as finance, health, education, or justice. As a minister, they assume statutory duties and are responsible for serving as the chief executive of a department. Under the convention of ministerial responsibility, they also accept personal and collective responsibility to the House of Assembly for their personal actions, but also for those of their department and of the government as a whole. This principle establishes an accountability framework wherein ministers must address inquiries by the legislature through mechanisms such as Question Period, legislative committees, debates, and through its statutory offices, the latter being the subject of this Review.

Ministers administer their departments with the assistance of deputy ministers and assistant deputy ministers, who in turn rely on the expertise and dedication of a large public service. The public service is a vital part of the Westminster system, providing non-partisan, expert advice and assisting in the implementation and delivery of government services to the public.

Although these constitutional conventions are complex, they work together to produce a liberal, democratic system called "responsible government". The legitimacy and authority of the executive derives from the legislature which, in turn, derives its authority from voters as elected representatives.

The Legislative Branch

The Newfoundland and Labrador legislature, called the General Assembly, is often described as having two parts. The main decision-making body and the focus of most public attention is the House of Assembly, which consists of all the elected representatives. The second, and more easily overlooked part, is the Lieutenant-Governor, the King's representative, whose assent is formally required to pass any bill into law. The Lieutenant-Governor does not play an active role in legislative decision-making, because royal assent is almost invariably granted.

While the House of Assembly consists of elected members, it depends on the support of many officials and staff. These officials include the Speaker, who is both a member and an official; the Clerk of the House of Assembly; the Law Clerk; and the Sergeant-at-Arms. These House officials also include the statutory officers at the focus of this Review. Like the public servants in the executive branch, these officials are required, by constitutional convention, to remain politically neutral.

At the federal level, it is common to distinguish between "officers" of Parliament, meaning officials like the Clerk and the Sergeant-at-Arms who are directly involved in the workings of the legislature, and "agents" of Parliament, meaning officials like the statutory officers in this Review. This terminology has not been commonly used to describe this Province's institutions, and I have not used it. This Report will use the term "officers" in reference to statutory officers.

General Assemblies usually consist of four annual sessions, reflecting the four years between provincial elections. Every session consists of two periods, Spring and Fall, which begin with the Speech from the Throne and end with prorogation. The House of Assembly meets for two periods a year, for an average of 54 days per year (between 2017 and 2023).

As discussed above, the legislature is the source of the government's legitimacy, and the government can only remain in power for as long as it commands the confidence of the House of Assembly. As a result, the legislature has an ongoing role monitoring the government and satisfying itself that the government deserves its confidence. It reviews and approves legislation, including matters related to taxation and spending; scrutinizes ongoing policies and program administration; safeguards the rights of individual citizens and providing avenues to address grievances caused by public officials; and acts as a primary public forum for discussing Cabinet's performance.

The House of Assembly is responsible for approving the budget and allocating funds and resources to the executive branch. This function allows the legislature to exercise significant influence over the executive's actions. Historically, it is this budgetary control that allowed the elected chamber in Westminster to seize control of the executive, establishing responsible government and electoral democracy. The House's control over the budget process ensures that the executive branch operates within the limits set by the legislature and remains accountable for its financial decisions. The legislature, in other words, holds the government accountable by collectively examining the government's performance, while also ensuring the government is answerable for its use of powers and resources.

The House of Assembly also debates and passes a range of motions. Motions to introduce or amend statute law are typically introduced by the government and require the Lieutenant-Governor's assent to become law. Other motions can lead to binding resolutions of the House. These resolutions do not lead to statute law and do not require the Lieutenant-Governor's assent. However, they can have significant effects and play a central role in appointing, suspending, and removing statutory officers.

The House debates on these motions do sometimes lead to legislative changes. However, they also provide an opportunity for elected representatives to articulate constituents' concerns, share local knowledge, and advocate for individuals or smaller communities within their own districts. In this respect, they are analogous to Question Period and to the House's non-binding or symbolic resolutions, providing a forum for political parties to communicate and promote their policy platforms.

Legislative committees offer a more flexible procedure that can facilitate in-depth examination and analysis of various issues and policies. They can invite expert witnesses, stakeholders, and members of the public to present their perspectives. Committees can be responsible for conducting detailed reviews, gathering information, and making recommendations to the House of Assembly. They can also provide a forum for members, especially those not in Cabinet, to participate in oversight processes. The House of Assembly employs committee structures less actively than some other Westminster jurisdictions, but it does have several standing committees with a specific mandate and function.

Party discipline plays an important role in the House of Assembly. Party discipline refers to the expectation that members of a political party will adhere to the party's

positions, policies, and voting directions in the legislature, ensuring that parties can present a unified front, speak with one voice, and implement their policy agenda. In Canadian provincial parliamentary systems such as the system in Newfoundland and Labrador, party discipline is particularly pronounced.

Although the powers and roles of the legislative and executive branches are cleanly divided, in practice the two branches tend to operate in tandem. It is almost inherent in responsible government that Cabinet can usually control the legislature. A government that cannot exert significant control of the House cannot endure: it will fall as soon as it fails to pass a budget or defeat a confidence motion.

The government's control over the legislature is particularly pronounced when the governing party commands an absolute majority of the seats in the House, as commonly happens. In these circumstances, Cabinet is sometimes said to exercise a "double monopoly of power": its members control the executive as a Cabinet and as the heads of their departments, while they also control the legislature through party discipline.

The collaboration between executive and legislature does not undermine the separation of powers. Instead, it promotes informed and effective governance. The legislative branch represents the voters' interests and concerns, as the executive branch provides expertise and administrative capabilities. And even under a majority government, a system of checks and balances continues to operate, promoting transparency and accountability and ensuring that the government maintains the confidence of the House that justifies its authority.

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- Jack Stilborn "The Officers of Parliament: More Watchdogs, More Teeth, Better Governance?" *How Ottawa Spends, 2010-2011: Recession, Realignment, and the New Deficit Era*, (Montreal: McGill-Queen's University Press, 2004) at 243-260.
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STATUTORY OFFICES IN NEWFOUNDLAND AND LABRADOR

In Newfoundland and Labrador, each statutory office is led by a statutory officer and is independent of the executive branch of government. There are seven statutory offices: the Office of the Auditor General, the Office of the Chief Electoral Officer, the Commissioner for Legislative Standards, the Office of the Citizens' Representative, the Office of the Child and Youth Advocate, the Office of the Information and Privacy Commissioner, and the Office of the Seniors' Advocate. The Auditor General is not within the scope of this Review.

The Clerk of the House of Assembly, in accordance with the *House of Assembly Accountability, Integrity and Administration Act*, in particular section 28(1)(b), is responsible for the oversight, management, and control of the administrative and financial operations of the statutory offices, except for the Auditor General. In this regard, the statutory officers act under the policies, directives and procedures established by the Management Commission of the House of Assembly and under the administrative direction of the Clerk of the House of Assembly. This function is also described in employment contracts with each statutory officer upon their appointment.

Subject to the approval of the House of Assembly Management Commission, statutory officers can appoint deputy officers, clerks, and employees as they deem necessary to carry out their duties under their enabling legislation. These assistants and employees are considered members of the public service of the province.

Office of the Chief Electoral Officer

The Chief Electoral Officer is responsible for conducting elections and for ensuring fairness, impartiality, and compliance with all aspects of the *Elections Act, 1991*. The Chief Electoral Officer is also accountable to ensure public disclosure of contributions and expenditures of political parties and candidates and to certify public reimbursement of election expense.

The creation of an independent Chief Electoral Officer responded to concerns about the integrity of the elections process. Throughout the mediaeval and early modern era, elections were run by returning officers appointed by the Crown. These returning officers were servants of the Crown and often promoted the King's interests. The advent of responsible government did not change the returning officers' character, but it did change their loyalties: instead of favouring the King's candidates, they favoured the government's.

The Chief Electoral Officer is a Canadian innovation. After the particularly corrupt federal election of 1917, the Canadian Parliament adopted the *Dominions Elections Act*, placing the administration of elections in the hands of an independent Chief Electoral Officer. The Chief Electoral Officer brought together all the essential features of a modern statutory officer: they were appointed after a resolution of the House of Commons, they reported directly to the House of Commons through the Speaker, and their security of tenure was modelled after Supreme Court of Canada judge's, requiring both cause and a joint address of Parliament for removal.

A Chief Electoral Officer was introduced in this Province in 1954, but the position was appointed directly by Cabinet and had no security of tenure. It was not until the *Elections Act, 1991* that the Chief Electoral Officer was established as an independent statutory officer on the Canadian model.

The Chief Electoral Officer's staff appears to have grown significantly in the past decades. Until 2007, the office had only 2-3 staff and only brought on additional help during election periods.

Legislation:

The mandate and responsibilities of the Chief Electoral Officer are set out in the *Elections Act, 1991*.

Power, Duties and Responsibilities:

The Office of Chief Electoral Officer defines its primary clients as the individuals, groups and organizations that the Office deals with on a regular basis and considers as a priority. This includes: the electorate, provincial schools boards, community and special interest groups, the House of Assembly and its Members, federal and provincial election offices, the media, election field staff, political parties, candidates, as well as federal, provincial and municipal governments.

The Chief Electoral Officer exercises general direction and supervision over the administration and conduct of elections in Newfoundland and Labrador, and ensures that election officers act with fairness, impartiality, and in compliance with the *Elections Act, 1991*. The mandate of the officer also includes administration of the election finance provisions of the legislation as they pertain to registered parties and candidates.

The Chief Electoral Officer facilitates the right to vote by communicating to electors the various voting methods available, dates and deadlines that apply to those voting methods, and the locations where voting is available. They also work to ensure that headquarters and field staff are well-trained in electoral processes and procedures. When elections are called, the writ of election must be issued to the Chief Electoral Officer in conformity with the instructions of the Lieutenant-Governor in Council.

As soon as convenient after the issue of the writ of election, the returning officer shall, subject to the approval of the Chief Electoral Officer, appoint a deputy returning officer for each polling station established in their electoral district. The returning officer is also responsible for keeping a list of the names and addresses of the deputy returning officers showing the polling station for which each has been appointed and must permit an opportunity for inspection of the list by a candidate, scrutineer, or elector at any time up to the opening of the poll. A deputy returning officer must, subject to the approval of the returning officer, immediately after their appointment, appoint a poll clerk, who before acting, swears an oath.

In years when elections or by-elections are not held, the officer has the responsibility to continuously prepare for an election. These duties may include:

- organizing and planning administrative and legislated electoral events, such as opening district offices throughout the province, special ballot voting, the issuance of election writs, nomination deadlines, advance poll voting, voting in personal care homes and hospitals, election day, election results, and the Official Addition of the Votes;
- procurement and maintenance of supplies for headquarters, returning offices, and satellite offices;
- coordination and delivery of supplies throughout all parts of Newfoundland and Labrador (factoring in geographical and weather challenges);
- hiring election field and headquarters staff;

- designing and delivering training modules;
- preparing and printing voters lists and electoral district maps;
- responding to and incorporating feedback from stakeholders; and
- maintenance of communication channels with internal and external stakeholders, including advertising and outreach campaigns.

The Chief Electoral Officer must also work with federal, provincial, and municipal governments in the sharing of information relative to the maintenance of an accurate, comprehensive, and up-to-date permanent list of electors. These initiatives are supplemented by promotional activities and educational programs aimed at encouraging voter registration.

The Chief Electoral Officer must appoint a returning officer for each electoral district in the province, assign the duties of each returning officer, and fix their remuneration on a scale approved by the House of Assembly Management Commission continued under the *House of Assembly Accountability, Integrity and Administration Act*. Every returning officer must:

- immediately upon the receipt of notice that a writ has been issued for an election in their electoral district, open an office in some convenient place in the electoral district from which he or she can be available to the electors;
- maintain an office throughout the election; and
- give public notice of the location of the office in the prescribed form, or in the manner that the Chief Electoral Officer may direct.

Either the returning officer or the election clerk must be on duty in the office of the returning officer during the hours that the polls are open. When a returning officer to whom a writ of election has been directed refuses, or is unable to act, or is disqualified from acting, or is removed and there is no one able under Division A to act in place of that returning officer, that writ may be withdrawn by the Chief Electoral Officer and another writ of election may be issued, which must be directed to the person in the electoral district concerned that the Chief Electoral Officer may designate.

The Chief Electoral Officer may enter into an agreement with the Chief Electoral Officer for Canada with respect to the supply to the Chief Electoral Officer by the Chief

Electoral Officer for Canada of information contained in the register of electors prepared in respect of the province under the *Canada Elections Act*.

The Chief Electoral Officer must retain the ballot boxes, sealed, for a period of one year after the date of the election in which they were last used and then, unless otherwise directed by an order of a judge, destroy all the documents, ballots, and papers contained in the ballot boxes except the poll books, the supplementary list of electors, and all oaths.

Staff:

The current staff list includes the following 11 positions:

- Chief Electoral Officer
- Commissioner for Legislative Standards
- Assistant Chief Electoral Officer/Director Election Finance
- Director, Elections Operations/Special Ballot Administrator
- Communications and Training Manager
- Manager, Voter Registry/ATIPP Coordinator
- Election Policy and Systems Analyst
- Executive Assistant/Office Manager
- Voter Registry Coordinator (x2)
- Election Warehouse Clerk

References:

- *Dominion Elections Act*, SC 1920, c 46.
- *Elections Act*, SNL 1954, c 79, s 32.
- *Elections Act,* SNL 1992, c E-31.
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- Louis Massicotte, "The Chief Electoral Officer of Canada" (2003) 26(3) Can Parl Rev 19.
- Office of the Chief Electoral Officer, "OCEO/CLS Activity Plan 2020-23" (2020), online, *House of Assembly Newfoundland and Labrador* https://assembly.nl.ca/business/electronicdocuments/OCEOCLSActivityPlan2020-2023.pdf.

Commissioner for Legislative Standards

The Commissioner for Legislative Standards is responsible for the investigation of conflict-of-interest provisions under the *House of Assembly Act* and the codes of conduct provisions of the *House of Assembly Accountability, Integrity and Administration Act*. The Commissioner for Legislative Standards is also responsible for hearing appeals of public office holders under the *Conflict of Interest Act, 1995*.

The Commissioner was first introduced in 1993 under the name "Commissioner for Member's Interests" as part of a long-debated scheme to regulate members' conflicts of interests. The central role of the Commissioner in that scheme was described by one of the committee members in the House at the time:

> *"The legislation hinges 100 per cent on one clause and one item in the legislation. If we do not have the right or a good person as commissioner this legislation will not be worth the paper that it's written on. The commissioner will dictate whether this legislation is going to be good or bad."*

Legislation

The Commissioner for Legislative Standards has responsibilities under three provincial statutes: the *House of Assembly Act*, the *House of Assembly Accountability, Integrity and Administration Act, 2007*, and the *Conflict of Interest Act, 1995*.

Power, Duties and Responsibilities

The Commissioner for Legislative Standards defines four primary clients: the House of Assembly, its members, public office holders, and the Speaker of the House of Assembly. The Commissioner for Legislative Standards is responsible for providing guidance and clarification to members who seek information regarding their obligations under conflict of interest legislation and codes of conduct. A member must apply in writing to request the commissioner's opinion. Any opinions offered by the commissioner to a particular member are considered privileged information and can only be released with the member's written consent.

In addition to offering guidance, the commissioner may also receive a request for an opinion from a member who believes that another member is in contravention of the *Act* or the members' code of conduct. This request must be made in writing and must set out the grounds for the belief and the nature of the alleged infringement. The Commissioner for Legislative Standards also has the power to conduct an inquiry on their own initiative

to determine whether a member has failed to fulfil an obligation or has violated the code of conduct. This is typically done when the commissioner believes that the inquiry would be in the public interest. When the commissioner decides to conduct an inquiry, the commissioner has all the powers of a commissioner under the *Public Inquiries Act, 2006*. Additionally, the House of Assembly, itself, can request an opinion from the commissioner on a matter concerning a member's compliance by passing a resolution. The Premier also has the power to request an opinion from the commissioner on a matter concerning a minister.

Members are required to file a disclosure statement on or before April 1 of each calendar year, and within 60 days of their election or appointment. These statements are reviewed by the Commissioner for Legislative Standards and a public disclosure statement is prepared for the member's signature. The review process can take time and, in some cases, the commissioner may recommend that a member place some or all of their business interests in a blind trust.

To ensure compliance with timelines required by legislation and to enhance transparency, a status report of the review progress for each member's submission is published on the commissioner's website. All public disclosure statements are available for public inspection and are on file in the Office of the Commissioner for Legislative Standards'.

If the Commissioner for Legislative Standards determines that a member has failed to fulfil or comply with the code of conduct, the commissioner may recommend in a report that the member be reprimanded, make restitution, or pay compensation; that the member be suspended from the House of Assembly (with or without pay) for a specified period; or that the member's seat be declared vacant. The report will not take effect unless the report is sent to the Speaker and approved by resolution of the House of Assembly. The report must be taken up and disposed of within 15 sitting days after the day on which it was tabled or within a longer period, not to exceed six months, that the House of Assembly may determine.

If the Commissioner for Legislative Standards concludes that there was no failure, without reasonable justification, in a member's fulfilment and compliance with the code of conduct, then the Commissioner for Legislative Standards certifies this to the member in writing and must provide a copy of the certificate to the Premier if the inquiry began

after their request, or to the Speaker of the House of Assembly if the inquiry began after their request or upon resolution of the House of the Assembly.

Subject to the approval of the Lieutenant-Governor in Council, the Commissioner for Legislative Standards has the power to create regulations. These regulations can be used to prescribe matters related to the *House of Assembly Act*, as well as to determine what classes of interests are to be excluded as private interests or what will constitute a material change.

Staff:

Currently, the Commissioner for Legislative Standards' office only has one dedicated and permanent position, that of the Commissioner. Up until December 12, 2022, the practice has been that the Commissioner for Legislative Standards and the Chief Electoral Officer are held by the same individual.

References:

- *House of Assembly Act*, RSNL 1990, c H-10; 1993 c1 s 1 (1), (2), (4); 2001 c 42, s 19; 2004 c 47, s 18; 2007 cH-10.1 s 68; 2007 c H-10.1 s 68; 2016 c6 s 7; 2019 c P-44.01, s 38.
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- Newfoundland and Labrador, Legislative Assembly, Hansard, 48th Leg, 1st Sess, No 29 (17 May 2016) at 1407.
- Newfoundland and Labrador, Treasury Board Secretariat, *Political Activity Policy 2011*, online: https://www.gov.nl.ca/exec/tbs/working-with-us/political/.
- Office of the Chief Electoral Officer, "OCEO/CLS Activity Plan 2020-23" (2020), online, *House of Assembly Newfoundland and Labrador* https://assembly.nl.ca/business/electronicdocuments/OCEOCLSActivityPlan2020-2023.pdf.

Office of the Citizens' Representative

The Office of the Citizens' Representative was created to perform a province-wide ombudsman service that includes reviewing complaints from citizens who feel they have been treated unfairly with respect to their contact with government offices and agencies. The Citizens' Representative and staff mediate and investigate complaints, then generate reports and recommendations to government.

The prospect of an ombudsman office (previous title for the Citizens' Representative) in Newfoundland and Labrador started with the 1969 Speech from the Throne, which

stated that the government was concerned that the large size of the Civil Service could lead to a perception that individual citizens were not being treated impartially. Following the Speech of the Throne, a Select Committee of the House of Assembly, chaired by John Nolan, delivered a report recommending the establishment of an Ombudsman office.

The *Parliamentary Commissioner (Ombudsman) Act* was passed on May 19, 1970, but the first Ombudsman was only appointed in 1975. For the next 15 years, the Office provided the traditional services of an Ombudsman, processing complaints from citizens on government services across the province. On March 15, 1990, the Minister of Finance announced in the provincial budget the Office of the Ombudsman would be abolished as part of an austerity strategy. The decision to abolish the office followed an assessment from government which found that the $236,000 annual expenditure was not warranted for the substance and number of complaints investigated.

One of the most immediate problems that originated, following the abolishment of the Office, was the inability to process *Freedom of Information Act* requests and complaints regarding police officers. After the office was abolished, appeals for denied *Freedom of Information Act* requests were assigned to the Supreme Court, and the Minister of Justice briefly considered the creation of an office of the House of Assembly to serve as a police commission.

A new ombudsman office was created in May 14, 2001. The new office, renamed "Office of the Citizens' Representative," had a mandate with "broad investigative powers, similar to that of the former ombudsman… [with] the authority to investigate Crown corporations, departments and agencies of government." The current legislation, *the Citizens' Representative Act*, received royal assent in December 2001.

In 2007, the Citizens' Representative's powers were expanded by the enactment of the *House of Assembly Accountability, Integrity and Administration Act*, which allowed whistleblower investigations regarding House of Assembly members or officials. Whistleblower investigations regarding executive branch members followed in 2014 with the enactment of the *Public Interest Disclosure and Whistleblower Protection Act*. Most recently, the Citizens' Representative was empowered to investigate harassment complaints regarding House of Assembly members. under the *House of Assembly Accountability, Integrity and Administration Act*.

Legislation:

The Citizens' Representative has responsibilities under three provincial statutes: the *Citizens' Representative Act*; the *House of Assembly Accountability, Integrity and Administration Act*, and the *Public Interest Disclosure and Whistleblower Protection Act*.

Power, Duties and Responsibilities:

The Office of the Citizens' Representative defines its primary clients as:

(1) citizens who allege they have been treated unfairly when pursuing or receiving access to public service;

(2) whistleblowers who allege gross mismanagement that is contrary to the public interest; and

(3) Members of the House of Assembly, Legislative and Executive branch employees, who allege harassment by Members of the House of Assembly.

Secondary clients include:

(1) the House of Assembly;

(2) the Lieutenant-Governor in Council; and

(3) the Public Service.

Under the *Citizens' Representative Act*, the Citizens' Representative is responsible for investigating and mediating complaints from citizens who feel they have been treated unfairly after being in contact with government offices and agencies. The Citizens' Representative and staff will attempt to mediate citizens' complaints and, if this is not possible, will then undertake impartial and unbiased investigations. If the complaint cannot be resolved through an investigation, a report is created, and recommendations can be made to the House of Assembly.

The Office of the Citizens' Representative also investigates matters referred by the Lieutenant-Governor in Council or the House of Assembly, as well as matters independently determined by the representative as requiring investigation. When carrying out an investigation, the Citizens' Representative may summon and examine, on oath or affirmation, a person who, in the opinion of the Citizens' Representative, is able to give information relating to a matter being investigated.

The Citizens' Representative's duty is to ensure that complaints and matters referred to its office are investigated and mediated in a timely, thorough, and objective manner. The aim is to mediate complaints to the satisfaction of all stakeholders, if possible, and report on the findings.

The Citizens' Representative also recommends appropriate redress for complaints and, in certain circumstances, may make public reports on certain matters. The ultimate goal is to improve the overall provision of public service by departments and agencies, and to ameliorate the cause of complaints, where possible. As a result, the Citizens' Representative can also undertake complaints that study how governmental policies, procedures, and actions can affect a large number of people. These are called "systemic complaints" and can result in recommendations with a broader impact than those resulting from individual complaints.

Upon making a recommendation, the Citizens' Representative may ask a government department or agency to notify its office within a specific time period about the steps they have taken or intend to take after receiving the recommendation. If the representative is not satisfied with the response, or if there is no response within a reasonable time period, they may report the matter to the Lieutenant-Governor in Council. The Representative may include a copy of the report containing recommendations and mention it in their next annual report to the House of Assembly, after considering the comments made by or on behalf of the department or agency affected.

While the Citizens' Representative has the authority to investigate complaints from individuals regarding provincial public employees or officials, they do not have the authority to investigate the following government offices and agencies:

- the House of Assembly or a committee thereof;
- Cabinet;
- the Executive Council or a committee thereof;
- a court, judge, or a justice of the peace;
- an arbitrator appointed under the Arbitration Act;
- any decision where the citizen has a right to appeal to a court or tribunal but has not yet done so or the time for doing so has not expired;
- a decision by the Access to Information Commissioner; or

- a problem that the Child and Youth Advocate has the power to deal with.

The Office of the Citizens' Representative, at its discretion, may also refuse or cease to investigate a complaint, if:

- it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before contacting the representative;
- in the representative's opinion it is frivolous or trivial, vexatious, or not made in good faith;
- the complainant does not have a sufficient personal interest in the subject matter of the complaint;
- in the representative's opinion, the complaint should not be investigated or continued based on public interest;
- in the representative's opinion, the circumstances of the complaint do not require investigation; or
- a law or procedure provides an adequate remedy to the circumstances of the complaint and the complainant has not availed of this remedy, with no reasonable justification for not doing so.

Under the *Citizens' Representative Act,* the Office of the Citizens' Representative may exercise and perform its powers, duties and functions despite a provision of another *Act*. Consequently, a proceeding, decision, recommendation, act or omission that they are investigating is final, not subject to appeal, or not subject to be challenged, reviewed, quashed, or called into question.

Under the *House of Assembly Accountability, Integrity and Administration Act*, the Citizens' Representative is also responsible for investigating complaints of public interest disclosures or whistleblowing from public employees against members and employees of the House of Assembly, its statutory officers, the Speaker, and the Clerk. The role is to impartially investigate these complaints and ensure that all parties involved are treated with procedural fairness.

Additionally, the Citizens' Representative accepts complaints of gross mismanagement from government employees under two statutory programs. This ensures that subsequent investigations are carried out as expediently and informally as possible, while still being thorough and unbiased. The goal is to provide a fair investigation and subsequent report that is unbiased and thorough.

Under the *Public Interest Disclosure and Whistleblower Protection Act*, the purpose of which is to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that an employee believes may be unlawful, dangerous to the public or injurious to the public interest, and to protect persons who make those disclosures; the Citizens' Representative is the office that is legislated to receive and investigate, where appropriate, the disclosure by an employee and take such action as set out in the *Act*.

Under the *Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly*, the Citizens' Representative is responsible for receiving inquiries and complaints related to harassment against members of the House of Assembly from various sources, including members of the Legislative and Executive branches, by-standers, and government employees. These duties include coordinating informal resolution processes such as facilitating discussions or mediation sessions, as well as conducting an independent investigation under the formal process as determined by the complainant.

The Citizens' Representative also provides independent and confidential advice to those who report harassment against members of the House of Assembly. The Citizens' Representative ensures that employees are aware of and have access to the external Independent Support Advisor, as well as the informal and formal resolution processes available. The objective is to treat all parties involved with procedural fairness and to carry out investigations in accordance with the established timelines and policies. Investigations are to be thorough, unbiased, and fair, with the goal of achieving a resolution that is satisfactory for all parties.

Staff:

The current staff list includes the following nine positions:

- Citizens' Representative
- Assistant Citizens' Representative
- Two Senior Investigators
- Two Investigators
- Intake Officer / Investigator
- Office Manager
- Executive Secretary

References:

- Canadian Press, "Newfoundland loses political watchdog," (15 August 1990) *Canadian Press* at M132.
- *Citizens' Representative Act,* SNL 2001 c C-14.1 at s10, 15, 16, 18, 19, 24, 31, 38, 39, 43, 44, 54.
- Glen Whiffen, "Ombudsman authority raps province for decision to abolish office" (27 September 1990). *The Telegram*.
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- Office of the Citizens' Representative, "Business Plan 2014-2017" (2014), online, *House of Assembly Newfoundland and Labrador* < https://www.citizensrep.nl.ca/pdfs/OCR-BusinessPlan14-17.pdf>
- Office of the Citizens' Representative, "Annual Performance Report 2021-2022" (2020), online, *House of Assembly Newfoundland and Labrador* https://www.citizensrep.nl.ca/pdfs/OCR-AnnualPerformanceReport21-22.pdf.
- *Public Interest Disclosure and Whistleblower Protection Act*, SNL 2014 c 37.2, amended 2021 c A-22.1 s50) at s 3.
- Russell Wangersky, "Oh, all right, we'll look, but there's nothing there: Like a sighing parent searching the closet for monsters, the province agrees to examine its Freedom of Information Act" (9 December 2000) *The Telegram*.

Office of the Child and Youth Advocate

The Office of the Child and Youth Advocate was established in 2001 to advocate for children and youth by advising government and its agencies on the effectiveness and relevance of services provided to children and youth. The Office of the Child and Youth Advocate also reviews and investigates matters affecting the rights and interests of children and youth. These investigatory powers were expanded following the 2006 Turner Review and Investigation.

The Office of the Child and Youth Advocate was established on December 13, 2001, after the *Child and Youth Advocate Act* received royal assent, following the recommendations of the Select Committee on Children's Interests. This Committee, which was initially formed on December 16, 1994, was dissolved with the call of the provincial election in January 1995. A new Committee was then established on March 26, 1996, chaired by Gerald Smith, with Harvey Hodder as vice-chair and Mary Hodder as a member.

The Committee's recommendations, outlined in the report *LISTENing & ACTing: A Plan for Child, Youth and Community Empowerment*, were tabled on June 17, 1996. They suggested the creation of a Child, Youth and Family Secretariat within the government and the establishment of a Child and Youth Advocate who would report to the legislature. These two new government agencies were tasked with reforming and renewing the government's approach to children, youth, their families, and communities.

The creation of the Office of the Child and Youth Advocate also followed consultations leading up to the drafting of the *Child, Youth and Family Act* in 1998. In February 2001, the government announced its plan to move forward with advocacy legislation. The Department of Health and Community Services was delegated to carry out the policy development, and a broad-based consultation was held in March 2001 to solicit input on the legislation.

With the establishment of the Office of the Child and Youth Advocate, Newfoundland and Labrador became the eighth province to create an independent advocacy office for children and youth. The first Child and Youth Advocate was officially sworn in on September 16, 2002.

Legislation:

The enabling legislation for the Office of the Child and Youth Advocate is the *Child and Youth Advocate Act*.

Power, Duties and Responsibilities:

The Office of the Child and Youth Advocate defines its primary clients as children and youth under the age of 19. A young person in extended care or custody is eligible until the age of 21. The Child and Youth Advocate also works closely with family members, professionals, other supporters, and champions working on behalf of children and youth.

The Child and Youth Advocate's main responsibility is to protect and advance the rights and interests of children and youth, ensure that children and youth have access to services and that their complaints regarding these services receive appropriate attention, either through individual or systemic advocacy. The Office of the Child and Youth Advocate also provides information and advice to the government, government agencies, and communities about the availability, effectiveness, responsiveness, and relevance of services to children and youth. Additionally, the Child and Youth Advocate reviews and

investigates individual matters and acts as an advocate for that child's/youth's rights and interests.

When a child/youth who has been placed in a facility, caregiver's home, group home or another placement under a provincial statute or the federal *Criminal Code* or *Youth Criminal Justice Act*, asks to communicate with the Child and Youth Advocate, that request must be forwarded to the Child and Youth Advocate immediately. Similarly, when a child/youth dies or experiences a critical injury having received, or while receiving, a designated service provided by the Department of Children, Seniors and Social Development (CSSD), or the Department of Justice and Public Safety (JPS), the designated department must report it to the Child and Youth Advocate.

To carry out its duties, the Office of the Child and Youth Advocate is authorized to receive, review, and investigate matters relating to a child or youth or a group of them, regardless of whether a request or complaint has been made. When carrying out an investigation, the Child and Youth Advocate may summon and examine, on oath or affirmation, a person who, in the opinion of the advocate, is able to give information relating to a matter being investigated.

The Child and Youth Advocate, at their discretion, may refuse or cease to investigate or review a complaint, if

- it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before contacting the advocate;
- in the advocate's opinion it is frivolous or trivial, vexatious or not made in good faith;
- the complainant does not have a sufficient personal interest in the subject matter of the complaint;
- in the advocate's opinion, the complaint should not be investigated or continued based on public interest;
- in the advocate's opinion, the circumstances of the complaint do not require investigation; or
- the law or procedure provides an adequate remedy to the circumstances of the complaint and the complainant has not availed of this remedy, with no reasonable justification for doing so.

The Child and Youth Advocate can also mediate or use other dispute resolution processes on behalf of a child or youth or a group of them. If these processes do not result in a satisfactory outcome, the Child and Youth Advocate may conduct an investigation. The Child and Youth Advocate can also initiate and participate in or assist children/youth to initiate and participate in case conferences, administrative reviews, mediations, or other processes in which decisions are made about the provision of services. The Child and Youth Advocate is authorized to meet with and interview children/youth and inform the public about their needs and rights.

Additionally, the Child and Youth Advocate can make recommendations to the government, government agencies, or communities about legislation, policies, and practices regarding services to or the rights of children/youth. Upon making a recommendation, the Child and Youth Advocate may monitor the government department or agency's actions (or planned actions) in response to the recommendation. If the Child and Youth Advocate is not satisfied with the response or if there is no response within a reasonable time period, the Child and Youth Advocate may report the matter to the Lieutenant-Governor in Council and include a copy of the report containing recommendations in their next annual report to the House of Assembly.

Staff:

The Office of the Child and Youth Advocate has 13 permanent employees and one temporary employee, including:

- Child and Youth Advocate
- Executive Assistant to the Advocate
- Director of Individual Advocacy and Investigations
- Director of Strategic Services and Outreach
- Systemic Advocacy Consultant (x5)
- Individual Advocacy Specialist (x3)
- Administrative Officer
- Administrative Assistant
- Communications and Policy Officer (Temporary position)

References

- *Child and Youth Advocate Act*, SNL 2001, c C-12.01.

- *Child and Youth Advocate Act,* SNL 2017 c 27 s1, 11, 15, 18, 21, 24, 28, 29.
- Newfoundland and Labrador, Government of Newfoundland and Labrador News Release, *Select Committee on Children's Interests - Committee tables final report*, (17 June 1996), online: https://www.releases.gov.nl.ca/releases/1996/house/0617n04.htm.
- Newfoundland and Labrador, Government of Newfoundland and Labrador News Release, *Child and Youth Advocate office to open,* (15 November 2002), online: https://www.releases.gov.nl.ca/releases/2002/ocya/1115n03.htm.
- Newfoundland and Labrador, Legislative Assembly, Hansard, 48th Leg, 1st Sess, No 29 (17 May 2016).
- Newfoundland and Labrador, Treasury Board Secretariat, *Executive Pay Scale 2022-2025*, online: https://www.gov.nl.ca/exec/tbs/files/EXEC-2022-2025-2.xlsx.
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- Office of the Child and Youth Advocate, "Annual Report 2021-2022" (2021), online: https://www.childandyouthadvocate.nl.ca/files/OCYAAnnualReport2021-22.pdf.
- Office of the Child and Youth Advocate, "Business Plan 2020-2023" (2020), online: https://www.childandyouthadvocate.nl.ca/files/OfficeoftheChildandYouthAdvocateBusinessPlan2020-23.pdf.
- Peter H Markesteyn and David C Day, *Turner Review and Investigation*, (Newfoundland and Labrador: Newfoundland and Labrador Child and Youth Advocate, 2006).

Office of the Information and Privacy Commissioner

The Office of the Information and Privacy Commissioner is responsible for protecting and upholding access to information and protection of privacy rights under the *Access to Information and Protection of Privacy Act, 2015*. The Information and Privacy Commissioner investigates and mediates complaints, makes recommendations to public bodies, and also has an oversight role with respect to the *Personal Health Information Act*.

On December 12, 2000, Justice Minister Kelvin Parsons announced that government would establish the Freedom of Information Review Committee with the mandate of reviewing the *Freedom of Information Act,* the first review since the Act's enactment in 1981, and making recommendations. The review was established as part of then–Premier Roger Grimes' pledge to update the legislation, especially with the availability of new technology and information management, and "ensure a greater level of openness and accountability within government." At the time of the review, Newfoundland and Labrador was the only province without legislation to protect the collection, use, and disclosure of personal information.

The final report included 52 recommendations including expanding the *Act's* coverage to more government agencies, reducing the number of exemptions to the *Act*, and integrating personal privacy protection into the *Act*. One of the principal recommendations, as part of the *Act*'s critical review mechanisms, was the establishment of the Office of the Information and Privacy Commissioner to serve as an alternative to the courts. The role was envisioned from the beginning as independent from government and it was recommended that the Commissioner be appointed by the House of Assembly and provided security of tenure.

In response to the recommendations of the Review, Bill 49 was presented to the House of Assembly in the fall of 2001. The bill received royal assent on March 14, 2002, and was enacted as the *Access to Information and Protection of Privacy Act*. Among the recommendations enacted was the establishment of the Information and Privacy Commissioner as an officer of the House of Assembly. The initial legislation permitted a two-year term with the possibility of reappointment for further terms by the Lieutenant-Governor in Council on resolution of the House of the Assembly.

In 2008, the mandate of the Office of the Information and Privacy Commissioner was expanded to include privacy provisions, a part of the *Act* that had been deferred in 2002 to allow departments and agencies to prepare and implement the new legislation. The privacy provisions were proclaimed on January 16, 2008. In 2008, the *Personal Health Information Act* was introduced in the House of Assembly, adding to the Information and Privacy Commissioner's mandate any personal information regarding a person's health or health care history such as diagnostic information collected by a physician, prescription information collected by a pharmacist and eyesight information collected by an optometrist. The *Personal Health Information Act*, however, would not come into force until April 1, 2011.

A comprehensive revision of the *Access to Information Act* was conducted by the 2014 *ATIPPA* Statutory Review Committee chaired by former Chief Justice Clyde K. Wells ("Wells Report" or "Wells Committee"). Following the Wells Report, the existing statute was repealed and replaced with the *Access to Information and Protection of Privacy Act, 2015*, proclaimed on January 17, 2015. A 2020 *ATIPPA* Statutory Review was also completed by former Chief Justice David Orsborn ("Orsborn Review"). Recommendations and amendments following that Review have yet to be implemented.

Legislation:

The Information and Privacy Commissioner's mandate and responsibilities are set out under two provincial statutes: the *Access to Information and Protection of Privacy Act, 2015* and the *Personal Health Information Act*.

Power, Duties and Responsibilities:

The Office of the Information and Privacy Commissioner defines its primary clients as the people of the province and the entities whose activities the office oversees, as well as any others who have rights or bear responsibilities under the *ATIPPA* and *PHIA*. These include the members of the public, custodians in the public and private sector, third party interests, health care and educational institutions, municipalities, provincial government departments and Crown agencies, and the media.

Under *ATIPPA*, the Information and Privacy Commissioner is responsible for ensuring compliance with the *Act* and its regulations and has the power to conduct investigations. The Information and Privacy Commissioner also monitors and audits the practices and procedures employed by public bodies to carry out their responsibilities under *ATIPPA*. In addition, the Information and Privacy Commissioner may engage in or commission research related to *ATIPPA*, as well as review and authorize the collection of personal information from sources other than the individual concerned and consult with experts in related matters. The Information and Privacy Commissioner has additional responsibilities, including designing and delivering educational programs that inform the public of their rights under *ATIPPA*, as well as informing public bodies of their responsibilities and duties under the *Act*. The Information and Privacy Commissioner also provides assistance to and receives comments from the public about the administration of the *Act* and about matters concerning access to information and the confidentiality, protection, and correction of personal information. The Information and Privacy Commissioner can comment on the implications for access to information or for protection of privacy of proposed legislative schemes, programs, or practices of public bodies, in addition to the implications for the protection of privacy of using or disclosing personal information for record linkage or using information technology. The Information and Privacy Commissioner may also make recommendations to: grant access to records; correct personal information in a record; collect, use or disclose personal information in contravention of *ATIPPA*; or destroy personal information collected in contravention of *ATIPPA*. If a public body does not follow these recommendations, it may appeal to the court for a declaration. If the public

body does not file an appeal and does not implement the recommendations, the Information and Privacy Commissioner can file an order with the court to enforce the recommendations. Finally, the Information and Privacy Commissioner can also alert a public body to a failure to fulfil the duty to assist applicants and inform the public of apparent deficiencies in the system.

The Information and Privacy Commissioner has the powers, privileges and immunities of a commissioner under the *Public Inquiries Act, 2006*. They may request any record in the custody or under the control of a public body that the commissioner considers relevant to an investigation and may examine information in these records, including personal information.

Under the *Personal Health Information Act*, the Information and Privacy Commissioner has several powers and duties related to personal health information. These include reviewing a complaint regarding a custodian's refusal of a request for access to or correction of personal health information, as well as reviewing a complaint regarding a custodian's contravention or potential contravention of *PHIA* with respect to personal health information.

When a custodian refuses the request of an individual for access to personal health information, the person may file a complaint with the Information and Privacy Commissioner. A filed complaint from an individual may be resolved informally to the satisfaction of the complainant and the custodian, and in compliance with *PHIA*. If the Information and Privacy Commissioner is unable to reach an informal resolution, they may conduct a review of the subject, if deemed necessary. In conducting a review, the Information and Privacy Commissioner may demand that the custodian produce a copy of a record relevant to the subject-matter of the review, as well as a data storage, processing, or retrieval device or system belonging to the custodian under investigation. The custodian must produce this copy within a designated timeframe. In concluding their review, the Information and Privacy Commissioner may recommend that the custodian grant the individual access to the requested record; recommend that the custodian make the requested correction; or recommend corrections to the custodian’s procedures. Within a designated timeframe, the custodian must inform the Information and Privacy Commissioner of whether they will comply with the recommendations. If the custodian does not comply with the recommendations, the Information and Privacy Commissioner may, with the consent of the complainant, appeal to the court. If the Information and Privacy Commissioner does not make a recommendation, they are considered to have

confirmed the decision of a custodian to refuse to grant access or make a correction to personal health information.

The Information and Privacy Commissioner does not have to complete reviews where they are satisfied the custodian has responded adequately to the complaint; the complaint has been or could be more appropriately dealt with by a procedure other than *PHIA*; the complaint is in bad faith; or the length of time has elapsed for the review to serve a useful purpose. If the Information and Privacy Commissioner decides not to conduct a review, they must give notice of that decision, with reasons, to the complainant and the custodian and advise the complainant of their right to appeal the refusal of the custodian to grant access or make a correction to the court.

The Information and Privacy Commissioner may make recommendations to ensure compliance with *PHIA* and to inform the public about the *Act*. Additionally, the commissioner receives comments from the public about matters concerning the confidentiality of personal health information or access to that information, and provides assessments on the implications for access to or confidentiality of personal health information of proposed legislative schemes or programs or practices of custodians. Finally, the Information and Privacy Commissioner may comment on the implications for the confidentiality of personal health information of using or disclosing personal health information for record linkage or using information technology. The Information and Privacy Commissioner has the power to consult with any person with experience or expertise in any matter related to the purposes of *PHIA*.

Staff:

The OPIC's current staff list includes 13 positions:

- Information and Privacy Commissioner
- Director of Research and Quality Assurance
- Business Manager
- Administrative Assistant (x2)
- Senior Access and Privacy Analyst
- Access and Privacy Analyst (x7)

References:

- Access to Information and Protection of Privacy Act, SNL 2002, c A-1.1.
- Access to Information and Protection of Privacy Act, SNL 2002, c 16 at s 5.
- Access to Information and Protection of Privacy Act, SNL 2015, c A-1.2 at s 90, 92, 95, 97, 105, 106, 107.
- Canadian Press Newswire. "Report says Nfld. freedom of information act should cover more agencies." (July 19, 2001) Canadian Press Newswire.
- Government of Newfoundland and Labrador, Management Commission, Hansard, 74th Meeting, (25 September 2019).
- Michael Harvey, "Research Data Centres – A Regulator's Perspective" (August 2021) Journal of Privacy and Confidentiality 11 no 2.
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- Newfoundland and Labrador, Legislative Assembly, Hansard, 48th Leg, 1st Sess, No 29 (17 May 2016) at 1407.
- Newfoundland and Labrador, Treasury Board Secretariat, Political Activity Policy 2011, online: https://www.gov.nl.ca/exec/tbs/working-with-us/political/.
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- Office of the Information and Privacy Commissioner. "Annual Report 2021-2022" (2022), online: < https://www.oipc.nl.ca/pdfs/OIPCAnnualReport2021-2022.pdf>.
- Personal Health Act, SNL 2008, c P-7.01 at s 66, 67, 69, 72, 73, 74, 79.
- The Freedom of Information Review Committee, "Striking the Balance: The Right to Know & the Right to Privacy" (July 2001), Volume 1.
- Transparency and Accountability Act, SNL 2004 c T-81 at s4.

Office of the Seniors' Advocate

The newest of the statutory offices, the Office of the Seniors' Advocate, was established on December 14, 2016 after the *Seniors' Advocate Act* received royal assent.

Public consultations through the Let's Connect Initiative 2014 were held and the Office of the Seniors' Advocate was created as part of the five-point plan of Budget 2016. At the time, the Budget committed $500,000 to establish the office. The first Seniors' Advocate was officially sworn in on November 7, 2017 after the *Act* and Regulations came into force on July 5, 2017.

The Office of the Seniors' Advocate addresses systemic complaints and issues, including availability of appropriate housing, access to medications, accessible transportation or access to affordable food. The Office of the Seniors' Advocate is intended to supplement the work of the Citizens' Representative, who processes complaints from all adult citizens. The Seniors' Advocate is responsible for identifying and studying systemic issues that impact seniors. Systemic issues refer to problems that affect the overall system, rather than a specific or individual concern. These systemic issues are brought to the attention of the Office of the Seniors' Advocate through input from individuals, organizations, and service providers, as well as research and media reports. The issues fall under five broad categories: health care, personal care, housing, transportation, or finances. Systemic reviews may include research, consultations, and information requests.

While the Office of the Seniors' Advocate has no power to make recommendations about the treatment of individuals, the Office's reviews and research may be used by the Seniors' Advocate to make recommendations to government, government agencies, service providers, and community groups respecting legislation, policies, programs and services impacting seniors. The Seniors' Advocate then monitors its reports and recommendations to assess how they are implemented.

Legislation:

The Senior Advocate's mandate and responsibilities are set out by the *Seniors' Advocate Act, 2016*.

Power, Duties and Responsibilities:

The Office of the Seniors' Advocate defines its primary clients as seniors or individuals who are 65 years of age or older, and anyone in receipt of seniors' services.

To carry out its duties, the Seniors' Advocate has the power to receive and review matters related to seniors, initiate and participate in reviews, conduct research (including

interviews and surveys), consult with seniors, service providers, and the public, and request information (excluding personal health information and personal information).

The Office of the Seniors' Advocate does not have the authority to make recommendations about individual seniors' issues, making it the only statutory office limited to systemic investigations. If the Seniors' Advocate becomes aware of an individual senior's matter where that senior feels to have been treated unfairly or unjustly by a government department or agency, the Seniors' Advocate may refer that person to the Office of the Citizens' Representative. Individuals may also be referred to other appropriate resources including SeniorsNL, a non-profit advocacy organization which provides information, programs, and services to seniors in the Province. SeniorsNL records the details from all calls on its electronic tracking system. This information is also available to the Office of the Seniors' Advocate to help with its systemic monitoring.

The Seniors' Advocate is also responsible for ensuring that the public is aware of the Office's responsibilities and authority. Individuals can contact the Seniors' Advocate for information about the *Seniors' Advocate Act* and the Office's operations. Additionally, the Seniors' Advocate designs ongoing outreach programs throughout the Province to gather data and share information with the public.

Staff:

The current staff list includes the following four positions:

- Seniors' Advocate
- Systemic Advocacy Consultant (x2)
- Administrative officer

References:

- Government of Newfoundland and Labrador News Release. "2016 Budget Speech." (April 14, 2016)
- Government of Newfoundland and Labrador News Release. "Supporting Seniors in the Province." (December 13, 2016).
- Newfoundland and Labrador, Government of Newfoundland and Labrador News Release, 2016 Budget Speech, (19 July 2001).
- Newfoundland and Labrador, Legislative Assembly, Hansard, 48th Leg, 1st Sess, No 58 (13 December 2016).
- Office of the Seniors' Advocate, "Activity Plan 2018-2020." (2018), online: https://www.seniorsadvocatenl.ca/pdfs/OfficeOfTheSeniorsAdvocate2018-2020ActivityPlan.pdf

- Office of the Seniors' Advocate, "Activity Plan 2020-2023." (2020), online: https://www.seniorsadvocatenl.ca/pdfs/OSAActivityPlan2020-2023.pdf.
- Office of the Seniors' Advocate, "Activity Plan 2023-2026." (2023), online: https://www.seniorsadvocatenl.ca/pdfs/OSAActivityPlan2023-2026.pdf.
- Seniors' Advocate Act, SNL 2016 c S-13.002 at s 12, 16, 17, 20, 21.

RELEVANT ADMINISTRATIVE BODIES OF THE STATUTORY OFFICES

The following administrative bodies are also pertinent to this Review:

Independent Appointments Commission

The Independent Appointments Commission (IAC) is an independent, non-partisan body established in 2016 by the Government of Newfoundland and Labrador to provide merit-based, non-binding recommendations to the Lieutenant-Governor in Council.

The IAC is composed of a minimum of five to a maximum of seven members, appointed by the Lieutenant-Governor in Council on resolution of the House of Assembly. The chair of the commission is designated from the members by the Lieutenant-Governor in Council, and the vice-chairperson elected by the members of the commission. Members of the IAC do not receive compensation.

Members of the IAC serve for a term of three years and may be reappointed for an additional three-year term, to be served consecutively. During their tenure, a member may be removed by the Lieutenant-Governor in Council. When the House of Assembly is not sitting and a member of the commission cannot act due to accident, illness, incapacity or death, the Lieutenant-Governor in Council may appoint a person to act in their place. The appointment must be confirmed on resolution of the House of Assembly within 10 sitting days of the House next sitting.

The *Independent Appointments Commission Act*, under which the commission is established, applies to a wide range of public service appointments, including appointments to five out of the six statutory officers involved in this Review. (The IAC is not involved in the appointment of the Information and Privacy Commissioner.) For each appointment, the IAC chairperson selects three members of the Commission to a review panel who recommends three individuals for appointment. In making these recommendations, the IAC must work together with the Public Service Commission.

Public Service Commission

The Public Service Commission (PSC), established under the *Public Service Commission Act*, is composed of three members appointed from the public service, by the Lieutenant-Governor in Council. At least one member of the Commission must have served in public service for at least 10 years. Working under the *Independent Appointments Commission Act,* the Public Service Commission:

- advertises and receives applications for appointments, where vacancies exist;
- solicits and accepts applications and expressions of interest on an ongoing basis;
- creates and maintains a list of potential appointees based on received applications; and
- provides the Independent Appointments Commission with a list of all potential appointees, including a list of recommendable potential appointees.

Based on the recommendations made by the Independent Appointments Commission, candidates for statutory officers are selected by the Lieutenant-Governor in Council and appointed on resolution of the House of Assembly.

House of Assembly Management Commission

The House of Assembly Management Commission was established under the authority of the *House of Assembly Accountability, Integrity and Administration Act,* and it is a continuation of the Commission of Internal Economy of the House of Assembly established under the *Internal Economy Commission Act*. The Commission is responsible for the financial administration of all public money, within the *Financial Administration Act*, that may be voted on by the House of Assembly for the use and operation of the House of Assembly and statutory offices, and for any financial and policy matters that affect the House of Assembly, its members and its staff.

The House of Assembly Management Commission, chaired by the Speaker, is comprised of:

- the Speaker of the House of Assembly,
- the Clerk of the House of Assembly,

- the Government House Leader,
- the Official Opposition House Leader,
- two members from the government caucus,
- one member from the official opposition caucus, and
- one member, if any, from a third party that is a registered political party and has at least one member elected to the House of Assembly.

Additionally, a member of the Commission cannot serve concurrently as a member of the Public Accounts Committee, with certain exceptions.

As outlined by the Act, the House of Assembly Management Commission is responsible for:

- overseeing the finances of the House of Assembly, including its budget, revenues, expenses, assets, and liabilities;
- reviewing and approving the administrative, financial and human resource, and management policies of the House of Assembly and statutory offices;
- implementing and periodically reviewing and updating the financial and management policies applicable to the House of Assembly and statutory offices; and
- giving direction on matters that are related to the efficient and effective operation of the House of Assembly and statutory offices.

References:

- *House of Assembly Accountability, Integrity and Administration Act*, SNL 2007, c H-10.1 at s18, 20.
- *Independent Appointments Commission Act,* SNL 2016, c I-21 as amended at s 6, 7, 8, 10.
- *Internal Economy Commission Act*, RSNL 1990, c I-14.
- Newfoundland and Labrador, Legislative Assembly, *Hansard*, 48th Leg, 1st Sess, No 29 (17 May 2016).
- *Public Service Commission Act,* RSNL 1990, c P-43 amendment.

PART III – WHAT IS A STATUTORY OFFICE?

The six statutory offices at the centre of this review are puzzling, and their distinctive role in the system is regularly misunderstood. Even in the media, statutory offices are a fuzzy affair—at times they are neither sufficiently controversial to be well-known, but neither are they passive enough to go unnoticed.

Across the Commonwealth, "statutory offices" is a parliamentary term that is used loosely and inconsistently. The *Glossary of Parliamentary Procedure* makes no mention of statutory offices or agents of Parliament, merely defining "officers of Parliament" as "a position responsible to one or both Houses of Parliament for the carrying out of duties assigned by statute." This definition, however, refers broadly to all officers of the legislature, including non-statutory offices such as the Clerk of the House or the Speaker. A similar phenomenon is found across the Commonwealth. The *Erskine May* parliamentary procedure guide, for instance, does not use the term "Officer of Parliament," but lists permanent officers of one or other Houses (discounting the Lord Chancellor, the Speaker and their deputies), such as the Sergeant-at-Arms.

In Newfoundland and Labrador, the term "statutory officer" is defined in the *House of Assembly Accountability, Integrity, and Administration Act*, s. 1(r). However, the definition is simply a list of the statutory offices. It provides no sense of a statutory office's essential features.

The statutory office is a strange creature. A statutory officer is not elected and does not vote or speak in the House, but yet is tucked in under the administrative arm of the elected members of the legislature through the Clerk of the House of Assembly. A statutory officer is legislated to have the benefits of a deputy minister, yet they are not deputy ministers nor are they associated with any ministry.

As the term implies, statutory offices are created by government through specific legislation or statute. These statutes define the offices' limitations, powers, and responsibilities, as formally constituted organizations of the state. Typically, the legislation defines the office's mandate; the appointment, term of office, removal, and suspension of each officer, setting out the parameters, duties and responsibilities of the individual offices.

Statutory offices are characterized by several distinctive features. First, these offices operate independently, both in the decision-making and management of each office, from the executive and the legislature, free from political interference. Their independence is protected by a strong form of security of tenure, in which dismissing a statutory officer requires both cause and a resolution of the House. The goal of this security of tenure is to remove any threats to the impartiality and independence of the office, whether from the executive or the legislature. However, the central role of the legislature in removing statutory officers helps tie them to the legislative branch.

Second, while statutory officers have a great deal of autonomy in administering their own offices, their budget and financial management, human resources decisions and policies, etc. are overseen by the House of Assembly Management Commission and the House of Assembly service rather than by Cabinet. Their administrative ties to the House reinforce their legislative status.

Third, statutory officers must be appointed following a resolution of the House. This is unusual. The power to appoint senior officials is a central and jealously guarded function of the executive. Even judges, who are independent enough that they are often considered a separate branch of government, are appointed by the executive. The legislature's role in the appointment process cements the statutory officers' legislative role.

Fourth, while statutory officers have different mandates, they all report to the legislature about issues falling within their mandate. These reports provide statutory officers with a way to share their findings and recommendations to members and the public. The ability to report directly to the House of Assembly is not only a defining feature of statutory officers, but it is also distinctive among similar oversight bodies. It is also meant to safeguard their independence as they do not report to a Minister of the Crown or work under the directive of government.

These features are also critical in enabling statutory officers to carry out their main responsibility: to assist the House of Assembly in overseeing Cabinet and government departments. Question Period, committees, and debates can all be affected by partisan or political interests that can diminish serious evaluations from objective reality. By the same token, lack of time can constrain members in their ability to carry out in-depth assessments of the executive's performance or its use of resources. More importantly, perhaps, legislatures face an increasingly complex world with evolving technology and

needs, where "doing politics" requires additional expertise. Statutory offices are designed to address these limitations, by serving as impartial evaluators and by offering specialized knowledge and resources that may exceed the scope and expertise of individual members. Furthermore, statutory offices provide a direct avenue for the public to share their experience with government services and implemented policies, as primary users.

Taken as a whole, the defining and shared characteristics have two effects. First, they separate the statutory officers from the executive branch of government and attach them to the legislature. And second, they guarantee that the statutory officers enjoy a significant amount of independence even from the legislature.

Statutory officers' connection to the legislature is defining but also in many ways limiting. Its implications must be understood as part of the larger system of responsible government, which is built around a division between citizens, legislature, and executive. Under responsible government, policy is administered and (generally) developed by an executive Cabinet that has the confidence of a legislature elected by citizens.

Because statutory officers are not part of the executive, they cannot be responsible for administering or developing policy. Professor Paul Thomas, in his article "The past, present and future of officers of Parliament" described legislative agents as occupying "a kind of 'constitutional twilight zone'".

It may seem tempting to add ever-more offices to the legislative branch in the name of independence. This temptation comes with grave risks. Placing officers in the legislative branch derogates significantly from the government's actual responsibility for the development and administration of policy. To put it simply, insulating public bodies from the elected government is undemocratic and should be done as little as possible.

Public bodies should only be situated in the legislative branch in special circumstances. Even the courts, which are so defined by their constitutionally enshrined independence that they are sometimes described as a separate branch of government, are not separated from the executive.

The statutory officers' position in the legislature can only be justified by (1) a special connection to the legislature or to a special need for independence specifically from the executive and (2) a special mandate that does not interfere with government's responsibility to develop and administer policy.

CLASSIFYING STATUTORY OFFICERS

Despite the considerable variety of statutory officers across Canadian jurisdictions, statutory officers may be divided into two categories: primary and secondary. The primary statutory officers—the Chief Electoral Officer, the Information and Privacy Commissioner, the Ombudsperson (or Citizens' Representative), the Ethics Commissioner (or Commissioner for Legislative Standards), and the Auditor General—are generally present and common to all Canadian legislatures. They are characterized by the critical role they are perceived to play in the democratic system. These officers are generally charged with looking after basic mechanisms of accountability. In fact, in many ways, legislatures have become somewhat dependent on primary statutory officers to carry out these responsibilities which impact can directly influence the basic functions of governance.

Secondary statutory officers vary greatly, reflecting the distinctive needs and circumstances of each legislature, and can be further divided into: (a) specific statutory offices, and (b) supportive statutory offices. Specific statutory offices are designed to tackle exceptional issues that the legislatures may not have the resources to deal with, but feel they require considerable attention. For example, British Columbia has a Police Complaint Commissioner, while the Northwest Territories has an Equal Pay Commissioner. Supportive secondary statutory offices, instead, respond to the unique features of the system or provide support for particular laws. For instance, legislatures that are completely bilingual or multilingual, such as Quebec, New Brunswick, and some of the territories, have a Languages Commissioner. Despite these differences, secondary statutory offices are oftentimes characterized by narrower mandates and by greater variability. While some have existed for a long time, many others are recent additions, mirroring the evolution of modern governance. Others have changed over time, from stand-alone to amalgamated offices.

Another possible classification starts with the idea discussed above, placing a public officer in the legislative branch rather than the executive requires a special justification. The six statutory officers can be classified into three groups depending on the nature of this justification:

Legislative Officer. The Commissioner for Legislative Standards is involved in the day-to-day operations of the House of Assembly. The office's special connection to the legislature justifies their inclusion in the legislative branch.

Democratic Officer. The Chief Electoral Officer is responsible for maintaining the electoral system, the foundation of our democracy. Placing this office in the legislative branch prevents the government from manipulating the democratic process behind the scenes.

Transparency Officers. The Citizens' Representative, Child and Youth Advocate, Seniors' Advocate, and Information and Privacy Commissioner are all responsible for investigating and commenting on the executive's policy decisions and their administration of policy. This role requires, at a practical level, a special degree of independence from the executive.

The Citizens' Representative, Child and Youth Advocate, and Information and Privacy Commissioner all operate on some version of an ombuds model, in which they investigate individual issues and complaints and make recommendations based on their investigations. The Seniors' Advocate operates on an incomplete ombuds model, which will be described below.

Professor Paul Thomas, in his article, "The past, present and future of officers of Parliament," describes the ombuds model as one in which officers serve as the "eyes and ears" of the legislature, ensuring that legislators and the public understand how laws are actually being interpreted and applied. As a result, the transparency officers also have a role to play in maintaining the machinery of democracy, which further supports insulating them from the executive.

The Transparency Officers ensure that government services are provided to the public in compliance with the law and generally accepted principles by carrying out investigations and following up on public complaints. The main focus of these statutory offices, however, is on supporting the legislature's role in executive oversight by assessing government performance and carrying out policy evaluation programs, including the tabling of reports when considered necessary.

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THE STATUTORY OFFICERS AND JUDICIAL INDEPENDENCE

Statutory officers are a fairly recent addition to the Westminster constitution. By the time the first recognizable statutory officers were created in the nineteenth century, there was already a fairly mature conception of how to establish an officer's independence from the executive. To appreciate why the statutory officers take their current form, it is worth beginning with the development of judicial independence.

This history is significant because ideas about judicial independence have played a significant role in the development of statutory officers. However, I would also suggest that, with appropriate accommodation, the judicial model of independence could be tailored to meet the independence requirements of the statutory offices under review and, is perhaps, worth serious consideration. There is a subliminal tendency to treat judicial independence as something proprietary to the judicial system when, in reality, it is simply independence as applied to judges.

For our purposes, the development of judicial independence begins with security of tenure. Like statutory officers, judges have a strong form of security of tenure that has two branches: (1) they can only be dismissed for cause and (2) they can only be dismissed after a resolution of the legislature.

The "cause" branch has its roots in royal appointments in England. The monarch could choose to appoint officers either "at pleasure" or "during good behaviour". An officer with an "at pleasure" appointment could be dismissed at any time and could be easily influenced by the monarch. An officer with a "good behaviour" appointment had more independence. The monarch could only terminate the appointment by showing cause, often by a conviction or by an ancient writ of *scire facias*, which required the officer to show why their appointment should not be annulled.

The second branch, the House resolution, started as a limitation on good behaviour tenure. After the seventeenth century constitutional struggles established a limited monarchy, Parliament gradually limited the monarch's influence and independence, until eventually the monarchs effectively ceased participating in government and responsible government emerged. One important step in this process was the *Act of Settlement, 1700*, which provided among other things that "Judges Commission be made [during good

behaviour], and their Salaries be ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them."

The language of the *Act of Settlement, 1700* suggests that a parliamentary address was not an additional requirement for removing judges, but an alternative to establishing a breach of good behaviour. The security of tenure envisaged by the *Act of Settlement* was actually less than a traditional good behaviour appointment. And throughout much of the eighteenth and nineteenth centuries, that is how judicial security of tenure worked: a judge could be removed either by a parliamentary address or by demonstrating cause by *scire facias*, conviction, or impeachment.

In addition to guaranteeing judges' security of tenure, the *Act of Settlement, 1700*: required that judge's salaries "be ascertained and established". In other words, it recognized that judicial independence requires a measure of financial security. At the time, however, the salaries fixed under the *Act of Settlement, 1700* represented only a part of judges' income. Judges also took a share of court fees and sold offices in the courts. They could also hold other positions alongside their judicial duties. Lord Mansfield, for example, was a member of Cabinet. The expectation that a judge will not hold any other office and will rely on their salary alone took time to develop.

The idea of independence and of the separation of powers soon outgrew the limited provisions of the *Act of Settlement, 1700*. As the Honourable J. Derek Green described in his 2007 report, they exerted particular influence through the ideas of the French philosopher Montesquieu:

> *It was his [Montesquieu's] theorizing that influenced the formulation of the separation of the legislative, executive and judicial powers in the United States constitution. He felt that, as a defense against tyranny and the protection of political liberty, the power of the state should not be aggregated in one body but should, instead, be divided amongst three branches, which should act independently of each other in carrying out their respective roles. Each would then act as a check on the other and, in theory, one branch could not be called to account by any other.*

Montesquieu formulated his theories based on what he believed to be the way the English constitution functioned at the time. As has been pointed out by others since, there has never been a true separation of powers in parliamentary systems based on the English model. The operation of responsible government, with the Cabinet being responsible to the legislature, precluded it. It is this interconnection between the executive and the legislature that also weakens the notion of supremacy of parliament in practice. It leads,

in fact, to a situation where the executive, in many practical respects, controls the legislature. As these ideas about independence became entrenched in the political culture of the Westminster system, a parliamentary address began to be understood not as an alternative to cause, but as an additional requirement. The language of the *Constitution Act, 1867* parallels the *Act of Settlement, 1700*: "the judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons". But it is no longer possible to argue that Parliament could remove a judge without cause or that a conviction in a lower court could terminate a judge's tenure automatically and without further ado. The breach of good behaviour must be established in Parliament.

The ideas underpinning judicial independence in Canada were clarified after the enactment of the *Constitution Act, 1982*. The Supreme Court of Canada began to recognize that judicial independence was both an unwritten constitutional principle and an aspect of the constitutional right to a fair trial. In the landmark *Valente* decision, Le Dain J. concluded that there were three essential elements necessary to ensure the independence of the judicial system and, by extension, the judicial branch of government:

> *Security of tenure: "a tenure, whether until on age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive or other appointing authority in a discretionary or arbitrary manner.*
>
> *Financial Security: "security of salary or other remuneration, and, where appropriate, security of pension. The essence of such security is that the right to salary and pension should be established by laws and not be subject to arbitrary interference by the Executive in a manner that could affect judicial independence. In the case of pension, the essential distinction is between a right to a pension and a pension that depends on the grace or favour of the Executive."*
>
> *Institutional Independence: "The Executive must not interfere with, or attempt to influence the adjudicative function of the judiciary. However, there must necessarily be reasonable management constraints. At times there may be a fine line between interference with adjudication and proper management controls. The heads of the judiciary have to work closely with the representatives of the Executive unless the judiciary is given full responsibility for judicial administration." [Emphasis added]*

The first two aspects of judicial independence recognized in *Valente*, security of tenure and financial security, have been reviewed above. The third aspect, institutional independence, is also a significant issue for statutory officers. In a 2007 article, the then federal Chief Electoral Officer (Jean-Pierre Kingsley) was quoted as saying:

> *"Independence goes to structural issues which may impact on the ability of the decision-maker to perform his or her mandate. To be independent…is to work within an administrative or legislated structure which does not intrude upon or otherwise impede the due performance of one's statutory office according to the law. Independence, in other words, refers to the administrative structures which may be necessary to ensure that the performance of one's statutory mandate is not influenced by factors foreign to legal process itself."*

In *Valente*, Le Dain J. carefully noted a distinction between administrative independence necessary for the proper functioning of government and adjudicative independence necessary in the "exercise of the judicial function". He stated:

> *"The essentials of institutional independence which may be reasonably perceived as sufficient for purposes of s. 11(d) must, I think, be those referred to by Howland C.J.O. They may be summed up as judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function. To the extent that the distinction between administrative independence and adjudicative independence is intended to reflect that limitation, I can see no objection to it."*

In relation to statutory officers, it is the administrative element of government that is most likely to come into conflict with the independence of the statutory office. It is where the legitimate functioning of government and the independence of the statutory officer is at its most sensitive. These are the tectonic plates that generate trembles leading to quakes in the system. Over the past few decades, the procedure for removing judges in Canada has become further refined. Complaints are received and screened by the Canadian Judicial Council. Complaints that have merit are forwarded to a review panel, which considers whether the complaint is capable of justifying the judge's removal. If so, a full hearing panel will hold a public hearing, leading to a recommendation to the full Council, and ultimately a recommendation to the Minister of Justice.

The conduct review process under the *Judges Act* has two benefits. It ensures that anyone with a complaint or concern about a judge has an opportunity to have it fairly and fully heard. It also ensures that judges have a full and procedurally fair opportunity to respond to complaints before any action is taken.

When searching to put some flesh on the bones of independence, judicial independence is not the only place to look. The legislature also views itself as independent from both the executive and the judiciary and does not tolerate any interference that would impinge on its ability to function.

Legislative independence from the executive is a venerable constitutional principle which cemented its place in the Westminster system on the battlefields of the English Civil War. In principle and in law, the executive has no ability whatsoever to control the legislature.

In practice, the Westminster system has never operated without a close coordination between legislature and executive. Up until the nineteenth century, this coordination was managed by the "King's influence", the ability to secure support through patronage and rotten boroughs. Since the advent of responsible government, the right to form the executive is defined by the confidence of the legislature.

As the Supreme Court of Canada observed in *Wells v Newfoundland*:

> *The separation of powers is not a rigid and absolute structure. The Court should not be blind to the reality of Canadian governance that, except in certain rare cases, the executive frequently and de facto controls the legislature.*

This de facto control of the legislature by the executive occurs because:

> *on a practical level … the same individuals control both the executive and legislative branches of government. As this Court observed in* Attorney General of Quebec v. Blaikie *[1981] 1 S.C.R. 312 at p. 320, "There is a considerable degree of integration between the legislature and the Government. … [I]t is the Government which, through its majority, does in practice control the operations of the elected branch of the legislature on a day to day basis" Similarly, in* Reference Re Canada Assistance Plan *[1991] 2 S.C.R. 525…at p. 547:*
>
> *[T]he true executive power lies in the Cabinet. And since the Cabinet controls the government, there is in practice a degree of overlap among the terms "government," "Cabinet" and "executive."…In practice, the bulk of new legislation is initiated by government.*

The legislature's independence from the judiciary takes the form of the doctrine of "parliamentary privilege", which affords an umbrella protection to insulate the legislature or its members from interference. As the Honourable J. Derek Green stated in *Rebuilding Confidence, Report of the Review Commission on Constituency Allowances and Related Matters*:

> *"When properly invoked, the effect of the privilege is to insulate the person or the institution invoking it from interference from either the executive or the courts. It becomes a matter for the legislature, and for the legislature alone, to deal with and regulate the matters that fall within the parliamentary privilege umbrella. In this regard,*

> *therefore, the application of parliamentary privilege does reflect a separation between the legislature and the executive with respect to certain functions."*

Taken together, the factual coordination of executive and legislature and the doctrine of parliamentary privilege make it difficult to insulate a legislative officer from the government of the day. The party in power will generally be able to muster a majority to give effect to its wishes, and those wishes will not be questioned in court.

It appears then that the independence of statutory offices must take into account not only any potential interference from the executive branch of government but also from the legislative branch. At times, the analysis below will recommend some safeguards to protect statutory officers' independence even against the legislature.

At the same time, it is important not to express too low an expectation of elected members. They are not only capable of acting fairly and reasonably, but they often have a duty to do so. As the Honourable J. Derek Green noted in *Fairness, Reliability and Justification*:

> *It is important to emphasize that parliamentary privilege does not mean that the House is entitled to proceed illegally or unfairly. Privilege is not an exception to the rule of law. Instead, it is part of the constitutional architecture that gives meaning to the rule of law, defining a sphere in which the House is "the sole judge of the lawfulness of its proceedings". Within this sphere of privilege, the responsibility to uphold the law falls on the House rather than the superior courts, who cannot correct the House if it errs.*

<u>*References:*</u>

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THE STRUCTURAL TENSION OF INDEPENDENCE AND ACCOUNTABILITY

One of the main themes of this Review is the structural or organizational tension between independence, jurisdiction, and accountability as these terms relate to the statutory offices of the House of Assembly. The background information forming the Terms of Reference document states that:

> *"Each Statutory Office is led by a statutory officer and is independent of the executive branch of Government." [Emphasis added]*

This sets up the debate and asks the most significant questions forming the essence of this Review. That is, what is the meaning of being an independent statutory or legislative officer and what is the degree of accountability associated with this independent status? How is the jurisdiction of these non-elected bodies to be defined? To whom are they accountable? It is beyond mere academic curiosity to wonder why there is nowhere in the enabling legislation of these statutory officers to be found any definition of independence. The parallel issue to independence is that of accountability and, once again, the question is not addressed directly within the Terms of Reference but is obliquely referred to for review purposes in the Terms of Reference as "quality assurance and performance" and "appropriate administrative oversight model".

What do these terms mean? It appears that these are euphemistic terms for the more general concept of accountability. While there does not appear to be a complete or satisfactory mechanism to address accountability issues, it is noteworthy that for the six statutory offices under review, all have specific reporting clauses in their respective Acts requiring annual reports to the House of Assembly on "the exercise and performance of the duties and functions of that office". No doubt, these are seen as accountability requirements attached to the performance side of the individual statutory office and represent a form of legislated accountability. It is also apparent from the respective legislation that it can be anticipated that where independence and accountability are loosely or ill-defined, tensions will result amplifying the calls for answers.

It follows then that any contemplation of the scope and breath of this Review must strike an accommodation between independence and accountability. This does not mean there must be a balance between the two concepts; balance implies equality which is not always a workable outcome.

Total independence is not the goal. Independence must not be seen as license or unfettered freedom and absolute independence is not workable nor is it desirable. In his 2007 report, the Honourable J. Derek Green stated that "[i]ndependence and autonomy, in the abstract, do not justify exemptions from accountability." The administrative structure of government must be given room to operate through realistic accountability mechanisms, notwithstanding that at times friction will develop between the exercise of those two concepts of independence and accountability.

In addition to addressing the relationship between independence and accountability, this Review must also address the continuing uncertainty around the role that statutory offices play in the political system. Critics proffer that statutory offices have supplanted the legislature in their accountability role and threatens the very principle of responsible government. These independent bodies, according to critics, have essentially become "alien" institutions of the legislature, composed of non-elected actors, who may not have the expertise of the legislature or the executive itself to understand policy objectives and targets. These concerns have been heightened by unparalleled access that statutory officers have to the media and the public, and the fact that they are unburdened by the complexities that politicians may face like party discipline, cabinet solidarity or the pressure of upcoming elections. In the past, there have been significant tensions regarding statutory officers who communicate directly with the media, bypassing the legislature or launching constitutional court challenges without consulting the legislative body. This raises the legitimate concern of statutory officer accountability challenging the broadness of independence claimed by these legislative officers.

Supporters, on the other hand, argue that rather than supplanting the legislature, statutory offices complement the work of the legislature, furnishing members with specialized knowledge that would not be available otherwise, as well as in-depth analysis of investigations carried out independently. This additional step to policy evaluation programs strengthens government's ability to understand the implications of policies and the delivery of government services. Furthermore, statutory offices bring transparency to processes that are poorly understood outside of government and that generally do not receive public attention. More importantly, supporters argue the obligation to report back to the legislature binds statutory offices to the principles of parliamentary supremacy. In other words, statutory offices do not undermine the constitutional role of the legislature as they derive their authority from Parliament and have powers delegated by statute.

At the centre of this debate, referred to earlier, lies a second serious concern, that of the tension between independence and accountability. As independent bodies of the executive and the legislature, statutory offices wield significant power to investigate and report on any matters under their jurisdiction. In fact, the majority of enabling legislations (with the exception of the Seniors' Advocate in Newfoundland and Labrador), provide statutory offices with the freedom to initiate investigations when necessary. This political power is critical for statutory officers to provide non-partisan information to the legislature and ensure that they can do so fearlessly with security of tenure. Unchecked, however, this political power can undermine the very essence of statutory offices, transforming this freedom into a vehicle to serve personal and political interests. There is evidence, some argue, that statutory offices have become less neutral as they advocate for certain political values in the discharge of their duties. This concern has been underscored by statutory offices who have contacted the media to advocate for larger mandates that centre around policy making powers. For example, Ontario's Environmental Commissioner in 2007 was perceived as engaging in what is referred to as "mandate creep" or "policy advocacy," as he publicly advocated and pressured government to reform its policies regarding the aggregate extraction industry.

These issues reflect a considerable lack of accountability framework for the statutory officers themselves, who are much like public servants and must be perceived as above partisan disputes but accountable for their behaviour. Yet, this tension is not simply a matter of policy, instead it speaks to the very nature of these roles and how they are defined. The concern surrounding statutory offices advocating for mandates that expand the scope beyond what is legitimate, however, is not a reflection of an inherent issue with the role of statutory offices, but an unwillingness of the legislature to better define these positions or provide accountability. Many statutory offices across Canada have raised alarms at what they consider to be a complete lack of interest from governments and legislatures to engage with annual reports or recommendations.

Jonathon Malloy in his recent book *The Paradox of Parliament*, stated of the federal officers of Parliament:

> *The officers of Parliament are both a unified category and a sprawling collection with little in common with each other…*
>
> *The system of parliamentary officers is an eclectic mess because each was created at a different time to fulfil a specialized purpose, rather than as a comprehensive network. They remain often very different from one another. Some have clear operational*

> *responsibilities, such as approving the public accounts, administering access to information appeals, or registering and tracking all lobbying activity. Others are solely complaint driven, like the Conflict of Interest and Ethics Commissioner or the Public Sector Integrity Commissioner. Some investigate broad policy areas, like the Privacy and the Official Languages commissioners; some are limited to specialized inquires. Officers may have a combination of the above responsibilities. They also vary considerably in size from the hundreds of staff in the office of the Auditor-General to much smaller operations.*
>
> *The one thing they all have in common is that they are responsible to Parliament, not to the Government of Canada.*

He further comments in relation to ongoing controversy surrounding parliamentary officers that:

> *Some observers, notably Donald Savoie, argue that officers have ballooned out of control and "they now appear to function as free agents accountable to no one." Sharon Sutherland has long been a particular critic of the Auditor-General, saying the office holds "what may be the loosest and most incomplete set of responsibilities for a state auditor in existence." In Savoie's view, "Parliament has contributed to its own decline by effectively outsourcing the scrutiny function to independent officers."*

He concludes by saying:

> *Officers of Parliament are clearly here to stay, though their exact number and configuration are likely to continue evolving in the future. But they remain an exceptional and somewhat unclear aspect of Parliament. They do not fit neatly into the logic of either governance or representation. They work for parliamentarians, but are largely independent even of Parliament. Officers' relationships with Parliament are symbiotic more than dependent – that is, each side uses the relationship for its own ends. And because their focus is the scrutiny of government, officers will typically be more popular on the opposition than the government benches, regardless of which party is in power, as an extension of the overall parliamentary game between government and opposition.*

The points made by Malloy are important to keep in mind when considering the structure of the Newfoundland and Labrador statutory offices. There is pressure to make room for additional interests and also to expand the responsibilities of the existing six offices.

Clearly, statutory offices cannot be seen as unaccountable. That would simply be runaway independence. These offices, nonetheless, must be maintained as independent and effective offices within realistic boundaries of accountability. Whether or not the number of offices, or the responsibilities of the existing offices, need to be redefined will be considered further on in this Report.

The subjects addressed in this section illustrate the underlying concerns relating to statutory offices and which potentially add to the misunderstanding of these important legislature bodies. Statutory offices are critical and necessary tools through which the legislature maintains itself and exercises oversight of the executive, but ongoing issues highlight the need for a reconsideration of how tensions surrounding statutory offices are managed.

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PART IV – ISSUES, OBSERVATIONS, ANALYSIS AND RECOMMENDATIONS

STATUTORY OFFICES STANDING COMMITTEE

Before diving into the topics and questions set out in the Terms of Reference, it is important to explain the central structural component of my recommendations. I have arrived at this foundational recommendation having examined the issues all together and having assessed the alternative solutions for each individual topic. At the risk of presenting my recommendations in too much detail before explaining my analysis of each of the issues, I believe that a brief introduction to the concept of a committee of legislators or a "Statutory Offices Standing Committee" is helpful to contextualize and inform the remainder of this report.

As I hope will become clear in the reading of this report, the tension between the independence and the accountability of the statutory offices permeates through all of the issues identified in the Terms of Reference. What became very evident in this Review is that an ad hoc approach to each issue (whether it be compensation, appointment, discipline, removal, oversight or management of conflicts, etc.) produces only a collection of band-aid solutions; and these solutions would require continual or frequent review.

As it is currently, there are different mechanisms or processes to administer different parts of statutory officers' work— the processes and actors involved in the appointment processes are different from those of removal, for example. In some cases, there are different mechanisms and processes created for different officers. Aside from the Clerk of the House of Assembly (and the Management Commission to some extent), no one entity has enough familiarity or involvement with the statutory offices or their work—and even then, the Clerk has very limited involvement. When problems arise, it is not clear who should provide answers or make changes. The statutory officers and the executive and legislative branches of government would benefit from a single body that encounters the statutory officers often enough in different contexts to gain a deeper understanding of how statutory offices ought to function.

In that regard, a broader institutional design is appropriate. The right design can anchor the independence of the statutory offices on a structural level and also ensure that

a single body within the legislature oversees and facilitates the mechanisms for accountability. The question becomes: how should this system be designed?

In other contexts, for example, judges and self-regulating professions, committees are formed, drawing from the ranks of the judiciary and members of the profession. This ensures complete independence from government. However, the statutory officers are not numerous enough for self-regulation to be appropriate. There would always be a risk that the working relationship between the statutory officers could sway the course of an investigation or that an investigatory decision might jeopardize working relationships going forward.

Another option is to create an independent non-partisan committee to manage and oversee the statutory officers. For example, a committee could be formed with one member nominated by each of the Benchers of the Law Society, the President of Memorial University, the Chief Judge of the Provincial Court, and other independent public bodies. A committee of this kind would give statutory officers the same degree of independence characterizing judges and self-regulating professions. This model was employed for the selection process of the Information and Privacy Commissioner.

After reflection, I have decided that the highest degree of independence from the political world—independence to the point of separateness—is not desirable for statutory officers. Statutory officers are not like judges and professionals, whose spheres of responsibility lie outside electoral politics. Although the statutory officers require independence from the legislative and executive branches, they cannot be separated from them:

- The three advocacy offices (Citizens' Representative, Child and Youth Advocate, and Seniors' Advocate) have no independent powers or function. Their effectiveness is tied to their relationship with the legislature and executive.
- The two legislative offices (Chief Electoral Officer and Commissioner for Legislative Standards) are fundamentally concerned with the composition and maintenance of the legislative branch.
- The Information and Privacy Commissioner's quasi-judicial responsibilities could have been placed in an entirely independent body. However, their regulatory responsibilities depend on constant and productive engagement with government, and their advocacy work is similar to the advocacy work of the other advocacy officers.

Having considered this matter fully, I am satisfied that the right balance is for the statutory officers to be overseen by a committee of legislators applying clear principles guaranteeing officers' independence. That ensures that statutory officers will report actively to the legislature and that the legislature develops an understanding of them and their work.

Because this Committee's responsibilities are similar to those of the House of Assembly Management Commission, it might seem natural to entrust these responsibilities to the Management Commission. Indeed, a common theme from participants' submissions and comments was that certain functions/activities should be performed or managed by the House of Assembly Management Commission. However, the Management Commission, as a statutory body, does not have the legislature's distinctive powers and immunities and cannot report its conclusions directly to the House. In this context, I believe a standing committee of the legislature would be more appropriate.

For the purposes of this report, I am calling this committee the "Statutory Offices Standing Committee" (or Standing Committee). This Standing Committee should have the same composition as the Management Commission, except for the Clerk of the House of Assembly, who would support the Standing Committee instead of serving as a nonvoting member. Its meetings can generally be held concurrently with the Management Commission.

As opposed to a select committee, and in contrast to the practice of some other Westminster jurisdictions, standing committees in the House of Assembly are able to act even when the House is adjourned or prorogued, and their membership and business continue from one session to another. The only time when the Standing Committee would be unable to act is during an election. In the unlikely event that an urgent action is required in the midst of an election, the Standing Committee's functions should pass to Cabinet.

It is possible that, from time to time, an election may interfere with some of the Standing Committee's responsibilities. After the election, a new committee with different membership cannot be expected to resume business as if there had been no interruption. Nor would it be practical to expect an appointment, removal, or performance review process to lapse altogether and start from scratch. It is difficult to set a rule to prescribe how the new committee should treat the old committee's unfinished business: too much

depends on exactly where the work was left and on whether the new committee is comfortable with the choices made by the old. But the *Standing Orders* should be amended to ensure that, following an election, the newly composed Standing Committee will examine the records of the old and will have the power to take up any unfinished business as it considers fair and with such additional directions as may be appropriate.

I am aware that it may seem concerning to give Cabinet special powers over the statutory officers that can, in effect, be exercised only during an election, when Cabinet interference is least appropriate. However, Cabinet has held these powers throughout the history of the Westminster system without incident. Any actions taken during an election must be guided by the caretaker convention, under which the government may only take routine, noncontroversial, or urgent actions during an election period.

For the Standing Committee system to work, there needs to be a plan for who can exercise its powers during an election and a plan for ensuring that those powers are only exercised in rare appropriate circumstances. Cabinet has the resources to assume the Standing Committee's functions, and the caretaker convention provides a mature and appropriate body of principles to limit its actions. I am satisfied that Cabinet is the most appropriate body to fulfill this role.

A natural concern about allowing a committee of legislators to oversee the statutory officers is that the government will be able to control the committee through the party system and a working legislative majority. This point was noted by a number of participants. It is true that, in theory, a government could use party-line votes to remove a statutory officer unfairly and irrationally. The procedures recommended below do not prevent a legislative majority from acting wrongly.

The answer to this concern is that the Westminster system does not aim to tie the hands of a legislative majority tightly. An elected majority has great freedom to act, for better or for worse. They could always abolish the statutory officers or dismiss them by statute if they wished. The purpose of these procedures is not to force the majority to respect statutory officers' independence. It is to describe what respect for independence entails and to ensure that any disrespect must occur and be justified openly.

It is ultimately for the electorate to decide whether it approves of its representatives. If an elected majority chooses to act irrationally or unfairly, and the public knows and approves, that is a larger problem than this Review can address.

I am also mindful of other skepticisms towards committees of the legislature. Participants have pointed to the historical lack of use of House committees, particularly in the Newfoundland and Labrador legislature. The concern is that committee members might lack the expertise, capacity, or time to oversee statutory officers or perform time sensitive functions effectively. For instance, the Public Policy Forum committee argued:

> *Members' disinterest and lack of expertise is a shortcoming of legislative committee oversight. The situation is exacerbated by a lack of research capacity within the committee system…*
>
> *In a federal all-party legislative committee example, one former statutory officer noted that it was successful when the government was in a minority position but once the government won a majority, the idea that a parliamentary committee could act independently from the party in power "went out the door" and the panel died. According to another former statutory officer, the advantage of the Panel was that it forced accountability on all sides. But the problem with the panel was a lack of capacity and the fact there was "nothing in it" politically for the MPs who participated in it, so interest waned.*

Part of the answer to this concern is that the same elected members are entrusted with many challenging responsibilities, including approving the budget and debating legislation on technical topics. I agree with one participant that stated:

> *The proposition that members of the legislature do not have a level of expertise to oversee statutory offices is unacceptable. They're not necessarily experts in hydropower or child protection but there is legislation in all of those areas. Elected members can learn. Certainly those who are appointed to standing committees develop some level of expertise or are, hopefully, supported in their work by the legislature.*

As for disinterest or lack of capacity, the answer is that this is not necessarily the case. The Public Accounts Committee, for example, appears to be an effective committee of the legislature and is a fine example of a legislative oversight mechanism working well.

Elected members can also manage their difficult responsibilities by engaging assistance. In addition to the support from the Office of the Clerk of the House of Assembly, the Standing Committee will need expert advice to discharge its responsibilities. It will likely need to delegate some of its responsibilities entirely, either for practical reasons or to guarantee the independence of a decision.

As I will recommend in this report, the Standing Committee will have various oversight responsibilities and functions. In recognition of the significant workload for the

members of this Committee, I recommend that the Standing Committee members be compensated.

