

# Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick's Legislative Officers



December 2011

# **Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick's Legislative Officers**

## **Review Team:**

Albert, Jessica

Malone, Kevin

Richard, Bernard

## **Published by:**

Review of the Legislative Officers of New Brunswick

Legislative Assembly of New Brunswick

P.O. Box 6000

Fredericton, New Brunswick

E3B 5H1

December 2011

ISBN: 978-1-55471-927-3

Printed in New Brunswick

*“It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions”.*

James Madison in Federalist Paper # 51

### Acknowledgement

We would like to express our gratitude to the officers and other officials of the New Brunswick Legislative Assembly who supported this review with information, advice and technical assistance. Similarly, we want to acknowledge the support and advice received from officials in the executive branch during the course of the review. Finally, we want to offer a special thanks to the officials in other legislatures and governments across Canada who took the time to answer our questions, both orally and in writing.

## List of Abbreviations

Abbreviation	Meaning
CAI	Consumer Advocate for Insurance
HRC	Human Rights Commission
HRIS	Human Resource Information System
LAC	Legislative Administration Committee
LOC	Legislative Officers Committee
NBISA	New Brunswick Internal Services Agency

## Table of Contents

<b>HIGHLIGHTS .....</b>	<b>1</b>
<b>CHAPTER 1: THE ASSIGNMENT .....</b>	<b>3</b>
<b>CHAPTER 2: THE ROLE OF LEGISLATIVE OFFICERS IN PARLIAMENTARY SYSTEMS .....</b>	<b>9</b>
<b>CHAPTER 3: THE PERSPECTIVE OF NEW BRUNSWICK’S LEGISLATIVE OFFICERS .....</b>	<b>16</b>
<b>CHAPTER 4: HOW OTHERS SEE THE ROLE AND PERFORMANCE OF LEGISLATIVE OFFICERS....</b>	<b>23</b>
<b>CHAPTER 5: PRINCIPLES IN PRACTICE .....</b>	<b>33</b>
<b>CHAPTER 6: RECOMMENDATIONS FOR IMPROVING THE MANDATES AND OPERATIONS OF NEW BRUNSWICK’S LEGISLATIVE OFFICERS.....</b>	<b>37</b>
<b>APPENDIX A: TERMS OF REFERENCE .....</b>	<b>47</b>
<b>APPENDIX B: CONSOLIDATED RECOMMENDATIONS .....</b>	<b>51</b>
<b>APPENDIX C: ROUNDTABLE PARTICIPANTS– SEPTEMBER 15TH, 2011 .....</b>	<b>55</b>
<b>APPENDIX D: SOURCES OF INFORMATION AND ADVICE .....</b>	<b>57</b>
<b>APPENDIX E: INTER-JURISDICTIONAL COMPARISONS .....</b>	<b>61</b>
<b>APPENDIX F: QUESTIONS POSED TO LEGISLATIVE OFFICERS .....</b>	<b>66</b>
<b>APPENDIX G: QUESTIONS POSED TO EXECUTIVE BRANCH LEADERS .....</b>	<b>69</b>
<b>APPENDIX H: QUESTIONS POSED TO OTHER LEGISLATURES.....</b>	<b>72</b>
<b>BIBLIOGRAPHY .....</b>	<b>73</b>

## Highlights of the Review of Legislative Officers in New Brunswick

### General

This report is the first ever comprehensive review of the mandates and operations of legislative officers in New Brunswick. The former Ombudsman and Child and Youth Advocate, Bernard Richard, was asked to undertake the review by the Speaker of the New Brunswick Legislature, the Hon. Dale Graham. The report contains 33 recommendations for strengthening the efficiency, effectiveness, accountability and independence of the legislative officers.

### Efficiency

To contribute to cost-savings in the short term, the report recommends a moratorium on the creation of new legislative officer positions and, while the current number of legislative officer mandates is to remain the same, the report recommends that the number of legislative officers be reduced from eight to six.

To contribute to cost containment over the longer term, the report recommends that all legislative officer operations be co-located and that the Clerk of the Legislative Assembly become responsible for creating a working structure that fosters optimal use of resources by the officers, individually and collectively.

### Accountability

The report recommends a more active role for the Legislative Officers Committee and the Legislative Administration Committee in holding officers to account for budget submissions, work plans and for their public reports. A greater use of performance measures is also recommended along with a formal complaints mechanism for citizens who are dissatisfied with the work of an office.

## **Independence**

The report recommends a budget process for the legislature that reinforces the right of the legislature to set its own budget, including the budgets of legislative officers. A companion recommendation is for the legislature to assume the leadership role in recruiting, selecting and appointing its own officers.

## **Effectiveness**

To make the officers more effective as well as independent, the report recommends a new act to govern the recruitment and appointment of officers, their compensation, their powers of inquiry and their access to information held by the executive branch. Also to improve their effectiveness, the report recommends several processes for strengthening officer relationships within the legislature as well as for strengthening their relationships with the executive branch.

## Chapter 1: The Assignment

### Terms of Reference

In May 2011, the Speaker of the New Brunswick Legislative Assembly formally engaged the former Ombudsman and Child and Youth Advocate, Bernard Richard, to lead a review of legislative officers in New Brunswick. Essentially, the review is intended to find ways in which the efficiency, effectiveness and accountability of New Brunswick's legislative officers can be enhanced without impairing their independence<sup>1</sup>. In so doing, the review is to examine all aspects of the mandates and operations of these officers.

Presently, eight individuals have been appointed to discharge the responsibilities of the following legislative officer positions in New Brunswick:

1. **The Auditor General;**
2. **The Chief Electoral Officer and Supervisor of Political Financing;**
3. **The Ombudsman;**
4. **The Access to Information and Privacy Commissioner;**
5. **The Conflict of Interest Commissioner;**
6. **The Commissioner of Official Languages;**
7. **The Consumer Advocate for Insurance;**
8. **The Child and Youth Advocate.**

---

<sup>1</sup> See Appendix A, Terms of Reference.

These positions are governed or otherwise materially affected by thirteen pieces of legislation.

8 Legislative Officers and 13 Statutes	Year Created
<u>Auditor General</u> <i>Auditor General Act</i>	1967
<u>Chief Electoral Officer &amp; Supervisor of Political Financing</u> <i>Elections Act</i> <i>Political Process Financing Act</i>	1967
<u>Ombudsman</u> <i>Archives Act</i> <i>Civil Service Act</i> <i>Ombudsman Act</i> <i>Public Interest Disclosure Act</i>	1967
<u>Conflict of Interest Commissioner</u> <i>Members' Conflict of Interest Act</i>	2000
<u>Official Languages Commissioner</u> <i>Official Languages Act</i>	2003
<u>Consumer Advocate for Insurance</u> <i>Consumer Advocate for Insurance Act</i>	2005
<u>Child and Youth Advocate</u> <i>Child and Youth Advocate Act</i>	2006
<u>Access to Information and Privacy Commissioner</u> <i>Right to Information and Protection of Privacy Act</i> <i>Personal Health Information and Access Act</i>	2010

In addition, the review was directed to consider the most appropriate disposition of a Registrar of Lobbyists, a position proposed in Bill 43 introduced in the Legislative Assembly on June 1, 2011. The review was also tasked with giving advice on whether the Human Rights Commission would be better placed under the purview of the Legislative Assembly or left within the purview of the executive branch.

A report satisfying these terms of reference is to be submitted to the Speaker by October 31, 2011.

### Rationale for the Review

Over the last twenty years the number of legislative officers has increased in all Canadian jurisdictions. Their rapid growth in numbers and prominence has raised questions about, among other things, the accountability of these officers as well as about the efficient use of resources dedicated to these offices.

During this same period, governments have significantly expanded their program spending while also reducing tax burdens. As the global economy has faltered, surged and then faltered again, government deficits and debt have bloomed to unsustainable levels. Consequently, small and vulnerable jurisdictions like New Brunswick have begun to closely scrutinize all aspects of their operations. As is the case in other jurisdictions, the Government of New Brunswick has launched a comprehensive review of all policy and operational areas with a view to eventually eliminating its deficit.

*However modest the contribution, we accept the view that no branch of government should be exempt from fiscal restraint.*

When it comes to deficit and debt reduction, this review of legislative officers recognizes that the three branches of government have unequal capacities to contribute. That said, however modest the contribution, we accept the view that no branch of government should be exempt from fiscal restraint. Consequently, the review team was obliged to

engage legislative officers in a discussion of ways to enhance their collective efficiency in addition to discussion of the other previously mentioned considerations, namely, effectiveness, accountability and independence.

### **Approach to the Assignment**

In the course of conducting the review, many sources of information and perspective were utilized. Naturally, we turned to the legislative officers themselves for information, opinion and perspective. We met them individually and collectively and received their written input as well. We also consulted the Clerk of the Legislative Assembly on several occasions and appeared before the Legislative Administration Committee as well as the Legislative Officers Committee.

In the Executive Branch we had several exchanges with the Clerk of the Executive Council, the Deputy Minister of Finance, the Deputy Minister of Supply and Services and the CEO of the New Brunswick Internal Services Agency. As well, we had one plenary session with all provincial deputy ministers.

Since precedent and best practices elsewhere were regarded as important ingredients for our review, we undertook basic research on how other jurisdictions in Canada approached their legislative officers, what officers were in place and how they were funded. We decided that several jurisdictions warranted a closer look and we consequently sought written answers to a series of questions about their arrangements and practices and then engaged representatives of these jurisdictions in discussion.

In recognition of the benefits that flow from collective engagement, on September 15 we assembled a roundtable composed of New Brunswick's legislative officers, several legislative committee members, legislative staff, executive branch officials and subject matters experts from inside and outside New Brunswick. We challenged them to work through the most difficult issues posed by the review. While there was not always consensus among the

roundtable participants, there was ample opportunity to present arguments for and against various proposals intended to improve the efficiency, effectiveness, accountability and independence of the legislative officers. Readers will encounter these opinions in chapter 4<sup>2</sup>.

Finally, we reviewed literature prepared by academics and practitioners on trends and issues pertaining to legislative officers in Canada and elsewhere in the Commonwealth.

Readers can refer to appendices C and D for a complete list of sources for this review.

### **A Note on Terminology**

In the course of conducting research for this report, we learned that each jurisdiction uses a slightly different vernacular when referring to officers and committees within the legislative branch. For example, at the federal level, a distinction is made between officers and agents of parliament. Apart from the statutes under which they are appointed, the principal difference is that the primary role of parliamentary agents is oversight of the executive branch and the primary role of parliamentary officers is to support MPs directly through advisory and administrative services. In this usage the Auditor General and the Information Commissioner are examples of parliamentary agents whereas the Clerk of the House of Commons and the Parliamentary Librarian are examples of parliamentary officers. While we did not encounter this distinction at the provincial level we did encounter some provincial jurisdictions that refer to legislative officers as statutory officers.

Readers may also be aware that many jurisdictions have officials within the executive branch who act in an oversight role (departmental ombudsman for example), officials who may also have a measure of independence through statute. While these executive branch officials play a useful oversight role and

---

<sup>2</sup> See Appendix C: Roundtable Participants.

can claim a form of kinship with legislative officers, they do not fall within the scope of this review.

Therefore, this review will focus on those officials identified on page 3 and their counterparts, however designated, in other Canadian jurisdictions.

## Chapter 2: The Role of Legislative Officers in Parliamentary Systems

There are a series of questions posed in the terms of reference for this project, two of which essentially ask why we have legislative officers and whether they continue to serve a useful purpose. In the course of this chapter we will attempt to answer these questions. In so doing, we will briefly survey recent developments with respect to legislative officers in Canada and consider the implications of these events for this review. But first, a bit of history in order to cast light on the origins of our legislative arrangements.

### Westminster Heritage and the American Experience

Canada's current well-being is owed in part to a set of political institutions and practices inherited from Britain, institutions and practices that have evolved over a long period of history. The framework in which these institutions and practices are nestled is known as the Westminster doctrine. The origins of this doctrine can be traced to the meadows of Runnymede when English nobles brought King John to heel with the signing of the Magna Carta in 1215. This was the first formal check on a powerful (royal) executive and the first deposit of democratic DNA into the constitutional gene pool from which our Canadian lineage descends.

