



Submission of the
Office of the Chief Electoral Officer to the
Review of Statutory Officers of the House of
Assembly



Office of the Chief Electoral Officer
Newfoundland and Labrador

August 7, 2023

VIA EMAIL

Honourable Robert Fowler
Chair
Review of Statutory Offices of the House of Assembly
c/o DianeBlackmore@rsonl.ca

Subject: Review of Statutory Offices of the House of Assembly Submission

Dear Chair Fowler,

I am pleased to provide the initial submission of the Office of the Chief Electoral Officer in relation to the Review of Statutory Offices of the House of Assembly.

Please do not hesitate to contact our Office should you or the Committee members require clarification on any items discussed in the submission.

Sincerely,

Travis Wooley, CPA (CA)

Chief Electoral Officer (Acting)

Office of Chief Electoral Officer Background

The Office of the Chief Electoral Officer, more commonly referred to as Elections NL, is responsible for the administration of provincial elections, by-elections and plebiscites for the people of Newfoundland and Labrador. The legislation that guides the administration and delivery of election events in the province are the Elections Act, 1991 (herein referred to as “Elections Act”), and the House of Assembly Act. The Elections Act proscribes the conduct of election events, while the House of Assembly Act specifies the parameters for issuing a writ of election.

The duties of the Chief Electoral Officer are laid out in Section 5.(1) of the Elections Act. Specifically they are:

- (a) to exercise general direction and supervision over the administrative conduct of elections and to enforce on the part of election officers fairness, impartiality and compliance with this Act;
- (b) to issue to election officers those instructions that he or she considers necessary to ensure effective execution of this Act; and
- (c) to perform all other duties that are imposed on him or her by or under this Act.

In addition to these duties, the Chief Electoral Officer provides professional guidance and support to both Municipal and School Board elections within the province of Newfoundland and Labrador. The Chief Electoral Officer also works co-operatively with federal and provincial counterparts in sharing information and best practices on the delivery of election events, engaging election stakeholders, and modernizing election administration.

The Office of the Chief Electoral Officer Headquarters is located in St. John’s with a core staff of 10 permanent employees. Of these staff, eight are fully dedicated to the Office of the Chief Electoral Officer, while two provide support to the Commissioner of Legislative Standards in addition to their duties with the Office of the Chief Electoral Officer. The Commissioner of Legislative Standards currently shares space with the Office of the Chief Electoral Officer.

The Office of the Chief Electoral Officer has two distinct business lines through which we provide service delivery. The Voter Registry division is responsible for the day-to-day maintenance of the permanent list of electors. This division works directly with electors to maintain and update their voter information to ensure they receive correct election specific information at the correct address, and apportion electors to appropriate polling divisions. The Voter Registry division also works co-operatively with municipalities and various government agencies to provide an accurate, comprehensive, and up-to-date permanent list of electors. Municipalities in Newfoundland and Labrador utilize our permanent list of electors to administer their municipal elections and by-elections on an as needed basis.

The second business line within the Office of the Chief Electoral Officer is the Election Operations division. The Elections Operations division is responsible for the overall delivery of election events. During a general election, the Office of the Chief Electoral Officer, through the Election Operations division administers voting opportunities to over 350,000 electors, at over 1,000 polling locations throughout Newfoundland

and Labrador, delivered by approximately 4,000 election officials. Elections Operations staff are responsible for over 200 officials working in 50 election offices providing services to electors throughout the province for the duration of the election. It is the responsibility of the Election Operations division to oversee all the necessary planning and implementation of election administration prior to and during election events. This includes, but is not limited to the following activities:

- Review of election administration processes and procedures
- Short and long term resource planning
- Stakeholder engagement
- Development and delivery of training modules
- Procurement of supplies, materials, and equipment
- Testing and implementation of election software and hardware
- Implementation of communication and networking devices
- Coordination with election specific vendors
- Logistics planning for land, sea, and air delivery routes
- Risk management and response to electoral delivery issues

Throughout an election cycle the Election Operations division hires up to 40 temporary staff to facilitate the preparation, training, delivery, administration, and close out of election activities. The division has an operating warehouse where all election supplies and equipment are stored, palletized, and staged for delivery to the 50 election offices throughout the province. During the election period the warehouse then converts to an assembly area for fulfillment of Special Ballot mail-kits with a complement of approximately 25 staff.

The above background on the operations of the Office of the Chief Electoral Officer is not a comprehensive view of our organization. It is meant primarily to provide insight into the activities that the office undertakes through a long term election cycle and to respond to the often asked 'what do you do between elections' question. It is important to understand both the complexity of administering an election, and the advance planning, preparation, and coordination that goes into the delivery of an election event. Furthermore, it must be recognized that despite fixed date legislation, the Office of the Chief Electoral Officer must always be ready for an election call at any time.

The minimum required competencies required for each statutory office

There is no singular career trajectory to become a Chief Electoral Officer (CEO). Current CEO's in Canada consist of accountants (CPAs), lawyers, professors, project managers, career public servants, and former military officers. There is no specific pre-requisite 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.

The OCEO is a very unique environment and requires the CEO to be competent across a broad spectrum of skills. Individuals would culminate these skills throughout their career, as highlighted below.

Leadership – the CEO must have leadership competencies to manage and oversee a workforce that includes up to 10 Headquarter staff and 40 Returning Officers (permanent appointment, part time employees). During a provincial general election, the CEO is also responsible for 50 district and satellite offices throughout Newfoundland and Labrador, up to 40 Headquarter staff, over 200 staff working in district and satellite offices, and over 4,000 election officials. The CEO, through these offices and election officials serves over 350,000 registered electors in Newfoundland and Labrador. The CEO must possess the leadership competencies to lead, manage resources, and make timely decisions to ensure the delivery of election events to all electors throughout the province of Newfoundland and Labrador.