Recommendation 1: A "Statutory Offices Standing Committee" should be created. Its membership should mirror that of the House of Assembly Management Commission, with the exception of the Clerk of the House of Assembly who would support the Standing Committee, instead of serving as a nonvoting member.

Recommendation 2: The Standing Committee should have the discretion to engage assistance or services of the House of Assembly Service or external services in performing its duties.

Recommendation 3: During elections, Cabinet should be able to exercise the powers of the Standing Committee.

Recommendation 4: The Standing Orders should be amended to ensure that, following an election, the newly composed Standing Committee may examine the records of the old Standing Committee and will have the power to take up any unfinished business as it considers fair and with such additional directions as may be appropriate.

Recommendation 5: The members of the Statutory Offices Standing Committee should be compensated.

References:

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NUMBER AND STRUCTURE OF STATUTORY OFFICES

Now that I have described the Statutory Offices Standing Committee, I turn to the next largest structural pieces of the Terms of Reference:

- The number of statutory offices and whether a statutory officer could fulfil the obligations of more than one statutory role; which offices/statutory officers could be combined based on common objectives, functions, qualifications, clients, etc.; and
- Whether each Statutory Office requires the dedication of a full-time statutory officer or whether it could be part-time or on an as-needed basis.

These items raise significant structural questions and the Review received numerous comments and submissions on these two terms. Several major questions emerged in relation to both:

- Should the advocate offices be consolidated/amalgamated?
- Should the number of offices be reduced?
- Should the number of offices be expanded? Should we create, for example, a Disabilities Advocate?
- Should the Chief Electoral Officer and Commissioner for Legislative Standards roles be separated or remain as a combined role?
- Should the mandate of any of the offices be expanded? In particular, should the Seniors' Advocate be given investigatory powers? Should the scope of the Commissioner for Legislative Standards be expanded?
- Should the mandate of any of the offices be reduced or focused?

The question of reducing the number of statutory offices appears to be limited to the offices with advocate functions, namely the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate, and the Information and Privacy Commissioner. The focus on the advocates' roles is understandable. The advocates' roles are more similar to each other. They even overlap sometimes, in that the same situation might fall within the mandates of more than one advocate. The advocacy function is structured differently in different jurisdictions, and some scholars continue to question its value or appropriateness.

I have not received any suggestion that the Offices of the Chief Electoral Officer and the Commissioner for Legislative Standards should or could reasonably be combined either with each other or with another office. Nor is it clear to me in principle why this would be beneficial. I will not be discussing these offices in this section.

At the same time, the Review received numerous letters and submissions in support of the advocate offices, maintaining that these offices should continue to exist and keep their stand-alone form. The Review also received submissions that suggested that these offices are similar and should be amalgamated or reduced in some fashion for budgetary or simplicity reasons.

Before addressing these questions directly, I address several questions that seem to me to provide important background for this analysis:

(1) What is the constitutional role of these offices?

(2) How should the advocacy function be defined and limited?

(3) What should be the focus of special advocates, i.e. advocates like the Child and Youth Advocate that focus on the needs of a specific group?

(4) Given that many submissions expressed a concern that consolidation of offices was a pretext for budget cuts, what is the relationship between funding levels and the proper structure of these offices?

What is the constitutional role of statutory officers with advocacy and investigatory functions?

At the moment, the Citizens' Representative, Child and Youth Advocate, Seniors' Advocate, and Information and Privacy Commissioner all have powers to investigate and comment on government policy. Before discussing the structure of these offices, it is important to ask, at a higher level, how this investigation and advocacy function fits into the larger constitutional system.

Many observers struggle to reconcile these independent advocacy and investigatory roles with the system of responsible government. Some call them a new branch of government. They are an affront to the basic principle of Canadian democracy, according to Megan Furi; a symptom of legislative decline, according to David Pond. Donald Savoie has written that, "For the most part, they answer to themselves and play to the media."

Contrary to these negative assessments, I believe that the statutory officers' mandates are compatible with and can reinforce the basic principles of responsible government. The starting point is that statutory officers are not part of the executive. They should not be responsible for administering policy and nor should they be understood as setting their own policy agendas different from the government's. Instead, their advocacy work should be understood as supplementing traditionally legislative work:

(1) They scrutinize the behaviour of the executive and bring to light information which might inform decision-making by the executive, legislature, or the populace.

(2) These officers can also help individuals navigate the executive bureaucracy. However, this role cannot be exercised so frequently that the statutory officers become, in effect, part of the frontline staff administering policy.

The overlap between statutory officers' investigative and advocacy work and MHAs' traditional constituency and committee work is worth noting. In principle, if the statutory offices were abolished, the House and individual MHAs could fill the gap. However, as Dickson C.J.C. described in the 1984 Supreme Court of Canada case, *British Columbia Development Corporation v. Friedmann (Ombudsman)*, the ombuds function responds to the changing nature of modern society and government:

> *The traditional controls over the implementation and administration of governmental policies and programs—namely, the legislature, the executive and the courts—are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies is such that they are naturally unable to give careful attention to the workings of the entire bureaucracy. Moreover, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue.*

Some participants noted that the public received better results going to their constituency offices than going to a statutory office. While that may be true in some isolated incidences, in practice, it is unrealistic to assume that MHAs and the House could simply take over the statutory officers' work seamlessly. The statutory offices need significant staff resources and expertise to do their jobs. Either the rest of the legislative branch would need to be reconfigured or the level of investigation and advocacy would fall precipitously.

As I have explained, the statutory officers' advocacy and investigatory mandates can and should support traditional legislative functions. The challenge is to ensure sufficiently robust accountability structures, so that statutory officers support responsible government in fact and not just in theory.

What is the proper scope of a statutory officer's advocacy?

The Citizens' Representative, Child and Youth Advocate, Seniors' Advocate, and Information and Privacy Commissioner all have explicit advocacy roles. In light of the concerns reviewed above, it is worth considering how these powers should properly be exercised.

The Citizens' Representative and Child and Youth Advocate's investigatory powers are subject to jurisdictional restrictions. The officers are both forbidden to investigate decisions by, among other bodies, the legislature, Cabinet, or the courts. The Citizens' Representative is also forbidden from investigating matters "falling within the office of the child and youth advocate under the *Child and Youth Advocate Act*".

Neither the Information and Privacy Commissioner nor the Seniors' Advocate are subject to similar restrictions. In the Information and Privacy Commissioner's case, this may be because the *Access to Information and Protection of Privacy Act, 2015* was drafted by an independent review. In the Seniors' Advocate's case, it may reflect the lack of individual investigative powers.

It is difficult to define these statutory officers' roles in jurisdictional terms. The concept of jurisdiction comes from a judicial context. If a court acts beyond its jurisdiction, its decisions may be appealed or set aside or even (though this is rare in a modern Canadian context) may even be unenforceable. This concept fits awkwardly for statutory officers, whose reports do not generally have binding legal effects and are not subject to appeal.

The non-binding nature of advocates' reports also makes it difficult to understand jurisdictional limits. Applying decisions by, for example, the legislature, Cabinet, and the courts requires some interpretation of those decisions, which leads inevitably to some analysis of the policies and reasons underlying them. For a judicial body, this analysis does not require any jurisdiction to investigate these decisions. The court's jurisdiction is defined by the kinds of orders it can issue, not the kinds of analyses it can perform. But

for a statutory officer whose only powers are to analyze and comment, this line is difficult to draw.

Instead of using jurisdictional language, the proper limits on an officer's advocacy role are better understood in light of an officer's role. From a legal perspective, officers like the Citizens' Representative or Child and Youth Advocate can only express an opinion. Their opinion has no direct effects; its efficacy depends on persuading other officers to exercise their legal powers differently.

It is also important to appreciate that, while statutory officers may bring significant knowledge and credibility to their work, they cannot resolve issues through their credentials or technical expertise. The statutory offices do not and cannot synthesize all the possible ramifications or complexities inherent in policymaking before making recommendations. For example, a complete technical analysis of whether to fund a particular program would require weighing it against other, competing needs for funds. Statutory offices have neither the resources nor the mandate to perform this analysis. They must instead make recommendations based on an informed but partial perspective.

Even if the statutory offices could provide a systemic factual analysis of policy issues, these issues are often entwined with controversial questions of values.

Where the government and the courts have some intrinsic legitimate authority to resolve these irresolvable issues, a statutory officer does not. They have no democratic mandate and they are not an authoritative interpreter of the law. Statutory officers can offer well informed and good opinions, anchored in best practices, international standards, academic or judicial opinions. However, their opinions are not binding. A statutory officer is also constrained in the style of their advocacy. While statutory officers are not members of the executive branch, they are still servants of the Crown and must remain politically impartial. They should not adopt the rhetorical or tactical posture of an activist, op-ed columnist, or opposition member. They should not aim to inflame public opinion. They should not seek to be the focus of public attention or to be stars.

This is not to say that a statutory officer may not put their concerns before the public. Doing so is a necessary part of their role. But they should aim to inform and to promote a deeper understanding of issues. They should leave the more confrontational parts of political debate to others.

While a statutory officer must avoid an aggressive public posture, they must also avoid back-room operations. They are an independent officer responsible to a public legislature. They may offer their opinions in private, but they should not negotiate behind the scenes, trade horses, or form coalitions. They should rely on the strength of their arguments and not solicit support or public statements from others.

Taken together, these constraints provide considerable clarity about a statutory officer's role. A statutory officer has been given special powers, resources, and expertise to monitor and report on government action, and the independence to do so without fear of loss or hope of benefit. However, they can use these powers only to persuade and, more specifically, to persuade through information and reasoned argument.

This conception of statutory officers' role limits their ability to play politics effectively to achieve results. This limitation is appropriate. The constitutional purpose of statutory officers is not to achieve results but to support democratic decision-making. It is a success if a statutory officer's report leads to an informed and considered democratic decision, even if that decision is entirely contrary to the statutory officer's recommendation and opinion. It is a failure if a statutory officer subverts the democratic process by inappropriate rhetoric or maneuvering, even if they achieve their preferred outcome.

These limits on a statutory officer's role are not jurisdictional in nature. They are ethical. They should find expression in the statutory officers' Code of Conduct, not their constating legislation. They should be enforced through the oversight of a standing committee, not through judicial review or appeals.

Recommendation 6: Statutory officers' code of conduct should be amended to provide greater clarity in relation to the appropriate scope of advocacy.

Another kind of limitation on statutory officers' advocacy or investigation arises between statutory officers with different mandates. Who should take the lead when a policy issue can be approached from the perspective of the Child and Youth Advocate, the Seniors' Advocate, or the Citizens' Representative? This problem is discussed in more detail below.

What should the focus of special advocates be?

Why are there advocates for Seniors and for Children and Youth, but not for people with disabilities, racialized people, or other disadvantaged groups? A naïve starting point

would be that every group that is disadvantaged or underrepresented by the political process should have its own advocate. It is worth exploring why this is unworkable.

To begin with, there are many different grounds of disadvantage in society. For example, the *Canadian Charter of Rights and Freedoms* recognizes "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability" as significant potential grounds of discrimination in our society (s. 15(1)). The jurisprudence has recognized, as analogous grounds, non-citizenship; marital status; sexual orientation; and aboriginality-residence, and more categories may yet emerge.

Disadvantaged groups are more numerous still. For example, the Child and Youth Advocate and the Seniors' Advocate both approach the ground age from the perspectives of the young and the old. The perspectives and circumstances of the young and old are different enough that it might be difficult for a single advocate to represent both fairly. The other grounds of inequality in our society are also complex and, perhaps, even more so.

If it were feasible to classify all the disadvantaged groups in society and create advocates for them each, the classification would likely distort public understanding as well as clarify it. Many issues will not fit squarely into any one advocate's bailiwick, and the experience of individuals experiencing multiple grounds of disadvantage may not be fairly represented by advocates viewing each ground in isolation.

At a higher level, the plan of representing every concern or disadvantage through special advocates would be misguided even if it were possible. Within constitutional bounds, conflicts between our society's many interests and perspectives can and must be resolved primarily through a democratic process of public discourse and contested elections. Special advocates may inform and supplement that process, but their voices must not crowd out the voices of the communities they purport to represent.

Since special advocates cannot be created to represent every disadvantaged group, it is a challenge to identify an appropriate role for special advocates. The legislature can hardly rank the grounds of difference or disadvantage. It should not create advocates arbitrarily or, worst of all, to curry favour with those who are already politically powerful by further amplifying their concerns.

The fundamental problem is that disadvantage is too omnipresent in our society for a system of special advocates. One possible response is to consolidate all policy advocacy

into a single office, which will consider questions of disadvantage in a broader intersectional manner and not from a single vantage point. Another is to maintain some special advocates, but to narrow their focus from disadvantaged groups to groups who are *unable* to advocate for themselves within the normal democratic process. This narrower focus greatly reduces the number of groups concerned and the problems of interaction and overlap. It allows special advocates to be defined in a principled manner, and it eliminates concerns that advocates' voices will impinge on the democratic process or crowd out the voices of those they represent.

The Child and Youth Advocate is already focused on those who are unable to advocate for themselves. Its mandate focuses on children under sixteen, youth from sixteen to nineteen, and a small number of youths who are under 21 and who have been deprived of their liberty because of events while they were a minor (*Child and Youth Advocate Act*, s. 2(c) and (g)). Most children are unable to advocate for themselves for developmental reasons. Every youth is legally excluded from much of the democratic process. Under the age of 18 they are unable to vote or run for office. Under the age of 19 they are unable to represent themselves in court. As for the small number of youths between 19 and 21, the Child and Youth Advocate only represents them in respect of the lingering legal consequences of their childhood. The Child and Youth Advocate's mandate is appropriate.

The Seniors' Advocate's mandate is less focused. Many seniors are not only able to advocate for themselves but very much have the ability to do so. The numerous submissions the Review received from seniors and seniors' organizations attesting to the importance of the Seniors' Advocate is a testament to the political astuteness and organization of this Province's seniors.

While the Seniors' Advocate's mandate may currently be unfocused, it is also important. Many seniors are, due to age and medical issues, entirely unable to advocate themselves or even to manage their own affairs. There are also seniors who are able to care for and advocate for themselves today, but whose capacity may be precarious due to health reasons.

It is also important to recognize that the Seniors' Advocate's mandate is not limited to those over 65. It also includes a wide range of people who rely on "seniors' services." This includes many people with disabilities or medical issues that leave them unable to advocate for themselves. This group has significant overlap with the individuals who are

unable to advocate for themselves due to age and would benefit from the same kinds of policy advocacy.

As with seniors, not all people with disabilities are unable to advocate for themselves. The Province's vibrant and effective disability community reflects people with disabilities' strong advocacy skills.

At this stage, it is essential to reject the stereotypical association of seniors and people with disabilities. Seniors and people with disabilities are different groups with very different needs and perspectives. A young worker at an inaccessible workplace should not be lumped together with an older worker who is wrongly assumed to have limited mobility.

While seniors and people with disabilities are very different groups, people who are *unable* to advocate for themselves have much in common. For example, people who cannot speak face similar challenges and need similar services whatever their age. It would not make sense to distinguish those who are unable to advocate for themselves due to age from those who are unable due to disability, either to create separate advocates or to offer an advocate to one group but not the other.

There are people of all ages in our Province who have multiple complex disabilities, including physical, sensory, neurological and cognitive issues, and who require 24-hour-a-day intimate care. Many of these people have no ability whatsoever to advocate for themselves. These are the invisible people. The Seniors' Advocate's mandate should be reconceived to focus on those who are unable to advocate for themselves due to age, health, or disability. There should be a single advocate for seniors and persons with complex needs.

A "Seniors and Complex Needs Advocate" will inevitably encounter many issues that relate to seniors or people with disabilities who are able to advocate for themselves. In general, the appropriate course will be to refer these issues to the Citizens' Representative.

A narrow focus on those who are *unable* to advocate for themselves leaves few openings for other special advocates. One possible group are noncitizens, who are unable to vote or hold political office. However, non-citizens do have other means of advocating for themselves, and their limited political rights do not reflect their capacities but rather the theory that "citizenship, not residence, defines our political community and underpins the right to vote" (*Frank v. Canada (Attorney General)*. If this theory is right, the limitations

on noncitizens' political participation are appropriate and do not need to be remedied. If this theory is wrong, the limitations on noncitizens' politics are wrong and should be removed. In neither case is a special advocate the right answer.

> **Recommendation 7**: The Senior's Advocate's mandate should be reconceived to focus on those who are unable to advocate for themselves due to age, health, or disability. The Office should be renamed as the Office of the Seniors and Complex Needs Advocate.

What is the connection between funding levels and the advocacy function?

The Review received many submissions expressing concern that any restructuring of the statutory offices would be a pretext for budget cuts. Having considered the issue, I do not share this concern, and it is important to explain why.

The structure of the advocacy offices is a different question from the scope of the investigation and advocacy mandate and the level of funding available. Whether functions should be divided and consolidated is a fundamentally different question from whether the mandate should be wider or narrower and from whether the budget should be increased or reduced. A consolidated office could have a wide mandate and generous funding. A small budget could be divided among several distinct offices with different mandates. It is possible to mix and match.

This Review cannot and should not make recommendations about funding levels. It has not investigated the Province's finances or competing demands on public funds, and even if it had, the Province's finances change every year. The level of funding available for advocacy is an irreducibly political choice that must be made anew every year through the budget process.

This Review's analysis is not very sensitive to funding levels. Statutory officers will have to make difficult choices about priorities under almost any conceivable budgetary regime. The question is how the offices should be structured to best discharge their mandates, whatever the funding level available.

In circumstances of significant austerity, there is one aspect of the Citizens' Representative or Child and Youth Advocate's mandates that the legislature could reconsider. At the moment, these officers have limited grounds for refusing to investigate a complaint. These grounds do not appear to allow the officers to refuse to investigate a complaint based on a shortage of resources or to prioritize another investigation. The

inability to decline to investigate a complaint for resource or priority reasons places some limits on these offices' ability to prioritize resources and manage their workloads. This limitation may be appropriate when the offices are amply resourced, but would become a significant hindrance if funding levels are resourced.

At some point, if the legislature is unwilling or unable to fund the offices at a level permitting officers to investigate every complaint thoroughly, the legislature should have to consider allowing the officers to prioritize their own workload. Fortunately, this step has not been required so far. As I have not investigated the funding levels available for these offices, it would be inappropriate for me to make any recommendation about this question.

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Restructuring and Consolidation

As discussed above, I have received and considered with care several submissions suggesting that the advocacy function could or ought to be restructured. The most ambitious consolidation plan would fold all four advocates or ombuds offices—the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate, and the Information and Privacy Commissioner—into a single office.

The arguments for consolidation are at their weakest with the Information and Privacy Commissioner. It has a highly specialized focus with little overlap with the other offices. I am unable to see much potential synergy even in principle.

The other three ombuds offices' mandates overlap to a much more significant degree. The same factual situation could easily be approached as a question of maladministration, as a children's issue, and as a seniors or complex needs issue. As a result, I have considered three possible structures or models for the functions of the Citizens' Representative, Seniors and Complex Needs Advocate, and Child and Youth Advocate:

(1) A consolidated model in which investigation and advocacy functions are combined into a single ombudsman office);

(2) A collaborative model in which the Citizens' Representative, Seniors and Complex Needs Advocate, and Child and Youth Advocate are required to share resources and collaborate on investigations; and

(3) The current separate offices model for the Citizens' Representative, Seniors and Complex Needs Advocate, and Child and Youth Advocate.

Consolidation Model

The consolidated model has significant advantages. When multiple offices have overlapping functions, members of the public may be confused about where to bring their concerns. Expertise is more difficult to share, leading to duplicating work or even to issuing reports without the benefit of the other office's knowledge or perspective. In theory, two offices could conduct parallel investigations or even issue contradictory reports.

At the same time, it is important to recognize the costs of consolidation. First comes the challenge of administrative transition: building working teams and institutions takes time, and it might take years before a newly consolidated office works smoothly. In addition, there would be a loss of public confidence: many people would experience consolidation as the loss of an advocate and would view the new office with suspicion. These problems could be expected to reinforce each other.

The Review received many passionate comments and submissions on the prospect of consolidation. Some argue that any consolidation (e.g. Child and Youth Advocate and the Seniors' Advocate, or both offices under the Citizens' Representative) would be detrimental to both children/youth and to seniors. The Seniors' Advocate indicated that:

> *There is a major concern that if the Office of the Seniors' Advocate is combined with the Office of the Citizens' Representative, the voices of seniors will be significantly diminished given the growth of that office and its numerous mandates. The rights of seniors, and vulnerable children and youth, would be lost in such a model.*

The Newfoundland and Labrador Coalition of Seniors', Pensioners' and Retirees' Associations commented that,

> *There should be no consideration that the Office of the Seniors' Advocate could be combined with the Office of the Citizens' Representative. Given the Citizens' Representative's wide variation of responsibilities, there can be no guarantee that the*

> *voice of seniors would not be lost if there was any consideration of combination with the Office of the Seniors' Advocate.*

One participant expressed the opposite perspective, stating that:

> *Combining the Office of the Child and Youth Advocate with another office will inevitably divert resources from vulnerable children and youth to adults. Children and youth always suffer when their interests are not an exclusive priority.*

I am also aware that consolidation of legislative offices has been implemented in other jurisdictions, notably New Brunswick and Ontario. New Brunswick's former Access to Information and Privacy Commissioner's mandate was first consolidated into the Office of the Integrity Commissioner but was transferred to the Office of the Ombud in 2019. New Brunswick also consolidated its Child and Youth Advocate and Seniors' Advocate into one office in 2016. Ontario, in 2019, folded the mandate of the Environmental Commissioner into the Auditor General's Office and the mandates of the French Language Commissioner and the Provincial Advocate for Children and Youth into the Ombudsman's Office. Ontario's government received harsh criticism for these measures.

These examples are important considerations, and I have heard some opinions about how these consolidations affected the statutory offices' functions. However, it has been difficult to satisfy myself about what the effects of these changes were. It is difficult to disentangle the effects of consolidation from the effects of other policy decisions or changes that coincided with it. I have not been able to draw strong conclusions from these arguments and examples.

Collaboration Model

In this model, some of the benefits of consolidation could be achieved through collaboration. The offices could be required to collaborate on investigations. They could be required to operate a common document managing system and a common intake, so that a single phone number or intake desk engages the Citizens' Representative and both advocates.

Mandatory collaboration has two main disadvantages. First is the risk of duplication, as collaborative investigations will often involve more officers doing the same work. Second is the risk of disagreements and turf wars, as different officers compete for control of shared resources and responsibilities. This risk could be mitigated, but not eliminated, in several ways:

- Teamwork could be seen as a necessary attribute for appointment or reappointment;
- The *Code of Conduct* could recognize an ethical requirement to maintain professional and cooperative relationships where necessary (though when cooperation fails it can be very difficult to establish responsibility); and
- The Standing Committee could be responsible to oversee the mediation or resolution of disputes.

Separate Offices Model

The Citizens' Representative, Seniors' Advocate, and Child and Youth Advocate can already collaborate, and my understanding is that they do collaborate when circumstances warrant. Structural change does not seem necessary to secure many of the benefits of collaboration or consolidation, while maintaining the current structure avoids many of the risks and downsides.

The statutory offices do not need to be restructured to coordinate information sharing or even a common intake. They can institute policies encouraging consultation and conduct joint social and team-building events, so that officers and staff will view themselves as part of a united advocacy team. But by avoiding firm requirements or expectations of collaboration, the statutory officers will retain the ability to work independently when collaboration might be conflictual, unproductive, or wasteful.

Within the current system, a few small changes could enable the statutory officers to explore productive collaboration. Information sharing can be facilitated by removing the ability for the Citizens' Representative, Child and Youth Advocate, and Seniors and Complex Needs Advocate to investigate each other and by clarifying that the offices are free to share information with each other. The *Code of Conduct* can be amended to recognize an ethical obligation for statutory officers to collaborate on shared responsibilities to the extent that it is appropriate.

Each of the proposed models has some attractions, and perhaps no issue in this Review has given me more pause. On balance, I have concluded that the risks of disruption, loss of confidence, and risk of turf wars, likely outweigh the benefits of consolidation or mandatory collaboration. There is little concrete evidence before me that the offices' overlapping mandates interfere with their work or confuse the public. I believe

that the risk of dysfunction or distrust is real and pressing. I will not recommend a significant change to the structure of the advocacy or ombuds offices.

Recommendation 8: In light of the recommendation to limit the creation of new statutory offices, the current structure for the six statutory offices should remain in place, as separate offices.

Recommendation 9: The Citizens' Representative, Child and Youth Advocate, and Seniors and Complex Needs Advocate should explore opportunities to collaborate and share information with each other.

Recommendation 10: For clarity and to avoid duplication, the constating legislation for the Citizens' Representative, Child and Youth Advocate, and Seniors and Complex Needs Advocate should permit the officers to share information with each other and to refer matters to each other.

References:

- CBC News, "'We're talking about our children's lives here': Ontario cuts child and youth advocate" (15, November 2018) online: *CBC News* https://www.cbc.ca/news/indigenous/ontario-children-youth-advocate-cut-1.4907807.
- CTV News, "Health, education, environment: A look at where Ontario's PC government has made cuts so far" (5 June 2019) online: CTV News https://toronto.ctvnews.ca/health-education-environment-a-look-at-where-ontario-s-pc-government-has-made-cuts-so-far-1.4453159.

Recommendations for Specific Offices

Seniors and Complex Needs Advocate

As noted above, the Seniors' Advocate currently has an incomplete ombuds model. They are empowered only to analyze "systemic issues", not to issue recommendations about or assist individuals in navigating individual cases. As a result, the Office does not share the same investigatory function as the Child and Youth Advocate or the Citizens' Representative. When the Seniors' Advocate receives complaints regarding individual circumstances, the Office will refer these complaints to the Citizens' Representative for investigation or to SeniorsNL for assistance with resources and information.

The Review received a few submissions voicing support for the expansion of the Seniors' Advocate's mandate. For example:

- *The Seniors' Advocate needs more teeth. That office ought to mirror the Child and Youth Advocate to some extent.*
- *The duties, powers and resources of the Seniors' Advocate should be significantly increased to enable the Advocate to address the individual concerns of seniors, and to be directly informed of and empowered to investigate any circumstances where seniors appear to have been abused.*
- *The duties, powers and resources of the Seniors' Advocate should be significantly increased to enable the Advocate to address the individual concerns of seniors, and to be directly informed of and empowered to investigate any circumstances where seniors appear to have been abused.*

It is unclear why the Office of the Seniors Advocate was built differently. Presumably the decision was influenced by budget concerns. The Province has a wide range of seniors concerned about a wide range of policy issues. Staffing the Office of the Seniors' Advocate's to respond fairly to all of their complaints might be a significant and resource-intensive undertaking. Another possible reason for the Seniors' Advocate's special treatment might be that, given that over half of the Province's population are seniors, it might be difficult to draw the line between the Seniors' Advocate's individual advocacy responsibilities and the Citizens' Representative's.

However, depriving the Seniors' Advocate from investigating individual cases significantly harms the office's efficacy. The value of systemic advocacy depends on its quality. Individual investigations inform and motivate good systemic work. Without individual investigations, the quality of the Seniors' Advocate's systemic work is diminished, and its functions are at risk of becoming muddled with the work of SeniorsNL; the Seniors and Aging Division of the Department of Children, Seniors, and Social Development; the Provincial Advisory Council on Aging and Seniors; and other seniors' advocacy or policy interest groups.

I also expect that this more comprehensive mandate would bring the Seniors' Advocate's office in line with what one might expect to be a core function of an advocates' office. Therefore, in my view, the individual advocacy piece is a necessary element of this office's mandate. I recommend that the Office of the Seniors and Complex Needs Advocate be given full investigatory powers.

The change in focus and added scope recommended for a Seniors and Complex Needs Advocate may make an individual advocacy and investigation mandate more feasible from a cost perspective. If necessary, the legislature could allow the Seniors and

Complex Needs Advocate to prioritize complaints, as discussed above. Even in great austerity, and even if the Office's current staffing complement remained the same, it would be preferable for the systemic advocacy mandate to be combined with the power to investigate individual cases.

I further suggest that, with additional individual advocacy and investigation powers, the Seniors and Complex Needs Advocate could engage with adult protection matters and the *Adult Protection Act* in the same way the Child and Youth Advocate engages with child protection matters. In my view, this is an area that would benefit immensely from the expertise and assistance of a special advocate.

Recommendation 11: The Office of the Seniors and Complex Needs Advocate should have full investigatory powers for both systemic and individual advocacy.

Chief Electoral Officer and Commissioner for Legislative Standards

At the current time, the positions of the Chief Electoral Officer and the Commissioner for Legislative Standards are held by two separate acting officers. Historically, however, the Chief Electoral Officer and the Commissioner for Legislative Standards positions were held by the same appointed officer, going back to the first appointment of the Commissioner of Members' Interests in 1993.

The current legislation permits a single person to serve as both the Chief Electoral Officer and the Commissioner for Legislative Standards roles. Presumably, this structure was conceived for cost savings reasons and because the Commissioner for Legislative Standards' position was not intended to be a full-time position.

It is evident, however, that this arrangement may need to be revisited. Participants of the Review had fairly strong viewpoints on this issue. The Official Opposition, for example, commented in their written submission that,

> *While it may be possible to hold both offices simultaneously, recent events show that forcing the principal to step down from one role pending an investigation inevitably causes a vacancy to occur in the other role as well. This may be a time when the dedicated services of a full-time Chief Electoral Officer will be needed for a considerable period of time of adjustment.*

The Acting Chief Electoral Officer offered these comments:

> *Given the full-time requirement to oversee the multi-year planning and implementation cycle of elections, I recommend that the existing temporary removal of CLS duties from the CEO should become permanent, and the CLS should operate as a separate statutory role from the CEO. In my time as CEO (acting) over the past year, I have been fully engaged with modernization efforts, rebuilding the elections office, engaging stakeholders, and overseeing the planning activities for future election events. This has required a fulltime dedication to these activities. I would not have had the capacity to be solely responsible for both the cyclical and ad-hoc obligations of the CLS in addition to these duties. The need to always be "election ready" requires a full-time dedicated statutory officer that is not required to address non-election specific issues. The combination of the CEO obligations with any obligations of other Statutory Officers is not recommended. The CEO is unique to other Statutory Officers in that there is a democratic requirement for the CEO to be available to deliver an election event at any given time. The planning cycle for election events are multi-year projects that require the full-time dedication and oversight of the CEO to ensure a successful delivery of the event.*
>
> *Further to the discussion above regarding impartiality of the CEO, given the frequent and sometimes adverse interactions the CLS has with MHAs with respect to providing opinions regarding their obligations as members, the role of CEO and CLS should be split to maintain the requirement and appearance of impartiality. I recommend this should extend to keeping the CEO and CLS in separate physical locations such that matters and disputes of MHAs with the CLS does not appear to be seen as an interaction with the CEO. The intermingling of these two roles causes unnecessary interference with the core mandate of the CEO to manage and administer elections and negatively impacts independence and impartiality.*

Another participant commented that:

> *The Chief Electoral Officer was also the Commissioner for Legislative Standards. The backup for that person was the Citizens' Representative and the backup for the Citizens' Representative was the Commissioner for Legislative Standards. There were these problems that created a great deal of chaos over something that should be humming along invisibly. They became very visible and probably reflected poorly on the House of Assembly and the statutory offices…*

It was also apparent that, other than a general concern regarding spending, there was not much support for keeping the dual-role structure.

I agree that the Chief Electoral Officer role should be a dedicated full-time position. It has evolved over time. The office is the second-largest statutory office and employs enough permanent staff to benefit from a full-time executive.

The Commissioner for Legislative Standards role has also evolved. The number of investigations and reports conducted over the last 5 years is considerably higher than in the past.

It is apparent that the demands for each position are such that allocating exclusive capacity to one role most times would be to the detriment of the other. This does not serve the interests of the Province.

I also agree that it would be best to avoid any potential controversy that may be caused by holding a dual role. While not a technical conflict of interest, it is entirely possible that an appointed officer could, for instance, impose sanctions on a member as the Commissioner for Legislative Standards and then as the Chief Electoral Officer, also be tasked with auditing the accounts of that member or make decisions on elections issues that affect that member. In a partisan environment, it is best to ensure that these wires are not crossed and to ensure that there is sufficient separation between these roles.

I also find that on a fundamental level, there is a lack of synergy between the two positions. The Chief Electoral Officer and Commissioner for Legislative Standards have very different roles. The Commissioner for Legislative Standards needs to be able to conduct fair proceedings and issue sound rulings on a range of ethical issues. They also need to be able to help members and their families navigate a technical and personally invasive disclosure process. The Chief Electoral Officer's role requires, during elections, a person with exceptional executive, logistical, and decision-making abilities. Between elections, it requires a balance between constant readiness and long-range planning and policy development.

These roles require different and specific combinations of skills. It is unwise to expect the same person to be equally suitable for both. On that basis, I recommend that the Commissioner for Legislative Standards and Chief Electoral Officer be kept separate.

Recommendation 12: The same officer should not be permitted to hold both the roles of Commissioner for Legislative Standards and the Chief Electoral Officer.

Ethics and Integrity Commissioner

At the present time, a wide range of concerns dealing with wrongdoing by an elected member or employee of the provincial legislature, including breaches of their respective

codes of conduct, legislative standards and ethical behaviour, fall within the jurisdiction of the Office of the Commissioner for Legislative Standards. It is my assessment that the average or ordinary citizen when asked about the Commissioner for Legislative Standards presents with a blank stare of incomprehension. On the other hand, if asked about an Ethics and Integrity Commissioner would readily volunteer an understanding of matters relating to honesty and good behaviour or issues of wrongdoing. It would be expected that public confidence is promoted more readily when ordinary citizens understand the language associated with a piece of legislation.

It is my recommendation, therefore, that the Office of the Commissioner for Legislative Standards be re-named the "Office of the Ethics and Integrity Commissioner". However, a name change in itself does not address the whole issue associated with the ethical responsibilities of members or employees of the legislature.

The Commissioner for Legislative Standards has responsibilities under three separate pieces of legislation relating to overseeing and governing the good conduct or otherwise of all public office holders, including those of the executive and legislative branches of government, including statutory officers. These are:

(1) *House of Assembly Act*;

(2) *House of Assembly Accountability, Integrity and Administration Act*; and

(3) *Conflict of Interest Act, 1995*.

There are exceptions to this general jurisdiction. For example, Part VI of the *House of Assembly Accountability, Integrity and Administration Act* dealing with "Public Interest Disclosure" of wrongdoing refers to the Office of the Citizens' Representative as the recipient of disclosure information upon which it may carry out an investigation. This is also the case with sections 42.1 to 42.11 of the same *Act* with reference to the harassment policy, where it is the Citizens' Representative who is given responsibility for receiving complaints and following up with whatever form of investigation and disposition it deems appropriate.

In addition to the whistleblower scheme in the *House of Assembly Accountability Integrity and Administration Act*, the Province has a second whistleblower legislation, the *Public Interest Disclosure and Whistleblower Protection Act*. This scheme also fall under the jurisdiction of the Citizens' Representative, who can receive a disclosure of wrongdoing from an employee or officer of the public service and investigate where appropriate.

Apart from the specific references in these *Acts* to wrongdoing and legislative standards, these pieces of legislation speak profusely to the ethical standards and high degree of integrity associated with the duties and responsibilities of the elected members of the legislature, as well as the statutory officers and non-elected public office holders. It is the use of these terms that imposes a high level of morality and trust on the persons occupying these positions.

This high purpose is reflected in s.3(b) of the *House of Assembly Accountability, Integrity and Administration Act*, which clarifies that it aims to

> *Place responsibility with individual members to conduct their public and private affairs so as to promote public confidence in the integrity of each member, while maintaining the dignity and independence of the House of Assembly.*

Clearly the *House of Assembly Accountability, Integrity and Administration Act* is concerned with the ethical behaviours of members of the House of Assembly, as well as the Statutory Officers and the integrity of these positions.

A similar purpose carries through in relation to the *Public Interest Disclosure and Whistleblower Protection Act*. Section 3 of the *Act* indicates that it intends:

> "to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that an employee believes may be unlawful, dangerous to the public or injurious to the public interest, and to protect persons who make those disclosures."

In this instance, the focus is on the more onerous circumstances including criminal liability. While both the *House of Assembly Accountability, Integrity and Administration Act* and the *Public Interest Disclosure and Whistleblower Protection Act* refer to "Public Interest Disclosure" they have distinctive definitions as to what constitutes "wrongdoing" in their respective legislation. For the former at s. 54.(i)(e):

> (c) "wrongdoing", with respect to a member, the speaker, an officer of the House of Assembly and a person employed in the House of Assembly service and the statutory offices, means
>
> (i) an act or omission constituting an offence under this Act,
>
> (ii) gross mismanagement, including of public money under the stewardship of the commission, in violation or suspected violation of a code of conduct,

(iii) failing to disclose information required to be disclosed under this Act, or

(iv) knowingly directing or counseling a person to commit a wrongdoing described in subparagraphs (i) to (iii)

For the *Public Interest Disclosure and Whistleblower Protection Act* , at s. 4.(1):

4.(1) This Act applies to the following wrongdoings in or relating to the public service:

(a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;

(b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;

(c) gross mismanagement, including of public funds or a public asset; and

(d) knowingly directing or counselling a person to commit a wrongdoing described in paragraph (a), (b) or (c)

Having considered the slight nuances between the whistleblower schemes in the *House of Assembly Accountability, Integrity, and Administration Act* and the *Public Interest Disclosure and Whistleblower Protection Act*, I am of the opinion that there is little, if anything, to be gained by separating out the reporting, investigation and disposition of these two schemes to more than one of the statutory offices. This would be a most awkward situation where perhaps two statutory offices could be involved and conceivably arrive at different conclusions. Such a situation would do nothing to enhance public confidence in the investigatory structure of the legislature, especially where high office officials might be the subject of an investigation for an ethics violation or a more serious issue.

The fact is that, at present, matters involving the questionable behaviour or wrongdoing of legislative members and employees might fall either within the jurisdiction of the Commissioner for Legislative Standards or of the Office of the Citizens' Representative, depending on how exactly they are reported. One office administers the code of conduct for the House of Assembly members and another the code of conduct for officers and staff. The rationale for this system is not entirely clear.

Dividing ethical concerns about members among two different offices is not simply inelegant. These concerns do not fit comfortably with the Citizens' Representative's other mandates. The Citizens' Representative is responsible to investigate questions of maladministration in its broadest sense and even to comment on a range of policy decisions. It must be alert to the possibilities of even minor deviations from policy or good administrative practice and to the possibility that existing policies and practices should be reconsidered.

The whistleblower regimes, on the contrary, focus primarily on "gross mismanagement". As the Honourable J. Derek Green explained in his report *Fairness, Reliability, and Justification*, that is a much higher standard than simple maladministration. It relates to blameworthy individual action or inaction. It relates more to ethical failures than to administrative ones. Having considered the overall structure of the proposed office of the Ethics and Integrity Commissioner, it is the considered opinion of this Review that the Ethics and Integrity Commissioner be granted exclusive investigatory jurisdiction of the "*Public Interest Disclosure and Whistleblower Protection Act*"; and Part VI of the *House of Assembly Accountability, Integrity and Administration Act* dealing with "Public Interest Disclosure of Wrongdoing".

The same can be said for the system for resolving harassment complaints involving House members. Like code-of-conduct violations, a harassment investigation is a quasi-judicial investigation into morally blameworthy behaviour which is intended to lead directly to legally binding results. It is unlike ombuds investigations, which typically exist in the space between law and administration. It is squarely quasi-judicial. It is also the considered opinion of this Review that sections 42.1 to 42.11 inclusive of the *House of Assembly Act*, etc. with reference to the harassment policy be removed from the jurisdiction of the Citizens' Representative and relocated to the jurisdiction of the Office of the Ethics and Integrity Commissioner.

Assigning all complaints against members to the Ethics and Integrity Commissioner would streamline the process for investigating such complaints. It would also ensure that these complaints are handled consistently and from the same perspective. It eliminates any option of "judge-shopping". It allows a more natural distinction of responsibilities, with the Ethics and Integrity Commissioner focusing on questions of blame and wrongdoing, while the Citizens' Representative handles the broader questions of maladministration. It is this Review's recommendation that these matters come under the jurisdiction of the recommended Ethics and Integrity Commissioner

On the matter of what this new designation would involve, it should be emphasized that the three above mentioned pieces of legislation remain largely intact. I recommend the following limited modifications:

- to accommodate, where referenced, the change from "Commissioner for Legislative Standards" to the "Ethics and Integrity Commissioner";
- to clarify that, where appropriate, the Ethics and Integrity Commissioner may refer matters to the Auditor General, to the Citizens' Representative, or (where an issue relates to a statutory officer) to the Standing Committee. This recommendation is analogous to the current s. 15(2) of the *Public Interest Disclosure and Whistleblower Protection Act*. It also reflects the reality that, at present, many whistleblower complaints are ultimately referred for investigation under the *Citizens' Representative's Act*.

It is to be emphasized that the jurisdiction, duties, and responsibilities, including procedures under the above Acts, remain in place undisturbed, except that the Citizens' Representative would no longer have the responsibility for alleged wrongdoing investigation of government officials or employees

The reasons for these recommended changes are not earth-shattering but simply reflect that these matters, as alluded to above, refer to matters of wrongdoing, integrity, honesty and overall moral responsibility and good behaviour of persons entrusted with the governance at all levels from the executive to the legislative branches. These are, simply put, ethical issues based on the integrity of the office holders. As it now stands, they are fragmented within and across different pieces of legislation with a large degree of redundancy. It is the assessment of this Review that all matters relating to breaches of ethical behaviour or integrity in violation of the House of Assembly's "Code of Conduct for Members of the House of Assembly" or the "Code of Conduct for Employees of the House of Assembly Service", including statutory officers, be dealt with by an Ethics and Integrity Commissioner exclusively. In that regard, it is worthwhile to reference those codes of conduct and note the emphasis on such words and phrases as "honesty and integrity, unethical practices, public scrutiny, and high standards of ethical conduct".

It is important to emphasize that such a recommendation is not intended to reduce or diminish the Citizens' Representative, but rather, it is an effort to simplify the structure such that the Citizens' Representative can dedicate its resources on its core mandate.

In expanding the role of the Commissioner for Legislative Standards and rounding out a role that should be a full-time role, I also recommend that the responsibilities of the Commissioner of Lobbyists should be transferred to the Ethics and Integrity Commissioner. Under Newfoundland and Labrador's *Lobbyist Registration Act*, the Lieutenant Governor-in-Council appoints a Commissioner of Lobbyists. The Commissioner is responsible for regulating lobbying at the provincial level, in particular:

- investigating, with reasonable cause, possible violations of the *Act*, applicable regulations or Code of Conduct;
- prohibiting or cancelling the registration of lobbyists if the lobbyist has gravely or repeatedly breached the obligations imposed by the *Act*, regulations, or Code of Conduct;
- ordering that some or all registration information be kept confidential;
- recommending changes to the Code of Conduct; and
- submitting an annual report on Commissioner's Office to the House of Assembly through the Speaker.

Most Canadian jurisdictions have removed the lobbyist registry function from the executive. At the federal level and in Alberta, Saskatchewan, Manitoba, Ontario, and Quebec, New Brunswick, and the Federal government, the Commissioner for Lobbyists is either a stand-alone office or has been assigned to a Conflict of Interest Officer or Ethics Commissioner. In BC, the Lobbyists Registrar function is under the Information and Privacy Commissioner.

Newfoundland and Labrador is not the only jurisdiction where lobbyists are registered in the executive branch. The same is also true in Nova Scotia and Prince Edward Island. However, in both of these jurisdictions the lobbyist registry appears to be a pure registry function comparable to the role of the registrar of lobbyists under the *Lobbyist Registration Act*. The Commissioner for Lobbyists in this Province has a wider regulatory role.

The Registrar of Lobbyists' role maintaining the lobbyist registry is currently administered by the same public servants who maintain the registries for deeds, companies, co-operatives, and personal property. I see no reason to believe that an independent statutory officer could maintain this registry more efficiently, appropriately, or credibly. It is only the Commissioner for Lobbyists' more discretionary functions that I would recommend assigning to the Ethics and Integrity Commissioner.

Regulating lobbyists fits naturally with the Ethics and Integrity Commissioner's existing functions and expertise. It is a function that is appropriate for an independent statutory office within a modern conception of responsible government. Members may find it convenient that they can look to the same person for advice about lobbyist issues and about other ethical issues and there may be an increased efficiency in combining these two roles.

Recommendation 13: The Commissioner for Legislative Standards should be renamed as the Ethics and Integrity Commissioner.

Recommendation 14: The Ethics and Integrity Commissioner should be given jurisdiction over the *Public Interest Disclosure and Whistleblower Act*.

Recommendation 15: The Ethics and Integrity Commissioner be given jurisdiction over Part VI of the *House of Assembly Accountability, Integrity and Administration Act* dealing with "Public Interest Disclosure of Wrongdoing."

Recommendation 16: Sections 42.1 to 42.11 (inclusive) of the *House of Assembly Accountability, Integrity and Administration Act* with reference to the harassment policy should be placed under the jurisdiction of the Ethics and Integrity Commissioner.

Recommendation 17: The responsibilities of the Commissioner of Lobbyists, under the *Lobbyist Registration Act*, should be transferred to the Ethics and Integrity Commissioner.

References:

- *Conflict of Interest Act, 1995,* SNL 1995, c C-30.1.
- *Elections Act, 1991*, at s 5.1(2).
- *House of Assembly Accountability, Integrity and Administration Act*, SNL 2007 c H-10.1.
- *House of Assembly Act*, RSNL 1990 c H-10, s 34(3).
- Newfoundland and Labrador, *Code of Conduct for Employees of the Newfoundland and Labrador House of Assembly Service* (Newfoundland and Labrador: House of Assembly) online: https://www.assembly.nl.ca/pdfs/CodeOfConduct-Employees.pdf.
- Newfoundland and Labrador, *Code of Conduct for Members of the Newfoundland and Labrador House of Assembly* (Newfoundland and Labrador: House of Assembly) online: https://www.assembly.nl.ca/Members/MembersCodeOfConduct.aspx.

Commenting On Offices' Own Mandate

I also want to briefly discuss the ability of statutory offices, particularly those without advocacy functions (specifically, the Chief Electoral Officer and the Commissioner for Legislative Standards) to comment on policy reviews and changes. Neither the Chief Electoral Officer nor the Commissioner for Legislative Standards has an advocacy mandate and this is understandable and generally appropriate. These officers must hold themselves to a particularly high standard of impartiality and should avoid political controversy to the greatest extent possible.

At the same time, there are narrow circumstances in which feedback from the Chief Electoral Officer and Commissioner for Legislative Standards is essential. Their experiences and perspectives were or would have been valuable for this Review. But more seriously, the Chief Electoral Officer believed, in the leadup to the 2021 pandemic election, that it would be inconsistent with his role even to suggest amendments to the *Elections Act, 1991*. The Honourable Derek Green did not fault him for interpreting his role in that way, and the issue has no bearing on my analysis.

Whether or not amendments to the *Election Act, 1991* would have been beneficial, it is not in the Province's interest for statutory officers to feel unable to express their views about the structure of their own offices. I recommend that all statutory officers, including the Chief Electoral Officer and the Commissioner for Legislative standards, be permitted to identify issues about their mandate and their own office's structure, potential options for change, and potential advantages and disadvantages of each option. Outside of the context of a Review such as this, it would be appropriate for statutory officers to raise these issues with the Standing Committee, the House, or the executive, where appropriate.

Recommendation 18: All statutory officers should be permitted to identify and raise issues about their mandate, structure, potential options for change, and potential advantages and disadvantages of each option. These issues may be raised with the Standing Committee, the House, or the executive.

References:

- The Honourable J. Derek Green, *Fairness, Reliability, and Justification* (St. John's, NL: Queen's Printer, 2022), at p. 105.

COMPETENCIES

The Review's Terms of Reference require me to make recommendations on the minimum required competencies for each statutory officer. As it stands, there are no formal requirements set out in legislation as to the minimum required competencies for any statutory officer position I am tasked to review. For context, I note that the *Auditor General Act* requires the Auditor General to be a qualified auditor (*Auditor General Act*, s. 4).

There are competencies and qualifications that have been established over time by convention. For example, it is common for the Chief Electoral Officer to have a finance and accounting background and nearly all previously appointed Chief Electoral Officers had professional accounting/financial accreditations. It seems that the natural progression of the Assistant Chief Electoral Officer is to be successor to the Chief Electoral Officer and where the Assistant Chief Electoral Officer is responsible for election finances, those individuals will typically already have a background in accounting/finance.

The Review received a fair number of written responses and interview comments from participants regarding minimum competencies. Participants had varying opinions on what the minimum competencies should be and also offered specific competencies for certain officers. The suggestions included:

- Educational qualifications such as a graduate-level degree, post-secondary social sciences degree, law degree, or professional designation.
- Work experience such as executive-level experience in government, involvement in specific areas of the public system, advocacy experience, policy development, and project management experience.
- Skills and expertise in areas such as research, reporting, presentation, communication, public engagement, media relations, investigation, human resource management, critical thinking, time management, and negotiation.
- Character traits such as impartiality, sound judgement, enthusiasm, competence, and empathy.

It is apparent from our full collection of competencies that there is no real consensus. Some participants disagreed considerably, for example, on whether a law degree should be a minimum qualification or whether public service experience was necessary.

Establishing minimums are not a fruitful way of vetting candidates for executive-level positions. Each of these positions requires some common general qualities – for example, communication, analytical, and interpersonal skills; excellent character; motivation; a broad understanding of how people and public institutions work; and domain-specific knowledge – but every candidate will have strengths and weaknesses.

Particularly for executive-level positions, lists of minimum competencies set both too low and too arbitrary a bar. Too low, because the roles of statutory officers demand exceptional people. If there are many candidates who meet all the minimum competencies, the bar is too low and the list of competencies becomes unhelpful. Too arbitrary, because all of the qualities, skills, and knowledge required for the position could be learned in several ways. It is unlikely that even senior deputy ministers have every single competency needed for an ideal statutory officer. Disqualifying a good candidate for not possessing a very attainable skill would unduly limit the pool of candidates.

Minimum competencies also tend to be two-dimensional. For example, contrary to what some participants told us, a master's degree is not the only way to gain insight into relevant subject matter or insight into how organizations work. To automatically filter out a candidate with substantial relevant work experience simply for not having a master's degree would unduly limit the recruitment process and candidate pool. If anything, there would be a benefit in having advocates who approach the role from different perspectives.

It was raised in a number of comments that the statutory officer positions were essentially seen as retirement positions for deputy ministers. The Office of the Information and Privacy Commissioner, in their submission wrote:

> *… it has recently been observed that all present statutory officers are either former provincial government executives or else rose within the ranks of their statutory offices. By our own logic above, this is not necessarily a bad thing in the case of OIPC or more broadly: public administration and leadership expertise are critical competencies and they are commonly obtained through experience as a provincial government executive. That said, if all of the statutory officers are always from the same pool, and it is the very same pool that the statutory officers are charged with overseeing, then the problem that has been raised above – a difficulty in differentiating the executive from the legislative branch – may be exacerbated.*

I agree. Particular caution should be taken to avoid a situation where statutory officer positions are monopolized by a small club of senior civil servants. As noted by the Office of the Information and Privacy Commissioner, senior civil servants are natural candidates for statutory officer positions – they have a good understanding of how government

works; they have knowledge of government policies and the government's limitations and challenges. However, senior civil servants should not be the only candidates considered for statutory officer positions. Knowledge of government and an ability to navigate public systems are good assets, but these competencies should not be valued to the extent that they effectively exclude candidates from outside government or outside the Province. A revolving door between the statutory offices and the executive branch blurs the lines of the executive and legislative branches and is potentially damaging to public confidence.

A more effective approach would be to develop a description of the ideal candidate and compare the applicants to the description. The Statutory Officers' Standing Committee (or whoever is designated to assist the Standing Committee) should identify any gaps and incorporate these into any necessary training programs and performance evaluations. The description of the ideal candidate should be set out in the job advertisement or posting. In developing the description. I note that a fair amount of work has already been done on several of the previous job postings (Appendix 10). I would further suggest that the Standing Committee (or whoever is designated to assist the Standing Committee) consult with the Clerk of the House of Assembly, Executive Council, former statutory officers, statutory staff, and/or any other persons with insight into the role of the statutory officer.

I further recommend that the power to change the job description should rest with the Standing Committee. The job description will likely require some changes over time and the description should be reviewed whenever a new recruitment effort is initiated.

As a final note, I would like to observe that, in recruiting and recommending statutory officers, the Committee may have to consider questions of equity and diversity. The appointment process must not discriminate. It should place appropriate weight on ensuring that a diversity of perspectives are considered. It should ensure that statutory officers' legitimacy is not undermined by a perception that they do not appropriately represent the diversity of the Province.

These factors are a normal part of the process for recruiting and appointing senior public officials. The Standing Committee will have to consider them from time to time in the light of contemporary circumstances and values.

Recommendation 19: Instead of establishing minimum competencies, the Standing Committee (or the assisting entity) should develop a description of the ideal statutory officer. Any gaps in that candidates' competencies should be identified and incorporated into performance evaluations.

Recommendation 20: The Standing Committee should have the power to change all postings or advertisements for statutory officer positions and all postings/advertisements should be approved by the Standing Committee.

References:

- *Auditor-General Act*, SNL 1991, c. 22, s 4.

RECRUITMENT AND APPOINTMENT

The Recruitment and Appointments Process

Recruitment and Appointments Prior to 2015/2016:

Prior to the establishment of the Independent Appointments Commission in 2016 and the *ATIPPA* legislative amendments in 2015, the Child and Youth Advocate, the Chief Electoral Officer, the Commissioner for Legislative Standards, and the Information and Privacy Commissioner were recruited and selected by the executive branch, with the assistance of the Public Service Commission. The enabling legislation for these offices prior to 2015/2016 empowered the Lieutenant-Governor in Council to decide whom to recommend to the House of Assembly, with no specific direction on the recruitment process. It is my understanding that the recruitment process followed the same process as appointments for deputy ministers in government: the executive had the option to advertise for the position and run a competition. If a competition was run, the executive could also engage the Public Service Commission to advertise and collect applications. Once a candidate was selected, the Government House Leader or another designated minister introduced a motion in the House of Assembly for resolution. Once the resolution was passed with a simple majority of votes, the candidate was appointed by the Lieutenant-Governor in Council through an Order in Council.

In 2016, the *Child and Youth Advocate Act*, the *Citizens' Representative Act*, the *Elections Act, 1991*, and the *House of Assembly Act* were amended to standardize

provisions relating to the manner of appointment, term of office, removal, suspension, and salary of statutory officers appointed under those Acts.

The Current Recruitment and Appointment Process for the Child and Youth Advocate, the Chief Electoral Officer, the Commissioner for Legislative Standards, and the Seniors' Advocate:

Once the IAC was established in 2016, the statutory appointments and recruitment processes for the Child and Youth Advocate, the Chief Electoral Officer, the Commissioner for Legislative Standards, and the Seniors' Advocate positions were statutorily designated to the IAC. The enabling legislation for the appointments of the statutory officers are all similarly worded, specifying only that "on resolution of the House of Assembly, the Lieutenant-Governor in Council shall appoint…"

The process, as depicted in a simplified form, is set out in *Figure 1*:

- Informally, the responsibility of initiating the recruitment process appears to have fallen to the Clerk of the House of Assembly, who monitors the term expirations of the statutory officers and notifies the IAC, PSC and Cabinet of vacancies.
- In the early recruitment stages, the PSC prepares a posting/advertisement for the statutory officer position in consultation with the Clerk of the House of Assembly, ensuring that the identified qualifications and competencies are adequate for the role. It then posts and manages the advertising, collects applications through the PSC portal, and maintains a list of potential candidates on its database. At times, the IAC and PSC may have to broaden their search beyond the initial collection of applications, which may include searching the PSC database and reaching out to qualified and suitable candidates.

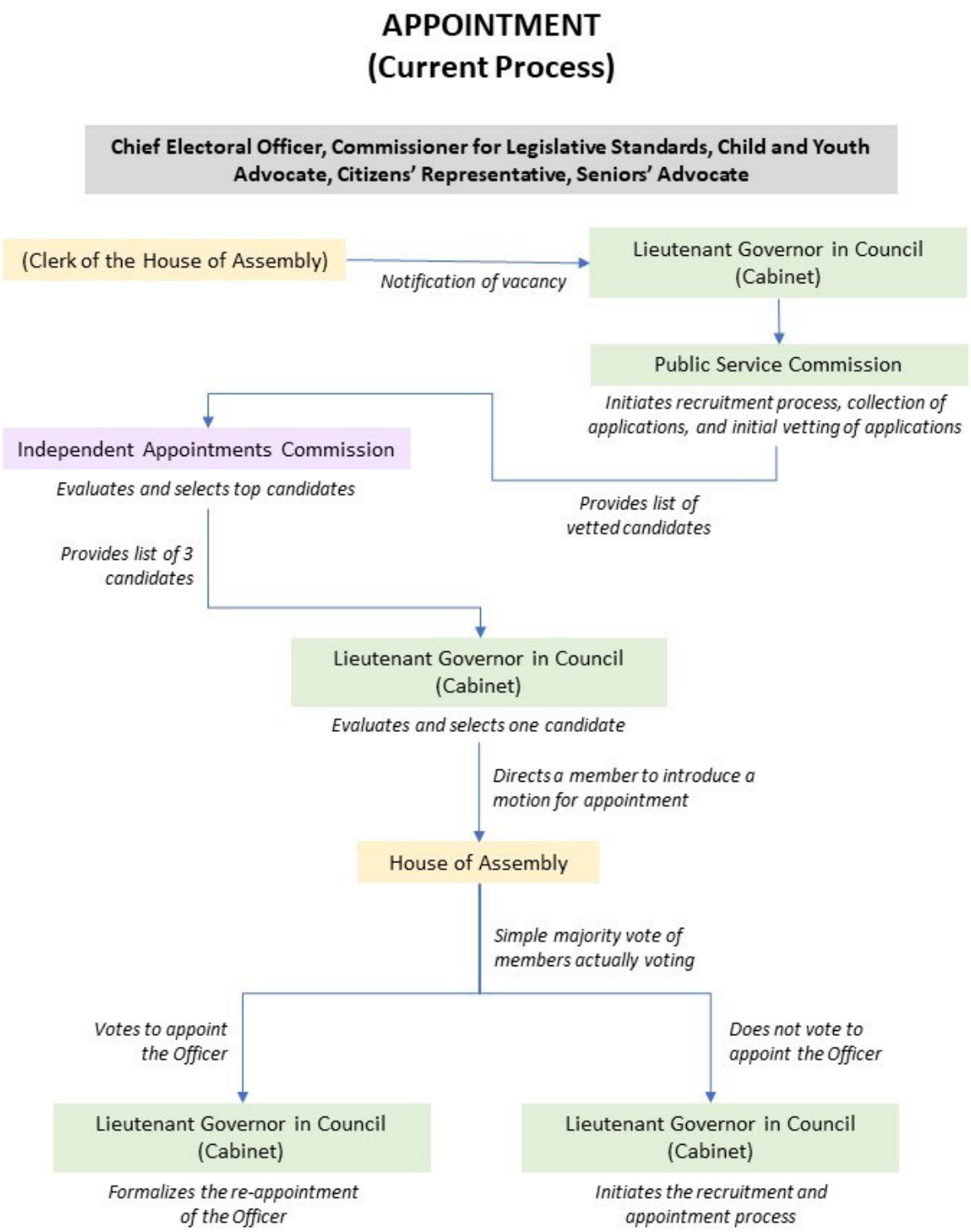

APPOINTMENT
(Current Process)
Chief Electoral Officer, Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Seniors' Advocate
(Clerk of the House of Assembly)
Notification of vacancy
Lieutenant Governor in Council (Cabinet)
Public Service Commission
Initiates recruitment process, collection of applications, and initial vetting of applications
Independent Appointments Commission
Evaluates and selects top candidates
Provides list of vetted candidates
Provides list of 3 candidates
Lieutenant Governor in Council (Cabinet)
Evaluates and selects one candidate
Directs a member to introduce a motion for appointment
House of Assembly
Simple majority vote of members actually voting
Votes to appoint the Officer
Does not vote to appoint the Officer
Lieutenant Governor in Council (Cabinet)
Formalizes the re-appointment of the Officer
Lieutenant Governor in Council (Cabinet)
Initiates the recruitment and appointment process

Figure 1

- Pursuant to the IAC's Rules of Procedure, when applications for a position are received, the IAC appoints a Review Panel of three commissioners to provide a list of recommended candidates. The PSC assists the IAC by performing an initial screening of applicants, which includes reviewing applications, conducting preliminary interviews and assessing the applicant against the qualities listed in the description. The PSC may invite the Clerk of the House of Assembly to participate in the interview process.
- The applications that make it through the initial screening are then passed to the IAC review panel along with the PSC's initial assessments for all applicants. The Review Panel reserves the ability to review and consider applicants that were not selected in the initial PSC screening. The IAC Review Panel may perform its own interviews at this stage.
- Next, the Review Panel identifies the top three candidates for recommendation. According to the IAC and PSC, review panels operate on consensus, but recommendations for statutory officer positions have historically been unanimous. The recommended candidates' names are provided to the PSC. The PSC contacts the candidates for personal disclosure information. If potential conflicts of interest are flagged by the IAC and PSC, that information is provided to the appointing body when the candidate is recommended. The recommended candidates are reviewed by the whole Commission before they are sent to the appointing authority. The candidates' names and applications are sent to the appointing authority, without ranking.
- In the situation that there are less than three recommended candidates or no suitable candidates, the IAC would write to the appointing authority to advise. According to the PSC, to date, the IAC has generally been able to recommend at least three candidates for statutory officer positions to the Lieutenant-Governor in Council.
- Cabinet, through their own process, then selects one candidate. To assist in selection, Cabinet can conduct their own interviews of the selected candidate(s). I note here that the recommendations of the IAC are not binding on Cabinet.
- Once an individual has been selected, a designated Minister of the Crown introduces the candidacy of the selected individual as a motion in the House of Assembly for resolution. Upon resolution of a simple majority of votes, the candidate is appointed by the Lieutenant-Governor in Council, through an Order in Council.

The Current Recruitment and Appointment Process for the Information and Privacy Commissioner:

When the 2014 *ATIPPA* Statutory Review was completed, the 2015 amendments to *ATIPPA* introduced a new process for the appointment of the Information and Privacy Commissioner, which was notably different from the other statutory officers.

Following the Committee's recommended legislative amendments, s. 85 of the *Act* outlines the current Information and Privacy Commissioner appointment process:

> 85. (1) The office of the Information and Privacy Commissioner is continued.
>
> (2) The office shall be filled by the Lieutenant-Governor in Council on a resolution of the House of Assembly.
>
> (3) Before an appointment is made, the Speaker shall establish a selection committee comprising
>
> (a) the Clerk of the Executive Council or his or her deputy;
>
> (b) the Clerk of the House of Assembly or, where the Clerk is unavailable, the Clerk Assistant of the House of Assembly;
>
> (c) the Chief Judge of the Provincial Court or another judge of that court designated by the Chief Judge; and
>
> (d) the President of Memorial University or a vice-president of Memorial University designated by the President.
>
> (4) The selection committee shall develop a roster of qualified candidates and in doing so may publicly invite expressions of interest for the position of commissioner.
>
> (5) The selection committee shall submit the roster to the Speaker of the House of Assembly.
>
> (6) The Speaker shall:
>
> (a) consult with the Premier, the Leader of the Official Opposition and the leader or member of a registered political party that is represented on the House of Assembly Management Commission; and
>
> (b) cause to be placed before the House of Assembly a resolution to appoint as commissioner one of the individuals named on the roster.

The Information and Privacy Commissioner Selection Committee is supported by the Public Service Commission, which receives and handles applications and follows a merit-based recruitment process. The Selection Committee selects roster top candidates evaluated through a quantitative method and submits the list to the Speaker. The Speaker then consults with the Premier, the Leader of the Official Opposition and the leader or member of any registered political party represented on the House of Assembly Management Commission to select an individual from the roster. Upon resolution in the House of Assembly of a simple majority of votes, the candidate is appointed by the Lieutenant-Governor in Council (Cabinet), through an Order in Council.

The simplified process is depicted in *Figure 2*.

References:

- *Child and Youth Advocate Act,* SNL 2001, c C-12.01 at s 4.
- *House of Assembly* Act, RSNL1990 c H-10 at s 24.
- *Seniors' Advocate Act,* SNL 2016, c S-13.002 at s 4.

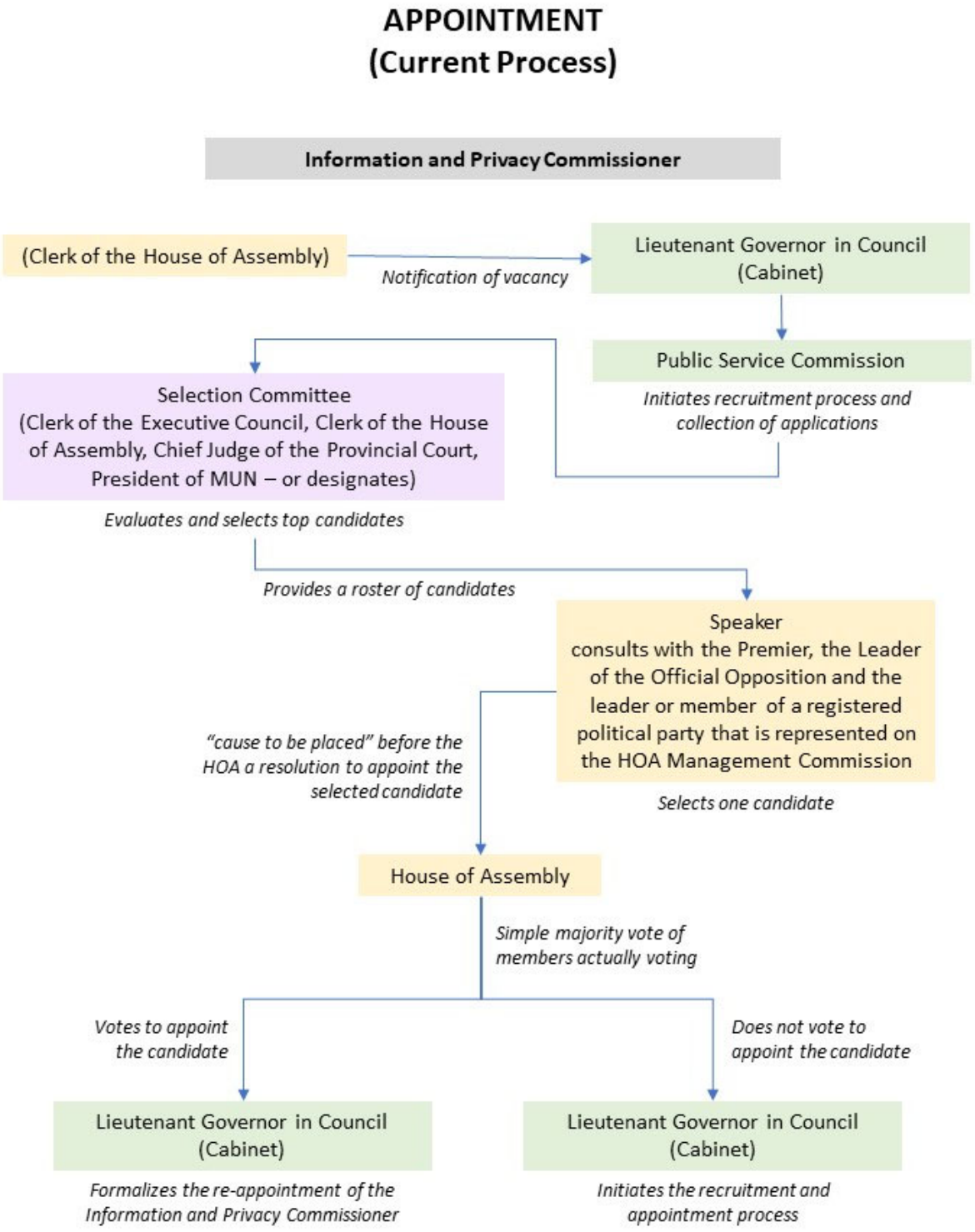

APPOINTMENT
(Current Process)
Information and Privacy Commissioner
(Clerk of the House of Assembly)
Notification of vacancy
Lieutenant Governor in Council (Cabinet)
Public Service Commission
Initiates recruitment process and collection of applications
Selection Committee
(Clerk of the Executive Council, Clerk of the House of Assembly, Chief Judge of the Provincial Court, President of MUN – or designates)
Evaluates and selects top candidates
Provides a roster of candidates
Speaker
consults with the Premier, the Leader of the Official Opposition and the leader or member of a registered political party that is represented on the HOA Management Commission
Selects one candidate
"cause to be placed" before the HOA a resolution to appoint the selected candidate
House of Assembly
Simple majority vote of members actually voting
Votes to appoint the candidate
Does not vote to appoint the candidate
Lieutenant Governor in Council (Cabinet)
Formalizes the re-appointment of the Information and Privacy Commissioner
Lieutenant Governor in Council (Cabinet)
Initiates the recruitment and appointment process

Figure 2

Independence of the Chief Electoral Officer, Child and Youth Advocate, Seniors' Advocate, and Commissioner for Legislative Standards Appointments Process:

A main concern raised by participants was the role of Cabinet in the appointment process for the Child and Youth Advocate, the Chief Electoral Officer, the Commissioner for Legislative Standards, and the Seniors' Advocate. A number of participants regarded Cabinet's ability to select the final candidate as inappropriate or a "false sense of independence", emphasizing the need for a process that is at "arm's length" from Cabinet.

For example, the submissions of Barry Petten of the Official Opposition and James Dinn, Leader of the NDP, and Allison Coffin all maintained that the selection of statutory officers should be independent of the executive branch. Mr. Dinn suggested that the House of Assembly be presented with the final roster of candidates. Mr. Petten and Ms. Coffin suggested that the appointments process for the Information and Privacy Commissioner be replicated for all statutory officers, with Mr. Petten commenting that the Information and Privacy Commissioner process would "remove the possibility of the executive branch handpicking candidates who might go easy on them."

In the submission from the Seniors' Advocate, it was suggested that the IAC recommendations should go to the Management Commission. In the Office of the Information and Privacy Commissioner's submission, it was indicated that the existing Information and Privacy Commissioner appointments process should be maintained because of its independence from the executive branch:

> *The Wells' Committee expressly considered the appointments process and explicitly designed a process to put the discretion over appointments in the hands of the legislative branch of government rather than the executive branch, over which the Commissioner has oversight.*

Though the Information and Privacy Commissioner appointment is subject to a different process, the Office of the Information and Privacy Commissioner noted that:

> *OIPC does not have any fundamental problem with the composition of the IAC as a selection panel, as compared to the panel provided for in* ATIPPA, 2015*. The latter panel was specifically designed in consideration of the nature of OIPC, but we also have respect for the types of individuals appointed to the IAC. Our concern is about what happens after the roster is provided by the IAC compared to that provided by the ATIPPA, 2015 process. Therefore, it would not be particularly problematic if, for the purposes of appointment of the Commissioner, the IAC was used to provide a roster to the Speaker and then the process set out in* ATIPPA, 2015 *continued from there. If there was a desire*

> *to standardize the appointments process of the statutory officers, then perhaps this process could be used for all of them…*

In his 2020 ATIPPA Statutory Review report, the Honourable David Orsborn specifically noted:

> *[For the appointment of statutory office holders other than the IPC] The Lieutenant-Governor-in-Council is required to consider the recommendations [of the Independent Appointments Commission] but is not limited to those recommendations in bringing forward a name to the House of Assembly. As such the process following receipt of the committee's recommendations is very much controlled by the executive branch of government.*

Some participants also expressed dissatisfaction with the lack of meaningful involvement and participation of MHAs (outside of Cabinet) in the appointment process, which does not offer opportunities for these MHAs to raise pertinent questions and access critical information to make a well informed vote. In her submission, Lorraine Michael explained that:

> *MHAs are expected to vote on a nomination of someone to a position without having been part of the process leading to that nomination. If there were any objections they could have been raised on the floor of the House in debate when the nomination was presented to MHAs. An individual MHA would have to stand and ask questions of the government's choice publicly with the nominee sitting in the Speaker's Gallery.*

Transparency of the Process

One observation from some participants—and certainly one of my observations in attempting to learn about the processes—is that some parts of the recruitment and appointment processes are not clear. Much of the information about how the processes operate in practice (for both the processes for the Information and Privacy Commissioner and the other statutory officers) is held only by the individuals who are directly involved in the process. Sometimes even the individuals involved in some parts of the process did not have a solid understanding of other parts of the process.

David Conway, in his review of the IAC legislation, found that there is merit in setting out the steps of the recruitment and appointment process in a way that is transparent and easily understood by the public. In my view, a clearly defined process, whether in legislation or in some rules of procedure or some other publicly available policy document, is advisable. A transparent process assists with maintaining consistent practices, attracting qualified candidates, and reinforcing public confidence in the process.

I appreciate that too much formality and definition in the process creates rigidity and does not allow for a process to be adapted in warranted circumstances. However, it seems to me that a general level of clarity would be beneficial, with an acknowledgement that justified amendments may be necessary.

Timeliness of Appointments

One of the most significant appointment issues that came to our attention was the timeliness of appointments. Multiple participants expressed concern that the recruitment and appointment processes for all of the statutory offices took too long and were susceptible to lengthy delays. In one case, a statutory office was left without an appointed statutory officer for over a year.

Appointment delays, as participants observed, may have the effect of discouraging qualified individuals from applying for statutory officer positions. During lengthy selection periods, candidates are generally unaware of the status of their application and are not given timelines or notifications as to when an appointment will be made. Participants even cited instances of qualified candidates withdrawing their applications due to delays and the uncertainty in the process. Mr. David Conway noted the same observations in his review:

> *There was also a view that the lengthy appointment process was a direct impediment and discouragement to attracting new candidates to entities. Individuals who may have been interested in a given appointment at one time were no longer interested a year or two later when an offer was eventually made…*
>
> *Furthermore, there is significant competition for top executive-level candidates, such that having individuals wait up to a year or more for the outcome of an appointment process is viewed as being detrimental to recruitment.*
>
> *There was a general lack of understanding and frustration as to why appointments take so long. There was a view that little to no information is available to indicate at what exact step a vacancy in the appointment process has progressed.*
>
> *There was also a view that the lack of any timelines in the appointment process made the process "open ended" and that it was difficult to understand who, if anyone, was responsible for keeping the process moving.*
>
> *Finally, there was a view that the "word of mouth" about a lengthy and opaque appointment process is poor, which serves to discourage potential applicants from applying or, even if they do apply, has applicants accepting other opportunities in the meantime.*

The timeliness issue is also not unique to Newfoundland and Labrador. In examining the appointment process of federal parliamentary agents, the Public Policy Forum Advisory noted:

> *Who would wish to submit their name to fill an officer's position, only to find the process delayed by months and the ultimate selection immediately subject to public scrutiny and criticism? This is of concern if one is interested in attracting candidates from outside government to fill these positions…*
>
> *Appointment delays have resulted in repeated extensions of mandates for some officers and long periods where the office is held by an interim officer, a recipe for administrative paralysis.*

There was an evident concern among a number of participants that timelines in the appointment process have not only affected the selection of competent candidates but have negatively impacted the functioning of statutory offices. It was even suggested that the timelines have become so excessive that returning to the pre-2015 appointment process was preferable to the current process.

It remains unclear where the delays occur. I have been advised that the entire process may be expedited when necessary. However, if so, the expedited process does not appear to me to be consistently applied. In my view, regardless of where the delays occur, the total length of time to complete the appointment process is a legitimate and major concern.

I want to be clear that I do not consider the timeliness issues to be attributable to individual persons or even to any individual entity or body. I accept that thorough and comprehensive recruitment and selection takes time. I commend the continued work of those involved in the current processes, including the IAC, the PSC, the Clerk of the House of Assembly, and the Executive Council Office, who are all from my observations fulfilling their mandate diligently and competently. I view these delays as a structural issue that could be clarified and simplified.

It is apparent that in 2014–2016, there was recognition that statutory officer appointments needed to be independent of government and that there were corresponding efforts to move selection processes towards independent committees. These changes were sensible but, perhaps, only partially achieved the goal of independent appointments.

In consideration of the current processes, I make the following observations:

- I am persuaded that the current appointment process has a negative impact on attracting qualified and suitable applicants for the statutory officer positions and has likely dissuaded potential candidates from applying for these positions. I also accept that delays in appointments cause significant administrative issues for statutory offices.
- It is not apparent to me that we have achieved an appropriate balance between the additional layers of independent selection and the practical functioning of the process, particularly the need for timely appointments.
- As previously stated, I am not convinced that the current process involving the IAC even achieves the desired independent separation from government since recommendations of the IAC are not binding on Cabinet.
- Perhaps one of the most obvious gaps in this current process is that there is no clear designation of one entity or person that is ultimately responsible for the appointment process or the timeliness of appointments.

Information and Privacy Commissioner Appointment Process Issues

As discussed previously, the Information and Privacy Commissioner appointment process is different from the process for other statutory officers. Having discussed the Information and Privacy Commissioner process in detail with various participants, I noted three practical issues regarding the Information and Privacy Commissioner appointment process, as set out in s. 85 of *ATIPPA*:

(1) the legislation is not clear on what happens when a consensus is not reached by the individuals consulted by the Speaker;

(2) it is not clear how the Speaker is to "cause to be placed before the House of Assembly a resolution to appoint as commissioner one of the individuals named on the roster" and

(3) the composition of the selection committee is not practical.

I have come to the conclusion that these issues could very well contribute significantly to delays in the Information and Privacy Commissioner appointment process

and could also indirectly affect recruitment for the Information and Privacy Commissioner position.

With regard to the first two issues, in the Honourable David Orsborn's 2020 *ATIPPA* Statutory Review, the Speaker's submission explained that:

> *The selection committee is required to provide a roster of candidates to the Speaker, but the ATIPPA is silent as to whether the candidates must be ranked. Further, it does not indicate whether the Speaker is bound to put forward the name of a first ranked candidate, if any, in a subsequent resolution. The decision to appoint a statutory officer is a decision of the House, not a decision of the Speaker. If, after consultation, a preferred candidate is not agreed by those with whom the Speaker consults, there is no clear direction in section 85 of ATIPPA as to how the Speaker may proceed. With respect to process, the Speaker of the House has no ability to put forward a resolution for the consideration of the House, yet the Speaker is required by the Act to "cause a resolution to be placed before the House". Therefore, the matter of moving the resolution must necessarily fall to the Government House Leader, who is responsible for the business of the House.*

The Office of the Information and Privacy Commissioner proposed in its submission:

> *… the Speaker can have the discretion to make the choice from the roster if there is no consensus and the Act recognizes this by saying that the next step in the process is to be taken by the Speaker in that they will "cause to be placed before the House of Assembly a resolution". However, this does not reflect the Speaker's role in the House – they are not intended to have positions on the substance of the matters before the House. It is also not realistic: even when the government does not hold a majority, it does hold the confidence of the House and thus rightly controls, within set parameters, how matters are to come before it. In any case, the Speaker has no authority to bring resolutions before the House. So how then is the resolution to be brought? OIPC recommends clarifying that some other actor (e.g. the Government House Leader) will (shall) bring the resolution*

The Orsborn Review, having considered the two issues set out above, did not recommend substantive modifications to a process intended to function as a good faith effort to select the best candidate. However, he found that the Speaker's concerns were valid and that some consideration should be given to addressing the issues identified by the Speaker. Ultimately, he recommended that the Selection Committee provide three names to the Speaker and if the Selection Committee considers it appropriate, they may rank the candidates. The Orsborn Review also recommended that the government House Leader be given the formal responsibility for bringing forward the resolution to appoint the selected candidate.

I agree with the Orsborn Review that the practical issues of the Information and Privacy Commissioner appointment process should be addressed to avoid disruptions in the appointment process in the future. I also agree that his recommendations for s. 85 of *ATIPPA* would add much needed clarity to the current process. However, former Chief Justice Orsborn did indicate that in making his recommendations, the Speaker understandably did not offer suggestions for change. Within this Review's mandate, I have had the benefit of collecting specific commentary, suggestions, and proposals for alternative processes for appointment, not only for the Information and Privacy Commissioner but for other statutory officers as well. As will be discussed in my recommendations later in this section, I believe there are broader structural changes that can be implemented in the appointment process to address these issues.

With regard to the third issue, the composition of the Selection Committee for the Information and Privacy Commissioner was designed by the Wells' Report. In their report, the Wells' Committee wrote:

> *… the perception of a Commissioner who is independent from government would be greatly enhanced if the choice resulted from efforts by a selection committee that would identify leading candidates for consideration. Such a committee could consist of persons holding offices such as the Clerk of the Executive Council, Clerk of the House of Assembly, Chief Judge of the Provincial Court, and President of Memorial University. [Emphasis Added]*

From this language, it seems to me that the Wells' Report intended the list to be examples of potential individuals who would credibly and independently serve on the Selection Committee. Though the language of the report indicates these were suggestions, the Wells' Report's draft amendments were ultimately adopted outright. As such, the report's suggestions for the Selection Committee composition were adopted, likely without consultation with these individuals/offices.

It is clear that the individuals named in s. 85(3), by the status of their roles and their offices, are highly regarded and are certainly capable of selecting the best candidates for the important role of Information and Privacy Commissioner. I take no issue with these suggestions and I appreciate the reasoning in the Report. However, by the same token, gathering these individuals to meet, discuss, and choose candidates, presents considerable practical difficulties. In their positions, these individuals have a great deal of responsibility and, understandably, incredibly busy schedules. In my view, there are other, more efficient ways of achieving independence and credibility in the appointment

process. It should be noted, as well, that these positions being ultimately political decisions, it may not be appropriate to include the Chief Judge of the Provincial Court or the President of Memorial University on the appointments committee.

References:

- David Conway, "Independent Appointments Commission Act: Statutory Review 2023" (May 2023) online: https://www.assembly.nl.ca/business/electronicdocuments/IndAppointCommActStatReview2023-Volume1.pdf.
- *Independent Appointments Commission Act*, SNL 2016 c I-2.1.
- Public Policy Forum, "Independent and Accountable, Modernizing the Role of Agents of Parliament and Legislatures" (April 2018), online: *Public Policy Forum* https://ppforum.ca/publications/independent-accountable/.
- The Honourable David B Orsborn, "*Access to Information and Protection of Privacy Act, 2015*. Statutory Review 2020" (2021) at 274-275.

Unsuitable or Questionable Appointments

The Review also received a number of comments regarding whether certain appointments were appropriate or competent, citing issues with qualifications, managerial skills, conflicts of interest, and judgement.

My mandate for this Review is focused on the structurally related aspects of the Province's statutory offices and as such, I do not intend to comment on past appointments. However, I do accept that unsuitable appointments can have major implications on the functioning of a statutory office, the staff, and public confidence.

As with all hiring decisions, though decision-makers try to make the best choices, even the most well-executed recruitment and selection processes cannot guarantee that a selected person will be successful in the role. I note, however, that participants offered a number of helpful suggestions on how to improve the methodology of the statutory officer selection process:

- Merit-based assessments for selecting statutory officers should be maintained and reinforced. Participants firmly supported the principle of recruiting candidates based on their accomplishments and abilities, rather than solely on their personal connections.
- The resources and capabilities of the PSC have been valuable and necessary for the facilitation of recruitment and appointment processes.

- A number of participants also emphasized the critical role of clear and comprehensive job advertisements in attracting suitable candidates.
- One participant suggested that a confidential "360-Degree" vetting process for shortlisted candidates should take place and interviews with provided references, former subordinates, and former supervisors.

Privacy of Applicants

Another concern raised by some participants was the non-confidential (and sometimes public) nature of the application process. This concern was particularly noted in the Information and Privacy Commissioner appointment process, where final candidates are known to the members of the Selection Committee, the leaders of the registered parties (and the members of the registered parties by extension), through the Speaker's consultation process. In both appointment processes, the selected candidate's name is put forward for resolution of the House and MHAs may debate the selection publicly. Historically, as I understand it, resolutions to appoint statutory officers have not always been unanimous, but none have ever been voted down.

There was divided opinion in relation to the privacy issue of applicants. We were told that it is appropriate for there to be public debate on the floor of the House and that selected candidates who apply for the position should have no reasonable expectation of privacy. I note that the Wells Report specifically commented that:

> *… the requirement for decision by a majority vote in the House of Assembly precludes secret determination by the government. Requiring approval by resolution of the House of Assembly ensures opportunity for open public debate on the merits or otherwise of the proposed appointee. The Committee is satisfied that this is an appropriate process for initial appointment and should be retained.*

We also heard contrary opinions pointing out the potential for embarrassment if the House were to vote down a nomination or if the decision between final candidates was debated and decided in the House. I agree that these concerns are real and that privacy of applications has a major impact on recruitment. As I will outline in my recommendations, I believe it is possible to structure a process that maintains the resolution on the appointment by the House, while also minimizing privacy issues.

House of Assembly Appointment Voting Threshold

A few participants made suggestions on the appropriate House of Assembly voting threshold for appointments. Some argued that the current simple majority vote creates an unbalanced process, favourable to candidates already selected by government. One participant argued that the threshold should be unanimous. The Office of the Citizens' Representative and James Dinn suggested that the appropriate voting threshold should be a supermajority (2/3 of the House) because it "ensures that the candidate is one who has wide respect among different political parties" and "requires government to reach out and consult meaningfully on the approval of candidates with the opposition." A super majority threshold, while uncommon, has been used in other jurisdictions. Prince Edward Island, for example, has adopted the 2/3 super majority threshold for the appointment of their Child and Youth Advocate, Ombudsperson, Conflicts of Interest Commissioner, and Information and Privacy Commissioner.

I accept that the voting threshold has bearing on the independence of the process. To illustrate, in the appointments of the Chief Electoral Officer, the Child and Youth Advocate, the Seniors' Advocate, and the Commissioner for Legislative Standards, it is possible, in a majority government, for Cabinet to nominate their preferred candidate and have the House vote in favour on a simple majority, despite opposition from the other parties. I agree that it is ideal to have a candidate supported by all members, and that some amount of meaningful consultation with other political parties should be engrained in the process. However, I also believe that weight must be given to the practical execution of the process, recognizing the political nature inherent to the process and recognizing the importance of making timely appointments. My recommendations on the voting threshold are set out below.

Exploring Alternatives

In establishing my recommendations, the Review team and I considered a number of proposed models and structures. These included:

- Amending the current appointment model for the Chief Electoral Officer, the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate, and the Commissioner for Legislative Standards such that the final roster of IAC selected candidates are submitted to the Management Commission instead of Cabinet;

- Amending the current appointment model for the Information and Privacy Commissioner to:
  - Change the composition of the Selection Committee;
  - Require the Selection Committee to provide a ranking of candidates in their recommendations; and/or
  - Require the Government House Leader to introduce the motion of the selected candidate, following the Speaker's consultation process;
- Applying the current or amended appointment model for the Chief Electoral Officer, the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate, and the Commissioner for Legislative Standards to the Information and Privacy Commissioner; and
- Applying the current or amended appointment model for the Information and Privacy Commissioner to the Chief Electoral Officer, the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate, and the Commissioner for Legislative Standards.