For 800 years in Britain and for more than 140 years in Canada, parliamentary institutions and practices have evolved. While the evolutionary path has not been straight or unbroken, there has been a persistent effort to curb the concentration of political power in one place.

The slow development of democratic institutions and practices in Britain arguably contributed to the American Revolution in 1776 as well as to the adoption of a written constitution for the United States in 1787. While imperfect and subject to amendment over the intervening 225 years, the constitutional articulation of 1787 was remarkable and praiseworthy in many ways. Since 1787, political and constitutional developments in the United

States have been closely watched by other countries including those following Westminster traditions.

This allusion to American history is relevant to our discussion because, of all the remarkable insights of the American founders, there is none greater than the founders' understanding of human nature<sup>3</sup>. Because it took human nature into account, the design of the US system of government was noteworthy for its checks and balances, division of powers, limited terms of office, frequent elections, separation of church and state and transparency of operation. All of this was intended to make tyranny and bad government less likely.

While not wanting to over-reach, we take the view that this history arguably teaches us three things. First, that scandal, excess and abuse arise in government when checks and balances are weak or absent. Second, that office holders will naturally seek to acquire more authority as well as the freedom to exercise that authority, and to do so out of the public eye. The third lesson derives from the first two, namely, that legislative vigilance and government transparency are required if office-holders are to give greater weight to the public interest in comparison to the ever present pressure of private interests.

*Scandal, excess and abuse arise in government when checks and balances are weak or absent.*

As a consequence of this history, legislatures in healthy parliamentary democracies have come to play several critical roles. In particular, they monitor the actions of government, constantly scanning for inappropriate, improper, incompetent and illegal actions. In this work, legislatures are materially aided by effective oversight institutions, in other words, by legislative officers. Legislatures are thus enabled (opposition parties in particular) to vigorously oppose the government. In so doing, legislators in opposition (usually organized into political parties) seek to alter the course of the government-in-office and to make certain behaviors less likely in the future. In all of this, the

---

<sup>3</sup> See James Madison's discussion of the role of interest, faction and ambition in political affairs: Federalist Papers #'s 10 and 51.

principal opposition party (the Official Opposition) seeks to establish its credentials as a government-in-waiting, one which could effectively take the reins of office on short notice.

Legislatures in parliamentary systems have struggled to assert and maintain their oversight responsibilities in relation to the executive branch. Since reaching their pinnacle of effectiveness in the 19<sup>th</sup> and early 20<sup>th</sup> centuries, legislatures have experienced an erosion of their privileges. These rights, collectively known as parliamentary privilege, are the constitutionally recognized rights of parliamentarians and legislators to conduct their essential business free of interference by outsiders, including governments and courts. While this privilege has been largely respected in terms of procedures and the right of members to speak their mind, the right of a legislature to set its own budget and chose its own officers free of interference by the executive branch has been substantially eroded in a number of jurisdictions. Because the discipline of political parties is strong, especially when a party is in the majority and in government, governments in many parliamentary jurisdictions have asserted their dominance by essentially informing legislatures of their annual budget allotments and by informing legislatures who they (the governments) have chosen to be their legislative officers. There is an inherent conflict of interest in this executive branch dominance that many legislatures have failed to address.

Along with this political reality, democratic legislatures in the modern era find themselves with the impossible task of overseeing a vast and multi-faceted executive branch. Practically speaking, they cannot do this without the aid of legislative officers. In 1984, the Supreme Court of Canada recognized this reality:

*“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 demand on members of legislative bodies is such that they are naturally unable to give careful attention to the working of the entire bureaucracy. Moreover they often*

*lack the investigative resources necessary to follow up properly any matter they do elect to pursue.<sup>4</sup>*

Therefore, we take the view that legislative officers in parliamentary democracies were created for the primary purpose of helping legislators make the business of government more open, transparent and honest than it would otherwise be and, in so doing, make good governance more likely. As we will see in later chapters, there are a variety of activities carried out by these officers, all in the name of helping legislators hold government to account. These activities normally fall into one or more of the following categories: audit, investigation and advocacy.

To assist readers in fully appreciating the value of the roles played by these officers, we will now briefly consider how our political system and its institutions compare with the systems and institutions of other countries.

### Canada in a Global Context

In global terms, we know there are only a handful of robust democracies. Organizations like Transparency International, Freedom House and Human Rights Watch offer persuasive evidence that the majority of the world's governments engage in practices that are substantially at variance with the democratic image they wish to project. In well over 100 countries it is commonplace to hear and read reports of systemic government corruption, of the suppression of free speech, of the repression of civil society organizations, of the manipulation of nominally independent institutions like electoral commissions and of toothless legislatures that fail to hold governments to account. In these countries, citizens have come to expect unfair and unequal treatment at the hands of partisans who populate the departments and agencies of government. This is the daily reality faced by most of humanity.

---

<sup>4</sup> *British Columbia Development Corporation v. Friedmann (Ombudsman)* [1984], p.459.

In Canada (and New Brunswick) we face a far more benign reality. While there are problems, we have nonetheless relatively healthy institutions in most sectors of our society:

- We have representative and vigorous legislatures across Canada.
- We overwhelmingly have honest and competent public officials.
- We have open and transparent governments when compared to most other countries.
- We have a diverse and active civil society.
- We have an independent and vigorous press.

And in those instances where any of the above is insufficient or deficient, we have tools to peacefully change the situation.

Many developing countries envy our political and administrative institutions and practices, so much so that they frequently invite Canadians to work with them to adapt our institutions and practices to their respective contexts. In the ranks of Canadians who travel to these countries to assist in this way, one can find legislative officers as well as public servants and elected members of the legislatures from across Canada.

### Current Challenges Affecting Canadian Legislative Officers

Intuitively and experientially, we know that our institutions are not immune to decline. If we take the time to consider recent events in jurisdictions across the country, we can see what may be fairly described as storm warnings for legislative officers.

*We know that our institutions are not immune to decline.*

For example, in many Canadian jurisdictions there have been sharp disputes between Auditors General and the governments they are auditing. Sometimes the dispute is focused on whether the Auditor General has crossed the line between auditing financial systems and commenting on government policy (Alberta). Sometimes the dispute is over access to privileged documents (British Columbia and Nova Scotia). And sometimes the dispute is focused on the relationship between Auditors General and the legislators they serve (see the recent case of the federal Auditor General auditing MP expenditures). These disputes sometimes find their way into the media and sometimes the tone and substance of the comments raise questions about the health of this important relationship.

Sometimes there are questions about the competence and/or integrity of a legislative officer and unsettling questions find their way into the public domain (Newfoundland and Labrador, Ontario and the Parliament of Canada). These cases may reveal fault lines in the way legislative officers are chosen and held accountable.

Sometimes governments and legislators alike take exception to the forcefulness and appropriateness of public comments by a legislative officer (Parliamentary Budget Officer). This raises a question about the appropriate public persona for a legislative officer.

More than occasionally, Information Commissioners across Canada publicly lament the barriers and delays they encounter as they try to extract information from governments that they believe belongs in the public domain. Often governments bristle at the persistence of these officers when it comes to prying loose information that will likely place the government in a poor light. The sources of obstruction are alleged to reside on both sides of the political-bureaucratic divide. This raises at least two questions: Is there a culture of secrecy in government as some officers have asserted? And can this tension between governments and legislative officers be better managed?

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.

These examples serve to illustrate: i) that even healthy political systems can have important problems, ii) that these problems can develop quickly, iii) that these problems can become both public and rancorous and iv) that there are persistent underlying tensions between the legislative branch and the executive branch that need to be better managed.

We now turn our attention specifically to the legislative officers of New Brunswick and what they told us about how well their mandates and operations served the review objectives of efficiency, effectiveness, accountability and independence.

## Chapter 3: The Perspective of New Brunswick's Legislative Officers

As reported in the opening chapter, we interacted frequently with New Brunswick's legislative officers, sometimes individually and sometimes in a group setting. We also received written input from these officers in response to our questions about their operations as well as in response to broader questions about their mandates and relationships<sup>5</sup>.

While they were not enthused by the prospect of diminished resources, or of co-location of operations, we were constructively engaged by the legislative officers throughout the review. For the sake of clarity and consistency we will report the views of the officers by following the categories used in posing questions.

### Mindset of the Officers

As a matter of principle and practicality, most legislative officers took the view that it was timely to examine their mandates and operations. While there was concern that efficiency considerations could receive disproportionate weight in relation to effectiveness, accountability and independence, there was agreement that these four criteria ought to lie at the centre of the review.

Several officers urged that the review be seen against the history that had given birth both to legislatures and to legislative officers. In this vein, it was noted that legislative officers were usually created because of failures in the political system (corruption, patronage, electoral fraud, etc.) and that a reduction in resources for officers could allow root tendencies in the political system to flourish again. Another officer noted that the growth and

*Legislative officers were usually created because of failures in the political system.*

---

<sup>5</sup> See Appendix F: Questions Posed to Legislative Officers. Also, see our website: <http://www.gnb.ca/legis/Promos/Review-LegislativeOfficers/index-e.asp> for questions raised in our July 7<sup>th</sup> Status Report.

dominance of the executive branch (sometimes referred to as “court government”) had also added impetus to the creation of legislative officers since officers were one means of restoring the role of the legislature.

So the general message was a cautionary one, namely, that those conducting the review need to be careful that short-term and long-term efficiency gains didn’t also bring the unintended consequence of an inadequately monitored executive branch which in turn would lead to a recurrence of problems that stem from an imbalance between the branches of government.

### Adequacy and Use of Resources

There was unanimous agreement that legislative officers in New Brunswick have comparatively fewer resources to work with than their counterparts in other Canadian jurisdictions<sup>6</sup>. This perception contributed to a reluctance to accept that a poorly resourced legislature ought to contribute to deficit reduction. Most officers took the view that substantial reductions were not possible in their respective operations without impairing their ability to discharge their responsibilities. That said, there were several ideas for cost containment including charge-backs for audits and investigations, partnering with stakeholders for education and promotion, multiple assignments for individual officers and, perhaps the most obvious, a moratorium on the creation of new legislative officers.

Among the officers, there were varying opinions about the budgetary and operational impact of co-location of their operations. At one end of the continuum, there was a majority view that each operation was unique and that co-location and the sharing of services was unlikely to improve the work of officers and that it might even be harmful. At the other end of the continuum, there was a view that that co-location (especially with greater use of combined

---

<sup>6</sup> In the 2011–12 budget year, the budget for New Brunswick’s eight legislative officers is \$ 7.3 M. These officers employ 73 individuals. This budget for the legislative officers is approximately 1/3 of the total estimated expenditure for the Legislative Assembly of New Brunswick. Also see Appendix E: Inter-Jurisdictional Comparisons.

mandates) would reduce the wage bill and foster project collaboration across (officer) boundary lines. This in turn was seen as having a double benefit: 1) more employees with multiple skills and wider knowledge and 2) improved morale among employees because of better development opportunities.

Our interest in the potential gains from co-location was heightened when we learned that a recent consolidation of the finance and human resources staff of the Legislative Assembly had yielded improvements in efficiency, effectiveness and service capacity. Processes were standardized, employees were cross-trained and overall output rose. Even so, we acknowledge that this example of the successful co-location of finance and human resources services may capture only some of the issues that would arise with co-location of legislative officers.

In fact, we can find a pertinent and successful example of legislative officer co-location without leaving New Brunswick. For several years, the mandates of three legislative officers were assigned to one individual (Ombudsman, Child and Youth Advocate and Information and Privacy Commissioner). These offices were combined under one roof and the administrative and professional employees of the three offices supported and collaborated with each other. Moreover, this experience underscored the feasibility and value of cross-training professional employees such as lawyers and intake officers. The

*We believe worries about co-location are unfounded.*

experience not only respected individual legislative mandates, the synergies created through co-location actually enhanced overall productivity. Therefore, we believe worries about co-location are unfounded.

For reasons of independence, the principle of receiving administrative services exclusively from the legislature was endorsed by legislative officers. Those officers now receiving some or most of their services from the legislature were very satisfied. That said, most officers receive at least some services directly or indirectly from the Department of Supply and Services and/or from the New Brunswick Internal Services Agency (NBISA). These services include

telecommunications, office space, email, postal service, parking, and data storage and retrieval from the Human Resource Information System (HRIS).