The CEO is traditionally viewed as operating a relatively small core group of permanent staff at Headquarters, however the election readiness activities of the office regularly include training, engagement, and oversight of the 40 Returning Officers despite their part-time nature. Ensuring their readiness is as important as activities at Headquarters and is often underestimated in the understanding of the function of the CEO. This is also true when staffing exponentially increases leading up to and during an electoral event. The CEO must have the ability to lead finite resources with a small group at Headquarters, yet for extended periods have the leadership competencies to oversee a significant workforce with a singular purpose under a strict timeline.

Planning – the CEO must have competence in planning events and projects to oversee an election event. The delivery of an election requires the CEO to continuously plan, manage, and prioritize tasks to ensure that all processes, materials, teams, and resources are “election ready”. This planning includes resource management, process and technology implementation, logistics, procurement, testing, stakeholder engagement, training, communications, and risk management and mitigation.

An important contextual consideration with respect to planning is the unknown environment in which a CEO continuously operates. 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. Therefore, the CEO must always remain in a state of election preparedness, especially in the case of a minority government. The ability to plan and operate in this environment requires good organization, communication, and leadership skills to ensure an electoral event runs smoothly, no matter when it occurs.

Planning for an electoral event requires competence in long term planning, even beyond the planning cycle of a current election. Significant changes to administration processes may take multiple election cycles to properly test and implement, and the CEO must have the ability to properly manage and oversee long term projects and deliverables. Given the readiness requirements of the office, the OCEO must at all times have viable electoral procedures and processes, so any changes must be incremental and fully integrated. The CEO must make key decisions related to the prioritization and timing of changes or modernization of administrative processes to carefully balance election readiness with process updates.

Management Skills – the CEO must have the ability to manage and engage with staff. Election events are a heavy workload, high pressure environment for many election staff. The CEO must have the ability to appropriately address issues and support staff in the common goal of delivering an election event. The CEO must also be competent at appropriately prioritizing activities, ensuring these activities meet both the strategic goals of the office and the readiness requirements for election events. A confident, yet calm, management style is an asset.

Independence – the CEO must be competent at being impartial to maintain the trust of the electoral process. The CEO must make any decisions, advice, or recommendations with thorough consideration of impartiality. The CEO must also treat each elector, candidate, political party, or other stakeholder with the same consideration of impartiality. The independence of the CEO goes to the heart of the democratic process and its importance cannot be overemphasized. The unique nature of the OCEO in our democracy requires that independence be maintained at all times.

Combination of Statutory Officers

The role of the Chief Electoral Officer has been combined with the role of the Commissioner for Legislative Standards (CLS) since 1993. In June 2022 the former CEO/CLS was placed on suspension and the roles of CEO and CLS were split between two individuals. The roles were combined at the reinstatement of the former CEO/CLS in the fall of 2022. The roles were then split again as separate roles in December 2022 and since that time, the roles remain separate.

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 full-time 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.

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

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 5 preceding general elections since the enactment of fixed date legislation, only 2 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 complexities and time involved in being continuously prepared to deliver an election event requires full attention at all times by the CEO.

Recruitment / Appointment / Re-Appointment / Compensation / Disciplined / Removed

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. The recent controversy surrounding the appointment of Right Honourable David Johnston as the Independent Special Rapporteur on Foreign Interference underscores the importance of ensuring that all political parties are in alignment that an individual representing a democratic institution is seen as impartial and independent.

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 6 years (with a possible 6 year extension). Depending on the timing of the appointment, a CEO may potentially only see 1 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 2 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.

Modernization of electoral operations requires long-term planning that can span over several years, and may be implemented gradually over multiple elections. The implementation and deployment of new service delivery models during a general election event is a significant and complex task. This involves developing processes and procedures, system development and testing, development and delivery of training, design and procurement of new materials or equipment, and potential legislative amendments.

These long-term projects must be done in parallel with the planning and delivery of election events using existing electoral procedures.

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.

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.

Manage Conflicts

Historically, the CEO has not had any conflict with other statutory offices. The 2021 General Election was a unique election conducted in a pandemic environment. It would not be prudent to recommend significant changes to the ways conflicts are managed between statutory offices given the unique context of the dispute between the former CEO and the Citizens' Representative. The legislation clearly sets out the process and procedures to be followed. The OCEO believes no amendments are required and that this process functions insofar as the principles of procedural fairness are applied and respected.

Oversight

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.

With respect to hiring full-time employees, the OCEO conducts their policies in accordance with the Public Service Commission and Human Resources from Corporate Member Services.

When hiring part-time temporary staff for delivery of an election event, the OCEO has consulted the Public Service Commission and Human Resources from Corporate Member Services on our specific requirements. Given election timelines and the difficulty in recruiting staff for election events, the OCEO has latitude to conduct temporary hiring for short-term appointments of less than 1 year. The OCEO conducts longer-term temporary appointments (1 year or more) similar to full-time hiring in accordance with Public Service Commission and Human Resource guidelines.

The OCEO reports monthly on financial activities to Corporate Member Services and the controller of the House of Assembly. Additionally, the Auditor General regularly audits the OCEO to ensure transparency and accountability in the prudent expenditure of public funds.

Shared Space and Admin Functions

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. These requirements mean that 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 by-election. As noted, during a general election the staffing complement at OCEO Headquarters increases to between 40-50 on-site staff.

The OCEO also notes that it is currently in the process of moving to a new building. The space was only considered for the activities of the OCEO and CLS when the tender was originally issued. The term of the lease is 10 years with planned occupancy for fall 2023.

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.

Reports

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.