We also looked at recruitment and appointment models from other jurisdictions including all other provinces and territories in Canada, the Canadian federal parliamentary officers, and the models in the United Kingdom, Australia, and New Zealand. Some jurisdictions, like New Brunswick, employ a process similar to the Information and Privacy Commissioner appointment process for some of their officers. Manitoba, for instance, makes its appointments by resolution of the Assembly, upon recommendation of the Standing Committee of the Assembly on Legislative Affairs. In Ontario, the Ombudsman and the Financial Accountability Officer are:

> *…appointed by the Assembly, by order, made only if the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. The order may be waived if the [officer] is appointed by unanimous consent of the Assembly.*

Having considered the factors described above, my recommendations are as follows:

(1) The ultimate responsibility for the recruitment and appointment process for all statutory officers should rest with the Statutory Offices Standing

Committee. It is important for accountability and timeliness reasons that there is some "ownership" of these processes.

(2) The final selection of one candidate should be approved by the Standing Committee. As a committee of the House of Assembly, the Standing Committee would be able to, on its own accord, put forward the motion to appoint the selected nominee.

(3) The steps in the recruitment and appointment process for all statutory officer positions should be determined and approved by the Standing Committee. It is recommended that a merit-based appointment process for all statutory officers be maintained. Absent exceptional reasons for different processes, I see no reason why the same process cannot be applied to all statutory officer appointments.

(4) Once the Standing Committee determines the process, the steps should be set out in a publicly available policy/procedure document for transparency purposes. The Standing Committee should retain the flexibility to adjust the process to any special circumstances, a general policy should still be developed by the Standing Committee and made available to inform the public and any potential candidates. If a recruitment/appointment process is to be expedited or adjusted, the Standing Committee should disclose the changes to the process with reasons as to the circumstances to justify this.

(5) As part of its ownership of the recruitment and appointment process, the Standing Committee should be responsible for initiating the process. All postings or advertisements for Statutory Officer positions should be approved by the Standing Committee. To ensure the Committee has the resources necessary to conduct a comprehensive search and advertisement process, the Committee is encouraged to seek the assistance of the Office of the Clerk of the House of Assembly and the PSC. The Standing Committee should be responsible for monitoring term lengths of the statutory offices and for receiving notices of retirements, resignations, and other circumstances that would trigger the recruitment process.

(6) The Standing Committee should have the discretion to consult or engage the Office of the Clerk of the House of Assembly, the PSC, the IAC, staff members of the statutory offices, former statutory officers, third party recruitment firms, or others for recruitment/appointment purposes. For example, the Standing Committee could engage the continued services of the PSC to manage postings/advertisements, collect applications, perform searches in their database for potential candidates, and correspond with contacts for recommendations, etc. In developing a description of the role,

the Standing Committee could consult former statutory officers or staff of the statutory office. If there is an immediate need to fill a vacancy, the Standing Committee could adopt a truncated process, shorter timelines, or use a third-party recruitment firm. This model introduces greater flexibility in the process, allowing the Standing Committee to adjust the process according to what is appropriate in the circumstances, while also holding the ultimate responsibility/accountability for making the appointment. The Standing Committee must ensure that initiating the process and reviewing the job descriptions is done in a timely manner. I would encourage the Committee, at minimum, to meet and make decisions on the recruitment process for each appointment as soon as a potential vacancy is identified and meet again to make a final decision on the selected candidate. I would also encourage the Committee to apply consistent recruitment practices across all statutory office positions as much as possible.

(7) Timelines for the recruitment and appointment process should be defined and set out in a publicly available policy document. I recommend the following timelines:

(a) Gauging interest: The Standing Committee should contact the statutory officer 18 months before the expiry of the first term to confirm whether the officer is interested in continuing for a second term.

(b) Posting and advertisement: If a recruitment process is to be initiated, the position should be advertised 12 months before the expiry of the statutory officer's term. Any necessary search or outreach to potential candidates should also be initiated at this time.

(c) Appointment: I recommend that appointments should be made at least three (3) months prior to the expiry of the incumbent officers' term, to ensure continuity plans are in place. The incumbent officer could provide training to the incoming officer, if appropriate.

These are initial recommendations only. The Standing Committee and the Clerk of the House of Assembly would be in the best position to determine the appropriate timelines based on their process, and so I recommend that these timelines be reviewed and amended as necessary. Setting appropriate timelines for the Chief Electoral Officer's appointment and

reappointment may be particularly challenging, given the office's connection to the election cycle.

(8) Any issues with conflicts of interest, competencies, or suitability of a selected candidate should be identified in the selection process and discussed among the members of the Standing Committee. As the accountable decision-making body, the Committee should be trusted to make decisions on whether perceived conflicts of interests or gaps in competencies will affect the officer's ability to fulfill their mandate and ascertain any measures that can be implemented to address these concerns. For instance, if the selected candidate previously worked for the public body (or persons) that is subject to investigation, a procedure for recusal can be put in place whereby the deputy officer has authority over that particular investigation.

(9) I recommend that the voting threshold for resolution on the appointment of a nominated person in the House of Assembly be maintained, with a simple majority. By implementing the Standing Committee model, I believe meaningful consultation with other parties would be effected through the Committee selection and approval process. I have concerns that a super majority or unanimous threshold could create delays in the process that would significantly hinder the operation of the statutory offices. Furthermore, the higher possibility of being voted down in the House is a significant deterrent for qualified and suitable candidates, thereby reducing the pool of applicants substantially.

I also offer the following suggestions:

(1) Based on my understanding of the current recruitment processes, I would also suggest that some recruitment effort be dedicated to recruitment of candidates outside of Newfoundland and Labrador. This could include recruitment of individuals in statutory officer positions in other jurisdictions. The Review interviewed statutory officers who had been recruited to fill statutory officer positions in other provinces/territories. I see a considerable benefit in recruiting a statutory officer from another jurisdiction who understands the role, has demonstrated success in the position, and is familiar with the challenges of the mandate.

(2) I would also suggest that more recruitment effort should be put towards outreach, particularly in canvassing recommendations from former statutory officers, MHAs, civil servants, and others. Many people, including those in the public service, have limited knowledge or understanding of

the statutory offices. When these positions are posted, there may be some qualified and suitable candidates who might apply if approached about the opportunity.

Recommendation 21: The Standing Committee should be responsible for recruiting and evaluating candidates and for recommending candidates to the House for all statutory officer positions.

Recommendation 22: The Standing Committee should operate a merit-based recruitment process, consulting as it thinks appropriate with the Office of the Clerk of the House of Assembly, the PSC, the IAC, staff members of the statutory offices, former statutory officers, third party recruitment firms, or others.

Recommendation 23: Timelines for the appointment process should be defined in a publicly available policy document.

Recommendation 24: The voting threshold for the House to approve the Standing Committee's recommendation to appoint a candidate should remain a simple majority.

A simplified depiction of my recommended process is set out in *Figure 3*:

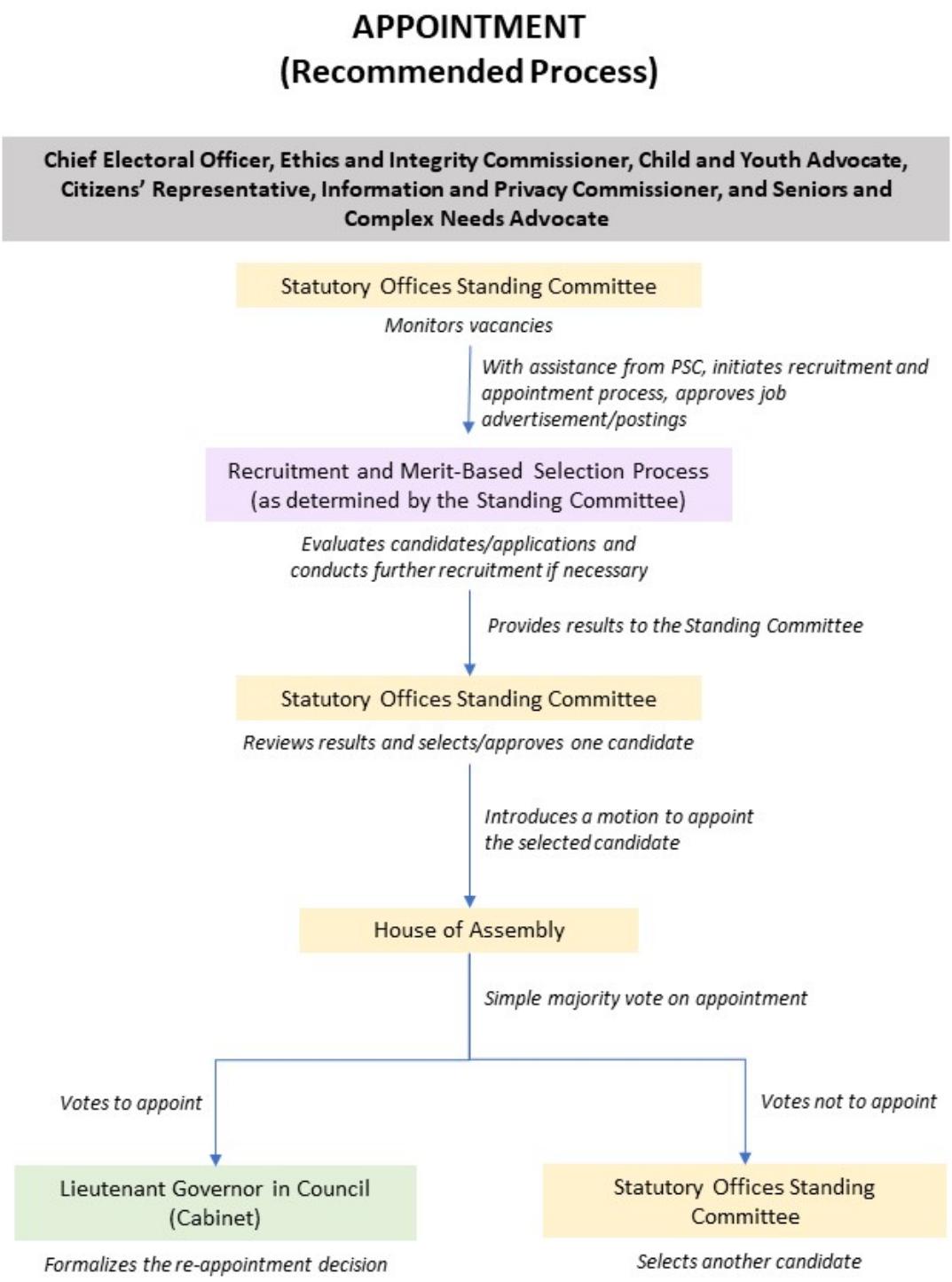

APPOINTMENT
(Recommended Process)
Chief Electoral Officer, Ethics and Integrity Commissioner, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors and Complex Needs Advocate
Statutory Offices Standing Committee
Monitors vacancies
With assistance from PSC, initiates recruitment and appointment process, approves job advertisement/postings
Recruitment and Merit-Based Selection Process (as determined by the Standing Committee)
Evaluates candidates/applications and conducts further recruitment if necessary
Provides results to the Standing Committee
Statutory Offices Standing Committee
Reviews results and selects/approves one candidate
Introduces a motion to appoint the selected candidate
House of Assembly
Simple majority vote on appointment
Votes to appoint
Votes not to appoint
Lieutenant Governor in Council (Cabinet)
Formalizes the re-appointment decision
Statutory Offices Standing Committee
Selects another candidate

Figure 3

ACTING APPOINTMENTS

Almost every statutory office has experienced a period under the management of an acting officer. It is clear that acting appointments are important: they ensure that functions of the office are not interrupted, they provide support to staff, and they ensure that the office's operations remain accountable and independent.

Currently, an acting statutory officer may be appointed by Cabinet upon recommendation of the House of Assembly Management Commission. Acting appointments are intended to be made when a statutory officer is temporarily unable to perform their duties or the position becomes vacant when the House of Assembly is not sitting, or when the House is sitting but does not pass a resolution to appoint an officer before the end of that sitting. The term of the acting officer is not intended to extend beyond the end of the next sitting of the House of Assembly.

I understand that, in some situations, acting appointments are made quickly by assigning the role to deputy officers. However, in one case, a senior government official was temporarily seconded to the statutory office, but was unable to fully assume the role because they could not be privy to confidential information. In another case, a statutory office simply remained vacant until an appointment was made. In other cases, acting appointments have been extended for long periods of time, sometimes more than a year.

It is not my intention to make findings or judgements on the appropriateness of previous acting appointments, but I accept that issues with acting appointments can cause significant disruptions in the operations of statutory offices. Aside from the obvious managerial disruptions, there are also functional issues, particularly where the acting officer is assigned as a caretaker only, and it is unclear whether the acting officer has the full legislated powers/authority of the position.

The Standing Committee should be responsible for making all acting appointments. I am hopeful that by implementing my appointment process recommendations, acting appointments will not be necessary in most cases. However, should the need arise, the Standing Committee should have the discretion to make the selection of an acting officer and have discretion over the process by which the selection is made. Acting appointments should be temporary and limited to a short period of time, and even if an officer is suspended for a longer period, the reasons for and duration of that suspension will be governed by the Standing Committee. I do not feel it is necessary to have a House resolution for an acting appointment.

Given the potential disruptions to the statutory offices, acting officers should be granted the powers and authority to act in the place of a Statutory Officer until a Statutory Officer is appointed. Acting appointments should be treated as a stopgap measure and should not be extended without extenuating circumstances to justify the extension.

Recommendation 25: Acting officers should be granted the powers and authority to act in the place of a Statutory Officer until a Statutory Officer is appointed.

Recommendation 26: Acting appointments should not be extended without extenuating circumstances to justify the extension.

I would strongly suggest that the Standing Committee should, in consultation with each current statutory officer, develop redundancy plans in the event that the statutory officer resigns, becomes incapacitated, ill or dies, or is suspended or removed. The redundancy plan should include arrangements for a possible immediate transition and plans for keeping staff informed and supported throughout the process. Redundancy plans of the offices could be held by the Standing Committee, to be considered if an acting appointment becomes necessary. The plan could be updated or amended by the statutory officer as required.

Barring exceptional circumstances, I would suggest that the simplest process for acting appointments is to appoint the most senior deputy officer until the Standing Committee can conclude the appointment process. It seems apparent from the experience of statutory offices that the least disruptive gaps in appointments were those in which a senior deputy officer was immediately appointed as acting officer. Of course, appointing a deputy may not be possible for smaller statutory offices (e.g. Commissioner for Legislative Standards and Office of the Seniors' Advocate). In those cases, the Standing Committee may want to consider redundancy plans involving other statutory officers, other deputy officers, former statutory officers, statutory officers from other jurisdictions, or managers from other independent bodies.

Recommendation 27: The Standing Committee should, in consultation with each current statutory officer, develop redundancy plans in the event that the statutory officer resigns, becomes incapacitated, ill or dies, or is suspended or removed.

Statutory Officer positions should not be left vacant. Acting appointments must be made in a timely manner, which may require immediate action by the Standing Committee. If an officer's authority is required for important office functions (e.g. the issuance of reports), acting appointments should be made on an expedited basis. My hope is that a simplified appointments process and a single entity accountable for timely appointments will minimize any periods of vacancies, and minimize the need to extend acting appointments.

Recommendation 28: Statutory Officer positions should not be left vacant. All acting appointments should be made in a timely manner, minimizing any disruptions to operations and functions.

Finally, acting statutory officer positions should not be filled by seconded government employees/officials (or any person who will be returning to the government). To preserve the independence of the statutory office, acting appointments should be independent of government.

Recommendation 29: Acting Statutory Officers should be independent of government.

References:

- *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2 at s 89.
- *Child and Youth Advocate Act*, SNL 2001, c C-12.01 at s 4.
- *Citizens' Representative Act*, SNL 2001, c C-141 at s 5.
- *Elections Act, 1991*, SNL 1992, c E-3.1 at s 6.
- *House of Assembly Act*, RSNL 1990, c H-10 at s 7.
- *Seniors' Advocate Act*, SNL 2016, c S-13.002 at s 4.

TENURE, REAPPOINTMENT AND PERFORMANCE REVIEWS

Current Term Lengths

As it now stands in this province, all statutory officers serve terms of office for a six-year period with the possibility of serving a second six-year term upon reappointment. The overall maximum time permitted is two terms. (The exception to this is the office of

the Auditor General, whose term of office is fixed at 10 years and is non-renewable and who is excluded from this Review).

Prior to the 2015 *ATIPPA* amendments, the Information and Privacy Commissioner had two-year terms with no maximum for reappointment. In the 2014 *Statutory Review of the Access to Information and Protection of Privacy Act*, chaired by former Chief Justice Clyde Wells, considered the submissions for longer terms and concluded that a six-year term would be appropriate, with the opportunity for reappointment for a further six years.

The Review performed a jurisdictional scan to establish a helpful frame of reference and get a sense of term lengths for legislative officers across the country (See Table 1). In looking at legislative officers or agents from other Canadian jurisdictions, the following general observations can be made:

- Terms of legislative officers across Canada range from four years (eg. Northwest Territories) to seven years (eg. New Brunswick).
- Half of the jurisdictions (e.g. British Columbia, Ontario, and the Federal legislative officers) permit one reappointment, or two-term maximum. Some jurisdictions, (eg. Nova Scotia and the Territories) do not have limits on the number of terms that an officer may serve.
- The tenures of Chief Electoral Officers across the country are almost always different from other legislative officers. Some are treated like an Auditor General with longer terms and others' terms are tied to election events.

Table 1: Tenure - Jurisdictional Scan

Jurisdiction	Statutory Officer	Term of Office
Alberta	Chief Electoral Officer	2 general elections + 1 year. Renewable.
Alberta	Child and Youth Advocate	5 years per term. Renewable.
Alberta	Ethics Commissioner and Lobbyist Registrar	5 years per term. Renewable.
Alberta	Information and Privacy Commissioner	5 years per term. Renewable.
Alberta	Ombudsman	5 years per term. Renewable.
Alberta	Public Interest Commissioner	5 years per term. Renewable.
British Columbia	Chief Electoral Officer	2 general elections + 1 year. Renewable.

Table 1: Tenure - Jurisdictional Scan		
Jurisdiction	**Statutory Officer**	**Term of Office**
British Columbia	Conflict of Interest Commissioner	5 years per term. Renewable.
British Columbia	Human Rights Commissioner	5 years per term. Renewable for 1 additional term.
British Columbia	Information and Privacy Commissioner	5-year non-renewable term.
British Columbia	Merit Commissioner	5 years per term. Renewable for 1 additional term.
British Columbia	Ombudsperson	6 years per term. Renewable for 1 additional term.
British Columbia	Police Complaint Commissioner	5 years per term. Renewable for 1 additional term.
British Columbia	Representative for Children and Youth	5 years per term. Renewable for 1 additional term.
Federal	Chief Electoral Officer	10-year non-renewable term.
Federal	Commissioner of Official Languages	7 years per term. Renewable for 1 additional term.
Federal	Conflict of Interest and Ethics Commissioner	7 years per term. Renewable for 1 additional term.
Federal	Information Commissioner	7 years per term. Renewable for 1 additional term.
Federal	Parliamentary Budget Officer	Up to 7-year term. Renewable for up to a maximum of 14 years of service.
Federal	Privacy Commissioner	7 years per term. Renewable for 1 additional term.
Federal	Commissioner of Lobbying	7 years per term. Renewable for 1 additional term.
Federal	Public Sector Integrity Commissioner	7 years per term. Renewable for 1 additional term.
Manitoba	Advocate for Children and Youth	5 years per term. Renewable for 1 additional term.
Manitoba	Chief Electoral Officer	2 general elections + 1 year. Renewable.
Manitoba	Conflict of Interest Commissioner & Lobbyist Registrar	5 years per term. Renewable.
Manitoba	Information and Privacy Adjudicator	No term limits indicated.
Manitoba	Ombudsman	6 years per term. Renewable for 1 additional term.

Table 1: Tenure - Jurisdictional Scan		
Jurisdiction	**Statutory Officer**	**Term of Office**
New Brunswick	Chief Electoral Officer	10-year non-renewable term.
New Brunswick	Child, Youth and Seniors' Advocate	7-year non-renewable term. Possible extension of up to 1 year.
New Brunswick	Commissioner of Official Languages	7-year non-renewable term. Possible extension of up to 1 year.
New Brunswick	Consumer Advocate for Insurance	7-year non-renewable term. Possible extension of up to 1 year.
New Brunswick	Integrity Commissioner	7-year non-renewable term. Possible extension of up to 1 year.
New Brunswick	Ombud	7-year non-renewable term. Possible extension of up to 1 year.
Nova Scotia	Chief Electoral Officer	10 years per term. Renewable.
Nova Scotia	Conflict of Interest Commissioner	Up to 5 years per term. Renewable.
Nova Scotia	Ombudsman	5 years per term. Renewable for 1 additional term.
Nunavut	Chief Electoral Officer	7 years per term. Renewable.
Nunavut	Information and Privacy Commissioner	5 years per term. Renewable.
Nunavut	Integrity Commissioner	5 years per term. Renewable.
Nunavut	Languages Commissioner	5 years per term. Renewable.
Nunavut	Representative of Children and Youth	5 years per term. Renewable for 1 additional term.
Northwest Territories	Chief Electoral Officer	1 general election + 1.5 years. Renewable.
Northwest Territories	Equal Pay Commissioner	4 years per term. Renewable.
Northwest Territories	Integrity Commissioner	4 years per term. Renewable.
Northwest Territories	Information and Privacy Commissioner	5 years per term. Renewable.
Northwest Territories	Languages Commissioner	4 years per term. Renewable.
Northwest Territories	Ombud	5 years per term. Renewable.
Ontario	Chief Electoral Officer	No term limits indicated.
Ontario	Environmental Commissioner	5 years per term. Renewable.
Ontario	Financial Accountability Officer	5 years per term. Renewable for 1 additional term.
Ontario	Information and Privacy Commissioner	5 years per term. Renewable for 1 additional term.

Table 1: Tenure - Jurisdictional Scan		
Jurisdiction	**Statutory Officer**	**Term of Office**
Ontario	Integrity Commissioner	5 years per term. Renewable for 1 additional term.
Ontario	Ombudsman	5 years per term. Renewable for 1 additional term.
Prince Edward Island	Chief Electoral Officer	No term limits indicated.
Prince Edward Island	Child and Youth Advocate	5 years per term. Renewable for 1 additional term.
Prince Edward Island	Conflict of Interest Commissioner	5 years per term. Renewable.
Prince Edward Island	Information and Privacy Commissioner	5 years per term. Renewable for 1 additional term.
Quebec	Chief Electoral Officer	5 years per term. Renewable.
Quebec	Ethics Commissioner	Up to 5-year term. Renewable.
Quebec	Public Protector	5 years per term. Renewable.
Quebec	Lobbyists Commissioner	5 years per term. Renewable.
Saskatchewan	Advocate for Children and Youth	5 years per term. Renewable for 1 additional term.
Saskatchewan	Chief Electoral Officer	2 general elections + 1 year. Renewable.
Saskatchewan	Conflict of Interest Commissioner and Registrar of Lobbyist	Up to 5-year term. Renewable.
Saskatchewan	Information and Privacy Commissioner	5 years per term. Renewable for 1 additional term.
Saskatchewan	Ombudsman	5 years per term. Renewable for 1 additional term.
Saskatchewan	Public Interest Disclosure Commissioner	5 years per term. Renewable for 1 additional term.
Yukon	Chief Electoral Officer	Term expires 3 months after the tabling of the final report of the first Electoral District Boundaries Commission that is appointed after that CEO is appointed. Renewable.
Yukon	Child and Youth Advocate	5 years per term. Renewable.
Yukon	Conflict of Interest Commissioner	3 years per term. Renewable.
Yukon	Information and Privacy Commissioner	Same as Ombudsman.
Yukon	Ombudsman	5 years per term. Renewable.

Current Reappointment Process

There is no legislative or formal direction on the reappointment process for the Chief Electoral Officer, Commissioner for Legislative Standards, Citizens' Representative, Child and Youth Advocate, Seniors' Advocate officers and only slightly more for the Information and Privacy Commissioner. From what I understand, the current reappointment process for all officers is either initiated by the Executive Council or, as a more recent development, by the Clerk of the House of Assembly, who notifies the Executive Council that a term of a statutory officer is about to expire. The Executive Council then may contact the statutory officer to confirm interest in serving a second term. There do not seem to be solid timelines on gauging interest. Some officers have been contacted up to six months in advance of their term expiry to gauge interest in reappointment; others have been contacted perilously close to the end of their term or even after their term had expired.

If Cabinet decides to reappoint a statutory officer, it will direct a member to introduce a resolution into the House to that effect. If Cabinet decides not to reappoint a statutory officer or to hold a competition, it will initiate a merit-based process through the Public Service Commission and Independent Appointments Commission. In either case, the process will then proceed as a normal appointment process.

The reappointment of the Information and Privacy Commissioner, as set out in ATIPPA, is different. Section 87(2) of the *ATIPPA* specifies that reappointment of the Information and Privacy Commissioner requires a double majority (approval of a majority of the members on the government side of the House of Assembly and separate approval of a majority of the members on the opposition side). I note that since the 2015 ATIPPA amendments came into force, no appointed Information and Privacy Commissioner has yet indicated an interest in serving a second term, and so the operation of s. 87(2) of the *Act* has not yet been tested. Presumably, a member of Cabinet would be responsible for putting forward the motion in the House to reappoint.

Figures 4 and 5 represent simplified depictions of the current reappointment processes.

RE-APPOINTMENT
(Current Process)

Chief Electoral Officer, Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Seniors' Advocate

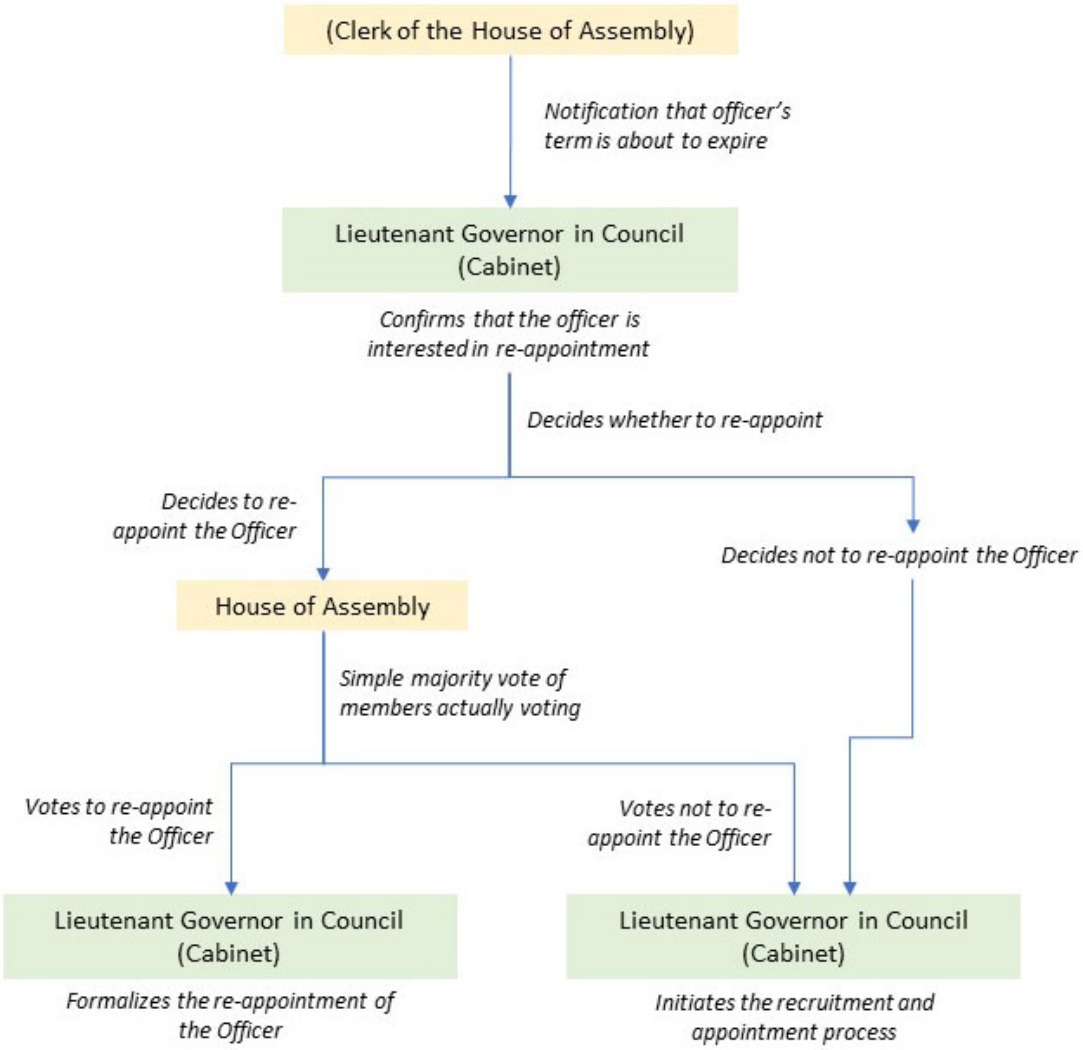


Figure 4

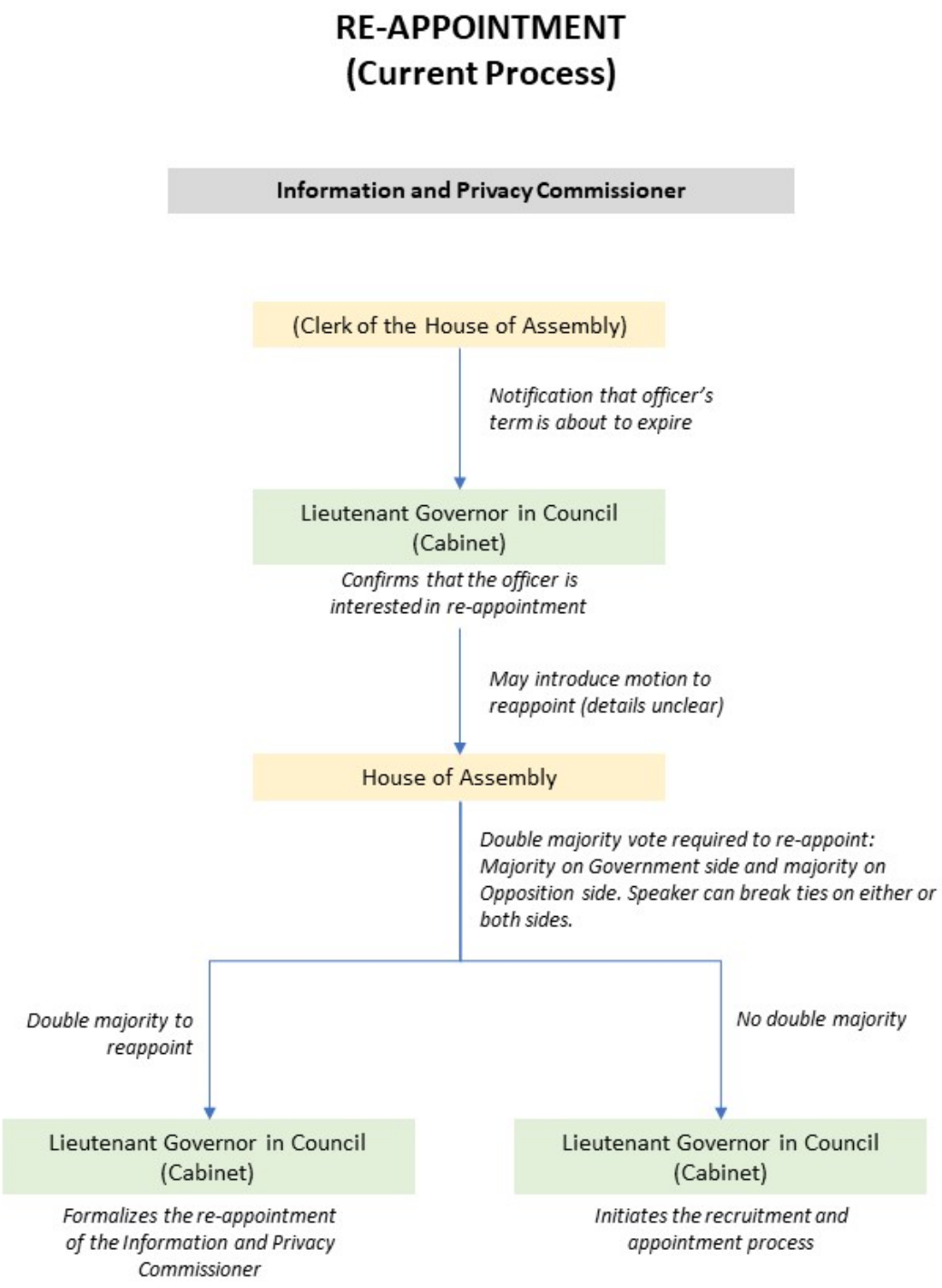

RE-APPOINTMENT
(Current Process)
Information and Privacy Commissioner
(Clerk of the House of Assembly)
Notification that officer's term is about to expire
Lieutenant Governor in Council (Cabinet)
Confirms that the officer is interested in re-appointment
May introduce motion to reappoint (details unclear)
House of Assembly
Double majority vote required to re-appoint: Majority on Government side and majority on Opposition side. Speaker can break ties on either or both sides.
Double majority to reappoint
No double majority
Lieutenant Governor in Council (Cabinet)
Formalizes the re-appointment of the Information and Privacy Commissioner
Lieutenant Governor in Council (Cabinet)
Initiates the recruitment and appointment process

Figure 5

In formulating my recommendations, I have carefully considered the following factors:

Independence of the Reappointment Process and Security of Tenure of the Chief Electoral Officer, Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative and Seniors' Advocate

As discussed, the reappointment process for these officers sits wholly with the decision-making authority of the executive branch. Some participants found this to be an encroachment on the independence of the office, as a statutory officer may favour (or may be perceived to favour) the government to ensure reappointment. The Review was given a couple of examples. A former agent said they knew of a colleague who was anticipating a second term and wondered about whether to "go easy" on the government to ensure reappointment. Another participant gave another example of an officer receiving a disclosure against a government official at the end of the officer's second term. The disclosure was career limiting. Since the disclosure was received at the end of [the Officer's] second term, there was no issue, but the participant suggested that a statutory officer with investigatory powers may be hesitant to take on that kind of investigation if seeking reappointment.

This potential issue regarding the independence of reappointment process is avoidable and the perception of these offices can be further enhanced by either removing the requirement for reappointment all together or shifting the decision-making authority to the legislature. It is evident that the Wells' Committee recommended the latter, requiring a double majority vote in the House for reappointment. Their reasoning was that a vote in the legislature "should avoid both the probability of a Commissioner making recommendations designed to increase the chances of reappointment and the perception of such decisions being made."

Another way to enhance independence is to change the tenure to a non-renewable fixed term (e.g. 10 years), as with the Auditor General. Proponents insist that removing the reappointment process avoids the temptation of currying favour from the executive to secure reappointment as nothing is to be gained by pleasing the government if tenure is a fixed term. For instance, some participants argued that "10 years might provide real stability and would reduce the possibility of personal interests in reappointment interfering with any case that comes in" and "[10 year terms] would make it easier for younger officers to be more vocal."

The Honourable J. Derek Green, when referring to the structural independence for officers of the legislature in his 2007 report, touched on the three essential components referred to earlier as necessary for judicial independence and their applicability to statutory officers. One of those components, he suggests, is a fixed, non-renewable term of office:

> *Other forms of independence are enjoyed by statutory officers such as ombudsmen. The offices are usually created and supported by their own legislation, and the head of the office is called, and treated as, an "officer of the legislature." Such officers are often allowed to hire their own staff and regulate their own workplace, provided they report directly to the legislature and not through a minister. They often have a fixed, non-renewable term; have a committee of the legislature involved in overseeing their office; have a reasonable salary, objectively set; and involve the legislature in setting the officer's budget.*

It is evident that the preservation of independence is a main consideration. However, it must be delicately balanced with other factors.

Motion for Reappointment of the Information and Privacy Commissioner and Voting Threshold

The reappointment process for the Information and Privacy Commissioner, though further removed from Cabinet, appears to have another potential independence issue. The Office of the Information and Privacy Commissioner, in its written submission, explained that:

> *A flaw in [the current process] is that Cabinet, if displeased with decisions of the Commissioner, may decide simply (and silently) not to bring such a resolution before the House in the first place and let the Commissioner's term naturally expire. Thus, the executive branch has a veto over a decision that rightfully should be with the legislative branch. The Wells' Committee was concerned that a single majority would create an incentive for the Commissioner to be friendly towards the government towards the end of their first term. The double majority, however, does not actually remove that incentive but rather modifies it: it could be said that the Commissioner must be friendly enough to the government so that it does not quietly let their term naturally expire, but not so overtly friendly as to lose the confidence of the opposition. In the context of a legislature that is controlled by the government of the day, there is little to be done about the requirement for the government to support a reappointment; however the principle to be preserved is that the choice should be an open one in the legislature. If the government does not want to appoint a Commissioner who is interested in serving a second term, it should be the subject of open debate in the House. If its desires are legitimate – e.g. poor*

performance rather than political displeasure – then it should be prepared to explain and defend this position.

The OIPC's recommendation is to establish an "automatic trigger prior to the end of the first term whereby the Speaker "shall cause" a motion to be brought before the House.

As s. 87(2) of the *Act* has never been tested, this issue remains theoretical. It is not clear to me that Cabinet would be able to quietly avoid reappointment in practice. However, I appreciate the desire to have some clarification of the process to specify who is responsible for bringing the motion before the House. For reasons indicated in the Recruitment and Appointment section of this report, I am averse to recommending that the Speaker "shall cause" a motion to be brought before the House.

With regards to the voting threshold for a majority from both sides of the House to reappoint the Information and Privacy Commissioner, another participant raised an interesting point: "What happens should a vote fail? It would be humiliating for the incumbent."

I note again that this is a theoretical issue, but it is a valid point. While I agree with the basis for the Wells' Committee's reasoning for s. 87(2), I can also appreciate the problematic consequences of a failed vote and the likelihood of a failed vote. It is conceivable that, under this regime, a Commissioner could be ousted publicly for reasons unrelated to their objective performance. Further, without clear timelines, a failed vote could occur very close to the end of an Information and Privacy Commissioner's term, leaving the statutory office in a lurch and leaving the Information and Privacy Commissioner with very little notice to look for alternate employment. I would think that these undesirable consequences would also impact recruitment and attracting candidates for the position.

I agree that the appropriate decision-making authority on reappointment should be the legislature. It is unavoidable, under that decision-making process, that a vote in the House is a public process. However, as I will discuss in my recommendation for reappointment, the process can be improved to avoid potentially precarious or "humiliating" situations, while still preserving the decision-making authority in the legislature.

Timelines and Transparency of the Process

According to participants:

- The reappointment process can be hell. The statutory officer has no idea what is happening. In one case, the reappointment was announced only two days before the expiry of the term, even though the Officer expressed interest in the reappointment six months before the expiry date. This is not rare. It's not the best practice, but it also happens in other jurisdictions.
- If it's the government's intention not to reappoint an officer, the officer may need to find another job, so the officer should have a lot of notice. Their pension and health benefits may be all tied up with their career. A year in advance would be helpful. However, governments tend to leave this to the last minute.
- At one time the government interpreted the IAC process to mean that you needed to be appointed under the IAC process for reappointments. A number of people had to re-compete for their own positions and some simply refused, and some of them were reappointed anyway, and some weren't.

As with the appointment process, I accept the comments that clear timelines and procedures are needed for the reappointment process if it remains in place. Once established, a detailed reappointment process and procedure would be informative for candidates applying for the position and enhance the recruitment process.

Impact on Recruitment and Attracting Candidates

In making recommendations, I am also cognizant of the potential effects on recruitment and attracting good candidates for officer positions, though I must rely heavily on assumptions. As discussed in the Recruitment and Appointment section of this report, it is evident that the opaqueness and inconsistencies in the appointment process causes frustration and has deterred good candidates from applying. The extent of this negative impact on recruitment efforts in the past cannot be accurately measured. However, it is perhaps reasonable to assume that the prospects of reappointment would be a serious consideration for prospective applicants. Uncertainty of reappointment would be a potential deterrent. It is reasonable that uncertainty of reappointment would be a potential deterrent.

One candidate suggested that the purpose of offering an opportunity for reappointment was to attract candidates. While I am unable to confirm this, it makes sense that a possible 12-year contract would be more attractive than a 6-year one. It was also suggested that no requirement for reappointment and a 10-year term of office would also likely capture a wider pool of candidates.

Benefits of Institutional Knowledge and Preserving Continuity

There was consensus that tenures cannot be so short as to only allow enough time for an officer to learn the job and be replaced. There was some commentary that new appointments do incur a period of training and adjustment. The two-year term of office of the Information and Privacy Commissioner prior to 2015 was clearly too short. Longer tenures allow officers to gain experience and knowledge of the subject matter, establish necessary connections with staff, and become more efficient in operations. Longer tenures also ensure continuity of long-term projects and planning.

Benefits of New Leadership

The Review also heard arguments that 10-year appointments were too long. It was also apparent that no participants advocated for unlimited reappointments. In fact, participants commented that unlimited reappointments was undesirable and that the two-term maximum was reasonable. A few participants pointed out that:

- Over time, complacency will set in and [the officers'] views might be too set. There's nothing better than a fresh look at something…[Every] few years it's useful to have a new leader.
- Limiting the number of years of a Statutory Officer … ensures a renewing of the office's direction, vision and strategic planning as it works to meet the changing needs of the people it serves. Term limits allow for change and growth for the statutory office by ensuring the vision and plans remains relevant and innovative …
- A two-term limit is appropriate. Statutory officers are like fish, you don't want them around too long.
- Staff members of a statutory office want to attract the best people to be the Statutory Officer. If there was a ten-year appointment and the staff didn't have confidence in the person appointed, staff might leave.

I take the point that complacent or entrenched leaders are detrimental to the functioning of a statutory office. Unlike government departments, officers cannot be shuffled or disposed of at pleasure, and given the additional level of security of tenure, it would be important to consider the benefits of new leadership in balance with other factors.

I also agree that longer fixed non-renewable terms could trap an office with a poorly performing officer, whose long tenure must be suffered to the end. The Wells' Committee also considered the argument, with reference to the Information and Privacy Commissioner:

> *One possibility is a long term, between 8 and 12 years with no possibility of reappointment. In that way the Commissioner could look forward to a reasonable term, but have no incentive to behave in a manner likely to result in reappointment. The Centre for Law and Democracy expressed a concern that such an approach could result in being stuck for a very long time with an appointee who turned out not to be a very good performer.*

Performance Reviews

Currently, aside from the offices' annual reports and the business/activity plans, there are no external measures for regularly evaluating the performance of statutory officers – and the efficacy of these mechanisms is questionable (as will be discussed in the Reports section). There were numerous comments regarding performance of the statutory officers. For example:

- If an officer lacks the required competencies for the position, there is very little recourse. One option is to wait out the term but that could have detrimental effects on the office. Another option is to remove the individual using the provisions of the *Act*; however, that too is a problematic process.
- The performance and quality of the work of each statutory officer is measured by the work of its office; each statutory officer represents the statutory office and, therefore, any measure of accountability for the office is also for the officer…
- There is no justification to impose external mechanisms to ensure the quality of the work and performance of statutory officers. The House of Assembly and the Management Commission have the capacity to order work reviews on a case-by-case basis. This is a necessary and sufficient

mechanism to provide oversight for the work of the statutory offices. It is for the legislative branch to provide oversight for the legislative branch, and no other branch of government should have that role.

- There is no validation or quality control. Who oversees or checks? Time and again, there is inaccurate information in reports. Statutory officers are putting out opinions and politicized commentaries to the public and there's no way to know if it is accurate. The public interest must be kept in view at all times.
- Any mechanism for quality assurance will be inherently political. Either [statutory officers] have independence, or they don't.
- If there's a real problem with the performance of a Statutory Officer, that's what removal is for. If it's a matter of opinion, that's what the telephone is for. There would be real concern about a formal procedure.

I appreciate that there are divergent views on this issue. Concerns about performance reviews interfering with independence are valid. At the same time, it is constructive and beneficial for statutory officers to receive periodic feedback. Every officer will have areas of improvement and gaps in knowledge—even exceptional officers. Especially for officers with advocacy roles, it is important to have real, two-way communication with both the legislative and executive branches about the nature of the officers' work. It is crucial to ensure that statutory officers do not become "free agents accountable to no one."

The performance review mechanism could be housed within the legislature and responsibility for facilitating the reviews could be designated to the Standing Committee. In my view, the Standing Committee should be familiar with each appointed officer and has a legitimate role in articulating the bounds of the officers' roles.

I note that it is important that statutory officers do not feel bound by or beholden to feedback from performance reviews. To preserve independence, it should be ultimately up to the officers whether to accept feedback from the Standing Committee or any other body. For similar reasons, all performance reviews must also be conducted in strict confidence. These safeguards, along with the high threshold for removal, should provide adequate assurance that any performance review mechanism is unlikely to jeopardize officers' independence.

Tenure of the Chief Electoral Officer

A jurisdictional scan is particularly helpful in examining the tenure of the Chief Electoral Officer. Chief Electoral Officers in most jurisdictions are the exception to the general four-to-seven-year term lengths of other officers. Some Chief Electoral Officers have 10-year non-renewable terms. Others have terms that are tied to the length of election cycles. For example, the Chief Electoral Officer terms in Alberta, British Columbia, Manitoba, and Saskatchewan are tied to election events – the term lengths are formulated such that the Chief Electoral Officer serves two general elections with an additional 12 or 18 months. As an example, Saskatchewan's *Election Act*, states:

> *…a Chief Electoral Officer holds office for a term commencing on the day of his or her appointment and ending on the day that is 12 months after the day fixed for the return to the writ for the second general election for which he or she is responsible.*

It is also interesting to note that almost all other Canadian jurisdictions do not put limits on the number of terms a Chief Electoral Officer can serve. With the exception of Newfoundland and Labrador and Quebec, all other jurisdictions seem to provide for flexibility to keep long-serving Chief Electoral Officers. In Ontario, there does not appear to be any limits on tenure. The current Chief Electoral Officer in Ontario has served since June 2008.

As to why this might be, the submission of the Chief Electoral Officer provides helpful context:

> *The existing framework for the term of a CEO does not match with the long-term planning and cyclical nature of the OCEO. Currently the term limit of a CEO is six years (with a possible six year extension). Depending on the timing of the appointment, a CEO may potentially only see one general election, or could either enter or leave the role immediately preceding an event. To gain a full appreciation of the role, retain the operational knowledge of elections, and provide a continuity of election expertise, the CEO term should be increased to ensure that the CEO is present for at least two general elections. A 10 year term would ensure the CEO is present for multiple election events to provide continuity as well as facilitate long-term modernization projects that could span over multiple election cycles.*

Having reviewed the Chief Electoral Officer's mandate and duties in detail, I am satisfied that the Chief Electoral Officer position requires a high level of institutional and specialized knowledge, not only on the operations side, but also accounting/auditing expertise. It is a role in which institutional knowledge is of particular importance and benefit. A longer term would also permit the Chief Electoral Officer to engage in long-

term strategic planning and implementation, which is particularly important for electoral operations.

My remarks about the importance of the Chief Electoral Officer's role should not imply that the Chief Electoral Officer's personal knowledge and skills are indispensable during an election. On the contrary, the Province must be prepared to hold an election at any time, even if the Chief Electoral Officer is suddenly ill or unavailable, a possibility which can never be discounted. The Chief Electoral Officer is responsible for ensuring that the electoral system can always function without them.

Appropriate Term Lengths, Performance Reviews, and the Reappointment Process

In this Review, submissions and interviews have revealed varying opinions in relation to the terms of office or tenure of statutory officers. In consideration of these opinions and the factors discussed, a new option emerged; a presumption of reappointment. I recommend that the six-year term of office for a maximum of two terms remain in place for the Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors' Advocate positions. The presumption of reappointment is established by the reappointment process detailed in Recommendation 36.

The presumption of reappointment balances several conflicting purposes. A long and secure period of tenure is required to attract strong candidates, to avoid limiting the pool of candidates to only senior public servants and to ensure that statutory officers are not easily influenced by the government of the day. At the same time, however, an institution like a statutory office sometimes needs and would benefit from a change of leadership. The presumption of reappointment is designed to balance these conflicting objectives, allowing a new statutory officer to be appointed after six years without a breach of good behaviour, but only if there is a broad consensus among legislators, based on an objective evaluation of the existing officer's performance, that a change is required.

Recommendation 30: The term length for the Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors and Complex Needs Advocate positions should remain six years, with a presumption of reappointment for an additional six-year term.

The term of office for the Chief Electoral Officer is the exception. I am persuaded that there are good, practical reasons that are specific to the duties and nature of the Chief Electoral Officer's role, that justify a departure from the tenure of other statutory officers. I recommend that the Chief Electoral Officer's term of office be amended to guarantee that the Chief Electoral Officer serves in two general elections and an additional 12 months after the second election. This recommendation is consistent with many jurisdictions across the country. I am also satisfied that the highly specialized and technical and institutional knowledge of an incumbent Chief Electoral Officer may be beneficial for more than two terms (4 elections). If it is suitable for the Chief Electoral Officer to continue for more than two terms, they could be appointed for additional terms as long as appropriate and periodic performance review measures in place.

Recommendation 31: The term of office of the Chief Electoral Officer should be amended to guarantee two general elections and an additional 12 months. The Chief Electoral Officer should not be limited to two terms. The reappointment of the Chief Electoral Officer should follow the same process as the other statutory officers.

The responsibility for reappointment process should rest with the Statutory Offices Standing Committee. The Committee should be responsible for monitoring term lengths and, if applicable, initiating the reappointment process and ensuring the process is completed.

Recommendation 32: The responsibility for reappointment process should rest with the Statutory Offices Standing Committee. The Committee should be responsible for monitoring term lengths and, if applicable, initiating the reappointment process and ensuring the process is completed.

Recommendation 33: The steps of the reappointment process for all statutory officer positions should be determined and approved by the Statutory Offices Standing Committee. These steps should be set out in a publicly available policy document.

I recommend that a performance review be conducted in consideration of reappointment. As previously recommended, the Standing Committee should confirm whether the statutory officer is interested in continuing for a second term at least 18 months before the expiry of that officer's first term. If the officer is not interested in serving a second term, the Standing Committee should initiate the recruitment and appointment

process according to the timelines set out in the Recruitment and Appointment Recommendations. If an officer is interested in continuing for a second term, the Standing Committee should initiate a performance review and ensure that the performance review is completed and shared with the Committee members at least one month before the next sitting of the House. In this way, the reappointment process can give effect to good performance evaluation without compromising security of tenure.

Recommendation 34: If an officer is interested in serving a second term, the Standing Committee should initiate a performance review. The performance review must be completed and shared with the Committee members at least one month before the next sitting of the House.

In conducting the performance review, the Standing Committee can decide to engage the services of the House of Assembly Service or a credible external consultant/services to perform the review, in strict confidence. I suggest that the performance review include interviews with the officer, the officers' direct reports, the Clerk of the House of Assembly (and anyone they nominate), and the Clerk of the Executive Council (and any one they nominate). I also suggest that any identified areas of poor performance should be brought to the attention of the officer so that they may provide a response.

Recommendation 35: The Standing Committee may engage external services to conduct performance reviews. All performance reviews must be conducted in strict confidence.

In that month before the next sitting, the Standing Committee should decide, based on the performance review and any responses from the incumbent officer, whether to: (a) reappoint the officer, or (b) bring a motion to the House for approval to conduct a competition for the position. A competition should not be initiated unless a resolution of the House of Assembly, passed by a super majority vote (2/3) of the House, votes in favour.

Requiring a super majority will, in most cases, protect statutory officers from the government's ability to control the House. Governments often control a majority of the house, but assembling a 2/3 majority will usually require the agreement of at least some opposition or independent members.

The decision to require a super majority should be contrasted with the "double majority"—a majority of government members and also of opposition members—currently required to reappoint the Information and Privacy Commissioner. Requiring a double majority has some attractions. It ensures that the government will never be able to control the outcome of the resolution, no matter how strong its majority. It also means, in practice, that the decision not to reappoint a statutory officer requires the cooperation of the opposition leadership.

On the whole, I am convinced that a 2/3 majority is preferable to a double majority in this context. A double majority requirement places the opposition and government on an equal footing; but the legislature consists of members not parties. If the government has a particularly strong mandate, it would be unusual to allow a handful of opposition members to override a supermajority of the House. In the more common case, if a government is able to assemble a supermajority because a significant number of opposition members agree that a new competition would be appropriate, but where a narrow majority of the opposition is opposed to a new competition, it would again seem unusual to allow the narrow majority of the opposition override the bipartisan supermajority of the House.

Finally, I would note that a decision by the House to hold a new competition should in no way be held against a statutory officer who is not reappointed. The decision to hold a competition must be understood as a decision that the statutory office could benefit from new leadership. It does not reflect any failure of the outgoing statutory officer, let alone a breach of good behaviour.

If the House does not vote in favour of a competition, the officer should be immediately reappointed by the Standing Committee for a second term. If the House votes in favour of a competition, the Standing Committee should initiate the recommended recruitment and appointment process and take the necessary steps to appoint an acting officer.

Recommendation 36: Before the next sitting of the House, the Standing Committee should decide to: (a) reappoint the officer, or (b) bring a motion to the House for resolution to conduct a competition for the position. If the House votes in favour of a competition (which would require support of 2/3 of the House), the Standing Committee should initiate the recommended recruitment and appointment process and appoint an acting officer. Otherwise, the Standing Committee should reappoint the incumbent officer.

The timelines for the reappointment process should be defined and transparent, set out in a publicly available policy document. I recommend that these timelines be reviewed and amended by the Standing Committee, as necessary. The Standing Committee and the Clerk of the House of Assembly would be in the best position to determine the appropriate timelines.

Recommendation 37: Timelines for the reappointment process should be set out in a publicly available policy document.

A simplified depiction of my recommended process is set out in *Figure 6*.

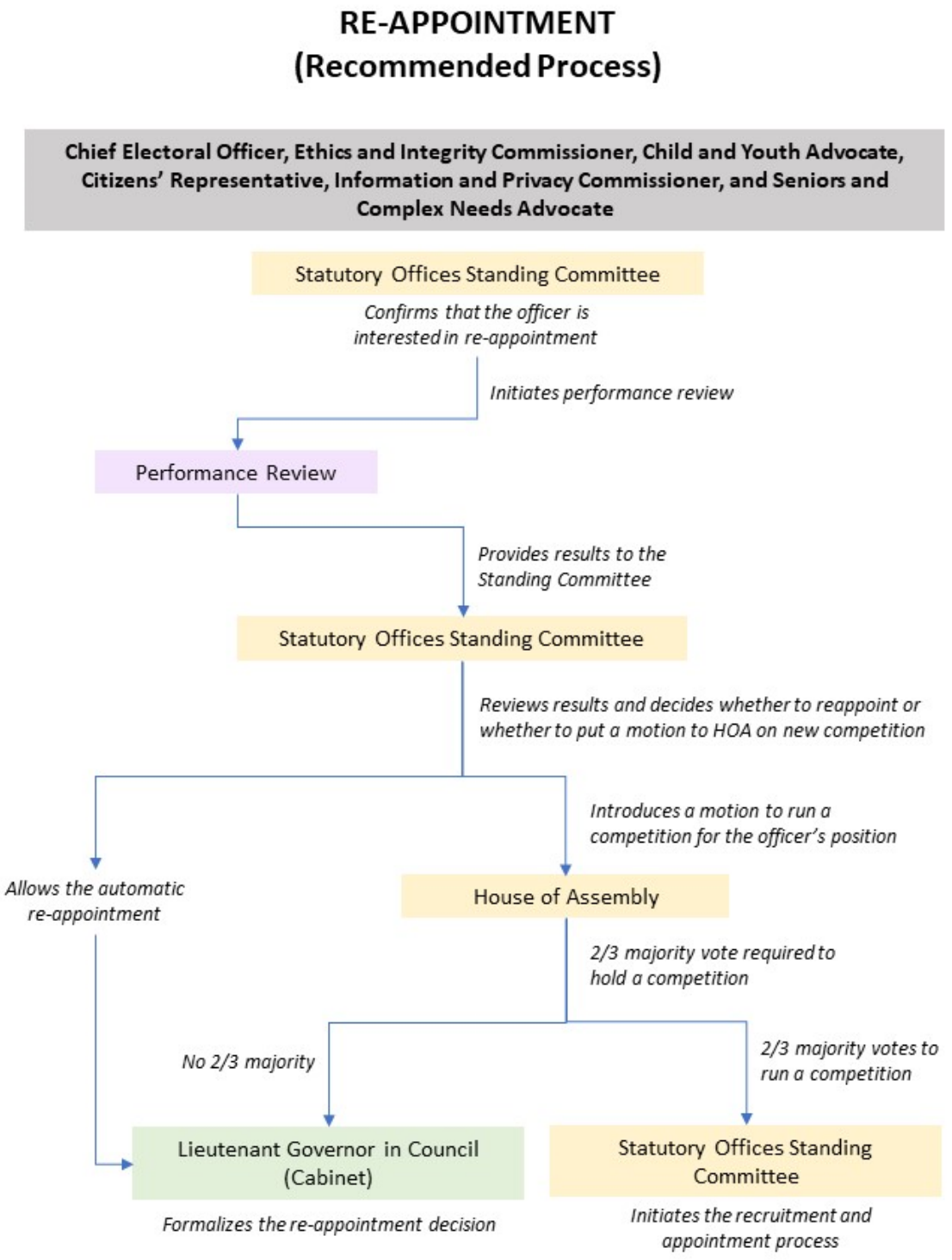

RE-APPOINTMENT
(Recommended Process)
Chief Electoral Officer, Ethics and Integrity Commissioner, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors and Complex Needs Advocate
Statutory Offices Standing Committee
Confirms that the officer is interested in re-appointment
Initiates performance review
Performance Review
Provides results to the Standing Committee
Statutory Offices Standing Committee
Reviews results and decides whether to reappoint or whether to put a motion to HOA on new competition
Introduces a motion to run a competition for the officer's position
Allows the automatic re-appointment
House of Assembly
2/3 majority vote required to hold a competition
No 2/3 majority
2/3 majority votes to run a competition
Lieutenant Governor in Council (Cabinet)
Formalizes the re-appointment decision
Statutory Offices Standing Committee
Initiates the recruitment and appointment process

Figure 6

REMOVAL AND SUSPENSION

One of the defining features of statutory officers is that they are given an extensive security of tenure to protect their independence. This feature raises a number of perennial and interrelated questions:

(1) How should statutory officers be removed or temporarily suspended from office?

(2) How should concerns about or conflicts involving statutory officers be managed?

(3) How can high standards of behaviour and performance be encouraged without compromising independence?

Removal and Suspension under the Current Legislation

Five of the six statutory officers have the same language describing suspension or removal:

> The Lieutenant-Governor in Council, on resolution of the House of Assembly passed by a majority vote of the members of the House of Assembly actually voting, may suspend or remove the [officer] from office because of an incapacity to act or for misconduct, cause or neglect of duty.
>
> When the House of Assembly is not sitting, the Lieutenant-Governor in Council may suspend the [officer] because of an incapacity to act or for misconduct, cause or neglect of duty but the suspension shall not continue in force beyond the end of the next sitting of the House of Assembly.

The Information and Privacy Commissioner's removal provision is subtly different, removing "cause" as a basis for removal.

As with judicial security of tenure, removing a statutory officer requires both cause ("incapacity to act", "neglect of duty" or "misconduct") and a resolution of the House of Assembly. Several other features of the legislation are worth noting:

- The House majority must include a majority of members actually voting.
- Even after a resolution is passed, the Lieutenant-Governor in Council appears to have a choice about whether to remove the officer.
- The standard for suspending an officer while the House is in session appears to be identical to the standard for removal.

- When the House is out of session, the power to suspend passes to Cabinet.

For the moment, it is worth focusing on suspension or removal by the House. The actual mechanics of removal are quite complex:

- In theory, any member could move to suspend or remove an officer. An opposition MHA moved to suspend the Chief Electoral Officer in April 2021.
- In practice, a resolution to suspend or remove an officer requires government support:
    - A government requires the confidence of the legislature to exist. Even a minority government must regularly be able to assemble a majority of the legislature to pass a budget or win a confidence vote. As a result, it is rare for a government to survive in office without effective control of the legislature.
    - In this Province, the opposition and independent members of the House do not typically place binding motions on the House order paper to be called. Motions on opposition day are typically symbolic.
    - Even if a binding motion was placed on the order paper, the Government House Leader might not, under the current rules and practice, be bound to call it for a vote. As a result, under the current House practice, a motion for removal requires the government's consent.
- As a result, the decision to remove or suspend a statutory officer is normally made, in practice, outside the formal mechanics and before the motion is brought by Cabinet.
- The Cabinet decision to remove or suspend is preceded by a written Cabinet submission which, in turn, typically relies on a prior investigation. Cabinet could often be expected simply to adopt the results of this investigation so that, in another sense, it is this investigation where the real decision is made.
- The Cabinet decision normally leads to a Minute in Council instructing the Government House Leader or an appropriate minister to introduce the motion.

- The House must decide for itself how to debate the motion. Past motions have proceeded under the normal standing orders.
    - The motion has been supported by a paper record prepared by the government. Officers have not been permitted to make arguments or call evidence in response. Motions to permit the officer to be heard have been defeated.
    - Members debate the motion, speaking either for 20 or 60 minutes.
- If the resolution passes, it is certified and delivered to Cabinet.
- Because Cabinet typically makes its decision before a motion is brought, the final Order-in-Council removing or suspending the officer is usually a formality.
- Following the Order-in-Council, the Clerk of the House of Assembly terminates the officer's employment contract.

When the House is out of session, the mechanics are much more straightforward. The initial investigation and Cabinet submission lead, not to a decision to introduce a motion in the House, but directly to a temporary suspension.

A simplified depiction of the current removal process is set out in *Figure 7*:

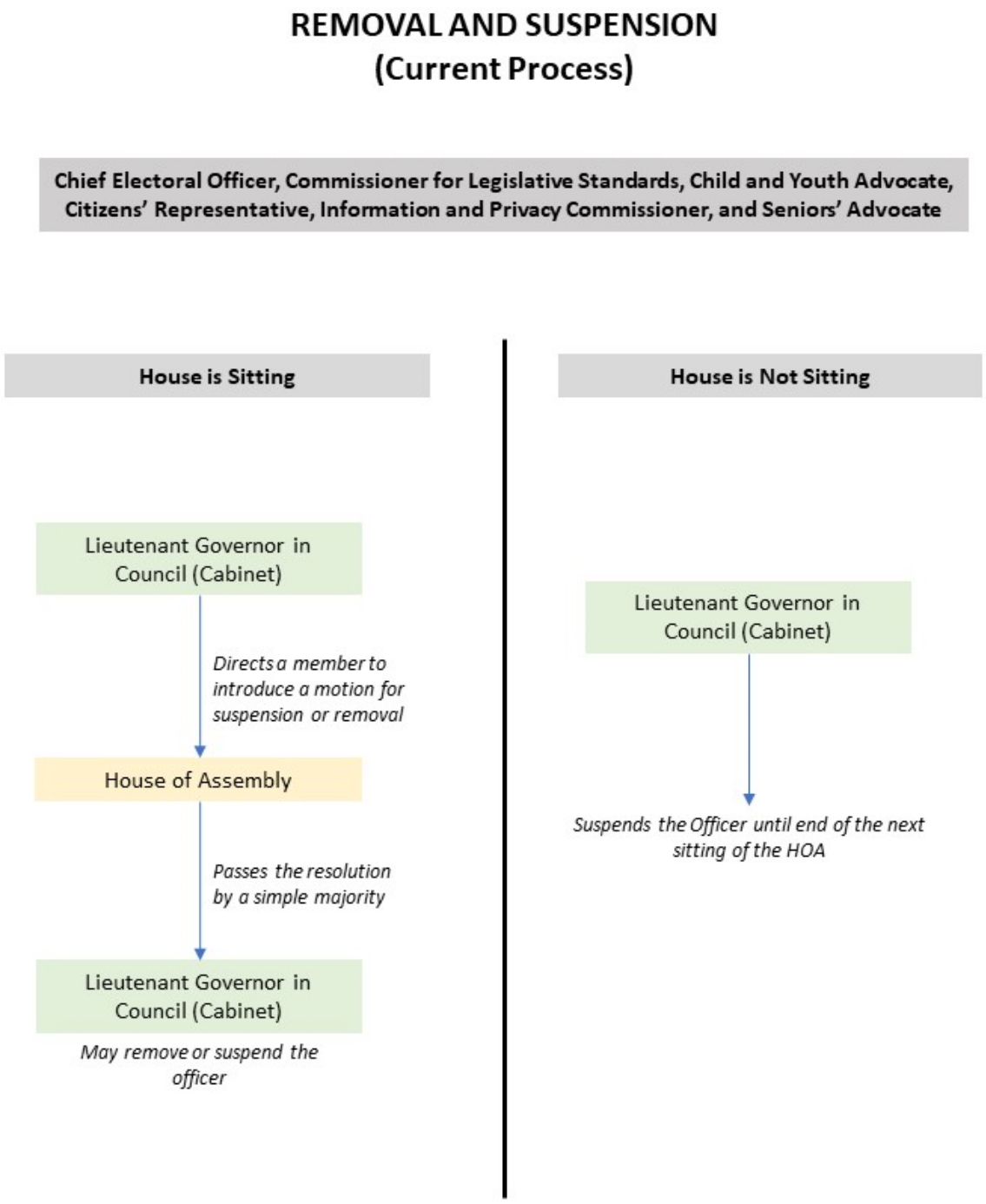

REMOVAL AND SUSPENSION
(Current Process)
Chief Electoral Officer, Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors' Advocate
House is Sitting
Lieutenant Governor in Council (Cabinet)
Directs a member to introduce a motion for suspension or removal
House of Assembly
Passes the resolution by a simple majority
Lieutenant Governor in Council (Cabinet)
May remove or suspend the officer
House is Not Sitting
Lieutenant Governor in Council (Cabinet)
Suspends the Officer until end of the next sitting of the HOA

Figure 7

Procedural Fairness

There is no clear practice on how to investigate concerns or how to provide procedural fairness. Every time that a serious allegation has been raised in the past and every time there have been public concerns about fairness, it appears that the process has been different:

- **The 2005 removal.** In 2005, after the Auditor General raised concerns about a statutory officer, the House Commission of Internal Economy retained a lawyer to advise it. The lawyer's opinion was that the actions described by the Auditor General were just cause for dismissal. The Speaker advised the officer of the Commission's concerns and invited him to attend, with counsel, if he wished.

  The officer denied that his actions contravened his legislation and asked the Speaker to retain a judge to determine the issue. After further letters, the Commission recommended that Cabinet suspend the officer. When the House returned to session later that year, it resolved that he be removed, and he was.

  The following year, the officer applied for judicial review of the House resolution. His application was dismissed because the House process is protected by parliamentary privilege.

  Lingering concerns about the fairness of these proceedings led to a review in 2009 by the Honourable John J. O'Neill, a retired judge of the Court of Appeal, of whether the circumstances justified the officer's removal. The review concluded that the circumstances did justify removal, but did not consider in detail whether the officer had been provided procedural fairness.

- **The 2009 removal.** In 2009, after the Speaker brought forward concerns about a statutory officer, the Lieutenant-Governor in Council suspended her. The House extended her suspension to allow her to respond to the Speaker's concerns. After her response, and anticipating a motion to remove her, the officer applied to court for a declaration that she was entitled to a hearing. This motion was also denied based on parliamentary privilege.

  A motion to remove the officer was introduced. The opposition attempted to amend the resolution to require "a hearing as contemplated by the principles of procedural fairness and natural justice, including a meaningful opportunity to respond to the allegations

in person against her and her office". This resolution was defeated, and the officer removed.

- **The 2022 suspension.** After a yearlong investigation into whistleblower complaints, the Citizens' Representative released a report in March 2022 finding wrongdoing by another statutory officer. Eventually, the Speaker referred the Citizens' Representative's report to Cabinet, which referred it to the House of Assembly Management Commission, which engaged the Honourable J. Derek Green to review the report. While this review was underway, Cabinet suspended the statutory officer.

The 2022 Green Review concluded that the findings of wrongdoing could not be relied on and that the officer had not been provided with procedural fairness. The officer's suspension was reversed, but when his term came to an end he was not renewed.

The Green Review analyzed in some detail what procedural fairness requires in this context. It concluded, in summary:

- A high degree of procedural fairness is required before removing a statutory officer.
- The specific procedures depend on the allegations and evidence. If an officer was convicted at trial, no further investigation may be needed. If an allegation turns on credibility, cross-examination may be required.
- Cabinet and the House are entitled to rely on delegates to investigate, but they have an independent obligation to satisfy themselves that procedural fairness was provided and that the test was met.

It is time to provide clarity about how allegations about statutory officers should be investigated, both for complainants and for officers themselves. The process should resemble the process for the discipline of judges and professionals, centred around a body or committee that can fairly and credibly receive, filter, and investigate complaints. At the outset of my analysis, I described the Standing Committee that should play that role. What remains is to describe the details of the process of removal and suspension.

Good Behaviour

At the moment, five of the six statutory officers can be removed for "cause" as well as "incapacity to act", "misconduct", or "neglect of duty". The remaining officer, the Information and Privacy Commissioner, can be removed only for "incapacity to act",

"misconduct", or "neglect of duty": "cause" is excluded. While it is unclear what significance the difference in language has, it is difficult to justify.

On the face of it, the references to "incapacity to act", "misconduct", "cause", or "neglect of duty" may seem clearer and more contemporary than "good behaviour". However, the benefits of colloquial expression are limited in this context. These sections will be invoked rarely and always with the benefit of legal advice. They should be drafted by lawyers.

The phrase "good behaviour" clearly imports an established concept with an extensive jurisprudence from the judicial discipline context. Describing the old familiar test with new words invites arguments about whether the different words suggest a subtly different test in some manner.

The statutory officers' security of tenure is modeled on judges'. The language removing them should parallel the *Constitution Act, 1867*, s. 99(1) and section 10 of the *Provincial Courts Act*, SNL 1991, c 15: they should "hold office during good behaviour".

Recommendation 38: The grounds for removal of statutory officers should be replaced with the traditional language of "good behavior" (rather than "cause," "incapacity to act", "misconduct", or "neglect of duty").

Collecting and Investigating Complaints

At the moment, the main process for investigating complaints about statutory officers is found in Part VI of *HoAAIA*. A member or civil servant who believes a statutory officer has committed "wrongdoing" (usually meaning gross mismanagement violating the code of conduct for House of Assembly officers) may file a "disclosure" with the Citizens' Representative (or, if the concern is about the Citizens' Representative, with the Commissioner for Legislative Standards). These disclosures will be investigated and can lead to a report and recommendation to the Speaker.

The *HoAAIA* process has several flaws:

- Making statutory officers responsible for investigating each other invites an infinity of complaints. For example, in 2022 the Commissioner for Legislative Standards issued a report into whether the Citizens' Representative improperly handled information relating to his investigation of the Chief Electoral Officer.

- The definition of "wrongdoing" under *HoAAIA* does not track the grounds for removing or disciplining statutory officers. As a result, investigation findings under *HoAAIA* will not support removal. In addition, valid complaints cannot be investigated. Permanent incapacity does not appear to be "wrongdoing", and neither (so long as it occurs outside work) is murder. (Neither is "gross mismanagement", as that concept was explained by the Honourable J. Derek Green in *Fairness, Justification and Transparency*.)
- An investigation can only lead to a report to the Speaker. It is unclear how this should lead to a resolution for removal. The Citizens' Representative's 2022 report recommended that its findings be considered by the House of Assembly, but the Citizens' Representative did not have any clear power to put its report before the House.

I recommend the following changes:

- Complaints about statutory officers' individual behaviour or capacity should be addressed to and received by the Clerk of the House of Assembly.
- When another public body encounters a significant concern about a statutory officer's behaviour or capacity in the course of its own investigation or work, it should avoid, to the extent it is compatible with its own mandate, comments or findings about the officer's individual behaviour and capacity. It should instead refer the possible concern to the Committee. Part VI of *HoAAIA* should be specifically amended to allow the investigator to refer a disclosure to the Committee at any stage.
- The Clerk will, with the advice of the Law Clerk, filter out frivolous or vexatious complaints.
- If a complaint is not frivolous or vexatious, the Clerk will inform the statutory officer of the essence of the complaint and provide an opportunity to respond. At this stage, if there are legitimate concerns about confidentiality, the Clerk should err on the side of preserving confidentiality.
- After receiving the statutory officer's response, or after a reasonable time, the Clerk will inform the Committee, which may, after receiving appropriate advice,

  - Dismiss the complaint, if it is apparent that no further investigation is warranted;
  - Request additional information or submissions from the complainant or officer;
  - Provide a confidential caution to the officer, if it is apparent that the complaint could not justify removing the officer, but that the complaint may raise an issue requiring comment; or
  - Direct a hearing if the complaint could justify removal.

- At a hearing, the Committee should generally appoint a credible independent referee to oversee the committee's procedure. The referee should in turn engage independent counsel to present the case against the statutory officer, and the statutory officer should be entitled to retain their own counsel.
- A hearing may be held before the whole Committee or, with the Committee's unanimous consent, a subcommittee.
- The reviewer must ensure the statutory officer enjoys a high standard of procedural fairness. The complainant should receive procedural fairness and confidentiality to the greatest extent consistent with a fair, thorough, and transparent hearing. To the extent possible, a hearing should be held in public.
- After a hearing, the Committee or subcommittee may:
  - Dismiss the complaint, with or without cautioning the officer;
  - Request additional information (for example, by referring specific questions to the referee); or
  - Recommend removal in a report to the House (or, in the case of a subcommittee, recommend that the Committee recommend removal to the House).
- The voting threshold to remove an officer in the House of Assembly should be a simple majority. Unlike my previous recommendation on reappointment (where I concluded that a 2/3 majority is required to reflect a broad consensus on conducting a new competition), in this context, I do not believe it would be appropriate for an officer to stay in office if a majority of the House is satisfied that the officer has breached good behaviour and the officer has been afforded proper procedural fairness.

- Cabinet's ability to override the House should be removed. If the government does not control the House and chooses not to make the motion a confidence issue, it should abide by the House's decision to remove a legislative officer.

The recommended process is set out in a simplified depiction in *Figure 8:*

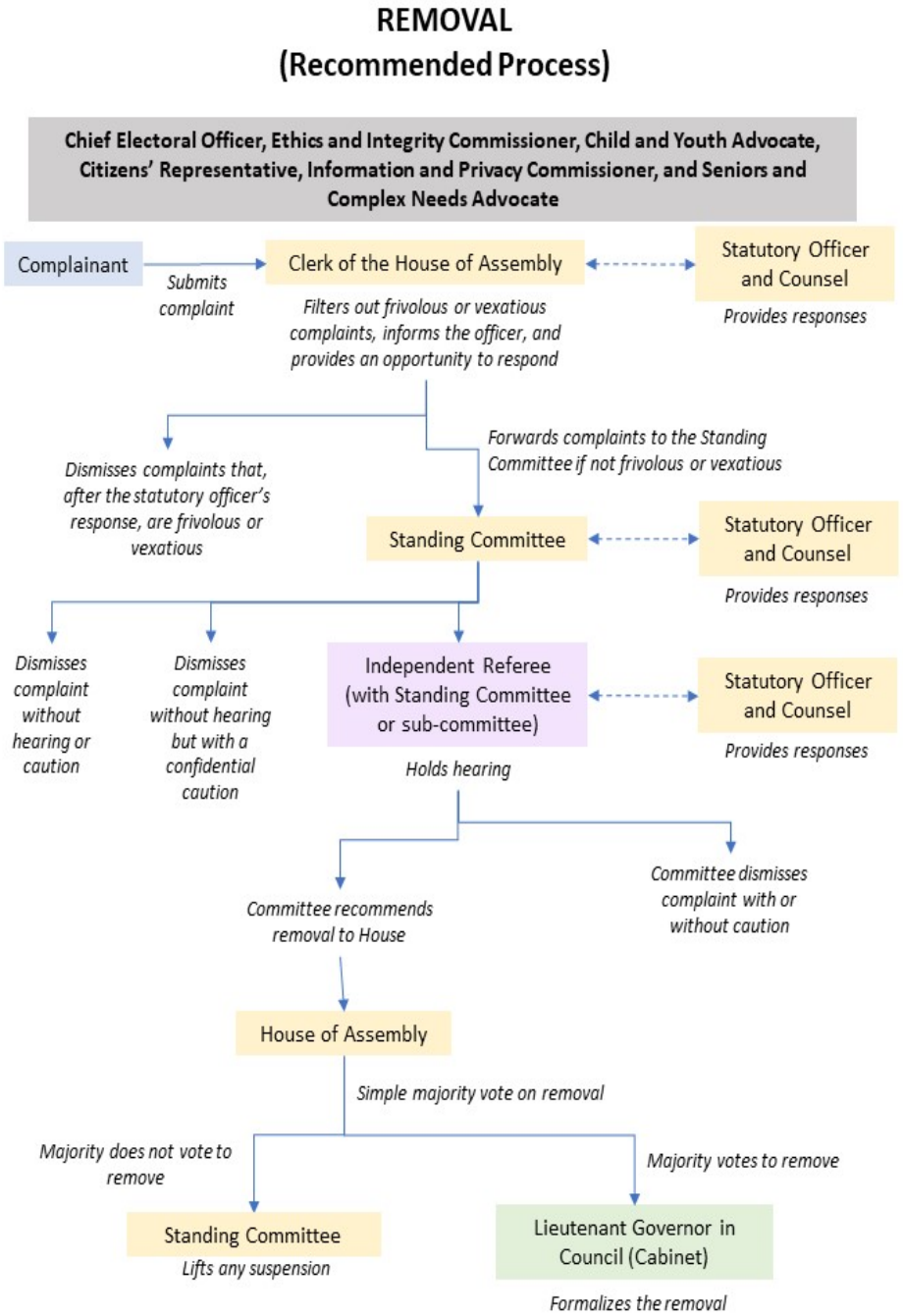


Figure 8

Recommendation 39: The process for removal of statutory officers should be as follows:

(1) Complaints or referrals about statutory officers' individual behaviour or capacity should be directed to the Clerk of the House of Assembly.

(2) The Clerk should filter out frivolous or vexatious complaints.

(3) If a complaint is not frivolous or vexatious, the Clerk should inform the statutory officer of the essence of the complaint and provide an opportunity to respond.

(4) After receiving the statutory officer's response, or after a reasonable time, the Clerk should inform the Standing Committee, which may: (a) dismiss the complaint, if it is apparent that no further investigation is warranted; (b) request additional information or submissions from the complainant or officer; (c) provide a confidential caution to the officer, if it is apparent that the complaint could not justify removing the officer, but that the complaint may raise an issue requiring comment; or (d) direct a hearing if the complaint could justify removal.

(5) If a hearing is held, the Standing Committee or sub-committee should generally appoint a credible independent referee to oversee the committee's procedure. The referee should in turn engage independent counsel to present the case against the statutory officer, and the statutory officer should be entitled to retain their own counsel. The process should maintain confidentiality and procedural fairness.

(6) After a hearing, the Committee or subcommittee may (a) dismiss the complaint, with or without cautioning the officer; (b) request additional information (for example, by referring specific questions to the referee); or (c) recommend removal in a report to the House.

(7) The voting threshold to remove an officer in the House of Assembly should be a simple majority.

(8) Cabinet should be required to remove an officer that the House has resolved to remove.

Suspension

Unlike with judges, who can simply take leave from their duties, some procedure for suspending statutory officers is necessary. They are unique officers. Their offices cannot simply cease functioning while they are incapable of acting or under suspicion of serious misconduct.

One problem with the current procedure is that neither Cabinet nor the House is the right body to manage temporary suspensions. Cabinet is part of the executive branch, and the House's time is too scarce. Temporary suspensions should be managed by the Standing Committee.

A second problem is that the grounds for temporary suspension should be different from the grounds for removal. Temporary suspensions should be available when there is a justifiable reason, not only when an officer is suspected of a breach of good behaviour. In addition, there should be some clarity about what kind of suspicion or procedure is required to justify a temporary suspension.

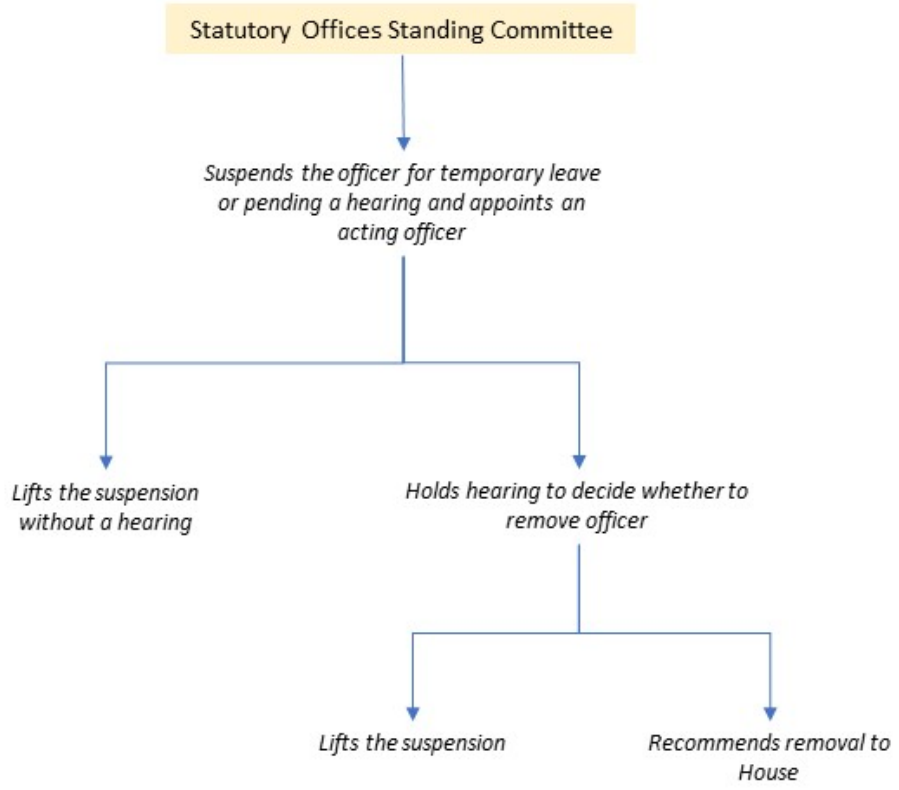
I recommend that the Standing Committee should have the power to suspend an officer temporarily or permit a temporary leave.

Recommendation 40: The Standing Committee should have the power to suspend an officer temporarily: (1) If the officer is temporarily incapable of acting or has a justifiable reason (such as maternity leave) for taking a temporary leave from their duties; or (2) If there are serious grounds to suspect: (a) that an officer has committed a breach of good behavior; and (b) that it would be inappropriate to allow the officer to continue to act during an investigation.

The recommended process is set out in a simplified depiction in *Figure 9:*

SUSPENSION or TEMPORARY LEAVE
(Recommended Process)

Chief Electoral Officer, Ethics and Integrity Commissioner, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors and Complex Needs Advocate



*During an election, Cabinet would be able to exercise the powers of the Standing Committee

Figure 9

COMPENSATION

Current Compensation

Presently, statutory officers' compensation is fixed by the Lieutenant-Governor in Council after consultation with the Management Commission. Officers are compensated according to a very complex Treasury Board executive branch "Executive Pay Plan" process. For example, a statutory officer might be classified at an "EP-10 level". From my observations, the operation and application of the Pay Plan is opaque.

From what I am able to discern, salary negotiations take place after the selection process has been completed. Statutory officers, like other executive positions within government, are assessed on a points system and placed on a scale level that ranges from levels EP-01 to EP-64 and on a "step" within that level, which ranges from Step 1 to Step 33. Once placed, officers' salaries may increase regularly according to their EP scale and step, similar to other executives. Placement appears to be determined by a number of factors which may include: the qualifications/skills of the officer; the size of the statutory office's operations; the number of reports to the officer, the size of the office's budget; and the level of difficulty of finding a suitable person for the role. In some circumstances and subject to some limitations, statutory officers who held positions in the executive branch are able to carry their salaries (red-circled) to the statutory officer position.

For pension benefits, the *Public Service Pensions Act* applies to those statutory officers who were subject to the *Act* before their appointment. If the officers were not subject to the *Act* prior to their appointment, they will be paid for contribution into an RRSP in an amount equivalent to a contribution to the Public Service Pension Plan[1].

The enabling legislation for each statutory office states that the officer is "eligible to receive the same benefits as a deputy minister". It is not clear what the benefits of a deputy minister are. This is further complicated by the fact that deputy ministers are not all equally compensated. I have observed that, under this regime, statutory officers have no standard salary base and are not aligned with any particular deputy minister. In fact, it appears that most of the current statutory officers are paid less than most deputy

[1] The *Seniors' Advocate Act* has not been amended to reflect this pension plan. See Seniors' Advocate profile in this report for further details.

ministers. Most statutory officers seem to have salaries more comparable to those of junior deputy ministers or associate deputy ministers.

Compensation Standards

The Review received several suggestions and proposals on the compensation of statutory officers, particularly with regards to which standard or anchor should be applied. These are:

1. **Continuing with the Executive Pay Plan:**

   A few participants felt that the current regime under the Executive Pay Plan was effective and should remain in place. It is evident that the Executive Pay Plan has widespread use and acceptance within the public service. I appreciate that, from what we heard, the statutory officers are generally content with their current salaries; no statutory officer suggested that their current level of compensation affected their commitment to executing their mandate.

   In my view, however, the operation of the Executive Pay Plan and classification process is too variable and subjective for officer positions that are independent and should also be perceived to be independent. The 2015 ATIPPA Review found that, where the Information and Privacy Commissioner's salary was determined by the executive branch (even with consultation with the Management Commission), there remained a risk that the Information and Privacy Commissioner could be perceived to make recommendations likely to result in a favourable salary increase. I share this concern.

   In addition, it is a valid concern that statutory officer positions can be (and are currently) classified below the levels of typical deputy ministers. This may very well have undesirable implications on recruitment; a lower classification and compensation level is likely not attractive to potential candidates with senior-level experience and skills. Statutory officer positions should attract a pool of candidates that are comparable in qualifications and skill to deputy ministers.

2. Parity with statutory officers in Atlantic Canada or other Canadian jurisdictions:

Some participants compared the salaries of statutory officers to officers' salaries in other jurisdictions. For example, in the Citizens' Representative's submission, it was noted that "To the best of my knowledge and belief the Newfoundland and Labrador Ombudsman has historically made less than all of his provincial and territorial colleagues." The Office of the Information and Privacy Commissioner, in its submission, indicated that:

> *The salary level of Information and Privacy Commissioners across Canada varies, as does the method of setting it. In BC and at the federal level, Commissioner's salaries are set at the rate of provincial and federal court judges respectively (approximately $290,000 and $390,000 respectively). In AB and ON the amount is set by a legislative committee but the levels are broadly comparable to that of BC. In other jurisdictions (e.g. SK, NB, MB) there is reference in statute to the level at which deputy ministers are paid, though this can vary substantially, for example in SK the Commissioner's salary is in the order of $240,000 while the top of scale for the Manitoba Ombudsman is $177,000. Comparisons are challenging because jurisdictions vary in what and how they disclose about salaries but also varying level of responsibilities of the position, e.g. BC, AB and QC have oversight of private sector privacy statutes while other provinces, such as NL, have oversight of only the public and health sectors.*

I agree with the Office of the Information and Privacy Commissioner in this regard. Salaries in other jurisdictions do not reflect the unique legislative mandates of statutory officers in Newfoundland and Labrador, nor do they reflect the population size and financial resources of this Province. As such, I am not inclined to use this standard.