*The Clerk's emphasis on preserving or creating service arrangements that respect the roles and interests of both branches is well-taken.*

Discussions with the Clerk of the Legislative Assembly underscored the importance of handling personal information about elected members in an impartial and confidential manner. Similar sensitivities attach to matters such as official communications from the Legislature being handled by the executive branch (Communications New Brunswick) before publication. In such cases, the potential

for misunderstandings and missteps is real. Consequently, we believe that the Clerk's emphasis on preserving or creating service arrangements (as the case may be) that respect the roles and interests of both branches is well-taken.

Finally, there was interest in how budgets for legislative officers were developed and approved in other jurisdictions. All officers favoured improving the budget process of the New Brunswick Legislature so that officers could annually present and defend their proposed estimates before an appropriate committee of MLAs. There was a companion interest in a budget process that was simultaneously respectful of fiscal realities and the supremacy of the legislature in our system of government.

### **Adequacy of Legislation**

Most of the officers were satisfied with the basic provisions of their enabling legislation. Apart from the Ombudsman and Child and Youth Advocate whose legislation was recently revised, most officers had a relatively short list of legislative provisions requiring amendment. Only the Auditor General (whose legislation has never been subject to a comprehensive review) took the position that her legislation needs a substantial overhaul in order to bring the effectiveness and independence of her office up to the emerging standard for Auditors General in Canada. In this vein, there was consensus among the

legislative officers that there ought to be a regular mandatory review of legislation for their responsibilities and that a review every ten years was an appropriate interval.

The question of access to privileged information held in the executive branch was also raised. Officers took the view that access should be the same for all and that, if there were to be constraints on what could be done with privileged information once accessed, the constraints should be the same for all officers. There was no consensus on the question of whether it was better to have appointment terms of different lengths (terms in New Brunswick currently vary from five to ten years) nor was there consensus on whether terms should be renewable.

### **Relationships with Stakeholders**

We were told that while the relationship with the executive branch was currently satisfactory, there was potential to make it more constructive, that is, more proactive and more problem-solving in orientation. This would be facilitated by regular meetings with executive branch leaders (sometimes bilateral and sometimes with a group). Most legislative officers took the view that better relations with the executive branch were possible without the relationship becoming “cozy” and thus undermining the independence of the officers.

In a related vein, several officers thought that the executive branch should confer with officers before minor issues became outright problems. While the relationship will always be partly complaint-driven, the relationship could also have dimensions of proactive consultation and collaboration. Engaging a legislative officer (perhaps on a charge-back basis) to do an examination or a study of an issue important to a government department falls within this line of thinking. The Child and Youth Advocate and the Auditor General have both done this and encourage more initiatives of this nature.

## Accountability Practices

*New Brunswick's legislative officers unanimously favour a more active Legislative Officers Committee.*

New Brunswick legislative officers unanimously favour a more active Legislative Officers Committee. The officers want regular opportunities to talk about their work in general and their reports in particular. They think their reports could be used more effectively in the work of the Legislative Assembly, whether during debate over a bill, in debate over the estimates for a department or during Question Period.

While there was some discussion of the value of performance measures, there was acknowledgement that such measures take time and expertise to develop. Most officers referred to the legislative requirement to submit annual reports to the legislature as their over-riding performance measure. Some officers also cited their legislated requirement to respond to complaints and inquiries within time limits as another type of performance measure. There was no discussion of third party or peer reviews and only the Auditor General currently makes use of such an accountability mechanism.

In discussions about accountability, several officers referred to the importance of having unfettered access to the media when they have issues requiring the attention of government. They stressed the importance of the media in giving public profile to their issues and cases and in placing government under constructive pressure to address their recommendations. They use this “power” judiciously out of a concern that criticism and pressure beyond a certain point can backfire and actually reduce the cooperation of government.

## Recruitment

There was some discussion of how other jurisdictions manage the recruitment of legislative officers and, in particular, which branch of government leads the recruitment process. Currently, the executive branch dominates the

recruitment and selection of officers in New Brunswick. There was a general view among officers that a stronger role for the New Brunswick Legislature in the recruitment and selection of its officers was desirable. However, there was no agreement on the wisdom of a more open and transparent recruitment process. Officers saw advantages and disadvantages with greater openness and transparency in the recruitment of legislative officers. Some saw value in casting the recruitment net more widely than at present (thus generating more candidates) as well as value in bringing candidates before legislators prior to selection (more openness, rigor and fairness). Other officers worried that the often partisan and raucous nature of legislative business would discourage strong candidates from applying.

## Chapter 4: How Others See the Role and Performance of Legislative Officers

In this chapter our primary emphasis is on the approach taken by other Canadian provinces and at the federal level to the creation, mandating, resourcing and management of their legislative officers.

To begin with, we investigated the number, scope, resourcing and operations of legislative officers in all provincial jurisdictions as well as at the federal level. We then sent a series of written questions to legislative officials in all jurisdictions and followed up with a telephone interview. All jurisdictions sent written replies to our questions.

### Resources for Legislative Officers

Our research reveals that there are 65 legislative officers and parliamentary agents in provincial and federal jurisdictions: 58 in the ten provinces and seven at the federal level. The annual cost of these officers and their operations is in the order of \$650 million, a considerable sum by any standard.

New Brunswick and British Columbia share the distinction of having the most legislative officers of all jurisdictions in Canada (eight each). However, not only are BC and NB at (almost) opposite ends of the country geographically, they are at opposite ends of the funding continuum when it comes to legislative officers. BC, Alberta, Quebec and Ontario have top tier funding for their legislative officers (range of \$9–\$15 million annually per officer) while New Brunswick and PEI occupy the bottom rung among the provinces with less than \$1 million annually allocated (on average) to each of their officers<sup>7</sup>. This is not to say that New Brunswick has too many officers in total or that the individual officers do anything less than commendable work with the limited resources they have. The information available to us does not permit such conclusions.

---

<sup>7</sup> See Appendix E: comparing New Brunswick to other jurisdictions.

The history and circumstances of provinces vary sufficiently that there is no objective way to say that one province has too few officers or another too many. While Newfoundland and Labrador for example, may not require a Commissioner of Official Languages, no informed and fair-minded person would say New Brunswick does not. That said, while New Brunswick officers may wish to have and may be able to make a case for additional resources, there is no escaping the hard fiscal reality facing this province for at least the next few years. And while these officers can also point to significantly better resourcing of counterparts in other jurisdictions, they must also acknowledge that they serve in one of the most fiscally challenged provinces in Canada<sup>8</sup>.

### Sharing and Use of Resources by Legislative Officers

We found few examples in other jurisdictions of legislative officers sharing resources. Most jurisdictions do what New Brunswick does, that is, give their officers reasonable discretion in how they set up their offices and in how they source their administrative services. The result in New Brunswick is a series of physically separate officers with separate operations. Among the jurisdictions consulted, British Columbia is the best example of legislative officers sharing office space, reception, accounting, IT support and personnel services<sup>9</sup>. We also understand that, at the federal level, the Commissioner of the Environment and Sustainable Development operates from inside the office of the federal Auditor General.

We found only limited use of combined appointments for legislative officers. The most common pairing of appointments is to make the Chief Electoral Officer also responsible for vetting the financing of political parties<sup>10</sup>. Sometimes the Conflict of Interest Commissioner is also the Public Integrity Commissioner and sometimes the latter post is paired with the Ombudsman. If a jurisdiction does not have a Child and Youth Advocate, it is common for the

---

<sup>8</sup> Telegraph-Journal. "Province's AA-credit rating unchanged", August 11, 2011. Page A1. John Chilibeck.

<sup>9</sup> The four co-located B.C. officers are the Ombudsman, the Information and Privacy Commissioner, the Police Complaints Commissioner and the Merit Commissioner.

<sup>10</sup> In New Brunswick, this position is formally known as the Supervisor of Political Financing.

Ombudsman to assume, *de facto*, the role of Child and Youth Advocate. This, for example, is the case in Nova Scotia.

In terms of administrative services for legislative officers, most jurisdictions have a mixed model. That is to say, some services are provided from within the legislature and some are provided by the executive branch. In most cases where services are provided to legislative officers by the executive branch, the Clerk's Office has negotiated an agreement or MOU that is consistent with the independence of the legislature and places conditions on delivery of the services being purchased from the executive branch.

Many legislatures have administrative policies that mirror the policies of the executive branch, but these legislatures maintain their independence and right to vary their policies to suit their needs. The enabling legislation for some legislative officers sometimes contains a provision asserting such independence.

### **Budget Process for Legislatures and Legislative Officers**

Our survey of budget processes followed by legislatures reveal, with one exception, several common features:

- All-party committees chaired by the Speaker take the lead role in developing and deciding budget estimates for the legislature including for legislative officers. This committee is frequently referred to as a Management Commission or a Board of Internal Economy<sup>11</sup>.
- The fiscal guidelines used by the government in developing its budget are recognized by the legislature but are not, in and of themselves, the determining factor in setting an annual budget estimate for the legislature.
- The Clerk of the Assembly plays an important managerial role in the development of the budget and, depending on the circumstances, may

---

<sup>11</sup> In New Brunswick, the equivalent structure is the Legislative Administration Committee or LAC.

arrange for legislative officers to appear before the all-party committee to answer questions about and to defend their budget submissions. In some jurisdictions, there is input from budget professionals in the executive branch.

- The norm for the legislatures we surveyed is that once the all-party committee chaired by the Speaker sets a budget for the legislature, this amount is incorporated without revision into the Budget of the Minister of Finance.

In the course of doing this research we became aware of provisions in the Newfoundland and Labrador *House of Assembly Act* that formally confer substantial managerial authority upon the Clerk of the Assembly in terms of the financial and personnel transactions carried out in the name of the Assembly. The Clerk of the Newfoundland and Labrador House of Assembly, in Westminster parlance, appears to be an accounting officer<sup>12</sup>.

It may be that, in most legislatures, the Clerk plays such a role *de facto*; nonetheless, there is merit in the statutory confirmation of such a role. Within the framework of overall direction by the Speaker and the other elected members of the Legislative Administration Committee (LAC), we see value in formally charging the most senior

*The Clerk would be expected to create arrangements that facilitate the optimal use and sharing of resources by legislative officers.*

unelected official of the Legislature (the Clerk of the Assembly) with the responsibility for ensuring that sound management policies are recommended to LAC (possibly with input from the legislative officers) and that, once adopted, these policies are followed across the full spectrum of legislative activities. In this context, the Clerk would be expected to create arrangements that facilitate the optimal use and sharing of resources by legislative officers. This does not mean that the Clerk would substitute her judgment for that of a legislative

---

<sup>12</sup> Accounting officers are the administrative heads of their organizations and are legally required to answer before the legislature for the compliance of their organizations with relevant laws, policies and rules respecting financial and personnel matters. In the case of Newfoundland and Labrador, readers are referred to Sections 28–31 of the *House of Assembly Act*.

officer in terms, for example, of an investigation into a complaint, an audit of a government program, a conclusion arising from an investigation or an audit, or the public presentation of an officer's views. Rather, the Clerk's accountability is that of a system manager. We will return to this point in our final recommendations.

## Accountability Mechanisms and Practices

In the Parliament of Canada, it is commonplace for individual officers (parliamentary agents) to appear frequently before committees of the House and the Senate. These appearances are occasioned by the submission of their annual reports as well as by other matters on which MPs believe these officers may have helpful information and perspectives. These officers also have annual plans and budgets on which they may be questioned as well as performance measures. Accountability practices in the federal system are especially strong when compared to the provincial legislatures we surveyed.

At the provincial level, most legislative officers are not routinely called before legislative committees even after the tabling of their annual reports. There are two exceptions, the first of which is the Child and Youth Advocate. Some of the provinces with Child and Youth Advocates have a dedicated legislative committee (British Columbia and Manitoba) before which the Advocate frequently appears.

