

Submission
to
The Honourable Robert Fowler, Chair and Members
Review of Statutory Offices
by
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1.INTRODUCTION

I was privileged to be a Member of the House of Assembly of Newfoundland and Labrador for four General Assemblies covering a span of 13 years.

I entered the Legislature in the fall of 2006 which was a very interesting time. A scandal because of misuse of constituency allowances by some members of the Legislature had caused the government to put in place the Review Commission on Constituency Allowances and Related Matters – to which I shall refer as the Green Commission elsewhere in my submission , referring to The Honourable J. Derek Green, the Commissioner.

The report Rebuilding Confidence released in May 2007, revealed major weaknesses in the Legislature. I was personally shocked to learn of the very small infrastructure that existed resulting in insufficient oversight of the work of the legislature and of the elected members.

The recommendations of the Green Report were the basis for a new piece of legislation, the House of Assembly (HOA) Accountability, Integrity and Administration Act (The Act.) It was the beginning of a new age for the Legislature of Newfoundland and Labrador. It set the stage for a major shift in thinking and behaving.

I bring this up because so much of the growth and development that has occurred in the legislature, a lot of it in the area of the Statutory Offices, is rooted in the spirit of the act that was given Royal Assent in June 2007.

A major breakthrough was the establishment of the House of Assembly Management Commission which would provide for clear and timely disclosure in relation to operations of the House of Assembly and statutory offices. It replaced the Commission of Internal Economy of the House of Assembly which was made up from the governing party and the official opposition only; and whose business was carried out privately away from any other eyes.

For the first time discussion and decision-making regarding the remuneration of Members of the House through salaries, expenses, resources and pensions would be managed through public proceedings and by a Commission whose members would come from all parties represented in the House of Assembly. The only things discussed privately would be those pertaining to personnel and legal matters, matters protected by privacy and data protection laws, and budget deliberations involving the preparation of the annual estimates of expenditures of the House of Assembly and the statutory offices. Any decisions made in such private meetings would be reported on in public proceedings.

I have looked at the review of the statutory offices through the lens of accountability, transparency, integrity, and public engagement – values that are at the heart of the HOA Accountability, Integrity and Administration Act.

2. Approach of Submission

In my submission I am taking a big picture view rather than getting into the nitty gritty of how offices should be run. I hope what I present will be helpful for the members of the Review in their deliberations about the minutiae.

I think the work being done by all of the statutory offices is essential. I don't think any one of them is unnecessary. A scan of what happens in other jurisdictions in our country shows that the NL legislature is not out of line. It

reflects what other legislatures see as important. I think the six statutory offices under review meet the minimal needs of a well-run legislature.

While I can't see any of them being irrelevant, I won't deny that there could be some restructuring for the sake of better efficiency, but I won't get into such details.

My approach is not based on how to save money, rather it focuses on how services are delivered for the good of the people of the province. It is important to note that the work of 5 of the 6 statutory offices is focused on issues that directly relate to the public.

3. Terms of Reference

I find it interesting that a number of the terms of reference for the Review seem to take for granted restructuring of the statutory offices is needed. I suspect there are underlying assumptions or biases behind such a position.

Right off the top I want to be clear about my position based on my experience as an MHA and a party leader in the House. I believe that each of the Statutory Offices under scrutiny is essential for a well-run governance structure that affects both those inside the system and the public to which Government is accountable.

One of the lessons from the Green Commission was the need for a much more sophisticated structure if operations of the Legislature were to be run in a professional, open and transparent manner. A consequent lesson was the need for adequate resources to make that happen. As a result of the report no one questioned the new money it was going to take to do that. The number of people responsible for the administration of operations of the House of Assembly and statutory offices increased from two to over two dozen.

My point here is to say 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 I do fear if saving money is the goal we run the risk of making decisions that will undermine the delivery of essential services.

4. Issues

4.1 One of the things concerning me in the Terms of Reference is the idea of the position of a statutory officer being part-time or even on an as-needed basis. I'm trying to imagine that possibility for each of the positions. I can see the temptation to narrow a job description to the point of making part-time seem reasonable, especially in the case of the Chief Election Officer (CEO). However, I think in all cases it would be desirable to think long term.

After the fiasco of the election called in 2021, Government needs to deal with questions about our electoral system. Thought needs to go into the impact on elections of social media, and technology that allows for on line voting, for example. These are just two areas that would require research and long-term vision. Thought also needs to go into being prepared for the many contingencies that might occur that could affect an election. The ones that are currently covered are quite narrow in scope.

Consequently I think the CEO should be more than merely an administrator. We have issues of low voter turnout. The CEO could be in the lead, researching and encouraging discussion on ways in which political parties and our educational system could be nurturing a more educated electorate that is eager to be engaged in elections , such an important part of our democratic system.