3. Setting statutory officers' salaries at 75% (or some other percentage) of the salary of a provincial court judge:

This standard was recommended by the Wells' Committee in its 2015 report but was not ultimately implemented in the *ATIPPA* amendments. In 2016, *ATIPPA* was amended to make the provisions relating to the salary of the Information and Privacy Commissioner consistent with the

salary provisions of other statutory officers. The basis for the Wells' Committee's recommendation was that the Information and Privacy Commissioner's compensation should be comparable to the deputy minister level and that the percentage of a provincial court judge's salary that approximates the salary of a senior deputy minister was 75%.

Some participants disagreed with this approach. Notably, one participant told the Review that:

> *It is not appropriate to compare the circumstances or responsibilities of a short-term statutory officer with a judge, so their compensation should not be linked.*

I see merit in fixing the salaries of statutory officers to that of a Provincial Court Judge. Provincial Court judges enjoy the full benefits of the *Valente* definition of independence, including salary, which is determined by an independent salary and benefits tribunal which meets every four years and recommends to government an appropriate level of remuneration. This compensation standard is used in other jurisdictions. For example, the Police Complaint Commissioner in British Columbia is compensated on the same level as the Chief Judge of the Provincial Court. Federally, the Chief Electoral Officer and Federal Privacy Commissioner are compensated with the salary of a judge of the Federal Court (with the exception of the Chief Judge).

However, ultimately, I find that an anchor to the judicial branch is not the most appropriate basis for the statutory officer salaries. Statutory officers are not like judges, whose spheres of responsibility lie outside electoral politics. Judges' salaries are determined differently than the salaries of the legislative and executive branches. Although the statutory officers require independence from the legislative and executive branches, they cannot be separated from them. The more appropriate anchor would be to the Executive Branch (deputy ministers within government), to whom the roles of the statutory officers are more closely linked.

4. Parity with deputy ministers or senior deputy ministers in public service:

Multiple participants indicated that statutory officer compensation levels should be "comparable to those that [they] regulate." One participant noted:

> *An officer should not be paid less than the equivalent deputy minister. If the office holder is seen to be at a lower pay scale, they lose some respect and, along with that, their independence is affected.*

In contrast, some participants felt that,

> *Statutory officers should not be getting deputy minister level compensation. That doesn't match the standard of work we've seen from them and, in some cases, their experience. Government directors have much more responsibility and accountability than statutory officers.*

In evaluating these proposals and standards, I considered the factors that were discussed in the Wells' Committee's report, where he stated:

> *The Committee believes the best option is to provide for a salary that is calculated by relating it to the salary of a person holding a senior responsible position, but one that is determined objectively by a process that is independent of government. A second significant consideration is that the salary should reflect the importance and responsibility of the position and be sufficient to attract persons with the training, experience, and skill that will result in sound performance of the office…*
>
> *However, there are other factors to be considered: the Committee is proposing that the Commissioner have the status of a deputy minister, the House of Assembly Accountability, Integrity and Administration Act makes similar provision, and that Act also provides that the Commissioner reports to the Clerk of the House of Assembly on financial matters. Taking those into account, it would seem appropriate that the Commissioner's salary be comparable to the deputy minister level…*

I agree with these factors, particularly the necessity of a process that is independent from government. That said, I also take the point of one participant who commented that:

> *A common recommendation is fixing the compensation of statutory officers to some standard, but it will depend on what you're using as the*

> *anchor. Sometimes they want Atlantic parity, sometimes judges' salaries. Those anchors don't consider the province's circumstances, e.g. financial wherewithal...*
>
> I agree that the appropriate standard for compensation must, at least to some degree, reflect the financial constraints that are considered in the salaries of the public service.

There is a standard by which all of these factors are considered. I recommend that compensation for all statutory officers be calculated as the average of all deputy ministers' salaries to be determined annually on the same date annually (eg. January 1 of each year) by the Standing Committee. All statutory officers should receive the same salary. This compensation model is perhaps unconventional, however, I believe that it is responsive to the issues raised and the factors recognized by the Wells' Committee.

The average of deputy ministers' salaries can vary unpredictably from year to year as new junior deputy ministers are appointed or as senior public servants retire. These fluctuations should even out in the long run, but in the short run, statutory officers should not be exposed to sudden and baseless reductions in income. As a result, I also recommend that if the average of the deputy ministers' salaries decreases in a subsequent year, the compensation of the statutory officers should remain the same as the previous year (i.e. no roll backs).

The Statutory Offices Standing Committee, with the assistance of the Office of the Clerk of the House of Assembly, should be responsible for the determination of compensation each year for all statutory officers and acting statutory officers. Calculating the average is a simple administrative task that can be delegated; but it is important that the Standing Committee assume ultimate responsibility for the statutory officers' compensation. I also recommend that the process for determining compensation should be transparent and set out in a publicly available document.

With regards to transition, the salaries of any current statutory officer that exceed the current average of deputy ministers should be maintained until the position becomes vacant and a new officer is selected, at which time the new officer would receive compensation as determined by the recommendations above.

Recommendation 41: Compensation for all statutory officers should be the same and calculated as the average of all deputy ministers' salaries to be determined on the same date annually (e.g. January 1 of each year).

Recommendation 42: The Statutory Offices Standing Committee, with the assistance of the Office of the Clerk of the House of Assembly, should be responsible for determining compensation each year for all statutory officers and acting statutory officers.

Recommendation 43: The salaries of any current statutory officer that exceed the current average of deputy ministers should be maintained until the position becomes vacant and a new officer is selected, at which time the new officer should receive compensation as determined by the recommendations above.

Red Circling

It is also necessary to briefly address an issue raised in the comments and submissions. As mentioned previously, when former deputy ministers are appointed as statutory officers, their salaries are "red circled" or carried to their statutory officer position. Where the salaries for the statutory officers are generally less than the salaries for deputy minister positions, appointing these individuals at the approved salary would result in a voluntary demotion. The executive, in consultation with the Management Commission, has preserved the deputy ministers' salaries, presumably to be able to attract deputy ministers to the officer positions. One participant commented that:

> *No one will take the job if they have to take a pay cut and reduced status. If the position is aligned with a junior deputy minister, you're not perceived to have that amount of weight within the system.*

It has been explained to me that it is within normal course of government operations that deputy ministers may be appointed and transferred to other departments at pleasure. Because of this, there must be some degree of salary protection when deputy ministers are moved around, and so the executive branch has established the practice of allowing deputy ministers to preserve their salary. This also avoids issues with constructive dismissal. I believe this is a sensible policy for the functioning of the executive branch.

However, applying the same policy to positions in a separate branch of government may be problematic. I agree with the Office of the Information and Privacy Commissioner submission that:

> *… all present statutory officers are either former provincial government executives or else rose within the ranks of their statutory offices… this is not necessarily a bad thing… public administration and leadership expertise are critical competencies and they are commonly obtained through experience as a provincial government executive. That said, if all of the statutory officers are always from the same pool, and it is the very same pool that the statutory officers are charged with overseeing, then the problem that has been raised above – a difficulty in differentiating the executive from the legislative branch – may be exacerbated.*

Another participant stated that the statutory officers' positions are currently "seen as retirement jobs for Deputy Ministers."

It seems to me that red-circling carries a real risk of diminishing the separation between the executive and legislative branches, contributing to a misconception that deputy ministers are simply transferring to another executive branch department. I also agree that the current red-circling practice may skew recruitment and appointment processes towards senior deputy ministers, offering benefits that are not available to other candidates (e.g. private industry or officers from other jurisdictions).

On that basis, I recommend that transferring salaries from public service positions (ie. "red circling") should not apply to statutory officer positions.

Recommendation 44: Transferring compensation levels from public service positions (i.e. "red circling") should not apply to statutory officer positions.

Standardization of Statutory Officer Compensation

The Review also received commentary on whether compensation should be standardized across all statutory offices. Some participants felt that standardization was not appropriate. One participant stated:

> *Not all offices are created equal. Some are fundamental to our democracy. Some are more administrative, some are more advocacy focused.*

Another participant stated:

> *It seems that the positions of statutory officers were all classified and all classified the same, which doesn't make sense, because the offices are substantially different. There's no need for statutory officers to be paid the same, as they do different work and the labour market for them is different.*

Another participant stated,

> *Salaries of statutory officers should be consistent and reflect their independence and the important role they play in promoting accountability and transparency.*

I appreciate the arguments that the duties and responsibilities of the statutory officers are different. There are, of course, differences in size of offices and number of reports, and differences in the nature of each office's work. However, I must return to the intention of the existing legislation for each of these officers. The current legislation for each officer clearly states that the benefits of the officer is to be that of a deputy minister. I also believe that a standardized compensation policy has the practical benefits of simplicity, and transparency. On this basis, I see little justification why compensation cannot be standardized.

I should note two final points. First, while the government usually and understandably uses the size of an administrative unit as a rough measure of an executive's level of responsibility, this concept does not necessarily apply seamlessly to statutory officers. A statutory officer, working alone or with few staff, still bears weighty responsibilities. They work in the public eye, with no government or minister to take the blame for any failures. The responsibility of a statutory officer with a large staff to manage is different from the responsibility of a statutory office with a small staff or none, but it is not a question of one having a greater responsibility than the other, the responsibilities are different in kind.

Second, if the statutory officers' salaries were tied to their staffing levels, that would encourage them to advocate for even larger staffing and budgets. This incentive would be harmful for their work and for the Province's finances.

For illustration, the average deviation of the six statutory officers' salaries is currently approximately $10,500.00. While not an inconsiderable amount of money, the combined budget of the statutory offices is currently about $7 million dollars. Any savings achieved through small reductions in statutory officers' pay would quickly be swamped if the officers achieved even a small increase in their total budgets.

References:

- *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2 at s 88, 90.
- *Child and Youth Advocate Act*, SNL 2001, c C-12.01 at s 3, 7-9.
- *Citizens' Representative Act*, SNL 2001, c C-14.1 at s 6-7, 90.

- *Constitution Act, 1867* at s 99(1).
- *Elections Act, 1991*, SNL 1991, c. E-03.1, s 5.3, 5.4, 6, 35(5).
- *House of Assembly Accountability, Integrity and Administration Act*, SNL 2007 c H-10.1 at s 54.
- *House of Assembly Act*, RSNL 1990, c H-10 at s 34(6-7), 38.
- *March v. Hodder, et al,* 2007 NLTD 93.
- *Newfoundland and Labrador (Child and Youth Advocate) v Newfoundland and Labrador (House of Assembly)*, 2009 NLTD 189.
- Newfoundland and Labrador, Legislative Assembly, Hansard, 48th Leg, 1st Sess, No 29 (17 May 2016) at 1407.
- Newfoundland and Labrador, Legislative Assembly Proceedings, vol. XLVI No 42 (17 December 2009) online: *House of Assembly* https://www.assembly.nl.ca/houseBusiness/Hansard/ga46session2/09-12-17.htm.
- Newfoundland and Labrador, Legislative Assembly Proceedings, vol XLVI No 43 (21 December 2009) online: *House of Assembly* https://www.assembly.nl.ca/houseBusiness/Hansard/ga46session2/09-12-21.htm.
- Newfoundland and Labrador, Treasury Board Secretariat, Executive Pay Scale 2022-2025, online: https://www.gov.nl.ca/exec/tbs/files/EXEC-2022-2025-2.xlsx.
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- *Provincial Courts Act*, SNL 1991, c 15 at s 10.
- *Seniors' Advocate Act*, SNL 2016, c S-13.002 at s 7-8, 10.
- *Statutory Offices of the House of Assembly Amendment Act*, SNL 2016 c 6 at s 6.
- The Honourable J Derek Green, "Fairness, Reliability, and Justification: Accountability Based on Public Interest Disclosures. Review of the Citizens' Representative's Report Respecting the Chief Electoral Officer" (15 September 2022) online: *House of Assembly* https://assembly.nl.ca/About/ReportsPublications/pdfs/FairnessReliabilityandJustification-FullReport.pdf at 54, 144-147, 158-161.
- The Honourable John J O'Neill, "Independent Review and Evaluation of the Actions of Fraser March with Respect to the Decision to Remove Him from the Office of the Citizens' Representative" (12 December 2009) online: *House of Assembly* https://www.assembly.nl.ca/business/electronicdocuments/2009TheO'NeillReview.pdf.
- *Wells v Newfoundland*, [1999] 3 SCR 199.

MANAGING CONFLICTS AND MISCONDUCT

Conflicts With and Questions About Statutory Offices

Another question posed by the Review's Terms of Reference is:

How to manage conflicts which arise between Statutory Offices, who should investigate alleged misconduct of a statutory officer, and how that investigation should be conducted (internally, externally, independent ADR etc.).

Statutory officers' mandates are generally separate and unlikely to bring them into conflict. The recent investigations in this Province do not seem to be a common occurrence in Canada, and the changes suggested above should generally ensure that statutory officers' duties do not draw them into regular conflict with each other. To the extent that conflict arises nevertheless among statutory officers, these conflicts should be referred to and resolved by the Standing Committee.

In contrast, conflict between statutory officers and the executive branch and governing party is common across Canada. The likelihood of conflict is inherent in the structure of any office that investigates, regulates, or advocates with the executive, such as the Citizens' Representative, Child and Youth Advocate, Seniors and Complex Needs Advocate, and the Information and Privacy Commissioner. These officers are also liable to be drawn into conflict with municipalities and other public bodies within their purview. Conflict with individual MHAs is also an inherent likelihood for statutory officers like the Commissioner for Legislative Standards and the Chief Electoral Officer.

Structural conflict does not usually mean dysfunction or acrimony. Statutory officers, public servants, and elected officials are generally very able to manage disagreement professionally. But these structural conflicts will often give rise to persistent questions about statutory officers' work: whether their actions fall within their mandate, whether their conclusions are accurate or reasonable, whether their procedures are fair, whether their manner of expression is appropriate, etc.

Questions of this kind are endemic in political and professional life. They arise regularly among people of integrity and good faith, especially in the grey areas where norms are unformed or disputed or difficult to apply. But our society usually has tools to answer these questions, to resolve disagreements and establish norms for the future. Questions about conduct in the public service can be resolved through the management hierarchy and, ultimately, by Cabinet. Questions about judicial decisions are resolved through appeals. Even questions about politicians' behaviour can be resolved through elections.

It is difficult to resolve questions about statutory officers' mandates without compromising their independence. Statutory officers cannot be integrated into a

management structure. Their recommendations and advocacy are not generally subject to appeal or judicial review. The removal process can only sanction misconduct, not problematic or questionable decisions.

The statutory offices would benefit from a process for resolving significant good-faith disagreements. Statutory officers must be able to take strong positions on difficult issues without fear that they will compromise their effectiveness by stoking conflict or mistrust. Executive branch officers, House members, and other public officials need an appropriate pathway to respond to statutory officers' decisions openly instead of letting issues fester.

I recommend the following process for questions about statutory officers:

1. Questions about a statutory office's decisions or role should be directed to and received by the Clerk of the House of Assembly. The questioner may decide whether to identify themselves. Statutory officers may submit questions about their own mandate but are never required to do so. Statutory officers must be free to exercise their mandate as they understand it without asking, in effect, for permission.
2. The Clerk will, with the advice of the Law Clerk, filter out inappropriate questions. Questions must aim to clarify the boundaries of an officer's statutory mandate or ethical responsibilities, rather than second-guessing an officer's conclusions or choices within their mandate. This principle is necessary to protecting officers' independence. Questions may be hypothetical but must not be academic: the practical value of the answer must justify the inquiry. The Clerk may also, with the advice of the Law Clerk, answer questions that are obvious. If a question is not frivolous or vexatious, is not obvious, and has practical utility, the Clerk will direct the question to the statutory officer and provide an opportunity to respond.
3. After receiving the statutory officer's response, or after a reasonable time, the Clerk will inform the Standing Committee. Upon reviewing the question, the Standing Committee has the discretion either to:
    a. Accept the statutory officer's response;
    b. Dismiss the question, if the practical value of the answer is unlikely to justify appointing an independent referee; or

c. Refer the question to a credible independent referee.

4. A credible independent referee should allow the statutory officer, the Clerk of the Executive Council, and the questioner (if identified) to provide a brief written submission and then provide a written answer to the question. A referee's answer may conclude that a statutory officer's role should be understood differently in the future, but it should not criticize a statutory officer or the officer's past decisions. The purpose of this process is to clarify boundaries for the future, not to criticize individuals. If a question raises a real concern about potential misconduct, that concern must be referred to the complaints process. Referees' written answers should be shared with other statutory officers and published to the extent possible.

Over time, a body of accumulated answers may help statutory officers, MHAs, and public servants develop a deeper shared understanding of their roles, allowing each to act boldly within their mandate without confusion or conflict.

While the suggestions made above may help, over time, clarify the limits of officers' mandates, they cannot address concerns about competence or work quality within these mandates. To some extent, a tolerance for error is the price of independence. An officer is not independent within their mandate unless they are free year after year to discharge that mandate in a way that others think unreasonable.

Recommendation 45: Questions about a statutory officer's decisions or mandate should be directed to and received by the Clerk of the House of Assembly. The questioner may decide whether to self-identify.

Recommendation 46: The Clerk of the House of Assembly should, with the advice of the Law Clerk, filter out inappropriate questions. The Clerk may also, with the advice of the Law Clerk, answer questions and/or direct the question to the statutory officer for a response.

Recommendation 47: After receiving the statutory officer's response, or after a reasonable time, the Clerk should inform the Standing Committee of the question. Upon reviewing the questions and response, the Standing Committee has the discretion either to accept the statutory officer's response; dismiss the question; or refer the question to an independent referee.

Recommendation 48: The statutory officer, the Clerk of the Executive Council, and the questioner (if identified) should provide a brief written submission to the referee.

Recommendation 49: The referee should provide a written answer to the question to the Standing Committee. The Standing Committee must refer any real concerns about potential misconduct to the complaints process. The Standing Committee should share the referees' written answers with other statutory officers and publish the answers to the extent possible.

Building Relationships with Statutory Offices

Relationships between Statutory Offices and Government Bodies

While there are well-established connections between certain government bodies and statutory offices with advocacy roles, it is apparent that, in general, relationships between these statutory offices and government departments can be improved to preempt potential conflicts.

The Review collected several comments from participants that reflected either an unfamiliarity with statutory officers or a lack of trust. For instance, a common sentiment from participants was that many civil servants do not recognize the statutory officers and are unfamiliar with the work that they do. One participant noted that some deputy ministers either do not understand the officers' role or they just consider the officers to be a nuisance. Other participants commented that the lack of trust between statutory offices and the public service contributed a culture of "us" versus "them", and that without trust, public servants can impede the work of the statutory offices. An example that was given was that statutory offices commonly run into issues with non-responsive public servants.

The tension between statutory offices and government is not unique to Newfoundland and Labrador. In the 2011 Review of the Mandates and Operations of New Brunswick's Legislative Officers, the Review team found that:

> *Privately, ministers and public servants sometimes chafe over what they regard as aggressiveness by legislative officers who have a seeming indifference to the cost in time and money of complying with frequent and substantial demands for information and for compliance with recommendations. This raises a question about whether the relationship*

> *between legislative officers and executive branch leaders is more a power struggle than a respectful search for ways to find mutually satisfactory accommodations.*

From what I have gathered, there is no current formal structure for facilitating communications between statutory officers in Newfoundland and Labrador and the departments/bodies that they interact with. The comments from participants indicate that measures are needed to manage underlying tensions and to build these relationships as much as possible. Government bodies should understand the mandate of statutory offices and correspondingly, statutory offices should have detailed knowledge of government policies and operations and understand the challenges and limitations that public servants face. Statutory officers should feel comfortable contacting deputy ministers, assistant deputy ministers, or public servants regarding complaints that can be informally resolved. Open lines of communication provide the best basis upon which issues can be resolved, minimizing the need for investigations and reports. When investigations must be carried out, mutual respect ensures that public servants are appropriately cooperating with investigations and that reports are accurate and contain practical and well-supported recommendations.

In its article "Independent and Accountable: Modernizing the Role of Agents of Parliament and Legislatures", the Public Policy Forum Advisory Group strongly suggested that:

> *A more constructive approach [for building trust with public servants] is needed. That can be as simple as organizing regular meetings between Officers and senior officials, a practice that has long been common with the federal auditor general and deputy ministers. Other Officers could adopt this approach to build trust with senior public servants. Otherwise, it is easy for the public service to quickly "close down" and render the work of a Statutory Officer difficult.*

I agree with this recommendation from the Public Policy Forum. This simple effort can go a long way towards building these important relationships. I recommend that regular meetings be held between each statutory office and the government departments/bodies that have a significant connection to the office's mandate, at least annually. I recommend that these meetings involve the statutory officer, deputy statutory officers (or key statutory office staff), department ministers, deputy ministers, and assistant deputy ministers (or key government staff). For offices such as the Office of the Information and Privacy Commissioner and the Office of the Citizens' Representative, which work with a significant number of public bodies, steps should be taken to identify the departments and ministers/deputy ministers these offices interact with the most. I

would encourage that these meetings be organized and facilitated with the assistance of the Office of the Clerk of the Executive Council.

> **Recommendation 50**: Regular meetings should be held between statutory officers and ministers and deputy ministers that have a significant connection to the statutory office's mandate. These meetings should take place at least once per year.

Relationships between Statutory Offices and MHAs

Participants' comments also revealed that MHAs, particularly those newly elected or without experience in government are likely to be unfamiliar with the statutory offices. As the "eyes and ears" of the legislative branch, it is incumbent that legislative members understand the roles of the statutory officers. I believe this would elevate the status of these offices and increase engagement with their reports.

The creation of a Standing Committee to deal with statutory officers is, I think, the most effective step for promoting a mutual understanding between members and statutory officers. The Standing Committee, paired with the other accountability structures recommended in this report, should ensure that at least some members have a thorough understanding of the statutory officers' roles and work. However, there is also a benefit in ensuring that all MHAs have a basic level of understanding of the statutory officers.

Section 22 of the *House of Assembly Accountability, Integrity and Administration Act* sets out the orientation and training requirements for new MHAs:

> 22. (2) Within 30 days of a member's election for the first time to the House of Assembly, the speaker shall ensure that an appropriate orientation program is given to the member respecting
>
> (a) the types of services offered to members by the House of Assembly service and how those services may be accessed;
>
> (b) the proper procedures to be followed in making claims for reimbursement or payment for proper expenses incurred by the member in carrying out his or her duties;
>
> (c) recommendations for proper systems to be employed in operating a constituency office and employing a constituency assistant; and
>
> (d) other matters that the speaker considers appropriate to assist the member in carrying out his or her duties.

(2.1) A member shall complete the orientation and training programs referred to in subsections (1) and (2).

It is recommended that section 22 be amended to include orientation and training on the mandates and functions of the statutory offices. I suggest that MHAs meet with all of the statutory officers and perhaps tour the office facilities.

Recommendation 51: It is recommended that newly elected MHAs receive orientation and training on the mandates and functions of the statutory offices.

References:

- Public Policy Forum, "Independent and Accountable, Modernizing the Role of Agents of Parliament and Legislatures" (April 2018), online: *Public Policy Forum* https://ppforum.ca/publications/independent-accountable/.

REPORTS

Another item in this Review's Terms of Reference is to recommend "where reports from each statutory office should be directed, such as whether any of the reports of the Statutory Offices should go to a standing or select committee of the House of Assembly for review and analysis." I have arrived at the conclusion that regular attention to reports in the House of Assembly is a sensible way to establish a basic level of accountability without compromising independence. The statutory officers, operating outside any reporting structure, can at times seem to be operating in a vacuum. If an institution like the Standing Committee was responsible for following the statutory offices' work and occasionally asking questions about it, that would at least provide a forum for mutual understanding and for noticing serious issues or patterns.

Annual Reports

All the statutory officers are required to produce annual reports for the House, which are tabled via the Speaker. This reporting mechanism is sometimes held out to be sufficient for quality assurance purposes. However, while it is a reasonable reporting structure, it is ineffective.

The House receives so many reports that it would be difficult for any MHA to pay critical attention to them. Many participants confirmed that annual reports tend to go unread. For example:

- *Elected members don't read all of the annual reports. If they read annual reports, that's time not spent helping a constituent. The hope is that the Management Commission reads them more thoroughly.*
- *The OIPC Annual Report is tabled in late September, at a time when the House is closed, at the same time as hundreds of other annual reports from government departments, agencies boards and commissions, as required by the Transparency and Accountability Act. None of these reports receive very much attention.*
- *Performance is already addressed in the form of annual reports and strategic planning, but who is reading them and what is being done when they are submitted? Who is monitoring when they are not submitted?*
- *Statutory officers certainly spend a lot of money preparing annual reports and producing them. Somebody should pay attention to them.*

Perhaps, comfortingly, this issue is not unique to our jurisdiction. Professor Paul Thomas indicates it is also an issue on a federal level:

> *Legislators sometimes show scant interest in the activities and performance of statutory officers, in some cases, not even bothering to hold hearings on their annual reports. Too often, the result is confusion about statutory officers' roles and whether they are accountable for their actions and, if so, to whom? Without that clarity, officers occasionally act as if they are free agents, responsible only to their own conscience…*
>
> *[Officers] are required to submit annual reports on their activities and occasionally produce special reports to the legislature, depending on their mandate. Yet with some notable exceptions, there is no guarantee these reports will be the subject of specific parliamentary review or hearing. This lack of scrutiny can lead to officer frustration and a lack of accountability on their performance to MPs or legislative members.*

In speaking with the current statutory officers, it was clear that the officers welcomed the opportunity to speak about their annual reports and have the annual reports reviewed in detail. It was evident that almost all annual reports are simply put online without feedback or discussion.

Former MHA Allison Coffin also raised this point in her submission:

> *The objectives and performance measures presented in the annual reports are self determined and self evaluated. Offices develop their own objectives and determine the metrics, or performance measures, used to determine their success. Objectives are generally in line with the duties and responsibilities of the Office and measures often come from internally generated data.*
>
> *There is no formal process for evaluating the appropriateness, effectiveness, accuracy, or comprehensiveness of these annual reports. Once a report is tabled it is available to the public but there is no other oversight or evaluation.*

Another participant provided this suggestion:

> *There's a real benefit to… a system that includes a House Committee, a committee that could have access to the annual report, and compare it to past years and ask why things didn't happen. The knowledge from that works its way back into the work ethic of a statutory officer, because you know you have to actually answer to the people you account to in theory.*

I agree with this suggestion. Statutory officers require more direct scrutiny from the House. They exist largely outside any management hierarchy that can review and provide feedback on their work. Statutory offices' annual reports should be brought to the special attention of the Standing Committee. The Standing Committee should routinely ask statutory officers to give brief oral presentations of their annual reports and answer any questions from members. In the process of reviewing annual reports, the Standing Committee can develop standards for evaluation and identify any areas for improvement. This review process would also help develop the Standing Committee's understanding of the statutory officers of their work.

Recommendation 52: The Standing Committee should review the annual reports of the statutory offices each year. As part of the review, the Standing Committee should invite statutory officers to present their annual reports.

Activity and Business Plans:

As public bodies, the statutory officers are required under the *Transparency and Accountability Act* to produce annual reports as well as either activity plans, business plans, or strategic plans. At the moment, the statutory officers are classified as category 3 government entities and must produce activity plans, setting a clear direction of activities for the next three years.

The *Transparency and Accountability Act* framework is designed for the executive branch of government. In general, plans must reflect the government's strategic direction (s. 7(2)(a) for an activity plan) and must be approved by a responsible minister (s. 7(3)).

Several aspects of the *Transparency and Accountability Act* framework are not appropriate for the legislative branch and are modified under the *House of Assembly Accountability, Integrity and Administration Act*. Accordingly, the responsible minister's responsibilities pass to the Speaker, and Cabinet's responsibilities pass to the

Management Commission. In place of the strategic direction of the government, the statutory offices must consider the strategic direction of the House of Assembly Service.

These modifications are generally appropriate. As the Honourable J. Derek Green wrote in his 2007 report, the same broad principles of transparency and openness should apply in the legislative branch as in the executive. In light of my other recommendations, I believe that, for the statutory offices, the responsibilities of the responsible minister would be more appropriately exercised by the Standing Committee, and that the strategic direction of the government should be interpreted as the strategic direction determined by the Standing Committee.

> **Recommendation 53**: The *House of Assembly Accountability, Integrity and Administration Act* should be amended to clarify that, in relation to statutory officers, the Standing Committee exercises the same responsibilities as that of the minister and that the strategic direction of government will be the strategic direction determined by the Standing Committee.

Special Reports and Vetting

The Child and Youth Advocate and Citizens' Representative can report the government's failure to take reasonable action in response to an investigation. However, they do not have the wider power of the Information and Privacy Commissioner under the *ATIPPA, 2015* to make a special report to the House about issues relating to their mandate.

Pursuant to their role to serve the legislature, all statutory officers should have a wide power to make a special report, modelled on the Information and Privacy Commissioner's special report power. These "special" reports should be made to the House through the Speaker, in the sense that they may be tabled immediately under the *House of Assembly Act*; but it may also be appropriate for the Standing Committee to comment on the report or hear from the officer in person.

The Review heard the perspective that statutory officers' reports should all be tabled. But the statutory officers produce too many reports for this to be useful, and tabling many of their reports would be inappropriate and prejudicial. For example, the Citizens' Representative is required to report the decision not to investigate or to cease investigating a complaint to the complainant and other interested persons, but it would not be appropriate to report that conclusion publicly.

A flexible special reporting power would ensure that a statutory officer can always bring an issue to the House's attention when necessary or appropriate. This is not to say that the power to table a report should be wielded without some mechanism for scrutiny. Some statutory officers have (or could have) the power to issue reports with life-changing consequences. A few participants raised concerns that, due to the potentially serious consequences of certain reports, these reports should be reviewed or vetted for quality before publication or there should be some sort of ability for appeal. One participant told the Review that:

> *These officers have the power to issue reports, which are then often used as powerful leverage in the House of Assembly. Even if totally exonerated, a report can be damaging. It's hard to explain how damaging these reports are.*

Another participant indicated that:

> *[Public servants] expressed frustration that another authority could hold them to account, and they can feel "ambushed" when a negative report from an Officer is issued without prior notice. A critical report can do serious damage to the reputation of senior public servants, who find it difficult to counter the initial negative publicity from such reports. As anonymous public servants, they cannot defend themselves publicly and depend on their ministers to do so. They prefer the process followed by Auditors General, who traditionally provide draft reports to affected departments and allow these departments to meet and discuss or craft responses before a final report is published.*

Other participants also indicated that vetting was necessary to ensure that there was some measure of quality assurance.

The Review also heard the perspective that any formal procedure for vetting reports constitutes interference with the offices' independence. Some participants agreed that reports could be vetted as long as vetting was done within the legislature. Others took a harder line and disagreed with any kind of vetting or review. Seniors' Advocate, Susan Walsh, states in her written submission:

> *Creating a House of Assembly Committee with the power to amend/adapt reports would negatively impact the statutory office's ability to make robust, unprejudiced recommendations, particularly if a report or recommendations may not look favourably on a government department or entity at the centre of a review. The public's perception – real or perceived – of the power of a statutory office to work for the people with no fear of censorship, would be severely negatively impacted by a prior review process with the potential to change or influence the text. Statutory offices must be – and be perceived to be – free from improper influences that could appear to affect our independent decision-making and recommendations.*

The Office of the Child and Youth Advocate took the same position:

> *The ability of the Child and Youth Advocate to release a report and make recommendations for improvement of programs, procedures, policies, and legislation without interference from outside sources, including members of the House of Assembly, is critical to preserve its independence and ensure that its actions are not susceptible to legislative pressure.*

The statutory officers are free to circulate draft reports in advance of publication. While I would encourage officers to consider circulating a draft where appropriate, the benefits and drawbacks depend on the context. This is the kind of decision that an independent officer must be able to make for themselves. I do not feel comfortable making a blanket recommendation.

The remaining question is whether to recommend a formal vetting process. It is not clear that interposing an additional layer of review between statutory officers and the House will improve the quality or fairness of the reports. Vetting by a partisan committee might well distort an otherwise fair process; but even an independent review process could harm the officers' work. It would discourage strong candidates from seeking positions as officers.

Vetting could also affect the quality of officers' work in several ways. Officers might feel pressure to modify their conclusions for the benefit of the reviewing committee. Officers might also feel less direct responsibility for the effects of their reports, which will pass through a layer of review before release.

A more appropriate mechanism is to empower the Standing Committee to review and comment on special reports submitted to the Speaker, but not to restrict the offices' ability to table reports via the Speaker. The Standing Committee could then at its discretion review the report and provide commentary to the House. Within this function, the Standing Committee would have the flexibility to choose its review process. For example, the Committee may choose to meet to review the report, hold hearings, engage research assistance, publish commentary on any special reports, and/or engage a credible independent consultant to perform the review (e.g. a retired judge). Any special report provided to the Speaker should also be submitted to the Standing Committee.

I hasten to observe that the possibility that the Standing Committee might respond to a report does not impinge upon officers' independence in the least. An independent officer with security of tenure, financial security, and administrative autonomy has

complete independence, in the sense that they can issue reports and recommendations freely and without fear of jeopardizing their career. They cannot, in a democracy, also expect to be free from questions or criticism.

Recommendation 54: All statutory officers should have the power to make "special" reports (modelled on the Information and Privacy Commissioner's special report power under s. 106 of the *ATIPPA*). These special reports should be directed to the House, through the Speaker, and tabled immediately under the *House of Assembly Act*.

Recommendation 55: All statutory officers' special reports directed to the Speaker should also be directed to the Standing Committee. The Standing Committee, at its discretion, may review the special report and decide its process for review.

References:

- *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2 s87, s105-106
- *Child and Youth Advocate Act*, SNL 2001, c C-12.01, s4, s24(2), s28
- *Citizens' Representative Act*, SNL 2001, c C-141, s5, s25, s38(2), s43
- *Elections Act, 1991*, SNL 1992, c E-3.1, s6, s273(3)
- *Green Report 2007*, pp. 2-19; 5-40; 7-11 and 7-12.
- *House of Assembly Act*, RSNL 1990, c H-10 s7, s35
- *Seniors' Advocate Act*, SNL 2016, c S-13.002 s4, s20
- *Transparency and Accountability Act* SNL 2004, c. T-8.1

ADMINISTRATIVE OVERSIGHT

Pursuant to the Review's terms of reference, I am also tasked with examining: "What is an appropriate administrative oversight model for the Statutory Offices, inclusive of financial management, human resources management, information management, procurement, and any other 'back office' functions [or] structure."

The *House of Assembly Accountability, Integrity and Administration Act* designates the administrative function of the statutory offices to the Clerk of the House of Assembly with some oversight functions involving the Management Commission. According to the *Act*, the Clerk and the Corporate and Members Services Division of the House provides:

- administrative, financial and other support services to the statutory offices, including financial management, accounts processing, and human resources services;
- direction and supervision of general administrative policies of the statutory offices;
- analysis and commentary to the Management Commission on statutory office budget submissions;
- authorization and records of all financial commitments of the statutory offices;
- regular reports to the Management Commission and the secretary of the Treasury Board regarding the financial and budgetary performance of the statutory offices;
- reports to the Management Commission and the audit committee on statutory office audits;
- maintenance and periodic assessments of the statutory offices' internal controls; and
- certification of the statutory offices' internal control systems.

In our interviews, and in the written submissions from participants, there was a definitive consensus among participants that the existing administrative oversight model was satisfactory and need not be changed. Participants agreed that the Clerk and the Corporate and Members Services Division of the House was effective in providing non-partisan administrative oversight and support to statutory offices. Participants also found that the accountability framework and management certification function have been effectively carried out. Statutory officers indicated that without these services, their offices and budgets would have to expand to provide these functions.

With regard to information management and technology functions, the statutory offices rely on the services of the Office of the Chief Information Officer (OCIO). All six statutory bodies are listed under "public bodies" that fall under the *Management of Information Act* and are subject to the directives and policies of the *Act* and the OCIO.

Participants also felt that the OCIO services are satisfactory and the sharing of information management and technology services was a practical arrangement. For example, the Office of the Information and Privacy Commissioner, in their submission, indicated:

We do not view it as an appropriate use of public resources for a separate IT/IM capacity to be developed for the legislative branch, though perhaps it would be appropriate for an [Memorandum of Understanding] to be developed between the OCIO and the HOAS that governs the relationship.

Nearly all participants agreed that the executive branch should not have a role in directly overseeing statutory offices' administrative functions. Participants emphasized that such oversight by the executive branch could compromise the independence of the legislative branch and undermine the ability of statutory offices to scrutinize government services and policy implementation. As such, maintaining the current administrative oversight framework provides sufficient financial and administrative services to statutory offices while maintaining the recognition of the offices' independence.

Based on this consensus, I see no reason to disturb the status quo with regard to administrative oversight. Therefore, I recommend that the current structure for administrative oversight and provisions of administrative services should remain in place.

I note that there were some comments referring to very minor ideas to improve the administrative oversight structure. For these minor issues, I suggest that the House policies need not match Treasury Board's and that requests from statutory officers for changes in policy should be given due consideration by the Clerk, the Standing Committee, or the Management Commission, depending on the context.

Recommendation 56: The current structure for administrative oversight and provisions of administrative services should remain in place.

References:

- *House of Assembly Accountability, Integrity and Administration Act*, SNL 2007, c H-10.1 at s 28.

SHARING OFFICE SPACE AND OTHER RESOURCES

The statutory offices are currently located as follows:

- The Office of the Chief Electoral Officer is located at 39 Hallett Crescent, St. John's, NL. The location has been leased by the House of Assembly Management Commission since 2005.
- The Office of the Citizens' Representative is located at 20 Crosbie Place, 4th Floor, Beothuk Building, St. John's, NL. A recent move within the same building provided the Office with a larger space.

- The Office of the Child and Youth Advocate is located at 193 Lemarchant Road, St. John's, NL.
- The Office of the Information and Privacy Commissioner is currently located at the Sir Brian Dunfield Building, 3rd Floor, 2 Canada Drive, St. John's, NL. The premises is leased from the Newfoundland and Labrador Housing Corporation on a 5-year contract. The Office of the Information and Privacy Commissioner had previously been located on the 5th Floor of the East Block of the Confederation Building and later at 34 Pippy Place, St. John's, NL.
- The Commissioner for Legislative Standards shares its office space with the Chief Electoral Officer at 39 Hallett Crescent, St. John's, NL.
- The Office of the Seniors' Advocate is also located at the Sir Brian Dunfield Building, 3rd Floor, 2 Canada Drive, St. John's, NL;

The statutory offices do not currently share administrative staff, except for the Chief Electoral Officer and the Commissioner for Legislative Standards, who have historically shared an executive assistant.

The Review received a number of comments on co-location and sharing office space. The statutory offices largely maintained that separate spaces were necessary, but that some spaces like boardrooms could be shared. Participants pointed to issues regarding security and different physical space needs. To take one example, the Office of the Chief Electoral Officer requires considerable warehouse space and operations space for election materials and temporary staff. This space is not available in most office buildings.

Other participants raised concerns about the expense of these offices. For example, one participant noted that,

> *Physical space should be shared to reduce taxpayer expenses on rent and costs on supplies such as copiers, printers and cleaning services.*

Another participant stated that,

> *…five Bell contracts, five snow-clearing contracts, and five buildings for a relatively small number of people seems unnecessary.*

I appreciate the differing viewpoints on sharing office space. In my view, office space and staffing issues are fundamentally resource allocation decisions. The starting point should be that, barring unusual situations, these decisions should be made annually through the budget process.

Preparing a budget is one of government's core constitutional responsibilities. In practice, portions of the budget relating to the legislature are currently prepared by the House of Assembly Management Commission and incorporated by the government with little comment. However, this is a choice: the ultimate responsibility for preparing the budget is the government's, and the ultimate responsibility for passing the budget is the House's. The budget is always a confidence issue: if the budget is defeated, the government will fall, and a new election will follow.

The budget's special constitutional significance should raise doubts about any proposal to remove resource allocation decisions from the budget process. But there are also practical reasons for leaving these decisions inside a budget process rather than in a statutory review.

Decisions about office space, for example, involve choosing between a limited number of available office spaces. Each space has a different cost, location, layout, and quality, with effects both on the public body's operations and the government's larger financial choices. The benefits and drawbacks of each space will change regularly depending on each office's current structure and demands on the province's overall financial circumstance and competing needs.

Choosing between different office spaces requires a highly concrete analysis focused on tradeoffs and priorities. That is the kind of problem the budget process is designed for, not an abstract question of principle that is appropriate for an independent statutory review, particularly a statutory review focused on offices' structure rather than their current operations. It is the government's legitimate role to prepare a budget that provides the statutory officers with the office space that strikes the best overall balance between cost and service to the public.

The question about sharing office space or other resources is whether there is any firm issue of principle that should constrain the budget process, a reason why sharing would be inappropriate whatever the practical and financial benefits. The answer, in short, is no.

Symbolism, Office Space, and the Executive

On a symbolic level, sharing office space with the executive could undermine the apparent independence of the statutory offices. For example, it would clearly be

inappropriate for an ostensibly independent office to share office space with the Premier or Cabinet. At that point, it would be necessary to admit the office is not independent.

If the executive and legislative branches had separate buildings, merely being located in the same building as the executive branch might raise a symbolic concern. But in this province, the core executive functions are housed in the Confederation Building alongside the House of Assembly. It cannot be inconsistent with a legislative officer's legislative status to be housed in the same building as the legislature.

A location in the Confederation Building will pose some practical difficulties. Statutory officers, with investigative or advocacy roles, will have to hold confidential meetings with clients. When these clients live in or near St. John's, the statutory officer's office would be a convenient location for these meetings. If the statutory officer is located in the same building as the public bodies it is investigating or advocating with, these meetings may have to be held off site more frequently. This will cost some staff time and some additional costs to secure appropriate meeting spaces. These are the kinds of considerations that must be considered as part of the budget process.

As for office space outside the Confederation Building, it would not generally be a concern for a statutory body to be located in the same building as another public body or branch of the executive. These locations are not symbolically associated with the government, as the Confederation Building is, and do not house Cabinet or the central officers from whom the statutory officers must remain independent.

Some special concerns might arise if a statutory officer were expected to share space with a public body with which they were particularly involved. For example, if the Child and Youth Advocate were housed alongside Child, Youth, and Family Services, there would be a risk that members of the public would doubt its independence. However, the connection between the two functions might also make the Child and Youth Advocate more accessible to individuals needing assistance. It is difficult to say more in the abstract. Symbolic issues with a common location must simply be considered along the more practical costs and benefits.

Symbolism and Other Statutory Officers

At the level of principle, it would not normally be inappropriate for statutory officers to be located in the same building or even to share office space such as a boardroom. The statutory officers will rarely, if ever, be investigating each other, and they should not

employ staff who cannot be trusted to manage incidental contact with staff from other offices.

Similarly, it may be practical for statutory officers with shared needs to share staff members or other resources like information, expertise, software, or equipment. The decision to share resources requires weighing the practical benefits against the practical costs (coordination problems, conflicting needs, etc.)

In some unusual cases, sharing resources may raise problems of principle. However, even in these cases, the problems and their potential solutions will be highly fact specific. For example, some staff members may have conflicts of interest with some investigations or matters. Maintaining effective firewalls to manage these conflicts requires some attention and care. These are management problems for the statutory officers and the Standing Committee to resolve. They would be inappropriate for this Review.

Recommendation 57: Any questions about sharing office space or administrative resources should be resolved through the ordinary budget process.

References:

- Newfoundland and Labrador, *Order in Council Record (OC2005-095)*, (30 May 2016).

PART V - RECOMMENDATIONS

Recommendation 1: A "Statutory Offices Standing Committee" should be created. Its membership should mirror that of the House of Assembly Management Commission, with the exception of the Clerk of the House of Assembly who would support the Standing Committee, instead of serving as a nonvoting member.

Recommendation 2: The Standing Committee should have the discretion to engage assistance or services of the House of Assembly Service or external services in performing its duties.

Recommendation 3: During elections, Cabinet should be able to exercise the powers of the Standing Committee.

Recommendation 4: The Standing Orders should be amended to ensure that, following an election, the newly composed Standing Committee may examine the records of the old Standing Committee and will have the power to take up any unfinished business as it considers fair and with such additional directions as may be appropriate.

Recommendation 5: The members of the Statutory Offices Standing Committee should be compensated.

Recommendation 6: Statutory officers' code of conduct should be amended to provide greater clarity in relation to the appropriate scope of advocacy.

Recommendation 7: The Senior's Advocate's mandate should be reconceived to focus on those who are unable to advocate for themselves due to age, health, or disability. The Office should be renamed as the Office of the Seniors and Complex Needs Advocate.

Recommendation 8: In light of the recommendation to limit the creation of new statutory offices, the current structure for the six statutory offices should remain in place, as separate offices.

Recommendation 9: The Citizens' Representative, Child and Youth Advocate, and Seniors and Complex Needs Advocate should explore opportunities to collaborate and share information with each other.

Recommendation 10: For clarity and to avoid duplication, the constating legislation for the Citizens' Representative, Child and Youth Advocate, and Seniors and Complex Needs

Advocate should permit the officers to share information with each other and to refer matters to each other.

Recommendation 11: The Office of the Seniors and Complex Needs Advocate should have full investigatory powers for both systemic and individual advocacy.

Recommendation 12: The same officer should not be permitted to hold both the roles of Commissioner for Legislative Standards and the Chief Electoral Officer.

Recommendation 13: The Commissioner for Legislative Standards should be renamed as the Ethics and Integrity Commissioner.

Recommendation 14: The Ethics and Integrity Commissioner should be given jurisdiction over the *Public Interest Disclosure and Whistleblower Act*.

Recommendation 15: The Ethics and Integrity Commissioner be given jurisdiction over Part VI of the *House of Assembly Accountability, Integrity and Administration Act* dealing with "Public Interest Disclosure of Wrongdoing."

Recommendation 16: Sections 42.1 to 42.11 (inclusive) of the *House of Assembly Accountability, Integrity and Administration Act* with reference to the harassment policy should be placed under the jurisdiction of the Ethics and Integrity Commissioner.

Recommendation 17: The responsibilities of the Commissioner of Lobbyists, under the Lobbyist Registration Act, should be transferred to the Ethics and Integrity Commissioner.

Recommendation 18: All statutory officers should be permitted to identify and raise issues about their mandate, structure, potential options for change, and potential advantages and disadvantages of each option. These issues may be raised with the Standing Committee, the House, or the executive.

Recommendation 19: Instead of establishing minimum competencies, the Standing Committee (or the assisting entity) should develop a description of the ideal statutory officer. Any gaps in that candidates' competencies should be identified and incorporated into performance evaluations.

Recommendation 20: The Standing Committee should have the power to change all postings or advertisements for statutory officer positions and all postings/advertisements should be approved by the Standing Committee.

Recommendation 21: The Standing Committee should be responsible for recruiting and evaluating candidates and for recommending candidates to the House for all statutory officer positions.

Recommendation 22: The Standing Committee should operate a merit-based recruitment process, consulting as it thinks appropriate with the Office of the Clerk of the House of Assembly, the PSC, the IAC, staff members of the statutory offices, former statutory officers, third party recruitment firms, or others.

Recommendation 23: Timelines for the appointment process should be defined in a publicly available policy document.

Recommendation 24: The voting threshold for the House to approve the Standing Committee's recommendation to appoint a candidate should remain a simple majority..

Recommendation 25: Acting officers should be granted the powers and authority to act in the place of a Statutory Officer until a Statutory Officer is appointed.

Recommendation 26: Acting appointments should not be extended without extenuating circumstances to justify the extension.

Recommendation 27: The Standing Committee should, in consultation with each current statutory officer, develop redundancy plans in the event that the statutory officer resigns, becomes incapacitated, ill or dies, or is suspended or removed.

Recommendation 28: Statutory Officer positions should not be left vacant. All acting appointments should be made in a timely manner, minimizing any disruptions to operations and functions.

Recommendation 29: Acting Statutory Officers should be independent of government.

Recommendation 30: The term length for the Commissioner for Legislative Standards, Child and Youth Advocate, Citizens' Representative, Information and Privacy Commissioner, and Seniors and Complex Needs Advocate positions should remain six years, with a presumption of reappointment for an additional six-year term.

Recommendation 31: The term of office of the Chief Electoral Officer should be amended to guarantee two general elections and an additional 12 months. The Chief Electoral Officer should not be limited to two terms. The reappointment of the Chief Electoral Officer should follow the same process as the other statutory officers.

Recommendation 32: The responsibility for reappointment process should rest with the Statutory Offices Standing Committee. The Committee should be responsible for monitoring term lengths and, if applicable, initiating the reappointment process and ensuring the process is completed.

Recommendation 33: The steps of the reappointment process for all statutory officer positions should be determined and approved by the Statutory Offices Standing Committee. These steps should be set out in a publicly available policy document.

Recommendation 34: If an officer is interested in serving a second term, the Standing Committee should initiate a performance review. The performance review must be completed and shared with the Committee members at least one month before the next sitting of the House.

Recommendation 35: The Standing Committee may engage external services to conduct performance reviews. All performance reviews must be conducted in strict confidence.

Recommendation 36: Before the next sitting of the House, the Standing Committee should decide to: (a) reappoint the officer, or (b) bring a motion to the House for resolution to conduct a competition for the position. If the House votes in favour of a competition (which would require support of 2/3 of the House), the Standing Committee should initiate the recommended recruitment and appointment process and appoint an acting officer. Otherwise, the Standing Committee should reappoint the incumbent officer.

Recommendation 37: Timelines for the reappointment process should be set out in a publicly available policy document.

Recommendation 38: The grounds for removal of statutory officers should be replaced with the traditional language of "good behavior" (rather than "cause," "incapacity to act", "misconduct", or "neglect of duty").

Recommendation 39: The process for removal of statutory officers should be as follows:

(1) Complaints or referrals about statutory officers' individual behaviour or capacity should be directed to the Clerk of the House of Assembly.

(2) The Clerk should filter out frivolous or vexatious complaints.

(3) If a complaint is not frivolous or vexatious, the Clerk should inform the statutory officer of the essence of the complaint and provide an opportunity to respond.

(4) After receiving the statutory officer's response, or after a reasonable time, the Clerk should inform the Standing Committee, which may: (a) dismiss the complaint, if it is apparent that no further investigation is warranted; (b) request additional information or submissions from the complainant or officer; (c) provide a confidential caution to the officer, if it is apparent

that the complaint could not justify removing the officer, but that the complaint may raise an issue requiring comment; or (d) direct a hearing if the complaint could justify removal.

(5) If a hearing is held, the Standing Committee or sub-committee should generally appoint a credible independent referee to oversee the committee's procedure. The referee should in turn engage independent counsel to present the case against the statutory officer, and the statutory officer should be entitled to retain their own counsel. The process should maintain confidentiality and procedural fairness.

(6) After a hearing, the Committee or subcommittee may (a) dismiss the complaint, with or without cautioning the officer; (b) request additional information (for example, by referring specific questions to the referee); or (c) recommend removal in a report to the House.

(7) The voting threshold to remove an officer in the House of Assembly should be a simple majority.

(8) Cabinet should be required to remove an officer that the House has resolved to remove.

Recommendation 40: The Standing Committee should have the power to suspend an officer temporarily: (1) If the officer is temporarily incapable of acting or has a justifiable reason (such as maternity leave) for taking a temporary leave from their duties; or (2) If there are serious grounds to suspect: (a) that an officer has committed a breach of good behavior; and (b) that it would be inappropriate to allow the officer to continue to act during an investigation.

Recommendation 41: Compensation for all statutory officers should be the same and calculated as the average of all deputy ministers' salaries to be determined on the same date annually (e.g. January 1 of each year).

Recommendation 42: The Statutory Offices Standing Committee, with the assistance of the Office of the Clerk of the House of Assembly, should be responsible for determining compensation each year for all statutory officers and acting statutory officers.

Recommendation 43: The salaries of any current statutory officer that exceed the current average of deputy ministers should be maintained until the position becomes vacant and a new officer is selected, at which time the new officer should receive compensation as determined by the recommendations above.

Recommendation 44: Transferring compensation levels from public service positions (i.e. "red circling") should not apply to statutory officer positions.

Recommendation 45: Questions about a statutory officer's decisions or mandate should be directed to and received by the Clerk of the House of Assembly. The questioner may decide whether to self-identify.

Recommendation 46: The Clerk of the House of Assembly should, with the advice of the Law Clerk, filter out inappropriate questions. The Clerk may also, with the advice of the Law Clerk, answer questions and/or direct the question to the statutory officer for a response.

Recommendation 47: After receiving the statutory officer's response, or after a reasonable time, the Clerk should inform the Standing Committee of the question. Upon reviewing the questions and response, the Standing Committee has the discretion either to accept the statutory officer's response; dismiss the question; or refer the question to an independent referee.

Recommendation 48: The statutory officer, the Clerk of the Executive Council, and the questioner (if identified) should provide a brief written submission to the referee.

Recommendation 49: The referee should provide a written answer to the question to the Standing Committee. The Standing Committee must refer any real concerns about potential misconduct to the complaints process. The Standing Committee should share the referees' written answers with other statutory officers and publish the answers to the extent possible.

Recommendation 50: Regular meetings should be held between statutory officers and ministers and deputy ministers that have a significant connection to the statutory office's mandate. These meetings should take place at least once per year.

Recommendation 51: It is recommended that newly elected MHAs receive orientation and training on the mandates and functions of the statutory offices.

Recommendation 52: The Standing Committee should review the annual reports of the statutory offices each year. As part of the review, the Standing Committee should invite statutory officers to present their annual reports.

Recommendation 53: The House of Assembly Accountability, Integrity and Administration Act should be amended to clarify that, in relation to statutory officers, the Standing Committee exercises the same responsibilities as that of the minister and that

the strategic direction of government will be the strategic direction determined by the Standing Committee.

Recommendation 54: All statutory officers should have the power to make "special" reports (modelled on the Information and Privacy Commissioner's special report power under s. 106 of the ATIPPA). These special reports should be directed to the House, through the Speaker, and tabled immediately under the House of Assembly Act.

Recommendation 55: All statutory officers' special reports directed to the Speaker should also be directed to the Standing Committee. The Standing Committee, at its discretion, may review the special report and decide its process for review.

Recommendation 56: The current structure for administrative oversight and provisions of administrative services should remain in place.

Recommendation 57: Any questions about sharing office space or administrative resources should be resolved through the ordinary budget process.

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PART VII – APPENDICES

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Justice and Public Safety
December 5, 2022

Public Advisory: Review of Statutory Offices to be Conducted; Minister Hogan Available to Media

The Provincial Government has appointed Retired Supreme Court Justice Robert Fowler to conduct a review of the statutory offices that report to the House of Assembly. Justice Fowler will review the structure, reporting and accountability of the statutory offices of the House of Assembly and prepare a report that includes recommendations.

The Honourable John Hogan, KC, Minister of Justice and Public Safety and Attorney General, will be available to media at 1:00 p.m. today (Monday, December 5) outside of the House of Assembly to discuss this review.

Statutory offices operate independent of government. They are also not directed by Cabinet or ministers. Given the need to operate independently from the Provincial Government, the offices report directly to the House of Assembly. The statutory offices being reviewed include:

- Commissioner for Legislative Standards
- Office of the Chief Electoral Officer
- Office of the Child and Youth Advocate
- Office of the Citizens' Representative
- Office of the Information and Privacy Commissioner
- Office of the Seniors' Advocate

The Auditor General is excluded from this review, as the Auditor General Act was updated in 2021 to improve accountability for public bodies in the province. The Auditor General is subject to robust performance oversight by Auditors General across Canada and reports to the Public Accounts Committee.

The full terms of reference for this review can be found in the backgrounder below. The review is anticipated to take approximately six months.

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BACKGROUNDER

Terms of Reference

The Consultant shall review the structure of the Statutory Offices of the House of Assembly, with the exception of the Office of the Auditor General, and prepare a report that includes recommendations for the following:

- The minimum required competencies for each statutory officer;
- The number of statutory offices and whether a statutory officer could fulfil the obligations of more than one statutory role; which offices/statutory officers could be combined based on common objectives, functions, qualifications, clients etc.;
- Whether each Statutory Office requires the dedication of a full-time statutory officer or whether it could be part-tine or on an as-needed basis;
- How each statutory officer should be recruited, appointed, re-appointed, compensated, disciplined, and removed from office;
- How to manage conflicts which arise between Statutory Offices, who should investigate alleged misconduct of a statutory officer, and how that investigation should be conducted (internally, externally, independent ADR etc.).
- Whether and how quality assurance and performance of each statutory officer/Statutory Office should be measured and overseen;
- What is an appropriate administrative oversight model for the Statutory Offices, inclusive of financial management, human resources management, information management, procurement, and any other “back office” functions; structure;
- Whether physical space and administrative functions could be shared among Statutory Offices; and
- Where reports from each Statutory Office should be directed, such as whether any of the reports of the Statutory Offices should go to a standing or select committee of the House of Assembly for review and analysis.

The Consultant may seek input from current and former statutory officers, the Clerk of the House of Assembly, the Clerk of the Executive Council, the Management Commission of the House of Assembly and any others that may be necessary to inform the Terms of Reference.

2022 12 05 12:00 p.m.

Review of Statutory Offices of the House of Assembly

PROCEDURAL GUIDELINES

1. **General:**

   a. The Review of Statutory Offices of the House of Assembly is an independent review to examine the structure or administration of six of the Province's statutory offices as set out in the Terms of Reference (https://www.rsonl.ca/terms-of-reference/). The Review is bound by the limits of the Terms of Reference. The Review will be conducted by the Honourable Robert A. Fowler, Consultant.

   b. The Review is committed to a thorough, fair, transparent, and independent process.

   c. The Consultant will make any findings and recommendations he deems appropriate. The findings and recommendations of the Consultant will be contained in a report filed upon completion of the Consultant's work.

   d. The Review's office is located at 3rd Floor, Gosling Building, 285 Duckworth Street, St John's, NL A1C 1G9.

   e. The Consultant will appoint/retain legal counsel, subject matter experts, and researchers to assist him. This Review team will ensure that all matters which bear on the Terms of Reference are brought to the attention of the Consultant.

   f. The Review will be conscious of the need to act efficiently so as to ensure that any costs incurred by the Review are only those that are reasonable and necessary to address the Terms of Reference. The Consultant will have the ability to do such things as are necessary in this regard, including, but not limited to, determining the scope of participation, directing areas of research, and setting time limits for submissions.

2. **Who can participate:**

   a. The Consultant invites any member of the public to comment on any issue related to the Review or its Terms of Reference.

   b. The Consultant will also reach out directly to solicit comments from:

      - The Commissioner for Legislative Standards (and former Commissioners)
      - Office of the Chief Electoral Officer (and former Officers)
      - Office of the Child and Youth Advocate (and former Officers)
      - Office of the Citizens' Representative (and former Officers)
      - Office of the Information and Privacy Commissioner (and former Commissioners)
      - Office of the Seniors' Advocate (and former Officers)
      - Office of the Clerk of the House of Assembly (and former Clerks)

- The Speaker of the House of Assembly (and former Speakers)
- The Clerk of the Executive Council (and former Clerks)
- The Independent Appointments Commission (and former members)
- Members of the House of Assembly (and former members)

c. The Consultant will provide direction about the appropriate scope of participation as needed.

3. Methods of communication:

a. The six statutory offices, the Office of the Clerk of the House of Assembly, the Speaker of the House of Assembly, the Clerk of the Executive Council, and the Independent Appointments Commission must accept communications through email.

b. The Review may communicate with participants via phone, video conference, or email.

c. Subject to guideline 6, participants may communicate with the Review by email to info@rsonl.ca or by telephone to 709-729-8866 or 1-833-699-3011.

d. The Review may communicate with participants and the public through announcements, which will be available on both the Review website (https://www.rsonl.ca/) and on Twitter (@NLStatReview).

e. The Review will not accept comments, questions, or submissions through Twitter.

4. General information collection:

a. The Review may utilize a range of research and other processes where such research or processes are deemed by the Consultant to be necessary.

b. The Review will proceed informally and not according to the law of evidence and may accept information from any source.

c. The relevance, reliability, weight, and appropriateness of any factual information are substantive issues that the statutory offices may address in their comments and that the Consultant will address in the final report.

5. Written submissions:

a. All participants are encouraged to provide written submissions to info@rsonl.ca by July 17, 2023. Submissions may only address the subject matter as set out by the Terms of Reference. Written submissions received after July 17, 2023 will only be accepted with the approval of the Consultant.

6. Oral submissions and interviews:

a. Where appropriate, the Consultant may permit participants to provide oral submissions by phone or video conference.

b. The Consultant will offer to interview the Commissioner for Legislative Standards, Office of the Chief Electoral Officer, Office of the Child and Youth Advocate, Office of the Citizens' Representative, Office of the Information and Privacy Commissioner, Office of the Seniors' Advocate, and Office of the Clerk of the House of Assembly. Other interviews may take place at the Consultant's discretion.

c. Interviews may take place in person or by phone or video conference.

d. The Review will summarize the material features of all oral submissions and interviews. Participants will be given an opportunity to comment on the summaries of their submissions or interview.

e. Summaries of oral submissions will be posted on the Review's website.

f. Interviews may be recorded for reference and summarization purposes only.

g. Only the material summarized on the Review's website will be considered in the Review's report.

h. Where appropriate, the Consultant may allow affected parties or participants to respond to interview or oral submission summaries.

7. Responses:

a. The Consultant may invite some participants to provide final written submissions to respond to other submissions. After that time, the Review's record and the comments of the participants will be considered final, subject to direction by the Consultant.

b. The Consultant may, from time to time, identify potential issues and seek specific submissions on those issues. Neither the identification of an issue, nor any comment or question elaborating upon it, implies any views on whether an issue will or ought to be addressed or about how any issue ought to be framed or decided. The final report may pass over issues that were identified and may address issues that were not identified. Participants are expected to make any submissions they wish considered on any issue relating to the Review or the Terms of Reference, irrespective of whether the issue is identified by the Consultant.

c. The Consultant aims to provide participants with as much time as is reasonably possible to provide submissions and comments on specific issues.

8. Confidential and anonymous submissions:

a. Participants may, on request or by invitation, provide a submission on an anonymous or confidential basis based on special circumstances.

b. Where appropriate, counsel for the Review will discuss a request or invitation with a participant to identify terms on which information can be provided and shared fairly while preserving anonymity or confidentiality.

c. Where both the participant and the Consultant agree to terms, a summary of the material features of the submission will be prepared. The participant will be given an opportunity to comment on the summary, which will then be shared on the Review's website.

d. Only the material features summarized on the Review's website will be considered in the Review's report.

e. If a participant requests or is invited to provide a submission on an anonymous or confidential basis and no agreement is reached, the Review will not consider or share any information in respect of that request or invitation.

9. Request for information:

a. The Consultant may request information or comments from other individuals or institutions as it sees fit orally, by email, or otherwise.

b. Participants may suggest individuals or institutions from whom the Consultant might request information or comment. The Review team or the Consultant may seek comments on the suggestion before deciding whether to seek information or comment.

10. Amendments to and comments on procedure:

a. These guidelines are subject to interpretation or revision as the Consultant thinks appropriate.

b. Participants and counsel are invited to make comments on these guidelines at any time. Comments may be submitted to info@rsonl.ca.

How to Participate

The Honourable Robert A. Fowler is inviting input from the public in the review of the statutory offices of the House of Assembly. Citizens with direct experience with the offices of the Commissioner for Legislative Standards, Chief Electoral Officer, Child and Youth Advocate, Citizens' Representative, the Information and Privacy Commissioner, and/or the Seniors' Advocate are especially encouraged to offer comment. The Office of the Auditor General is not included in the review. The review is strictly bound by the limits of its terms of reference.

Any member of the public who wishes to comment is encouraged to submit a written submission by email to info@rsonl.ca by July 17, 2023. If possible, submissions should be in Portable Document Format (PDF). Include your name and organization name on the document, where applicable. Personal contact information (address, telephone number) should be provided within the body of the email. Submissions may also be mailed or hand delivered to 285 Duckworth Street, St. John's.

Written submissions will be posted on the Review's website as they are received. Personal contact information will not be posted.

Citizens who have special circumstances that inhibit supplying a written submission should, at the earliest opportunity, contact Diane Blackmore, Chief Administrative Officer, by email at info@rsonl.ca or by telephone at 709-729-8866.

Written submissions are strongly encouraged. Where necessary, a request for an in-person, telephone or video meeting should be made to Ms. Blackmore. If such a meeting occurs, a written digest will be posted on our website soon thereafter.

Questions and Answers

1. What is the Review of Statutory Offices of the House of Assembly?

The Review of Statutory Offices of the House of Assembly is an independent review examining the structure or administration of six of the province's statutory offices: Child and Youth Advocate, Seniors' Advocate, Information and Privacy Commissioner, Citizens' Representative, Chief Electoral Officer, and the Commissioner for Legislative Standards. The Auditor General is not included in our Review. We have been asked to write a report and make recommendations.

Our Review is guided and restricted by our Terms of Reference, which sets out the questions and topics we have been asked to look at. That means our report can only make recommendations on the questions and topics in our Terms of Reference. The Terms of Reference can be found on our website at: https://www.rsonl.ca/terms-of-reference/.

2. Who is conducting the Review?

The Honourable Robert A. Fowler will be conducting this Review and has put together a team of researchers and legal counsel to assist him. More information on the Review Team is available at https://www.rsonl.ca/members/.

3. Where is the Review located?

Our office is located on the 3rd Floor, Gosling Building, 285 Duckworth Street, St. John's, NL, A1C 1G9.

4. What are the guiding principles of the Review?

We are committed to a thorough, fair, transparent, and independent review process. We are also committed to ensuring that any costs for this review are reasonable and necessary.

5. What will the Review process look like?

There will be several stages of our Review:

a) **Collecting Comments and Submissions:** We will be receiving and reviewing comments and submissions from the public, from the Statutory Offices, MHAs and other key people and organizations.

b) **Interviews:** From there, we will interview a number of key people that can assist us with understanding the issues. We will post summaries of our interviews on our website.

c) **Research:** We will also research a number of topics/questions that will help us make informed recommendations. This includes research into how other provinces and jurisdictions operate.

d) **Responses:** After interviews have been completed, we will reach out to a number of people and organizations to get final responses.

e) **Report:** Our team will put together a report and recommendations based on the information we have collected, the research we have done, and our analysis of that information and research.

6. Who can participate in the Review?

We want to hear from you! Any member of the public can comment on any issue related to our Terms of Reference. We would especially like to hear from you if you have direct experience with any of the six statutory offices.

We will also reach out directly for comments from the Statutory Offices, MHAs, and other key bodies, people, and organizations.

7. How can members of the public participate in the Review?

Any member of the public can send in comments by email at info@rsonl.ca or by mail to: 3rd Floor, Gosling Building, 285 Duckworth Street, St. John's, NL, A1C 1G9. Please send in your written submission by **July 17, 2023**. If you are unable to provide your comments by email, you can contact us to arrange a phone or video conference.
All comments will be shared on our website, unless special exceptions are made. Please note that we will not share your personal contact information. If you have questions about this, please email info@rsonl.ca.

8. Can submissions be anonymous and/or confidential?

Yes, in special circumstances, participants may, on request or by invitation, provide a submission anonymously or confidentially. You can email info@rsonl.ca if you would like to provide anonymous or confidential comments and we will contact you about how to do this.

9. Where can I find the Review's procedural guidelines?

Our formal procedural guidelines provide a more detailed and authoritative description of our procedures. They can be found at https://www.rsonl.ca/procedural-guidelines/.

10. How can I stay updated on the Review?

We will post updates and information on our website: www.rsonl.ca. We will also post updates on Twitter: @NLStatReview.

Media Advisory

Review of Statutory Offices of the House of Assembly

The Honourable Robert A. Fowler will hold a media availability at 11:00 a.m. on Wednesday, April 12 to provide an update on the Review of Statutory Offices of the House of Assembly.

The event will take place in the foyer (scrum area) in front of the House of Assembly, East Block, Confederation Building. Cameras should face the open doors of the legislative chamber.

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Media contact:

Diane Blackmore
Chief Administrative Officer
Review of Statutory Offices of the House of Assembly

Tel: 709-729-8866

Toll Free: 1-833-699-3011

Email: info@rsonl.ca

Twitter: @NLStatReview

2023-04-11 10:00 a.m.

NEWS RELEASE

The Honourable Robert Fowler is inviting input from the public in the review of the statutory offices of the House of Assembly.

Citizens with direct experience with the offices of the Commissioner for Legislative Standards, Chief Electoral Officer, Child and Youth Advocate, Citizens' Representative, the Information and Privacy Commissioner, and/or the Seniors' Advocate are especially encouraged to offer comment. The Office of the Auditor General is not included in the review.

The review will look at the structure and administration of the six offices as set out in the terms of reference. This is not a fault-finding mission or an examination into the behaviour of any person: it is a forward-looking policy review. The review is strictly bound by the limits of its terms of reference. It will be conducted under the umbrella of independence and impartiality; concepts which will be rigorously upheld.

Any member of the public who wishes to comment is encouraged to submit a written submission by email to info@rsonl.ca by July 17, 2023. If possible, submissions should be in Portable Document Format (PDF). Include your name and organization name on the document, where applicable. Personal contact information (address, telephone number) should be provided within the body of the email. Submissions may also be mailed or hand delivered to 3rd Floor, Gosling Building, 285 Duckworth Street, St. John's, NL A1C 1G9.

Information updates will appear on the Review's website www.rsonl.ca and its Twitter account @NLStatReview. Written submissions will be posted on the Review's website as they are received. Personal contact information will not be posted.

Citizens who have special circumstances that inhibit supplying a written submission should, at the earliest opportunity, contact Diane Blackmore, Chief Administrative Officer, by email at info@rsonl.ca or by telephone at 709-729-8866.

Written submissions are strongly encouraged. Where necessary, a request for an in-person, telephone or video meeting should be made to Ms. Blackmore. If such a meeting occurs, a written digest will be posted on our website soon thereafter.

To support this work, the Honourable Robert Fowler has engaged Michael Collins, Co-Counsel; Adrienne Ding, Co-Counsel; Dr. Alex Marland, Political Scientist; and Diane Blackmore, Chief Administrative Officer, to assist in the research and development of its mandate. Bios for each are included below.

The review is anticipated to take approximately six months.

Review of Statutory Offices of the House of Assembly
3rd Floor, Gosling Building
285 Duckworth Street
St. John's, NL A1C 1G9

Email: info@rsonl.ca

Telephone: 709-729-8866
Toll Free: 1-833-699-3011

Website: www.rsonl.ca

Twitter: @NLStatReview

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Media Contact:

Diane Blackmore
Tel: 709-729-8866
Toll Free: 1-833-699-3011
info@rsonl.ca

2023-04-12 11:00 a.m.

BIOS

The Honourable Robert Fowler was appointed to the Provincial Court of Newfoundland and Labrador as a Magistrate in 1977. Following his duties in Gander and Woody Point, he was appointed to the Provincial Court of Grand Falls-Windsor where he remained until 2000. In 2000, he was appointed by the Government of Canada to the Supreme Court of Newfoundland and Labrador in Happy Valley-Goose Bay. In 2007, he moved to St. John's where he sat in the Trial Division and the Unified Family Court. Justice Fowler retired in September of 2020 after forty-four years as a Judge.

Michael Collins

Mr. Collins was originally called to the bar in Ontario in 2010 and transferred to the Law Society of Newfoundland and Labrador in 2012. He is a civil litigator practicing with Tupman & Bloom LLP in St. John's, NL. His previous experience includes serving as a law clerk at the Supreme Court of Canada, a research lawyer at the Newfoundland and Labrador Court of Appeal, and Associate Counsel at the Muskrat Falls Inquiry. Michael has co-authored several journal articles with the Honourable Malcolm Rowe and is a member of the Court of Appeal Rules Committee, the SS Daisy Committee, the Canadian Bar Association, and the Advocates' Society.

Adrienne Ding

Ms. Ding was admitted to the Bar in Ontario in 2014 and the Bar of Newfoundland and Labrador in 2015, having obtained her J.D. from Dalhousie University in 2013. She is legal counsel with the firm of O'Dea Earle in St. John's where she practices labour and employment law and civil litigation. She also contributes to the legal profession as a member of the Judicial Advisory Committee, a board member of the Federation of Asian Canadian Lawyers, Atlantic Chapter, and a member of the Canadian Bar Association.

Dr. Alex Marland

Dr. Marland is a Professor of Political Science at Memorial University. He is the author or lead editor of multiple books, including First Among Unequals: The Premier, Politics, and Policy in Newfoundland and Labrador (MQUP, 2014) and The Democracy Cookbook: Recipes to Renew Governance in Newfoundland and Labrador (MUP, 2017), as well as Brand Command: Canadian Politics and Democracy in the Age of Message Control (UBC, 2016) which won the Donner Prize and an Atlantic book award. From 2003 to 2006 he was a public servant in the Government of Newfoundland and Labrador. Beginning July 2023 he will be the inaugural Jarislowsky Chair in Trust and Political Leadership at Acadia University, in Nova Scotia.

Diane Blackmore

Ms. Blackmore has worked in the administrative field with the Government of Newfoundland and Labrador for approximately 40 years. She has extensive experience working with Commissions/Inquiries, ie. St. John's Urban Region (Agriculture) Development Area Review Commission, Newfoundland and Labrador Electoral Districts Boundaries Commission, Commission of Inquiry on Hormone Receptor Testing, Commission of Inquiry Respecting the Death of Donald Dunphy, and the Commission of Inquiry Respecting the Muskrat Falls Project.

Terms of Reference

The Consultant shall review the structure of the Statutory Offices of the House of Assembly, with the exception of the Office of the Auditor General, and prepare a report that includes recommendations for the following:

- The minimum required competencies for each statutory officer;
- The number of statutory offices and whether a statutory officer could fulfil the obligations of more than one statutory role; which offices/statutory officers could be combined based on common objectives, functions, qualifications, clients etc.;

- Whether each Statutory Office requires the dedication of a full-time statutory officer or whether it could be part-tine or on an as-needed basis;
- How each statutory officer should be recruited, appointed, re-appointed, compensated, disciplined, and removed from office;How to manage conflicts which arise between Statutory Offices, who should investigate alleged misconduct of a statutory officer, and how that investigation should be conducted (internally, externally, independent ADR etc.).
- Whether and how quality assurance and performance of each statutory officer/Statutory Office should be measured and overseen;
- What is an appropriate administrative oversight model for the Statutory Offices, inclusive of financial management, human resources management, information management, procurement, and any other "back office" functions; structure;
- Whether physical space and administrative functions could be shared among Statutory Offices; and
- Where reports from each Statutory Office should be directed, such as whether any of the reports of the Statutory Offices should go to a standing or select committee of the House of Assembly for review and analysis.

The Consultant may seek input from current and former statutory officers, the Clerk of the House of Assembly, the Clerk of the Executive Council, the Management Commission of the House of Assembly and any others that may be necessary to inform the Terms of Reference.

Submissions

Everett Fancey
Glenys Jackman
Glenn F. Ploughman
Sarah Slaney
Carl Slaney
Private Submission
Citizens' Representative
Independent Appointments Commission
Lorraine Michael
Official Opposition Office
James Dinn, MHA, District of St. John's Centre
Information and Privacy Commissioner
Child and Youth Advocate
Seniors' Advocate
Sarah Stoodley, MHA, District of Mount Scio
Citizens for Change in Long Term Care NL Advocacy Group
NL Coalition of Seniors', Pensioners' and Retirees' Associations
Elizabeth Hiscock
Patricia McLay
Don Abbott
Forum of Canadian Ombudsman
Alison Coffin, Former MHA, St. John's East-Quidi Vidi
International Ombudsman Institute
Office of the Chief Electoral Officer
Roland Wells

Review of Statutory Offices of the House of Assembly
"What We Heard"

This document is a collection of written comments submitted to the Review, comments from interviews/meetings conducted by the Review, and some relevant comments gathered from academic articles and other sources.

Please note that this document is not intended to reproduce the lengthy and detailed submissions the Review has received. While care has been taken to preserve the substance of comments as much as possible, these comments cannot be taken to be exact quotes, but rather to reflect the general themes, opinions, and ideas of the participants to the Review. Many of them are drawn from notes of oral conversations. Many have been paraphrased either for brevity or anonymity. All have been presented here outside their original context.

Some of these comments may appear to relate to events or persons. These comments have been included in a spirit of fairness and completeness; however, the Review is a forward-looking policy review and will not make any findings about persons or events.

Acronyms

- IAC = Independent Appointments Commission
- LGIC = Lieutenant Governor in Council
- MHA = Member of the House of Assembly
- OCEO = Office of the Chief Electoral Officer
- OCR = Office of the Citizens' Representative
- OCYA = Office of the Child and Youth Advocate
- OIPC = Office of the Information and Privacy Commissioner
- OSA = Office of the Seniors' Advocate
- OAG = Office of the Auditor General
- PSC = Public Service Commission
- ATIPPA = Access to Information and Protection of Privacy Act
- PHIA = Personal Health Information Act

Suggested Competencies of Statutory Officers

- **Educational Background or Work Experience:**
  - Graduate-level degree
  - Law degree/Legal training
  - Professional designation (regulated by a professional regulator body)
  - Professional experience
  - Executive-level experience in government
  - Robust backgrounds in their areas of work
  - Social work or health science background
  - Experience leading social programs
  - Experience in advocacy
  - Experience in mediation
  - Previous involvement with the public system
  - Access to network of key persons/stakeholders
  - Project management experience

- **Skills and Expertise:**
  - Research and reporting
  - Presentation and communication skills
  - Public engagement and media relations
  - Investigation skills/knowledge
  - Subject matter experience/expertise (eg. child protection for CYA)
  - Leadership/Managerial skills (human resources/office administration)
  - Teamwork, teambuilding, and interpersonal skills
  - Problem solving ability
  - Adaptability and flexibility
  - Critical thinking skills
  - Time management skills
  - Negotiation skills
  - Analytical skills
  - Skills in community relations / ability to build and maintain effective relationships
  - Knowledge of policy development, program analysis, and data analysis
  - Knowledge and understanding of parliamentary law and common law
  - Knowledge of government and ability to navigate government systems
  - Experience in clinical work and/or front-line work
  - Knowledge of or acquired experience with legislation
  - Ability to acquire necessary skills
  - Planning skills (logistics and project management)

- **Character and Traits:**
  - Good character
  - Impartiality (for roles that are not Advocates)
  - Sound judgement
  - Enthusiasm
  - Competence
  - Empathy/Compassion for social issues

Comments on who should decide competencies

- The selection of statutory officers should remain at arm's length from government, with the IAC left to determine the required competencies for each, using input from the offices themselves.
- Each office and each appointment is unique. There isn't going to be a unique approach.
- The competencies of the statutory office principals should remain at the discretion of the House of Assembly and not be dictated by law or by the executive branch. It should be for the Members to exercise their own judgment based on the candidates available.
- No minimum requirements should be established for the Information and Privacy Commissioner but the required competencies should be the purview of the selection committee provided for by the ATIPPA.
- A standing committee should be responsible for recruitment from preparing the initial job ad to recommending a candidate to the House.
- There is no specific prerequisite training to become a CEO, nor does one have to come from a specific profession. While experience in election management is certainly an asset, the core staff at the Office of the Chief Electoral Officer (OCEO) are responsible for the operations of the office while the CEO is responsible for the overall direction of the office and ensuring that the office is 'election-ready' at all times. A common progression to the CEO role is through the experience gained as the Assistant Chief Electoral Officer (which is appointed through the Public Service Commission), however, there is no guarantee that the Assistant Chief Electoral Officer will always be the successor to the CEO role.

Comments on whether statutory officer roles should be part-time, on an as-needed basis, or shared with another role

- All Statutory Officer roles should be full-time roles. All six have hefty workloads and significant obligations that require their early attention and dedication throughout the year and throughout their terms of office.
- Not all Statutory Officer roles need to be full-time roles. There is no need for the best model possible, the approach should be right-sized for the province of Newfoundland and Labrador.
- The Citizens' Representative position requires, without question, a full time incumbent.
- Children and youth are a unique and vulnerable population with specialized needs who deserve a dedicated, full-time Child and Youth Advocate to be their voice, independent of any political interests. Anything less would not be in the best interests of the children

of this province and would run counter to the spirit and intent of the United Nations Convention on the Rights of the Child and current trends.

- The Child and Youth Advocate should not be tasked with the additional responsibilities of another statutory office that would divert the attention of the office from the challenges of children and youth, a unique and sizeable demographic. Any move to erode the OCYA would be a giant step backward and would be met by fierce opposition from the public and Members of the House of Assembly.

- The Chief Electoral Officer should be more than merely an administrator. A narrow analysis of the role of Chief Electoral Officer as someone who merely runs elections might allow for a part-time position. A broader analysis allowing for a role that could lead to an improved electoral system would require the position to be full-time.

- Consider historic trends and projections for the future when anticipating demand for the work of Statutory Officers.

- The time has come for a review of the position of the Commissioner for Legislative Standards. There is so much more involved in it than merely checking the financial situation of MHAs for conflict of interest and making sure they get their annual financial status report in on time.

- Changing a statutory office to a part-time basis is a disservice to the people of this province. The staffing complement has been created based on the province's population, and is not reflective of other provinces with larger populations, who therefore have larger staffing complements.

- It was never intended that the Commissioner for Legislative Standards be full-time. The role has ballooned largely because of the conduct of politicians in using the Code of Conduct as a political weapon. Furthermore, the majority of complaints over the past several years were the result of bullying and harassment which is now under the jurisdiction of the Citizens' Representative.

- The Information and Privacy Commissioner is a full time position and cannot be performed on a part-time or an as-needed basis.

- To ensure that the right systemic services are available for this demographic of our population will require a dedicated, strong, and committed advocate to ensure aging is done well in our province. Under no circumstances, knowing what is known, should the Seniors' Advocate position and office be diminished in any way. In fact, it most definitely should be reviewed for enhanced staffing, resources, and accommodations.

- All of the Seniors' Advocate work could not be achieved if the position was part-time or shared with another statutory office. The Seniors' Advocate must be a dedicated, full-time position.

- Statutory Officers are legislatively prevented from holding another public office or carrying on a trade, business or profession. This is deliberately limiting in order to maintain the

independence and integrity of the office. Engaging in any other forms of work could potentially result in bias or conflict of interest.

- The OCEO mandate is to be election-ready at all times to deliver an election event. While s.3.1 of the House of Assembly Act establishes fixed date elections in the Province, by operation of s.3.2, the Lieutenant-Governor may, by proclamation, prorogue or dissolve the House of Assembly when the Lieutenant-Governor sees fit. The OCEO notes that of the five preceding general elections since the enactment of fixed date legislation, only two have been held on the date as specified in s.3.1 of the Act. That general elections have been called at varying times throughout the election cycle underscores the significance of having a full-time statutory officer dedicated in the role of CEO, overseeing the planning and implementation of election processes.

- The Chief Electoral Officer's role is a full-time job that requires a constant state of election readiness given the nature of our constitutional democracy. It should not be combined with the roles of any other statutory officer.

Comments on the current number of statutory offices, whether offices/statutory officers roles could or should be combined, and necessary changes to mandates if offices were combined.

- Statutory officers have heard rumors that there were plans to consolidate some offices in the recent past, but these did not proceed, probably because financial pressures eased.

- Diminishing the OSA would not be in the best interest of seniors in this province.

- The Seniors' Advocate should remain an independent office representing seniors of our province and should not be combined with any other government offices.

- There appears to be no cost savings or benefit for having the children/youth and seniors come under one umbrella. In fact, given that NL has a higher population per capita of seniors, a combined OCYA and OSA model would be even more challenging in this province, given the need for the Advocate to share their time between two essential and busy offices with distinct needs and priorities.

- Similar work is being completed by the OCYA, OSA, and OCR. The main difference is the age of the population served. While there are differences in terms of policies and rights of adults, seniors, children, and youth, there is the question of why there are three separate offices dealing with complaints. An amalgamated model could reduce the amount of senior leadership positions within at least three of these offices through amalgamation. It could also reduce some of the administrative positions for a lower overall cost of running these offices.

- An amalgamation could allow for similar protocols regarding the public release of case information and legislation across the board for the OCR, OCYA, and OSA.

- The tendency to weld things on to statutory officer mandates is almost irresistible and I'm not sure it's serving us well.

- The consideration of combining advocacy and investigative roles should be taken cautiously, there is an inherent tension between advocacy and investigation.

- An advocate's role should be to ensure that the legislature knows the policies of the government it supports and how they operate in practice. An advocate can legitimately identify options, advantages and disadvantages, but not lobby for particular policies or outcomes.

- The mandate of OIPC should be left unaltered at this time. The form of OIPC was carefully designed to meet its very unique function.

- Fewer, stronger offices would better serve elected representatives and strengthen accountability. Legislators should set a high bar for creating new offices. Consideration should be given to consolidating the work of offices with similar mandates.

- The work being done by all of the statutory offices is essential, not any one of them is unnecessary. While no statutory office could be irrelevant, some restructuring could be done for the sake of better efficiency.

- Statutory Officers shouldn't be using their budget to ask for more money. Our population hasn't grown 400%, but yet we have an increasing number of employees in the statutory offices.

- If we were to amalgamate offices, you could have the OCR and within that, you could have divisions for seniors, children and youth, ethics, whistleblowers, and information and privacy. You could staff professional investigators and have professional report-writers. Whether you're 6, 26, or 76, if you have a complaint against a government body, there would be a single point of entry that triages complaints and applies consistent investigation and report-writing. If those offices had a more holistic view, it'd be within their mandate to raise more systemic issues. If there aren't enough resources, maybe we have to add more people - but we need a level of consistency and utility.

- There is concern for the state of our province if it loses the accountability methods provided by our statutory offices in a time when the general population appears to be more weary and apprehensive of our government as a whole. There is also concern about the expertise and quality of investigations if statutory offices were to be combined.

- MHAs may not need all these advocates. MHAs do a lot of advocacy work already and do not necessarily need officers to do essentially what MHAs should do.

- It's arbitrary to have advocates for some underrepresented groups and not others, and impossible to have a separate advocate for every possible ground of disadvantage. There should be some principled basis for these institutional choices. For example, advocates could be created only for those groups who are entirely excluded from the democratic process: minors, the incapable, and permanent residents.

- MHAs deal with a lot of people who've already been to a statutory office. More often than not they get more satisfaction from an MHA's office than any other. The core offices are OIPC, OCR, and the OCEO. They're the no-brainers, but the advocates - where do you draw those lines?

- The role of the Seniors' Advocate is pivotal in speaking for and on behalf of all seniors and especially seniors in care. The OSA must remain autonomous and independent of other legislated offices. In addition to its current mandate to address systemic issues impacting seniors, the mandate of the Seniors' Advocate should be expanded and strengthened to mirror that of the Child and Youth Advocate. The OSA should also have the legislative authority to investigate complaints or issues of concern and make recommendations as necessary. Undoubtedly, additional resources and supports will be necessary to carry out the expanded role.