The second exception is the Auditor General for whom accountability practices are robust in all jurisdictions. It is the reports of the Auditor General that are most anticipated, most reported on in the media and most used by legislators. In all jurisdictions, the Auditor General can expect to be called frequently before the Public Accounts Committee. Additionally, Auditors General have developed more performance measures than their fellow officers and routinely use peer review mechanisms as a way of strengthening their accountability and their performance.

Even among legislative officers, there is no debate on the desirability of legislative committees holding officers to account. In fact, this is a powerful source of affirmation for these officers. In the words of the parliamentary authority, Professor Ned Franks, “just as the Auditor General needs a Public Accounts Committee in order for her work to be meaningful, so too other legislative officers need an active Legislative Officers Committee”<sup>13</sup>.

Professor Paul Thomas also speaks to this point:

[...] Parliament cannot simply delegate matters to agencies, fail to monitor their activities and fail to heed their recommendation. Agencies depend on Parliament to follow up their reports and recommendations as a way to encourage ministers and public servants to take them seriously. In the end, Parliament must remain the principal “watchdog”<sup>14</sup>.

### **Recruitment Practices, Terms of Office and Compensation**

There is much variety in the length of terms given to legislative officers in Canada. The terms for legislative officers are for as little as two years while others are virtually open-ended (i.e. until retirement or age 65). Auditors General and Chief Electoral Officers usually have the longest terms (minimum of ten years). Provincial Conflict of Interest Commissioners tend to be part-time officers with five year terms. In the case of most officers, there is a provision for reappointment.

We note that there is some debate about the merit of having longer terms of office for legislative officers but with no provision for reappointment. The advocates of this approach believe it would strengthen the independence of the

---

<sup>13</sup> Observation made by Professor Ned Franks during the September 15<sup>th</sup> Roundtable on the Review of New Brunswick Legislative Officers.

<sup>14</sup> This quotation is taken from unpublished speaking notes prepared by Paul Thomas. The speaking notes are based on a paper written by Professor Thomas for the Government of Canada’s Office of the Public Integrity Commissioner. Retrieved from: [http://www.psic-ispcc.gc.ca/quicklinks\\_liensrapides/pres\\_thomas-eng.aspx](http://www.psic-ispcc.gc.ca/quicklinks_liensrapides/pres_thomas-eng.aspx).

officer because the officer would experience no temptation to go easy on the government in order to make reappointment more likely. Moreover, this approach would not reduce the effectiveness or the accountability of officers.

It is common for enabling legislation to have removal provisions but, because of the importance of independence and security of tenure, the threshold for removal is high. That said, in recent years, there have been a few cases of removal from office or of officers leaving, under pressure, before the end of their term. Given this, it is interesting that, among the provincial jurisdictions we surveyed, we did not discover formal procedures for handling complaints against legislative officers.

Recruitment practices also vary across the country. The approach to the recruitment and selection of legislative officers tends to be driven either by the government (the cabinet office) or by an all-party committee of the legislature, usually the one that handles the budget for the legislature. In both cases, the trend seems to be toward more openness (national competitions) and more rigor in the recruitment and selection of legislative officers.

As with recruitment, the compensation reference point for legislative officers tends to be either that of a judge or that of a deputy minister. Officers are often part of a pension plan administered by the government.

### **Access to Privileged Information by Legislative Officers**

The enabling statute for a legislative officer typically has provisions governing access by the officer to information held in the executive branch. As a matter of principle and practice, the legislation usually confers a right of access to documents that officers believe they need in order to conduct proper audits, investigations or inquiries. Notwithstanding this, the statute often cites exceptions to this right of access and these exceptions are for privileged documents such as those containing cabinet confidences and legal opinions. In recent years, some Auditors General have had success in eroding these claims of privilege and have secured access to privileged documents as a result of

court decisions and/or as a result of political pressure to amend their enabling legislation. It is our understanding that in cases where access is granted to privileged documents, the Auditor General may not publicly disclose that information. The recently proclaimed *Auditor General Act* in Nova Scotia is seen by some as the current gold standard in relation to access to information albeit with conditions and with a dispute settlement mechanism. It is noteworthy that other legislative officers do not enjoy as much access as do Auditors General.

*Legislative officers ought to have access to any documents they believe are required for the discharge of their mandates. This is not an argument for carte blanche access but for reasoned and reasonable access.*

For purposes of this review, we believe legislative officers ought to have access to any documents they believe are required for the discharge of their mandates. This is not an argument for *carte blanche* access and use by the

officers, but for reasoned and reasonable access to and use of such documents.

We recognize governments in Canada have traditionally maintained that privileged documents fall outside the jurisdiction of officers. We also recognize that there are complex considerations around waiver of privilege by governments. Finally, we recognize that governments have litigated at every turn, albeit with mixed results, in order to protect such information and that they will likely do so again.

We have no desire to provoke an acrimonious dispute. We do, however, want to make recommendations that improve the effectiveness of legislative officers by improving their access to privileged information in situations where their analysis and advice requires such access in order to be informed. We do not wish to impair the preparation and use of confidential reports in governments. We respect the importance of confidentiality in government as well as in the operations of legislative officers. We think there is a mutual interest in finding common ground on this matter through negotiation rather than through litigation. Recommendations in Chapter 6 will be made in this spirit.

## Views from the Executive Branch

In the course of our review we had the opportunity to meet several times with deputy ministers in the executive branch. We also invited written replies to questions intended to capture the experiences and opinions of these leaders in relation to the efficiency, effectiveness, accountability and independence of legislative officers.

**The view of the executive branch can be summarized as follows:**

- There is limited understanding among officials in government regarding the role of legislative officers in our system of government.
- There is a view that legislative officers sometimes misunderstand the scope of their authority and thus seek access to information that is exempted from their jurisdiction.
- There is a perception that there are too many officers and that the amount of oversight impairs the work of government.
- There is a perception that the officers are generously compensated for the work that they do.
- There is a perception that the Legislative Assembly must be a part of reducing New Brunswick's deficit and debt.
- There is uncertainty about permissible ways to interact with legislative officers.
- There is a view that some form of workshop or seminar on the role of the legislative assembly and its officers in our system of government should be available to employees of the executive branch.

## Managing the Relationship

Based on the input received from legislative officers and executive branch leaders, it is evident that the relationship between the two would benefit from some considered attention. We will offer recommendations on this relationship in Chapter 6; meantime, we want to quote at length, the observations of

Professor Paul Thomas on the elements of a healthy relationship between the two:

Ideally, the relationships between agencies and the public service should be based on mutual understanding and respect for the different roles and constraints they face.

The leadership, philosophy and style of both agencies and public service organizations will determine whether relationships are cooperative and constructive.

Agencies must avoid the “gotcha” approach. Departments must not be overly defensive. Relations should be cordial, but not cozy. There must be both procedural and substantive fairness involved with the investigations and reports of parliamentary agencies.

In preparing and presenting their reports, agencies should not “pull their punches” for the sake of saving ministers and public servants from embarrassment<sup>15</sup>.

---

<sup>15</sup> This quotation is taken from unpublished speaking notes prepared by Paul Thomas. The speaking notes are based on a paper written by Professor Thomas for the Government of Canada’s Office of the Public Integrity Commissioner. Retrieved from: [http://www.psic-ispc.gc.ca/quicklinks\\_liensrapides/pres\\_thomas-eng.aspx](http://www.psic-ispc.gc.ca/quicklinks_liensrapides/pres_thomas-eng.aspx).

## Chapter 5: Principles in Practice

Throughout this report there are repeated references to the importance of efficiency, effectiveness, accountability and independence in the mandate and operations of legislative officers. These principles are the cornerstones of the terms of reference and there is an expectation that this review will make recommendations to improve the performance of New Brunswick's legislative officers on all four of these measures. Before making recommendations for changes to the current officer regime, we want to describe what these principles look like when they are fully implemented. This will assist readers in judging the degree to which the current regime falls short on each principle.

### Elements of Accountability

- A statutory obligation to report to the Legislative Assembly on the work of the office and, in turn, a reasonable expectation of being thoroughly questioned by legislators.
- Annual appearances of each officer before a legislative committee to present and defend the estimates and work plans for the office.
- The use of performance measures customized to the work of each office.
- The periodic use of peer or third party reviews of the work of each office.
- Availability of officers to the media and to stakeholders to answer questions about the work of the office.
- Mechanisms or well-publicized procedures for handling complaints about any officer.

### Elements of Efficiency and Cost Containment

- The assignment of multiple mandates to individual officers where there are mandate synergies.
- Collaboration with other officers in securing and using money, personnel, space and equipment.
- Optimal use of resources through thoughtful organization design and management.

- For officers with educational components to their mandates, the use of cost-sharing arrangements with partners and stakeholders.
- For all officers, the authority to levy charge-backs for new legislated services as well as for new public bodies added to their jurisdiction.

### Elements of Effectiveness

- Sufficient legislative authority to conduct the required audits, investigations and inquiries.
- Sufficient access to information in the executive branch to allow audits, investigations and inquiries to be properly conducted.
- Sufficient resources and technical support to discharge statutory obligations.
- The formation and management of constructive arms-length relationships with those being audited, investigated or reviewed.
- The unfettered ability to report formally and to speak publicly about findings and recommendations.

### Elements of Independence

- Personal independence of the officer through a fixed term of office and removal only for cause.
- Administrative independence of the officer through reliable and adequate support services.
- Financial independence of the officer through fair compensation and adequate resources to meet statutory obligations.
- Overall independence of the institution to which the officers are accountable expressed through the autonomy to set its own budget and to select its own officers.

In our view, this is the ideal. And moving toward this ideal strengthens the machinery of government and this, in turn, serves the larger public interest.

In our research, we did not identify a jurisdiction in which all the elements of all the principles were present. Most jurisdictions were approximations of this ideal. The reasons for falling short of this ideal can be found in the history of legislative institutions which, as we saw in Chapter 2, is characterized by incremental growth and change over time. When institutions grow in this fashion, it can be difficult to discern guiding principles. Often, institutional adaptations are responses to problems; in other words, they are remedies fashioned for a specific problem at a specific point in time. In these responses, practicality matters as much as or more than principle. This seems especially true of Westminster parliamentary institutions. As Oonagh Gay says about the Mother of all Parliaments, “the arrangements at Westminster and elsewhere in the UK have grown up in a haphazard, and often illogical, way”<sup>16</sup>. While there may be somewhat more coherence and consistency in Canadian legislative institutions than in the UK, there are, nonetheless, Canadian examples of institutional change in the wake of pressure and scandal. One thinks of the recent events that spawned the *Federal Accountability Act* and its institutional offspring: the Public Sector Integrity Commissioner, the Commissioner of Lobbying and the Conflict of Interest and Ethics Commissioner<sup>17</sup>. In this context, it is helpful to quote Professor Paul Thomas once more. Professor Thomas notes (as have others) that Canada finds itself with a “trust deficit” when it comes to politics, political leaders and public institutions. One consequence of this is “the substitution of rules and oversight mechanisms for trust and the exercise of discretion”<sup>18</sup>.

Earlier, this report cited growth in the number and significance of legislative officers in federal and provincial jurisdictions across Canada over the last 30–40 years. It is difficult to escape the impression that the creation of these officers was not only a response to contentious issues in each jurisdiction but also a response to a perceived need to “keep up” with other jurisdictions. By

---

<sup>16</sup> Oonagh Gay, *Parliament’s Watchdogs: At the Crossroads*, p.11.

<sup>17</sup> Creation of a Procurement Ombudsman within PWGSC as a result of the *Federal Accountability Act*.

<sup>18</sup> This quotation is taken from unpublished speaking notes prepared by Paul Thomas. The speaking notes are based on a paper written by Professor Thomas for the Government of Canada’s Office of the Public Integrity Commissioner. Retrieved from: [http://www.psic-ispc.gc.ca/quicklinks\\_liensrapides/pres\\_thomas-eng.aspx](http://www.psic-ispc.gc.ca/quicklinks_liensrapides/pres_thomas-eng.aspx).

emulating the practices of others, these jurisdictions could be said to be adding oversight institutions proactively as well as reactively.

Readers of this report will know that New Brunswick's experience in the creation of legislative officers follows this trend of reaction and emulation. While there is a measure of consistency within the regime of legislative officers in New Brunswick, there is also an understandable absence of uniformity and approach among the various legislative officers owing to their creation over a 40 year period.