So, a narrow analysis of the role of CEO 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.

4.2 Related to this first point is the idea of having one officer covering more than one office. It is important to recognize that each office has a very

particular focus and requires particular expertise. The Statutory Officers are more than mere administrators.

Currently there are two positions which over the years – going back to my first election and before – have been filled by one person. They are the Chief Electoral Officer and the Commissioner for Legislative Standards. I could never figure out the connection between these two positions. In actual fact there is none.

I have to think at some point the reasoning for having these two positions filled by one person had to do with someone thinking neither one required a full-time officer, a point that requires study.

I just created a scenario in which the CEO could be seen as full-time. But that is not the point I want to pursue. Even if those two positions were seen as part-time it cannot be assumed the same person could or should hold those two positions. One has to ask does that one person have the specific skills and knowledge needed for both of those jobs. Being a good administrator and having all the skills needed to run elections has very little to do with making judgments about ethical behaviour of members of the House of Assembly and vice versa.

In my opinion this example is the most contentious in the context of the review. I am going to use my past experience as a member of the Standing Committee on Privileges and Elections to back up what I am mean.

In 2019 the committee was tasked with studying issues that had arisen in the legislature regarding harassment between certain MHAs. We were to make recommendations for the development of a legislature-specific harassment-free workplace policy. One of the things we dealt with was where to place the over-sight of such a policy. On one hand it would appear that it could be the responsibility of the Commissioner for Legislative Standards; on the other the issue of harassment and complaints was one that the Citizen's Representative dealt with. One could argue either position. The policy that was passed in the House of Assembly went with the latter.

As a committee we made our decision based on which office had the resources and the experience to deal with complaints. We knew that the Citizen's Representative and the staff were trained in this area because it was part of their work. There was nothing in the structure of the office of the Commissioner for Legislative Standards to ensure anyone in that position would be trained to deal with complexities such as harassment.

I believe 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. Perhaps it doesn't have to be full time, but it just can't be filled by someone in another position such as the Chief Electoral Officer simply because that officer might have time to spare.

4.3 Another area of major concern for me has to do with the terms of reference related to the administration of the statutory offices and how the officers and offices relate to each other. This is a very tricky area.

The statutory offices are independent of the House of Assembly while being accountable to the legislature through the responsibility of the Management Commission of the House of Assembly. Section 20 of the HOA Accountability, Integrity and Administration Act covers the details of the Management Commission's responsibilities "for the administrative, financial and human resource and management policies of the House of Assembly service and statutory offices."

I sat on the Management Commission from the time it was established to the time of my departure from the Legislature. We took our responsibility for the statutory offices very seriously and held annual meetings with them especially as part of the budgetary processes. Sometimes a special situation could demand a meeting with a statutory officer. Without divulging any details I can say that there were times when the discussion around finances certainly interfaced with human resource and management policies. A request for an usual increase in a budgetary line could naturally lead to policy discussion and sometimes tension.

There is no doubt in my mind the Act covers everything required for transparent accountability of statutory officers through of the role of the Management Commission. The Act also decrees the Management Commission to “implement and periodically review and update financial and management policies applicable to the House of Assembly service and statutory offices.”

I take for granted that the members of the Review will be consulting with the Management Commission and the statutory officers. So I am not going to take it upon myself to get into details of what a review should recommend.

However, from the perspective of someone who sat as a legislator in the House of Assembly, I believe that the process of appointment of officers leaves much to be desired. According to the acts covering the officers they are appointed by resolution of the House of Assembly. As an elected member of the House of Assembly I was expected to vote on a nomination of someone to a position without having been part of the process leading to that nomination. If I had an objection I could have raised it on the floor of the House in debate when the nomination was presented to us. But here's the conundrum. 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.

In my experience the appointment of statutory officers is one of the least transparent processes in the House of Assembly. I find it curious that the original appointment of an officer is presented by government to the House for approval. Whereas if an acting officer needs to be appointed the recommendation to the Legislature is made by the HOA Management Commission. I have to question why the same process is not used for the appointment of the position in the first place.

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.

5. Concluding Remarks

Statutory officers and their offices have a heavy responsibility. I believe everything should be done to give them the confidence to do the work that is assigned to them. I believe that if issues and concerns are presented to them for consideration they will want to help make things work.

As things are right now they each are out there in their own field working according to their mandate. They often have to prove their existence, not just by doing their work but by also convincing decision-makers that when they ask for resources they are not just trying to get more for themselves.

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.

I thank the members of the Review for the opportunity to submit my thoughts.