- You may not save money by consolidating. But a one-stop-shop or common intake is more efficient.

- The Citizens' Representative is a crucial office which protects the weakest among us who have no voice. This Office of the Citizens' Representative ensures the equitable treatment of citizens and the examination of government policy or lack of government policy leading to systemic inequality or discrimination. It is an absolutely essential service which ensures our democracy is fair and equitable and that no category of individual is unseen and unheard. I am most grateful that this Office exists.

- If government is going to give priority to the work covered by the statutory offices, it has to be ready to put resources into maintaining them in a professional and adequate manner. That doesn't mean that restructuring can't happen. But there is the fear that if saving money is the goal, the risk is making decisions that will undermine the delivery of essential services.

- These are roles that need to be independent. There is pressure to recommend another office for persons with disabilities. Some of these are a political response; It's a nice thing to do. There is a lot of respect for the Seniors' Advocate, but government has a Minister for Seniors, an office within that office, an Advisory Committee - all looking at the same issues. There is support for the Seniors' Advocate, but what is the value of that office? If you're going to have a seniors or disability office, it should be like the OCYA, it should be able to do individual advocacy.

- I would support an Advocate for Persons with Disabilities, provided it is independent like the Seniors Advocate, and has the ability to deal with systemic inequalities, as for example, to be able to refer issues through the Office of the Citizens Representative.

- Statutory offices are not duplicating work, and each has an important role to play, as evidenced in their annual reports, as the numbers of complaints/investigations rise each year.

- The OCYA should not be combined with another office because of the nature of their work.

- In Ontario, they ended up firing all the advocates, removing the advocacy function.

- The role of an advocate versus an ombudsman is vastly different. An ombudsman does not advocate. Advocacy goes beyond the role of an ombudsman. The Seniors' Advocate is not an impartial role, as advocacy is not impartial.

- The Seniors' Advocate needs more teeth. That office ought to mirror the Child and Youth Advocate to some extent.

- In Manitoba, roles have been combined or are usually combined. This trend of combination is worrying when authority, resources, and staff do not match the expanded mandates. Conflicts of interest can also arise when the different mandates of a single officer clash.

- Everyone recognizes the offices fulfill important functions and duties. If there are inefficiencies, or if there is overlap, it is important to look at maximizing efficiencies rather than just increasing budgets. Are we setting up a system that makes it easy to bring concerns forward or not? It should be a citizen-centred approach.

- The statutory offices should remain separate. Any combination of them would run the grave risk of diluting their ability to scrutinize government or provide advice to members of the public seeking redress. For instance, the OCEO and the OCLS have previously been held by the same individual. Yet these offices conduct different work requiring unique skill sets and knowledge. By combining roles, the search for candidates would invariably become more difficult. This in turn would result in lengthier vacancies.

- All statutory offices should remain stand-alone statutory offices and should not be shouldered with the responsibilities of other statutory offices.

- There should be no consideration that the OSA could be combined with the OCR. Given the Citizens' Representative's wide variation of responsibilities, there can be no guarantee that the voice of seniors would not be lost if there was any consideration of combination with the OSA.

- The OSA is very vital and certainly needs to be heard from and kept viable.

- The need for the Seniors' Advocate will only increase in the future.

- Seniors are anxious to see the Seniors' Advocate succeed as it is an advocacy for seniors generally and programs that affect seniors. Seniors finally have a voice and they appreciate being heard.

- The mandate of the Child and Youth Advocate should not be changed unless such changes are in the best interest of children and pass a Child Rights Impact Assessment. Further, any changes ought to expand and modernize the mandate of the OCYA in line with newer legislation in other Canadian provinces. Administrative efficiencies should not come at the cost of impacting the rights of vulnerable children and youth.

- Combining the Office of the Child and Youth Advocate with another office will inevitably divert resources from vulnerable children and youth to adults. Children and youth always suffer when their interests are not an exclusive priority.

- Dealing with the OCR is a very positive experience, the investigators are always professional and well prepared.

- An advocate is needed to be a voice to government for seniors' concerns and not be lumped into another busy office where they are lost to pressing concerns. Do not make seniors feel unworthy of being heard and taken seriously. Leave the OSA as a separate entity.

- Please add my support to the submission from NLSPSA regarding the proposed review of the seniors advocate position.

- The OSA unequivocally requires a full-time Officer. Any suggestion of a combination here would ensure relegation of the senior population to a backseat position behind children and youth since general sympathy would rest with those underage and significantly vulnerable persons of our communities.

- There is a major concern that if the OSA is combined with the OCR, the voices of seniors will be significantly diminished given the growth of that office and its numerous mandates. The rights of seniors, and vulnerable children and youth, would be lost in such a model.

- The concept of combining the OCYA and the OSA is concerning as both of these populations deserve the attention and expertise of a full time Advocate, not half time. Further, given the difference in authority of both offices (the Child and Youth Advocate has investigatory powers whereas the Seniors' Advocate does not) this would need to be addressed. Neither the voices of children nor seniors would benefit from an Advocate focused on two very different areas of expertise.

- The Seniors' Advocate was intended to have investigatory powers. The 2015 Red Book committed to create a Senior's Advocate to investigate individual complaints. It is our understanding that due to budget limitations, individual advocacy and investigatory powers were sacrificed as it was thought that the Citizens' Representative could fulfill that role.

- The OCYA is top heavy when compared with other government offices. For every senior management position there is 3.3 staff, which for such a small office seems disproportionate and fiscally wasteful – particularly as there is no provision of emergency services.

- In New Brunswick, after the Seniors' Advocate was combined with the Child and Youth Advocate, approximately a quarter of the Advocate's time is spent on seniors. While the two offices (Seniors and Child Advocate) are combined they still operate separately and there were no real efficiencies to combining offices. The expertise and needs associated with the mandate of the Seniors' Advocate and the Child and Youth Advocate are entirely different and our seniors are better served with its own independent Advocate solely focused on seniors issues.

- Some of the work completed by the OCYA is repetitive of internal CSSD and other departmental processes. Two different reports (internal and external) being completed

with similar recommendations yet different language creates confusion and more work for those trying to implement changes.

- The Chief Electoral Officer is needed and needs to be a standalone office. This person needs to be nonpartisan, ready to go, professional, and have a specific skill-set.

- If there are concerns that the work of the Citizens' Representative may overlap with the work of the Child and Youth Advocate and the Seniors' Advocate, consider the argument that it is better to have more checks and balances on the operations of the government than too few. It is imperative that children and youth be the focus of the work of a dedicated Child and Youth Advocate and that seniors be the focus of the work of a dedicated Seniors' Advocate, but it is no less important that citizens generally, whistleblowers and subjects of alleged harassment, be afforded the services of a dedicated Citizens' Representative.

- The duties, powers and resources of the Seniors' Advocate should be significantly increased to enable the Advocate to address the individual concerns of seniors, and to be directly informed of and empowered to investigate any circumstances where seniors appear to have been abused.

- It is inconceivable that the far-reaching functions of ATIPPA could function without a dedicated, stand-alone OIPC with a dedicated, full-time Statutory Officer. As it is a natural extension of the work of the OIPC, the OIPC should be given an independent oversight role with respect to the 'duty to document' provisions of the Management of Information Act.

- In recent years, the Chief Electoral Officer has served simultaneously as the Commissioner for Legislative Standards. While it may be possible to hold both offices simultaneously, recent events show that forcing the principal to step down from one role pending an investigation inevitably causes a vacancy to occur in the other role as well. This may be a time when the dedicated services of a full-time Chief Electoral Officer will be needed for a considerable period of time of adjustment.

- Considering the scandal that precipitated the Green Report of 2006-07, it would be not just imprudent, but foolish and outrageous to erode the OCLS that was strengthened to prevent a recurrence of such a scandal. Such an erosion would be all the more imprudent now that the importance of properly handling harassment allegations has been acknowledged and the Commissioner's duties have been expanded accordingly.

- The role and mandate of the Commissioner should be expanded to parallel that of the federal Conflict of Interest and Ethics Commissioner, and the title of the Office and Officer should be changed accordingly. To the extent that this revised role duplicates the work of other offices overseeing conflicts of interest, changes should be made to ensure the responsibility rests with the new provincial Conflict of Interest and Ethics Commissioner.

- The House of Assembly created the Child and Youth Advocate as a watchdog. They wouldn't have visibility into departments except through appropriations, reports, question period – and they wanted someone to pay closer attention. You could argue that the Advocate's role is the Opposition's role or the role of parliamentary committees.

- If there is a significant investigation, such as the fitness of another Statutory Officer, that should not go to Citizens' Representative. That should go to a committee or elsewhere. For investigations of cabinet ministers, it depends on the nature of the complaint. If it's under the House of Assembly, the investigation should go to the Commissioner for Legislative Standards.

- In hindsight, extensive analysis of skills, competencies and legislative requirements should have been conducted before expanding the scope of the ombuds function to include whistleblower and harassment investigations.

- The key component to consider is that the OCR, by the mere nature of acting in the role of a parliamentary ombudsman, cannot advocate. Whereas the key function of the OCYA and OSA, by virtue of their name and mandate, is advocacy. If the OCR were to absorb the OCYA and/or OSA, this role would simply not be possible, as it is outside of the scope and mandate of an ombuds. Concerns were voiced when Ontario eliminated their Child and Youth Advocate, and concerns remain regarding the efficacy of this office in advocating for children and youth, particularly for those that are marginalized.

- At this time, not only is the OCR responsible for the *Citizens' Representative Act* (requiring a working knowledge of all provincial government departments, boards/authorities and agencies), but they are also responsible for the PHIA, and the Harassment-Free Workplace Policy applicable for complaints against Members of the House of Assembly. This policy is outside the scope of other provincial ombudsman. It would be unreasonable to expect any Ombuds to have the capacity and expertise to manage this portfolio, combined with the responsibilities of the other statutory offices.

- Consider recommending the addition of resources devoted to public engagement and education. The public is generally unaware of the services that these offices provide, if they even know of their existence at all. Consider even recommending a new statutory office solely devoted to this task.

- Consider the feasibility of creating a Statutory Office similar to the Parliamentary Budget Office (PBO) at the federal level. Such a body would elevate the level of political debate and improve deliberation and decision making by providing information that would likely be trusted and accepted by all parties.

- Given the full-time requirement to oversee the multi-year planning and implementation cycle of elections, it is recommended that the existing temporary removal of CLS duties from the CEO should become permanent, and the CLS should operate as a separate statutory role from the CEO. The need to always be "election ready" requires a full-time dedicated statutory officer that is not required to address non-election specific issues.

- Children and adults with complex needs and their family caregivers would remain unseen and unheard if not for the Office of the Citizens' Representative. This office has the ability to do the research, they have the staff to organize focus groups with the parents of these children/adults with complex needs, and research what services are provided for them. They have the ability to see what resources are provided to these children/adults and to identify any gaps in services.

- Given the frequent and sometimes adverse interactions the CLS has with MHAs with respect to providing opinions regarding their obligations as members, the role of CEO and CLS should be split to maintain the requirement and appearance of impartiality.

- The scope of the Citizens' Representative jurisdiction, which is limited to government policy being assessed as an Ombudsman, is an impediment to seniors as their issues go beyond government policy. The responsibilities of the Seniors' Advocate go beyond the Citizens' Representative mandate and include service providers and community agencies. The Citizens' Representative, respectfully, is not an advocate, and in the current arrangement seniors, and/or their concerns, are sometimes referred by the Citizens' Representative to the Seniors' Advocate for systemic advocacy.

- The current lack of investigatory powers of the Seniors' Advocate is limiting the Office's ability to fully address the needs of seniors in this province and leaves a gap in the oversight which the Office was intended to fulfill.

Comments on initiating the appointment process and recruitment

- The institution of the IAC process changed the involvement of the House in the recruitment process for the statutory officers. Prior to the IAC process, the Executive Branch conducted the recruitment process for all statutory offices prior to bringing a resolution to the House to confirm the appointment. Now, the Clerk of the House of Assembly initiates the IAC process to start a recruitment; however, the selection still rests with the Executive Branch.

- Residents must have confidence in the process and the people selected to lead the agencies, boards, and commissions making decisions and delivering critical public services. The IAC website provides the public with information on membership terms and vacancies. Interested individuals can apply online for vacant positions. The Public Service Commission (PSC) supports the IAC and the government in delivering a merit-based appointment process for agencies, boards, and commissions.

- Initial recruitment of a Statutory Officer should follow the current advertisement format (ie) making the recruitment known to members of the public and public service who may be interested in offering their services and skills. The candidate should be screened by the senior House of Assembly HR personnel with the assistance of the PSC.

- Recruitment of Statutory Officers should be subject to the legislation governing the IAC, with recommendations made to the LGIC for a subsequent vote by the House of Assembly.

- Members of the IAC are highly-qualified and respected individuals. They are also subject to the merit-based process and appointed through a resolution in the House of Assembly, with MHAs having the opportunity to comment on their appointment. Having a merit-based appointment process brings greater confidence to the people of the province that appointments are based on finding the most suitable individual. Ultimately, using such a comprehensive process will lead to greater transparency, improved organizational processes and enhanced quality of public services.

- There was a view that the lengthy IAC appointment process was a direct impediment and discouragement to attracting new candidates to entities. Individuals who may have been interested in a given appointment at one time were no longer interested a year or two later when an offer was eventually made.

- The hiring process should be like the normal one for public servants, through the PSC.

- A merit-based assessment process need not be limited to the Independent Appointments Commission process. Any merit-based assessment process would work equally well. The recruitment of an individual statutory officer should be a normal executive recruitment, with tiers of interviews and formal questions.

- The PSC leads a process to profile the skills and representation requirements for agencies, boards, and commissions. The IAC recommends individuals for chief executive officers or equivalent positions and members of the associated boards. Similarly, the commission recommends individuals for certain provincial statutory offices.

- You've got to bone up on the recruitment, because you don't want buyer's remorse.

- The balance between independence, from tenure, and the ability to handle bad hires, can be handled with an enhanced recruitment and hiring process.

- Building and sustaining public interest in specific opportunities can sometimes be challenging. Some positions generate significant public interest, while others require increased promotion and stakeholder outreach. Sometimes, the IAC and PSC may have to broaden their search beyond the initial list, which may include searching the PSC database and reaching out to qualified and suitable candidates. For statutory officer positions, the PSC will also partner with the Clerk of the House of Assembly for potential candidates who expressed an interest. These recruitment methods are not unusual in recruiting for key positions that are challenging to fill. These situations are more rare than commonplace but can lead to increased timelines in issuing recommendations.

- Once the applications are received, the IAC appoints a panel of three (a Chair and two others), assisted by the PSC. The PSC performs an initial screening of applicants. The PSC will conduct interviews and may issue an invitation to the Clerk of the House of Assembly to participate in the interview process. The applications of the candidates that best match the competencies required for the position are then passed to the panel along with the assessment matrix for all candidates. The panel reserves the right to review applications of candidates that were not selected in the initial screening. Next, the panel performs interviews and identifies the top candidates. IAC panels operate on consensus, but recommendations for statutory officers have historically been unanimous. The recommended candidates' names are provided to the PSC. The PSC contacts the candidates for personal disclosure information. If potential conflicts of interest are flagged by the IAC and PSC, that information is provided to the appointing body when the candidate is recommended. The recommended candidates are reviewed by the whole Commission before they are sent to the appointing authority. The top three candidates' names and applications are sent to the appointing authority, without ranking. In the situation that there are no suitable candidates, the IAC would write to the appointing authority to advise – however, this has not historically been the case for statutory officer positions.

- In Manitoba, decisions on the appointment and remuneration of officers of the Legislature is the responsibility of the Legislative Assembly Management Commission, an all-party body chaired by the elected Speaker of the Legislature. Previously, these appointments had been made by Order in Council with remuneration set by Executive Government.

- In Manitoba, a different body, the all-party Standing Committee on Legislative Affairs chaired by a government MLA, remains responsible for the recruitment and recommendation of nominees for these positions.

- The average time from when a request is received from an appointing authority to initiate recruitment to the IAC issuing a recommendation has averaged six months. However, the timelines have decreased to an average of five months over the past two years. The IAC process for the appointment of statutory officers has historically taken 5-6 months. The selection process as a whole requires timely identification of vacancies, adequate job descriptions, timely responses from prospective candidates, and timely executive decisions for appointments.

- There needs to be some way of allowing former officers to identify and maybe encourage suitable people to apply. Officers could keep lists of people they would recommend.

- Merit-based recruitment requires time and dedication; therefore, upfront, proactive planning is vital. Identifying vacancies early and giving the IAC adequate notice of upcoming expirations and/or resignations is an essential component in addressing the needs of these entities in a timely fashion.

- The IAC website was viewed as not being modern or intuitive…The application process was viewed as cumbersome and not user friendly. Individuals noted that they did not receive a copy of their application once it was submitted and, even if they remembered to renew their application two years later, an entirely new application had to be submitted. Furthermore, there were issues raised with the lack of details on the website about the steps in the appointment process and the timelines involved.

- Attention to the skills, competencies, and representation factors in profiles and recruitment requests is also important to consider. Appointing authorities could benefit from a thorough analysis of skills and demographic needs to clarify desirable and essential skills and ensure that potential appointees are representative of the population they serve. Highlighting these areas in all requests to the IAC are proactive measures that can help increase efficiencies in the process.

- Once a recommendation is issued, the government and appointing authorities implement an internal decision-making process to consider the information presented and make final appointment decisions. The timelines associated with these decisions are outside the purview of the IAC. However, as detailed in the "Rules of Procedure", if an appointment is not made within 60 days, the IAC has the discretion to state publicly that a recommendation has been submitted for which an appointment has yet to be made. No such release has been issued, but the IAC takes steps to ensure valid justification for any delays. A monthly report is sent to Cabinet Secretariat to identify outstanding appointments.

- Former officers have been consulted for the recruitment process of other statutory officers, and have sat in on the interviews.

- In smaller jurisdictions, very often someone from another jurisdiction has to be brought in.

- Any process involving statutory officers should be independent of civil service. There's nothing wrong with using the PSC or IAC for information, but only so long as the decision to appoint is and is seen to be nonpartisan and free from executive influence.

Comments on the appointment process

- Some might argue the OCYA is external or arm's length, however at the end of the day the Premier appoints the Child and Youth Advocate and other statutory positions. The offices operate within the provincial government. Therefore, there is a false sense of independence.

- Retain the existing appointments process for the Information and Privacy Commissioner with respect to how a roster is provided to the Speaker. This was the subject of submissions to the 2020 Statutory Review of ATIPPA, 2015 and ultimately Chair Orsborn agreed with this recommendation. The Wells Committee expressly considered the appointments process and explicitly designed a process to put the discretion over appointments in the hands of the legislative branch of government rather than the executive branch, over which the Commissioner has oversight.

- Legislators must be responsible for the appointment of officers, with the aim of having all party support for the final selection. A special committee should consider the kinds of selection processes operating in provinces such as Alberta and Saskatchewan.

- It is recommended that the appointment process for the Information and Privacy Commissioner be modified such that, following consultation by the Speaker of the leaders of the registered parties represented in the House, that the Government House Leader will bring a resolution before the House.

- Appoint all Statutory Officers using the method outlined in section 85 of the ATIPPA.

- Apart from the independent OIPC appointment process, the appointments process for other Statutory Officers is controlled by Cabinet. The only problem with the IAC serving as a section panel for statutory officers is that the purpose of the IAC, per its legislation, is to inform the executive branch. The key is: where does the roster go and who can decide?

- The time between initiating an appointment and a resolution being brought to the House typically takes upward to a year.

- These appointments are each prescribed by statute. It follows that changing the appointment process would require individual or omnibus statutory amendment. Officers of the House of Assembly should still be approved by the House sitting as a collective.

- While the OSA has no issue with the current appointment process, given this is a statutory office of the House of Assembly, you might wish to consider if the recommendation from the IAC should proceed to the Management Commission of the House of Assembly, and then advanced to the legislature for concurrence, rather than being under the control of the executive branch of government.

- Statutory offices exist in a subordinate role, created by the executive branch. Cabinet has a prescribed role for the appointment, suspension, removal, and compensation of Statutory Officers, as well as the authority to set regulations. The executive branch does not deal with day-to-day administration, that's the House of Assembly Management Commission.

- The recruitment process for the Seniors' Advocate role appears to have a considerable period of delay in filling a vacant position and the process does not appear to be as transparent as it could be.

- Recruitment processes are generally confidential processes. Under the current requirements, there are a lot of different entities involved in the recruitment of a statutory officer: the IAC, the PSC, the Clerk of the House, the Management Commission, the Clerk of the Executive Council and the Cabinet.

- One legislative requirement is that a consultation occurs between the Executive Council and the Management Commission on the salary. This brings a lot of individuals into the recruitment process. However, it is only a consultation and if there was a disagreement, the decision of the Executive Branch would prevail. This begs the question: should a consultation be required?

- It'd be interesting to find out how many candidates the IAC actually put forward to Cabinet. For other positions, the IAC rarely gives enough qualified candidates to make a decision, or they won't provide enough diverse candidates. The same is likely true for the statutory officers.

- Some good people might not think to apply for the Statutory Officer positions, but would accept the role if offered.

- Considering that there is a parallel review of the IAC, it is recommended that both Committees engage to determine any cross-sharing of gathered information that might be helpful to both review processes.

- The selection of Statutory Officers should remain at arm's length from government, with IAC left to determine the required competencies for each, using input from the offices themselves. One change to consider in the selection process would involve the final stages, when the House votes on a candidate. The House should be presented with a final list of three individuals capable of filling the role, with a detailed evaluation of their competencies and experience, including all materials compiled by the IAC in its selection process.

- Appointment delays have resulted in repeated extensions of mandates for some officers and long periods where the office is held by an interim officer, a recipe for administrative paralysis.

- The selection committee process defined for the OIPC could be replicated for all statutory offices. This would be a reasonable way to present the House with a roster of qualified candidates without specifying requisite competencies. It would remove the possibility of the executive branch handpicking candidates who might go easy on them.

- The Management Commission could conduct the recruitment process for statutory officers. It is a mature and capable entity and the House of Assembly Service has developed the capacity to support the Commission appropriately.

- There is a need for the online application to be modernized. At times, the information received through the application process is very limited. Transparency around the process could enhance the applicant experience. There is also no opportunity for an applicant to update/remove their application profile, as result there have been multiple applications by the same applicant.

- For the most part, the IAC has executed its role well over the last several years to reduce the risk of nepotism, cronyism, bias, etc. However, there is a concern with the hiring of an Assistant Deputy Minister directly from government. A key tenet of these positions is impartiality, and there is a concern with how neutral upcoming investigations may be if this individual was involved in making decisions as an Assistant Deputy Minister on files that are now being investigated by the statutory office.

- The IAC is an improvement in principle, but the paperwork associated with the merit-based process does discourage some good candidates.

- Shortlisted candidates for Statutory Officers can face up to 3 interviews (PSC level, IAC level, Cabinet level). Given the tenure of these appointments and the elongated process for investigation, suspension and eventual removal of an incumbent, there's no need to add or subtract from the number of vetting interviews.

- In the past, very qualified people not within government, have applied for the position, but don't make it on the list. There is no means to assess whether those people were appropriately screened out.

- MHAs are expected to vote on a nomination of someone to a position without having been part of the process leading to that nomination. If there were any objections they could have been raised on the floor of the House in debate when the nomination was presented to MHAs. An individual MHA would have to stand and ask questions of the government's choice publicly with the nominee sitting in the Speaker's Gallery. In a majority government the opposition really has no way to question appointments. At least if the Management Commission were engaged, questions could be raised in-camera early in the process regarding the nominee being recommended by government. It would be more in keeping with the spirit of the Green Report and the Act. Something must be done about the appointment of officers, signifying that they are truly independent of the executive branch of government or direction by Cabinet or Ministers, as stated in the House of Assembly document defining Statutory Officers.

- Individuals stated that the merit-based IAC appointment process could be bypassed entirely based upon "urgent or extenuating circumstances", as per Section 9(2)(b) of the Act. Individuals were of the view that there is insufficient transparency at the point in time when this bypass provision is used for the public to know that it is being used. Individuals also noted the lack of any rationale at the time that this bypass provision is used to explain what the "urgent or extenuating circumstances" are exactly.

- The issue that arises in the OIPC appointment process is how the name of 'one of the individuals named on the roster' is chosen to be put forward in the resolution, in particular where no unanimity exists among the individuals with whom the Speaker must consult. The selection committee is required to provide a roster of candidates to the Speaker, but the ATIPPA is silent as to whether the candidates must be ranked. Further, it does not indicate whether the Speaker is bound to put forward the name of a first ranked candidate, if any, in a subsequent resolution. The decision to appoint a statutory officer is a decision of the House, not a decision of the Speaker. If, after consultation, a preferred candidate is not agreed by those with whom the Speaker consults, there is no clear direction in section 85 of ATIPPA as to how the Speaker may proceed. With respect to process, the Speaker of the House has no ability to put forward a resolution for the consideration of the House, yet the Speaker is required by the Act to 'cause a resolution to be placed before the House'. Therefore, the matter of moving the resolution must necessarily fall to the Government House Leader, who is responsible for the business of the House. One further consideration for a Speaker may be whether the House sits in a majority or a minority configuration, which can result in added complexity if confidence is at issue.

- ATIPPA requires that the Speaker consult with the Premier, the Leader of the Official Opposition and the Leader of the Third Party on the selection of the Information and Privacy Commission. However, the legislation is not clear on how a decision is made, particularly if there is disagreement.

- Further, the legislation stipulates that the Speaker causes a resolution to be brought to the House to appoint one of the individuals. However, this is not a valid construct in our system. The Speaker has no authority or procedural avenue to place a resolution before the House. It is only the Government that can do this.

- In the OIPC appointment process, if there is no consensus, the roster should not go on the floor of the House. If the Government House Leader can't get consensus, the government should bring a name forward.

- It is appropriate for there to be public debate on the floor of the House about the selected candidate. If you're the name who comes forward, you signed up for that and have no reasonable expectation of privacy. But that wouldn't be appropriate for a second, non-recommended candidate.

- A confidential 360 degree vetting process for shortlisted candidates should take place which should include interviews with provided references, former subordinates, and former supervisors in order to gauge whether a candidate displays any risk of ethical or Code of Conduct violations based on past history or reputation.

- An officer needs all-party support from the start of their mandate to legitimize their work and avoid the partisan debates that have broken out over officers' findings and decisions.

- Even if partisanship can be overcome, do elected officials have the expertise to make hiring decisions involving professionals with specialized qualifications? It is suggested that legislators seek the assistance of the appropriate Public Service Commission or an outside recruitment firm to set the hiring criteria, please advertisements and conduct the initial stages of the search. Former officers or outside professional experts could also be brought into the decision-making.

- Who would wish to submit their name to fill an officer's position, only to find the process delayed by months and the ultimate selection immediately subject to public scrutiny and criticism? This is of concern if one is interested in attracting candidates from outside government to fill these positions.

- There was a consistent view that the overall amount of time required to make IAC appointments takes too long. It was noted that, from start to finish, it could take up to six months or a year to fill vacancies. This has apparently caused other issues.

- There was a general lack of understanding and frustration as to why appointments take so long. There was a view that little to no information is available about what exact step in the appointment process a given vacancy is at. There was also a view that the lack of any timelines in the appointment process made the process "open ended" and that it was difficult to understand who, if anyone, was responsible for keeping the process moving.

- There appeared to be no one person or position that was ultimately responsible for the appointment process or the timeliness of appointments. Although various groups were involved in appointments (PSC, IAC, Department, Cabinet etc.), nobody seemed to "own" or be responsible for the process itself on an overall basis.

- The impartiality of the CEO is paramount and an agreement by all members of the Independent Appointments Commission should be required for a successful CEO applicant. This ensures the principles of impartiality and independence that are necessary for the successful delivery of electoral events.

- Given that the CEO must function within a political sphere, without the consensus of the IAC, a CEO could be accused of being biased, associated with, or partial to a political party or candidate. This undermines the role and credibility of the CEO in delivering fair, impartial electoral events. Additionally, it undermines trust in the integrity of OCEO as a democratic institution.

Comments on the HOA appointment voting threshold

- Appointment should be by majority or supermajority (ie. 2/3). Dean Gottehrer and Michael Hostina, who worked together to establish the essential characteristics of an Ombudsman, suggest a super majority is preferable because it "ensures that the candidate is one who has wide respect among different political parties and even parties that oppose one another or the government."

- Rather than requiring the vote of a simple majority, there should be a higher threshold for confirmation of Statutory Officers, possibly 2/3 of the House. As our first-past-the-post

electoral system usually delivers a majority of seats to one party, the end result is that the candidate favoured by government is automatically approved without consultation from the opposition, effectively rendering this step a "rubber stamp." While elections have occasionally delivered majorities of more than 2/3 of the seats, there would nonetheless be many more instances, such as in the current House, where higher voting thresholds would require government to reach out and consult meaningfully on the approval of candidates with the opposition.

- The legislation requires for a majority vote from both sides of the House to reappoint the Information and Privacy Commissioner. What happens should a vote fail? It would be humiliating for the incumbent.The appointment should be unanimous and a reappointment should be nearly unanimous. That requires the leader and the parties to come together and agree.

Comments on length of term(s)

- The term should be four to five years - five years max. Over time, complacency will set in and your views might be too set. There's nothing better than a fresh look at something. A person could reapply, but only once. After a few years it's useful to have a new leader. The organization takes on the personality of the leader.

- Statutory office holders should hold their offices for a period that is longer than the longest General Assembly (i.e. more than five years), so they have the security of tenure required for them to engage in the challenging work of holding the government to account without being unduly vulnerable to the aggressive overreach of a vindictive administration.

- The term limits should be a term of five years with the possibility of reappointment for a further term. Most of our systems are evolving quickly so it's not a bad idea to replace officers more often. For any seasoned executive, contract lengths are around five years now anyway.

- Limiting the number of years a Statutory Officer can remain in that position is a good idea and should continue. This limit ensures a renewing of the office's direction, vision and strategic planning as it works to meet the changing needs of the people it serves. Term limits allow for change and growth for the statutory office by ensuring the vision and plans remains relevant and innovative and also safeguards against not having enough time to achieve the longer-term goals.

- Statutory officers' performance should be thoroughly reviewed near the end of their first term. After that review, they should get a second term unless a supermajority of the House votes to remove them.

- Staff members of a statutory office want to attract the best people to be the Statutory Officer. If there was a ten-year appointment and the staff didn't have confidence in the person appointed, staff might leave.

- Ten years might provide real stability and would reduce the possibility of personal interests in reappointment interfering with any case that comes in.

- Ten years with no reappointment would be a good term. It would make it easier for younger officers to be more vocal.

- Officers should serve a single mandate and reappointments of no more than one year should occur only when elections are imminent or other extraordinary circumstances prevail. Terms should be a minimum of 5 years and a maximum of 10 years. An automatic trigger should be introduced that would launch a selection process for new officers at a predetermined period before the existing officeholder's term ends.

- The role of a statutory office is to hold government to account. This often means levelling criticism at Government. Consequently, it may be difficult for a statutory officer at the end of their term to secure employment with Government. This could be a consideration for mid-career public servants in seeking these positions even though these people would have the type of qualifications and experience suited to these positions.

- Who do you want in these jobs? You want people with life experience who aren't going back to government afterwards. Statutory Officers who plan to go back to government afterwards would bring everything into disrepute. The longer the term, the better ability to capture younger potential candidates.

- These jobs are seen as retirement jobs for Deputy Ministers.

- Term length for the OIPC was contemplated in the Wells Review. In the oral hearings, several models were considered. The existing two years for the OIPC at the time was considered too short, the Auditor General's ten was too long; that's why it is six. The renewable part was to attract candidates.

- All statutory officers should be ten-year appointments. Shorter terms with the possibility of reappointment may impact the appearance of independence and impartiality. A one-time ten-year appointment, like the Auditor General, preserves the integrity and independence of statutory officers who would have no concerns about reappointment when performing their role.

- In the Yukon, the term is three years and it's too little. Six or seven years could be appropriate. It needs to be longer than the life of an assembly.

- A two-term limit is appropriate. Officers are like fish, you don't want them around too long.

- The existing framework for the term of a CEO does not match with the long term planning and cyclical nature of the OCEO. Currently the term limit of a CEO is six years (with a possible six year extension). Depending on the timing of the appointment, a CEO may potentially only see one general election, or could either enter or leave the role immediately preceding an event. To gain a full appreciation of the role, retain the operational knowledge of elections, and provide a continuity of election expertise, the CEO term should be increased to ensure that the CEO is present for at least two general elections. A 10 year term would ensure the CEO is present for multiple election events to provide continuity as well as facilitate long-term modernization projects that could span over multiple election cycles.

- Consideration should be given to one-term of 10 years in keeping with the independent nature of the role of the Child and Youth Advocate. Similar to the Auditor General.

- A ten-year term should be considered given the nature of the independent and impartial role of the office, with a discretion to extend that role depending on the timing of an election cycle.

- A longer term would permit the Chief Electoral Officer to engage in long term strategic planning.

Comments on the re-appointment process

- The re-appointment process can be hell. The statutory officer has no idea what is happening. In one case, the re-appointment was announced only two days before the expiry of the term, even though the Officer expressed interest in the re-appointment six months before the expiry date. This is not rare. It's not the best practice, but it also happens in other jurisdictions.

- Re-appointment for Statutory Officers should follow a transparent fixed timeline for two reasons. First, it would provide some certainty for Statutory Officers near the end of their term, permitting them to make future career and personal plans. Re-appointment should be discussed, confirmed, or denied at least six months prior to the term expiry. Second, a fixed timeline for reappointment would help ensure the perceived impartiality of the Statutory Officer. Otherwise citizens may perceive the Statutory Officer currying favor with the government just prior to his or her appointment.

- Re-appointments should be established in relevant legislation, with the statutory review of relevant legislation undertaken every five years.

- Six years plus a re-appointment poses a challenge for the Chief Electoral Officer, it doesn't provide enough continuity or enough time for long-term planning and implementation. In a six year term a CEO may only experience one general election in a typical four year general election cycle.

- A flaw in the re-appointments process is that Cabinet, if displeased with decisions of the Commissioner, may decide simply (and silently) not to bring such a resolution before the House in the first place and let the Commissioner's term naturally expire. Thus, the executive branch has a veto over a decision that rightfully should be with the legislative branch. If the government does not want to appoint a Commissioner who is interested in serving a second term, it should be the subject of open debate in the House. If its desires are legitimate – e.g. poor performance rather than political displeasure – then it should be prepared to explain and defend this position. There should be an automatic trigger towards the end of the Commissioner's first term so that a motion to re-appoint the Commissioner would be the subject of debate in the House.

- Near the end of an Officer's second term, there was a disclosure against a government official. The disclosure was career limiting. Since it happened at the end of the Officer's

second term, there was no issue. But a Statutory Officer with investigatory powers may not want to take that on in their first term.

- One former agent said he knew of a colleague who was anticipating a second term and wondered about whether to "go easy" on the government to ensure reappointment.

- Re-appoint all Statutory Officers using the method outlined in section 87 of the ATTIPA. Alternatively, the Speaker can consult with the three party leaders to decide to re-appoint.

- The House should have the discretion to re-appoint a Statutory Officer who Members believe is doing a good job in that role. The requirement established for the reappointment of the Information and Privacy Commission – that there must be majority votes of both the government side and the Opposition side of the House – should be replicated for all Statutory Officers.

- Each law pertaining to each statutory office should be amended to state: "The LGIC may, with the approval of a majority of the members on the government side of the House of Assembly and separate approval of a majority of the members on the opposition side of the House of Assembly, re-appoint the Statutory Officer for one further term of six years."

- In the Northwest Territories, they've committed to a public process for re-appointment, with no exceptions. The public application process is helpful.

- If it's the government's intention not to re-appoint an officer, the officer may need to find another job, so the officer should have a lot of notice. Their pension and health benefits may be all tied up with their career. A year in advance would be helpful. However, governments tend to leave this to the last minute.

- Re-application for officers looking to be re-appointed would chill the pool of future applicants. At one time the government interpreted the IAC process to mean that you needed to be appointed under the IAC process for re-appointments. A number of people had to re-compete for their own positions and some simply refused, and some of them were re-appointed anyway, and some weren't.

- If there is going to be a re-appointment process, it should be clearly defined so the Child and Youth Advocate, the Office of the Child and Youth Advocate, and the public are aware of the process. A transparent approach adds credibility to the process and the role of the Child and Youth Advocate.

Comments on acting appointments

- One option in the sudden absence or incapacity of a statutory officer would be for the statutory officer to appoint an interim officer, from within the statutory office in an ad-hoc position, to fill the gaps.

- Continuity can be protected when acting statutory officers are delegated by the statutory officer or at least not appointed by Cabinet.

- A standing committee should maintain a list of alternates who can assume an acting position quickly. Usually the officer's deputy would be appropriate; current civil servants should be avoided.

- There are times when statutory officers have resigned and weeks have passed before an acting officer was appointed. All authority flows from the officer, so there was no authority for staff of the office to act.

- A statutory amendment should be made allowing for the automatic appointment of an Acting Statutory Officer by the House of Assembly Management Commission in the event of the illness, suspension, or termination of a statutory officer. This provides continuity and certainty for the offices' continued operations.

- It's bad to have someone in an acting capacity for too long. There should be a mandatory timeline.

- When there were two year appointments with multiple terms, things got done towards the end of the two years. The day after the appointment expired, no one in the office could sign reports. Everybody just kept working and when the House sat again and an appointment was made, the officer signed the reports then.

- ATIPPA should be amended to allow the commissioner to designate a person who will assume their powers and duties in the event of their absence or a vacancy in the office of commissioner.

- In one instance, when an officer was removed, the staff just waited until someone spoke to the Speaker. Eventually a person was sent over as acting officer, but that person couldn't be involved in meetings, they couldn't be sworn in, they couldn't have confidential information. It would be better to take a former incumbent from a pool of former statutory officers, if they're willing.

- Appointing an "Acting" Statutory Officer requires fewer steps and less scrutiny than filling a position permanently. Most are appointed on the recommendation of the House Management Commission. While this is a formal process, it remains under the control of the sitting government who have a majority of members on the House of Management Commission. This has the potential for undue influence and advantage. Individuals in "Acting" roles cannot be recruited, apply for, or otherwise be considered for the permanent position.

- There is a worry that acting officers are simply caretakers without the authority to make significant changes.

- Consideration should also be given to a second shorter 'bridge-term' re-appointment of 1-3 years to allow for proper transition between an incoming and outgoing CEO. This bridge term could cover the recruitment period for a new CEO, or depending on the timing of the election cycle, allow a CEO to remain in place if an election is scheduled shortly after the expiry of their original term.

- For the OCYA, the process for acting appointment of the deputy within the office has been seamless in the past. There's always been someone acting. There is no provision for a deputy, but having an acting advocate until a permanent appointment is named has not been an issue for OCYA.

Comments on compensation

- Compensation is usually in line with the rate paid in previous employment, consistent with skills, knowledge and experience one is bringing to the position. This compensation process is still effective.

- Revisit the Wells Committee recommendation that the Commissioner's salary be set at 75 percent of a provincial court judge.

- As deputy minister equivalents, statutory officers tend to make less than most deputy ministers and in my case less than some associate and assistant deputy ministers. To the best of my knowledge and belief the Newfoundland and Labrador Ombudsman has historically made less than all of his provincial and territorial colleagues.

- It seems that the positions of statutory officers were all classified and all classified the same, which doesn't make sense, because the offices are substantially different. There's no need for statutory officers to be paid the same, as they do different work and the labour market for them is different.

- There should be some kind of base standard to keep it standard. The statutory officers are referred to as deputy minister equivalents, but they weren't equivalent in bonuses.

- The Wells Report thought the status of the OIPC should be comparable to those that it regulates, e.g. the senior deputy ministers. Those salaries are actually lower now than Memorial or federal or municipal salaries.

- The processes should remain as they currently are, although the legislation pertaining to the Seniors' Advocate should be updated to refer to *the Public Service Pensions Act, 2019*.

- Deputy Ministers preserve their salaries on transfer to another department. While Deputy Ministers have applied and been appointed as statutory officers, the Executive Branch has recommended that they keep salaries as if a transfer had occurred. As the salaries for the statutory officers are generally less than the Deputy positions, appointing these individuals at the approved salary would result in a voluntary demotion.

- It should also be noted that despite this large responsibility, the Ombuds is one of the lowest (if not the lowest) paid statutory office in this province. Because the OCR opts not to publish reports publically, the general public most likely do not truly understand the significant work that is undertaken by this office.

- No one will take the job if they have to take a pay cut and reduced status. If the position is aligned with a junior deputy minister, you're not perceived to have that amount of weight within the system.

- Statutory officers are different from deputy ministers. They are public personas. At times there's an appeal to that—having their own voice, it has an attraction but also a responsibility.

- Statutory officers should not be getting deputy minister level compensation. That doesn't match the standard of work we've seen from them and, in some cases, their experience. Government directors have much more responsibility and accountability than statutory officers.

- In Manitoba, compensation of statutory officers is decided by the Legislative Assembly Management Commission, who meet in-camera.

- The ideal model would be one person on top who is more senior, truly impartial, and has much more experience. We could compensate that person at a Clerk level. Then maybe the next person is a Director level.

- Not all offices are created equal. Some are fundamental to our democracy. Some are more administrative, some are more advocacy.

- The somewhat quasi-judicial role of some of the statutory officers does not justify a salary equivalent to that of a judge, as has been suggested.

- The legislation specifies that the statutory officers are Deputy Minister equivalents however, the approved salary level for these positions is less than that of a typical deputy minister position.

- The government is married to this pay scale that pins the size of the office to the salary. Colleagues in other jurisdictions are pinned to superior court judges. The Parliamentary Commissioner was tied to the Provincial Court Chief. They have the same status as deputy ministers, but they make less than many assistant deputy ministers.

- The salary of a statutory office has to be reflective of what the officer brings. That usually comes with advanced education and senior roles, it has to be reflective of the person's skill set.

- From experience, there has been quite a bit of variance in officer compensation. Some were paid similar to deputy ministers, some were not. An officer should not be paid less than the equivalent deputy minister. If the office holder is seen to be at a lower pay scale, they lose some respect and, along with that, their independence is affected. In New Brunswick, statutory offices used to be paid the salary of a provincial court judge, though it may have been adjusted now.

- A common recommendation is fixing the compensation of statutory officers to some standard, but it will depend on what you're using as the anchor. Sometimes they want Atlantic parity, sometimes judges' salaries. Those anchors don't consider the province's

circumstances, e.g. financial wherewithal. It is not appropriate to compare the circumstances or responsibilities of a short-term statutory officer with a judge, so their compensation should not be linked. An appropriate anchor is the executive pay plan.

- Some jurisdictions have established salaries in legislation and benchmarks them to deputy minister or provincial court judge positions.

- Salaries of statutory officers should be consistent and reflect their independence and the important role they play in promoting accountability and transparency.

Comments on the removal and suspension process

- The LGIC should retain the ability to suspend but not beyond the next sitting. In the alternative, an all-part committee of the House, dedicated to the activities of the statutory officers, could be assigned this responsibility and remove this power from the Cabinet if it is the will of the House.

- Disciplinary action may be considered by the House of Assembly Management Commission or appropriate committee of the legislature.

- The Management Commission should (through the Speaker) also oversee necessary disciplinary actions related to a statutory officer. The procedure followed could be similar to what already exists for the disciplining of government deputy ministers.

- A 2/3 super majority of voting members should be required to remove a statutory officer.

- Removal should result from progressive warnings (for example: verbal warning, written warning, and then dismissal), to give at least six months of being aware of shortcomings. Assistance should also be provided to address these shortcomings.

- Consideration should be given to the creation of a Complaints Authorization Committee, as a sub-committee of the Management Commission, who would be tasked with accepting and screening complaints made against Statutory Officers. To preserve the independence of the Committee, no members of the House of Assembly should be on the Committee, but membership could include the Clerk of the House of Assembly, a retired lawyer/judge, an individual from the Public Service Commission with expertise in human resource issues and workplace behaviors. If a complaint is approved, a one-person tribunal before a retired justice would adjudicate the complaint.

- In the event that a statutory officer is removed supports should be in place for staff to ensure their needs are met and the office continues to run smoothly.

- A Committee should be created, chaired by the Clerk of the House of Assembly, to hold a monthly or bi-monthly meeting with all statutory officers to discuss ongoing issues common to all offices. When necessary, issues can be forwarded from the Clerk of the House of Assembly to the Management Commission for consideration.

- The processes for suspending or removing statutory offices are essentially the same for all six statutory officers under the current review. There are no provisions for "disciplining" a statutory officer other than "suspending" a statutory officer, nor should there be. The appropriate responses to neglect of duty or misconduct should be suspension or removal. Opportunities for the government to use the threat of removal from office as a means of exerting influence over any statutory officer must be minimized if not eliminated. It may be in the government's interest to silence its critics, but it is in the people's best interest that the security of tenure of these critics of the government – these statutory officers of the people's House – should be made as secure as possible.

- Any decision by the House to remove or suspend a statutory officer should have a double majority – a majority of the members on the government side and a separate majority of the members on the opposition side.

- If you had a special committee on statutory officers, maybe with the Speaker as chair, that could decide suspension/removal. That would help get it away from political considerations.

- It's trite to say, but statutory officers used to be called "servants of Parliament." If you look at the history, that's what we're there for. A servant needs a master. A statutory committee has benefits in that regard.

- The House of Assembly Management Commission should be the body making the decision on the suspension of a statutory officer. This would place the decision in the hands of the rightful branch of government and serve to protect the independence of our statutory officers.

- Terms such as poor management, mismanagement and gross mismanagement should be well defined and the process for establishing them should be rigorous.

- All processes for performance, including discipline and removal from office, should be contained within the legislation and regulations for the position of the Seniors' Advocate and its office. It is understood that the current House of Assembly oversight model is working satisfactorily for this office and no changes are recommended.

- Security of tenure means that, if you want to remove someone, you need to build a case. But politicians don't want to do that on the floor of the House.

- Section 5.3 of the Elections Act, 1991 describes the authority of the House and Lieutenant-Governor-in-Council to remove or suspend the CEO for incapacity to act, or for misconduct, cause or neglect of duty. OCEO has no concerns with this provision and no recommendations to make.

Comments on conflicts between Offices

- An arbitrator (perhaps the courts) or the House of Assembly Management Commission could provide solutions for conflicts between statutory offices. There's nothing wrong for two well-meaning organizations to disagree and use a third-party.

- The OSA has not experienced any conflict with any other statutory office that would necessitate a change of or any combination of functions with another office. It is understood that there may be some misunderstanding of the role of the OCR just the same as there is misunderstanding of the role of the Seniors' Advocate to deal with systemic issues only and not personal situations. However, in fairness, there is a high level of cooperation between the two offices, there is sharing and referral of information and personal cases, as appropriate.

- It is recommended that no special provision be developed for conflict resolution between or among statutory offices but that the provisions of their legislation prevail.

- There was the one episode of apparent conflict involving the OCR and the OCEO, but that seems to be the only one. The mandates of statutory offices don't usually rub against each other's, and when they do, it's generally productive.

- The role of the Management Commission could be expanded to allow the Commission (through the Speaker) to play a mediation role should disputes arise between statutory offices. That being said, given the fact that the statutory offices are independent entities working under separate legislations with separate mandates, disputes between them during the normal course of business would seem unlikely and certainly very rare occurrences.

- Consider a framework that encourages formal and informal collaboration of statutory offices. Work with Statutory Officers to establish a system to address matters of overlapping responsibility to reduce the possibility of conflicts.

- If there's a conflict between the offices, you should pick up the phone and resolve it.

- The same House of Assembly standards/procedures which currently exist to investigate alleged misconduct of House of Assembly personnel in supervisory or high-ranking positions could be applied to the statutory officers. The Management Commission, as an impartial entity, could also play a role should bias or conflict of interest - perceived or real - exist within the House of Assembly.

- If there are complaints about statutory officers, go to the MHAs. The process has to start with something with the legislature. It's a coat that has to belong to the House of Assembly. The Management Commission seems to be the best hanger for the coat.

- For some time, the officers would informally meet three or four times a year, that should happen again.

- Alternative dispute resolution, as successful as it may be, will not invalidate the investigating officers statutory authority. Jurisdictional conflicts should be the sole domain of the courts.

- There should be a standard process across the board to deal with complaints – that would have more of an impact. A common, normalized tool. People are calling with complaints to all statutory offices, and other government bodies. People need to know how they can legitimately complain. Right now they don't know who would be the right person to call.

- In carrying out the statutory offices' independent function, independence should be understood as the ability to be truthful and accurate and recommend appropriate remedies, not so that they can say whatever they want, regardless of accuracy, or whether the topic is not within the scope of their statutory obligations.

- I am not aware of any gathering that brings the statutory officers together to talk about the common good they are all working towards. Perhaps the Management Commission could be responsible for making that kind of thing happen. Perhaps the current review of the offices could be the instigator for such a discussion.

- There used to be informal meetings among statutory officers but there were never any meetings with an agenda. Usually, the Citizens' Representative would call someone up and say 'Let's meet at Boston Pizza at 12.' The meetings were a great help with the administrative and financial issues.

- There used to be no conflicts between offices. Sometimes the same person submitted a similar request to the OIPC and the OCR, but these were fundamentally different cases. If there is a conflict, you'd need some kind of arbitrator or, subject to confidentiality, the Management Commission to manage the conflict.

- Statutory officers who conduct investigations should have the resources and obligation to hire lawyers well versed in such matters, so their investigative reports are as reliable as possible and procedural fairness is assured. Whistleblowers and witnesses should be protected from reprisals, but their testimony must be substantially disclosed, tested and open to challenge, as procedural fairness demands. Allegations of harassment should be isolated and dealt with under the Harassment Free Workplace Policy. The Codes of Conduct should be defined more directly and thoroughly, with less aspirational language that is wide open to interpretation.

- Historically, each statutory office was created with a specific purpose, with all four existing harmoniously together since 2004-2005, until the OSA was added in 2018-2019. Why did questions or concerns not arise during these 12+ years?

- Statutory officers have few annual direct personal interactions that would give rise to conflict. However, from time to time an officer will fall under scrutiny by one of their colleagues. The statutory officers exercise varying degrees of statutory jurisdiction over one another. Given the low level of informal personal interactions, the probability of interpersonal struggle is highest when an officer is placed under statue-enabled examination by another officer.

- There have not been any conflicts with other statutory offices, in fact, statutory officers frequently contact each other to discuss ongoing common issues.

Comments on quality assurance and performance issues, oversight mechanisms, and who should administer quality assurance or oversight

- Some statutory officers have mixed up policy making and advocacy. They should identify systemic issues so government can make the policy. They should be able to identify areas

where the system is not working. They should tell government to reconsider XYZ, but not tell government what to do. It all goes back to role definition. Right now, it's almost a free-for-all. For example, the Auditor General cannot question government policy and will only look at whether government is complying with its policies. That's why it may be good for someone to review whether officers are complying with their role. We need more quality control.

- Another means of improving public confidence in statutory offices would be to allow the OAG to conduct regular reviews of their work and activities. As the OAG already audits the financial statements of the House and statutory offices, it should also examine their performance periodically, to ensure that they continue to fulfill their mandates.

- The objectives and performance measures presented in the annual reports are self-determined and self-evaluated. There is no formal process for evaluating the appropriateness, effectiveness, accuracy, or comprehensiveness of these annual reports. The existing annual reporting process can be modified to provide a robust and comprehensive quality assurance and performance measurement framework.

- The OCEO completes the business plan / 3 year activity plan templates in accordance with the Transparency and Accountability Act. In addition to the requirements of the Act, the OCEO would benefit from an externally generated strategic plan that matches the longer-term objectives of the OCEO. This long-term strategic plan would guide the longer term goals of the organization, while the activity plans guide the more immediate activities of the OCEO.

- The OAG should conduct a mandatory review of the OCEO after every general election. These reviews should be issued in a timely manner after the vote, contain recommendations on how to improve OCEO performance, and be released publicly. Such measures would do much to restore public confidence in the integrity of our electoral system.

- If an officer lacks the required competencies for the position, there is very little recourse. One option is to wait out the term but that could have detrimental effects on the office. Another option is to remove the individual using the provisions of the Act; however, that too is a problematic process.

- The performance and quality of the work of each statutory officer is measured by the work of its office; each statutory officer represents the statutory office and, therefore, any measure of accountability for the office is also for the officer. The OSA maintains a work plan and tracks outcomes and timelines regularly.

- Officers have certain statute-based obligations to meet throughout the year to demonstrate performance to the legislature they serve. In my case, I am obliged to report on the exercise and performance of my functions and duties under s. 43 of the Act, s. 20 of the *Public Interest Disclosure and Whistleblower Protection Act* and, from a strategic planning and organizational improvement perspective, s. 9 of the *Transparency and Accountability Act*. Some of my national colleagues do meet with a select committee of the legislature to discuss their reports and answer any questions parliamentarians may have.

- From a democratic perspective, the statutory officers are creatures of the House and the House has a role. There is currently no legislative oversight of any of these offices with the exception of the Office of the Auditor General.

- The Public Accounts Committee works in partnership with the Auditor General. It examines the reports of the AG, determines if it wishes to conduct further research and, if necessary, will make recommendations to the House.

- A similar oversight function could be beneficial for the other statutory offices.

- If the House was to create such a committee, the current composition of the House is a challenge as it is Private Members that generally serve on these committees.

- The performance of statutory officers as leaders and managers should be appraised, along with the efficiency and effectiveness of the offices they lead. These reviews should be conducted by a committee of the Legislature, not by a part of the government executive. At least once every four years, statutory officers should go before a committee of the Legislature for the purpose of such a review. There's no need for empty rituals, all stakeholders should be involved.

- After each general election the Chief Electoral Officer travels and meets with Returning Officers to debrief all aspects of the election event. These are opportunities to collaborate with election officials, learn what worked, what didn't, and identify solutions and best-practices going forward. The OCEO regularly updates Returning Officers throughout the planning and implementations cycle of the election. If the CEO is not addressing the issues identified in the debriefings the Returning Officers will let the CEO know.

- Committee work requires a significant time commitment on the part of Members and takes away from a Member's time for constituency work. It is noted that compensation for committee work was eliminated by a recommendation of the Members' Compensation Review Committee in 2016. Consequently, Members are required to put in a significant time commitment without compensation.

- There is no justification to impose external mechanisms to ensure the quality of the work and performance of statutory officers. The House of Assembly and the Management Commission have the capacity to order work reviews on a case-by-case basis. This is a necessary and sufficient mechanism to provide oversight for the work of the statutory offices. It is for the legislative branch to provide oversight for the legislative branch, and no other branch of government should have that role.

- Without due cause, the use of 'quality assurance' by an improper body can become arbitrary and may be used as a source of power or threat. Performance is already addressed in the form of annual reports and strategic planning, but who is reading them and what is being done when they are submitted? Who is monitoring when they are not submitted?

- There is no validation or quality control. Who oversees or checks? Time and again, there is inaccurate information in reports. Statutory officers are putting out opinions and

politicized commentaries to the public and there's no way to know if it is accurate. The public interest must be kept in view at all times.

- Consider using a consensus-based meeting with the three party leaders to determine how matters relating to miscarriages of duties are investigated.

- Statutory officers should report to an entity that's not the executive branch. The entity needs to be part of the House; maybe a committee or another officer, referring to a judge or a panel could work. With the Auditor General, there is a professional standard, longstanding procedure and protocol, long tradition of putting out reports, and the OAGs across Canada take turns auditing each other. They clearly write reports in a remedial fashion - the kind of information the executive can use to better serve the public.

- OIPC views that its current Annual Reporting requirements as set out in the noted statutes are sufficient performance measurements. OIPC would be pleased to have the opportunity to present its Annual Report to a Committee of the House or the Management Commission and answer questions about it should it be invited to do so.

- The vast majority of what the Citizens' Representative does is addressing complaints that are transactional in nature, like an inmate needs a TV, someone needs healthcare, someone needs wall painted – the Citizens' Rep is good at that. However, for other things, like investigating another officer, the suitability and efficacy of that office is questionable.

- When you go through a report of a statutory officer, it's full of spelling mistakes. It speaks to the need for quality assurance.As an oversight body, the Management Commission would be ineffective because it doesn't have the capacity. People don't necessarily have the skillset. They're set up to manage budgets.

- The Speaker is supposed to be neutral, but he's a member of the governing party, and you can't erase that. The Management Commission is structured so government always wins. The Speaker will always vote with the government side. Members are supposed to park their politics, but that'll always come back at the end of the day. A lot of the time, there are decisions being made by the government members of Committees, and the Opposition has no power apart from bantering and criticizing. They walk in and they have their hands cuffed before they walk in the door.

- Naively, one would have thought that committees make decisions on the merits, but it's all partisan. Not that there's anything wrong with that, necessarily.

- The partisan nature of legislative committees affects their ability to review an officer's work.

- Members' disinterest and lack of expertise is a shortcoming of legislative committee oversight. The situation is exacerbated by a lack of research capacity within the committee system.

- The Management Commission makes a lot of recommendations, but Cabinet has to do the recommended actions. The Management Commission is sometimes the cover for government on some things, and that takes away what the Management Commission is really meant for. It's supposed to be the Cabinet of the legislature.

- In a federal all-party legislative committee example, one former statutory officer noted that it was successful when the government was in a minority position but once the government won a majority, the idea that a parliamentary committee could act independently from the party in power "went out the door" and the panel died. According to another former statutory officer, the advantage of the Panel was that it forced accountability on all sides. But the problem with the panel was a lack of capacity and the fact there was "nothing in it" politically for the MPs who participated in it, so interest waned.

- Perhaps there isn't a formal way to provide feedback or gauge performance, apart from annual reports. Whatever the oversight mechanism is, it should hold officers to account for objectives, and there should be a performance contract identifying their objectives.

- Legislators sometimes show scant interest in the activities and performance of statutory officers, in some cases, not even bothering to hold hearings on their annual reports. Too often, the result is confusion about statutory officers' roles and whether they are accountable for their actions and, if so, to whom? Without that clarity, officers occasionally act as if they are free agents, responsible only to their own conscience.

- Statutory officers are required to submit annual reports on their activities and occasionally produce special reports to the legislature, depending on their mandate. Yet with some notable exceptions, there is no guarantee these reports will be the subject of specific parliamentary review or hearing. This lack of scrutiny can lead to officer frustration and a lack of accountability on their performance to MPs or legislative members.

- Establish a committee, supported by expertise in performance measurement, indicator development and planning, which can include the statutory officers, Members of the House of Assembly and other vested parties to develop a robust and comprehensive accountability framework for the statutory offices.

- Statutory officers certainly spend a lot of money preparing annual reports and producing them. Somebody should pay attention to them.

- No one ever provides feedback on annual reports. There is no quality assurance in that way; no one's really checking.

- There are forty individuals (MHAs) who are responsible for oversight. They have a role. We have statutory officers who are going in the media and becoming public figures and members of the public are going to statutory officers, rather than MHAs. The public should be reminded of the roles of MHAs and statutory officers.

- Statutory offices aren't particularly useful to MHAs. Some MHAs never use statutory offices to help constituents. Opposition MHAs do use them to investigate things, because statutory offices have way more power than MHAs do.

- Sometimes a politician will say they read the annual report. The reports are not even physically tabled, they're deemed tabled and put on the website.

- It's regrettable that there aren't standing committees that allow for an analysis of statutory recommendations/reports. If it was routine that statutory officers appear and talk and even get queried, that'd be the right forum in which to explain and ask questions.

- The only one who's ever asked about the OIPC Annual Reports was the 2020 ATIPPA Review. Otherwise no one has provided feedback on OIPC Annual Reports. The OIPC Annual Report is tabled in late September, at a time when the House is closed, at the same time as hundreds of other annual reports from government departments, agencies boards and commissions, as required by the *Transparency and Accountability Act*. None of these reports receive very much attention.

- The Auditor General provides the best example of oversight working well. In both federal and provincial jurisdictions, a Public Accounts Committee meets frequently and reviews Auditor General reports. Chaired by an Opposition member, these committees work diligently. In Ontario, the legislature's Public Accounts Committee meets weekly and conducts its first hour of deliberations in-camera. This encourages openness among committee members and reduces partisanship. Yet a former Ontario Auditor General notes it would be impossible for MPPs to dedicate as much time and effort to the work of each of the nine Ontario Statutory Officers as they do to the work of the Auditor General.

- The proposition that members of the legislature do not have a level of expertise to oversee statutory offices is unacceptable. They're not necessarily experts in hydropower or child protection but there is legislation in all of those areas. Elected members can learn. Certainly those who are appointed to standing committees develop some level of expertise or are, hopefully, supported in their work by the legislature. Officers should table their annual reports and high profile reports with a Committee. Members would be interested and be able to question the Officer on the issues of the day.

- Some deputy ministers either don't understand the officers' role completely, particularly new deputies, or they just consider the officers a nuisance. There's a need for respect between the deputy ministers and the statutory officers which could be helped by a one day meeting over number of issues (eg. time it takes a department to respond to requests might drag it on for months, which is extremely frustrating for the officer looking for a solution). There's a need for a really strong understanding of each person's role and how the relationship foster faster resolution of issues. If an officer has to complain about not receiving responses, it doesn't foster public trust in any of the institutions of government. A meeting with officers and deputy ministers around issues might be extremely useful in that regard.

- Perhaps MHAs shouldn't be reaching out individually to statutory officers for commentary. Should the statutory officers be having individual conversations with members? Their role is to serve the entire House, not individual members.

- Some MHAs would not feel that their interests would be protected if they were to be investigated by statutory offices. These MHAs have no faith and question the processes of the office's investigations. The capacity of some of the statutory officers is limited.

- Elected members don't read all of the annual reports. If they read annual reports, that's time not spent helping a constituent. The hope is that the Management Commission reads them more thoroughly.

- The executive branch of government has no business measuring and overseeing the performance and quality of the work of the statutory officers and their offices. If the House of Assembly Management Commission has reason to believe a statutory office is not performing at a level that is appropriate, it can address these issues with the statutory officers. There is no justification in the Green review to impose external mechanisms to ensure the quality of the work and performance of statutory officers. It is for the legislative branch to provide oversight for the legislative branch, and no other branch of government should have that role.

- If there's a real problem with the performance of a Statutory Officer, that's what removal is for. If it's a matter of opinion, that's what the telephone is for. There would be real concern about a formal procedure.

- Any mechanism for quality assurance will be inherently political. Either they have independence, or they don't.

- Any review must be within the legislative branch. The executive might dislike a statutory officer's decisions, but they can't have the final say.

- You can't apply cookie cutter approaches to quality assurance. You can't set up an Excel spreadsheet to measure all the statutory officers. Statutory officers could talk with people for three hours and eventually do nothing, but take the time to explain what's happening. How do you measure that?

- The legislature has a duty to monitor the performance of its officers. Statutory officers report to the legislature via the Speaker and are accountable only to the legislature, not the executive, it would be a contravention of international standards for the independence of an Ombudsman to become subject to arbitrary "quality assurance and performance" reviews and be overseen by anyone outside of the Members of the House to which we report.

- If the Management Commission saw issues, they could report through their chain of command.

- As it stands now, it is difficult to deal with serious complaints about Statutory Officers, short of removing an officer for incompetence or misbehaviour. A rigorous process involving the legislature should be considered for dealing with serious complaints.

Comments on administrative oversight

- The current House of Assembly model works well for the purposes of the Seniors' Advocate and no changes are needed.

- There are no issues with the way the statutory offices are currently overseen from an administrative perspective. There are also no issues with the Speaker's Office, the Clerk, House services and the six (or seven, or fewer) statutory offices collaboratively developing an administrative oversight model for the statutory offices, inclusive of

financial management, human resources management, information management, procurement, and any other "back office" functions and structure.

- The executive branch of government must not have a role in the oversight of statutory offices, as this would compromise the independence of the legislative branch and threaten the proper work of the statutory offices to provide scrutiny of the executive branch.

- It is recommended that the administrative oversight model involving the Management Commission and the House of Assembly Service be maintained. OIPC is of the view that it has sufficient financial and administrative independence to discharge its mandate with sufficient independence. In general, the more policies and services the Management Commission/House of Assembly Services develops on its own rather than relying on the default of Treasury Board policies, the better as this will help with the recognition of the legislative branch as an identifiably independent branch of the government.

- The House of Assembly Accountability, Integrity and Administration Act designates the Clerk of the House of Assembly with administrative oversight of the statutory offices. The Corporate and Members Services Division of the House provides financial management, accounts processing, general operations and human resources services to all of the offices with the exception of the AG. Further, the Clerk is legislatively subject to management certification which requires that the Clerk ensures that the internal control processes are established and are functioning properly. The provision of these services has not caused any problems and have functioned well with clean audits since their inception. If there was any thought to administrative services to the statutory offices being provided differently, consideration would need to be given to how the management certification requirement would apply and preserving the accountability framework.

- The *House of Assembly Accountability, Integrity and Administration Act* covers everything required for transparent accountability of statutory officers through the role of the Management Commission.

- Statutory offices have benefited immensely from the non-partisan professional assistance that the House of Assembly Service provides in ensuring the government-standard compliance the public expects in these areas. Assuming responsibility for these areas as a stand alone proposition would more than double the office budget and would require expansion or relocation.

- The number of staff as well as the budgets of statutory offices have increased notably since they started. These offices report to the House of Assembly, but one wonders whether these offices provide appropriate value for residents in the fulfilment of their mandates.

- The OCEO reports to and uses Corporate Members Services (CMS) to conduct administrative oversight on processes and procedures. The CEO regularly consults with payroll, procurement, Human Resources, and Accounts Payable with respect to the delivery of election events. During high volume activities, the OCEO will temporarily host on-site CMS staff (purchasing, AP, etc.) to assist with administrative functions and ensure appropriate procedures and policies are followed. The OCEO also hires additional

administrative support for these functions in high volume periods and CMS members train these support staff.

Comments on whether physical space and administrative functions can or should be shared

- Oversight agencies should not be co-located with entities they investigate. Physical separation assists the perception of independence. Shared administration is not currently an option as there is no space to absorb additional staff or share functions with another office. Further, there may be document or information security issues with sharing a space with another statutory office or Officer that may be under investigation.

- The concept of independence is an invisible shield and it is not tied to a physical space. There are efficiencies that could be achieved by having an administrative pool that could assist anyone.

- The OSA's current physical space would be unable to accommodate inclusion/sharing with another statutory office as the space is too small. There is little to be gained from sharing administrative functions, particularly if it means adding more duties.

- Statutory offices should not be contained in core government buildings. This impacts the appearance of independence from government.

- There are some concerns regarding sharing space and staff when it comes to investigations, as well as accessing servers and documents. Offices need multiple physical controls. Although you can find a workaround for those concerns. They would not be able to share legal services.

- There are concerns regarding the use of external legal counsel and the expenses incurred as a result that fall to the taxpayer. There is value in reviewing how other jurisdictions enable legal services for their Statutory Officers. Also consider expenses incurred by statutory offices on external legal advice, and as a result, whether it would be appropriate to have shared legal support. Some of the Statutory Officers engage with external legal counsel for a range of issues, including interpretation of existing legislation. There is concern that this becomes a significant expense for taxpayers.

- Physical space and administrative functions should be shared among statutory offices. Hiring practices, role classification should be consistent between statutory offices and administrative resources should be shared. These should also be alignment with core government roles and compensation. Physical space should be shared to reduce taxpayer expenses on rent and costs on supplies such as copiers, printers and cleaning services.

- It wouldn't be a problem to share a building, but the OIPC would require a secure office suite within such a building to maintain confidentiality and security. The prospect for officers to investigate each other would not preclude having adjacent office spaces. In any case, some unpleasantness is unavoidable, statutory officers live in a political environment. They could not share analysts/investigators or administrative staff. The type

of investigations statutory offices do are quite specific, so it's a very specific skillset. Analysts are also expected to be experts in privacy in a legal and societal context as well as, broadly speaking, in access to information.

- Should there be any consideration to add a mandate to deal with personal cases to the OSA, an additional stream of service provision would be needed, a new mandate developed, new accommodations, and a significant increase in the staff pool, with very high additional costs to government.

- Separate offices are understandable, but five Bell contracts, five snow-clearing contracts, five buildings - for a relatively small number of people - seems unnecessary.

- There is no objection to co-location of the statutory offices in a single building with separate, secure office suites for each statutory office.

- There's no reason why the various statutory offices could not share a pool of employees conducting certain functions common to them all, such as receptionists, clerks, and human resources staff. These could even potentially be shared with the Office of the Speaker. If such a consolidation were to occur, there would need to be measures put in place to ensure that these employees did not share details of an investigation in one statutory office with those working in another. Any resources saved in the process could then be devoted to the main work of the offices, allowing the core staff to concentrate further on their mandates.

- Currently, none of the statutory offices employs a communications officer. A shared communications person or team would help these offices engage with the public to let citizens and the media know more about the important work they conduct.

- It would not be ethical for the offices to share a lawyer due to potential conflicts of interest. It is also important to note that even if the statutory officers were solicitors themselves, it would not exempt the offices from requiring external legal consultation. You cannot expect a statutory officer, who could be responsible for a broader portfolio, to complete the legal work necessary for each investigation and inquiry.

- The consideration of sharing physical space and administrative functions should be taken cautiously, it could compromise the privacy and confidentiality of a statutory office vis-à-vis other statutory offices, unless the shared physical space includes robust physical subdivisions and security barriers, enforced by effective (and no doubt costly) internal security measures and personnel. This could create needlessly uncomfortable working environments.

- This would not be realistic if it remains an expectation that statutory offices investigate each other. Many of the offices have also been in their respective locations for a long time, and as such, may have cheaper rent than if a new office space were to be ascertained.

- There wouldn't be any problems with co-location in neighbouring units within a building or sharing resources. All the back office functions are already shared through the HoA: HR, budgeting, ordering, etc.

- Any decision to share physical space and administration functions among statutory offices must be made independently of the executive branch, and must be driven collaboratively by the offices of the legislative branch, with a full view and understanding of the implications in terms of security, privacy, confidentiality and workability.

- Sharing office space should never be. It won't work. It's too small a fishpond.

- The Office of the Chief Information Officer provides IT support and IT infrastructure for all statutory offices at no additional cost to the statutory offices. This practice should continue as it offers value for taxpayers and is in alignment with providing IT support to outside organizations such as Legal Aid, the RNC and the Courts.

- Complete confidentiality and freedom from reprisal must be assured, both for complainants and for the employees who share information with the Ombudsman Office. Access to files and physical space must be safeguarded and secure from unauthorized access.

- The OCEO is distinct from other Statutory Offices given the unique role we have in our democracy to ensure fair and transparent elections. The OCEO has both client service and election operation requirements. The office has both a dedicated client service area, as well as an operations area with dedicated resources, space, and a warehouse for storage, processing, and assembly activities. Our workforce does fluctuate significantly, and we must have readily available capacity in our space to accommodate significant increases in temporary staff for an election or byelection. The amount of space required by the OCEO is significantly different to the space required by other statutory offices. The necessity to have both client service and operations spaces readily available is a "must" in order for the OCEO to be prepared for the calling and administration of an election at any time.

- Maintaining the current office space not only supports independence but allows members of the public to easily identify with the role and functions of our office. A dedicated office for the public to access leads to less confusion. A combination of offices may have a chilling effect on people coming forward about personal issues if they are required to navigate a complex setting.

- Maintaining a separate office space sends a clear message that the voices and views of children and youth are priorities which will not be silenced or diluted by being combined with other offices that have separate and distinct mandates.

- The Chief Electoral Office, unlike other statutory offices, requires a significant amount of physical warehouse space for election materials, permanent and temporary staff, and the conduct of its operations.

Comments on where and how should reports be directed

- There's a real benefit to that kind of a system that includes a House Committee, a committee that could have access to the annual report, and compare it to past years and ask why things didn't happen. The knowledge from that works its way back into the work

ethic of a statutory officer, because you know you have to actually answer to the people you account to in theory.

- There is concern about elected members' ability to process reports of statutory offices. It's unclear what the best practice is, but the ability to process this fairly and competently is a big question mark. Elected members are competent, but not in this and certainly not with HR issues, and there are political calculations where there shouldn't be. There needs to be one clear specific protocol. When the Auditor General reports are issued, there's a clear process and the reports are released. Reports should be tabled immediately and the officer should have the authority to release them straight to the public. The Management Commission is not a body that's set up to deal with that.

- The most logical referral of any report involving the conduct of a statutory officer would be to the Management Commission which could then determine next steps.

- The ability to work autonomously and unaffiliated with any government department, government agency, private business or political party is absolutely imperative to protect the validity and veracity of all work produced by a statutory office.

- Creating a House of Assembly Committee with the power to amend/adapt reports would negatively impact the statutory office's ability to make robust, unprejudiced recommendations, particularly if a report or recommendations may not look favourably on a government department or entity at the centre of a review. The public's perception – real or perceived – of the power of a statutory office to work for the people with no fear of censorship, would be severely negatively impacted by a prior review process with the potential to change or influence the text. Statutory offices must be – and be perceived to be - free from improper influences that could appear to affect our independent decision-making and recommendations.

- If statutory officers serve Parliament, their work should be tabled publicly.

- You can't vet reports before tabling. The Committee would be controlled by government by definition.

- Senior public servants said the work of Statutory Officers complicates their lives and muddles their traditional responsibilities to their minister under the Westminster system. In particular, they expressed frustration that another authority could hold them to account, and they can feel "ambushed" when a negative report from an Officer is issued without prior notice. A critical report can do serious damage to the reputation of senior public servants, who find it difficult to counter the initial negative publicity from such reports. As anonymous public servants, they cannot defend themselves publicly and depend on their ministers to do so. They prefer the process followed by Auditors General, who traditionally provide draft reports to affected departments and allow these departments to meet and discuss or craft responses before a final report is published.

- Every report produced by a statutory office should be made available to the public as soon as it is finalized, in addition to being tabled in the House, so that they reach as wide a public as possible without delay. The withholding of a Citizens' Representative report by the Speaker last year potentially creates a worrying precedent. Such reports are the means by which statutory officers hold government to account when there are allegations

of wrongdoing. Citizens deserve to be informed of the report and its contents, so they may make up their own minds about the evidence in the case and pass judgment on their elected officials accordingly at the ballot box.

- The ability of the Child and Youth Advocate to release a report and make recommendations for improvement of programs, procedures, policies, and legislation without interference from outside sources, including members of the House of Assembly, is critical to preserve its independence and ensure that its actions are not susceptible to legislative pressure.

- There is concern with each instance of investigation becoming its own report and being tabled in the House of Assembly for debate, even when there is no wrongdoing found. Considering there are no appeal mechanisms, it does introduce uncertainty and the potential for politically motivated accusations. This process may discourage elected members from asking for clarifications. There should be an appeal mechanism, and reports should be reviewed by a committee of the House of Assembly prior to being referred to the House of Assembly.

- Perhaps such reports should be directed to the House of Assembly Management Commission, which may then be empowered to direct the report for a review by a standing or select committee or by an external reviewer, as was eventually done in the circumstances in question. The Management Commission and the House itself ought to be free to decide where a report will be directed on a case-by-case basis if something about the report requires special consideration. Such decisions are made following debates of Members, where the options are weighed for the particular cases at hand. This approach may be preferable to a formulaic approach that orders reviews of reports when they may not be warranted.

- Reports that could be handled differently are ones that require further decisions and actions by the House of a disciplinary nature – reports on alleged wrongdoing. Some of these may be submitted to the House of Assembly Management Commission.

- New Brunswick is just an example of a jurisdiction with legislative oversight committee (Standing Committee on Procedure, Privileges and Legislative Officers) for statutory offices.

- There are some difficulties with the power of the statutory officers who have deputy minister status, given their backgrounds. Some of them are very qualified, but others are not. These officers have the power to issue reports, which are then often used as powerful leverage in the House of Assembly. Even if totally exonerated, a report can be damaging. It's hard to explain how damaging these reports are.

- Statutory officers can table a report saying whatever they want, but an MHA can't.

- The statutory offices would welcome feedback on their annual reports.

- In New Brunswick, reports of the Child and Youth Advocate were presented to the legislature twice in seven years, despite some very high profile, disturbing cases. There

was little process to present reports. The legislature, for whatever reason, didn't feel that they needed to question the Officer on those reports - and that's regrettable.

- All officers are obliged to table annual reports to the House of Assembly via the Speaker. This is in keeping with Commonwealth and Canadian best practice. For public interest disclosure reports, any reform of that program should divert reporting obligations away from the Speaker and Clerk to the House of Assembly Management Commission, or a select committee of the House. In the alternative, parliamentarians should consider whether to impose a defined period for referral to which the Speaker must adhere.

- Reports issued by the Commissioner for Legislative Standards under Conflict of Interest or Code of Conduct are submitted to the Speaker for tabling in the House. Once tabled, it is incumbent on the Government House Leader to give notice of a resolution to concur in the report. The resolution will appear on the next day's Order Paper as a Government motion and must be called by the Government House Leader for debate within the timeframe specified in the legislation, i.e. within six months of being tabled. The resolution is debatable and amendable.

- This always puts the onus on Government to initiate a disciplinary proceeding, even if it is against a member of another caucus or an unaffiliated member.

- The onus to review and analyze annual reports is already on elected officials. That process can be formalized by including firm timelines and a more rigorous framework for discussion and analysis, which can be done during debate in the House of Assembly or in a Committee of the Whole. In exceptional circumstances, expediency and impartiality could be maintained using a committee of the three party leaders to review, analyze and make a recommendation on a report.

- A statutory office is supposed to hold government accountable. The reporting of activities of government by an independent third party provides an important accountability and transparency function. Recommendations from reports are regularly monitored and when government policy is effective it is acknowledged.

- Transparency and accountability are closely associated with timeliness. A recent example of a Citizens' Representative report being held in the Speaker's office for a prolonged period of time indicates the need for tight timelines in the reporting process.

- For reports of the Commissioner for Legislative Standards, there should be a mechanism to ensure that only substantiated reports are tabled. It's unclear what entity would be appropriate. All the committees are politically controlled, it's just a question of which party controls them. It couldn't be a committee of members; it would have to be independent.

- Politicians talk about the chaos of reports going back and forth. That's not chaos, that's the system working as it should.

- The Elections Act requires reports on election and election finance to be sent to the Speaker for delivery to the House of Assembly. The Elections Act also forms a Political Advisory Committee, however there are no actionable items from that committee, nor does it have any reporting structure. There is room for improvement in the operation of

the Political Advisory Committee, however that is beyond the Terms of Reference of the Statutory Review Committee.

Comments on the mandate/Terms of Reference of the Review

- Contextually, this review arose out of a conflict between two statutory offices that was largely related to the last provincial pandemic election. It appears that the Statutory Officers involved in that matter were placed in a very difficult position and fulfilled their duties in what became a highly publicized and unnecessary political situation. To my knowledge, there was never any dispute between any statutory officers prior to this situation.

- The Chief Electoral Officer was also the Commissioner for Legislative Standards. The backup for that person was the Citizens' Representative and the backup for the Citizens' Representative was the Commissioner for Legislative Standards. There were these problems that created a great deal of chaos over something that should be humming along invisibly. They became very visible and probably reflected poorly on the House of Assembly and the statutory offices. The fact that they have no dispute resolution and no oversight mechanism is problematic. There should always be an order of operations.

- Your terms of reference have been provided to you by government and the results of your work will be reported to government such that Cabinet, rather than the legislature, will be enabled to make decisions regarding the structure and administration of these independent statutory offices. This extraordinary approach of government reviewing the operation of statutory offices, rather than the usual legislative review, or a review guided by the legislative branch, places these offices in a position of vulnerability as we continue our roles of important public interest oversight of government throughout this review.

- While this isn't a fault-finding exercise, the political context is relevant. The immediate trigger was the review of the Chief Electoral Officer by the Citizens' Representative. At the same time, there's friction between the Information and Privacy Commissioner and the government, e.g. the Information and Privacy Commissioner refusal to "scrub" the C report. Another part of context is Bill 20, the consolidation of health authorities, which was introduced without consulting the OIPC as required under s. 112 of the Act.

- In launching this review of statutory offices, the provincial government excluded the Auditor General because the *Auditor General Act* had recently been reviewed. However, both ATIPPA, 2015 and PHIA have also been subject to recent review, as required by statute. ATIPPA, 2015 was comprehensively reviewed by the Honourable David Orsborn starting in 2020 and his report was provided to the Minister responsible for Access to Information and Protection of Privacy in June 2021.

- Careful consideration should be given to how and whether a recommendation can be operationalized before finalizing a recommendation and including it in a report.

- This office's form and function are so intertwined that they can't be separated. Consider that. The fact of the review creates a feeling of vulnerability.

- Obviously something isn't functioning, and that's why this review is needed.

- It is interesting that a number of the terms of reference for the Review seem to take for granted restructuring of the statutory offices is needed. One would suspect there are underlying assumptions or biases behind such a position.

- There has not been enough longevity with the position of the Seniors' Advocate for there to be any review of its purpose, usefulness, impact, structure, and administration.

- Given the first Seniors' Advocate was appointed in November 2017, and the intervening pandemic and associated restrictions, it is premature to do a structural review of the OSA at this time, there is little objective evidence to demonstrate structure review is necessary or in the public interest for seniors.

- This review arose largely out of a one-time dispute between two Statutory Officers who were performing their statutory duties. The dispute between these Officers did not concern the OCYA. While any statutory office may benefit from review and criticism, the rights of children and youth should not be diminished, or their voices silenced, as a result of disagreement between other entities not involving children.

- It ought to be the legislative branch, not the executive branch, commissioning reviews and recommending appropriate revisions of statutory offices of the legislative branch.

- The first impetus for the current review is the situation that occurred in 2021-22 when the Citizens' Representative reviewed and reported on allegations regarding the Chief Electoral Officer and, subsequently, when that report became the subject of further review, discussion and public controversy. Arguably, as many of us stated at the time, some change is required in the way things are done to prevent a recurrence of this chaos.

- The Terms of Reference are not limited to managing conflicts among Statutory Officers. They wander into other areas that, for the Opposition, raise significant concerns. If any aspect of the current review is a veiled attempt by the executive branch to erode statutory offices whose work has proven to be politically troublesome and embarrassing for the government, all such aggressive overreach by the government must be exposed and resisted.

- There is a question of whether the Officers are competent and whether they have the appropriate resources. If the elected members had the choice, some statutory officers would have been fired. That really speaks to the problem. Reputations and institutional credibility have been damaged.

- One person everyone respects is the Auditor General. The Auditor General can't question the policy merits of the government. What you're seeing in some offices is that statutory officers are questioning policy. Some elected members believe some of these offices have crossed that line by complaining about their legislative limit saying legislation doesn't go far enough. This damages relationships and creates a direct challenge. These offices shouldn't be at loggerheads.

- This review should have been called for by the Speaker, as expressed by constituents. Mandatory reviews of statutory offices are needed after, say, ten years.

Comments on the independence and accountability of statutory offices

- The primary challenge of independence is not OIPC's independence from the House of Assembly but rather its perceived independence from the executive branch of government. It is very common for us to find that members of the public do not differentiate this office from government bodies or departments. This failure to appreciate the differences between the executive and the legislative branch occasionally occurs with people within the government as well, with consequences for the exercise of our mandate.

- Independence is a day-to-day struggle. Complainants who request help are often inherently untrusting. To convince them to participate, they need to trust the impartiality and independence of a statutory office.

- Accountability of statutory offices requires clear role definitions and professionalism. The staff must have clear role descriptions, responsibilities, understand when and how to perform investigation and write reports. People who understand how the system works.

- Some offices lack specific oversight by legislatures, which undermines accountability. If legislators lack the inclination to assign responsibility for an officer to a specific committee, they should consider whether the office merits being an agent of legislature. Officers work for elected representatives. They are not free agents. As such, all officers should report to home committees.

- The office must have the power to recommend and convince, but not to decide. Ombudsman processes are in effect alternative dispute resolutions that typically take place after the management under investigation has had the opportunity to respond and resolve the complaint, but before citizens are required to exhaust their legal remedies.

- There must be total independence of action. The Ombudsman's Office cannot be in a relationship of subordination to administrative or elected officials. They must have investigative powers and freedom and autonomy to draw independent conclusions and the resources to do this effectively.

- The government tried and failed to influence the office. The statutory officer wasn't afraid to say no, even to the Premier's Office.

- The Ombudsman's Office typically holds the discretion to comment publicly, if deemed in the public interest.

- Statutory offices are more damaging to government than the Opposition. They all embarrass the government from time to time.

- Part of the challenge is employing people who are smart and have judgment. Some statutory officers act as zealots and exceed their role; not knowing when to push

something and not to push something. In theory, the legislature can amend the legislation and the officer's jurisdiction, but in practice, that's very hard.

- Having the ability to independently make recommendations based on concerns or issues is important to seniors because they know their voices are being heard, and action is being taken. It would be difficult to objectively analyze, criticize and advocate for change to government policy and programs/services if the office was part of government. A statutory office must retain the respect and confidence of the House of Assembly, government and the public. All work completed by the office, and recommendations, is well grounded in fact, research, independence, and fairness.

- The House of Assembly is the ultimate oversight body of the executive branch. Some of the Statutory Officers think they are the ultimate oversight body, but their job is to inform the House of Assembly. They are not elected and they are not the oversight body.

- Statutory Officers are directly responsible to the House and not to the government. As such, they often play the crucial role of whistleblower and are called upon to speak truth to power. Any proposals for changing their offices should in no way weaken that capacity. If anything, these powers should be strengthened as a result of this process.

- It is the rightful duty of the House of Assembly and its statutory offices to hold the executive branch to account. The executive branch must not undermine that role, whether directly or through indirect means dressed up in a cloak of legitimacy.

- The Ombudsman institution plays a vital role in not only providing an impartial and independent mechanism for citizens to pursue their rights regarding wrongful government action, but also acts as a vital means of prompt and protecting integrity in public institutions, good governance, the rule of law and human rights.

- The lack of trust between officers and the public service contributes to a culture of "us" and "them".

- Statutory officers have forty bosses. Statutory officers are their eyes and ears. MHAs don't have the time to get into the weeds of the bureaucracy.

- Not all officers are independent. Some seem to side with the Opposition. The Opposition sometimes seems to have information earlier than other MHAs.

- Statutory officers cannot become allies of an Opposition shadow cabinet minister. Their independence is mostly from the party in power and the civil service, but it's also from individual MHAs. Officers should have a term appointment of at least five years, with the opportunity for only one renewal. They should hold office on the basis of good behaviour, not at the pleasure of the government. Appointment should be done through a resolution passed by the Legislature. Removal should only be done by a vote in the Legislature, perhaps based on an extraordinary majority of 60% of the MLAs to make it likely that the governing party alone could not remove an officer.

- It is valuable for each officer to have a designated "home" committee of the Legislature to which its annual reports are referred. At least once in the normal four year cycle of

sessions of the Legislature, there should be at least one review of the performance of each of the officers.

- It is important to consider the factors of leadership integrity and the leadership philosophy/style of individual officers and the foundational values which they embody in their own behaviour and seek to embed within the cultures of the institutions they lead.

- You've got to un-politicize the statutory officers' roles. They can't be a matter of political controversy or weaponry.