In spite of inconsistencies and the absence of uniformity, readers will also know that the operations and performance of the New Brunswick legislative officers show considerable merit. In fact, as we looked at arrangements and practices in other jurisdictions, we concluded that New Brunswick legislative officers compared favourably on most points. Notwithstanding their caution about the unintended consequences that sometimes accompany change, we were pleased that these officers constructively engaged in discussion about potential changes that hold the prospect of enhancing their efficiency, effectiveness, independence and accountability.

A review such as this one presents the challenge of recommending new arrangements and practices that promise improvement without losing the inherent value of present arrangements and practices. This is no small task given that the status quo has thoughtful defenders.

Nonetheless, we ask ourselves, if New Brunswick legislators were starting afresh and were creating a system of legislative officers for the first time, would they simply reproduce the current officer regime or would they opt for a regime that promised an optimal mix of efficiency, effectiveness, accountability and independence?

We think the answer to this question is obvious and the recommendations contained in the following chapter will, over a period of several years, move the current officer regime much closer to the ideal described at the beginning of this chapter.

## Chapter 6: Recommendations for Improving the Mandates and Operations of New Brunswick's Legislative Officers

### A. General Recommendation

**A.1** Given the justifiable concern over the state of the economy and the fiscal situation of the province, and given that New Brunswick already has a full complement of legislative officers, **it is recommended that no new legislative officer positions be created until the fiscal situation improves significantly and sustainably.**

### B. Recommendations Bearing on the Independence of Legislative Officers

**B.1** Given the primacy of the legislature in the Westminster system and given that it is in the public interest for the legislature to play an effective oversight role in relation to the executive branch, **it is recommended that the legislature takes the leadership role in the recruitment and selection of its officers.** This recommendation would allow for advice from and the inclusion of representatives of the executive branch in the LAC-led recruitment process. **It is recommended that no legislative officer be appointed without the adoption of a legislative resolution approving the proposed appointment and that the requisite changes be made so that the appointment of legislative officers clearly falls within the statutory authority of the legislature rather than, as is presently the case, the Lieutenant Governor-in-Council.**

**B.2** It is also recommended that the Legislative Assembly strengthen its annual LAC-driven budget development process by interviewing legislative officers on their proposed estimates and that the amounts recommended by LAC be included without revision in the annual budget tabled by the Minister of Finance. In so doing, it is recommended that LAC be mindful of the fiscal guidelines being followed by the executive branch in the preparation of its annual budgetary estimates.

## C. Recommendations Bearing on the Accountability of Legislative Officers

C.1 Given that legislative officers are employees of the Legislative Assembly and given the widely accepted practice of holding officers to account through the tabling of annual reports, **it is recommended that the Legislative Officers Committee require legislative officers to appear before the Committee at least annually so as to answer questions about their annual reports and also to respond to any other matter that members of the Committee may wish to raise.** It is also recommended that, apart from what is contained in the annual report of a legislative officer, the Legislative Officers Committee ought to seek comments from each officer on the adequacy of their legislation, the adequacy of their resources, performance measures for their area of responsibility, collaboration with other legislative officers and best practices of their counterparts in other Canadian jurisdictions.

C.2 Given growing support for the development and use of performance measures, especially as expressed by the Auditor General with respect to the executive branch of government, **it is recommended that the Legislative Officers Committee direct the legislative officers to develop performance measures that can be tracked and reported annually.**

C. 3 Bias, or the perception of bias, can undermine the work of public officials. Therefore, given the inherent conflict involved when legislative officers audit or investigate each other or audit their employer (the MLAs), **it is recommended that no officer of the legislature have the authority or obligation to review or audit another officer or program of the Legislative Assembly without the participation of an independent and qualified third party chosen by the Speaker with the approval of LAC.** It is acknowledged that the implementation of this recommendation would add a small incremental annual cost to the operation of the Legislative Assembly.

C.4 Given the current absence of an agreed procedure for handling citizen complaints about the work or conduct of a legislative officer, **it is recommended that citizen complaints about legislative officers be directed to the Speaker**

who, in consultation with the Clerk of the Assembly, should investigate the complaint and present his advice to the Legislative Administration Committee. Once the complaint is addressed, the Speaker ought to report his disposition of the complaint to the complainant.

#### **D. Recommendations Bearing on the Efficiency of Legislative Officers**

**D.1** There are a variety of factors that bear on the organization of legislative officers. First, there is the fiscal situation of the province. Second, there is the inherent desirability of establishing arrangements that allow legislative officers to operate in the most efficient manner possible. Third, there is the Westminster practice of naming an accounting officer who is legally responsible for the efficiency and administrative integrity of the organization or institution. As we saw in Chapter 4, the accounting officer designation is usually applied to deputy ministers in the executive branch but, in the case of the following recommendation, it is being transposed to the legislature. The equivalent of the Minister in a legislative setting would be the Speaker and the equivalent of the deputy minister would be the Clerk. The designation of the Clerk as the Accounting Officer for the Assembly is not intended to diminish the ability of the legislative officers to manage their specific legislative responsibilities, but is intended to create a responsibility centre for the efficient management of the legislative officers as a group.

**D.2** Therefore, it is recommended:

- i) that the Clerk of the Legislative Assembly be formally designated as the accounting officer for the Legislative Assembly;**
- ii) that legislative officers as a group be managed and administered by the Clerk;**
- iii) that legislative officers be co-located at the earliest feasible time;**
- iv) that the Clerk have an ongoing responsibility for recommending ways to maximize the assignment of mandates to individual legislative officers;**
- v) that administrative and other services be provided to legislative officers through the office of the Clerk either from within the legislature or by third**

party service providers who are bound by agreements protecting the independence and privileges of the legislature and its officers.

**D.3** Because legislative officers share responsibility with the Clerk for efficient operations, legislative officers who are co-located are expected to identify ways in which they can share professional staff, provided such sharing does not impair their ability to discharge their legislated responsibilities. While this practice will contribute to long-term cost containment, short-term efficiencies and cost-savings are also required. To this end, it is recommended that the following legislative mandates be assigned to the Ombudsman: *Ombudsman Act, Public Interest Disclosure Act, Members' Conflict of Interest Act, Conflict of Interest Act*<sup>19</sup> and the *Registrar of Lobbyists Act* (now before the Legislative Assembly). Consequently, it is recommended that priority be given to co-locating the employees of the two officers who presently oversee these mandates. In recommending the assignment of conflict of interest responsibilities to the Ombudsman, we want to stress the importance of appointing an Ombudsman who has: i) impeccable character and demonstrated judgment, ii) relevant experience in the practice of law or, alternately, ready access to legal expertise in this area of law, and iii) is committed to the sensitive management of the confidential information about members and senior office holders that will necessarily be in the possession of the Office of the Ombudsman.

**D.4.** Over the medium to long-term, it is recommended that the Clerk remain alert to opportunities for recommending the assignment of multiple mandates to individual officers. It is also recommended that the Clerk of the Legislative Assembly work closely with the Deputy Minister of Supply and Services to develop and implement a cost-effective plan that co-locates the maximum number of officers at the earliest opportunity.

---

<sup>19</sup> The current Conflict of Interest Commissioner recommended that two statutes – the *Members' Conflict of Interest Act* and the *Conflict of Interest Act* – be administered by the Conflict Commissioner. The effect of this recommendation is that MLAs, Cabinet Ministers, Deputy Heads, Heads of Crown Corporations and ministerial staff would seek advice about actual, apparent and potential conflicts of interest from the same source. See: 2011 Quinquennium Report of the Conflict of Interest Commissioner, pp. 4–5.

**D.5 To further facilitate management of legislative officers as a group, it is recommended that a single statute for the creation, mandating, and resourcing of legislative officers be drafted and approved by the legislature.**

## **E. Recommendations Bearing on the Effectiveness of Legislative Officers**

**E.1 As a general rule, the status, rights and privileges of legislative officers ought to be equal. No officer should be more or less independent than another or more or less accountable than another. With this in mind and given the recommendation for a single statute covering common provisions, it is specifically recommended that several provisions bearing on effectiveness be harmonized across the officer class, namely: i) recruitment and selection, ii) compensation iii) removal from office, iv) immunity from prosecution and suit, and v) access to information including privileged documents when necessary, as well as access to a dispute resolution mechanism in the event of disagreement.**

**E.2. With respect to harmonizing terms of office, it is recommended that the Auditor General and the Chief Electoral Officer have nonrenewable ten year terms of office with provision for a six month extension in exigent circumstances. It is recommended that all other officers have a nonrenewable term of seven years with provision for a six month extension in exigent circumstances. Terms of this length are conducive to effectiveness and independence as well as being consistent with the best practices elsewhere. Where they vary, the terms awarded to current legislative officers should be respected. It is also recommended that all legislative officers be compensated under the terms of the deputy head compensation and benefits plan.**

**E.3 Currently, legislative officers seldom meet as a group. Given that this report raises the performance bar in relation to working together and supporting each other, it is recommended that regular meetings of this group be convened and chaired by one of their number with the convenor/chairing role rotating among the officers on an annual basis. This new practice should include the sharing of information and best practices gained at annual meetings**

with counterparts from other Canadian jurisdictions. In this vein, the Chair of the Legislative Officers Group ought to meet periodically with the Clerk of the Executive Council for the purpose of identifying common issues and information needs. Additionally, it is recommended that there be an annual meeting of Deputy Ministers and Legislative Officers dedicated to shared interests and issues. The results of these sessions ought to be made available in a timely fashion to MLAs and Ministers.

**E.4** The forging of an effective relationship between legislative officers and the executive branch also depends on mutual understanding and respect for the role played by each branch. To this end, it is recommended that a machinery of government workshop be designed, organized and delivered – a workshop that includes an examination of the historical development of each branch, the modus operandi of each branch and the best practices for working together without compromising the role and independence of each branch. This workshop should be available to those whose responsibilities require them to interact with officials from the other branch of government. The Clerk of the Legislative Assembly and the Clerk of the Executive Council ought to jointly lead the development and delivery of this workshop.

**E.5** Given that some legislative officers begin their jobs with little or no background in government and given the importance of new officers mastering their responsibilities quickly, it is recommended that the Clerk of the Legislative Assembly and the Clerk of the Executive Council ensure the preparation and delivery of briefing material that includes information on the history and role of the legislature, legislative committees, legislative officers and relations with the executive branch. The Clerks ought to brief the new officer at the earliest opportunity. In the same vein, it is recommended that each legislative officer who is leaving office ensure a smooth transition for their successor by preparing briefing material about the responsibilities of the office, its practices and current issues.

## F. Other Recommendations

F.1 With respect to the Consumer Advocate for Insurance (CAI), the placement of this office under the auspices of the legislature is unique in Canada and is arguably out-of-place when seen from a strict Westminster perspective in that the position does not provide oversight of or act as a check on the executive branch.

F.2 A review of other placement options for the CAI, such as within the executive branch or within an insurance industry regulatory structure, offer no gains when it comes to the four core criteria of this review: efficiency, effectiveness, independence and accountability.

F.3 That said, there is no obvious reason why the responsibilities of the CAI, along with the resources of his office, could not be effectively added to the responsibilities of the Ombudsman who is already effectively discharging responsibilities in addition to those conferred by the *Ombudsman Act*. This change would yield efficiency gains without undermining the effectiveness, accountability or independence of the current consumer advocacy arrangements. This change should be delayed until the current CAI completes his term.

**F.4 Therefore, it is recommended that the responsibilities of the Consumer Advocate for Insurance be assigned to the Ombudsman effective January 1, 2015 and that the resources of the Office of the CAI be reallocated to the Office of the Ombudsman at that time.**

F.5 The effect of this recommendation (F.4) combined with the previous recommendation to assign lobbyist registration and conflict of interest responsibilities to the Ombudsman would have the effect of reducing the number of legislative officers in New Brunswick from eight to six.

F.6 With respect to the Human Rights Commission (HRC), its current placement in the executive branch is consistent with the arrangement in other Canadian

jurisdictions. Its mandate covers all sectors in New Brunswick and this distinguishes it from the classic legislative officer whose *raison d'être* is to oversee the executive branch exclusively. While the HRC is currently performing ably within the executive branch, there is some concern about its independence. In fact, we understand this concern underpins the election commitment of the current provincial government to move the HRC into the legislative branch.

**F.7** Two issues lie at the heart of this concern: i) the formal requirement that the Minister responsible for the Commission approve each HRC recommendation for a formal Board of Inquiry and ii) that several investigators employed by the HRC are members of a labour union and that these investigators, from time to time, are obliged to investigate complaints about the conduct of fellow union members and, as a result, raising the perception of conflict of interest. The HRC takes the view that these issues can easily be addressed through relatively minor legislative and policy changes. Were these changes to be made, the Chair and Executive Director of the HRC have expressed their confidence that the efficiency, effectiveness, accountability and independence of the HRC would be best-served by continued placement in the executive branch. We agree and take the position that these two changes effectively address the concern underpinning the election commitment. Provided these changes are accomplished, there would be no reason, particularly given the fiscal context, for moving the HRC from the executive branch. **Therefore, it is recommended that i) the *Human Rights Act* be amended so that the Human Rights Commission has the sole and final authority to initiate a Board of Inquiry, ii) that the labour union-affiliation of HRC investigators be terminated and, as a consequence of i) and ii), that the Human Rights Commission remain under the purview of the executive branch.**

**F.8** Lastly, the current arbitration of disputes arising out of efforts to access documents covered by the *Archives Act* falls within the jurisdiction of the Ombudsman. Since the essence of this provision deals with access to information held by the provincial government, a more appropriate assignment of such disputes lies with the Access to Information and Privacy Commissioner rather than with the Ombudsman. **Therefore, it is recommended that Section**

10 of *Archives Act* be amended so that in every instance where the term “Ombudsman” now appears, the term “Access to Information and Privacy Commissioner” be substituted therefore.

## G. Concluding Thoughts

Throughout the course of this review of the mandates and operations of New Brunswick’s legislative officers, we remained focused on the four principles set out in the terms of reference, namely: efficiency, effectiveness, accountability and independence. These principles have served as pillars for our work, giving structure and shape to the research and analysis as well as to our many interviews and group meetings with stakeholders and experts.

Over the last few months we questioned and listened carefully to those with experience and perspective in this field. We probed as deeply as we knew how. At the end of our inquiry, we found a regime in need of fine-tuning and updating but not one that required an overhaul.

In the course of formulating recommendations, no one principle was elevated above another. Instead, the objective was to offer advice that would make improvements to the legislative officer regime while respecting all four principles simultaneously.

So for example, we thought it unwise to substantially reduce expenditures in the name of efficiency if this meant impairing the effectiveness of the officers in carrying-out their oversight responsibilities. But because we also thought the status quo was inefficient and unsustainable, we recommended a new approach to the management of legislative officers – an approach that promises to contain costs and optimize the use of resources while also improving the effectiveness of the officers.

Similarly, we thought it unwise for the legislature to defer to the executive branch in the recruitment and selection of its officers or to have the government unilaterally determine the annual budget of the legislature. A

better approach in our view is to augment the independence and leadership of the legislature in these matters while preserving the right of the government to make its views known.

Competing principles and values also shaped our work on other questions. For example, there was a question about where to draw the line for officers in relation to access to privileged information in the custody of the executive branch. There was also a question about how many responsibilities could be assigned to a single legislative officer without undermining the effectiveness of the officer. And there was a question about how much and what kind of collaboration can occur between legislative officers and the executive branch without that experience colouring the judgment and action of the actors on both sides.

Because of the approach taken during this review, some stakeholders will find the answers to these and other questions disappointing; disappointing because the recommendations cause either too little or too much change, or disappointing because the wrong balance was struck on issues of particular importance to these stakeholders. These are questions on which honest people can differ. However, our mandate was to respect *all* of the principles, answer *all* of the questions and to show no favour to any one officer or institution in so doing. In the final analysis, the success of this review will lie in the extent to which it strengthens the work of *all* legislative officers and, in turn, in the extent to which *all* legislators are able to effectively use the information and advice provided by the officers.

## Appendix A: Terms of Reference

### Government Renewal Review of the Offices of the Legislative Assembly

In the face of fiscal pressures, the Government of New Brunswick has identified a goal of ensuring that it is able to provide appropriate and affordable services to citizens on a sustainable basis. To this end, a process of review and reflection was initiated in March 2011.

#### The objectives of the exercise are:

1. To improve the culture of government to focus on core services, accountability through performance measures, and continuous performance improvement;
2. To engage stakeholders to ensure there is an alignment between affordable quality public services and public expectations;
3. To ensure government meets its stated 2011–12 budget commitments; and,
4. To provide direction for the development of a three–year plan to return to a balanced budget by 2014–15.

The Government of New Brunswick is composed of three arms that operate independently of each other: the executive, the legislative and the judicial arms. Government Renewal in the executive arm is being carried out through the Government Review Office under the direction of a Cabinet Committee on Government Renewal.

To contribute to the overall goal, parts of the legislative arm will also undergo a review, with compatible objectives. Reporting to the Legislative Administration

Committee, the review will be carried out over a six-month period, commencing May 1, 2011.

**The objectives of the review are:**

1. To ensure that the objectives relating to the various functions of the Officers of the Legislative Assembly are clear and relevant, and that the Officers are held accountable for meeting those objectives. (Note: The functions that fall under the responsibility of the Speaker and the Clerk of the Legislative Assembly are not part of the review except as they may relate to the functions and support of other Officers);
2. To determine how the functions and operations of the Officers of the Legislative Assembly can be carried out more effectively and efficiently;
3. To determine what functions, if any, within the executive arm of government would be more effectively/efficiently carried out in the legislative arm; and,
4. To contribute to the government objective of developing and implementing a three-year plan to return to a balanced budget by 2014–15.

**In meeting these objectives, the review should address the following:**

Description of the current situation: What Legislative Officers exist and what are their responsibilities? What are their respective objectives? How are the functions supported operationally?

- Effectiveness: Why were the respective Legislative Officer positions put in place? Are those objectives being met? If not, why not? Are there objectives that are no longer relevant? Are there objectives that could be better met within an altered structure?
- Efficiency: Where objectives remain relevant, are they being met in the most efficient way possible? Where could efficiencies be found without

seriously compromising effectiveness? What efficiency/effectiveness trade-offs should be considered in the interests of providing best value to New Brunswickers?

- Administration/operations: Is there duplication of operations/administration within the Legislative Assembly? To what extent could supporting offices/activities be combined structurally and/or physically? What differences exist in relation to the configuration of the offices /staff (number, compensation and benefits, powers, etc.)? Where such differences exist, is there a rationale or should there be more consistency?
- Placement within Government:
  - Are there functions within the legislative arm of government that would be better placed in the executive arm or in the private sector? If so, what are the policy, operational and resource implications of moving these functions out of the legislative arm? Are there functions within the legislative arm that should not be done at all? Why? What are the implications?
  - Are there functions within the executive arm of government that would be better placed in the legislative arm? If so, what are the policy, operational and resource implications of moving these functions from the executive arm to the legislative arm?
- Accountability: How are the Officers of the Legislative Assembly currently held accountable for the fulfillment of their roles and responsibilities? Are those accountability mechanisms effective? How could accountability be improved? What are the resource implications of improved accountability?
- Budget: What are the processes by which the budgets for the Legislative Assembly functions are derived? Are these processes effective? What

budget processes could be put in place to appropriately balance the functional needs of Officers with the fiscal imperatives of the Province?

The review will be carried out under the leadership of Mr. Bernard Richard. Mr. Richard will operate within a budget established for the review by the Clerk of the Legislative Assembly and approved by the Legislative Administration Committee. Resources for undertaking the review will be provided from within the budget of the Legislative Assembly.

A final report will be due for submission to the Legislative Administration Committee no later than October 31, 2011. The report must include a description and analysis of the current situation, and recommendations to address the review objectives.

## Appendix B: Consolidated Recommendations

### General Recommendation

1. That no new legislative officer positions be created until New Brunswick's fiscal situation improves significantly and sustainably.

### Recommendations Bearing on the Independence of Legislative Officers

2. That the Legislative Assembly take the leadership role in the recruitment and selection of its officers.

3. That no legislative officer be appointed without the adoption of a legislative resolution approving the proposed appointment.

4. That the requisite statutory changes be made so that the appointment of legislative officers clearly falls within the authority of the legislature.

5. That the Legislative Administration Committee (LAC) strengthen its annual budget development process by interviewing legislative officers on their proposed estimates and that the amounts recommended by LAC be included without revision in the annual budget tabled by the Minister of Finance.

6. That, in the preparation of its annual budgetary estimates, LAC be mindful of the fiscal guidelines being followed by the executive branch.

### Recommendations Bearing on the Accountability of Legislative Officers

7. That the Legislative Officers Committee (LOC) require legislative officers to appear at least annually so as to answer questions about their tabled reports.

8. That LOC regularly seek comments from each officer on the adequacy of their legislation, on the adequacy of their resources, on collaboration with other legislative officers and on the best practices of their counterparts in other Canadian jurisdictions.

9. That LOC direct each legislative officer to develop performance measures that can be tracked and reported annually.

10. That no legislative officer have the authority or obligation to review or audit another officer or program of the Legislative Assembly without the participation of an independent and qualified third party chosen by the Speaker with the approval of LAC.

11. That citizen complaints about legislative officers be directed to the Speaker who, in consultation with the Clerk of the Assembly, should investigate the complaint and present his advice to LAC. Once the complaint is addressed, the Speaker ought to report his disposition of the complaint to the complainant.

#### **Recommendations Bearing on the Efficiency of Legislative Officers**

12. That the Clerk of the Legislative Assembly be formally designated as the accounting officer for the Legislative Assembly.

13. That the Clerk of the Legislative Assembly manage and administer the legislative officers as a group.

14. That legislative officers be co-located at the earliest feasible time.

15. That administrative and other services be provided to legislative officers either from within the legislature or by third party service providers who are bound by agreements protecting the independence and privileges of the legislature and its officers.

16. That the following legislative mandates be assigned to the Ombudsman: *Ombudsman Act, Public Interest Disclosure Act, Members' Conflict of Interest Act, Conflict of Interest Act and the Registration of Lobbyists Act.*

17. That the Clerk of the Legislative Assembly work closely with the Deputy Minister of Supply and Services to develop and implement a cost-effective plan that co-locates the maximum number of officers at the earliest opportunity.

18. That the Clerk of the Legislative Assembly have an ongoing responsibility for recommending ways to maximize the assignment of mandates to individual legislative officers.

19. That a single statute for the creation, mandating and resourcing of legislative officers be drafted and approved by the legislature.

### **Recommendations Bearing on the Effectiveness of Legislative Officers**

20. That provisions bearing on effectiveness be harmonized across the officer class, namely: i) recruitment and selection, ii) compensation under the Deputy Minister compensation and benefits plan, iii) removal from office, iv) immunity from prosecution and suit, and v) access to information, including access to privileged documents when warranted, as well as access to a dispute resolution mechanism in the event of disagreement.

21. That the Auditor General and the Chief Electoral Officer have nonrenewable ten year terms of office with provision for a six month extension in exigent circumstances.

22. That all other officers have a nonrenewable term of seven years with provision for a six month extension in exigent circumstances.

23. That legislative officers adopt the practice of regular business meetings with the chair of the group being rotated on an annual basis.

24. That the chair of the legislative officers group meet periodically with the Clerk of the Executive Council for the purpose of identifying common issues and information needs.

25. That there be an annual meeting of deputy ministers and legislative officers with an agenda dedicated to shared interests and issues.

26. That a machinery of government workshop be designed, organized and delivered to those whose responsibilities require them to interact with officials from the other branch of government.

27. That the Clerk of the Legislative Assembly and the Clerk of the Executive Council ought to jointly lead the development and delivery of this workshop.

28. That the Clerk of the Legislative Assembly and the Clerk of the Executive Council ensure the preparation and delivery of briefing material to newly appointed legislative officers and that each legislative officer who is leaving office ensure a smooth transition for their successor by preparing briefing material about the responsibilities of the office, its practices and current issues.