- Officers should work for some kind of reasonable accommodation with government over disagreements. Their purpose is to serve Parliament and make the system better. I'm not sure it's better to turn it into thermonuclear war.

- A longstanding dispute erodes public confidence.

- A more constructive approach is needed. That can be as simple as organizing regular meetings between Statutory Officers and senior officials, a practice that has long been common with the federal auditor general and deputy ministers. Other Officers could adopt this approach to build trust with senior public servants. Otherwise, it is easy for the public service to quickly "close down" and render the work of a Statutory Officer difficult. Statutory Officers must be prepared to build trust with public servants as part of the transition process when they take office.

- Statutory Officers' accountability should be to the House. If there is an issue with a statutory officer it should be brought to the attention of the Clerk of the House who can then bring it to the Management Commission if necessary.

Statutory Offices – Selected Jurisdictional Scans

Page #

Ottawa (Federal) – Cont'd.

Statutory Offices in Alberta
Ethics Commissioner and Lobbyist Registrar

1. Legislation

The commissioner has responsibilities under three provincial statutes:

- The Conflict of Interest Act[1]
- The Public Service Act[2]
- The Personal Health Information Act[3]

2. Appointment Process

2.1 Process[4]

The commissioner is appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

The commissioner may be appointed on either a full-time or part-time basis.

2.2 Term of Office

The commissioner is appointed for a fixed term of five years, and they continue to do so after the expiry of their term of office until that they are reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first[5].

2.4 Removal and Suspension[6]

On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ethics Commissioner from office for cause or incapacity.

At any time the Legislative Assembly is not sitting the Lieutenant Governor in Council, on the recommendation of the Standing Committee of Legislative Offices, may suspend the commissioner from office for cause or incapacity, but the suspension cannot continue beyond the end of the next sitting of the Legislative Assembly.

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[1] *The Conflict of Interest Act,* RSA 2000 c.C-23

[2] *The Public Service Act,* RSA 2000 c.P42 (this includes the Code of Conduct)

[3] *The Lobbyists Act,* SA 2007 c.L-20.5

[4] RSA 2000 c.C-23 s33

[5] RSA 2000 c.C-23 s34

[6] RSA 2000 c.C-23 s36

2.5 Resignation

The commissioner may at any time resign from office by delivering a written resignation to the Clerk of the Legislative Assembly[7].

2.6 Acting officer8

The Lieutenant Governor in Council, on the recommendation of the Standing Committee of Legislative Offices, may appoint an acting Ethics Commissioner if:

- the office is or becomes vacant when the Legislative Assembly is not sitting
- the commissioner is suspended when the Legislative Assembly is not sitting
- no recommendation is made by the Assembly before the end of the session

The Lieutenant Governor in Council may appoint an acting commissioner if the commissioner is temporarily absent because of illness or for another reason.

3. Power, Duties and Responsibilities

Under the Conflict of Interest Act:

One of the main responsibilities of the commissioner is to promote awareness among Members of the Legislative Assembly of their obligations under the Act. The commissioner routinely holds personal discussions with Members, particularly when interviewing them regarding their disclosure statements; commissions the preparation and dissemination of written information; and interacts with party caucuses to advise them on programs they can institute[9].

A Member, former Minister or former political staff member may request the Ethics Commissioner to give advice and recommendations on any matter respecting their obligations under the Act. The commissioner may then, in writing, provide the Member, former Minister, political staff member or former political staff member with advice and recommendations, which are considered confidential and can only be released with the consent of the people involved[10].

If a Member, former Minister or former political staff member complies with any recommendations contained in the advice and recommendations of the commissioner, no proceeding or prosecution shall be taken against the Member, former Minister or former political staff member[11].

On the recommendation of the Ethics Commissioner, the Standing Committee may make an order to manage the records in custody or under control of the office, including their creation, handling, control, retention, security, disposition and destruction. The order may also define and classify

[7] RSA 2000 c.C-23 s35
[8] RSA 2000 c.C-23 s37
[9] RSA 2000 c.C-23 s42
[10] RSA 2000 c.C-23 s43
[11] RSA 2000 c.C-23 s43

records, or establish programs to deal with these records. The commissioner must, however, retain records of a Member, former Minister, or former political staff for a period of at least 2 years. After this period, all records must be destroyed unless necessary for an investigation, prosecution or inquiry[12].

Under The Public Service Act:

Every designated office holder must file with the commissioner a disclosure statement and a return, related to those directly associated with the office holder, within 60 days after becoming a designated office holder, and in each subsequent year at the time specified by the Commissioner. Additionally, a designated office holder must, within 30 days after the occurrence of any material changes to the information contained in a disclosure statement, file with the commissioner an amending disclosure statement[13].

If the commissioner is of the opinion that a designated office holder has breached the time requirements for filing a disclosure statement, an amending disclosure statement or a return referred to *the Conflicts of Interest Act* applies in respect of an administrative penalty[14].

Under The Lobbyists Act[15]:

The Ethics Commissioner may authorize any individual in the Office of the Ethics Commissioner to be the Registrar. If the commissioner does not authorize anybody to act as the registrar, the commissioner will hold the office of the registrar.

The registrar establishes and maintains a registry, which includes a record of all returns filed and other information submitted to the registrar and any information that is required to be entered in the registry. In doing so, the registrar verifies the information contained in any return filed or other document submitted, and may refuse or return documents that do not comply with the requirements of the Act.

If the registrar proposes to remove a return from the registry, the registrar must inform the designated filer who filed the return of its removal and the reason for the proposed removal. The filer may file a response within 30 days. Following this period, if the registrar is not satisfied, the return may be removed from the registry.

The registry established must be made available for public inspection in the manner and at the times that the Registrar may determine[16].

[12] RSA 2000 c.C-23 s47
[13] RSA 2000 c.P42 s25.31
[14] RSA 2000 c.P42 s25.32
[15] SA 2007 c.L-20.5 s11
[16] SA 2007 c.L-20.5 s12

The Ethics Commissioner may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of the Act. These advisory opinions and interpretation bulletins are not binding[17].

The registrar must conduct an investigation if they have reason to believe that an investigation is necessary to ensure compliance with the Act. In carrying out an investigation, the registrar may in the same manner and to the same extent as a justice of the Court of Queen's Bench, summon individuals, compel oral or written evidence on oath, as well as compel individuals to produce any documents the registrar finds necessary.

The registrar must immediately suspend an investigation under if the registrar discovers that the subject-matter of the investigation is also the subject-matter of an investigation to determine whether an offence has been committed or that a charge has been laid with respect to that subject-matter.

The registrar may refuse or cease an investigation if:

- there is a better remedy for the matter
- dealing with the matter would serve no useful purpose because of the length of time has elapsed
- the matter is trivial or minor
- there is any other valid reason for not dealing with the matter[18]

When the registrar is of the opinion that a person has contravened the Act, the registrar may, by notice in writing served on the person personally or by mail, require that person to pay to the Crown an administrative penalty in the amount set out in the notice for each contravention. The amount of the penalty, which cannot exceed $25,000, is determined by the registrar based on:

- the severity of the contravention
- the degree of wilfulness or negligence in the contravention
- whether or not there was any mitigation relating to the contravention
- whether or not steps have been taken to prevent reoccurrence of the contravention
- whether or not the person who received the notice of administrative penalty has a history of non-compliance
- whether or not the person who received the notice of administrative penalty reported themselves on discovery of the contravention
- whether or not the person who received the notice of administrative penalty has received an economic benefit as a result of the contravention
- any other factors that, in the opinion of the registrar, are relevant[19]

A person who is served with a notice of administrative penalty may appeal the registrar's decision to impose an administrative penalty by filing an application with the Court of Queen's Bench within 30

[17] SA 2007 c.L-20.5 s14
[18] SA 2007 c.L-20.5 s15
[19] SA 2007 c.L-20.5 s18

days from the date the notice of administrative penalty was served. A copy of the application shall be served on the Registrar not less than 30 days before the appeal is to be heard. On hearing the appeal, the Court of Queen's Bench may confirm, rescind or vary the amount of the administrative penalty[20].

4. Reports

4.1 Annual report[21]

The commissioner must report at least once a year in writing to the Speaker of the Legislative Assembly. The report must include:

- the names of Members who have not filed disclosure statements or returns within the time provided
- generally on the affairs and activities of the office, including the failure of a public agency to comply with the requirements of the code of conduct and the number of investigations commenced
- any other information that the commissioner considers to be appropriate or that the Minister requests

The Speaker of the Legislative Assembly must submit a copy of the report before the Legislative Assembly if it is sitting or, if it is not sitting, within 15 days after the beginning of the next sitting.

4.2 Special report[22]

If the commissioner is of the opinion that a designated office holder has breached the time requirements for filing a disclosure statement, an amending disclosure statement or a return

The commissioner must prepare a report including the following:

- the name of the designated office holder required to pay an administrative penalty the particulars of the breach the amount of the administrative penalty
- whether the administrative penalty was paid or appealed
- any other information that the commissioner considers appropriate

The report must be provided to:

- in the case of a breach by a deputy minister, to the Deputy Minister of Executive Council
- in the case of a breach by the Deputy Minister of Executive Council, to the Premier
- in the case of a breach by a member, to the deputy minister to whom the member or person reports

[20] SA 2007 c.L-20.5 s18.1
[21] RSA 2000 c.C-23 s46
[22] RSA 2000 c.P42 s25.32

After an investigation has been conducted under the *Lobbyists Act*, the registrar must prepare a report of the investigation, including findings and conclusions and reasons for the findings and conclusions. The report may contain details of any payment received, disbursement made or expense incurred by an individual who is named in a return required to be filed

The Ethics Commissioner must submit the report to the Speaker of the Legislative Assembly. On receiving the report from the commissioner, the Speaker must submit the report before the Legislative Assembly if it is sitting or, if it is not sitting, within 15 days after the beginning of the next sitting.

If the Legislative Assembly is not sitting when the commissioner submits the report to the Speaker, the Speaker must distribute a copy of the report to the office of each Member of the Legislative Assembly. After the copies of the report have been commissioner may make the report public[23].

5. Salary, Pension and Benefits Regulations[24]

The Standing Committee of Legislative Offices determines the salary of the commissioner, and must review their compensation at least once a year.

6. Staff (Number of Positions and Corresponding Titles)

The department of public service called the "Office of the Ethics Commissioner" consists of the Ethics Commissioner and those persons employed under the *Public Service Act* as are necessary to assist the Ethics Commissioner in carrying out the commissioner's duties.

On the recommendation of the Ethics Commissioner, the Standing Committee may order that any regulations, order, directive mandate, procedure or allocation made under *the Financial Administration Act, the Public Service Act* or *the Public Sector Compensation Transparency Act,* be inapplicable or be varied to the Office of the Ethics Commissioner or any of its employees.

The chair of the Standing Committee must submit a copy of each order before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

If the Ethics Commissioner or any former Ethics Commissioner or a person who is or was employed or engaged by the Office of the Ethics Commissioner discloses information that is confidential, that person is guilty of an offence and liable to a fine not exceeding $20,000[25].

7. Bibliography

- The Conflict of Interest Act, RSA 2000 c.C-23
- The Public Service Act, RSA 2000 c.P42 (this includes the Code of Conduct)
- The Lobbyists Act, SA 2007 c.L-20.5

[23] SA 2007 c.L-20.5 s7

[24] RSA 2000 c.C-23 s38

[25] RSA 2000 c.C-23 s40

Statutory Offices in Alberta
Information and Privacy Commissioner

1. Legislation

The commissioner has responsibilities under four provincial statutes:

- The Freedom of Information and Protection of Privacy Act[1]
- The Health Information Act[2]
- The Personal Information Protection Act[3]

2. Appointment Process

2.1 Process[4]

The commissioner is appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

2.2 Term of Office[5]

The commissioner is appointed for a term not exceeding five years, and they continue to do so after the expiry of their term of office until that they are reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

2.4 Removal and Suspension[6]

The Lieutenant Governor in Council must remove the commissioner from office or suspend the commissioner for cause or incapacity on the recommendation of the Legislative Assembly.
If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the commissioner for cause or incapacity on the recommendation of the Standing Committee of Legislative Offices.

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[1] *The Freedom of Information and Protection of Privacy Act,* RSA 2000 c.F-25
[2] *The Health Information Act,* RSA 2000 c.H-5
[3] *The Personal Information Protection Act,* SA 2003 c.P-6.5
[4] RSA 2000 c.F-25 s45
[5] RSA 2000 c.F-25 s46
[6] RSA 2000 c.F-25 s47

2.5 Resignation[7]

The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly.

2.6 Acting officer[8]

The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Ethics Commissioner if:

- the office is or becomes vacant when the Legislative Assembly is not sitting
- the commissioner is suspended when the Legislative Assembly is not sitting
- no recommendation is made by the Assembly before the end of the session

The Lieutenant Governor in Council may appoint an acting commissioner if the commissioner is temporarily absent because of illness or for another reason.

3. Power, Duties and Responsibilities

Under the Freedom of Information and Protection of Privacy Act:

The commissioner has a range of responsibilities and powers outlined in the Act to ensure compliance and promote transparency. First, they are authorized to conduct investigations to ensure that all provisions of the Act are being followed, as well as compliance with rules regarding the destruction of records. These rules may be specified in other Alberta enactments or in local public bodies' bylaws, resolutions, or other legal instruments. Even if a review is not requested, the commissioner can issue orders.

In addition, the commissioner plays a crucial role in informing the public about the Act and its provisions. They actively seek feedback from the public regarding the administration of the Act, providing an avenue for comments and suggestions. The commissioner also engages in or commissions research on various topics that impact the goals of the Act. They comment on proposed legislative schemes or programs of public bodies, analyzing their implications for freedom of information and personal privacy. Moreover, the commissioner offers insight into the privacy implications of using or disclosing personal information for record linkage purposes.

The commissioner is also authorized the collection of personal information from sources other than the individuals themselves. If a public body fails to assist applicants, the commissioner is responsible for bringing it to the attention of the head of that public body. Lastly, the commissioner provides general advice and recommendations to public body heads on matters concerning their rights and obligations under the Act[9].

[7] RSA 2000 c.F-25 s47
[8] RSA 2000 c.F-25 s48
[9] RSA 2000 c.F-25 s53

The head of a public body may ask the commissioner to give advice and recommendations on any many matter respecting any rights or duties under the Act. The commissioner may then, in writing, provide the head with advice and recommendations.[10]

In conducting an investigation, the commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*. The commissioner may require any record to be produced to the commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of the Act[11].

Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court[12].

The commissioner may not investigate any matter that the commissioner has the power to investigate or review under the Act, unless the commissioner agrees[13].

On the recommendation of the commissioner, the Standing Committee of Legislative Offices may make an order to manage the records in custody or under control of the office, including their creation, handling, control, retention, security, disposition and destruction. The order may also define and classify records, or establish programs to deal with these records[14].

A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the commissioner to review any decision, act or failure to act of the head that relates to the request[15]. To ask for a review, a written request must be delivered to the commissioner[16], who will provide a copy to the head of the public body concerned[17].

The commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review[18]. If the matter is not settled, the commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry[19]. The commissioner may refuse to conduct an inquiry if, in the opinion of the commissioner, the matter has been dealt with previously or the circumstances warrant refusing to conduct an inquiry[20].

[10] RSA 2000 c.F-25 s54
[11] RSA 2000 c.F-25 s56
[12] RSA 2000 c.F-25 s58
[13] RSA 2000 c.F-25 s62
[14] RSA 2000 c.F-25 s64
[15] RSA 2000 c.F-25 s65
[16] RSA 2000 c.F-25 s66
[17] RSA 2000 c.F-25 s67
[18] RSA 2000 c.F-25 s68
[19] RSA 2000 c.F-25 s69
[20] RSA 2000 c.F-25 s70

If a person makes a request to the Registrar of Motor Vehicle Services for access to personal driving and motor vehicle information and a notification is published in accordance with the regulations made under *the Traffic Safety Act*, the commissioner may review the Registrar's decision as set out in the notification[21]. The request for the review must be made in writing and delivered to the commissioner within 60 days after the date the notification was published[22].

Upon completion of the review, of an inquiry when necessary, the commissioner, by order, may[23]:

- require the Registrar to give the person who made the request access to all or part of the personal driving and motor vehicle information to which access was requested if the Commissioner determines that the Registrar is not authorized to refuse access under the regulations made under *the Traffic Safety Act*
- either confirm the decision of the Registrar or require the Registrar to reconsider it if the Commissioner determines that the Registrar is authorized to refuse access under the regulations made under *the Traffic Safety Act*
- require the Registrar to refuse access to all or part of the personal driving and motor vehicle information if the Commissioner determines that the Registrar is required under the regulations made under *the Traffic Safety Act* to refuse access

No later than 50 days after being given a copy of an order of the commissioner, the Registrar must comply with the order[24].

An employee of a public body may disclose to the commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes should be disclosed by a head, or is being collected, used or disclosed in contravention to the Act. The commissioner may use this information to initiate an inquiry or investigation25.

Under the Health Information Act:

An individual who makes a request to a custodian for access to or for correction or amendment of health information may ask the commissioner to review any decision, act or failure to act of the custodian that relates to the request. An individual, who believes that the individual's own health information has been collected, used or disclosed in contravention of the Act, may also ask the commissioner to review that matter. Finally, a custodian may ask the commissioner to review the decision of another custodian to refuse to disclose health information[26].

To ask for a review, a written request must be delivered to the commissioner 60 days after the person asking for the review is notified of the decision[27]. On receiving a request for a review, the

[21] RSA 2000 c.F-25 s74.2
[22] RSA 2000 c.F-25 s74.3
[23] RSA 2000 c.F-25 s74.7
[24] RSA 2000 c.F-25 s74.9
[25] RSA 2000 c.F-25 s82
[26] RSA 2000 c.H-5 s73
[27] RSA 2000 c.H-5 s74

commissioner must as soon as practicable give a copy of the request to the custodian concerned.[28] The commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review[29]. If the matter is not settled, the commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry[30]. The commissioner may refuse to conduct an inquiry if, in the opinion of the commissioner, the matter has been dealt with previously or the circumstances warrant refusing to conduct an inquiry[31].

If the inquiry relates to a decision to grant or to refuse access to all or part of a record, the commissioner may, by order, do the following:

- require the custodian to grant access to all or part of the record, if the commissioner determines that the custodian is not authorized or required to refuse access
- either confirm the decision of the custodian or require the custodian to reconsider it, if the commissioner determines that the custodian is authorized to refuse access
- require the custodian to refuse access to all or part of the record, if the commissioner determines that the custodian is required to refuse access

The commissioner may also:

- require that a duty imposed by the Act or the regulations be performed
- confirm or reduce the extension of a time limit
- confirm or reduce a fee required to be paid under the Act or order a refund, in the appropriate circumstances, including if a time limit is not met
- confirm a decision not to correct or amend health information or specify how health information is to be corrected or amended
- require a person to stop collecting, using, disclosing or creating health information in contravention of the Act
- require a person to destroy health information collected or created in contravention of the Act

A copy of an order made by the Commissioner under this section may be filed with a clerk of the Court of King's Bench and, after filing, the order is enforceable as a judgment or order of that Court[32]. No later than 50 days after being given a copy of an order of the commissioner, the custodian must comply with the order[33].

An affiliate of a custodian may disclose to the commissioner any health information that the affiliate is required to keep confidential and that the affiliate, acting in good faith, believes is being collected, used or disclosed in contravention of the Act[34].

[28] RSA 2000 c.H-5 s75
[29] RSA 2000 c.H-5 s76
[30] RSA 2000 c.H-5 s77
[31] RSA 2000 c.H-5 s78
[32] RSA 2000 c.H-5 s80
[33] RSA 2000 c.H-5 s82
[34] RSA 2000 c.H-5 s83

In addition, the commissioner plays a crucial role in informing the public about the Act and its provisions. They actively seek feedback from the public regarding the administration of the Act, providing an avenue for comments and suggestions. The commissioner also engages in or commissions research on various topics that impact the goals of the Act. They comment on proposed legislative schemes or programs of public bodies, analyzing their implications for protection of health information. Moreover, the commissioner exchanges information with an extra-provincial commissioner and enter into information sharing and other agreements with extra-provincial commissioners for the purpose of coordinating activities and handling complaints involving 2 or more jurisdictions[35].

Under the Personal Information Privacy Act:

The commissioner has the authority to ensure that organizations are handling personal information in accordance with the law and may issue orders, regardless of whether a formal review has been requested. This means that if a violation or non-compliance is identified, the commissioner can take action and issue appropriate orders to rectify the situation.

The commissioner is also responsible for informing the public about the Act. This includes raising awareness about individuals' privacy rights and how organizations should handle personal information. They also seek input from the public and encourages them to provide comments regarding the administration of the Act, and engage in or commissions research on various subjects that impact the purposes of the Act.

Additionally, the commissioner may comment on the implications for personal information protection in relation to existing or proposed programs of organizations. This involves assessing how these programs may affect the privacy rights of individuals and providing recommendations or guidance to ensure adequate safeguards are in place. The commissioner may also provide advice and recommendations of general application to organizations on matters pertaining to their rights and obligations under the Act.

In cases where an organization fails to assist applicants, the commissioner has the authority to bring this failure to the attention of the organization. This is aimed at ensuring that organizations fulfill their obligations and provide necessary assistance to individuals seeking to exercise their privacy rights[36].

Where an organization suffers a loss of or unauthorized access to or disclosure of personal information that the organization is required to provide notice, the commissioner may require the organization to notify individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure. The commissioner must establish an expedited process for determining whether to require an organization to notify individuals in circumstances where the real risk of significant harm to an individual as a result of the loss or unauthorized access or disclosure is obvious and immediate[37].

[35] RSA 2000 c.H-5 s84

[36] SA 2003 c.P-6.5 s36

[37] SA 2003 c.P-6.5 s37

In conducting an investigation, the commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*. The commissioner may require any record to be produced to the commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of the Act[38].

The commissioner is granted certain powers and discretion to engage with and collaborate with extra-provincial commissioners on matters pertaining to the Act or other information protection statutes. This collaboration can take various forms, including consultation and entering into agreements with these commissioners. Furthermore, the commissioner has the authority to delegate powers to an extra-provincial commissioner. This delegation allows an extra-provincial commissioner to carry out specific powers, duties, or functions provided for under information protection statutes. The commissioner may also accept a delegation from an extra-provincial commissioner, granting them the power, duty, or function of the extra-provincial commissioner as outlined in an information protection statute.

In cases where an investigation, review, or inquiry involves a matter that falls under the jurisdiction of both the commissioner and an extra-provincial commissioner, the commissioner has the ability to delegate the matter to the extra-provincial commissioner. This delegation allows the extra-provincial commissioner to conduct the necessary investigation, review, or inquiry pertaining to that matter. Similarly if a matter falls within the jurisdiction of the commissioner, an extra-provincial commissioner can refer the matter to the commissioner, allowing the commissioner to handle and resolve the matter appropriately[39].

Under the Act, the commissioner may conduct inquiries, investigations and reviews in the same manner as under the *Freedom of Information and Protection of Privacy Act*[40].

If, in the course of an investigation or a review, the commissioner determines that a personal information code is silent on a matter or that the code or any provision of it is inconsistent or is deficient, the commissioner may apply any provision of the Act as if the provision had been included in that code. Additionally, with respect to a professional regulatory organization, the Ombudsman may not, unless the commissioner agrees otherwise, investigate any matter that the commissioner has the power to investigate, review or hold an inquiry into under the Act[41].

4. Reports

4.1 Annual report[42]

The commissioner must report annually to the Speaker of the Legislative Assembly. The report must include:

[38] SA 2003 c.P-6.5 s38
[39] SA 2003 c.P-6.5 s43
[40] SA 2003 c.P-6.5 Part 5
[41] SA 2003 c.P-6.5 s55
[42] RSA 2000 c.F-25 s63

- the work of the commissioner's office
- any complaints or reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body
- any other information that the commissioner considers to be appropriate

The Speaker of the Legislative Assembly must submit a copy of the report before the Legislative Assembly as soon as possible.

Under the *Health Information Act* and *the Personal Information Protection Act,* The commissioner must report annually to the Speaker of the Legislative Assembly. The report must include:

- the work of the commissioner's office
- any other information that the commissioner considers to be appropriate

On receiving a report from the commissioner, the Speaker must submit the report before the Legislative Assembly as soon as possible, if the Legislature is sitting, or if the Legislature is not sitting, within 15 days after the beginning of the next sitting[43].

5. Salary, Pension and Benefits Regulations[44]

The Standing Committee determines the salary of the commissioner, and must review their compensation at least once a year.

6. Staff (Number of Positions and Corresponding Titles)

The department of public service called the "Office of the Information and Privacy Commissioner" consists of the Information and Privacy Commissioner and those persons employed under the *Public Service Act* as are necessary to assist the Information and Privacy Commissioner in carrying out the commissioner's duties.

On the recommendation of the Information and Privacy Commissioner, the Standing Committee may order that any regulations, order, directive mandate, procedure or allocation made under *the Financial Administration Act, the Public Service Act* or *the Public Sector Compensation Transparency Act,* be inapplicable or be varied to the Office of the Ethics Commissioner or any of its employees.

The chair of the Standing Committee must submit a copy of each order before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting[45].

[43] RSA 2000 c.H-5 s95; SA 2003 c.P-6.5 s44
[44] RSA 2000 c.F-25 s49
[45] RSA 2000 c.F-25 s51

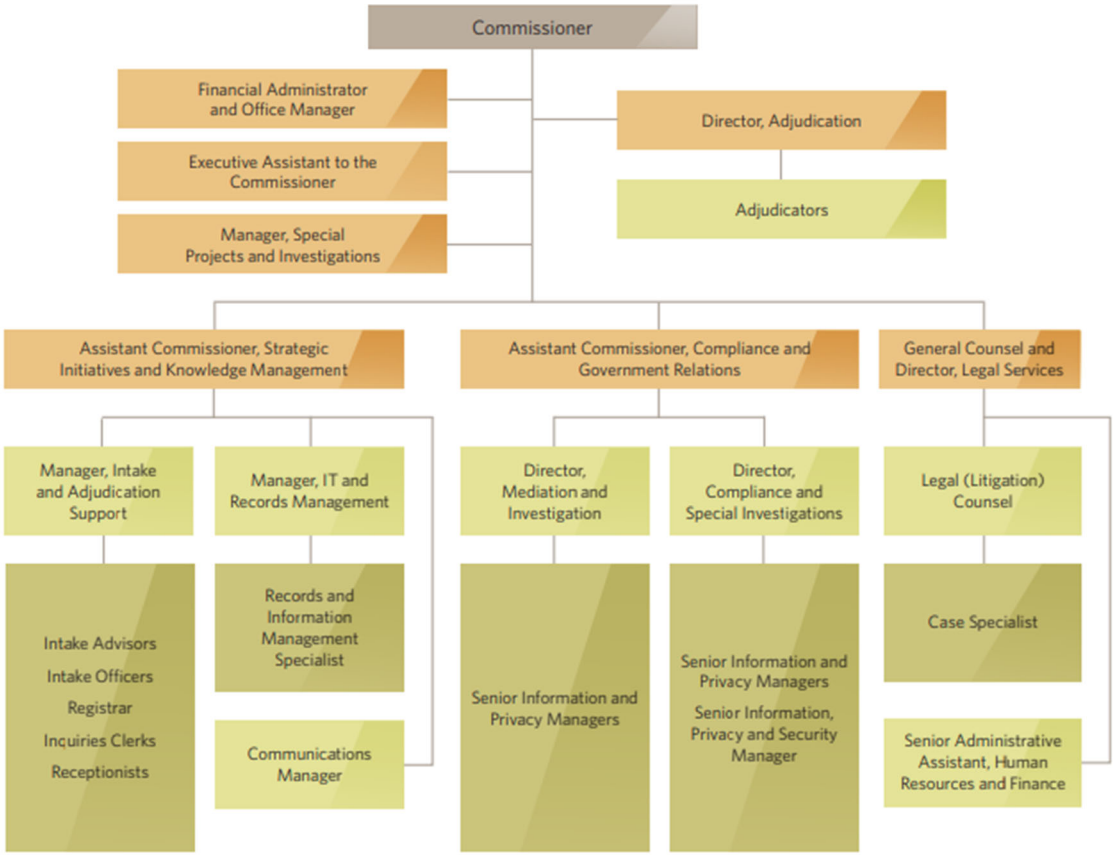

Figure 1 Organization structure according to the OPIC 2021-2022 Annual Report

7. Bibliography

- OIPC. 2022. "Annual Report 2021-2022."
- *The Freedom of Information and Protection of Privacy Act,* RSA 2000 c.F-25
- *The Health Information Act,* RSA 2000 c.H-5
- *The Personal Information Protection Act,* SA 2003 c.P-6.5

Statutory Offices in British Columbia
Human Rights Commissioner

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Human Rights Code[1]

2. Appointment Process

2.1 Process[2]

The Legislative Assembly may, by resolution, appoint as the Human Rights Commissioner a person who has been unanimously recommended for the appointment by a special committee of the Legislative Assembly.

2.2 Term of Office[3]

The commissioner is appointed for a term of five years. The commissioner may be reappointed for one additional term of up to 5 years as specified in the reappointment resolution.

2.4 Removal and Suspension[4]

By a resolution passed by at least 2/3 of the members present, the Legislative Assembly may, for cause or incapacity, suspend the commissioner, with or without salary, or remove the commissioner from office.

If the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee, by unanimous resolution, may, for cause or incapacity, suspend the commissioner, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

2.5 Resignation[5]

The commissioner may resign at any time by giving written notice to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from British Columbia, to the Clerk of the Legislative Assembly.

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[1] *The Human Rights Code,* RSBC 1996 c.210
[2] RSBC 1996 c.210 s47.01
[3] RSBC 1996 c.210 s47.01
[4] RSBC 1996 c.210 s47.02
[5] RSBC 1996 c.210 s47.02

2.6 Acting officer[6]

If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, the Legislative Assembly, on the recommendation of the standing committee, may appoint an acting commissioner to exercise the powers and perform the duties of the commissioner until whichever of the following is the case and occurs first: the suspension ends the commissioner returns, or a person is appointed.

If the commissioner is suspended or the office is vacant while the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee may appoint an acting commissioner until the suspension ends, the commissioner returns, or a person is appointed, whichever occurs first.

If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, and the Legislative Assembly is not sitting and will not be sitting within 5 days and the standing committee has not been established, the Lieutenant Governor in Council may make the appointment

3. Power, Duties and Responsibilities

The commissioner's primary responsibility is the promotion and safeguarding of human rights, which includes a wide range of tasks and duties aimed at combating discriminatory practices, policies, and programs. The commissioner is responsible for identifying and bringing attention to any form of discrimination, as well as developing resources, policies, and guidelines. They also publish comprehensive reports, make recommendations, and utilize other appropriate means to raise awareness and take action against discriminatory practices.

The commissioner may undertake, direct, and support research pertaining to human rights. Additionally, they examine human rights implications of policies, programs, and legislation, ensuring that they align with the principles enshrined in the relevant legal code. Whenever inconsistencies arise, the commissioner offers recommendations for adjustments to foster greater compliance. Collaboration is also essential. The commissioner is responsible for consulting and cooperating with individuals and organizations, fostering partnerships to promote and protect human rights effectively. Moreover, the commissioner establishes specialized working groups to tackle specific assignments related to human rights, leveraging collective expertise for maximum impact.

Recognizing the significance of international obligations, the commissioner actively promotes compliance with international human rights standards, and in their role as a key advocate, intervenes in complaints and participates in legal proceedings. While the commissioner cannot file a complaint with the tribunal themselves, they do offer assistance to individuals or groups throughout the complaint process[7].

[6] RSBC 1996 c.210 s47.03

[7] RSBC 1996 c.210 s47.12

On request by the commissioner, the tribunal must provide to the commissioner copies of complaints and responses filed with the tribunal and may provide to the commissioner other records in its custody or control.[8]

The Legislative Assembly or any of its committees may at any time refer a matter to the commissioner for inquiry and report. If the commissioner accepts a referral, the commissioner must inquire into the matter referred, and make a written report to the Legislative Assembly. If the commissioner does not accept a referral, the commissioner must provide written reasons to the Legislative Assembly for not accepting the referral.[9]

If the commissioner is of the opinion that an inquiry into a matter would promote or protect human rights, the commissioner may inquire into the matter. The inquiry may be conducted in public.[10]

For the purpose of conducting an inquiry, the commissioner may make an order, in writing, requiring a person to do one or more of the following:

- attend, in person or by electronic means, before the commissioner and answer questions on oath or solemn affirmation or in any other manner
- produce to the commissioner a record or other thing in the person's custody or control
- record physical dimensions, or take photographs, video recordings or audio recordings, of premises or vehicles, and produce the records, photographs, video recordings and audio recordings to the commissioner[11]

The commissioner must not require any information or answer to be given or any record or other thing to be produced if the Attorney General certifies that giving the information, answering the question or producing the record or other thing might

- interfere with or impede the investigation or detection of an offence
- result in or involve the disclosure of deliberations of the Executive Council
- result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature, and that the disclosure would be contrary or prejudicial to the public interest

The commissioner must report each certificate of the Attorney General to the Legislative Assembly not later than in the commissioner's next annual report.[12] The commissioner may file a copy of an order with the Supreme Court. The order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court[13].

[8] RSBC 1996 c.210 s47.13
[9] RSBC 1996 c.210 s47.14
[10] RSBC 1996 c.210 s47.15
[11] RSBC 1996 c.210 s47.16
[12] RSBC 1996 c.210 s47.18
[13] RSBC 1996 c.210 s47.19

At the conclusion of an inquiry, the commissioner may make a written report containing any recommendations the commissioner considers appropriate. The commissioner may publish this report and provide it to the Speaker of the Legislative Assembly.

If a report contains a recommendation made to a person, the commissioner may require the person to notify the commissioner, within a specified period of time, of steps taken, or intended to be taken, to address the recommendation. If the commissioner considers that a person has not, within the original or extended period of time, adequately addressed a recommendation, the commissioner may make a written report about the person's failure to adequately address the recommendation. The commissioner may publish this report and provide it to the Speaker of the Legislative Assembly[14].

4. Reports

4.1 Annual report[15]

The commissioner must report annually to the Speaker of the Legislative Assembly. The Speaker of the Legislative Assembly must submit a copy of the report to the Legislative Assembly as soon as possible.

4.2 Special Reports

At the conclusion of an inquiry, the commissioner may make a written report containing any recommendations the commissioner considers appropriate. The commissioner may publish this report and provide it to the Speaker of the Legislative Assembly. If the commissioner considers that a person has not, within the original or extended period of time, adequately addressed a recommendation, the commissioner may make a written report about the person's failure to adequately address the recommendation. The commissioner may publish this report and provide it to the Speaker of the Legislative Assembly.

If the commissioner provides a report to the Speaker, the Speaker must submit the report to the Legislative Assembly as soon as practicable[16].

5. Salary, Pension and Benefits Regulations[17]

The commissioner is entitled to be paid compensation as may be set by the Lieutenant Governor in Council. The public service plan under the *Public Sector Pensions Plans Act* applies to the commissioner.

[14] RSBC 1996 c.210 s47.20
[15] RSBC 1996 c.210 s47.23
[16] RSBC 1996 c.210 s47.20
[17] RSBC 1996 c.210 s47.04

The commissioner may also engage or retain consultants or specialists the commissioner considers necessary to exercise the powers and perform the duties of the office and may determine their remuneration and other terms and conditions of their engagement or retainers[18].

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may appoint, in accordance with the *Public Service Act*, employees necessary to enable the commissioner to exercise the powers and perform the duties of the office.

7. Bibliography

- *The Human Rights Code,* RSBC 1996 c.210

[18] RSBC 1996 c.210 s47.06

Statutory Offices in British Columbia
Merit Commissioner

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Public Service Act[1]

2. Appointment Process

2.1 Process[2]

The Legislative Assembly may, by resolution, appoint as the Merit Commissioner. The Legislative Assembly must not recommend an individual to be appointed unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.

2.2 Term of Office[3]

The commissioner is appointed for a term of three years. The commissioner may be reappointed for one additional term of up to 3 years as specified in the reappointment resolution.

2.5 Acting officer[4]

The Lieutenant Governor in Council may appoint an acting commissioner if:

- the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting
- the commissioner is suspended when the Legislative Assembly is not sitting
- the commissioner is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly before the end of the session
- the commissioner is temporarily absent because of illness or for another reason

An acting commissioner holds office until whichever of the following occurs first:

- a person is appointed
- the suspension of the commissioner ends,

[1] *The Public Service Act,* RSBC 1996 c.385
[2] RSBC 1996 c.385 s5.01
[3] RSBC 1996 c.385 s5.01
[4] RSBC 1996 c.385 s5.01

- the Legislative Assembly has sat for 30 days after the date of the acting commissioner's appointment
- the commissioner returns to office after a temporary absence

3. Power, Duties and Responsibilities

The merit commissioner is responsible for monitoring the application of the merit principle under the Act by conducting random audits of appointments to and from within the public service to assess whether the recruitment and selection processes were properly applied to result in appointments based on merit, and the individuals when appointed possessed the required qualifications for the positions to which they were appointed. The commissioner is also responsible for reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made[5].

Additionally the merit commissioner is responsible for monitoring the application of government practices, policies and standards to eligible dismissals by the agency, ministries, as well as boards, commissions, agencies, and organizations. In doing so, the commissioner conducts reviews of eligible dismissals[6].

A reviewable dismissal becomes eligible for review if no grievance procedure under a collective agreement or proceeding before a court or a judicial or quasi-judicial tribunal in relation to the reviewable dismissal has been commenced, 12 months after the date of the dismissal. Alternatively, it may also become eligible for review if a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal in relation to the reviewable dismissal has been commenced, 6 months after the date on which the grievance procedure or the proceeding and all related proceedings are complete.

The agency head must notify the merit commissioner as soon as practicable after the agency head becomes aware that a dismissal about which information was provided to the merit commissioner is the subject of a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal.

If the merit commissioner is conducting a review of a dismissal that is the subject of a grievance procedure under a collective agreement or a proceeding before a court or a judicial or quasi-judicial tribunal, the merit commissioner must defer the review until the date that is 6 months after the date on which the grievance procedure or the proceeding and all related proceedings are complete.[7]

The agency head must, at least once every 6 months, provide the merit commissioner with information about reviewable dismissals and eligible dismissals, including, without limitation:

[5] RSBC 1996 c.385 s5.1
[6] RSBC 1996 c.385 s5.11
[7] RSBC 1996 c.385 s5.12

- the name of the employee who was dismissed
- the position or title of the employee who was dismissed
- the name of the ministry, board, commission, agency or organization that employed the employee who was dismissed
- the date of the dismissal
- any other prescribed information

The agency head must provide the merit commissioner with the dismissal file for a reviewable dismissal as soon as practicable after the dismissal becomes eligible for review[8]

4. Reports

4.1 Annual report

The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made. The Speaker must submit the report to the Legislative Assembly as soon as practicable, if it is in session.

If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.

The report must include monitoring of the application of the merit principle without disclosing personal information, and monitoring of the application of government practices, policies and standards regarding eligible dismissals. The latter may include references to particular interests, identification of persistent patterns, and recommendations, without disclosing any personal information[9].

5. Salary, Pension and Benefits Regulations[10]

The commissioner is entitled to be paid compensation as may be set by the Lieutenant Governor.

[8] RSBC 1996 c.385 s5.13
[9] RSBC 1996 c.385 s5.2
[10] RSBC 1996 c.385 s5.01

6. Staff (Number of Positions and Corresponding Titles)

7. Bibliography

- OMC. "Annual Report 2021-2022."
- *The Public Service Act,* RSBC 1996 c.385

Statutory Offices in British Columbia
Police Complaint Commissioner

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Police Act[1]

2. Appointment Process

2.1 Process[2]

The Legislative Assembly may, by resolution, appoint as the Merit Commissioner. The Legislative Assembly must not recommend an individual to be appointed unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.

2.2 Term of Office[3]

The commissioner is appointed for a term of 5 years. The commissioner may be reappointed for one additional term of up to 5 years as specified in the reappointment resolution. A person cannot be reappointed for a third or subsequent term.

The Legislative Assembly may not appoint a police complaint commissioner for a 2nd term unless the police complaint commissioner notifies the committee at least 6 months before the end of the first term that they wish to be considered for reappointment, and the committee unanimously recommends the reappointment within 60 days of being notified.

2.3 Resignation[4]

The police complaint commissioner may resign from office at any time by giving written notice to the Speaker of the Legislative Assembly, or if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

[1] *The Police Act,* RSBC 1996 c.367
[2] RSBC 1996 c.367 s47
[3] RSBC 1996 c.367 s47
[4] RSBC 1996 c.367 s48

2.4 Removal and suspension[5]

By a resolution passed by 2/3 or more of the members present in the Legislative Assembly, the police complaint commissioner, for cause or incapacity, may be suspended from office, with or without salary, or removed from office.

If the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by unanimous resolution, may suspend the police complaint commissioner for cause or incapacity, with or without salary, for a period that must be set by the committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

2.5 Acting officer[6]

If the police complaint commissioner is suspended or the office is vacant, the Legislative Assembly, by resolution and on the recommendation of the committee, may appoint an acting police complaint commissioner until the suspension ends or an appointment is made.

If the police complaint commissioner is suspended or the office is vacant, and if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days, the committee, by resolution, may appoint an acting police complaint commissioner:

- until the suspension ends, if the police complaint commissioner is suspended
- if the office of the police complaint commissioner is vacant, until an appointment is made

3. Power, Duties and Responsibilities[7]

The police complaint commissioner is generally responsible for overseeing and monitoring complaints, investigations and the administration of discipline and proceedings under the Act. They are responsible for establishing guidelines to be followed by members or individuals involved in receiving complaints, as well as guidelines for municipal police departments and their employees on receiving and handling oral or written reports from the public or other individuals. Additionally, the commissioner must maintain comprehensive records for each complaint and investigation conducted under this legislation. This includes all relevant documents associated with the complaints and investigations.

Based on these records, the commissioner compiles statistical information, covering various aspects, such as demographic information of complainants (if available), the number and frequency of complaints and investigations, different types or classes of complaints and investigations, and their outcomes or resolutions. The compilation may also identify any emerging trends related to the data gathered.

[5] RSBC 1996 c.367 s48
[6] RSBC 1996 c.367 s48
[7] RSBC 1996 c.367 s177

The commissioner is responsible for developing and providing outreach programs and services aimed at informing and educating the public about this legislation and the powers and responsibilities of the Police Complaint Commissioner. They also make available to the public of a list containing support groups, neutral dispute resolution service providers, and agencies that can assist complainants in mediation or other informal resolution processes.

Information advice, and assistance are also provided to various parties involved in legislation, including individuals making complaints, current and former police members, discipline authorities, boards, and adjudicators.

The commissioner is responsible for making recommendations to a board to review and reconsider any policies or procedures that may have contributed to the conduct under investigation in a complaint or investigation. Additionally, they may make recommendations to the director or the minister to initiate reviews, studies, or audits aimed at helping police departments, forces, designated policing units, or designated law enforcement units (covered by this legislation through regulations) in developing training or other programs that address issues identified through the complaint process and prevent their recurrence. They can also recommend the minister to consider a public inquiry under the *Public Inquiry Act* when there are reasonable grounds to believe that the issues warrant a broader inquiry in the public interest, surpassing the scope of an investigation conducted under the Act.

When carrying out their powers and duties, the police complaint commissioner can request interviews or statements from discipline authorities, prehearing conference authorities, chief constables, deputy chief constables, or board chairs of municipal police departments. Any person to whom a request is made under the above provision must comply with the commissioner's request. The commissioner may also consult and provide advice to individuals holding similar positions as the Police Complaint Commissioner in other Canadian jurisdictions or within the Royal Canadian Mounted Police.

When the police complaint commissioner receives a complaint or report, whether directly or indirectly, that a member has, whether on or off duty, caused the death of a person, caused a person serious harm, or contravened a prescribed provision of the Criminal Code or a prescribed provision of another federal or provincial enactment, he police complaint commissioner must immediately notify the independent investigations office.[8]

4. Reports

4.1 Annual report

The police complaint commissioner must report annually to the Speaker of the Legislative Assembly on the work of the police complaint commissioner's office. The Speaker must promptly submit the report to the Legislative Assembly if it is in session and, if the Legislative Assembly is not in session when the report is submitted, within 15 days after the beginning of the next session.[9].

[8] RSBC 1996 c.367 s177.1
[9] RSBC 1996 c.367 s51.1

The report must include recommendations for the improvement of the complaint process[10].

5. Salary, Pension and Benefits Regulations[11]

The police complaint commissioner is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia. The *Public Sector Pension Plans Act* applies to the police complaint commissioner.

For the purposes of the application of the *Public Service Act*, the police complaint commissioner is a deputy minister[12].

6. Staff (Number of Positions and Corresponding Titles)[13]

The police complaint commissioner may appoint, in accordance with the *Public Service Act* and regulations, one or more deputy police complaint commissioners and other employees necessary.

In 2021, the office had 32 staff, including 13 Investigative Analysts, who are directly involved in the oversight of misconduct investigations. There are an additional 23 Corporate Shared Services[14] staff that provide finance, payroll, administration, facilities, human resources, and information technology support for four independent Offices of the Legislature, including the OPCC[15].

The police complaint commissioner may also retain consultants, mediators, experts, specialists and other persons that the police complaint commissioner considers necessary.

7. Bibliography

- OPCC. “Annual Report 2021-2022.”
- *The Police Act,* RSBC 1996 c.367 as amended
- BC Ombudsperson. 2022. “Service Plan 2022/23-2024/25.”

[10] RSBC 1996 c.367 s177
[11] RSBC 1996 c.367 s50.1
[12] RSBC 1996 c.367 s51
[13] RSBC 1996 c.367 s51
[14] Corporate Shared Services: The Office of the Ombudsperson provides support to four Independent Offices of the Legislature through an economical Corporate Shared Services support organization. These shared support services include finance, human resources, facilities and IT services. (BC Ombudsperson Service Plan 2022/23-2024/25).
[15] OPCC. 2021. “Annual Report 2021-2022.”

Statutory Offices in Manitoba
Ombudsman

1. Legislation

The ombudsman has responsibilities under four provincial statutes:

- The Ombudsman Act[1]
- The Freedom of Information and Protection of Privacy Act[2]
- The Personal Health Information Act[3]
- The Public Interest Disclosure (Whistleblower Protection) Act[4]

2. Appointment Process

2.1 Process

The ombudsman is appointed by resolution of the Assembly, upon recommendation of the Standing Committee of the Assembly on Legislative Affairs[5].

2.2 Term of Office

The ombudsman is appointed for a fixed term of six years and may be reappointed for one further term of six years, but cannot serve for more than two terms of six years[6].

2.4 Removal and Suspension

The Assembly may, by order passed by a vote of at least two thirds of the members, remove or suspend the Ombudsman from office for cause[7]. If the Assembly is not sitting, the Speaker may, with the prior approval of the Legislative Assembly Management Commission, suspend the Ombudsman for cause[8].

A suspension under subsection must end no later than 30 sitting days of the Assembly after the suspension came into effect[9].

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[1] *The Ombudsman Act,* C.C.S.M. c. O45
[2] *The Freedom of Information and Protection of Privacy Act,* C.C.S.M. c.F175
[3] *The Personal Health Information Act,* C.C.S.M. c.P33.5
[4] *The Public Interest Disclosure (Whistleblower Protection) Act,* C.C.S.M. c.217
[5] C.C.S.M. c. O45 s2
[6] C.C.S.M. c. O45 s4
[7] C.C.S.M. c. O45 s5
[8] C.C.S.M. c. O45 s6
[9] C.C.S.M. c. O45 s6

2.5 Acting officer[10]

If at any time the office of Ombudsman becomes vacant within six months because the term of office is scheduled to expire or the Ombudsman has resigned; or for any other reason; the President of the Executive Council must, within one month after that time, convene a meeting of the Standing Committee on Legislative Affairs. The Standing Committee must then, within six months after that time, consider candidates for the office and make a recommendation to the Assembly.

3. Power, Duties and Responsibilities

Under the Ombudsman Act:

The ombudsman can investigate your complaint about access to information and privacy matters, the fairness of government actions or decisions, or serious wrongdoings that an individual believe may have occurred. These investigations may be initiated upon receiving a written complaint or the ombudsman's own initiative[11].

A committee of the Assembly may also at any time refer to the Ombudsman, for investigation and report by them, any petition or matter that is before that committee for consideration. Additionally, the Lieutenant Governor in Council may at any time refer to the Ombudsman, for investigation and report by them, any matter relating to administration in or by any department, agency of the government or municipality, or by any officer, employee or member[12].

The Ombudsman does not have the authority to investigate the following[13]:

- decisions, recommendations, acts, orders, or omissions made by various governmental bodies, such as the Legislature, the assembly, the Lieutenant Governor, committees, councils, or the Executive Council
- council resolutions or by-laws related to policies
- orders, decisions, or omissions made by courts, judges, referees, masters, or justices of the peace during legal actions or proceedings
- awards, decisions, recommendations, or omissions made by arbitrators or arbitration boards governed by *The Arbitration Act*
- decisions, recommendations, acts, or omissions for which there is a right of appeal or objection, unless the Ombudsman determines that it would be unreasonable to seek recourse through the court or tribunal. An investigation cannot start until the time limit for exercising the right to appeal, object, or apply has expired

[10] C.C.S.M. c. O45 s2
[11] C.C.S.M. c. O45 s15
[12] C.C.S.M. c. O45 s16
[13] C.C.S.M. c. O45 s18

Whenever the Minister of Justice certifies in writing to the ombudsman that an investigation would be contrary to public interest, the Ombudsman cannot investigate that matter, or, if they have begun an investigation, they must discontinue it[14].

The ombudsman may also refuse or cease an investigation if[15]:

- the complainant has had knowledge of the issue for more than one year before the complaint was submitted to the ombudsman
- the complaint is frivolous, vexatious or not in good faith
- in the public interest, a matter should not be investigated or continued to be investigated

In carrying out their duties, the Ombudsman has the protection and powers of a commissioner appointed under the *Manitoba Evidence Act*[16]. The ombudsman may also require any person to produce any document, paper or thing that in their opinion is related to an investigation[17], expect for documents that involve the disclosure of deliberations or proceedings from the Lieutenant Governor in Council or the Executive Council[18].

If, after the investigation, the Ombudsman determines that a decision, recommendation, act, or omission is against the law, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact, or the result of an improper use of power; then the ombudsman must report their opinion and reasons and make recommendations as necessary to the relevant government minister and department/agency, or to the relevant council head[19].

Under the Freedom of Information and Protection of Privacy Act[20] and the Personal Health Information Act[21]

The Ombudsman is empowered to conduct investigations and audits to monitor and ensure compliance with the relevant legislation and regulations. This includes overseeing adherence to security measures and record destruction requirements stipulated by other laws, by-laws, or legal instruments governing local public bodies. They also have the authority to make recommendations to public bodies, following an opportunity for the head of the body to present their case. These recommendations may involve ceasing or modifying practices that contravene the Act, or the destruction of collections of personal information not collected in accordance with the Act.

During an investigation, the Ombudsman has as all the powers and protections of a commissioner under *The Manitoba Evidence Act* and can required pubic bodies to provide any record or a copy of a record, within 14 days[22].

[14] C.C.S.M. c. O45 s19
[15] C.C.S.M. c. O45 s23
[16] C.C.S.M. c. O45 s13
[17] C.C.S.M. c. O45 s30
[18] C.C.S.M. c. O45 s31
[19] C.C.S.M. c. O45 s36
[20] C.C.S.M. c.F175 s49
[21] C.C.S.M. c.P33.5 s28
[22] C.C.S.M. c.F175 s50

The ombudsman is also responsible for commenting on proposed legislative schemes or programs initiated by public bodies by assessing their potential impact on access to information and the protection of privacy. Additionally, they are responsible for commenting on matters related to privacy protection. This includes offering insights on the implications of using or disclosing personal information for record linkage and the utilization of information technology in the collection, storage, use, or transfer of personal data.

In carrying out their duties, the Ombudsman has the authority to engage in or commission research on topics that impact the achievement of the Act's goals, as well as engage in public consultations. The Ombudsman can also exchange information with individuals or entities that possess similar duties and powers in Canada or other provinces or territories. This includes entering into information-sharing agreements to coordinate activities and handle complaints across jurisdictions, enhancing collaboration and efficiency in addressing concerns.

Under The Public Interest Disclosure (Whistleblower Protection) Act:

The Ombudsman is responsible for investigating a disclosure of wrongdoing and to recommend corrective measures that should be taken. The Ombudsman may decide not to investigate a disclosure if the subject matter is being investigated by a designated officer, or may refer a disclosure to the designated officer if the they believe that the matter could be dealt with more appropriately by the designated officer. The Ombudsman may also refer a disclosure to the Auditor General if the Ombudsman believes that the matter would be dealt with more appropriately by the Auditor General[23].

The ombudsman may also refuse or cease an investigation if[24]:

- the matter could be better dealt with under another Act
- the complaint is frivolous, vexatious or not in good faith
- so much time has elapsed that investigating it would not serve a useful purpose
- the disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue
- the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement

The Ombudsman and persons employed under the Ombudsman have the powers and protections provided for in *The Ombudsman Act* when conducting an investigation of a disclosure[25].

Upon completing an investigation, the Ombudsman must prepare a report containing their findings and any recommendations about the disclosure and the wrongdoing, and provide a copy of this report to the responsible chief executive[26]

[23] C.C.S.M. c.217 s19-20
[24] C.C.S.M. c.217 s21
[25] C.C.S.M. c.217 s22
[26] C.C.S.M. c.217 s24

4. Reports

4.1 Annual report[27]

The Ombudsman must report annually to the assembly through the Speaker on the exercise and performance of their functions and duties under the Acts.

The annual report, prepared under t*he Public Interest Disclosure (Whistleblower Protection) Act*, must include[28]:

- the number of general inquiries relating to this Act
- the number of disclosures received and the number acted on and not acted on
- the number of investigations commenced under this Act
- the number of recommendations the Ombudsman made and whether the public body complied with the recommendations
- whether, in the opinion of the Ombudsman, there are any systemic problems that give rise to wrongdoings
- any recommendations for improvement the Ombudsman considers appropriate

4.2 Special report

In the public interest, or in the interest of a person, department, agency of the government or municipality, the Ombudsman may publish reports relating generally to the exercise and performance of their functions and duties under this Act or to any particular case investigated by them, whether or these were included in the Annual report[29].

5. Salary, Pension and Benefits Regulations[30]

The Legislative Assembly Management Commission determines the salary and benefits of the Ombudsman. The salary of the Ombudsman cannot be reduced except on resolution of the Assembly carried by a vote of 2/3 of the members of the Assembly.

Within 60 days after their appointment, the Financial Accountability Officer may notify the Speaker in writing that they do not wish to be a member of the Public Service Pension Plan.

6. Staff (Number of Positions and Corresponding Titles)

The ombudsman may engage the services of any persons necessary to assist them in carrying out their functions. Persons employed under the Ombudsman must be appointed under *The Public Service Act*.

[27] C.C.S.M. c. O45 s42; C.C.S.M. c.F175 c58; C.C.S.M. c.P33.5 s37; C.C.S.M. c.217 s29
[28] C.C.S.M. c.217 s29
[29] C.C.S.M. c. O45 s43
[30] C.C.S.M. c. O45 s7

The Ombudsman, and all persons employed under him, are employees within the meaning of *The Civil Service Superannuation Act*[31].

In 2021, the office employed 42 people in the following roles: Access & Privacy Investigations Manager; Business Transformation Specialist; Administrative Support Clerk; Investigator; Systemic Investigations & Audits Manager; Administration Manager; Complaints Analyst; Senior Investigator; Community Relations & Corporate Services Manager; Administrative Support Assistant; Ombudsman Act Investigations Manager; Intake Manager; Deputy Ombudsman; Communications, Education & Training Coordinator; and Public Interest Disclosure Investigations Manager[32].

7. Bibliography

- Manitoba Ombudsman Office. 2021. "Annual Report 2021-2022."
- *The Freedom of Information and Protection of Privacy Act,* C.C.S.M. c.F175
- *The Ombudsman Act,* C.C.S.M. c. O45
- *The Personal Health Information Act,* C.C.S.M. c.P33.5
- *The Public Interest Disclosure (Whistleblower Protection) Act,* C.C.S.M. c.217

[31] C.C.S.M. c. O45 s9

[32] Manitoba Ombudsman Office. 2021. "Annual Report 2021-2022."

Statutory Offices in Manitoba
Chief Electoral Officer

1. Legislation

The ombudsman has responsibilities under two provincial statutes:

- The Elections Act[1]
- The Election Financing Act[2]

2. Appointment Process

2.1 Process

The Chief Electoral Officer is appointed by resolution of the Assembly, upon recommendation of the Standing Committee of the Assembly on Legislative Affairs[3].

2.2 Term of Office

The term of office for the chief electoral officer is from the date of appointment until 12 months after the date of the return of the last writ for the second general election for which the chief electoral officer is responsible. They may re-appointed[4].

2.4 Removal and Suspension[5]

The Assembly may, by order passed by a vote of at least two thirds of the members, remove or suspend the Chief Electoral Officer from office for cause. If the Assembly is not sitting, the Speaker may, with the prior approval of the Legislative Assembly Management Commission, suspend the officer for cause.

A suspension under subsection must end no later than 30 sitting days of the Assembly after the suspension came into effect.

2.5 Acting officer[6]

If at any time the office of the Chief Electoral Officer becomes vacant within six months because the term of office is scheduled to expire or the officer has resigned; or for any other reason; the President of the Executive Council must, within one month after that time, convene a meeting of the Standing

[1] *The Elections Act,* C.C.S.M. c.E30
[2] *The Election Financing Act,* C.C.S.M. c.E27
[3] C.C.S.M. c.E30 s23
[4] C.C.S.M. c.E30 s23.1
[5] C.C.S.M. c.E30 s26
[6] C.C.S.M. c.E30 s22

Committee on Legislative Affairs. The Standing Committee must then, within six months after that time, consider candidates for the office and make a recommendation to the Assembly.

3. Power, Duties and Responsibilities

The main responsibilities of the Chief Electoral Officer include exercising general direction and supervision over the conduct of elections, ensuring that election officials carry out their duties fairly and impartially and in compliance with this Act, and giving election officials any instructions that the chief electoral officer considers[7].

After the Lieutenant Governor makes an order to call for an election, they directs the chief electoral officer to issue a writ of election to the returning officer for each electoral division in which an election is to be held. Upon receiving the order, the Chief Electoral Officer must issue the writ or writs of election in accordance with the order, and publish a notice of the election indicating the Election Day, the closing day for nominations, and any other information the chief electoral officer considers necessary[8].

The chief electoral officer must prepare a preliminary voters list for each voting area in an electoral division, using information from the register of voters; and give the preliminary voters list for each voting area to the returning officer of the electoral division within two days after a writ of election is issued[9]. Within two days after a writ of election is issued, the chief electoral officer must provide each registered political party who requests it a copy of the preliminary voters list for each voting area in the province[10].

During an election, the Chief Electoral officer may direct the use of vote counting machines. In doing so, they must establish and publish procedures for vote counting machines, including the following[11]:

- the use of vote counting machines by the chief electoral officer and election officials
- the testing of vote counting machines
- the steps to be taken when a vote counting machine provides a notification
- the circumstances in which a voting officer may transcribe a voter's candidate choice onto a replacement ballot, if the voter's intent is clear and the vote counting machine has rejected the ballot or cannot read it
- the security of vote counting machines while they are being used in voting and at other times
- anything else the chief electoral officer considers necessary

The Chief Electoral Officer is also responsible for establishing and maintaining a register of voters for Manitoba from which voters lists may be prepared for use at elections. The chief electoral officer

[7] C.C.S.M. c.E30 s27
[8] C.C.S.M. c.E30 s49-50
[9] C.C.S.M. c.E30 s74
[10] C.C.S.M. c.E30 s75
[11] C.C.S.M. c.E30 s101

may at any time contact a voter to verify the chief electoral officer's information relating to the voter, and request the voter to confirm, correct or complete the information by a specified date[12].

Under the *Election Financing Act,* administered by the Chief Electoral Office, they must maintain public registers of registered parties and candidates, and leadership contestants; assist registered parties and their financial officers, candidates and leadership contestants in preparing any necessary statements, reports and records; and maintain public records of[13]:

- unregistered candidates for each general election and by-election,
- financial officers and deputy financial officers of registered parties
- official agents and deputy official agents of candidates and leadership contestants

4. Reports

4.1 Annual report[14]

The Chief Electoral Officer must report annually to the assembly through the Speaker on the exercise and performance of their functions and duties under the Acts. The report may include recommendations for amendments to *the Elections Act*.

The Speaker must table a report in the Assembly without delay if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

A report that contains recommendations about amendments stands referred to the Standing Committee of the Assembly on Legislative Affairs. The Committee must begin considering the report within 60 days after it is tabled in the Assembly.

4.2 Special report

The Chief Electoral Officer must report to the Speaker of the Assembly after each election, a report about the conduct of the election[15].

5. Salary, Pension and Benefits Regulations16

The Legislative Assembly Management Commission determines the salary and benefits of the Chief Electoral Officer. The salary of the officer cannot be reduced except on resolution of the Assembly carried by a vote of 2/3 of the members of the Assembly.

The chief electoral officer is an employee within the meaning of the *Civil Service Superannuation Act*.

[12] C.C.S.M. c.E30 s63
[13] C.C.S.M. c.E27 s2
[14] C.C.S.M. c.E30 s32
[15] C.C.S.M. c. O45 s43
[16] C.C.S.M. c.E30 s24

6. Staff (Number of Positions and Corresponding Titles)

The ombudsman may engage the services of any persons necessary to assist them in carrying out their functions. Persons employed under the Ombudsman must be appointed under *The Public Service Act*[17].

Elections Manitoba is headed by the Chief Electoral Officer who is assisted by the Deputy Chief Electoral Officer. The CEO and DCEO are supported by a core staff of 21 people[18].

7. Bibliography

- Elections Manitoba. "Staff." Online: < https://www.electionsmanitoba.ca/en/About/Staff_Org_Chart>
- *The Elections Act*, C.C.S.M. c.E30
- *The Election Financing Act*, C.C.S.M. c.E27

[17] C.C.S.M. c.E30 s31

[18] Elections Manitoba. "Staff." Online: < https://www.electionsmanitoba.ca/en/About/Staff_Org_Chart>

Statutory Offices in New Brunswick
Consumer Advocate for Insurance

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Consumer Advocate for Insurance Act[1]

2. Appointment Process2

2.1 Process

The officer is appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly.

Before an appointment is made, a selection committee is established for the purpose of identifying potential candidates to be appointed Consumer Advocate. The selection committee, who submits a roster of qualified candidates to the Lieutenant-Governor in Council, is composed of:

- the Clerk of the Executive Council or a person designated by the Clerk
- the Clerk of the Legislative Assembly or a person designated by the Clerk
- a member of the judiciary
- a member of the university community

The Premier then consults with the leader of the opposition and the leaders of the other political parties having representation in the Legislative Assembly during the most recent sitting with respect to one or more qualified candidates from the selection committee's list of qualified candidates.

2.2 Term of Office

The advocate holds office for seven years and is not eligible for reappointment. If necessary, the Lieutenant-Governor in Council may extend the term for a period of not more than 12 months.

2.3 Resignation

The advocate may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly.

[1] *Consumer Advocate for Insurance Act,* SNB 2004 c.C-17.5 as amended

[2] SNB 2004 c.C-17.5 s2

2.4 Removal and Suspension

The Lieutenant-Governor in Council may suspend or remove the officer because for cause or incapacity, upon passing of a resolution by a vote of two thirds of the members voting at the Legislative Assembly.

If the Legislature is not in session, a judge of The Court of King's Bench of New Brunswick may, on an application by the Lieutenant-Governor in Council, suspend the Consumer Advocate, with or without pay, for cause or incapacity.

If a judge suspends the Consumer Advocate, the judge must do the following:

- appoint an acting advocate to hold office until the suspension has been dealt with
- table a report on the suspension with the Legislative Assembly within 10 days after the commencement of the next session of the Legislature

The suspension cannot continue beyond the end of the next session of the Legislature.

2.5 Acting Appointment

If the advocate has been suspended by the Lieutenant-Governor in Council, the Lieutenant-Governor in Council may appoint an acting Consumer Advocate to hold office until the suspension has elapsed. An acting Consumer Advocate, while in office, has the powers and duties of the Consumer Advocate and shall be paid such salary or other remuneration and expenses as the Lieutenant-Governor in Council may fix.

The term of the acting advocate lasts for up to one year[3].

3. Power, Duties and Responsibilities

The Consumer Advocate is responsible for examining the underwriting practices and guidelines of insurers, brokers, and agents, and reporting any prohibited practices to the Superintendent. They are also authorized to investigate insurers, brokers, and agents regarding the premiums charged for contracts of insurance and the availability of contracts of insurance. The advocate must also respond to requests for information related to insurance and develop educational programs for consumers to learn more about insurance[4].

Additionally, the Consumer Advocate may carry out tasks or investigations related to insurance matters or the insurance industry as directed by the Legislative Assembly. They are authorized to appear before the New Brunswick Insurance Board to represent the interests of consumers. In this role, the Consumer Advocate has the ability to present evidence, call witnesses, cross-examine witnesses, and make representations to the Board[5].

[3] SNB 2004 c.C-17.5 s4

[4] SNB 2004 c.C-17.5 s7

[5] SNB 2004 c.C-17.5 s7

In carrying out investigations, the Consumer Advocate has all the powers, privileges and immunities of a commissioner under the *Inquiries Act* and regulations[6].

Investigations[7]:

Before starting an investigation based on a complaint, the Consumer Advocate must inform the insurer, broker, or agent about their intention to carry out the investigation. Similarly, before commencing an investigation on their own initiative, the Consumer Advocate must notify the Superintendent and the insurer, broker, or agent concerned of their intention to carry out the investigation.

The Consumer Advocate has the discretion to determine the procedure to be followed during an investigation, subject to the Act's provisions.

After an investigation is complete, the Consumer Advocate shall communicate the results of the investigation, any recommendations, opinions, and reasons for recommendations, only to the insurer, broker, or agent concerned, the complainant, and, at their discretion, the Superintendent.

If the Consumer Advocate reasonably believes that the insurer, broker, or agent has violated any prohibition or failed to comply with the requirements of the Insurance Act, they shall either suspend the investigation and refer the matter to the Superintendent or complete the investigation and communicate the results of the investigation and any recommendations, including opinions and reasons for recommendations, to the Superintendent.

If the Consumer Advocate reasonably believes that the insurer, broker, or agent has committed an offense under any Act of Parliament or any other Act of the Legislature other than the Insurance Act, the Consumer Advocate shall suspend the investigation and refer the matter to the appropriate authorities, regardless of whether the investigation was initiated based on a complaint or on their own initiative.

The advocate may refuse or cease an investigation if, in the opinion of the advocate, the complaint is trivial, frivolous, vexatious or not made in good faith, or if the complaint does not under the authority of the advocate.

4. Reports

4.1 Annual report[8].

The Consumer Advocate must report annually to the Legislative Assembly concerning activities of the office in the previous year, as well as the total amount assessed against licensed insurers in the previous year and the amount paid by each insurer

[6] SNB 2004 c.C-17.5 s8

[7] SNB 2004 c.C-17.5 s9

[8] SNB 2004 c.C-17.5 s10

Each annual report is submitted to the Speaker of Legislative Assembly, as soon as practicable after the close of each year, to be tabled by the Speaker. If the Legislative Assembly is not in session, the annual report must be submitted within 10 days following the beginning of the next session.

5. Salary, Pension and Benefits Regulations[9]

The Consumer Advocate's salary is determined by the Lieutenant-Governor in Council within the deputy head pay plan, and is entitled to receive benefits similar to those received by deputy heads.

The pension plan converted to a shared risk plan in accordance with An Act Respecting Public Service Pensions applies to the Consumer Advocate.

6. Staff (Number of Positions and Corresponding Titles)

The Office of the Consumer Advocate is comprised of four permanent staff and one part time employee. In addition to the advocate, the office has one Administrative Assistant, two full-time Assistant Consumer Advocates, and one part-time Assistant Consumer Advocate.

7. Compensation (employees earning $100,000+)

The most current approval, by the Lieutenant-Governor in Council, fixed the advocate's salary as to be that of Level I, Step D of the Deputy Head Pay Plan[10].

In 2013, the range of salary for the Consumer Advocate was between $150,000 and $174,999[11].

8. Bibliography

- Government of New Brunswick. "Order in Council Record (OIC 2016-309)." (December 7, 2016).
- Government of New Brunswick. "2013 Unaudited Supplementary Employee Lists." (2014).
- Office of the Consumer Advocate. 2022. "Annual Report 2022."
- *The Consumer Advocate for Insurance Act,* SNB 2004 c.C-17.5 as amended.

[9] SNB 2004 c.C-17.5 s3

[10] Government of New Brunswick. "Order in Council Record (OIC 2016-309)." (December 7, 2016).

[11] Government of New Brunswick. "2013 Unaudited Supplementary Employee Lists." (2014).

Statutory Offices in New Brunswick
Child and Youth Advocate

1. Legislation

The advocate has responsibilities under one provincial statute:

- The Child, Youth and Senior Advocate Act[1]

2. Appointment Process[2]

2.1 Process

The officer is appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly.

Before an appointment is made, a selection committee is established for the purpose of identifying potential candidates to be appointed Consumer Advocate. The selection committee, who submits a roster of qualified candidates to the Lieutenant-Governor in Council, is composed of:

- the Clerk of the Executive Council or a person designated by the Clerk
- the Clerk of the Legislative Assembly or a person designated by the Clerk
- a member of the judiciary
- a member of the university community

The Premier then consults with the leader of the opposition and the leaders of the other political parties having representation in the Legislative Assembly during the most recent sitting with respect to one or more qualified candidates from the selection committee's list of qualified candidates.

2.2 Term of Office

The advocate holds office for seven years and is not eligible for reappointment. If necessary, the Lieutenant-Governor in Council may extend the term for a period of not more than 12 months.

2.3 Resignation

The advocate may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly. The Speaker or the Clerk, as the case may be, must immediately inform the Lieutenant-Governor in Council of the advocate's resignation[3].

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[1] *Child, Youth and Senior Advocate Act,* SNB 2007 c.C-2.7 as amended
[2] SNB 2007 c.C-2.7 s3
[3] SNB 2007 c.C-2.7 s7

2.4 Removal and Suspension

The Lieutenant-Governor in Council may suspend or remove the officer because for cause or incapacity, upon passing of a resolution by a vote of two thirds of the members voting at the Legislative Assembly.

If the Legislature is not in session, a judge of The Court of King's Bench of New Brunswick may, on an application by the Lieutenant-Governor in Council, suspend the advocate, with or without pay, for cause or incapacity.

If a judge suspends the advocate, the judge must do the following:

- appoint an acting advocate to hold office until the suspension has been dealt with
- table a report on the suspension with the Legislative Assembly within 10 days after the commencement of the next session of the Legislature

The suspension cannot continue beyond the end of the next session of the Legislature[4].

2.5 Acting Appointment

If the advocate has been suspended by the Lieutenant-Governor in Council, the Lieutenant-Governor in Council may appoint an acting advocate to hold office until the suspension has elapsed. An acting advocate, while in office, has the powers and duties of the advocate and shall be paid such salary or other remuneration and expenses as the Lieutenant-Governor in Council may fix.

The Lieutenant-Governor in Council may appoint an acting advocate for a term of up to one year if:

- the office of Advocate becomes vacant during a sitting of the Legislative Assembly, but the Legislative Assembly does not make a recommendation before the end of the sitting
- the office of Advocate becomes vacant while the Legislative Assembly is not sitting[5]

3. Power, Duties and Responsibilities

The Child, Youth and Senior Advocate, in carrying out their duties and functions, is empowered to receive and review matters relating to individuals or groups of children, youths, adults under protection, or seniors, either through petitions or on their own initiative. The advocate may also advocate, mediate, or employ another dispute resolution process on behalf of those they represent. If these processes do not result in a satisfactory outcome, the advocate can conduct an investigation.

Additionally, they may initiate or participate in a case conference, administrative review, mediation, or other process that deals with service provision decisions. The advocate is also authorized to inform the public about the needs and rights of these vulnerable groups and to make recommendations to the

[4] SNB 2007 c.C-2.7 s7
[5] SNB 2007 c.C-2.7 s10

government or other authorities about legislation, policies, and practices concerning services to or the rights of children, youths, adults under protection, and seniors[6].

The advocate does not have jurisdiction over and cannot act with respect to judges and functions of any court of the Provinces, and deliberations and proceedings of the Executive Committee or any committee of it. The advocate cannot investigate or review a matter that is being or has been investigate or reviewed by the Office of the Ombudsman or the New Brunswick Human Rights Commission[7].

A person may petition the Advocate, in writing or otherwise, to review, investigate or provide advocacy services. A committee of the Legislative Assembly may also refer any petition that is before it for consideration, or any matter relating to the petition, to the advocate to be investigated or reviewed and a report made[8].

If a child or youth in a facility, caregiver's home, group home, or other home or place in which the child or youth is placed under the *Criminal Code* (Canada), the *Youth Criminal Justice Act* (Canada), or an Act of the Legislature, asks to communicate with the advocate, the person in charge of the facility shall immediately forward the request to the advocate.[9]

If an adult under protection or a senior in a facility, caregiver's home, group home, or other home or place in which the adult or senior is placed under an Act of the Legislature, asks to communicate with the advocate, the person in charge of the facility shall immediately forward the request to the advocate.[10]

The advocate may refuse to or cease to review, investigate or provide advocacy services if[11]:

- it relates to a decision, recommendation, act or omission of which the petitioner has had knowledge for more than one year before contacting the advocate
- the petition is frivolous or trivial, vexatious or not made in good faith
- the petitioner does not have a sufficient personal interest in the subject matter
- the petition should not be investigated or continued based on public interest
- further investigation is unnecessary
- a law or procedure, provides an adequate remedy to the circumstances of the petition whether the petitioner has availed of this remedy or not

When conducting an investigation, the advocate is considered a commissioner under the *Inquiries Act.*[12] Before beginning an investigation or review, the advocate must inform the administrative head of any authority concerned. If, during an investigation or review, the advocate is satisfied that there is prima facie proof that a decision or recommendation made, an act done or omitted or a procedure

[6] SNB 2007 c.C-2.7 s13
[7] SNB 2007 c.C-2.7 s14
[8] SNB 2007 c.C-2.7 s15
[9] SNB 2007 c.C-2.7 s16
[10] SNB 2007 c.C-2.7 s16.1
[11] SNB 2007 c.C-2.7 s17
[12] SNB 2007 c.C-2.7 s18

used caused a grievance, the advocate must advise the administrative head of the authority or the employee, and must give the authority or employee an opportunity to be heard[13].

On the request of a member of the Executive Council in relation to an investigation or review, or in any case where an investigation or review relates to a recommendation made to a member of the Executive Council, the advocate must consult the member after making the investigation or review and before forming a final opinion.

If, during or after an investigation or review, the advocate is of the opinion that there is evidence of a breach of duty or misconduct by an authority or an employee of an authority, the advocate shall refer the matter to the administrative head of the authority[14].

In carrying out an investigation, the advocate may summon and examine under oath an employee of an authority who is able to prove information, the petitioner, and the any other person the advocate deems necessary, with the approval of the Attorney General. The rules for taking evidence in The Court of King's Bench of New Brunswick apply to evidence given by a person required to provide information, answer questions and produce documents or paper.[15]

If, after conducting an investigation or review of an authority's services, the advocate makes a recommendation to the authority, the advocate may request that the authority notify them within a specified period of the steps that the authority has taken or proposes to take to give effect to the recommendation. If, after this period, the authority does not act upon the recommendation or acts in a manner unsatisfactory to the advocate, they may send a report to the Lieutenant Governor in Council and, after doing so, may report to the Legislative Assembly.[16]

4. Reports

4.1 Annual report[17].

The Child, Youth and Senior Advocate must report annually to the Legislative Assembly concerning activities of the office in the previous year.

In the interest of children, youths, adults under protection and seniors, the public, an authority or any other person, the advocate may publish a report relating generally to the exercise and performance of the advocate's functions and duties or to a particular case investigated by the advocate, regardless of whether it was included in the annual report.

[13] SNB 2007 c.C-2.7 s19
[14] SNB 2007 c.C-2.7 s19
[15] SNB 2007 c.C-2.7.5 s20
[16] SNB 2007 c.C-2.7 s23
[17] SNB 2007 c.C-2. s25

5. Salary, Pension and Benefits Regulations[18]

The Child, Youth and Senior Advocate's salary is determined by the Lieutenant-Governor in Council within the deputy head pay plan, and is entitled to receive benefits similar to those received by deputy heads.

The pension plan converted to a shared risk plan in accordance with An Act Respecting Public Service Pensions applies to the advocate.

6. Staff (Number of Positions and Corresponding Titles)

The advocate may appoint such assistants and employees as the Advocate considers necessary for carrying out their functions and duties. The pension plan converted to a shared risk plan in accordance with *An Act Respecting Public Service Pensions* applies to all persons employed in the Office of the Child, Youth and Senior Advocate[19].

In 2017, the office was composed of 11 full-time employees and 4 part-time employees, including the advocate. Full-time positions include an Office Manager and Administrative Assistant, a Receptionist, a Clinical Director, a Director of NB Seniors Advocacy, a Deputy Advocate and Senior Legal Counsel, a Director of Systemic Advocacy, two Delegates, and a Director of Research, Education, and Outreach. Part-time positions include a Civic Services Intern, a Communications Officer, Civic Service Intern, and a Delegate.[20]

7. Bibliography

- *Child, Youth and Senior Advocate Act*, SNB 2007 c.C-2.7 as amended
- OCYSA. 2017. "Annual Report 2017-2018."

[18] SNB 2007 c.C-2.7 s4
[19] SNB 2007 c.C-2.7 s11
[20] OCYSA. 2017. "Annual Report 2017-2018."

Statutory Offices in Nova Scotia
Chief Electoral Officer

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Elections Act[1]

2. Appointment Process

2.1 Process

The officer is appointed by the Governor in Council, subject to the approval of the House of Assembly by majority vote[2].

2.2 Term of Office

The officer holds office for 10 years. They may be re-appointed for further terms[3].

2.3 Resignation

2.4 Removal and Suspension

The Governor in Council may suspend or remove the officer because for cause or incapacity, upon passing of a resolution by a vote of two thirds of the members voting at the House of Assembly[4].

Upon written advice of the President of the Executive Council and the Leader of the Opposition, the Governor in Council may, at any time the House of Assembly is not in session, suspend the Chief Electoral Officer for cause or incapacity. The suspension cannot continue in force beyond the end of the next session of the House of Assembly[5]

3. Power, Duties and Responsibilities

The Chief Electoral Officer is responsible for overseeing and managing all matters relating to the work, conduct, and administration of Elections Nova Scotia[6]. This involves examining statements, reports, forms, returns, and other information that is filed with the Chief Electoral Officer. The officer also has the authority to issue instructions to election officers in order to ensure that the Act is

[1] *Elections Act,* 2011 c.5 as amended
[2] 2011 c5 s7 (1)
[3] 2011 c5 s7 (3)
[4] 2011 c5 s7 (4)
[5] 2011 c5 s7 (5)
[6] 2011 c.5 s10 (1)

executed effectively and without bias. This may include providing guidance on how to conduct the election process in a non-partisan manner[7].

The officer is also responsible for establishing and maintaining registers of various individuals and groups, including electors, registered parties, registered electoral district associations, registered candidates, and candidates. The Chief Electoral Officer may prescribe the information that must be included in these registers to ensure that they are accurate and up-to-date[8].

The Chief Electoral Officer has several additional powers and responsibilities under the Act. The officer has the authority to assist registered parties, electoral district associations, candidates, and registered third parties in preparing statements and returns required under the Act. This includes helping them to comply with all aspects of the Act. They can also delegate authority to any election officer appointed under the Act to perform any duty or exercise any power as required[9].

Additionally, the officer may enter into agreements with municipalities, the Conseil Scolaire Acadien Provincial, and the Chief Electoral Officer of Canada to share lists of electors for electoral purposes. The officer may also enter into agreements with persons to obtain information to update the Register of Electors, with provisions for reimbursement of associated costs[10].

The Chief Electoral Officer has the authority to designate additional election officer positions and increase the number of election officers for an election. They may also train individuals and pay them in accordance with the tariff of fees and expenses both during and between elections. During elections, the officer may increase the number of polling stations and vary any prescribed forms to suit existing circumstances. The Chief Electoral Officer may also prepare and distribute guidelines and policies with respect to any matter in the Act, including codes of conduct for election officers and employees of Elections Nova Scotia[11].

In general, the Chief Electoral Officer has the power to generally adapt the provisions of the Act to meet existing circumstances and modify any provision of the Act to permit its use at a by-election. In addition, the Chief Electoral Officer may seek the advice of the Election Commission, as well as advisory committees and panels of experts established from time to time[12].

The officer is responsible for supervising and directing the activities of the Assistant Chief Electoral Officer, who is appointed by the Governor in Council and has the same powers and duties as the Chief Electoral Office in their absence[13]. The Chief Electoral Officer is also responsible for appointing returning officers for each electoral districts and for establishing the qualifications for retuning officers[14].

[7] 2011 c.5 s4
[8] 2011 c.5 s4
[9] 2011 c.5 s5
[10] 2011 c.5 s5
[11] 2011 c.5 s5
[12] 2011 c.5 s5
[13] 2011 c. s11-12
[14] 2011 c.5 s22

The Chief Electoral Office has the powers, authorities, rights, privileges, and immunities of a deputy minister under various laws, including the *Civil Service Act and the Public Service Act*, with the exception of any specific powers related to managing a particular department or program.

Additionally, the Chief Electoral Officer has the authority to develop and implement public communication, education, and information programs designed to promote greater awareness and understanding of the electoral process. These programs may target specific individuals or groups who may encounter challenges when exercising their democratic rights, such as new voters. The officer may also develop educational material, as defined in the *Education Act*, for distribution to students who have reached voting age or will soon do so[15].

When directed by a majority vote of the House of Assembly, the Chief Electoral Officer may carry out studies, including studies on voting procedures, voting by persons with disabilities, and improvements in electoral finances. In carrying out these studies, if necessary, the officer may direct surveys, research, and reports; establish advisory committees; and hold conferences[16].

4. Reports

4.1 Annual report

The Chief Electoral Officer must provide the Public Accounts Committee with annual business plans and performance reports of Elections Nova Scotia. These plans and reports are considered public documents[17].

The Chief Electoral Officer must report at least annually to the House of Assembly, through the Speaker, on the administration of Elections Nova Scotia and include any recommendations made. These reports are tabled by the Speaker if the House is sitting and when it is not, in the next ensuing sitting[18].

4.2 Special reports

As soon as possible after the election, the Chief Electoral Officer shall prepare a detailed report of the conduct of the election that includes[19]:

- the results by candidate for each polling station in the electoral district
- the total cost of the election
- other information as determined by the Chief Electoral Officer
- amendments to this Act or any related enactment recommended by the Chief Electoral Officer

[15] 2011 c.5 s21
[16] 2011 c.5 s21
[17] 2011 c.5 s20
[18] 2011 c.5 s163
[19] 2011 c.5 s163

5. Salary, Pension and Benefits Regulations[20]

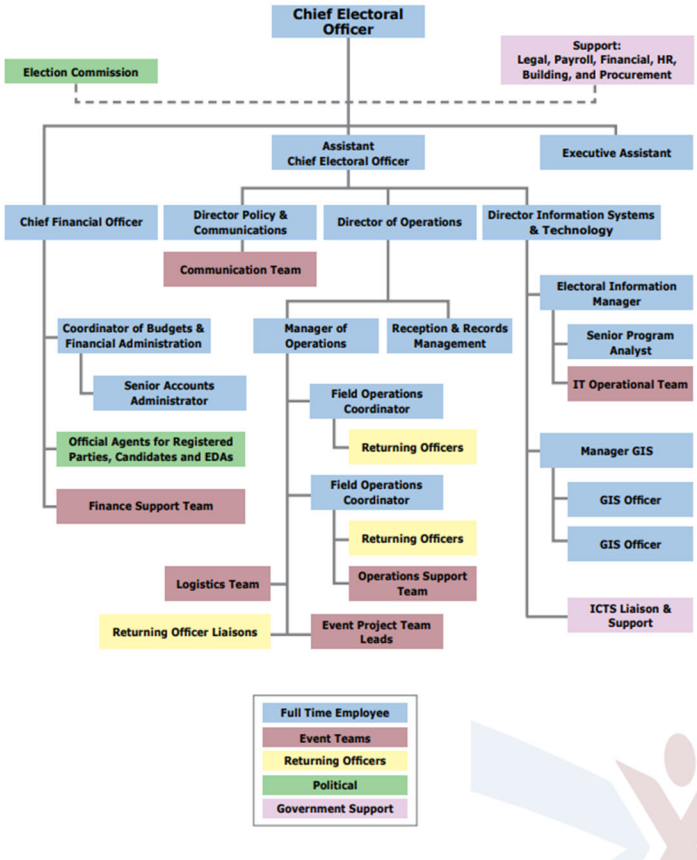
The Chief Electoral Officer must be paid remuneration within, but at or above the mid-point of, the annual salary rates for deputy ministers set out in the pay plan for deputy ministers together with any other remuneration payable to deputy ministers, which remuneration must be adjusted yearly by a percentage equal to the average increase for the remuneration of the deputy ministers.

The salary of the Chief Electoral Officer cannot be reduced except on the passing by the House of Assembly of a resolution carried by a vote of two thirds of the members voting.

The officer is also entitled to all rights, privileges and benefits, including pension benefits, to which deputy ministers are entitled. They are considered to be an employee within the meaning of the *Public Service Superannuation Act*.

6. Staff (Number of Positions and Corresponding Titles)

The officer can appoint any assistants, employees, and experts they deem necessary to carry out their duties under the Act. Assistants and employees are considered members of the civil service[21].



[20] 2011 c5 s8
[21] 2011 c5 s15

7. Compensation (employees earning $100,000+)

The most current approval, by the Governor in Council, fixed the officer's salary as Step 30 in the Management Compensation Plan (in 2008, it was the equivalent to $102,011.37). The officer was also eligible employee for consideration to receive annual amounts payable under the the MCP Pay for Performance Policy and for any applicable economic adjustments provided to non-bargaining unit civil servants[22].

8. Bibliography

- Government of Nova Scotia. "Order in Council Record (OIC 2008-408)." (August 6, 2008).
- Office of the Chief Electoral Officer. 2021. "Annual Report 2021-2022."
- *The Elections Act,* 2011 c.5 as amended

[22] Government of Nova Scotia. "Order in Council Record (OIC 2008-408)." (August 6, 2008).

Statutory Offices in Nova Scotia
Ombudsman (Citizens' Representative)

1. Legislation

The commissioner has responsibilities under two provincial statutes:

- The Ombudsman Act[1]
- The Public Interest Disclosure of Wrongdoing Act[2]

2. Appointment Process

2.1 Process

The officer is appointed by the Governor in Council, on resolution of the House of Assembly[3].

2.2 Term of Office

The officer holds office for 5 years. They may be re-appointed for a second term[4].

2.3 Resignation

The officer may resign in writing addressed to the Speaker of the House of Assembly, or, in the absence of the Speaker, to the Chief Clerk of the House of Assembly[5].

2.4 Removal and Suspension[6]

The Governor in Council, on recommendation of the House of Assembly, may suspend or remove the officer because for cause or incapacity.

When the House of Assembly is not sitting, a judge of the Trial Division of the Supreme Court may suspend the Ombudsman from their office for cause or incapacity upon an application by the Governor in Council. The judge may then appoint a person as an acting Ombudsman to hold office until the suspension has been dealt with by the House, and table a report of this suspension within ten days of the beginning of the next House session. A suspension that occurs while the House is not in session cannot continue beyond the end of the next session of the House.

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[1] *The Ombudsman Act,* R.S. c327
[2] *The Public Interest Disclosure of Wrongdoing Act,* 2010 c.42
[3] R.S., c. 327 s3 (2)
[4] R.S., c. 327 s4 (1)
[5] R.S., c. 327 s4 (2)
[6] R.S., c. 327 s5

3. Power, Duties and Responsibilities

Under the Ombudsman Act:

The Ombudsman may not be a member of the House and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office without prior approval in each particular case by the House or by the Governor in Council when the House is not in session[7].

For the purposes of this Act, the Ombudsman is a commissioner under the *Public Inquires Act*.[8]

The Ombudsman may investigate Nova Scotia Provincial Government Departments, Nova Scotia Government Agencies, Boards, and Commissions, and all Municipalities within Nova Scotia. The Ombudsman cannot investigate complaints about Federal government departments or about the private sector, or private citizens. The Ombudsman is also unable to investigate the decisions of judges or elected officials.

A person may apply by written complaint to the Ombudsman to investigate a grievance[9]. Additionally, any letters addressed to the Ombudsman, written by a person in custody[10] must be forwarded immediately, unopened, to the Ombudsman[11].

Once a complaints is received, the Office of the Ombudsman assess the complaint to determine if the ombudsman has the authority to proceed with an administrative review or investigation, including whether a more appropriate avenue exists. In some cases, if the complaint is found to not be under the jurisdiction of the ombudsman, the complainant may be referred to another agency, depending on whether the complaint is related to a self-regulating body, a federal agency, an elected official's decision, a court or tribunal, or a private corporation or individual[12].

All inquiries and complaints are assessed to determine whether they fall under one of two acts, *the Ombudsman Act* or the *Public Interest Disclosure of Wrongdoing*.[13]

If it is determined that a complaint requires further review it is assigned to an Ombudsman Representative, who will conduct an Administrative Review. Most complaints are resolved through this process. Complaints which cannot be resolved through Administrative Reviews may be subject to a Formal Investigation. Investigation do not have specific timelines for resolution. Formal Investigations, in particular, may take several weeks to several months[14].

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[7] R.S., c. 327 s3 (3)
[8] R.S., c. 327 s9
[9] R.S., c. 327 s12 (1)
[10] Custody is understood as any person who is on a charge or after a conviction or is an inmate or a patient of a mental hospital.
[11] R.S., c. 327 s12 (4)
[12] The Office of the Ombudsman. "Annual Report 2021-2022."
[13] The Office of the Ombudsman. "Annual Report 2021-2022."
[14] The Office of the Ombudsman. "Annual Report 2021-2022."

When, upon investigation, the ombudsman is of the opinion that a grievance exists, the ombudsman must report their opinion, reasons and any recommendations to the minister and the chief officer of the department or municipal unit concerned. After making a recommendation, the ombudsman may request the department or municipal unit to notify them within a specified time of the steps proposed to follow the recommendation[15].

If the department or municipal unit decides not to act upon the ombudsman's recommendations or if the ombudsman believes the steps proposed are unsatisfactory, the ombudsman may send a copy of their report and recommendation to the Governor in Council or the council of a municipal unit, and prepare a report for the House[16].

Office records are exempt from Freedom of Information and Protection of Privacy requests and are inadmissible in court. However, the process of investigation may require disclosure of the complainant's information to an agency. Ombudsman Representatives are also required to refer allegations of child abuse, or instances where a child/youth may be in need of protection to Child Welfare Services.

A committee of the House may refer any petition that is before the committee for consideration or any matter relating to such petition to the Ombudsman for investigation and report[17].

The ombudsman may refuse or cease an investigation if[18]:

- an adequate remedy or right of appeal already exists
- the complaint is trivial, frivolous, vexatious or not made in good faith
- further investigation is unnecessary
- the complaint is related to a decision, recommendation, act or omission of which the complainant has known for one year
- the complainant does not have a sufficient personal interest in the subject-matter of the grievance
- the ombudsman believes that is not in the public interest to investigate a complaint

The Office of the Ombudsman staff also sit on the following committees: Diversity Roundtable, Pride Nova Scotia Government Employee Network, Nova Scotia Disability Employee Network, and the French Language Services Committee[19].

Under the Public Interest Disclosure of Wrongdoing Act:

The *Public Interest Disclosure of Wrongdoing Act* provides public servants with a method to disclose allegations of wrongdoing regarding the provincial government. While the PIDWA covers provincial

[15] R.S., c. 327 s20
[16] R.S., c. 327 s20
[17] R.S., c. 327 s12 (2)
[18] R.S., c. 327 s14
[19] The Office of the Ombudsman. "Annual Report 2021-2022."

government employees only, disclosures regarding municipal government may be reviewed and addressed under the *Ombudsman Act*. All disclosures must be received in writing.[20]

After the *Public Interest Disclosure of Wrongdoing Act* was amended in 2016, the definition of government bodies which fell under was expanded to include public sector agencies, board, commissions, and educational entities.

Under the Act, wrongdoing is defined as:

- breaking the law or regulations when related to the official activity of an employee as an employee of government or a public sector body, or any public funds or assets
- misusing or mismanaging public funds or assets
- acting or failing to act in a way that creates substantial and specific danger to the life, health or safety of people or the environment
- directing or advising someone to commit a wrongdoing

The ombudsman may refuse or cease an investigation if[21]:

- a procedure under another Act would be a more appropriate remedy
- the disclosure is trivial, frivolous, vexatious or not made in good faith
- further investigation is unnecessary
- the complaint is related to a decision, recommendation, act or omission of which the complainant has known for one year
- the disclosure does not contain sufficient information
- there is another valid reason for not investigating

Once the investigation is complete, the ombudsman must prepare a report containing their findings and any recommendations related to the investigation of the disclosure of wrongdoing[22]

4. Reports

4.1 Annual report

The advocate reports annually to the House on the exercise of their functions under the Ombudsman Act and the Public Interest Disclosure of Wrongdoing Act[23].

[20] 2010 c.42 s7
[21] 2010 c.42 s23
[22] 2010 c.42 s26
[23] R.S., c. 327 s24 (1); 2010 c.42 s28

4.2 Special reports

The ombudsman, in the public interest or in the interest of an individual, department or municipal unit, may publish reports relating to their general duties and functions or relating to an investigation, regardless of whether these matters were included in the annual report[24].

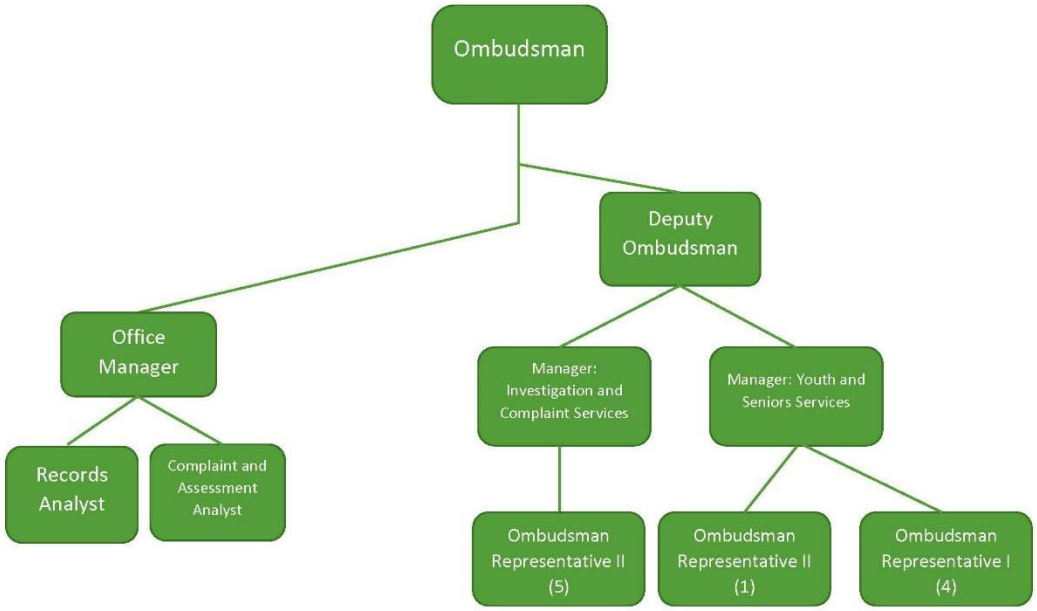
5. Salary, Pension and Benefits Regulations

The ombudsman's salary is fixed by the Governor in Council[25].

6. Staff (Number of Positions and Corresponding Titles)

The ombudsman, subject to the approval of the Governor in Council, can appoint any assistants and employees they deem necessary to carry out their duties under the Act. These assistants and employees are considered members of the public service of the province[26].

The Office has 17 full-time positions, including that of Ombudsman[27].



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- *The Public Interest Disclosure of Wrongdoing Act,* 2010 c.42

[24] R.S., c. 327 s24 (2); 2010 c.42 s28
[25] R.S., c. 327 s3 (4)
[26] R.S., c. 327 s7
[27] The Office of the Ombudsman. "Annual Report 2021-2022."

Statutory Offices in Nunavut
Information and Privacy Commissioner

1. Legislation

The commissioner has responsibilities under one statute:

- The Access to Information and Protection of Privacy Act[1]

2. Appointment Process

2.1 Process

The commissioner is appointed by the Commissioner (equivalent to the Lieutenant Governor), on the recommendation of the Legislative Assembly. [2]

2.2 Term of Office

The commissioner must be appointed for a term of five years and are eligible for reappointment. A person holding office continues to do so after the expiry of their term, until reappointed, or until a successor is appointed.

When the Information and Privacy Commissioner continues to hold office following the expiry of their office, the Commissioner, on the recommendation of the Management and Service Board, may remove the commissioner without cause. [3]

2.3 Resignation

The Information and Privacy Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Nunavut, by notifying the Clerk of the Legislative Assembly.[4]

2.4 Removal and Suspension

The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, remove the Information and Privacy Commissioner from office or suspend them

The Commissioner, on the recommendation of the Management and Services Board, may suspend the Information and Privacy Commissioner for cause or incapacity.

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[1] *Access to Information and Protection of Privacy Act,* CSNu c.A-20 as amended
[2] CSNu c.A-20 s61
[3] CSNu c.A-20 s61
[4] CSNu c.A-20 s62

A suspension may be ended by the Commissioner.[5]

2.5 Acting Appointment

The Commissioner, on the recommendation of the Management and Services Board, may appoint an acting Information and Privacy Commissioner when

- the Information and Privacy Commissioner is temporarily absent because of illness or for another reason
- the office is vacant
- the commissioner is suspended

An acting commissioner holds office until a person is appointed, the suspension ends, or the commissioner returns to office.[6]

3. Power, Duties and Responsibilities

The commissioner is primarily responsible for engaging in or commission research into matters affecting the carrying out of the purposes of the Act, receive representations about the operation of the Act, and offer comment on the implications for privacy protection of proposed legislative schemes or government programs.[7]

A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Information and Privacy Commissioner to review any decision, act or failure to act of the head that relates to that request. A request for a review of a decision of the head of a public body must be delivered in writing to the commissioner within 30 days after the person asking for the review is given notice of the decision.[8]

An individual may also request the Information and Privacy Commissioner to review whether a public body has collected, used or disclosed the individual's personal information in contravention of the Act. The commissioner may also initiate a review if the commissioner has reason to believe that a public body has or may have collected, used or disclosed personal information in contravention of the Act.[9]

On receiving a request for a review, the commissioner must give a copy to the head of the public body concerned and to the applicant.[10]

The Information and Privacy Commissioner may refuse to conduct a review or may discontinue a review if the request for a review is frivolous or vexatious; not made in good faith; concerns a trivial

[5] CSNu c.A-20 s62
[6] CSNu c.A-20 s62
[7] CSNu c.A-20 s67
[8] CSNu c.A-20 s28
[9] CSNu c.A-20 s49.1
[10] CSNu c.A-20 s30

matter; or amounts to an abuse of the right to access.[11] Except when a review is not conducted or is discontinued, a review must be completed within 180 days after the receipt by the commissioner.

On completing a review, the commissioner must prepare a written report setting out the recommendations with respect to the matter and the reasons for the recommendations; and send a copy of the report to the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for a review.[12]

Within 30 days after receiving the report of the Information and Privacy Commissioner, or 90 days if the review concerned used of personal information[13], the head of the public body concerned must make a decision to follow the recommendation or make any other decision the head considers appropriate; and give written notice of the decision to the commissioner, the person who asked for the review and any other person given a copy of the request.[14]

If the Information and Privacy Commissioner receives a report under about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the commissioner may recommend the public body to:

- take steps specified by the commission relating to notifying those individuals about the breach of privacy
- take steps specified by commissioner to limit the consequences of the breach of privacy
- take steps specified by the commissioner to prevent the occurrence of further breaches of privacy with respect to personal information under the public body's control, including, without limitation, implementing or increasing security safeguards within the public body.[15]

4. Reports

4.1 Annual report

The Information and Privacy Commissioner must, within six months after the end of each fiscal year, submit to the Speaker of the Legislative Assembly an assessment of the effectiveness of this Act and a report on the activities of the Information and Privacy Commissioner under the Act during the fiscal year, including information concerning any instances where recommendations made by the commissioner.

The Speaker must, at the first opportunity, submit a copy of the annual report to the Legislative Assembly.[16]

[11] CSNu c.A-20 s31
[12] CSNu c.A-20 s35
[13] CSNu c.A-20 s49.6
[14] CSNu c.A-20 s36
[15] CSNu c.A-20 s49.12
[16] CSNu c.A-20 s68

5. Salary, Pension and Benefits Regulations

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may appoint, following a competition, such staff as are necessary. They may also appoint staff without competition, with the approval of the Management and Services Board. Appointed staff are considered members of the public service as defined by the *Public Service Act*.[17]

7. Bibliography

- *Access to Information and Protection of Privacy Act,* CSNu c.A-20 as amended

[17] CSNu c.A-20 s64.1

Statutory Offices in Nunavut
Languages Commissioner

1. Legislation

The commissioner has responsibilities under one statute:

- The Official Languages Act[1]

2. Appointment Process

2.1 Process

The commissioner is appointed by the Commissioner (equivalent to the Lieutenant Governor), on the recommendation of the Legislative Assembly.

To be eligible for appointment as the Languages Commissioner, an individual must demonstrate an interest in and willingness to respond to the concerns, experiences and perspectives of individuals from or representatives of all three Official Language communities; and the specific historic, social and cultural contexts in which languages and linguistic rights are to be advanced under the Act.

The Legislative Assembly may establish additional qualifications or prerequisites to be considered when appointing the Languages Commissioner. [2]

2.2 Term of Office

The commissioner must be appointed for a term of five years. A person holding office continues to do so after the expiry of their term, until reappointed, or until a successor is appointed.

When the Languages Commissioner continues to hold office following the expiry of their office, the Commissioner, on the recommendation of the Management and Service Board, may remove the commissioner without cause. [3]

2.3 Resignation

The Language Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Nunavut, by notifying the Clerk of the Legislative Assembly.[4]

[1] *Official Languages Act,* CSNu c.O-20 as amended

[2] CSNu c.O-20 s16

[3] CSNu c.O-20 s16

[4] CSNu c.O-20 s17

2.4 Removal and Suspension

The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend or remove the Languages Commissioner from office.
The Commissioner, on the recommendation of the Management and Services Board, may suspend the Languages Commissioner for cause or incapacity.[5]

2.5 Acting Appointment

The Commissioner, on the recommendation of the Management and Services Board, may appoint an acting Languages Commissioner when

- the Languages Commissioner is temporarily absent because of illness or for another reason
- the office is vacant
- the commissioner is suspended

An acting commissioner holds office until a person is appointed, the suspension ends, or the commissioner returns to office.[6]

The Commissioner, on the recommendation of the Management and Services Board, may appoint a special Languages Commissioner to act in the place of the Languages Commissioner in respect of a particular matter if the Languages Commissioner advises the Management and Services Board that he or she should not act in respect of that particular matter due to a conflict of interest or other reasonable cause; or the Legislative Assembly directs, or the Nunavut Court of Justice orders, that a special Languages Commissioner should be appointed.

A special Languages Commissioner holds office during good behaviour until the conclusion of the matter in respect of which he or she has been appointed.[7]

3. Power, Duties and Responsibilities

It is the duty of the Languages Commissioner to take all actions and measures within the authority of the Languages Commissioner to ensure that Official Language rights, status and privileges are recognized, and the duties respecting the Official Languages are performed. Duties include:

- investigating whether the requirements of this or any other Act, regulation, policy or procedure concerning the Official Languages have been appropriately performed, and providing reports about the results of the investigation and recommendations
- developing mediation and other methods consistent with Inuit Qaujimajatuqangit, and using these methods when appropriate to resolve concerns about the performance of legislative, policy or procedural language obligations

[5] CSNu c.O-20 s17

[6] CSNu c.O-20 s18

[7] CSNu c.O-20 s19

- commenting on the implementation activities and performance of territorial institutions and municipalities, and on their compliance with the Act[8]

The following general principles and concepts of Inuit Qaujimajatuqangit apply in respect of the exercise of the powers and performance of the duties of the Languages Commissioner:

- Inuuqatigiitsiarniq (respecting others, relationships and caring for people)
- Tunnganarniq (fostering good spirit by being open, welcoming and inclusive)
- Pijitsirniq (serving and providing for family or community, or both)
- Aajiiqatigiinniq (decision-making through discussion and consensus)
- Piliriqatigiinniq or Ikajuqtigiinniq (working together for a common cause)
- Qanuqtuurniq (being innovative and resourceful)[9]

A person may apply to the Languages Commissioner orally, or in another form that the commissioner considers to be satisfactory, for the investigation of concerns that the status of an Official Language has not been recognized. On the Languages Commissioner's own initiative, or at the request of a territorial institution, a municipality or a member or committee of the Legislative Assembly, the commissioner may also commence an investigation.[10]

Before starting an investigation, the commissioner must notify the Minister, the administrative head of the territorial institution or municipality affected, and consult with the administrative head of the territorial institution or municipality affected.

The Languages Commissioner may also recommend or use mediation and other means consistent with Inuit Qaujimajatuqangit in attempting to resolve concerns identified in an application.[11]

The commissioner may refuse or cease an investigation if:

- the concerns identified primarily affect an individual other than the applicant, and the directly affected individual does not wish to proceed
- all or part of the concerns identified in the application or request may be dealt with under another Act or using another available procedure
- the application or request is frivolous, vexatious, or not made in good faith
- the applicant or party requesting an investigation has withdrawn the application
- the concerns identified in the application or request have been resolved[12]

When carrying out an investigation, the commissioner may summon and examine, on oath or affirmation, a person who in the opinion of the advocate is able to give information relating to a

[8] CSNu c.O-20 s22

[9] CSNu c.O-20 s22.1

[10] CSNu c.O-20 s26

[11] CSNu c.O-20 s30

[12] CSNu c.O-20 s28

matter being investigated.[13] In exercising these duties, the commissioner has the same powers as are vested in a court of law in civil cases.

If, after carrying out an investigation, the Languages Commissioner is of the opinion that a matter should be referred to a territorial institution or municipality for consideration, the commissioner must prepare and submit a report and the reasons for it to the administrative head of the territorial institution or municipality in question.

If the territorial institution is a department of the Government of Nunavut or a public agency, the Languages Commissioner must submit a copy of the report and reasons to the Premier and to the Minister responsible for the department or public agency.

In a report the commissioner may make recommendations, and may request that the administrative head of the territorial institution or municipality reply to these within a specified time indicating the action that has been or proposed to follow the recommendations; or if no action has been proposed, the reasons for not following that recommendation.[14]

If no action is taken that the Languages Commissioner considers adequate within a reasonable time after a report is submitted, the commissioner may prepare and submit an investigation report to the Speaker of the Legislative Assembly, who must submit the Legislative Assembly as soon as practicable.[15]

4. Reports

4.1 Annual report

The Languages Commissioner shall, within six months after the end of each fiscal year, prepare and submit to the Speaker of the Legislative Assembly an annual report of the conduct of the office and the discharge of the duties of the Languages Commissioner during the preceding year, including:

- the appointment and activities of an acting or special Languages Commissioner during the preceding fiscal year
- a description of the number and type of applications and requests made and under the *Inuit Language Protection Act*, the status or resolution of the applications or requests that were active during the preceding fiscal year and information about any instances where recommendations made by the Languages Commissioner after an investigation have not been followed
- an assessment of the effectiveness of the enforcement powers exercised and duties performed by the Languages Commissioner, with any recommended changes that the Languages Commissioner considers necessary or desirable to improve compliance with the Act or the *Inuit Language Protection Act*.

[13] CSNu c.O-20 s31

[14] CSNu c.O-20 s32

[15] CSNu c.O-20 s32.1

The Speaker must submit the Legislative Assembly as soon as is reasonably practicable.[16]

5. Salary, Pension and Benefits Regulations

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may appoint, following a competition, such staff as are necessary. They may also appoint staff without competition, with the approval of the Management and Services Board. Appointed staff are considered members of the public service as defined by the *Public Service Act*.[17]

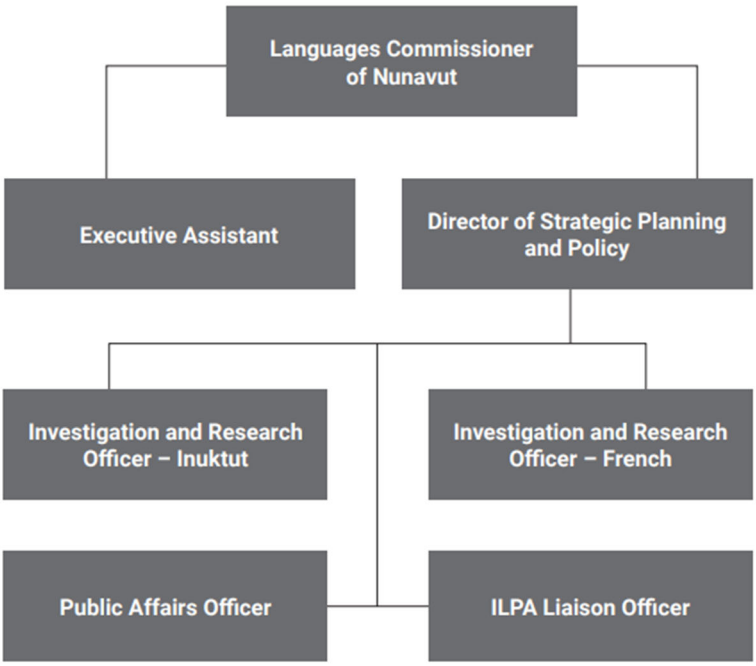
The Languages Commissioner may engage or retain the services of counsel, experts and other persons that the Languages Commissioner considers necessary to the exercise of the powers and performance of the duties of the Languages Commissioner in all the Official Languages.

The Languages Commissioner may consult with or engage Elders for assistance with dispute resolution, or for the purposes relating to Inuit Qaujimajatuqangit in the exercise of the powers and performance of the duties of the Languages Commissioner that the Languages Commissioner considers appropriate.[18]

[16] CSNu c.O-20 s24

[17] CSNu c.O-20 s20.1

[18] CSNu c.O-20 s21



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Statutory Offices in Northwest Territories
Integrity Commissioner

1. Legislation

The commissioner has responsibilities under one statute:

- The Legislative Assembly and Executive Council Act[1]

2. Appointment Process[2]

2.1 Process

The Integrity Commissioner is appointed by the Commissioner (equivalent to the Lieutenant Governor), on the recommendation of the Legislative Assembly.

2.2 Term of Office

The commissioner holds office for four years and may be reappointed for subsequent terms. A person continues to hold office after the expiry of his or her term of office until the person is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs.

2.3 Resignation

The commissioner may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly[3].

2.4 Removal and Suspension

The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend the Integrity Commissioner or remove them from office.

If the Legislative Assembly is not sitting, the Speaker, on the recommendation of the Board of Management, may suspend the Integrity Commissioner for cause or incapacity, and the suspension remains in effect until the conclusion of the next sitting of the Legislative Assembly, the Legislative Assembly revokes the suspension or removes the Integrity Commissioner from office, whichever occurs first[4].

[1] *Legislative Assembly and Executive Council Act,* SNWT 1999 c.22 as amended
[2] SNWT 1999 c.22 s91
[3] SNWT 1999 c.22 s92
[4] SNWT 1999 c.22 s92

2.5 Acting Appointment

If the Integrity Commissioner is suspended or removed, the Commissioner, on the recommendation of the Legislative Assembly, appoints an acting Integrity Commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Integrity Commissioner.

If the Integrity Commissioner is suspended or removed on the recommendation of the Board of Management, the Speaker, on the recommendation of the Board of Management, appoints an acting Integrity Commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Integrity Commissioner.

When, for any reason, the Integrity Commissioner determines that they should not act in respect of any particular matter, the Speaker, on the recommendation of the Board of Management, may appoint a special Integrity Commissioner to act in the place of the Integrity Commissioner. A special Integrity Commissioner holds office until the conclusion of the matter.[5]

3. Power, Duties and Responsibilities

A member must file a disclosure report with the Integrity Commissioner where a contract is held or entered into between the Government of the Northwest Territories or a department and an entity for which the member is a beneficial owner; or an entity for which an entity is a beneficial owner singly or collectively with the member[6].

A disclosure report must indicate the nature and value of the contract and the circumstances under which the contract was entered into; and be filed:

- within 90 days after the commencement of the first sitting of the Legislative Assembly after the election of the member to the Legislative Assembly, where the member holds the contract at the commencement of that sitting
- within 30 days after the entering into of a contract, where the contract is entered into after the commencement of the sitting[7]

After filing a disclosure statement, a member shall, as soon as is reasonably practicable, meet with the Integrity Commissioner to ensure that adequate disclosure has been made and to obtain advice from the Integrity Commissioner with respect to the member's obligations.[8] The commissioner then must prepare a public disclosure statement containing all information provided by a member[9].

The commissioner must prepare and publish on a website maintained by the Legislative Assembly a register containing:

[5] SNWT 1999 c.22 s94
[6] SNWT 1999 c.22 s79
[7] SNWT 1999 c.22 s80
[8] SNWT 1999 c.22 s88
[9] SNWT 1999 c.22 s89

- public disclosure statements and supplemental public disclosure statements prepared under this section
- annual reports
- any reports of late filing or non-filing of disclosure statements
- any reports prepared under the Act
- any other information the commissioner deems necessary[10]

If a member does not file a disclosure statement or supplementary disclosure statement on time, the Integrity Commissioner may impose a fine.[11]

The commissioner is also responsible for ensuring that the Speaker and Ministers comply with the requirement of not engaging in other employment or carry on a business, by approving the provisions of the trust and the list of trustees[12].

The Speaker or the Premier may request the Integrity Commissioner to give written advice and recommendations on any matter respecting conflicts of interest or the administration of the Act or the Code of Conduct. Information related to a request made by the Speaker or the Premier, and the advice and recommendations of the Integrity Commissioner, are confidential, but may be disclosed by or with the written consent of the Speaker or Premier.[13]

A member or a former member may also request the Integrity Commissioner to give written advice and recommendations on any matter respecting obligations of the member or former member under the Act or the Code of Conduct. A member or former member who makes such a request, must provide the commissioner with a written statement of the materials facts. In responding to a request, the commissioner may make any inquiries they deem appropriate. Information provided by a member or former member and any advice and recommendations of the Integrity Commissioner are confidential, but may be disclosed by the member or former member.[14]

When a member or former member has received and complied with the advice and recommendations of the Integrity Commissioner with respect to obligations under the Act or the Code of Conduct, no proceeding or prosecution shall be taken against the member or former member.[15]

Any member or any other person who believes on reasonable grounds that a member or former member has contravened the Act or the Code of Conduct may file a written complaint with the Integrity Commissioner. A complaint about a former member may only be filed, within one year after the day the contravention is alleged to have been committed. A complaint about a member may only be filed if the alleged contravention occurred during the member's present term or within two years, if it occurred during a previous term[16].

[10] SNWT 1999 c.22 s89
[11] SNWT 1999 c.22 s89.1
[12] SNWT 1999 c.22 s82
[13] SNWT 1999 c.22 s97
[14] SNWT 1999 c.22 s98
[15] SNWT 1999 c.22 s98
[16] SNWT 1999 c.22 s100

The Integrity Commissioner shall, after giving reasonable notice to the member or former member complained of and the complainant, conduct an investigation into the complaint. During the conduct of an investigation, the Integrity Commissioner may refer to any disclosure report, disclosure statement or supplemental disclosure statement, and has the powers of a Board under the *Public Inquiries Act*. The member or former member complained of cannot refuse to give evidence at the investigation[17].

After conducting an investigation, the Integrity Commissioner may:

- dismiss the complaint, if the Integrity Commissioner determines that the complaint is frivolous or vexatious or not made in good faith, there are insufficient grounds to warrant an inquiry, is against public interest, the member took all reasonable measures to prevent the contravention, or it is a minor contravention
- refer the matter to an alternative dispute resolution process
- find the member or former member to be guilty and recommend to the Legislative Assembly one or more punishments
- direct that an inquiry be held before a Sole Adjudicator[18]

4. Reports

4.1 Annual report[19]

No later than July 1 in each year, the Integrity Commissioner shall submit to the Speaker an annual report consisting of:

- a statement identifying any member who has filed a disclosure statement or supplemental disclosure statement after the deadline or who failed to file these disclosures before the annual report is submitted
- a statement identifying any member or former member who is authorized to accept a contract by the Integrity Commissioner
- a statement identifying any member who obtains an extension of time to file a disclosure statement
- a statement identifying a member or former member who is the subject of a complaint dismissed by the Integrity Commissioner
- a general summary of activities during the preceding year
- a statement identifying any recommended changes to the Act

The Speaker must submit the report to the Legislative Assembly as soon as practicable.

[17] SNWT 1999 c.22 s101
[18] SNWT 1999 c.22 s102
[19] SNWT 1999 c.22 s99

4.2 Special report[20]

The Integrity Commissioner may, at any time, submit to the Speaker a report identifying a member who has:

- filed a disclosure statement or supplemental disclosure statement after the expiry of the time permitted for such filing
- failed to file a disclosure statement or supplemental disclosure statement before the report is submitted to the Speaker
- been fined by the Integrity Commissioner

The Speaker must submit the report to the Legislative Assembly as soon as practicable.

After conducting an investigation, the commissioner must prepare a report of:

- what decision was made regarding the investigation
- the reason for this decision
- what punishment is recommended

The report must be submitted to the Speaker and a copy must be delivered to the member or former member, the complainant, each other member, and the Clerk. The Speaker must submit a copy of the report to the Legislative Assembly as soon as possible[21].

5. Salary, Pension and Benefits Regulations

The commissioner is paid an honorarium, determined by the Board of Management.[22]

6. Bibliography

- *Legislative Assembly and Executive Council Act,* SNWT 1999 c.22 as amended

[20] SNWT 1999 c.22 s99
[21] SNWT 1999 c.22 s102
[22] SNWT 1999 c.22 s94.1

Statutory Offices in Northwest Territories
Ombud

1. Legislation

The Ombud has responsibilities under one statute:

- The Ombud Act[1]

2. Appointment Process

2.1 Process

The Integrity Commissioner is appointed by the Commissioner (equivalent to the Lieutenant Governor), on the recommendation of the Legislative Assembly[2].

2.2 Term of Office

The Ombud holds office for five years and may be reappointed for subsequent terms. A person continues to hold officer after the expiry of his or her term of office until the person is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs[3].

2.3 Resignation

The Ombud may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly[4].

2.4 Removal and Suspension

The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend the Ombud with or without remuneration or remove the Ombud from office.

If the Legislative Assembly is not sitting, the Speaker, on the recommendation of the Board of Management, may suspend the Ombud for cause or incapacity, and the suspension remains in effect until the conclusion of the next sitting of the Legislative Assembly, the Legislative Assembly revokes the suspension or removes the Ombud from office, whichever occurs first[5].

[1] *Ombud Act,* SNWT 2018 c.19 as amended
[2] SNWT 2018 c.19 s4
[3] SNWT 2018 c.19 s5
[4] SNWT 2018 c.19 s6
[5] SNWT 2018 c.19 s6

2.5 Acting Appointment

If the Ombud is suspended or removed, the Commissioner, on the recommendation of the Legislative Assembly, appoints an acting Ombud to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Integrity Commissioner.

If the Ombud is suspended or removed on the recommendation of the Board of Management, the Speaker, on the recommendation of the Board of Management, appoints an acting Ombud to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Ombud

If the Ombud has resigned or is temporarily absent or unable to perform the duties of the Ombud, the Speaker, on the recommendation of the Board of Management, may appoint an acting Ombud to hold office until the Ombud is able to or is no longer absent, or a person is appointed as Ombud, whichever occurs first.[6]

When, for any reason, the Ombud determines that they should not act in respect of any particular matter, the Speaker, on the recommendation of the Board of Management, may appoint a special Ombud to act in the place of the Integrity Commissioner. A special Ombud holds office until the conclusion of the matter.[7]

3. Power, Duties and Responsibilities

The mandate of the Ombud is to investigate any decision, recommendation, act, or omission done by an authority, with respect to a matter of administration, that aggrieves any person in their personal capacity, or by any officer, employee or member of any authority in the exercise of any power or duty conferred on that officer, employee or member by any enactment.

The Ombud can begin any investigation on their own initiative[8]. The Legislative Assembly or a Standing Committee may also at any time refer a matter to the Ombud for investigation and report, and the Ombud may investigate the matter, and report back to the Legislative Assembly or Standing Committee as the Ombud considers appropriate[9].

A municipality or an Indigenous government may at any time refer a matter relating to the administration of that body, to the Ombud for investigation and report, and the Ombud may investigate the matter referred; and report back to the municipality or Indigenous government as the Ombud considers appropriate. The costs and expenses incurred by the Ombud relating to an investigation and report must be paid by the municipality or Aboriginal government that referred the matter[10].

[6] SNWT 2018 c.19 s7
[7] SNWT 2018 c.19 s8
[8] SNWT 2018 c.19 s15
[9] SNWT 2018 c.19 s16
[10] SNWT 2018 c.19 s16

A person making a complaint to the Ombud must provide their contact information, along with any documents that may be necessary[11]. If a person is in a territorial correctional institution or in custody, and wishes to contact the Ombud, their letter must be forwarded to the Ombud immediately.[12]

The Ombud may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches[13].

The Ombud may refuse or cease an investigation if:

- it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before contacting the Ombud
- in the Ombud's opinion the complaint is frivolous or trivial, vexatious or not made in good faith
- the complainant does not have a sufficient personal interest in the subject matter of the complaint
- in the Ombud's opinion, the complaint should not be investigated continued based on public interest
- in the representative's opinion the circumstances of the complaint does not require further investigation
- a law or procedure, provides an adequate remedy to the circumstances of the complaint, whether they have availed of these procedures or not
- the complainant has abandoned the complaint by failing to provide current contact information or failing to respond after a reasonable number of attempts by the Ombud to contact the complainant[14]

The Ombud shall not investigate any matter that falls within the mandate of the Languages Commissioner, the Information and Privacy Commissioner, the Integrity Commissioner, the Chief Electoral Officer, the Director of Human Rights or the Equal Pay Commissioner, unless that commissioner, director or officer agrees.

Before investigating any matter, the Ombud must notify the administrative head in writing. On the request of a Minister or administrative head, the Ombud shall consult with that Minister or administrative head after conducting an investigation and before forming a final opinion respecting the matter being investigated.

If, during or after an investigation, the Ombud is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any authority, the Ombud shall refer the matter to the administrative head of the authority and may continue with the ongoing investigation. When carrying out an investigation, the Ombud may summon and examine, on oath or affirmation, a

[11] SNWT 2018 c.19 s20
[12] SNWT 2018 c.19 s21
[13] SNWT 2018 c.19 s15
[14] SNWT 2018 c.19 s22

person who in the opinion of the advocate is able to give information relating to a matter being investigated.[15]

The Minister of Justice, however, may restrict the Ombud ability to enter any premises or require any information or documents, if doing so interferes with or impeded an investigation of an offence, or if the result requires a disclosure from the Executive Council. If the Ombud believes that it is nonetheless necessary, the Ombud may apply to a judge of the Supreme Court of the Northwest Territories for a determination. The Ombud shall report to the Legislative Assembly not later than in the Ombud's next annual report each instance where the Minister of Justice restricts an investigation.[16]

If, on completing an investigation, the Ombud decides that the complaint has not been substantiated, the Ombud shall, as soon as is reasonable, notify, in writing, both the complainant and the authority of the decision and the reasons for the decision.

The Ombud may become involved in public education for the purpose of informing the public about the principles of administrative fairness and the powers and duties of the Ombud[17].

4. Reports

4.1 Annual report

The Ombud must prepare and submit to the Speaker an annual report, no later than July 1, on the activities of the Ombud's office and the exercise of the powers and the performance of the duties of the Ombud during the preceding fiscal year.

The Speaker must submit the report to the Legislative Assembly as soon as practicable.[18]

4.2 Special report

If, on completing an investigation, the Ombud is of the opinion that one of the following circumstances exists, the Ombud must report that opinion and the reasons for that opinion to the administrative head of the authority and the Minister responsible for the authority, and may make recommendations the Ombud considers appropriate.[19]

The Ombud may, if the Ombud is of the opinion it is in the public interest or in the interest of a person or authority, make a special report to the Legislative Assembly or publish reports relating generally to the exercise of the Ombud's duties under this Act or to a particular case investigated by the Ombud.[20]

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[15] SNWT 2018 c.19 s26
[16] SNWT 2018 c.19 s28
[17] SNWT 2018 c.19 s15
[18] SNWT 2018 c.19 s43
[19] SNWT 2018 c.19 s33
[20] SNWT 2018 c.19 s43

5. Salary, Pension and Benefits Regulations

The Ombud is entitled to rights, privileges and benefits, including remuneration and pension benefits, similar to the entitlements of Assistant Deputy Ministers.

The Ombud is deemed a member of the public service for the purpose of pension benefits[21], but is not considered a member of the public service[22].

The Ombud may, with the prior approval of the Speaker, hold another public office or carry on a trade, business or profession, but may not hold a position as a member of the public service[23].

6. Staff (Number of Positions and Corresponding Titles)

The Ombud may employ any person whom the Ombud considers necessary for the effective and efficient operation of the office of the Ombud. Employees are considered members of the public service under the *Public Service Act*.

The Ombud may, from time to time, engage the services of any person whom the Ombud considers necessary to assist them[24].

7. Bibliography

- *Ombud Act,* SNWT 2018 c.19 as amended

[21] SNWT 2018 c.19 s9
[22] SNWT 2018 c.19 s11
[23] SNWT 2018 c.19 s10
[24] SNWT 2018 c.19 s12

Statutory Offices in Northwest Territories
Equal Pay Commissioner

1. Legislation

The commissioner has responsibilities under one statute:

- The Public Service Act[1]

2. Appointment Process

2.1 Process[2]

The Equal Pay Commissioner is appointed by the Commissioner (equivalent to the Lieutenant Governor), on the recommendation of the Legislative Assembly.

A person appointed as Equal Pay Commissioner must have expertise in the study and application of the right to equal pay for work of equal value.

2.2 Term of Office

The commissioner holds office for four years and may be reappointed for subsequent terms. A person continues to hold officer after the expiry of his or her term of office until the person is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs.

2.3 Resignation

The commissioner may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly.

2.4 Removal and Suspension

The Commissioner, on the recommendation of the Legislative Assembly, may, for cause or incapacity, suspend the Equal Pay Commissioner or remove them from office.

If the Legislative Assembly is not sitting, the Speaker, on the recommendation of the Board of Management, may suspend the Equal Pay commissioner for cause or incapacity, and the suspension remains in effect until the conclusion of the next sitting of the Legislative Assembly, the Legislative Assembly revokes the suspension or removes the commissioner from office, whichever occurs first.

[1] *Public Service Act,* RSNWT 1998 c.P-16 as amended
[2] RSNWT 1998 c.P-16 s40.2

2.5 Acting Appointment

If the Equal Pay Commissioner is suspended or removed, the Commissioner, on the recommendation of the Legislative Assembly, appoints an acting commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Equal Pay Commissioner.

If the Equal Pay Commissioner is suspended or removed on the recommendation of the Board of Management, the Speaker, on the recommendation of the Board of Management, appoints an acting commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as commissioner.

If the commissioner has resigned or is temporarily absent or unable to perform their duties, the Speaker, on the recommendation of the Board of Management, may appoint an acting commissioner until the they are able to or no longer absent, or a person is appointed, whichever occurs first.

When, for any reason, the Equal Pay Commissioner determines that they should not act in respect of any particular matter, the Speaker, on the recommendation of the Board of Management, may appoint a special commissioner to act in their place. A special Equal Pay Commissioner holds office until the conclusion of the matter.

3. Power, Duties and Responsibilities

The Equal Pay Commissioner is primarily responsible for receiving complaints, conducting investigations, assisting parties to resolve complaints and preparing investigation reports, as well as, promoting awareness and understanding of the right to equal pay for work of equal value.[3]

During an investigation, the commissioner may:

- request any person who may have relevant information to respond to oral or written inquiries
- request any person to produce documents the Equal Pay Commissioner considers necessary
- request any person to compile and produce information relating to job evaluation and pay

If a person refuses or fails to comply with a request of the Equal Pay Commissioner, the commissioner may apply to the Supreme Court for an order requiring the person to comply with the request.[4]

An employee may file a written complaint with the Equal Pay Commissioner within two years after the last occurrence of circumstances giving rise to the complaint. On receipt of a complaint, the commissioner must provide a copy of the complaint to the parties, and begin an investigation.[5]

Upon completion of an investigation, the commissioner must prepare a report and provide it to all parties, include any recommendations. Any party may submit the complaint, together with the

[3] RSNWT 1998 c.P-16 s40.22
[4] RSNWT 1998 c.P-16 s40.3
[5] RSNWT 1998 c.P-16 s40.4

commissioner's investigation report, to an arbitrator within six weeks after receipt of the report. The costs of an arbitrator must be paid by the Equal Pay Commissioner.[6]

An arbitrator who determines that a contravention has occurred may, in an award, make one or more of the following directions:

- to cease the contravention
- to refrain in the future from committing the same or a similar contravention
- to make available to any employee affected by the arbitrator's award any rights, opportunities or privileges that the employee was denied by virtue of the contravention
- to compensate any employee affected by the arbitrator's award for all or any pay lost up to three years prior to the date on which the complaint is made
- pay any employee affected by the arbitrator's award an amount not exceeding $10,000 as exemplary or punitive damages, if an employer has acted wilfully or maliciously, or has repeatedly contravened the Act
- to take any other action to place an employee affected by the arbitrator's award in the position the employee would have been in but for the contravention

An arbitrator may also, in an award, direct a party to pay some or all of the costs of any other party if the arbitrator is satisfied that:

- the complaint is frivolous or vexatious
- the investigation or adjudication of the complaint has been frivolously or vexatiously prolonged by the conduct of the party
- there are extraordinary reasons for making such a direction in the particular case[7]

Any party may appeal an award of an arbitrator to the Supreme Court within six weeks after delivery of the award to the appellant.[8]

4. Reports

4.1 Annual report

The Equal Pay Commissioner must prepare and submit to the Speaker an annual report, no later than July 1, on the activities of the commissioner's office and the exercise of the powers and the performance of the duties during the preceding fiscal year.

The Speaker must submit the report to the Legislative Assembly as soon as practicable.[9]

[6] RSNWT 1998 c.P-16 s40.5
[7] RSNWT 1998 c.P-16 s40.6
[8] RSNWT 1998 c.P-16 s40.7
[9] RSNWT 1998 c.P-16 s40.23

4.2 Special report

Upon completing an investigation, the commissioner must prepare an investigation report, including recommendations with respect to the resolution of the complaint, and must send it to the parties within six months after receipt of the complaint.[10]

5. Salary, Pension and Benefits Regulations

The Equal Pay Commissioner is entitled to an honorarium as determined by the Board of Management of the Legislative Assembly.[11]

The commissioner is not considered a member of the public service[12].

6. Staff (Number of Positions and Corresponding Titles)

The Equal Pay Commissioner may engage the services of experts or other persons necessary to assist in carrying out the functions of the Equal Pay Commissioner.[13]

7. Bibliography

- *Public Service Act,* RSNWT 1998 c.P-16 as amended

[10] RSNWT 1998 c.P-16 s40.4
[11] RSNWT 1998 c.P-16 s40.21
[12] RSNWT 1998 c.P-16 s40.2
[13] RSNWT 1998 c.P-16 s40.22

Statutory Offices in Ontario
Financial Accountability Officer

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Financial Accountability Officer Act, 2013[1]

2. Appointment Process

2.1 Process

The officer is appointed by the Assembly, by order, made only if the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. The order may be waived if the officer is appointed by unanimous consent of the Assembly[2].

2.2 Term of Office

The officer is appointed for a fixed term of five years and may be reappointed for one further term of five years. By order of the Assembly, they may continue to hold office after the term expires until a temporary successor is appointed or until a successor is appointed[3].

2.4 Removal and Suspension[4]

The Assembly may, by order passed by a vote of at least two thirds of the members, remove or suspend the Financial Accountability Officer from office for cause. If the Assembly is not in session, the Board of Internal Economy may on unanimous agreement suspend the officer.

A suspension continues until revoked by order of the Assembly, or by the Board of Internal Economy, or until the Financial Accountability Officer is removed from office.

2.5 Acting officer[5]

If the Financial Accountability Officer is unable to fulfil the duties of his or her office or the office becomes vacant, the Assembly (or the Board of Internal Economy, if the Assembly is not in session) may, by order, appoint a temporary Financial Accountability Officer.

[1] *Financial Accountability Officer Act, 2013,* S.O. 2013, c.4
[2] S.O. 2013, c.4 s2
[3] SO 2013 c4 s3
[4] SO 2013 c4 s4
[5] 2010, c.30, s67

As with the officer, the person to be appointed must have been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member.

3. Power, Duties and Responsibilities

The Financial Accountability Officer's mandate involves two main responsibilities. Firstly, the officer is responsible for independently analyzing and providing insights to the Assembly regarding the financial state of the province. This includes analyzing the budget, as well as assessing trends in the provincial and national economies. The officer proactively carries out this analysis without being prompted by any external requests[6].

Secondly, the officer is also required to respond to requests from members of the Assembly and committees of the Assembly. They may also attend meetings of the Standing Committee on Finance and Economic Affairs or provide assistance. These requests can fall under several categories[7]:

- Research into the province's finances and trends in the provincial and national economies: The officer conducts research to gather information and insights on the financial aspects of the province, including the economy at both provincial and national levels.
- Research into the estimates and supplementary estimates submitted to the Legislature: The officer examines the estimates and supplementary estimates provided to the Legislature, scrutinizing the financial details and ensuring transparency and accuracy.
- Research into the financial costs or financial benefits to the province of any public bill that is before the Assembly: The officer assesses the financial implications of public bills under consideration by the Assembly, providing an estimate of the costs or benefits to the province.
- Estimate the financial costs or financial benefits to the province of any proposal that relates to a matter over which the Legislature has jurisdiction: The officer undertakes the task of estimating the financial costs or benefits to the province for proposals related to areas within the Legislature's jurisdiction. These proposals can originate from the Government or any member of the Assembly.

The Financial Accountability Officer may in their discretion refuse any request by a member of the Assembly or a committee of the Assembly.

In carrying out their duties, the officer is entitled to, upon request, receive free of charge and in a timely manner, any financial, economic or other information that is in the custody or under the control of the ministry or the public entity and that the Financial Accountability Officer believes to be necessary[8], with the exception of information protected by the *Freedom of Information and Protection of Privacy Act,* the *Personal Health Information Protection Act, 2004,* or any Cabinet records.

[6] SO 2013 c4 s10
[7] SO 2013 c4 s10
[8] SO 2013 c4 s12

The Financial Accountability Office provides semi-annual forecasts of Ontario's economy and financial position through its Economic and Budget Outlook (EBO) reports. In addition, every two years, the office releases a Long-Term Budget Outlook report, which provides a projection of Ontario's economy and fiscal position over the next 30 years, based on current policies[9].

4. Reports

4.1 Annual report[10]

The officer must report annually, on or before July 31 of each year, on the work of his or her office to the Speaker of the Assembly who must submit the report before the Assembly at the earliest reasonable opportunity.

4.2 Special report[11]

The officer may make any other reports as they consider appropriate, and may present such report to the public or to any person they consider appropriate, but before the presentation, they must provide a copy of the report to the Minister of any ministry or to the head of any public entity to which the report is relevant.

Every report by the Financial Accountability Officer stands permanently referred to the Standing Committee on Finance and Economic Affairs. The Standing Committee may report its observations, opinions and recommendations about the Financial Accountability Officer's reports to the Assembly from time to time[12].

5. Salary, Pension and Benefits Regulations[13]

The Board of Internal Economy determines the salary and benefits of the Financial Accountability Officer, who is also a member of the Public Service Pension Plan.

Within 60 days after their appointment, the Financial Accountability Officer may notify the Speaker in writing that they do not wish to be a member of the Public Service Pension Plan.

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may engage the services of any persons necessary to assist them in carrying out their functions. Any staff members of the Ethics Commissioner's office are appointed in accordance with the *Public Service of Ontario Act, 2006*[14].

[9] FAO. 2021. "Annual Report 2021-2022."
[10] SO 2013 c4 s14
[11] SO 2013 c4 s15
[12] SO 2013 c4 s16
[13] SO 2013 c4 s4.1
[14] SO 2013 c4 s5

In 2021, the Financial Accountability Office employed a team of 20 people[15].

7. Bibliography

- Financial Accountability Office. "Annual Report 2021-2022."
- *Financial Accountability Officer Act, 2013,* S.O. 2013, c.4 as amended

[15] FAO. 2021. "Annual Report 2021-2022."

Statutory Offices in Ontario
Ombudsman

1. Legislation

The ombudsman has responsibilities under one provincial statute:

- The Ombudsman Act[1]

2. Appointment Process

2.1 Process

The ombudsman is appointed by the Assembly, by order, made only if the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. The order may be waived if the ombudsman is appointed by unanimous consent of the Assembly[2].

2.2 Term of Office

The ombudsman is appointed for a fixed term of five years and may be reappointed for one further term of five years. By order of the Assembly, they may continue to hold ombudsman after the term expires until a temporary successor is appointed or until a successor is appointed[3].

2.4 Removal and Suspension[4]

The Assembly may, by order passed by a vote of at least two thirds of the members, remove or suspend the Ombudsman from office for cause. If the Assembly is not in session, the Board of Internal Economy may on unanimous agreement suspend the officer.

A suspension continues until revoked by order of the Assembly, or by the Board of Internal Economy, or until the Ombudsman is removed from office.

2.5 Acting officer[5]

If the Ombudsman is unable to fulfil the duties of their or if the office becomes vacant, the Assembly (or the Board of Internal Economy, if the Assembly is not in session) may, by order, appoint a temporary Ombudsman.

[1] *The Ombudsman Act,* RSO 1990, c.O.6
[2] RSO 1990, c.O.6 s2
[3] RSO 1990, c.O.6 s3
[4] RSO 1990, c.O.6 s4
[5] RSO 1990, c.O.6 s7

As with the ombudsman, the person to be appointed must have been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member.

3. Power, Duties and Responsibilities

The Ombudsman's primary function is to thoroughly investigate any decision, recommendation, act, or omission that occurs during the administration of a public sector body. These investigations specifically focus on instances that directly impact individuals or groups in their personal capacity[6]. Additionally, the ombudsman has the authority to conduct investigations related to children, in the following areas[7]:

- services provided by a children's aid society, including issues concerning the well-being and care of children under the purview of a children's aid society
- services offered by residential licensees, including services provided by residential licensees to young persons who are detained or committed to custody
- services prescribed by regulations, provided or funded under the *Child, Youth and Family Services Act, 2017*

In carrying out their functions, the ombudsman may make investigate any complaint made to them by any individual affected, or by any member of the Assembly on behalf on an individual, or on the ombudsman's own initiative[8].

Once a complaint from an individual is received, the office makes informal inquiries and requests for information, in order to learn more about any related processes or policies. The aim is to resolve complaints at the lowest level possible. If it cannot resolved informally, an official investigation is launched and may include interviews and requests for documents. The Ombudsman may determine that there is a potential systemic issue, and may decide to launch a systemic investigation[9].

The ombudsman, however, cannot investigate any decision, recommendation, act or omission related to[10]:

- a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal
- any by-law, a right of appeal or objection, a right for a hearing or review, of a school board
- any by-law, a right of appeal or objection, a right for a hearing or review, of a university senate
- any person acting as legal adviser to the public sector body or as counsel to the public sector body

[6] RSO 1990, c.O.6 s14
[7] RSO 1990, c.O.6 s14
[8] RSO 1990, c.O.6 s13
[9] The Ombudsman Office. 2021. "2021-2022 Annual Report."
[10] RSO 1990, c.O.6 s13

- any decision, recommendation, act or omission that is within the jurisdiction of the municipal Ombudsman for the City of Toronto
- any child deaths that fall within the jurisdiction of the Office of the Chief Coroner or of any committees that report to the Office of the Chief Coroner

Additionally, the ombudsman may begin an investigation regarding a decision, recommendation, act or omission, within the jurisdiction of a municipal Ombudsman, if the municipal Ombudsman refused to investigate or has conducted and concluded an investigation; or if the time, if for bringing a complaint to the municipal Ombudsman for investigation has expired[11].

If a person makes a request under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, the Ombudsman may, as the case may be, investigate whether a municipality or local board of a municipality, or the City of Toronto or a local board of the City, is in compliance with the Acts[12].

The ombudsman may refuse to investigate any complaint if[13]:

- there is a better remedy for the complaint, that does not fall under the jurisdiction of the Ombudsman
- no further investigation is necessary
- the complainant has had knowledge of the issue for more than 12 months
- the complaint is trivial, vexatious or not in good faith
- the complainant has not a sufficient personal interest in the subject-matter

If, after the investigation, the Ombudsman believes that an omission should be rectified, recommendations are needed, or steps should be taken, they must submit a report to the appropriate public sector body, minister, school board, university head, or municipal or local board. If the ombudsman believes that after a reasonable time, no action has been taken according to their recommendations, they may send a copy of the report to the Premier, and thereafter to the Assembly[14].

4. Reports

4.1 Annual report[15]

The Ombudsman must report annually upon the affairs of the Ombudsman's office to the Speaker of the Assembly who submits the report to the Assembly if it is in session or, if not, at the next session.

[11] RSO 1990, c.O.6 s13
[12] RSO 1990, c.O.6 s14
[13] RSO 1990, c.O.6 s17
[14] RSO 1990, c.O.6 s21
[15] RSO 1990, c.O.6 s11

4.2 Special report

If, after completing an investigation related to the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, the Ombudsman is of the opinion that the public body was not in compliance, the Ombudsman must report their opinion, and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as they think fit[16].

5. Salary, Pension and Benefits Regulations17

The Board of Internal Economy determines the salary and benefits of the Financial Accountability Officer, who is also a member of the Public Service Pension Plan.

Within 60 days after their appointment, the Financial Accountability Officer may notify the Speaker in writing that they do not wish to be a member of the Public Service Pension Plan.

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may engage the services of any persons necessary to assist them in carrying out their functions. Any staff members of the Ethics Commissioner's office are appointed in accordance with the *Public Service of Ontario Act, 2006*[18].

7. Bibliography

- The Ombudsman Office. "Annual Report 2021-2022."
- *The Ombudsman Act, RSO 1990,* c.O.6 as amended

[16] RSO 1990, c.O.6 s14
[17] RSO 1990, c.O.6 s5
[18] RSO 1990, c.O.6 s7.4

Statutory Offices in Ottawa
Chief Electoral Officer

The position of Chief Electoral Officer (CEO) was created in 1920 by the Dominion Elections Act.

1. Legislation

The commissioner has responsibilities under two statutes:

- The Canada Elections Act
- The Referendum Act

2. Appointment Process

2.1 Process

The officer is appointed by resolution of the House of Commons.

2.2 Term of Office

The officer holds office for a non-renewable 10-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In case of the death, incapacity or negligence, while Parliament is not sitting, a substitute Chief Electoral Officer will be appointed, on the application of the Minister, by order of the Chief Justice of Canada or, in the absence of the Chief Justice of Canada, by the senior judge of the Supreme Court of Canada present in Ottawa.

An acting Chief Electoral Officer will act as Chief Electoral Officer for 15 days after the beginning of the next session of Parliament unless the Chief Justice of Canada or the judge who made the order to appoint the substitute Chief Electoral Officer sooner directs that the order be revoked. In the absence of both the Chief Justice of Canada and of the judge who ordered the appointment, the order may be revoked by any other judge of the Supreme Court of Canada.

3. Power, Duties and Responsibilities

The officer is responsible for administering federal elections and referendums in Canada, by supervising election officers to ensure they act in fairness and impartiality and in compliance with the Act. The officer also issues guidelines and interpretation notes on the application of the *Canada*

Elections Act to registered political parties, associations, nomination contestants, candidates and leadership contestants. These guidelines and interpretation notes are not binding and for information purposes only.

Before issuing a guideline, the officer must provide a copy of the proposed guideline or interpretation note to the Commissioner and members of the Advisory Committee of Political Parties. The Committee may provide written comments to the officer within 45 days after the copy was provided by the officer. In preparing the guideline or interpretation note, the office must consider any comments received from the Committee.

The officer may also issue a written opinion, on application by the chief agent of a registered party, to an activity or practice that the registered party or a registered association, nomination contestant, candidate or leadership contestant of the registered party proposes to engage in. Before issuing an opinion, the officer must provide a copy of the proposed opinion to the Commissioner and members of the Advisory Committee of Political Parties. The Committee may provide written comments to the officer within 30 days after the copy was provided by the officer. In preparing the opinion, the office must consider any comments received from the Committee.

Within 90 days after the application for a written opinion is made, the officer must publish on their website, for a period of 30 days, the opinion as well as a notice stating that the opinion will be issued at the expiry of that period. If the 90-day period coincides with a general election, the opinion and the notice will be published no later than 90 days after polling day for that election. After the 30-day period expires, the officer issues the written opinion by registering the submission on their website.

Written opinions issued by the Chief Electoral Officer are considered binding and set precedence, as long as their basis remain accurate and substantially unchanged.

4. Reports

The officer reports to the House of Commons by submitting statutory reports, which describe the administration of general elections or by-elections and report on the activities of Elections Canada since the previous report.

Official voting results are published as soon as possible after a general election.

For by-elections, one report is presented at the end of the year and presents the results of all by-elections in that year.

5. Salary, Pension and Benefits Regulations

The officer is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The officer is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act* and to be employed in the federal public administration for the purposes of the

Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.

Statutory Offices in Ottawa
Commissioner of Official Languages

In 1969, the Parliament of Canada adopted the first *Official Languages Act*, following the recommendations of the Royal Commission on Bilingualism and Biculturalism. *The Official Languages Act* established the role of the Commissioner of Official Languages and the first commissioner of official languages was appointed in 1970.

1. Legislation

The ombudsman has responsibilities under one statutes:

- The Official Languages Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons.

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Official Languages Commissioner ranks as and has all the powers of a deputy head of a department, while engaging exclusively in the duties of the office under the *Official Languages Act* and cannot hold any other office under His Majesty for reward or engage in any other employment for reward.

The main responsibility of the commissioner is to ensure the recognition of status of each official language by conducting and carrying out investigations. Investigations may be initiated after the commissioner receives a complaint or by their own initiative, whenever the status of an official is not recognized, or an Act of Parliament, regulation, or federal institution is not in compliance with the *Official Languages Act*.

Before carrying out an investigation, the commissioner must inform the deputy head or other administrative head of the federal institution involved in the complaint. Investigations carried out by the commissioner are always conducted in private.

During an investigation, the commissioner has the power

- to summon witnesses and request the submission of oral and written evidence on oath
- to administer oaths
- to receive and accept evidence, either on oath or by affidavit

If, when concluding the investigation, the commissioner of the opinion that further action may be required to address the complaint, they must report that opinion and its reasons to the President of the Treasury Board and the deputy head or other administrative head of the any related institution.

As a result of an investigation, the commissioner may make recommendations to any federal institution. The commissioner may also request the deputy head or other administrative head to notify them of any actions the institution proposes to take to give effect to those recommendations. If, within a reasonable time no adequate and appropriate action has been taken, the commissioner may transmit a copy of the report and recommendations to the Governor in Council.

The commissioner may refuse or cease an investigation if they find the complaint to be trivial or made in bad faith, or if the investigation or its continuation is deemed unrelated to the Act. If the commissioner decides to refuse or cease an investigation they inform the complainant of the decision and its reasons.

The commissioner is also responsible of raising awareness of the benefits of linguistic duality and work with community organizations and languages and minority communities. In addition, the commissioner fulfills a promotional and educational role by creating educational tools and carrying out research, studies and public awareness activities. They also deliver speeches and participate in conferences and workshops to inform Canadians of the status and importance of Canada's official languages.

4. Reports

4.1 Annual report

The commissioner submits an annual report to Parliament on their actions and duties, including any recommendations of proposed changes to the *Official Languages Act* they believe are necessary or desirable.

4.2 Special report

If the commissioner believes there is an urgent or important matter, related to their powers, duties and functions, that cannot be deferred until the annual report, the commissioner may submit a special report to Parliament at any time.

5. Salary, Pension and Benefits Regulations

The commissioner is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The officer is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act*.

The Governor in Council, on the recommendation of the Treasury Board, may exempt the commissioner from any directives of the Treasury Board or the Governor in Council made under *the Financial Administration* Act that apply to deputy heads or other administrative heads in relation to the administration of federal institutions.

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may engage or seek the advice or assistance, on a temporary basis, of persons with technical or specialized knowledge of any matter relating to the work of the commissioner, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

The Office of the Commissioner of Official works with staff members across Canada. The head office is located in Gatineau, Quebec, and there are five other regional offices: the Atlantic Region (New Brunswick), the Quebec and Nunavut Region (Quebec), the Ontario Region (Ontario), the Manitoba and Saskatchewan Region (Manitoba), and the Alberta, British Columbia, Northwest Territories and Yukon Region (Alberta).

Statutory Offices in Ottawa
Information Commissioner

The Office of the Information Commissioner was established in 1983 under the Access to Information Act to support the work of the Information Commissioner of Canada.

1. Legislation

The commissioner has responsibilities under one statute:

- The Access to Information Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons.

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Information Commissioner ranks as and has all the powers of a deputy head of a department, while engaging exclusively in the duties of the office under the *Access to Information Act* and cannot hold any other office under His Majesty for reward or engage in any other employment for reward.

The commissioner main responsibilities are to investigate complaints from people who believe they have been denied rights under the *Access to Information Act;* to help resolve disagreements between

requesters and institutions; to participate in litigation related to the *Access to Information Act*; and to encourage institutions to make information more easily available.

An individual may submit themselves or on behalf of someone else a complaint to the Office of the Information Commissioner if:

- they have not received a response from an institution after the 30-day or any extended time periods
- a time extension was claimed
- the institution is requiring the payment of excessive fees to process the request
- the records were entirely or partially withheld by institutions under one or more sections of the *Access to Information Act*
- the institution found no records or provided fewer records than expected in response to your request (i.e. records/more records should exist). This type of complaint is different and separate from when records were found but were entirely or partially withheld

The Office of the Information Commissioner Registry receives all complaints, regardless of whether complainants submit them electronically or by email or mail. Registry staff check each complaint to ensure it is admissible, based on the information and documents the complainant submits. To be admissible, a complaint must include all the necessary details, have been submitted by the 60-day deadline, not be premature and fall within the commissioner's mandate.

If the Registry determines the complaint is not admissible, it informs the complainant. If the complaint is admissible, the Registry informs the complainant and sends a Notice of intention to investigate to the institution and complainant.

Once the Notice of intention to investigate is sent, Registry staff collect documents and information from the institution to help start the investigation. The investigator might follow up with the complainant, institution and other parties to clarify certain points or ask questions. This could include seeking written representations from any of the parties. The investigator may work with the complainant and institution to resolve or narrow down the matters at issue.

If the commissioner finds a complaint to be well founded, they may order any actions or make any recommendations they consider appropriate for the institution to take to resolve the matters at issue. The commissioner may also refuse or cease to investigate complaints if they are trivial or made in bad faith, or if the investigation or its continuation is deemed unnecessary. When the commissioner decides to refuse or cease to investigate a complaint, they issue a notice.

While the commissioner has the power and duty to carry out investigations into the behavior of an institutions, as related to the *Access to Information Act*, they cannot impose any penalties or fines on institutions for failure to comply with the Ac, or award damages to complainants.

4. Reports

The commissioner tables annual reports to Parliament, as well as periodic report cards on individual departments.

All reports are transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling.

5. Salary, Pension and Benefits Regulations

The commissioner is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The provisions of the *Public Service Superannuation Act* apply to the commissioner, except that a person appointed from outside the public service, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

The commissioner is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act* and to be employed in the federal public administration.

6. Staff (Number of Positions and Corresponding Titles)

The Commissioner is supported by three deputy commissioners and a staff of approximately 135 employees.

Deputy commissioners include a Deputy Commissioner of Investigations, a Deputy Commissioner of Legal Services and Public Affairs, and a Deputy Commissioner in Corporate Services, Strategic Planning and Transformation Services.

The principal office of the Information Commissioner must be in the National Capital Region described in the *National Capital Act*.

Statutory Offices in Ottawa
Privacy Commissioner

The Office of the Privacy Commissioner of Canada (OPC) was established in 1983 following the passage of the *Privacy Act*.

1. Legislation

The commissioner has responsibilities under one statute:

- The Privacy Act
- The Personal Information Protection and Electronic Documents Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons.

The Governor in Council may appoint as Privacy Commissioner, the Information Commissioner appointed under the *Access to Information Act*. In the event that the Information Commissioner is appointed as Privacy Commissioner, the Privacy Commissioner will be paid the salary of the Information Commissioner but not the salary of the Privacy Commissioner.

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Privacy Commissioner ranks as and has all the powers of a deputy head of a department, while engaging exclusively in the duties of the office under the *Privacy Act* and cannot hold any other office under His Majesty for reward or engage in any other employment for reward.

The commissioner main responsibility is to monitor compliance with the Act and investigate complaints from individuals who believe that the federal government has not responded adequately to their request for access to personal information concerning them or that a federal agency is collecting private information in a manner that does not comply with the Act. The commissioner is also responsible for complaints relating to the collection, disclosure, use and protection of personal information in the private sector under the *Personal Information Protection and Electronic Documents Act* (PIPEDA). Under this Act, the commissioner duty is to promote privacy rights.

When carrying out an investigation, the commissioner focuses on resolving complaints through negotiation and persuasion, using mediation and conciliation if appropriate. However, if necessary, the commissioner has the power to summon witnesses, administer oaths and compel the production of evidence.

In cases that remain unresolved, particularly under PIPEDA, the commissioner may take the matter to Federal Court and seek a court order to rectify the situation.

Through the investigations, the Office of the Privacy Commissioner seeks to ensure organizations are complying with their privacy obligations under the law. Therefore, when appropriate, the commissioner may make recommendations to help prevent issues from recurring.

Under PIPEDA, the commissioner may choose to make public certain findings if they deem these findings to be in the public interest. Under the Privacy Act, the commissioner can only make their findings public through an annual or special report to Parliament.

The commissioner also provides legal and policy analyses and expertise to help guide Parliament's review of evolving legislation, as well as privacy impact assessments (PIAs) of new and existing government initiatives. Additionally, they promote public awareness and compliance of privacy rights and obligations through preparation and dissemination of public education materials, positions on evolving legislation, regulations and policies, guidance documents and research findings for use by the general public, federal government institutions and private sector organizations.

4. Reports

The commissioner tables annual reports to Parliament, as well as periodic report cards on individual departments.

All reports are transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling.

5. Salary, Pension and Benefits Regulations

The commissioner is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The provisions of the *Public Service Superannuation Act* apply to the commissioner, except that a person appointed from outside the public service, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

The commissioner is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act* and to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the Aeronautics Act.

6. Staff (Number of Positions and Corresponding Titles)

The Office of the Privacy Commissioner is comprised of three sectors: Compliance, Policy and Promotion, and Corporate Management. Each sector is overseen by a Deputy Commissioner who, along with the Legal Services Directorate, report directly to the commissioner. The commissioner is also supported by the Executive Secretariat.

Each sector is also divided into subsequent directorates.

The Compliance Sector focuses on addressing existing privacy compliance problems through continuous enforcement activities to ensure law violations are identified and that remedied. This sector is divided into three directorates: Privacy Act, PIPEDA, and Compliance, Intake and Resolution.

The Policy and Promotion Sector is future-looking and aims to inform Canadians of their rights and how to exercise them, and to bring organizations toward compliance with the law. This involves, for example, the development and promotion of general information and guidance, reviewing and commenting on Privacy Impact Assessments (PIAs), and offering industry advice on specific initiatives. The sector is divided into five directorates: Government Advisory, Business Advisory, Technology Analysis, Communications, and Policy, Research and Parliamentary Affairs.

The Corporate Management Sector provides advice and integrated administrative services such as corporate planning, resource management, financial management, information management and technology, human resources, and general administration to managers and staff. This sector is divided into four directorates: Human Resources, Finance and Administration, Information Management/Information Technology, and Business Planning, Performance, Audit and Evaluation.

A separate directorate, Legal Services, provides legal advice in relation to PIPEDA and *Privacy Act* investigations and audits, and in support of other operational activities. It also represents the Office of the Privacy Commissioner in litigation matters before the courts and in negotiations with other parties.

Statutory Offices in Ottawa
Conflict of Interest and Ethics Commissioner

The Office of Conflict of Interest and Ethics Commissioner was established in 2007 under the *Parliament of Canada Act* and replaced that of the Ethics Commissioner.

1. Legislation

The commissioner has responsibilities under two statutes:

- The Parliament of Canada Act
- The Conflict of Interest Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons.

In order to be appointed Conflict of Interest and Ethics Commissioner, an individual must be:

- a former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province;
- a former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in matters of conflicts of interest, financial arrangements, professional regulation and discipline, or ethics
- a former Senate Ethics Officer or former Ethics Commissioner

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not

exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Conflict of Interest and Ethics Commissioner ranks as a deputy head of a department and has control and management of the office of the commissioner. The duties and functions of the commissioner are carried out within the House of Commons, therefore the commissioner enjoys the privileges and immunities of the House of Commons and its members when carrying out those duties and functions.

The office defines its primary stakeholders as individuals subject to the *Conflict of Interest Act,* as well as Parliament, academics, ethics practitioners and others with an interest in the field, the media, and the public.

The commissioner is responsible for providing confidential advice to public office holders, Members of the House of Commons, and the Prime Minister on their obligations under the *Conflict of Interest Act* and the Code of Conduct. This is to ensure that these individuals are aware of their responsibilities and in compliance.

All public holders complete an initial compliance process where they are informed of the rules and have the opportunity to consider and address potential conflicts of interest. Initial compliance is a two-stage process that must be completed within 120 days after a reporting public office holder's appointment or reappointment. In the first stage, they must submit to the commissioner, within 60 days of their appointment, a Confidential Report outlining their assets, liabilities, income, current and past activities and any other information the commissioner considers necessary. In the second stage, advisors in the office review the Confidential Report and discuss with the reporting public office holder any measures that may be needed to comply with the Act.

Additionally, the commissioner reviews confidential reports submitted by individuals covered by the Act and the Code, and in relation to their assets, liabilities, and outside activities. The commissioner uses this information to determine relevant compliance measures and provide appropriate advice and guidance.

The commissioner also investigates possible contraventions of the Act and the Code, which are called "examinations" under the Act and "inquiries" under the Code. These investigations may be initiated at the request of a parliamentarian or on their own initiative. In the course of an investigation, the commissioner may consider information provided by the public that is shared with the commissioner by a parliamentarian.

While disclosures remain confidential, the commissioner maintains a public registry of all of the information about individual public office holders and Members of the House of Commons that the Commissioner is authorized to make public. This seeks to promote transparency and accountability by providing the public with access to relevant information about public office holders and Members of the House of Commons.

The commissioner reports annually to Parliament and prepares an annual list of sponsored travel by Members of the House of Commons. Reports on examinations under the Act are also submitted to the Prime Minister, and reports on inquiries under the Code are submitted to the House of Commons. All reports are made available to the public.

Finally, the commissioner activities also works with counterparts across Canada and around the world, exchanging information and sharing best practices, to ensure that the office remains up-to-date on issues and developments in the field.

4. Reports

The commissioner submits annual reports to the House of Commons of their activities under the *Conflict of Interest Act,* and an annual report under the *Parliament of Canada Act.*

Reports are transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling.

5. Salary, Pension and Benefits Regulations

The commissioner remuneration and expenses are set by the Governor in Council.

6. Staff (Number of Positions and Corresponding Titles)

The Office of Conflict of Interests and Ethics Commissioner has four employees in the commissioner's office, 21 employees in Advisory and Compliance, seven employees in Investigation and Legal Services, 9 employees in Communications, Outreach and Planning, and 11 employees in Corporate Management.

Statutory Offices in Ottawa
Commissioner of Lobbying

This position replaced that of the former Registrar of Lobbyists.

1. Legislation

The commissioner has responsibilities under one statute:

- The Lobbying Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of every recognized party in the Senate and the House of Commons and after approval of the appointment by resolution of the Senate and the House of Commons.

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Commissioner of Lobbying ranks as and has all the powers of a deputy head of a department, while engaging exclusively in the duties of the office under the *Lobbying Act* and cannot hold any other office under His Majesty for reward or engage in any other employment for reward.

The main responsibilities of the commissioner are to maintain a searchable registry of information reported by lobbyists, to provide education to stakeholders, and to verify that lobbyists comply with the requirements in the Act, as well as the Lobbyists' Code of Conduct.

For the purposes of the Act and the establishment of the commissioner's office, lobbying is defined as:

- payment by an employer or a client
- direct communication (in writing or orally) or indirectly (grassroots) with a federal public officer holder
- legislative proposals, bills, resolutions, regulations, policies or programs on a listed topic
- awarding of grants, contributions or other financial benefits, as well as awarding of contracts to consultant lobbyists
- arranging a meeting between a public office holder and any other person (for consultant lobbyists)

Lobbied individuals include public office holders: almost all federal government employees, Members of the House of Commons and their staff, Members of the Senate and their staff, and some governor in council appointees. Lobbying also includes designated public office holders: the Prime Minister, ministers, ministers of the state and their staff, Members of the House of Commons, Members of the Senate, Deputy ministers, ADMs and equivalents, positions designated by regulation, and some Governor in Council appointees.

To ensure compliance with the lobbying regulations of the Act, the commissioner is responsible for continuous verifications and investigations. All investigations are conducted in private and the commissioner has the power to summon witnesses, request the production of documents, and receive oral and written evidence.

If, at any time, the commissioner has reasonable grounds to believe that an offence has been committed, the commissioner must suspend the investigation and refer the matter to a peace officer.

After the completion of an investigation of an alleged breach of the Code, the commissioner is required to publish findings and conclusions in a report submitted to Parliament and made public, whether or not the allegation is well-founded. Breaches of the Code of Conduct are not punishable by fines. If an individual is convicted of an offence under the *Lobbying Act*, the commissioner may prohibit that individual from lobbying for a period of up to two years.

The commissioner may cease an investigation if they find the complaint could be better dealt under another Act, the matter is not sufficiently important, or the length of time has elapsed. If the commissioner decides cease an investigation they are not required to table a report to Parliament.

In addition to ensuring compliance of the regulations in the Act, the commissioner is responsible for promoting awareness and understanding of the *Lobbying Act,* by publishing educational material and providing information sessions. Lobbyists, registrants, federal officials and other stakeholders are offered ongoing support and advice – including on how to use the Registry and how to comply with the *Lobbying Act* and the Lobbyists' Code of Conduct.

4. Reports

4.1 Annual report

The commissioner submits an annual report to Parliament on their actions and duties.

4.2 Special report

The commissioner submits reports to Parliament after the completion of an investigation or special reports on any matter within their mandate.

5. Salary, Pension and Benefits Regulations

The commissioner is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The provisions of the *Public Service Superannuation Act* apply to the commissioner, except that a person appointed from outside the public service, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

The commissioner is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act* and to be employed in the federal public administration.

6. Staff (Number of Positions and Corresponding Titles)

The Office of the Commissioner of Lobbying employs 26 full-time employees.

Statutory Offices in Ottawa
Public Sector Integrity Commissioner

1. Legislation

The commissioner has responsibilities under one statute:

- The Public Servants Disclosure Protection Act

2. Appointment Process

2.1 Process

The Governor in Council shall, by commission under the Great Seal, appoint the commissioner after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

2.2 Term of Office

The commissioner holds office for 7 years and is eligible to be re-appointed for a second 7-year term.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Public Sector Integrity Commissioner ranks as and has all the powers of a deputy head of a department, while engaging exclusively in the duties of the office under the *Public Servants Disclosure Act* and cannot hold any other office or employment in the public sector or carry on any activity that is inconsistent with their power and duties.

The main responsibility of the commissioner is to strengthen accountability and increase oversight of government operations by providing a means in the federal public sector to disclose information that they believe could show that a wrongdoing has been committed or is about to committed, or that they

were asked to commit a wrongdoing. Under the Act, the commissioner receives and investigates any disclosures of wrongdoing.

When the commissioner considers that disclosures contain allegations with sufficient grounds, they will start an investigation by issuing a written notification to the individual who disclosed the information. The commissioner will also advise the chief executive of the organization involved and, if required, the persons against whom allegations have been made. Throughout the investigation, the identity of the discloser is kept private.

Although investigations have unique time-frames, the commissioner must determine whether to act on a complaint of reprisal in 15 days. Since April 1, 2013, other standards also apply to investigations:

- general inquiries are responded to within one working day
- a decision to investigate a disclosure of wrongdoing is made within 90 days of the discloser's first contact with the office
- investigations into disclosure and reprisal complaints are completed within one year

The commissioner will make a decision as to whether the alleged wrongdoing is founded based on the results of the investigation. This decision is communicated to the discloser, other persons involved, and to the organization's chief executive. If wrongdoing is found to have occurred, the commissioner can make recommendations to chief executives concerning corrective measures and will report the finding to Parliament within 60 days of informing the chief executive.

If an individual has allegedly committed a wrongdoing, the commissioner must inform them of the substance of the disclosure and give them the opportunity to answer to the allegations. There is no appeal process for the commissioner's decision. However, the commissioner's findings can be brought to the Federal Court of Canada for review.

The commissioner may refuse to launch an investigation if

- the information disclosed has been properly dealt with or could more appropriately be dealt with, through another procedure
- the length of time that has elapsed since the events occurred and, therefore, the investigation may not serve a useful purpose

4. Reports

4.1 Annual report

The commissioner submits an annual report to Parliament on their actions and duties. All reports are transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling.

4.2 Special report

The commissioner must report to Parliament cases of wrongdoing within 60 days after the conclusion of the investigation, to be tabled in Parliament.

The commissioner may also submit reports to Parliament after the completion of an investigation or special reports on any matter within their mandate.

5. Salary, Pension and Benefits Regulations

The commissioner is eligible to receive a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence when carrying out their duties.

The officer is deemed to be employed in the public service for the purposes of *the Public Service Superannuation Act*.

Statutory Offices in Ottawa
Parliamentary Budget Officer

The position of Parliamentary Budget Officer was created in December 2006 as part of *the Federal Accountability Act* and in response to criticisms surrounding the accuracy and credibility of the federal government's fiscal projections and its forecasting process. The first officer was appointed in 2008. The position, however, did not become a statutory office until 2017, when an amendment was made to the *Parliament of Canada Act*. As a result of this amendment, the officer's mandate were also expanded to include independent and non-partisan estimates of the financial cost of any election campaign proposal.

1. Legislation

The commissioner has responsibilities under one statute:

- The Parliament of Canada Act

2. Appointment Process

2.1 Process

The commissioner is appointed by the Governor in Council by commission under the Great Seal, after consultation with the leader of the government in the Senate or government representative in the Senate, the leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate; as well as, the leader of every recognized party in the House of Commons. The commissioner is then appointed by resolution of the Senate and the House of Commons.

By law, the officer is expected to have demonstrated experience and expertise in federal and provincial budgeting to be qualified.

2.2 Term of Office

The commissioner may be re-appointed for one or more terms of up to seven years each. However, they may not serve for more than 14 years in office in total.

2.4 Removal and Suspension

The officer may be removed for cause by the Governor General upon resolution of the Senate and the House of Commons.

2.5 Acting officer

In the event of the absence or incapacity of the commissioner, or if the office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not

exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

3. Power, Duties and Responsibilities

The Parliamentary Budget Officer has the rank of a deputy head of a department and has the control and management of the office. The officer may, in carrying out his duties, enter into contracts, memoranda of understanding and other arrangements.

The officer's main responsibility is to provide analysis to the Senate and the House of Commons on government estimates and on matters related to the nation's finance and economy, as listed in the annual work plan. Before each fiscal year, the officer prepares an annual work plan that must include the criteria for resource allocation and a list of matters considered as "of particular significance" and which should be brought to the attention of the Senate and the House of Commons. The list is produced by the officer, after consultation with the Speaker of the Senate and the Speaker of the House of Commons.

Once the annual work plan is finalized, the officer must provide it to the Speaker of the Senate and the Speaker of the House of Commons, for tabling. Throughout the fiscal year, the annual work plan may be updated as required.

When Parliament is not dissolved, the officer provides independent economic and financial analysis to the Senate and House of Commons, analyzes the estimates of the government and, if requested, estimates the financial cost of any proposal over which Parliament has jurisdiction, including from individual Senators and Members of Parliament, and parliamentary committees.

The officer is also responsible for preparing analysis reports of:

- a budget tabled by or on behalf of the Minister of Finance
- an economic and fiscal update or statement issued by the Minister of Finance
- a fiscal sustainability report issued by the Minister of Finance
- the estimates of the government for a fiscal year

Additionally, the officer may undertake research into and analysis of any matters in the annual work plan, upon request of the Standing Committee on National Finance of the Senate, the Standing Committee on Finance of the House of Commons, the Standing Committee on Public Accounts of the House of Commons, and the Standing Committee on Government Operations and Estimates of the House of Commons.

When Parliament is dissolved for a general election or during the 120-day period before a fixed general election, the officer provides political parties, at their request, with estimates of the financial cost of election campaign proposals they are considering making.

4. Reports

4.1 Annual report

The officer submits an annual report to Parliament on their actions and duties, transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling.

4.2 Special report

The officer submits reports produced at the request of a committee to the chair of said committee or to a member who has requested a report, one business day before the report become publicly available.

Any report analyzing a measure proposed as part of an election campaign is submitted to the requester and made publicly available, as soon as possible after the requester makes the proposal public.

All other reports, produced within the officer's mandate, are submitted to the Speaker of the Senate and the Speaker of the House of Commons one business day before becoming publicly available.

5. Salary, Pension and Benefits Regulations

The officer's salary and expenses are fixed by the Governor in Council.

6. Staff (Number of Positions and Corresponding Titles)

The Parliamentary Budget Officer may employ any officers and employees, as well as engage the services of any agents and mandataries, advisers and consultants that officer considers necessary. The officer may also engage, on a temporary basis, the services of those with technical or specialized expertise.

The office's organizational structure includes teams responsible for Budgetary Analysis, Policy Costing, Fiscal Analysis, Economic Analysis, Administrative Services, Communications, and Human Resources. The team is composed of about 40 employees, including economists, financial analysts, lawyers, and functional professionals.

Statutory Offices in Prince Edward Island
Child and Youth Advocate

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Child and Youth Advocate Act[1]

2. Appointment Process

2.1 Process

The officer is appointed by the Legislative Assembly on the recommendation of the Standing Committee on Legislative Assembly management, and following a resolution of the Legislative Assembly supported by at least two-thirds of the members present[2].

2.2 Term of Office

The advocate holds office for five years and may be reappointed for a single further term of five years. They continue to hold office after the term of office expires until a successor is appointed or a period of six months has expired, whichever occurs first[3].

2.3 Resignation

The advocate may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly[4].

2.4 Removal and Suspension[5]

The Legislative Assembly may, by a resolution passed by two-thirds of the members present, suspend or remove the Advocate from office for cause or incapacity.

When the Legislative Assembly is not sitting and is not scheduled to sit within five days, the Legislative Assembly Management Committee may, by unanimous resolution, suspend the advocate for cause or incapacity, with or without salary, for a period to be set by the Committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

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[1] *Child and Youth Advocate Act,* RSPEI 1988, c C-4.3 as amended

[2] RSPEI 1988, c C-4.3 s2

[3] RSPEI 1988, c C-4.3 s2

[4] RSPEI 1988, c C-4.3 s6

[5] RSPEI 1988, c C-4.3 s6

3. Power, Duties and Responsibilities[6]

The Child and Youth advocate is responsible for advocating for children, youth, and their families in regards to government services, either in terms of individual or system advocacy[7]. Their duties include providing information and advice to children, youth, and their families, representing the rights, interests, and viewpoints of children and youth who are receiving or eligible to receive government services, and assisting children and youth to initiate and participate in case conferences, service reviews, mediations, or other processes.

In addition, the advocate promotes and provides public education and advocacy respecting the rights, interests, and well-being of children and youth, the United Nations Convention on the Rights of the Child, and the United Nations Declaration on the Rights of Indigenous Peoples as it affects children and youth.

They also monitor implementation of and compliance with recommendations included in reports made under the Act, promote the rights of children and youth in relation to government legislation, policies, protocols, practices, and services to children and youth, work with individuals, families, communities, public bodies, and community organizations to support and create opportunities for the well-being of children and youth, and undertake or collaborate in research related to improving services.

In carrying out their duties, the Child and Youth advocate may receive and investigate any matter concerning a child or youth who receives or is eligible to receive a service, or a group of children or youths who receive or are eligible to receive a service. Additionally, the advocate can assist in appealing or reviewing a decision relating to a service on their own initiative or at the request of a child or youth. They can also appoint legal counsel to represent a child or youth with respect to a matter or proceeding under *the Child Protection Act.*

In addition, the advocate can review, investigate, and report on the serious injury or death of a child or youth, conduct or contract for research respecting the rights, interests, and well-being of children and youth for the purpose of making recommendations to improve the effectiveness and responsiveness of a reviewable service. They can advise or make recommendations to any public body or community organization responsible for providing reviewable services to children and youth on any matter relating to the rights, interests, and well-being of children and youth.

The advocate may exercise the powers of the office in respect of a service despite a provision in another Act that states that a decision, recommendation, act or omission is final or shall not be appealed.

The advocate may require a public body or community organization to provide any information in its custody or under its control, including personal information and personal health information, that the advocate considers necessary. The advocate, however, cannot require information regarding an order

[6] RSPEI 1988, c C-4.3 s12

[7] OCYA. “Inaugural Annual Report 2020-2021.”

for the placement or adoption of a child; the identity of a person who makes a report; a request by a person for a Children's Lawyer[8].