#### Other Recommendations

29. That upon the expiration of his term, the responsibilities of the Consumer Advocate for Insurance be reassigned to the Ombudsman along with the resources of the Office of the Consumer Advocate for Insurance.

30. That the *Human Rights Act* be amended so that the Human Rights Commission has the sole and final authority to initiate a Board of Inquiry.

31. That the labour union–affiliation of Human Rights Commission investigators be terminated.

32. That as a consequence of recommendations 30 and 31, the Human Rights Commission should remain under the purview of the executive branch.

33. That Section 10 of the *Archives Act* be amended so that in every instance where the term “Ombudsman” now appears, the term “Access to Information and Privacy Commissioner” be substituted therefor.

## Appendix C: Roundtable Participants– September 15th, 2011

<p><b>Austin, Kris</b> Leader People's Alliance of New Brunswick</p>	<p><b>Forestell, Donald J.</b> Clerk Assistant and Clerk of Committees Legislative Assembly of New Brunswick</p>
<p><b>Bateman, Thomas</b> Professor Department of Political Science St. Thomas University</p>	<p><b>Franks, C.E.S. (Ned)</b> Professor Emeritus Department of Political Studies Queen's University</p>
<p><b>Bertrand , Anne</b> Access to Information and Privacy Commissioner Legislative Assembly of New Brunswick</p>	<p><b>Fraser, Bill</b> House Leader Official Opposition Legislative Assembly of New Brunswick</p>
<p><b>Carrière , Greg</b> Assistant Director Research and Communications Office of the Official Opposition Legislative Assembly of New Brunswick</p>	<p><b>Godin, Ronald</b> Consumer Advocate for Insurance Legislative Assembly of New Brunswick</p>
<p><b>Carrier, Michel</b> Commissioner of Official Languages Legislative Assembly of New Brunswick</p>	<p><b>Hyson, Stewart</b> Professor Department of History and Politics UNBSJ</p>
<p><b>Catalli Sonier, Loredana</b> Clerk Legislative Assembly of New Brunswick</p>	<p><b>James, Byron</b> Clerk of the Executive Council Office and Secretary to Cabinet Executive Council Office Province of New Brunswick</p>
<p><b>Dickinson, Randy</b> Chairperson New Brunswick Human Rights Commission</p>	<p><b>Levert, François</b> Acting Ombudsman Legislative Assembly of New Brunswick</p>

## Roundtable participants

Page 2

<b>MacPherson, Kim</b> Auditor General Legislative Assembly of New Brunswick	<b>Urquhart, Carl</b> Deputy Speaker Legislative Assembly of New Brunswick
<b>Quinn, Michael</b> Chief Electoral Officer & Supervisor of Political Financing Legislative Assembly of New Brunswick	<b>Wagner, Judy</b> Legislative Coordinator Executive Council Office Province of New Brunswick
<b>Ryan, Hon. Patrick</b> Conflict of Interest Commissioner Legislative Assembly of New Brunswick	<b>Whalen, Chris</b> Acting Child and Youth Advocate Legislative Assembly of New Brunswick
<b>Smith, Stephen</b> Special Assistant Office of the Premier Province of New Brunswick	<b>Wild, Joe</b> Assistant Secretary to the Cabinet Privy Council Office Government of Canada
<b>Stewart, Jake</b> Chair Standing Committee on Legislative Officers Legislative Assembly of New Brunswick	<b>Wolters, Peter</b> Director Finance and Human Resources Legislative Assembly of New Brunswick
<b>Tremblay, Marshall</b> Representative New Democratic Party of New Brunswick	

## Appendix D: Sources of Information and Advice Deputy Ministers of New Brunswick

Caron, Denis	Regional Development Corporation
Castonguay, Jean	Transportation
Doucet, Edith	Social Development
Doucet, Roger	Education
Dupuis, Jean-Marc	Agriculture, Aquaculture and Fisheries
Durelle, Brian	Office of Human Resources
Ferguson, Michael	Finance
Fowlie, Darell	Office of the Premier (Communications)
Francis, Patrick	Aboriginal Affairs Secretariat
Haines, Perry	Environment
Holt, Douglas	Energy
James, Byron	Executive Council Office (Clerk)
Keating, Judith	Justice
Lemon, Louise	Supply and Services
Lepage, Phil	Natural Resources
Levesque, Bill	Business New Brunswick
Levesque-Finn, Sylvie	Local Government Service New Brunswick
Lutes, Greg	Executive Council Office (Policy and Priorities)
MacKay, Carolyn	Tourism and Parks Wellness, Culture and Sport
MacLeod, Robert	Invest NB
McCready, Dallas	Executive Council Office (Strategic Initiatives)
McLeod MacKnight, Wendy	Education and Early Childhood Development
Porter, Tim	Communications New Brunswick
Wilson, Dale	Public Safety

## List of Stakeholders Consulted

### Legislative Assembly Officials:

<p><b>Catalli Sonier, Loredana</b> Clerk Legislative Assembly of New Brunswick</p>	<p><b>McNeil, W. J. David</b> Clerk Legislative Assembly of Alberta</p>
<p><b>Chaychuk, Patricia</b> Clerk Legislative Assembly of Manitoba</p>	<p><b>Painchaud, Marc</b> Directeur du secrétaire du Bureau Assemblée nationale du Québec</p>
<p><b>Deller, Deborah</b> Clerk Legislative Assembly of Ontario</p>	<p><b>Proudfoot, Lorna</b> Law Clerk House of Assembly Newfoundland and Labrador</p>
<p><b>Ferguson, Neil</b> Clerk House of Assembly of Nova Scotia</p>	<p><b>Schofield, Josie</b> Manager Committee Research Services Legislative Assembly of British Columbia</p>
<p><b>Lang, Iris</b> Assistant Clerk Legislative Assembly of Saskatchewan</p>	<p><b>Sourial, Susan</b> Committee Research Analyst Legislative Assembly of British Columbia</p>
<p><b>MacKay, Charles</b> Clerk Legislative Assembly of Prince Edward Island</p>	<p><b>Wolters, Peter</b> Director Finance and Human Resources Legislative Assembly of New Brunswick</p>
<p><b>MacKenzie, William</b> Clerk House of Assembly of Newfoundland and Labrador</p>	

**Government of New Brunswick:**

<b>Ferguson, Michael</b> Deputy Minister Department of Finance	<b>Peters, Jill</b> Director Human Rights Commission of New Brunswick
<b>James, Byron</b> Clerk of the Executive Council and Secretary to Cabinet Executive Council Office	<b>Seymour, Andrea</b> Chief Operating Officer New Brunswick Internal Services Department
<b>Lemon, Louise</b> Deputy Minister Department of Supply and Services	<b>Wagner, Judy</b> Legislative Coordinator Executive Council Office Province of New Brunswick
<b>Lynch, Gary</b> Executive Director Facilities Management Department of Supply and Services	

**Legislative Officers of New Brunswick:**

<b>Bertrand, Anne</b> Access to Information and Privacy Commissioner	<b>MacPherson, Kim</b> Auditor General
<b>Carrier, Michel</b> Commissioner of Official Languages	<b>Quinn, Michael</b> Chief Electoral Officer & Supervisor of Political Financing
<b>Godin, Ronald</b> Consumer Advocate for Insurance	<b>Ryan, Hon. Patrick</b> Conflict of Interest Commissioner
<b>Levert, François</b> Acting Ombudsman	<b>Whalen, Chris</b> Acting Child and Youth Advocate

## Government of Canada:

<b>Bhusari, Maya</b> Privy Council Officer Machinery of Government Privy Council Office	<b>Misener, Steven</b> Director, Compensation and Leadership Development Senior Personnel Privy Council Office
<b>Boyd, Eileen</b> Assistant Secretary to the Cabinet Senior Personnel Privy Council Office	<b>Wild, Joe</b> Assistant Secretary to the Cabinet Machinery of Government Privy Council Office

## Other

<b>Dickinson, Randy</b> Chairperson Human Rights Commission of New Brunswick	<b>Hicks, Ron</b> Chair Statutory Officers' Review Panel Legislative Assembly of British Columbia
<b>Franks, C.E.S. (Ned)</b> Professor Emeritus Department of Political Studies Queen's University	<b>Lagasse, Jeannine</b> Executive Director Executive Council Office Government of Nova Scotia
<b>Gurnham, Peter W.</b> Chair Nova Scotia Utility and Review Board	<b>Savoie, Donald J.</b> Canada Research Chair in Public Administration and Governance University of Moncton
<b>Hamilton, Irene</b> Ombudsman Legislative Assembly of Manitoba	

## Appendix E: Inter-Jurisdictional Comparisons

### Newfoundland and Labrador

Statutory Offices	Main Estimates 2011-2012
Auditor General	\$3,602,700
Chief Electoral Officer & Commissioner for Legislative Standards	\$5,691,600
Citizens' Representative	\$843,500
Child and Youth Advocate	\$1,332,200
Information and Privacy Commissioner	\$1,204,400
<b>Total: 5</b>	<b>\$12,674,400</b>

[Source: *Estimates 2011*, p. 95 - 100

<http://www.budget.gov.nl.ca/budget2011/estimates/estimates2011.pdf>

### Nova Scotia

Legislative Offices	Main Estimates 2011-2012
Auditor General	\$3,550,000
Elections Nova Scotia	\$3,297,000
Conflict of Interest Commissioner	N/A* [see note]
Ombudsman	\$1,598,000
<b>Total: 4</b>	<b>\$8,445,000</b>

\*Note: No separate Main Estimates found for the Conflict of Interest Commissioner; all services provided by the Nova Scotia Legislature.

[Source: *Estimates and Supplementary Detail 2011-2012*, p. 20.24, 20.34 and 20.35.

[http://gov.ns.ca/finance/en/home/budget/budgetdocuments/2011\\_2013.aspx](http://gov.ns.ca/finance/en/home/budget/budgetdocuments/2011_2013.aspx)

## Prince Edward Island

<b>Legislative Offices</b>	<b>Main Estimates 2011–2012</b>
Auditor General	\$1,707,100
Chief Electoral Officer	\$1,451,500
Conflict of Interest Commissioner	\$43,500
Information and Privacy Commissioner	\$108,300
<b>Total: 4</b>	<b>\$3,310,400</b>

[Source: *Estimates 2011–2012*, p. 151 and p. 159.

<http://www.gov.pe.ca/budget/2011/estimates.pdf>

## New Brunswick

<b>Statutory Offices</b>	<b>Main Estimates 2011–2012</b>
Auditor General	\$1,845,000
Chief Electoral Officer and Supervisor of Political Financing	\$2,183,000
Child and Youth Advocate and Ombudsman*	\$1,654,000 [see note]
Conflict of Interest Commissioner	\$143,000
Consumer Advocate for Insurance	\$459,000
Access to Information and Privacy Commissioner	\$540,000
Commissioner of Official Languages	\$493,000
<b>Total: 7</b>	<b>\$7,317,000</b>

\*Note: The Child and Youth Advocate and Ombudsman are two different officers but they share the budget of \$1,654,000 as well as office space and resources.

[Source: *Main Estimates 2011–2012*, p.101–109.