When a child or youth is seriously injured or dies while receiving a government service, the public body or community organization that provided the service shall report the serious injury or death to the Child and Youth Advocate as soon as practicable. The advocate may then conduct a review of the report of a public body or community organization, to determine whether to investigate and to identify and analyze recurring circumstances or trends[9].

When the advocate decides to investigate the serious injury or death of a child or youth, the advocate must notify the public body or community organization responsible, any person who made a report, and any other person the advocate considers appropriate[10].

The advocate cannot investigate the serious injury or death of a child or youth until the completion of a criminal investigation and criminal court proceedings, by or at the direction of the Office of the Police Commissioner, unless the Minister of Justice and Public Safety and Attorney General gives the advocate written permission to proceed with an investigation prior to completion of one or both of those processes. The advocate must also wait for the coroner to complete their investigation and indicate that an inquest is not necessary[11].

4. Reports

4.1 Annual report

The advocate shall prepare an annual report and submit it to the Speaker of the Legislative Assembly not later than March 30 following the close of the fiscal year to which the report relates. The Speaker must lay the report before the Legislative Assembly on receipt of the report, or when the Legislative Assembly is not in session, at the beginning of the next sitting[12].

4.2 Special reports

Following an investigation the advocate must report the results of the investigation to the public body or community organization that provided the service subject of the report, and any other public body, community organization or person that the advocate considers appropriate[13].

The report must contain the advocate's reasons for undertaking the investigation, any recommendations regarding the services subject of the report, and a disclosure of personal information or personal health information, if necessary[14].

[8] RSPEI 1988, c C-4.3 s15

[9] RSPEI 1988, c C-4.3 s21

[10] RSPEI 1988, c C-4.3 s22

[11] RSPEI 1988, c C-4.3 s22

[12] RSPEI 1988, c C-4.3 s30

[13] RSPEI 1988, c C-4.3 s26

[14] RSPEI 1988, c C-4.3 s26

In order to improve effectiveness and responsiveness of services, the advocate may make a special report to the Standing Committee on Legislative Assembly Management, or to another standing or special committee of the Legislative Assembly as directed by the Standing Committee on Legislative Assembly Management[15].

5. Salary, Pension and Benefits Regulations

The Child and Youth Advocate's salary, paid out of the Operating Fund, is equal to the compensation paid to the Auditor General[16].

The Auditor General is considered to be of deputy minister rank. Compensation is determined by the Standing Committee on Legislative Assembly Management[17].

6. Staff (Number of Positions and Corresponding Titles)

The advocate may engage the services of any persons the Advocate considers necessary or advisable to assist them in carrying out their functions[18].

The Office of the Child and Youth Advocate is currently comprised of six employees[19]:

- The Child and Youth Advocate
- Executive Director
- Investigation/Research Representative
- Advocacy Representative
- Executive Administrative Assistant
- Legal and Policy Advisor

7. Bibliography

- Office of the Child and Youth Advocate. "Inaugural Annual Report 2020-2021."
- *The Audit Act,* RSPEI 1988, c A-24 as amended
- *The Child and Youth Advocate Act,* RSPEI 1988, c C-4.3 as amended

[15] RSPEI 1988, c C-4.3 s28

[16] RSPEI 1988, c C-4.3 s5

[17] RSPEI 1988, c A-24

[18] RSPEI 1988, c C-4.3 s7

[19] OCYA. "Inaugural Annual Report 2020-2021."

Statutory Offices in Prince Edward Island
Information and Privacy Commissioner

1. Legislation

The commissioner has responsibilities under two provincial statutes:

- The Freedom of Information and Protection of Privacy Act[1]
- The Health Information Act[2]

2. Appointment Process

2.1 Process

The officer is appointed by the Legislative Assembly on the recommendation of the Standing Committee on Legislative Assembly management, and following a resolution of the Legislative Assembly supported by at least two-thirds of the members present[3].

2.2 Term of Office

The commissioner holds office for five years and may be reappointed. They continue to hold office after the term of office expires until a successor is appointed or a period of six months has expired, whichever occurs first[4].

The commissioner may serve part-time during their time in office[5].

2.3 Resignation

The commissioner may resign in writing addressed to the Speaker of the Legislative Assembly, or, in the absence of the Speaker, to the Clerk of the House of Assembly[6].

2.4 Removal and Suspension[7]

The Legislative Assembly may, by a resolution passed by two-thirds of the members present, suspend or remove the Commissioner from office for cause or incapacity.

When the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.

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[1] *Freedom of Information and Protection of Privacy Act,* RSA 2000 c F-25
[2] *Health Information Act* , RSPEI 1988 c.H-1.41
[3] RSA 2000 c F-25 s42
[4] RSA 2000 c F-25 s43
[5] RSA 2000 c F-25 s42
[6] RSA 2000 c F-25 s44
[7] RSA 2000 c F-25 s44

2.5 Acting commissioner

The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting commissioner if the office becomes vacant or the commissioner is suspended when the Legislative Assembly is not sitting. If the Legislative Assembly is sitting, an acting commissioner is appointed when a commissioner could not be appointed before the end of the session[8].

3. Power, Duties and Responsibilities

The Commissioner has the authority to conduct investigations to ensure compliance with the Act and rules related to the destruction of records set out in other Prince Edward Island enactments, bylaws, resolutions, or other legal instruments authorized by the governing body of the local public body. They may also make investigate even if a review is not requested.

A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the commissioner to review any decision, act or failure to act of the head of the public body in question. This may also include any person who believes that the person's own personal information has been collected, used or disclosed in violation of the Act[9]. The request with the commissioner must be filed within 60 days of the decision by the head of the public body[10]. On receiving the request, the commissioner must provide a copy of the request to the head of the public body concerned and any other person who may be affected. The commissioner must also provide a summary of the review procedures and an anticipated date for a decision on the review[11]. Any inquiry must be completed within 90 days after receiving the request[12].

Additionally, the commissioner can inform the public about the Act, comment on proposed legislative schemes or programs of public bodies, comment on the implications for protection of personal privacy of using or disclosing personal information for record linkage, and authorize the collection of personal information from sources other than the individual the information is about.

The commissioner is also responsible for bringing to the attention of the head of a public body any failure by the public body to assist applicants, as well as and giving advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act[13]. In addition, the head of a public body may ask the commissioner to authorize them to disregard any requests that would unreasonably interfere with the operations of the public body, constitute an abuse of the right to access, or are frivolous or vexatious[14].

Since July 1, 2017, the commissioner has been responsible for overseeing that health information is dealt with by custodians in a manner consistent with the provisions of the *Health Information Act*.

[8] RSA 2000 c F-25 s45
[9] RSA 2000 c.F-25 s60
[10] RSA 2000 c.F-25 s61
[11] RSA 2000 c.F-25 s62
[12] RSA 2000 c.F-25 s64
[13] RSA 2000 c F-25 s51
[14] RSA 2000 c. F-25 s52

The HIA aims to establish a set of rules for custodians to follow regarding personal health information. These rules are designed to protect the confidentiality and privacy of individuals' health information[15]. Additionally, the HIA seeks to facilitate appropriate sharing and access of personal health information for better healthcare provision and management.

The HIA also provides individuals with the right to examine and obtain a copy of their personal health information from a custodian, subject to specific and limited exceptions. Individuals may request corrections or amendments to their personal health information maintained by a custodian. A request for the review of a decision of a custodian must be submitted in writing and delivered to the commissioner within60 days after the person is notified of the custodian's decision[16]. The HIA also establishes mechanisms to ensure that persons who have custody or control of personal health information are accountable and responsible for safeguarding the security and integrity of the information in their custody or control.[17]

Under the HIA, the commissioner may conduct investigations to ensure compliance with the HIA's provisions or rules relating to the destruction of personal health information set out in any other enactment. They may review privacy impact assessments and make recommendations to custodians regarding proposed changes, as well as comment on the implications for the protection of personal health information of proposed legislative schemes or programs of custodians. Additionally, the commissioner may review the response of a research ethics board, whether or not a review is requested[18].

If a custodian fails to assist individuals, the commissioner may bring it to their attention and may provide advice and recommendations of general application to custodians on matters relating to their rights or obligations under the HIA[19].

In conducting an investigation or in giving advice and recommendations, the commissioner has all the powers, privileges and immunities of a commissioner under the Public Inquiries Act[20].

In carrying out their responsibilities under both Acts, the Lieutenant Governor in Council may designate a judge to act as an adjudicator[21]

- to investigate complaints made against the Commissioner as the head of the Office of the Information and Privacy Commissioner
- when the person who is appointed as the commissioner is, at the same time, appointed as any other officer of the Legislature, to investigate made against that person when acting as the head of that office

[15] OIPC. 2021. "Annual Report 2021."
[16] RSPEI 1988 c.H-1.41 s58
[17] OIPC. 2021. "Annual Report 2021."
[18] RSPEI 1988 c.H-1.41 s47
[19] RSPEI 1988 c.H-1.41 s47
[20] RSPEI 1988 c.H-1.41 s51; RSA 2000 c.F-25 s53
[21] RSA 2000 c.F-25 s68.1

- to investigate complaints against a head of a public body and the commissioner had been a member, employee or head of that public body or, in the commissioner's opinion, the commissioner has a conflict with respect to that public body

4. Reports

4.1 Annual report

The commissioner shall prepare an annual report and submit it to the Speaker of the Legislative Assembly on the work of the commissioner's office; any complaints or reviews result from a decision or failure to act of the commissioner as head of a public body; and any matter related to freedom of information and protection of personal privacy[22].

5. Salary, Pension and Benefits Regulations

The commissioner's compensation is determined by the Standing Committee on Legislative Assembly Management, and it reviews that remuneration at least once a year[23].

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may engage the services of any persons necessary to assist the commissioner in carrying out their functions.[24].

7. Bibliography

- Office of Information and Privacy Commissioner. 2021. "Annual Report 2021."
- *The Freedom of Information and Protection of Privacy Act,* RSA 2000 c F-25 as amended
- *The Health Information Act,* RSPEI 1988 c.H-1.41 as amended

[22] RSA 2000 c.F-25 s59
[23] RSA 2000 c.F-25 s46
[24] RSA 2000 c F-25 s48

Statutory Offices in Quebec
Ethics Commissioner

1. Legislation

The commissioner has responsibilities under one provincial statute:

- The Code of Ethics And Conduct of the Members of the National Assembly[1]

2. Appointment Process

2.1 Process

The commissioner is appointed by the National Assembly on the joint motion of the Premier and the Leader of the Official Opposition, after consulting with the Leaders of the other authorized parties represented in the National Assembly and with the approval of two thirds of the members[2].

An individual cannot be appointed as Ethics Commissioner if they are[3]

- related by blood, or connected by marriage or civil union, to a member of the National Assembly, a Cabinet Minister, or the Premier's chief of staff up to the third degree inclusively
- a member of a federal, provincial or municipal political party
- a candidate on a ticket in a school election

2.2 Term of Office

The commissioner is appointed for a fixed term of five years or less. At the expiry of the term, the commissioner remains in office until reappointed or replaced.[4].

The commissioner exercises the duties of the office exclusively and on a full-time basis[5].

2.3 Resignation

The commissioner may resign at any time by giving notice in writing to the President of the National Assembly[6].

[1] *Code of Ethics and Conduct of the Members of the National Assembly,* c.C-23.1
[2] 2010, c.30, s.62
[3] 2010, c.30, s69
[4] 2010, c.30, s66
[5] 2010, c.30, s.64
[6] 2010, c.30, s66

2.4 Removal and Suspension

The commissioner may only be removed by a resolution of the Assembly approved by two thirds of the members[7].

2.5 Acting commissioner

If the commissioner leaves office or is unable to act, the Government, after consulting with the Leaders of the authorized parties that are represented in the National Assembly, may designate a person to act as Ethics Commissioner for a period not exceeding six months. The Government determines the designated person's remuneration and conditions of employment.[8].

3. Power, Duties and Responsibilities

The Office of the Ethics Commissioner defines its primary clients as those bound under the Code of Ethics, which applies to all Members of the National Assembly, including Cabinet Ministers. The Code also applies to the staff of the MNAs and House Officers of the National Assembly, such as the Leaders, House Leaders and Whips of the parliamentary groups, as well as staff hired to provide support and research assistance to a political party represented in the Assembly or to independent members[9].

One of the main responsibilities of the Ethics Commissioner relates to advisory opinions to members of the National Assembly, in response to written requests. The commissioner must provide members with a written advisory opinion containing reasons and any recommendations within 30 days after the member's request, unless otherwise agreed by the member and the Ethics Commissioner. An advisory opinion of the Ethics Commissioner is confidential and may only be made public by the member or with the member's written consent[10].

An act or omission by a member is deemed not to be a breach of this Code if they previously requested an advisory opinion from the Ethics Commissioner and the advisory opinion concluded that the act or omission did not contravene the Code[11].

A member who has reasonable grounds for believing that another member has violated a provision of the Code may request that the Ethics Commissioner conduct an inquiry into the matter. The request must be made in writing. The commissioner then must provide a copy of the request to the member named in it, as a written notice[12]. If the commissioner considers it necessary, they may after giving the member concerned notice, conduct an inquiry to determine any violations of the Code. An inquiry may also result from the commissioner's own initiative[13].

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[7] 2010, c.30, s66
[8] 2010, c.30, s67
[9] OEC. 2021. "Activity Report for 2021-2022."
[10] 2010, c.30, s87
[11] 2010, c.30, s88
[12] 2010, c.30, s91
[13] 2010, c.30, s92

In carrying out an inquiry, the commissioner may make agreements with other persons such as the Auditor General and the Lobbyists Commissioner for the conduct of joint inquiries, each under the legislative provisions that person administers[14].

The Ethics Commissioner must conduct inquiries in private and allow the member concerned to present a full and complete defence, including an opportunity to submit observations and, if the Member so requests, to be heard

- on whether the member has violated this Code
- on the sanction that could be imposed, after being informed of the Ethics Commissioner's conclusion and the grounds for them

The commissioner must not comment publicly on a verification or inquiry but may confirm that a request for a verification or an inquiry has been received, is under way or has been completed. The commissioner may also state why, after a verification, they decided not to conduct an inquiry[15].

The Ethics Commissioner may, on their own initiative or at the request of the member who was the subject of a request for an inquiry, conduct verifications to determine whether the complaint was made in bad faith or with intent to harm[16]. If the commissioner concludes that a request for an inquiry was made in bad faith or with intent to harm, the commissioner may recommend sanctions in a prepared report[17]. This report does not have to be submitted to the National Assembly[18].

If the Ethics Commissioner concludes that a member has violated the Code, the commissioner must prepare a report and, according to the circumstances, may recommend that no sanction or one or more of the following sanctions be imposed[19]:

- a reprimand
- a penalty, specifying the amount
- the return to the donor, delivery to the State or reimbursement of the value of the gift, hospitality or benefit received
- the reimbursement of any unlawful profit
- the reimbursement of the indemnities, allowances or other sums received
- a suspension of the member's from the National Assembly, together with a suspension of any allowance, until the Member complies with conditions imposed by the commissioner;
- the their seat as a member
- the loss of their position as a Cabinet Minister

Any sanction recommended in a report of the commissioner is applicable upon adoption of the report by the National Assembly by the vote of two thirds of the members[20].

[14] 2010, c.30, s94
[15] 2010, c.30, s96
[16] 2010, c.30, s97
[17] 2010, c.30, s100
[18] 2010, c.30, s98
[19] 2010, c.30, s99
[20] 2010, c.30, s104

The Office of the National Assembly appoints a jurisconsult by a unanimous vote of its members to be responsible for providing advisory opinions on ethics and professional conduct to any member who requests it. The jurisconsult may not be a member[21], and is appointed for a term of five years or less with eligibility for re-appointment[22]. The Office of the National Assembly determines, if need be, the remuneration, employment benefits and other conditions of employment of the jurisconsult and of the personnel the jurisconsult requires[23].

The commissioner may also publish guidelines for the members regarding the application of the Code, provided that no personal information is included. They also organize educational activities for members and the general public on the role of the Ethics Commissioner and the application of the Code[24].

4. Reports

4.1 Annual report

On or before 30 September each year, the commissioner must submit a report on the Ethics Commissioner's activities to the President of the National Assembly, together with financial statements for the preceding fiscal year.

The President of the National Assembly submits the reports and the financial statements before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.[25].

4.2 Special report[26]

Following an inquiry, the Ethics Commissioner reports without delay to the President of the National Assembly, the member under inquiry and the leader of the authorized party to which the member belongs. The report must include reasons for its conclusions and recommendations.

The President of the National Assembly submits the report to the National Assembly within the next three days or, if the Assembly is not sitting, within three days of resumption.

5. Salary, Pension and Benefits Regulations

The commissioner's compensation is determined by the National Assembly on the joint motion of the Premier and the Leader of the Official Opposition, after consulting with the Leaders of the other authorized parties represented in the National Assembly and with the approval of two thirds of the Members[27].

[21] 2010, c.30, s108
[22] 2010, c.30, s112
[23] 2010, c.30, s111
[24] 2010, c.30, s.89-90
[25] 2010, c.30, s79
[26] 2010, c.30, s98
[27] 2010, c.30, s63

6. Staff (Number of Positions and Corresponding Titles)

The commissioner may engage the services of any persons necessary to assist them in carrying out their functions. Any staff members of the Ethics Commissioner's office are appointed in accordance with the *Public Service Act*[28].

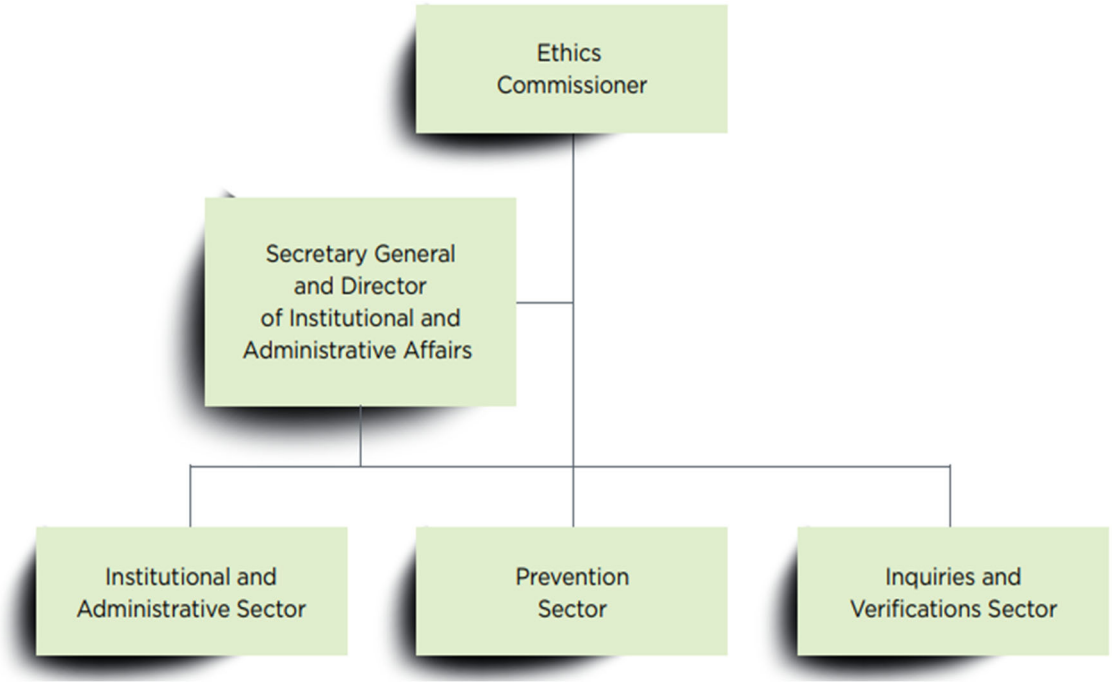
The Office of the Ethics Commissioner currently employs 14 people, in addition to the commissioner, out of which 10 are full-time positions and 4 are part-time. Certain services relating to the management of human, material, financial and information resources are provided by the National Assembly[29].

The Ethics Commissioner's team is divided into three distinct sectors: Prevention, Inquiries and Verifications, and Institutional and Administrative Affairs. The staff of the Prevention sector is responsible for responding to requests for advisory opinions from members and their staff. They draft and issue opinions, provide advice and assist the commissioner. They also analyze the private-interest disclosure statements of elected members and chiefs of staff.

The Inquiries and Verifications sector is responsible for collecting, researching and analyzing relevant facts. It provides the commissioner with interpretations of the Code in specific context of an inquiry and conducts various legal research studies and analyses.

The third sector was formed during the 2021 fiscal year under the responsibility of the Secretary General and Director of Institutional and Administrative Affairs. The Institutional and Administrative sector is composed of a communications and institutional relations advisor. This person is responsible for developing and maintaining relations with various partners, representing the Ethics Commissioner within various groups, supporting them in their presentations, training sessions and other speaking engagements, and managing the office's communications activities. The sector also includes support staff who revise, create and draft documents and administrative processes, and who provides technical support[30].

[28] 2010, c.30, s73
[29] OEC. 2021. "Activity Report for 2021-2022."
[30] OEC. 2021. "Activity Report for 2021-2022."



7. Bibliography

- Office of the Ethics Commissioner. "Activity Report 2021-2022."
- *Code of Ethics and Conduct of the Members of the National Assembly,* c.C-23.1

Statutory Offices in Saskatchewan
Child and Youth Advocate

1. Legislation

The ombudsman has responsibilities under one provincial statute:

- The Child and Youth Advocate Act[1]

2. Appointment Process

2.1 Process

The Advocate for Children and Youth is appointed by order of the Legislative Assembly[2].

2.2 Term of Office

The advocate is appointed for a fixed term of five years and may be reappointed for one further term of five years[3].

2.4 Removal and Suspension

The Legislative Assembly may remove or suspend the advocate from office for cause[4].

If the Legislative Assembly is not in session, the Board of Internal Economy may suspend the advocate for incapacity to act, neglect of duty or misconduct that is proved to the satisfaction of the Board of Internal Economy. This suspension cannot continue past the end of the following session of the Legislative Assembly[5]

2.5 Resignation

The advocate may resign the office at any time by giving written notice to the Speaker[6].

[1] *The Child and Youth Advocate Act,* SS 2012 c.A-5.4
[2] SS 2012 c.A-5.4 s3
[3] SS 2012 c.A-5.4 s3
[4] SS 2012 c.A-5.4 s4
[5] SS 2012 c.A-5.4 s5
[6] SS 2012 c.A-5.4 s3

2.5 Acting officer[7]

If the advocate is suspended, the Legislative Assembly, by order, must appoint an acting advocate to hold office until the suspension is revoked by the Legislative Assembly, or the advocate is removed from office by Legislative Assembly and a person is appointed as advocate.

3. Power, Duties and Responsibilities[8]

The Child and Youth Advocate is entrusted with the responsibility of safeguarding the rights and well-being of children and youths, and carries out various essential functions to fulfill their role. These include public education, advocacy, investigation, resolution, and provision of recommendations.
The advocate actively engages in public education and advocacy efforts aimed at promoting and protecting the interests and well-being of children and youths. Furthermore, the Advocate possesses the ability to conduct or arrange for research aimed at enhancing the rights, interests, and well-being of children and youths.

As part of their advisory role, the advocate may offer guidance and make recommendations to ministers responsible for services provided to children and youths. This ensures that the perspectives, needs, and well-being of children and youths are considered in the decision-making processes of ministries, government agencies, and publicly-funded health entities. The advocate also has the authority to provide recommendations on any matter arising from the investigations. These recommendations serve as guidance for relevant parties and contribute to the improvement of policies, practices, and services related to children and youths.

A committee of the Legislative Assembly may refer to the advocate for investigation and report any petition or matter relating to the rights, interests and well-being of children or youths that is before the committee for consideration. The Lieutenant Governor in Council may refer to the advocate for investigation and report any matter relating to the rights, interests and well-being of children or youths and services to children or youths by any ministry, agency of the government, publicly-funded health entity or employee thereof[9].

Any matter related to a child or youth who receives services from a ministry, government agency, or publicly-funded health entity falls within the purview of the advocate's attention. This includes individual cases, groups of children or youths, as well as services provided by relevant entities. The advocate is empowered to receive and thoroughly investigate these matters. When appropriate, the advocate employs non-adversarial approaches such as negotiation, conciliation, mediation, or other peaceful means to resolve the matters mentioned above.

[7] SS 2012 c.A-5.4 s4
[8] SS 2012 c.A-5.4 s14
[9] SS 2012 c.A-5.4 s15

Before investigating, the advocate must notify in writing the deputy minister of the affected ministry, or the administrative or executive head of the affected agency of the government or publicly-funded health entity, of the advocate's intention to make the investigation[10].

If, during or after an investigation, the advocate is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any ministry, agency of the government, or publicly-funded health entity, the advocate must refer the matter to the minister responsible for the ministry or agency of the government[11].

When carrying out an investigation, the advocate may summon and examine, on oath or affirmation, a person who in the opinion of the advocate is able to give information relating to a matter being investigated[12].

If an investigation by the advocate involves a review of a complaint about services from any ministry, agency of the government or publicly-funded health entity to a child or youth, the advocate may report the results of the investigation to the parent or guardian of that child or youth, and report the results of the investigation to the child or youth[13].

The advocate may also refuse or cease an investigation if[14]:

- the person referring the matter to the advocate has had knowledge of the issue for more than one year
- the matter is frivolous, vexatious or not made in good faith
- in the public interest, a matter should not be investigated or continued to be investigated
- the circumstances of the case do not warrant investigation
- the person referring the matter does not have a sufficient personal interest
- further investigation is deemed unnecessary
- there is a better remedy under another Act

If the advocate decides not to investigate a matter or to cease to investigate a matter, the advocate shall inform the person referring the matter of the decision[15].

Additionally, the advocate can make recommendations to the government or government agencies about legislation, policies, and practices, or upon completion of an investigation. If the advocate makes a recommendation, the advocate may ask the ministry, agency of the government or publicly-funded health entity to notify them within a specific time period about the steps they have taken or intend to take after receiving the recommendation. If the advocate is not satisfied with the response or if there is no response within a reasonable time period, they may report the matter to the Lieutenant-

[10] SS 2012 c.A-5.4 s24
[11] SS 2012 c.A-5.4 s24
[12] SS 2012 c.A-5.4 s26
[13] SS 2012 c.A-5.4 s17
[14] SS 2012 c.A-5.4 s22
[15] SS 2012 c.A-5.4 s23

Governor in Council and include a copy of the report containing recommendations in their next annual report to the Legislative Assembly.

If a child or youth in a facility asks to communicate with the advocate, that request shall be forwarded to the advocate immediately by the person in charge of that facility[16].

4. Reports

4.1 Annual report[17]

In accordance with *The Executive Government Administration Act*, the advocate must submit to the Speaker an annual report describing the progress and activities of the office in the previous year. The Speaker must then submit the report to the Legislative Assembly.

4.2 Special report

In the public interest, or in the interest of a person, department, agency of the government or municipality, the Child and Youth Advcotae may publish reports relating generally to the exercise and performance of their functions and duties under this Act or to any particular case investigated by them[18].

5. Salary, Pension and Benefits Regulations[19]

The Child and Youth Advocate compensation is equal to the average salary of all the deputy ministers and acting deputy ministers of the Government calculated as at April 1 in each year. Any benefits or payments that may be characterized as deferred income, retirement allowances, separation allowances, or severance allowances are not included in calculating the average salary of all the deputy ministers and acting deputy ministers.

If, as a result of current compensations for deputy ministers and acting deputy ministers, the salary of the advocate is less than the advocate's previous salary, the advocate must be paid not less than their previous salary.

The advocate is entitled to receive any benefits of office and economic adjustments that are provided generally to deputy ministers.

The Advocate is subject to *The Public Service Superannuation Act* and *The Public Employees Pension Plan Act*[20].

[16] SS 2012 c.A-5.4 s16
[17] SS 2012 c.A-5.4 s39
[18] SS 2012 c.A-5.4 s39
[19] SS 2012 c.A-5.4 s7
[20] SS 2012 c.A-5.4 s8

6. Staff (Number of Positions and Corresponding Titles)[21]

The advocate may appoint the employees that they feel necessary in the performance of their duties. Members of the staff of the Advocate are employees of the Legislative Assembly and are not members of the public service of Saskatchewan.

The Public Service Superannuation Act and *The Public Employees Pension Plan Act* apply to the members of the staff of the Advocate.

In 2022, the Office of the Child and Youth Advocate employed 24 people, including the advocate, under the following roles: Deputy Advocate, Executive Administrative Assistant, Administrative Assistant, Investigators, Regional Advocates, Advocacy Director, Investigations Director, Human Resources Manager, Finance and Administration Manager, Communications and Public Education Manager, and Systemic, Policy and Research Advocate[22].

7. Bibliography

- Saskatchewan Advocate for Children and Youth. 2022. "2022 Annual Report."
- *The Child and Youth Advocate Act*, SS 2012 c.A-5.4

[21] SS 2012 c.A-5.4 s9

[22] Saskatchewan Advocate for Children and Youth. 2022. "2022 Annual Report."

Statutory Offices in Saskatchewan
Conflict of Interest Commissioner and Registrar of Lobbyists

1. Legislation

The commissioner has responsibilities under two provincial statutes:

- The Members' Conflict of Interest Act[1]
- The Lobbyists Act[2]

2. Appointment Process

2.1 Process

The commissioner h is appointed by resolution of the Legislative Assembly[3].

2.2 Term of Office

The commissioner is appointed for a term of not more than five years and may be reappointed[4].

2.4 Removal and Suspension

The Legislative Assembly may, by resolution, remove or suspend the commissioner from office[5].

If the Legislative Assembly is not in session, the Board of Internal Economy may suspend the advocate for incapacity to act, neglect of duty or misconduct that is proved to the satisfaction of the Board of Internal Economy. This suspension cannot continue past the end of the following session of the Legislative Assembly[6]

2.5 Resignation

The advocate may resign the office at any time by giving written notice to the Speaker, and if there is no Speaker or if the Speaker is absent from Saskatchewan, to the President of the Executive Council.[7].

[1] *The Members' Conflict of Interest Act,* SS 1993 c.M-11.11
[2] *The Lobbyists Act,* SS 2014 c.L-27.01
[3] SS 1993 c.M-11.11 s18
[4] SS 1993 c.M-11.11 s18
[5] SS 1993 c.M-11.11 s19
[6] SS 1993 c.M-11.11 s20
[7] SS 1993 c.M-11.11 s18

2.5 Acting officer[8]

If the advocate is suspended, the Legislative Assembly, by order, must appoint an acting advocate to hold office until the suspension is revoked by the Legislative Assembly, or the advocate is removed from office by Legislative Assembly and a person is appointed as advocate.

3. Power, Duties and Responsibilities

Under The Members' Conflict of Interest Act

One of the main responsibilities of the commissioner relates to advisory opinions to members of the Legislative Assembly. In response to written requests, the commissioner may make those inquiries that they consider appropriate to provide members with a written opinion and recommendations. These opinion and recommendations are confidential, but may be released by the member or with the written consent of the member[9].

A member who has reasonable grounds for believing that another member has violated a provision of this Act may request that the commissioner conduct to give an opinion on the matter. The request must be made in writing. The member then must provide a copy of the request to the member named in it, with a copy of the application to the commissioner. The Legislative Assembly or the President of the Executive Council may also request an opinion from the commissioner on a member of the Assembly or of the Executive Council[10].

If a matter has been referred to the commissioner for an opinion, the Assembly or a committee of it cannot conduct an inquiry into the matter until it has received the opinion of the commissioner[11].

The commissioner may conduct inquiries upon request of a member, the Legislative Assembly, or the Executive Council, or whenever the commissioner considers an inquiry necessary regarding compliance of a member with the Act. For the purposes of an inquiry, the commissioner has all the powers conferred on a commissioner under *The Public Inquiries Act*[12].

When the commissioner carries out an inquiry and determines that a member has violated any provision of the Act, the commissioner has the authority to make recommendations in the report that presented to the Assembly. The commissioner may recommend[13]:

- that the member be directed to comply with the Act
- that the member be reprimanded for their actions
- that the Assembly impose a fine on the member, the amount of which will be determined by an order issued by the Assembly

[8] SS 1993 c.M-11.11 s19
[9] SS 1993 c.M-11.11 s27
[10] SS 1993 c.M-11.11 s29
[11] SS 1993 c.M-11.11 s29
[12] SS 1993 c.M-11.11 s30
[13] SS 1993 c.M-11.11 s31

- that the member be suspended from their duties
- that the member's seat be declared vacant.

Upon receipt of the commissioner's report, the Assembly is required to review its contents and provide a response within 40 sitting days from the day the report was presented. The Assembly may[14]:

- implement the recommendation made by the commissioner
- impose any or all of measures, including suspension
- reject the commissioner's recommendation entirely

Every member of the Legislative Assembly must file with the commissioner a disclosure statement and consult with the commissioner to ensure that adequate disclosure has been made or to ask for advice and direction[15]. The commissioner shall file with the Clerk of the Assembly the public disclosure statement as soon as is practicable, but not later than the June 30 following the filing of the member's disclosure statement. The Clerk of the Assembly then makes each public disclosure statement available for public inspection during the normal business hours of the office of the Clerk of the Assembly[16].

Under The Lobbyists Act

The Office of the Registrar of Lobbyists is responsible for maintaining and operating the province's lobbyist registry, promoting and educating the general public, stakeholders and the lobbyist community about The Lobbyists Act, as well as ensuring to the Act[17]

The commissioner is responsible for establishing and maintaining a registry of all returns filed and any other information submitted to the commissioner. In doing so, the commissioner verifies the information contained in any return filed or other document submitted, and may refuse or return documents that do not comply with the requirements of the Act. If a return is removed from the registry, the registrar must inform the designated filer who filed the return of its removal and the reason for the removal[18].

The commissioner must allow the public to inspect the registry during normal office hours of the registrar[19].

In addition to maintaining the lobbyists registrar, the commissioner is responsible for providing directions to lobbyists individually or generally with respect to the enforcement, interpretation or application of the Act. They may also make any inquiries they consider appropriate to provide

[14] SS 1993 c.M-11.11 s31
[15] SS 1993 c.M-11.11 s11
[16] SS 1993 c.M-11.11 s12
[17] CIC and ORL. 2020. "Annual Report of the Saskatchewan Conflict of Interest Commissioner and Registrar of Lobbyists 2020-2021."
[18] SS 2014 c.L-27.01 s14
[19] SS 2014 c.L-27.01 s15

lobbyists with a direction. If in compliance with the Act, the commissioner provide direction confidentially to a lobbyist[20].

The commissioner may conduct any investigations they deem necessary. For the purposes of an investigation, the commissioner has all the powers conferred on a commissioner under *The Public Inquiries Act, 2013*[21].

If the commissioner is of the opinion that a person has contravened the Act, the registrar may assess an administrative penalty. The maximum amount of an administrative penalty that may be imposed is $25,000. No administrative penalty, however, can be assessed by the commissioner more than two years after the act or omission that renders the person liable to an administrative penalty first came to the knowledge of the registrar[22].

Except when otherwise necessary, the commissioner cannot disclose any information that comes to the knowledge of the registrar in the exercise of their powers, performance of their duties or carrying out of their functions[23].

4.1 Annual report[24]

In accordance with *The Tabling of Documents Act, 1991*, the commissioner must submit to the Speaker an annual report describing the progress and activities of the commissioner in the previous year. The Speaker then submits the report to the Legislative Assembly

4.2 Special report[25]

When the commissioner receives a request for an opinion from member or from the Legislative Assembly, the commissioner must report their opinion to the Speaker and to the member who is the subject of the opinion. The Speaker must then submit the opinion to the Legislative Assembly as soon as is practicable if it is in session or, if it is not in session, at the next session.

When the commissioner receives a request for an opinion from the Executive Council, the commissioner must report their opinion to the President of the Executive Council.

After the commissioner conducts an investigation under the *Lobbyists Act*, the commissioner must prepare a report of the investigation, including findings and conclusions and reasons for the findings and conclusions. The report must be submitted to the Speaker, who then submits the report to the Legislative Assembly[26].

[20] SS 2014 c.L-27.01 s17
[21] SS 2014 c.L-27.01 s18
[22] SS 2014 c.L-27.01 s20
[23] SS 2014 c.L-27.01 s22
[24] SS 1993 c.M-11.11 s25
[25] SS 1993 c.M-11.11 s30
[26] SS 2014 c.L-27.01 s19

4. Salary, Pension and Benefits Regulations

The commissioner's compensation is fixed by the Board of Internal Economy[27]. The commissioner is subject to *The Public Service Superannuation Act*, but is not subject to *The Public Service Act*[28].

5. Staff (Number of Positions and Corresponding Titles)29

Subject the consent of the Speaker, the commissioner may use any employee of the Assembly as staff. Any officer of the Assembly may consent to act as staff for the commissioner where, in the officer's opinion, to do so will not unduly interfere with the officer's duties to the Assembly.

In 2020, the office employed two people, a Deputy Registrar and Executive Operations Officer and a Contractor, in addition to the commissioner [30].

6. Bibliography

- CIC and ORL. 2020. "Annual Report of the Saskatchewan Conflict of Interest Commissioner and Registrar of Lobbyists 2020-2021."
- *The Members' Conflict of Interest Act,* SS 1993 c.M-11.11
- *The Lobbyists Act,* SS 2014 c.L-27.01

[27] SS 1993 c.M-11.11 s22
[28] SS 1993 c.M-11.11 s23
[29] SS 1993 c.M-11.11 s24
[30] CIC and ORL. 2020. "Annual Report of the Saskatchewan Conflict of Interest Commissioner And Registrar of Lobbyists 2020-2021."

Statutory Offices in Yukon
Chief Electoral Officer

1. Legislation

The officer has responsibilities under one statute:

- The Elections Act[1]

2. Appointment Process[2]

2.1 Process

The officer is appointed by the Commissioner in Executive Council shall, on the recommendation of the Legislative Assembly made by at least two-thirds of the members of the Legislative Assembly

2.2 Term of Office

A chief electoral officer's appointment expires three months after the tabling of the final report of the first Electoral District Boundaries Commission that is appointed after that chief electoral officer is appointed. They may be reappointed.

2.3 Resignation

The chief electoral officer may at any time resign that office by written notice to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the Yukon, to the clerk of the Legislative Assembly.[3]

2.4 Removal and Suspension

The Commissioner in Executive Council shall, on and in accordance with the recommendation of the Legislative Assembly based on cause or incapacity suspend the chief electoral officer, with or without remuneration; or remove the chief electoral officer from office.

When the Legislative Assembly is not sitting and is not ordered to sit within the next five days, the Commissioner in Executive Council may suspend the chief electoral officer from office, with or without remuneration, for cause or incapacity but the suspension shall not continue in force after the expiry of 30 sitting days.[4]

[1] *Elections Act,* RSY 2002 c.63 as amended
[2] RSY 2002 c.63 s12
[3] RSY 2002 c.63 s12.02
[4] RSY 2002 c.63 s12.02

2.5 Acting Appointment

If the Equal Pay Commissioner is suspended or removed, the Commissioner, on the recommendation of the Legislative Assembly, appoints an acting commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as Equal Pay Commissioner.

If the Equal Pay Commissioner is suspended or removed on the recommendation of the Board of Management, the Speaker, on the recommendation of the Board of Management, appoints an acting commissioner to hold office until the suspension is revoked by the Legislative Assembly or a person is appointed as commissioner.

If the commissioner has resigned or is temporarily absent or unable to perform their duties, the Speaker, on the recommendation of the Board of Management, may appoint an acting commissioner until the they are able to or no longer absent, or a person is appointed, whichever occurs first.

When, for any reason, the Equal Pay Commissioner determines that they should not act in respect of any particular matter, the Speaker, on the recommendation of the Board of Management, may appoint a special commissioner to act in their place. A special Equal Pay Commissioner holds office until the conclusion of the matter.

3. Power, Duties and Responsibilities

The Chief Electoral Officer is responsible for exercising general direction and supervision over the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of the Act. The officer also has the authority to issue instructions to election officers in order to ensure that the Act is executed effectively.

This may include providing guidance on how to conduct the election process in a non-partisan manner. If, in the opinion of the chief electoral officer, the provisions of the Act are ineffective as a result of any mistake, miscalculation, emergency or unforeseen circumstances, the chief electoral officer may:

- extend the time for doing any act
- increase the number of election officers or polling stations
- otherwise adapt any of the provisions of this

The chief electoral officer may only extend or postpone the time for the taking of the poll if satisfied that because of an accident, emergency or extreme weather conditions, a substantial number of electors will be unable to get to their polling station within the time provided and no extension or postponement of more than 24 hours must be granted.[5]

The chief electoral officer may, after consulting each registered political party, submit to the Members' Services Board a written proposal for the use of any procedure, process, method, device,

[5] RSY 2002 c.63 s14

equipment or means of communication that differs from what this Act otherwise requires to be used for that purpose.[6]

The officer may, by approval in writing, prescribe write of elections, proclamations, nomination papers, ballot papers, and returns to the writ.[7]

Any organization that has as its primary purpose the promotion of candidates for election to the Legislative Assembly may apply to the chief electoral officer to be a registered political party. When a political party submits a valid application, the officer must register the party within 30 after receiving the application.[8]

The officer is responsible for supervising and directing the activities of the Assistant Chief Electoral Officer, who is appointed by the Chief Electoral Office. The Chief Electoral Officer is also responsible for appointing, removing or suspending returning officers for each electoral districts.[9]

The chief electoral officer shall establish and maintain a register of electors.[10] The chief electoral officer must also ensure the register of electors is revised as soon as practicable after any amendment or replacement of the *Electoral District Boundaries Act*.[11] This register must be provided to election officers, registered political parties, and to members of the Legislative Assembly per district.[12]

If it is made to appear to the chief electoral officer that an offence under this Act has been committed, the chief electoral officer must make any inquiries that appear necessary under the circumstances; and assist or intervene if it appears that proceedings for the punishment of the offence have not been properly taken and that intervention would be in the public interest.[13]

For the purpose of an inquiry, the chief electoral has the powers of a board constituted under the *Public Inquiries Act*.[14]

4. Reports

For each election, the chief electoral officer must prepare and put into effect a plan for providing information to the public about the election.[15]

[6] RSY 2002 c.63 s14.01
[7] RSY 2002 c.63 s16.1
[8] RSY 2002 c.63 s44
[9] RSY 2002 c.63 s22
[10] RSY 2002 c.63 s49
[11] RSY 2002 c.63 s49.05
[12] RSY 2002 c.63 s49.10
[13] RSY 2002 c.63 s350
[14] RSY 2002 c.63 s351
[15] RSY 2002 c.63 s314

The chief electoral officer must, immediately after each election, cause to be printed and published a report including, by polling divisions, the number of ballots cast for each candidate, the number of rejected ballots and the number of names on the list of electors.[16]

If the chief electoral officer has taken any action in respect of the apparent commission of an offence by an election officer, or if the chief electoral officer has suspended a returning officer, the chief electoral officer must deliver to the Speaker of the Legislative Assembly within 10 days after the start of the session of the Legislative Assembly next following the election.[17]

The chief electoral officer may, at any time, deliver to the Speaker of the Legislative Assembly a report setting out any matter that as arisen in connection with the office or any amendments recommended.[18]

Any report or recommendation received by the Speaker from the chief electoral officer must at the earliest opportunity be tabled in the Legislative Assembly.[19]

5. Salary, Pension and Benefits Regulations

The Commissioner in Executive Council shall by order prescribe the remuneration to be paid to the chief electoral officer.[20]

6. Staff (Number of Positions and Corresponding Titles)

The Commissioner in Executive Council may, after consultation with the chief electoral officer, by regulation provide for the employment of the assistant chief electoral officer and of other officers and employees who are to assist in carrying out their duties and responsibilities.[21]

7. Bibliography

- *Elections Act,* RSY 2002 c.63 as amended

[16] RSY 2002 c.63 s315
[17] RSY 2002 c.63 s316
[18] RSY 2002 c.63 s317
[19] RSY 2002 c.63 s318
[20] RSY 2002 c.63 s12.01
[21] RSY 2002 c.63 s16

Statutory Offices in Yukon
Child and Youth Advocate

1. Legislation

The advocate has responsibilities under one statute:

- The Child and Youth Advocate Act[1]

2. Appointment Process

2.1 Process

The advocate is appointed by the Commissioner in Executive Council shall, on the recommendation of the Legislative Assembly.

Before recommending the appointment of a person as the advocate, the Legislative Assembly must consider the skills, qualifications and experience of the person, including the person's understanding of First Nation culture, traditions, values, beliefs and history; and knowledge about child and youth development and disabilities affecting children and youth.[2]

2.2 Term of Office

The advocate must be appointed for a term of five years and may be reappointed.

The advocate must be appointed to work full time and must work exclusively as advocate and may not hold any other public office or carry on a trade, business or profession unless authorized by the Commissioner in Executive Council.[3]

2.3 Resignation

The advocate may at any time resign that office by written notice to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the Yukon, to the clerk of the Legislative Assembly.[4]

2.4 Removal and Suspension

On the recommendation of the Legislative Assembly, based on cause or incapacity, the Commissioner in Executive Council must, in accordance with the recommendation:

- suspend the advocate, with or without remuneration

[1] *Child and Youth Advocate Act,* SY 2009 c.61 as amended
[2] SY 2009 c.61 s4
[3] SY 2009 c.61 s4
[4] SY 2009 c.61 s6

- remove the advocate from office

When the Legislative Assembly is not sitting and is not ordered to sit within the next five days, the Commissioner in Executive Council may suspend the chief electoral officer from office, with or without remuneration, for cause or incapacity but the suspension shall not continue in force after the expiry of 30 sitting days.[5]

2.5 Acting Appointment

If the advocate is suspended or temporarily absent, the Commissioner in Executive Council, on the recommendation of the Legislative Assembly, may appoint an acting advocate to hold office until the end of the suspension, the appointment of a new advocate, or the return of the advocate.

If the advocate is suspended or temporarily absent, and if the Legislative Assembly is not sitting and is not ordered to sit within the next 5 days, the Commissioner in Executive Council may appoint an acting advocate until the end of the suspension, the appointment of a new advocate, or the return of the advocate.[6]

3. Power, Duties and Responsibilities

The advocate is primarily responsible for supporting, assisting, informing and advising children and youth respecting designated services when requested to do so by a child or youth who is receiving or eligible to receive the service or by any other person with an interest in the child or youth, which activities include:

- providing information and advice related to how to effectively access the designated service and any processes for review of decisions respecting the service
- working with the child or youth and other persons involved to ensure that the views and preferences of the child or youth receiving or eligible to receive the designated service are heard and considered, having regard to the age and maturity of the child or youth
- promoting the rights and interests of the child or youth receiving or eligible to receive the designated service particularly if the views and preferences of the child or youth cannot be determined due to their developmental level or inability to communicate
- working with the child or youth receiving or eligible to receive the designated service and other persons involved to resolve issues with respect to the designated service through the use of informal dispute resolution[7]

If, in the course of performing the individual advocacy functions on behalf of a child or youth, the advocate becomes aware of a policy or systemic issue in respect of a designated service that raises a substantial question of public interest, the advocate may review and provide advice to the public body, First Nation service authority or school board that is providing the designated service.

[5] SY 2009 c.61 s6
[6] SY 2009 c.61 s7
[7] SY 2009 c.61 s11

If a review of a policy or systemic issue requires resources beyond those available to the advocate, they may, rather than reviewing and providing advice on the issue, bring the issue to the attention of the public body, First Nation service authority or school board that is providing the designated service.[8]

The Legislative Assembly or a Minister may refer to the advocate for review and report any matter relating to the provision of designated services that involves the interests and well-being of children and youth, which may include a review of critical injuries, a death or other specific incident concerning a child or youth in the care or custody of the government or a First Nation service authority.[9]

In carrying out their functions and duties the advocate must:

- take into account the principles, rights, entitlements and other applicable provisions of any policy or legislation governing the designated services or governing the programs and services for children and youth provided by a First Nation or municipality
- take into account the provisions of the United Nations Convention on the Rights of the Child
- give priority to children and youth who do not have others who can assist them to advocate for their rights, preferences and interests
- make reasonable efforts to ensure that the child or youth understands the information provided
- coordinate advocacy actions with others providing advocacy services to children and youth[10]

The advocate may not act as legal counsel for a child or youth.[11]

The advocate may refuse to take any action in response to a request, if

- it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than six months before contacting the advocate
- the subject matter is frivolous or trivial, vexatious or not made in good faith
- the person does not have a sufficient personal interest in the child or youth on whose behalf they have made the request
- no further action is necessary or warranted
- the subject matter of the request is being dealt with by another body, tribunal or court established under legislation that has jurisdiction[12]

If a child or youth in a facility, caregiver's home, group home or other home or place in which the child or youth is placed under a provincial Act of the province, the Criminal Code, the Youth Criminal Justice Act (Canada), or an Act of the Legislature, asks to communicate with the advocate,

[8] SY 2009 c.61 s12
[9] SY 2009 c.61 s15
[10] SY 2009 c.61 s17
[11] SY 2009 c.61 s18
[12] SY 2009 c.61 s20

that request must be forwarded to the advocate immediately. The person in charge must also provide the child or youth with the means to contact or meet the advocate privately.[13]

4. Reports

4.1 Annual report

The advocate must provide an annual report on the affairs of the office, including financial statements, to the Speaker of the Legislative Assembly.

The advocate must provide the report no later than October 31st following the end of the fiscal year and the Speaker must submit the report to the Legislative Assembly as soon as possible.

The Advocate must distribute copies of the annual report to all First Nations after it has submitted to the Legislative Assembly, and should be made available to the public.

5. Salary, Pension and Benefits Regulations

The Commissioner in Executive Council must determine the remuneration and benefits for the advocate. The Commissioner in Executive Council must not reduce the remuneration and benefits of the advocate except on the recommendation of the Legislative Assembly. [14]
The Public Service Act does not apply in respect of the Advocate.[15]

6. Staff (Number of Positions and Corresponding Titles)

The advocate may employ any employees or contract for the provision of any services that the advocate considers necessary for the efficient operation of the office and may determine the terms and conditions of employees' employment, including the remuneration and benefits to which they are entitled, provided that those benefits include the application to the employees of the *Public Service Group Insurance Plan Act*.

The *Public Service Act* does not apply in respect of persons employed in the office of the advocate.[16]

7. Bibliography

- *Child and Youth Advocate Act,* SY 2009 c.61 as amended

[13] SY 2009 c.61 s26
[14] SY 2009 c.61 s5
[15] SY 2009 c.61 s4
[16] SY 2009 c.61 s8

Seniors' Advocate (Jurisdictional Scan)

Alberta

In Alberta, the Senior's Advocate was created with the implementation of the *Albertan Health Act*, implemented in 2013. On November 25, 2019, however, the government of Alberta announced the office of the Senior's Advocate would be absorbed by the office of the Health Advocate. The advocate had three key roles: helping seniors navigate systems and get support, outreach to seniors' groups and making recommendations to government for improvements.

The amalgamation, which included the transferring of five staff members and the Senior's Advocate budget, was expected to save the province as much as $500,000 per year.

Although both the Senior's Advocate and the Health Advocate are considered offices of the Legislature Assembly, they are not independent or statutory offices. The roles were created by ministerial order and do not report to the legislative assembly, instead they report to the Health Minister.

The Office of the Health Advocate currently provides services related to the Mental Health Advocate and the Senior's Advocate, in addition to the Health Advocate's role.

The Office of the Health Advocate is responsible for:

- providing education about the Alberta Health Charter
- referring Albertans to the appropriate complaints resolution process
- reviewing or investigating complaints under the *Alberta Health Act*
- providing information about health care services and programs
- reporting to the Minister of Health on the Health Advocate's activities

References

- French, Janet. 2019. "Alberta government phases out seniors advocate, rolls role into health advocate." *Edmonton*
- *Journal,* November 25. < https://edmontonjournal.com/news/politics/alberta-government-phases-out-seniors-advocate-rolls-role-into-health-advocate>
- Office of the Alberta Health Advocates <https://www.alberta.ca/office-of-alberta-health-advocates.aspx>
- Price, Terry, and Douglas Martin. 2022. "Opinion: It's time to bring back Alberta's senior advocate." *Edmonton*
- *Journal,* March 11. <https://edmontonjournal.com/opinion/columnists/opinion-opinion-its-time-to-bring-back-albertas-seniors-advocate>

British Columbia

In British Columbia, the Office of the Seniors Advocate was created in 2013, with the implementation of the *Seniors Advocate Act.* The advocate is considered an independent office, but not an officer of the Legislature, since it reports to the Minister of Health.

The Seniors Advocate monitors and analyzes seniors' services and issues, and makes recommendations to government and service providers to address systemic issues. The office also provides information and referrals for individuals who are navigating seniors services and tracks their concerns, which helps inform future work.

The office monitors: health care, housing, income supports, community supports and transportation. As well as, collaborating with service providers, government and health authorities to improve effectiveness, efficiency and outcomes. A council of advisers, made up of seniors, provides the Seniors Advocate with advice and feedback from the perspective of seniors with diverse backgrounds, ages, geographical areas and cultures.

References

- Office of the Seniors Advocate. "About Us." < https://www.seniorsadvocatebc.ca/about-us/>
- Office of the Seniors Advocate. "2021-2022 Annual Report of the Office of the Seniors Advocate."
- < https://www.seniorsadvocatebc.ca/app/uploads/sites/4/2022/07/Annual_Report_2021_22-FINAL.pdf>

Manitoba

In Manitoba, some of the responsibilities equivalent to that of a Seniors Advocate fall under the Minister of Seniors and Long-Term Care. The department was created in 2022, after the Health portfolio was split and two new cabinet positions were created, including a Mental Health and Community Wellness Minister. The creation of these new positions follows an investment of $14 million to expand the Self and Family-Managed Care program and $1.3 million more for palliative care services.

There are no plans to create a statutory office or introduce new legislation.

References

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- Liewicki, Nathan. 2022. "National, local advocates applaud creation of Manitoba department dedicated to seniors."

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Nova Scotia

In Nova Scotia, the role of a "senior advocate" falls under the responsibilities of the Seniors' Advisory Council of Nova Scotia. Formerly called Group of IX, the council serves as an advisory body to Government through the Department of Seniors to facilitate the development of government age-related policies, programs, and services. The group brings reports, recommendations, questions and suggestions to the government every month.

The Seniors Advisory Council is an independent body of elected volunteers representing nine seniors organizations:

- CARP – Nova Scotia Chapter;
- Community Links;
- National Association of Federal Retirees;
- Nova Scotia Federation of Seniors;
- Nova Scotia Government Retired Employees Association;
- Regroupement des aînés de la Nouvelle-Écosse;
- Section of Senior and Retired Doctors NS
- Retired Teachers Organization of the NSTU;
- Royal Canadian Legion, Nova Scotia/Nunavut Command

Although the NDP has called for the creation of a Seniors' Advocate Office (as a statutory office), the council believes the appointment of an advocate would reduce the ability of older Nova Scotians to deal with the government directly.

References

- Cooke, Alex. 2022. "N.S. NDP calls for seniors' advocate, but group says it's already doing the work." *Global*
- *News,* April 15. < https://globalnews.ca/news/8761105/ns-ndp-legislation-seniors-advocate/>
- Seniors' Advisory Council of Nova Scotia. < https://novascotia.ca/seniors/groupIX.asp>

Ontario

In Ontario, some of the responsibilities equivalent to that of a Seniors Advocate fall under the Minister of Long-Term. The department was created in 2022 as part of the implementation of the *Fixed Long-Term Care Act*.

A bill (Bill 196, Seniors' Advocate Act) to create a Seniors Advocate Office, as a statutory office, was introduced to the Legislative Assembly on July 2020, and after Second Reading it was referred to the Standing Committee on the Legislative Assembly on October 2020. The bill has not been furthered debated at the Assembly and remains with the Committee.

References

- Ontario Newsroom. 2022. "Premier Ford Appoints Minister of Long-Term Care." January 14. < https://news.ontario.ca/en/statement/1001428/premier-ford-appoints-minister-of-long-term-care>
- Legislative Assembly of Ontario. "Bill 196, Seniors' Advocate Act, 2020." < https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-196>

Prince Edward Island

In Prince Edward Island, some of the responsibilities equivalent to that of a Seniors Advocate fall under the Minister of Health and Wellness, who provides oversight to health services in the province in accordance with the Health Services Act. It establishes an accountability framework, standards for health services, performance targets, policy or guidelines for the management of operations and delivery of services and approves business plans and budgets. The Minister's mandate includes Senior's Health.

References

- Government of Prince Edward Island. "About: Health and Wellness." < https://www.princeedwardisland.ca/en/department/health-and-wellness/about>

Quebec

In Quebec, some of the responsibilities equivalent to that of a Seniors Advocate fall under the Minister of Health and Social Services. Complaints and reports about health and social services, regarding seniors, are managed by the local Service Quality and Complaints Commissioner.

References

- Government of Quebec. "Programs and Services for Seniors. 2023 edition." < https://cdn-contenu.quebec.ca/cdn-contenu/services_quebec/Guide_Seniors_EN_2023.pdf>

Saskatchewan

In Saskatchewan, some of the responsibilities equivalent to that of a Seniors Advocate fall under the Minister of Mental Health and Addictions, Seniors and Rural and Remote Health. The cabinet position, Minister Responsible for Seniors, was created in 2019.

There are no plans to create a statutory office. According to a government statement, the functions of a seniors advocate are fulfilled by government bodies like the Ministry of Health and the Saskatchewan Health Authority, as well as the provincial ombudsman and the non-profit organization Saskatchewan Seniors Mechanism.

References

- Vescera, Zack. 2020. "Sask. NDP says it would appoint seniors advocate if elected." *Saskatoon Star Phoenix,* July 17. < https://thestarphoenix.com/news/local-news/sask-ndp-says-it-would-appoint-seniors-advocate-if-elected>

Officers of Parliament in New Zealand, Australia, and the United Kingdom

Statutory offices, known as "Officers of Parliament" (hereafter officers) exist in various arrangements of the Westminster model across the Commonwealth. While the term is commonly used, the definition is less clear (Gay and Winetrobe 2003) – for some countries, like Canada and New Zealand, officers have been institutionalized, and for other countries, like Australia and the UK, officers exist by convention, often without statute (Gay and Winetrobe 2008).

It should be noted, however, that even within countries where officers are institutionalized, the term is rarely well-defined and is often confused with other positions (Gay 2008). The *Erskine May*, for instance, does not use the term "Officer of Parliament," but lists permanent Officers of one or other Houses (discounting the Lord Chancellor, the Speaker and their deputies), such as the Clerk or the Sergeant at Arms (Gay and Winetrobe 2003).

Despite the differences in definition and level of institutionalisation, officers are generally characterized by their emphasis on independence from the executive, their ability to provide accountability to Parliament, and a certain degree of parliamentary involvement in senior appointments (Gay and Winetrobe 2008). Other formal mechanisms also characterize these officers including restrictions on dismissal of officers and direct appointment of staff as non-civil servants (Gay and Winetrobe 2003).

While a wide variety of officers exist in the Westminster model, their definition as part of "Officers of Parliament" depends largely on their unique political and constitutional importance. Nevertheless, common officers exist in the Commonwealth and are considered to be "core" officers, including State Auditors, Ombudsmen, Electoral Officers/Commissions, and Parliamentary Ethics Commissioners (Gay and Winetrobe 2003).

With the exception of the Comptroller and Auditor General (or akin officers), most officers in the Commonwealth have been developed in the last 30 years or so, partly as traditional notions of ministerial responsibility have declined and partly as the process of government has become more widespread, complex, and impenetrable to the ordinary citizen (Gay and Winetrobe 2003; 2008). Independent "experts," in particular, as well as more formal rules, have become the norm whenever political scandals have weakened the public faith in the system.

This briefing note considers the differences between Officers of Parliament in Australia, New Zealand, and the United Kingdom.

(*Information is limited, as much as possible, to what is relevant and comparable to the Review of Statutory Offices of Newfoundland and to Canadian politics)*

Australia

In Australia, the Auditor-General is the only Commonwealth officer designated by legislation as an Officer of Parliament (Buchanan 2008). However, other officers in the country share some of the characteristics that are common to most other officers in the Commonwealth, such as appointment processes, terms of office, and, in some cases, level of interdependence with Parliament. These

offices include the Ombudsman, the Electoral Commissioner, the Human Rights Commissioner, and the Privacy Commissioner. Officers of Parliament also exist at the state level in Australia, but do not necessarily coincide with those at the federal level (Gay and Winetrobe 2003).

New Zealand

New Zealand's approach to defining the characteristics and status of officers of parliament in legal and functional terms is considered to be unique in the Commonwealth. This approach has been taken to limit the number of watchdog offices with parliamentary officer status, which is unusual among Commonwealth jurisdictions (Buchanan 2008). The concept of the officer of parliament in New Zealand has evolved over the past fifty years, from a simple statement of status in 1962 to the formal structures in place today.

In 1989, the Inquiry into Officers of Parliament Report defined the characteristics of an officer of parliament and led to the establishment of an Officers of Parliament Committee (OPC) and a system for parliamentary appointment, funding, and oversight. The committee is chaired by the Speaker ex officio (McGee 2017). In 2004, the Public Finance Act underwent a major overhaul, which included new reporting requirements for government departments and extended those, with appropriate modifications, to all officers of parliament. These reforms mandated that all government departments and officers of parliament must annually prepare a 'statement of intent' that guides operations over a three-year period. This statement forms the basis for the entity's annual report, which is subject to parliamentary scrutiny (Buchanan 2008).

In New Zealand, the Officers of Parliament have been standardized and institutionalized, following the recommendations of the 1989 Finance and Expenditure Committee. As a result, in New Zealand, unlike in Canada, officers have common rules governing the officers' relationship with the House and their funding arrangements, while their powers, duties, and functions are primarily determined by the relevant statutory provisions governing each individual position. The recommendations of the committee included (McGee 2017):

- An officer must only be created to check on the arbitrary use of power by the executive.
- An officer must only discharge functions that the House itself could carry out.
- An officer should be created only rarely.
- The House should periodically review the appropriateness of each officer's status as an Officer of Parliament.
- Each Officer of Parliament should be created with separate legislation primarily devoted to that position.

Officers of Parliament in New Zealand are composed of the Ombudsman (established in 1962), the Parliamentary Commissioner for the Environment (established in 1987), and the Controller and Auditor-General (established in 2011). A fourth officer was established in 1976, the Wanganui Computer Centre Privacy Commissioner, but was abolished in 1993.

The appointment of Officers of Parliament is carried out by the Governor General, but only after receiving the House's recommendation. These appointments are for a specific term, with the Auditor-

General holding the longest term of up to seven years, and the Ombudsmen, the Parliamentary Commissioner for the Environment, and the Deputy Auditor-General holding a term of up to five years. However, all Officers of Parliament remain in office until a successor is appointed, and reappointment is allowed except for the Auditor-General. The Remuneration Authority determines the salaries and allowances of Officers of Parliament, and their funding is appropriated through permanent legislative authority (McGee 2017).

Example of an Officer of Parliament: The Ombudsman

The Ombudsman is a public official responsible for investigating complaints about decisions made by government departments or other governmental bodies in New Zealand. One of the main responsibilities of the Ombudsman is to visit various facilities, such as prisons, immigration detention facilities, health and disability places of detention, childcare and protection residences, and youth justice residences, to prevent torture and other cruel, inhuman or degrading treatment or punishment. In 2010, the Ombudsman, along with the Human Rights Commission and New Zealand Convention Coalition, also took on responsibilities related to the United Nations Convention on the Rights of Persons with Disabilities (McGee 2017).

Example of an Officer of Parliament: The Parliamentary Commissioner for Environment

The Parliamentary Commissioner for the Environment is responsible for investigating the actions of public authorities that may have an environmental impact and auditing their procedures to minimize any adverse effects. This role is quite broad in nature. The workload of the office is determined by various factors, including the number of environmental issues identified by the commissioner, requests from members of Parliament and other individuals or groups, and environmental impact reporting required by Ministers and Government agencies (McGee 2017).

United Kingdom

In the United Kingdom, most Officers of Parliament are considered "watchdogs" and rarely established by statute (Gay 2008). The majority of these officers have resulted from specific scandals or events and are generally sponsored by the Cabinet Office for funding and staff. As a consequence, officers are considered a "fuzzy" concept in British politics (Gay 2008b).

According to legal status and function, the UK government recognizes five groups of Officers of Parliament (or watchdogs) and semi-parliamentarian Officers of Parliament (Gay and Winetrobe 2003). The modern preference has also been to create:

- Established Officers of Parliament
- Almost Officers of Parliament
- Statutory constitutional watchdogs
- Non-statutory Nolan watchdogs
- Other non-statutory watchdogs

Other officers include those sponsored by the Cabinet Office, such as the Civil Service Commissioners, the Committee on Standards in Public Life, the Business Appointments Committee,

the Public Appointments Commissioner, and the House of Lords Appointments Committee. Collective watchdogs, also sponsored by the Cabinet Office, or at times by the Ministry of Justice, are considered to be non-statutory and are appointed personally by the Prime Minister (Gay 2008).

The "Established Officers of Parliament" are comprised by the Comptroller and Auditor General, the Ombudsman, and the Parliamentary Commissioner for Standards (Gay 2008). Yet, even among these officers there are significant differences in the process of appointment and the level of independence.

Example of an Officer of Parliament: The Ombudsman

In the United Kingdom, the idea of introducing an Ombudsman system began after the Labour Party won the general election in October 1964. Prime Minister Harold Wilson was influenced by his experience on the Public Accounts Committee and aimed to create a parliamentary institution that adapted the Scandinavian Ombudsman concept to fit the UK's constitutional system. The result was a firm statutory base that embedded the Ombudsman Office within the parliamentary system (Giddings 2008).

The Parliamentary Ombudsman office was designed to be a classical Ombudsman office, and an instrument of Parliament for MPs to use in redressing citizens' grievances. It was underpinned by a select committee that served as a management instrument, designed to monitor the office's work and protect it from the Executive. The Ombudsman's work is initiated by Parliament and reported back to Westminster (Giddings 2008).

According to the *Parliamentary Commissioner Act, 1967,* there are two ombudsman offices in the UK: the Parliamentary Ombudsman and the Health Service Ombudsman (PHSO), both held by the same person by convention. The PHSO investigates complaints of "maladministration," which is when a public body has not acted properly, fairly or has given a poor service. The PHSO offers an independent complaint handling service for complaints that have not been resolved by the NHS in England and UK government departments. On the other hand, the Parliamentary Ombudsman can only investigate complaints about UK government departments and other UK public organizations if an MP refers the complaint to the Ombudsman, a requirement known as the "MP filter." There is no MP filter for the Health Service Ombudsman.

To investigate a complaint, the Parliamentary Ombudsman requires that the complainant must first have put their grievance to the department or public body concerned to allow officials to respond before taking the matter further. In some cases, complainants will have to go through a second review before the PHSO can investigate. This is often called a 'second tier,' and examples include the Adjudicator's Office or the Independent Case Examiner (ICE).

The Ombudsman is appointed by His Majesty by Letters Patent, for a period of no more than seven years and is not eligible for re-appointment. The officer may be relieved from his duties at the request of His Majesty, on the grounds of misbehaviour, or at their own request. Renumeration for the position of Ombudsman is the same salary as for an employee of the civil service.

Bibliography

- Buchanan, Robert. 2008. "Commonwealth Experience II – Officers of Parliament in Australia and New Zealand: Building a Working Model." In *Parliament's Watchdogs: At the Crossroads* by Oonagh Gay and Barry K. Winetrobe (eds.), 81-93. UK: UK Study of Parliament Group.
- Gay, Oonagh, and Barry K. Winetrobe. 2003. *Officers of Parliament – Transforming the role.* UK: The Constitution Unit School of Public Policy, UCL.
- Gay, Oonagh. 2008. "The UK Perspective: Ad Hocery at the Centre" In *Parliament's Watchdogs: At the Crossroads* by Oonagh Gay and Barry K. Winetrobe (eds.), 17-31. UK: UK Study of Parliament Group.
- Gay, Oonagh, and Barry K. Winetrobe. 2008. "Introduction – Watchdogs in Need of Support." In *Parliament's Watchdogs: At the Crossroads* by Oonagh Gay and Barry K. Winetrobe (eds.), 11-17. UK: UK Study of Parliament Group.
- Giddings, Philip. 2008. "The Parliamentary Ombudsman: a Classical Watchdog" In *Parliament's Watchdogs: At the Crossroads* by Oonagh Gay and Barry K. Winetrobe (eds.), 93-104. UK: UK Study of Parliament Group.
- McGee, David. 2017. "Officers of Parliament and Other Officers and Bodies Associated with Parliament." In *Parliamentary Practice in New Zealand* by Mary Harris and David Wilson (eds.), 99-113. Auckland: Oratia.
- *Parliamentary Commissioner Act196,* c. 13. UK Public General Act.
- Constituency Casework. 2022. "Parliamentary Ombudsman." *House of Commons Library*. Available at: https://commonslibrary.parliament.uk/parliamentary-ombudsman/

Executive Employment Opportunity

Citizens' Representative, Office of the Citizens' Representative

Newfoundland & Labrador

The Office of the Citizens' Representative provides a province-wide ombudsman service. The primary work of the Citizens' Representative is to accept requests from citizens who feel they have been treated unfairly with respect to their contact with government offices and agencies.

Operating under the **Citizens' Representative Act**, the powers of the Representative center around the resolution of disputes, brought forward by citizens or by the Representative, regarding decisions, acts, or omissions by government departments or agencies related to the matters of administration, when all other avenues of administrative appeal have been exhausted. The Lieutenant-Governor in Council and the House of Assembly may also refer to the Representative, a matter for investigation and report related to the matters of administration. The Representative is the Chief Investigator for whistle blowing complaints under the **Public Interest Disclosure and Whistleblower Protection Act** and the **House of Assembly Accountability, Integrity and Administration Act.** The Representative is responsible for leading a team of professionals dedicated to addressing issues raised by the general public that fall within the mandate of the office.

This opportunity provides the incumbent with the ability to build institutional respect and shape government policy through recommendations designed to improve process. As well, the successful candidate will, from time to time, speak to the media on issues related to the office.

Strategic vision and planning, the ability to maintain effective relationships with both government officials and community members will be critical to the role. Effective verbal and written communication skills are also essential. Knowledge or understanding of public administration and/or citizen advocacy would be an asset, as would an understanding of government programs and services/public service.

The executive position will require the successful candidate to demonstrate considerable and progressively responsible experience in the areas of management and senior leadership. Experience in, or a comprehensive understanding of investigative processes within a highly confidential environment is required. Demonstrated experience in mediation is also required.

Qualifications for this position would normally be acquired through completion of a university degree in a relevant discipline such as law, social work, or public administration combined with relevant experience. Masters level training would be preferred. Equivalencies will be considered.

The Citizens' Representative reports to the Speaker of the House of Assembly. The term of office is for six years, to a maximum of two terms.

The Representative exercises his/her responsibilities and conducts duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly. Legislation referenced can be viewed at:

www.assembly.nl.ca/legislation

Search #: IAC 2018-018
Location: St. John's, NL
Closing Date: Open Until Filled

Please submit your resume referencing the Search #, to the Independent Appointments Commission in one of the following ways:

Email: contact@iacnl.ca
Fax: 709-729-3178
IAC Mail : 50 Mundy Pond Road
P.O. Box 8700, St. John's, NL A1B 4J6

Employment Opportunity
Newfoundland and Labrador House of Assembly

The House of Assembly is seeking a leader with a commitment to the rights of seniors.

Seniors' Advocate

Newfoundland & Labrador

The Seniors' Advocate is an independent non-partisan Officer of the House of Assembly responsible for identifying, reviewing, and analyzing systemic issues related to seniors. Mandated through the *Seniors' Advocate Act,* the Advocate works collaboratively with seniors' organizations, service providers and other related entities to address and make recommendations to government, government agencies, service providers and community groups about legislation, policies, programs and services impacting seniors.

The Advocate hears complaints relating to the provision of services to seniors and may conduct independent reviews, promote awareness of issues and bring matters to the attention of the appropriate program reviewers such as Health Boards and Government Departments.

Under the administrative direction of the Speaker and the Clerk of the House of Assembly and acting in accordance with the policies and procedures of the Management Commission, the Advocate leads the visioning, planning, financial and human resource management of the Office of the Seniors' Advocate and provides strategic leadership and direction to staff who provide research and information services.

As the Advocate for seniors, the successful candidate will be a results oriented individual with a high degree of integrity and established credibility in his/her area of expertise. S/he will have a broad knowledge of the legislation, programs and policies that impact seniors, including but not limited to: heathcare, personal care, healthy aging, preventative health measures, housing, transportation, income support, income supplements, financial benefits, accessibility, abuse, and neglect and protection. The Seniors' Advocate must have knowledge of the core indicators which influence how public money is spent on meeting the needs of Seniors, and have an understanding of the implications for future provision of services to seniors.

This position requires the ability to use sound judgment when developing complex and sensitive recommendations in areas related to seniors. The Advocate will have experience in advocacy, mediation and innovative approaches to problem solving at system levels. The Advocate will have effective analytical, negotiation, and communication skills, as well as, the ability to build and maintain effective relationships with internal and external stakeholders.

The skills and knowledge required would normally be obtained through progressive leadership and senior management experience supplemented by a university degree, preferably at the Masters level, in one of the following areas - social work, psychology, geriatrics, sociology, or health sciences. The Advocate also must have experience working with seniors and their families, representational groups, health/care providers, program designers and other professionals.

The Seniors' Advocate exercises his/her responsibilities and conducts his/her duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly. Legislation referenced can be found at www.assembly.nl.ca/legislation/

Recommended candidates may be required to complete a Conflict of Interest and Criminal Record Check.

Search #: **IAC 2017-012**
Location: St. John's, NL
Closing Date: May 14, 2017

Please submit your application to the Independent Appointments Commission in one of the following ways. Be sure to reference the search number.
Email: contact@iac.nl.ca
Fax: 709-729-3178
IAC Mail: 50 Mundy Pond Road PO Box 8700 St. John's, NL A1B 4J6

Employment Opportunity

Seniors' Advocate
Newfoundland and Labrador House of Assembly

Newfoundland & Labrador

The Seniors' Advocate is an independent non-partisan Officer of the House of Assembly responsible for identifying, reviewing, and analyzing systemic issues related to seniors. Mandated through the Seniors' Advocate Act, the Advocate works collaboratively with organizations, service providers and other related entities to address and make recommendations to government, government agencies, service providers and community groups on legislation, policies, programs and services impacting seniors.

The Advocate hears complaints relating to the provision of services to seniors and may conduct reviews regarding systemic matters, promote awareness of issues and bring matters to the attention of the appropriate program reviewers. The Advocate leads the visioning and planning of the Office and provides leadership and direction to staff. As well, the Advocate will speak to the media on issues related to the Office.

The Advocate is responsible for the financial and human resource management of the Office, under the administrative direction of the Speaker and the Clerk of the House of Assembly and in accordance with the House of Assembly Accountability, Integrity, and Administration Act and the policies and procedures of the Management Commission.

As the Advocate for seniors, the successful candidate will be a results oriented individual with a high degree of integrity and established credibility in their area of expertise. They will have a broad knowledge of the legislation, programs, services and policies that impact seniors, including but not limited to: healthcare, personal care, housing, transportation, and finances.

This position requires the ability to use sound judgment when developing complex and sensitive recommendations in areas related to seniors. The Advocate will have experience in advocacy, mediation, and innovative approaches to problem solving at systemic levels. The Advocate will have effective analytical, negotiation, and communication skills, as well as, the ability to build and maintain effective relationships with internal and external stakeholders.

The skills and knowledge required would normally be obtained through progressive leadership and senior management experience supplemented by a university degree, preferably at the Masters level, in one of the following areas - social work, psychology, geriatrics, sociology, or health sciences. The Advocate must also have experience working with seniors and their families, representational groups, healthcare providers, program designers and other professionals.

The Advocate exercises their responsibilities and conducts duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly. Legislation can be found at www.assembly.nl.ca/legislation/.

Recommended candidates may be required to complete a Conflict of Interest and Criminal Record Check. Please note, only candidates invited for interview will be contacted.

Search#: IAC-2021-007
Location: St. John's, NL
Closing Date: Open Until Filled

Please submit your resume referencing the Search #, to the Independent Appointments Commission in one of the following ways:

Email: contact@iacnl.ca
Fax: 709-729-3178

Mail: The Metro Place, 261 Kenmount Rd.
P.O. Box 8700, St. John's, NL A1B 4J6

Employment Opportunity

Newfoundland and Labrador House of Assembly

The House of Assembly is seeking a seasoned leader with a high degree of integrity for a dual role as Chief Electoral Officer and Commissioner for Legislative Standards.

Newfoundland & Labrador

Chief Electoral Officer and Commissioner for Legislative Standards

The Chief Electoral Officer/Commissioner for Legislative Standards is an independent non-partisan Officer of the House of Assembly reporting to the House of Assembly through the Speaker.

In the role of Chief Electoral Officer, the incumbent is responsible for maintaining a state of provincial election readiness and enforcing fairness, impartiality and compliance with the *Elections Act, 1991*. The Chief Electoral Officer is responsible for the oversight and administration of provincial general elections and by-elections, elections finances and public relations programs to raise awareness of and promote participation of citizens in the electoral process. The Chief Electoral Officer also oversees investigations into suspected or alleged contraventions of the *Elections Act, 1991*.

In the role of Commissioner for Legislative Standards, the incumbent provides clarification and guidance to Members of the House of Assembly respecting their obligations under the *House of Assembly Act* and the Members' Code of Conduct. The Commissioner is also responsible for enforcing the conflict of interest provisions for Members under the *House of Assembly Act*, investigating and reporting on complaints under the Members' Code of Conduct or other matters referred to him/her under the *House of Assembly Accountability, Integrity and Administration Act* and hearing appeals of public office holders under the *Conflict of Interest Act, 1995.*

The Chief Electoral Officer leads the visioning, planning, financial, personnel and resource management of the Office under the administrative direction of the speaker and the Clerk of the House of Assembly acting in accordance with the policies and procedures of the Management Commission and other applicable legislation. The Chief Electoral Officer must have knowledge of current and emerging technologies as it relates to election management and knowledge of relevant acts, regulations, policies and procedures related to electoral events.

The Commissioner for Legislative Standards must have knowledge of current and emerging philosophies and practices in conflict of interest and organizational ethics. S/he should also possess a sound understanding of workplace investigation protocols.

The Chief Electoral Officer/Commissioner for Legislative Standards exercises his/her responsibilities and conducts his/her duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly. This position requires the ability to exercise utmost discretion in dealing with sensitive, confidential information, use sound judgement in making impartial decisions on complex issues and build and maintain effective relationships with internal and external stakeholders.

The successful candidate will have experience in planning, organizing and mobilizing resources in order to deliver the legislated mandate in accordance with legislated timeframes, demonstrated investigative and reporting abilities and a solid understanding of the provincial election process and finances.

Through senior leadership experience the successful candidate will have obtained excellent analytical, critical thinking and organizational skills, supplemented by a university degree in a related discipline. A financial background would be an asset.

Legislation referenced can be found at www.assembly.nl.ca/legislation.

Position #: POS 2016-002
Location St. John's
Closing Date: October 11, 2016

Please submit your application to the Independent Appointments Commission one of the following ways. Be sure to reference the competition number.

Email: contact@iacnl.ca
Fax: 709-729-3178

IAC Mail: 50 Mundy Pond Road
P.O. Box 8700, St. John's, NL A1B 4J6

Employment Opportunity

Newfoundland and Labrador House of Assembly

Newfoundland & Labrador

The House of Assembly is seeking a leader with a commitment to the Rights of Children and Youth.

Child and Youth Advocate - Office of the Child and Youth Advocate

The Child and Youth Advocate is an independent non-partisan Officer of the House of Assembly responsible for the general direction and supervision over the Child and Youth Advocate Office.

Mandated through the *Child and Youth Advocate Act,* the Advocate ensures that children and youth have access to services and their rights and interests are protected and advanced. The Advocate brings complaints relating to the provision of services to the attention of the appropriate authority and may conduct independent reviews and investigations as required. The Advocate is responsible for providing advice and information to government and communities about services.

Reporting to the House of Assembly through the Speaker of the House, the Advocate provides leadership and oversight to a team of consultants and advisors that develop and deliver programs to inform and educate the public.

The Advocate leads the visioning, planning, financial and personnel management of the office under the administrative direction of the Speaker and the Clerk of the House of Assembly acting in accordance with the policies and procedures of the Management Commission and other applicable legislation.

The successful candidate will be a results oriented individual with a high degree of integrity. He/she will have knowledge of the *Child and Youth Advocate Act*, *Children and Youth Care and Protection Act*, *Youth Criminal Justice Act*, *Adoption Act* and *Young Persons Offences Act,* and the policies and services designed to meet the needs of children and youth. He/she will have experience in advocacy, mediation and innovative approaches to problem solving at both an individual and systemic level. The Advocate will understand the needs of children and youth at risk and child and adolescent development and must be familiar with methodologies and practices associated with conducting child interviews.

The Advocate will have senior management and project management experience. The seasoned, results-oriented Advocate will possess excellent interpersonal, communications, negotiating and analytical skills. Skills and knowledge would be obtained through senior leadership experience supplemented by a university degree in social work, health sciences or education and managerial and field experience working with children, youth and their families.

This position requires the ability to use sound judgment when rendering complex and sensitive decisions, preferably in areas related to children and youth and also the ability to build and maintain effective relationships with internal and external stakeholders.

Established credibility in your career achievements and in your professional community will be essential in maintaining the public trust and in protecting the integrity of the work of this office.

The Child and Youth Advocate exercises his/her responsibilities and conducts his/her duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly.

Legislation referenced can be found at www.assembly.nl.ca/legislation/

Position #: POS 2016-003
Location St. John's
Closing Date: October 11, 2016

Please submit your application to the Independent Appointments Commission one of the following ways. Be sure to reference the competition number.

Email: contact@iacnl.ca
Fax: 709-729-3178

IAC Mail : 50 Mundy Pond Road
P.O. Box 8700, St. John's, NL A1B 4J6

Employment Opportunity

Child and Youth Advocate
Newfoundland and Labrador House of Assembly

The Child and Youth Advocate is an independent non-partisan Officer of the House of Assembly responsible for the strategic leadership and operational oversight of the Child and Youth Advocate Office.

Mandated through the Child and Youth Advocate Act, the Advocate ensures that children and youth have access to services and their rights and interests are protected and advanced. The Advocate brings complaints relating to the provision of services to the attention of the appropriate authority and may conduct independent reviews and investigations of complex and sensitive matters as required. The Advocate is responsible for providing advice and information to government and communities about services.

Reporting to the House of Assembly through the Speaker, the Advocate provides leadership and oversight to a team of investigative and advocacy professionals. The Office is responsible for developing and delivering programs to educate the public. The Advocate is responsible for communicating issues and investigative findings to the media.

The Advocate manages the Office under the administrative direction of the Speaker and the Clerk of the House of Assembly in accordance with the policies and procedures of the Management Commission and applicable legislation.

The Advocate will be a results oriented individual with a high degree of integrity. They will have knowledge of relevant frameworks, legislation, policies and services designed to meet the needs of children and youth. They will have experience in advocacy, mediation, and innovative approaches to problem solving at both an individual and systemic level. The Advocate will understand the needs of children and youth at risk, and child and adolescent development, and must be familiar with methodologies and practices associated with conducting sworn interviews.

This position requires effective communication and negotiating skills, as well as, the ability to utilize sound judgment when rendering complex and sensitive decisions, and the ability to build and maintain effective relationships with stakeholders.

The required qualifications would normally be obtained through senior leadership and project management experience supplemented by a university degree, preferably at the Masters level, in social work, health sciences or education and field experience working with children, youth and their families.

Established credibility in career achievements and professional community will be essential in maintaining public trust and in protecting the integrity of the Office.

The Advocate exercises their responsibilities and conducts duties in accordance with the Code of Conduct for employees and statutory officers of the House of Assembly.

Relevant legislation can be found at www.assembly.nl.ca/legislation/.

Please note, only candidates invited for interview will be contacted.

Search#:IAC-2021-010
Location: St. John's, NL
Closing Date: Open Until Filled

Please submit your resume referencing the Search #, to the Independent Appointments Commission in one of the following ways:

Email: contact@iacnl.ca
Fax: 709-729-3178

Mail: The Metro Place, 261 Kenmount Rd.
P.O. Box 8700, St. John's, NL A1B 4J6

House of Assembly

Newfoundland and Labrador

Home > Members > Code of Conduct

Violations of the Code of Conduct

CODE OF CONDUCT FOR MEMBERS OF THE HOUSE OF ASSEMBLY

A Code of Conduct for Members of the House of Assembly was developed by the Standing Committee on Privileges and Elections as directed by section 35 of the *House of Assembly Accountability, Integrity and Administration Act*, and passed by a resolution of the House on May 26, 2008. It was amended by resolution of the House on December 2, 2019.

The Code is the standard by which all Members agree to govern themselves in carrying out their responsibilities as elected officials. As a part of the oath of office, all Members agree to follow this Code of Conduct before being permitted to take their seat.

Code of Conduct

Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

Principles:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the *House of Assembly Accountability, Integrity and Administration Act*, the *Members' Resources and Allowances Rules*, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.
2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.

3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.
4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.
5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.
6. Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.
7. Members will base their conduct on a consideration of the public interest. They are individually responsible for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.
8. In performing their official duties, Members will apply public resources prudently and only for the purposes for which they are intended.
9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
10. Members should have regard to the duty of public service employees to remain politically impartial when carrying out their duties.
11. Members should promote and support these principles by leadership and example.
12. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.

CODE OF CONDUCT FOR EMPLOYEES OF THE HOUSE OF ASSEMBLY SERVICE

As Officers and Staff of the House of Assembly:

1. *We will serve the aims and objectives of the House of Assembly and ensure that personal interests and activities do not interfere, or appear to interfere, with this obligation.*
2. *We will perform our duties honestly, faithfully, ethically, impartially and efficiently, respecting the rights of the public and our colleagues. We will refrain from conduct that might impair our effectiveness or that would compromise our integrity.*
3. *We will ensure that we maintain the confidence and trust of Members of the House of Assembly and provide fair, confidential and impartial service equally to Members and staff of all parties.*
4. *We will treat colleagues, Members and the public with courtesy and respect.*
5. *We will avoid circumstances in which personal interests compromise or conflict with the interests of the House of Assembly and avoid circumstances in which there will be the appearance of a compromise or conflict. We are subject to the provisions of the Conflict of Interest Act, 1995.*
6. *We will not abuse our official position for personal gain. We will not accept any gift or other benefit that could be seen as an inducement or reward that might place us under an obligation to a third party. We will follow all requirements and policies of the House of Assembly service with respect to gifts and rewards.*
7. *We will exercise due care and control of records created or collected in the exercise of our responsibilities, ensuring that they are organized, secured and managed according to applicable policy and legislation.*
8. *We will ensure that any contribution we make to public debate or discussion on matters of government or House of Assembly policy is appropriate to the position we hold and is compatible with our obligation to be politically impartial.*
9. *We will ensure that our participation in public bodies and voluntary associations does not create a conflict of interest or the appearance of a conflict of interest with our duty to act in an a politically impartial manner.*