<http://www.gnb.ca/0160/budget/buddoc2011/ME2011-12.pdf>

## Québec

<b>Statutory Offices</b>	<b>Main Estimates 2011-2012</b>
Auditor General	\$26,488,700
Chief Electoral Officer	\$32,452,800
Ethics Commissioner	\$1,119,700
Lobbyist Commissioner	\$3,024,100
Public Protector	\$14,400,100
<b>Total: 5</b>	<b>\$77, 485,400</b>

[Source: *Expenditure Budget 2011-2012: Volume 1*, p. 23-41

[http://www.tresor.gouv.qc.ca/fileadmin/PDF/budget\\_depenses/11-12/Volume\\_1\\_ANG.pdf](http://www.tresor.gouv.qc.ca/fileadmin/PDF/budget_depenses/11-12/Volume_1_ANG.pdf)

## Ontario

<b>Statutory Offices</b>	<b>Main Estimates 2011-2012</b>
Auditor General *	\$16,224,100
Chief Electoral Officer	\$11,220,900
Environmental Commissioner	\$3,697,700
Information and Privacy Commissioner	\$14,948,200
Integrity Commissioner	\$2,256,000
Ombudsman	\$10,782,400
Provincial Advocate for Children and Youth	\$7,245,900
<b>Total: 7</b>	<b>\$66,375,200</b>

[Source: *The Estimates*, 2011-12. p.6

<http://www.fin.gov.on.ca/en/budget/estimates/2011-12/volume2/OLA.pdf>

\*Source : <http://www.fin.gov.on.ca/en/budget/estimates/2011-12/volume2/OAG.pdf>

## Manitoba

<b>Statutory Offices</b>	<b>Main Estimates 2011–2012</b>
Auditor General	\$6,489,000
Chief Electoral Officer	\$1,497,000
Children’s Advocate	\$2,864,000
Conflict of Interest Commissioner*	\$61,300
Ombudsman **	\$3,042,000 [see note]
<b>Total: 5</b>	<b>\$13,953,300</b>

[Source: *Main Estimates 2011–2012*, p. 25

[http://www.gov.mb.ca/finance/budget11/papers/r\\_and\\_e.pdf](http://www.gov.mb.ca/finance/budget11/papers/r_and_e.pdf)

\*Manitoba has a part time Conflict of Interest Commissioner, salary base \$40,000, operating base \$21,300. (Source: Patricia Chaychuk, Clerk of the Manitoba Legislative Assembly).

\*\*Note: *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* fall under the mandate of the Ombudsman.

## Saskatchewan

<b>Legislative Offices</b>	<b>Main Estimates 2011–2012</b>
Provincial Auditor	\$8,134,000
Chief Electoral Officer	\$14,284,000
Children’s Advocate	\$1,833,000
Conflict of Interest Commissioner	\$145,000
Information and Privacy Commissioner	\$1,114,000
Ombudsman	\$2,982,000
<b>Total: 6</b>	<b>\$28,492,000</b>

[Source: *Main Estimates 2011–12*, p.13 and p. 143–158

<http://www.finance.gov.sk.ca/budget2011-12/2011-12Estimates.pdf>

## Alberta

<b>Statutory Offices</b>	<b>Main Estimates 2011-2012</b>
Auditor General	\$22,715,000
Chief Electoral Officer	\$24,820,000
Ethics Commissioner	\$885,000
Information and Privacy Commissioner	\$5,669,000
Ombudsman	\$2,885,000
<b>Total: 5</b>	<b>\$56,974,000</b>

[Source: 2011-12 Legislative Assembly Estimates, p. 9-28.

<http://www.finance.alberta.ca/publications/budget/estimates/est2011/legislative-assembly.pdf>

## British Columbia

<b>Statutory Offices</b>	<b>Main Estimates 2011-2012</b>
Auditor General	\$15,752,000
Conflict of Interest Commissioner	\$480,000
Elections BC	\$8,134,000
Information and Privacy Commissioner	\$4,906,000
Merit Commissioner	\$1,062,000
Ombudsperson	\$5,372,000
Police Complaint Commissioner	\$2,796,000
Representative for Children and Youth	\$7,317,000
<b>Total: 8</b>	<b>\$45,819,000</b>

Source: *Estimates 2011-2012*, p.16 -21.

[http://www.bcbudget.gov.bc.ca/2011/estimates/2011\\_Estimates.pdf](http://www.bcbudget.gov.bc.ca/2011/estimates/2011_Estimates.pdf)

## Appendix F: Questions Posed to Legislative Officers

### Issues and Questions for Discussion with Legislative Officers of New Brunswick

#### A. Adequacy of legislation

- How would you assess the adequacy of the legislation covering your office? Are there provisions that should be clarified or otherwise amended?
- Is there any overlap or duplication between you and other officers of the Legislative Assembly?
- Is there some tweaking or reassignment of responsibilities among legislative officers that would make the work of your office more effective and/or efficient?
- Do any of your counterparts in other Canadian jurisdictions have superior legislation? In what way is this legislation superior?

#### B. Adequacy and use of resources

- Can you satisfy the obligations of your legislation with the resources presently allocated?
- What obligations, if any, are not being fully satisfied? What additional resources are required to meet the obligations?
- If resources were reduced, what would be the least damaging loss of function?
- Are there ways to share resources with other legislative officers that would improve efficiency without reducing your effectiveness or impairing your independence?
- To your knowledge, are there other Canadian jurisdictions that have superior arrangements in the provision of administrative and professional services?

### C. Nature of relationship with stakeholders

Would you please describe the nature of your relationship:

- With the public?
- With the Legislative Officers Committee?
- With other legislative officers?
- With the executive branch?
- With the media?
- With counterparts in other jurisdictions?

In terms of these relationships, what have been your most important and instructive experiences to date and what lessons (bearing on effectiveness) have been learned that ought to be shared with other legislative officers and with your successors?

### D. Performance and modus operandi of the legislative officer

- What are the ways in which you and your office are accountable? Accountable to whom?
- What are the ways in which you and the operations of your office are transparent?
- What are the ways in which you and your office measure or otherwise describe performance?
- In terms of accountability, transparency and metrics, have you identified and adopted practices of other legislative officers in New Brunswick or of your counterparts in other jurisdictions?

### E. Recruitment and Preparation for Office

- In what way were you vetted prior to your appointment as a legislative officer and how could that process be improved?

- Now that you are familiar with the requirements of your post as a legislative officer, what would you describe as the essential background, skill set and temperament for your job?
- In what way has your previous education and experience helped you to take on the duties of your office?
- Did you receive prior briefing and training and were you given readings to help you prepare for the duties of your office?
- What could be done to improve orientation and on-going professional development for legislative officers and their staff?

## Appendix G: Questions Posed to Executive Branch Leaders

### Issues and Questions for Executive Branch Leaders Regarding Legislative Officers

#### A. Views on the Mandates (the Legislation) of the Various Legislative Officers

- Are the legislative mandates of the officers clear?
- Are the legislative mandates (“the what”) of the officers appropriate?
- Are the legislative provisions governing inquiries, investigations, audits and reporting by the legislative officers (“the how”) appropriate to the legislative mandates as presently conferred?
- Is there a need to clarify or otherwise amend one or more of these mandates? If so, please explain why.

#### B. State of Your Department’s Relationship with Legislative Officers

- Which legislative officers interact most frequently with your department?
- How would you characterize these interactions? Routine? Cordial? Occasionally difficult? Other?
- If the relationships work well, why do you think this is the case?
- If the relationships are problematic, why do you think this is the case?

#### C. Understanding of the Role Played by Legislative Officers

- Do you, and the officials in your department who often interact with legislative officers, understand the history and legal framework behind the creation and operation of these officers?
- Do you think the legislative officers and their staff understand the history and legal framework behind their offices?
- If the answer to either or both previous questions is no, would remedial action to address this deficit in understanding be good value-for-money?

#### **D. Perceived Value of the Role Played by Legislative Officers**

- Do you think the role played by legislative officers helps MLAs to hold the government to account and otherwise helps them do their job as legislators?
- Do you think the role played by legislative officers helps the executive branch adhere to the rule of law and to use its allocated resources more effectively and efficiently than would otherwise be the case?
- Do you think the public comments and public reports of legislative officers promote transparency and openness in government and do these comments and reports help the media and the general public understand how government works?

#### **E. Perceived Nature of the Relationship between Legislative Officers and their Stakeholders**

Based on your interaction with various legislative officers, how would you characterize the relationship between legislative officers and

- other legislative officers?
- with their legislative overseers?
- with the public?
- with the media?
- with the executive branch?

#### **F. Ways in which the Mandate and Operation of Legislative Officers Might be Improved**

Do you think there is an opportunity for legislative officers to be more efficient in their operations

- by sharing resources?
- by greater coordination of their work?

- through clarification or reassignment of responsibility?
- through a reduction in their numbers?
- through the use of metrics? If yes, which metrics?

Do you think there is a need for legislative officers to alter the tone, volume and/or frequency of their interactions with the executive branch? If yes, please explain.

#### **G. Ways in Which the Executive Branch Can Be More Effective and Constructive in Its Relationship with Legislative Officers**

- Do you think there is reason and value in altering the reception your department typically gives to inquiries, investigations and/or audits by legislative officers? Whether yes or no, please elaborate.
- How much time and resources are typically given to managing your department's interaction with legislative officers? Are there ways in which these interactions could be better managed?
- To what extent is access to "confidential or privileged information" an issue in your dealings with legislative officers? Are there ways to resolve differences of opinion regarding access to confidential information?

## Appendix H: Questions Posed to Other Legislatures

1. How many Legislative Officers do you have and what are their titles?
2. To what extent do officers share resources, especially in relation to “front and back office” services? Are services provided to them by the Legislature or by the Executive Branch?
3. How annual budgets are decided for each officer?
4. What is the frequency with which individual officers appear before committees of your legislature?
5. Are there performance measures used in your jurisdiction with respect to legislative officers?
6. What are the recruitment practices with respect to officers (formal v. ad hoc), the consistency of officer appointment methods (involvement of the legislature or not) and the consistency of terms for officers (length and renewal or reappointment provisions).
7. Are there issues regarding the Officers’ access to information provisions, especially information that may be considered privileged (Cabinet documents or those subject to solicitor/client privilege)?
8. Has your jurisdiction done a comparable review of its officers, and if so, could you share it with us?

## Bibliography

- BAGEHOT, Walter. *The English Constitution*. London: C.A. Watts, 1964.
- BELL, Jeffrey Graham, "Agents of Parliament: A New Branch of Government?" *Canadian Parliamentary Review* (Spring, 2006):13–21.
- British Columbia Development Corporation v. Friedmann (Ombudsman)*, [1984] 2 S.C.R. 447.
- CANADA. PARLIAMENT. HOUSE OF COMMONS. "The Constitutional Limitations of Privilege". House of Commons Procedure and Practice. Second Edition, 2009.
- CANADA. PARLIAMENT. HOUSE OF COMMONS. *Report on the Operations of the Parliamentary Budget Officer within the Library of Parliament: Report of the Standing Joint Committee on the Library of Parliament*. (June, 2009).
- CANADA. PRIVY COUNCIL OFFICE. *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees*. 2007.
- CHILIBECK, John. "Province's AA-credit rating unchanged." *Telegraph-Journal* August 11, 2011. Page A1.
- FRANKS, C.E.S. *The Parliament of Canada*. Toronto: University of Toronto Press, 1987.
- FRASER, Sheila. "Serving Parliament through a Decade of Change", Office of the Auditor General of Canada, 2011.
- GAY, Oonagh and Barry WINETROBE, (editors). *Parliament's Watchdogs: At the Crossroads*. UK Study of Parliament Group, 2008.

- GILMORE, Alan. "The Accounting Officer: What are Canadians Getting?" *FMI Journal*, vol.18, no. 1 (Autumn, 2006), p. 20–23.
- HICKS, Ron. *An Auditor General Who is Both Independent and Accountable: Working Effectively Within Alberta's Westminster Model Democracy*. Information Bulletin, no. 136, University of Alberta, Western Centre for Economic Research. (March 2010).
- MADISON, James. *The Federalist Papers: A Penn State Electronic Classics Series Publication: No. 10 and No. 51*". Retrieved from: <http://www2.hn.psu.edu/faculty/jmanis/poldocs/fed-papers.pdf>.
- REYNOLDS, Robert. "Parliamentary Privilege." *Canadian Parliamentary Review*. Vol. 25 no.4. (Winter 2002).
- SAVOIE, Donald. *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, Toronto, University of Toronto Press, 2008.
- SAVOIE, Donald. *Power: Where Is It?*, Montreal, McGill Queen's University Press, 2010.
- THOMAS, Paul G; "Trust and the Role of Independent Parliamentary Agencies." : *A Paper prepared for the Office the Public Integrity Commission. Department of Political Studies at the University of Manitoba*. 2010. Retrieved from: [http://psic-ispc.gc.ca/quicklinks\\_liensrapides/pres\\_thomas-eng.aspx](http://psic-ispc.gc.ca/quicklinks_liensrapides/pres_thomas-eng.aspx)
- THOMAS, Paul G. "The Past, Present and Future of Officers of Parliament", *Canadian Public Administration*. Vol. 46, no.3. (2003), p. 287–314.