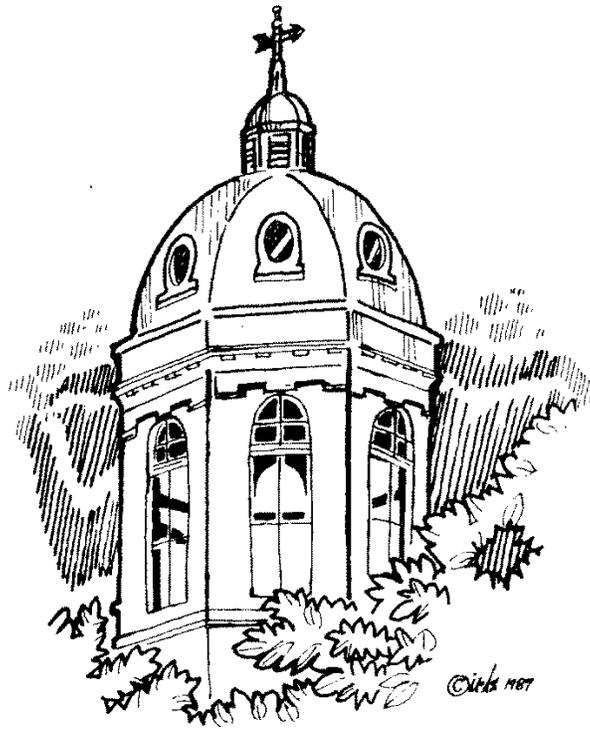


# Strategic Program Review Review of the Officers of the Legislative Assembly

Submitted to the  
LEGISLATIVE ADMINISTRATION COMMITTEE  
Legislative Assembly of New Brunswick

April 2016



Prepared by

François Levert  
Project Lead

Fredericton, New Brunswick



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REPORT

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Mr. Donald J. Forestell  
Clerk of the Legislative Assembly of New Brunswick

Mr. Clerk:

Pursuant to the mandate entrusted to me by the Honourable Chris Collins, Speaker of the Legislative Assembly of New Brunswick and Chair of the Legislative Administrative Committee, I submit the following report respecting the Terms of Reference as outlined in the Review of Officers of the Legislative Assembly of New Brunswick.

Respectfully submitted,

François Levert  
Project Lead



## **Foreword and Acknowledgments**

New Brunswick's legislative officers are more than creatures of statute; they are tangible expressions of the provincial legislature's increasing attention to the importance of upholding and promoting the fundamental principles of democracy, fairness, transparency and sound governance. Legislative officers are in fact agents of those fundamental principles and they are vested with specific mandates to oversee that those principles are respected in the workings of government.

Legislative officers exist at the behest of the Legislative Assembly, the "House of the People". As the needs, interests and priorities of New Brunswickers change and are voiced through their elected representatives who are granted the privilege to partake in the governance structure of our province, priorities are set and corresponding goals are developed by government to adjust the statutory and public policy framework accordingly. As objectives are laid out and measures implemented to reach those targets, all public entities are called on to contribute to this exercise. These entities include bodies that fall under the auspices of the legislative arm of government as well.

While there is generally an overall consensus on the need for a realignment of practices and procedures to reflect newly implemented objectives, changes applied to existing structures in the public sphere are sometimes met with apprehension and moderate resistance. Yet, where the values underlying genuine collaboration are respected, change is less polarizing and all stakeholders can effectively contribute to the redesigning of their core responsibilities and functions to meet today's challenges and secure an inspiring future for the generations of New Brunswickers that will follow.

As New Brunswick faces important and pressing financial challenges, the provincial government has established priorities, set goals and drafted objectives to achieve those goals through a Strategic Program Review which applies to provincial public agencies from the executive and legislative branches of government. The Legislative Assembly, through its Legislative Administration Committee, has expressed the desire to participate in this exercise, namely by reviewing the officers and offices of its oversight branch.

This report is but a step of many more that will need to be taken to allow New Brunswick's legislative officers to contribute their ideas and suggestions as to how government's objectives can be met. Furthermore and more importantly, it is hoped that the provincial legislature's oversight agents will take full advantage of the opportunities this exercise offers with respect to strengthening their independence while remaining accountable, efficient and effective. In turn, it is equally hoped that the Legislative Assembly, through committees and the office of the Clerk, will provide guidance and support to its legislative officers as they work individually and collegially in developing and implementing initiatives to achieve their respective targets. To be sustainable, this ambitious on-going project will require strong and sustained leadership from the provincial legislature.

This review would not have been possible to complete without the unwavering support as well as the cooperation and collaboration of many individuals. We particularly wish to acknowledge the

invaluable assistance of the Clerk of the Legislative Assembly and his staff who were instrumental in ensuring that the review process could be launched within a few hours of our arrival at our research headquarters. A special note of appreciation also goes to the Legislative Librarian and her staff for providing much needed research support and guidance.

In addition, we wish to thank all of New Brunswick's legislative officers for engaging in this review process by contributing insight into their operational world and much appreciated suggestions and novel ideas with respect to the Terms of Reference of this review. In addition, we are grateful for the relevant issues raised and creative ideas suggested by staff members from all legislative offices.

We were also honoured by the opportunity to raise and discuss suggestions for consideration as well as important and on-going challenges with members of the Standing Committee on Procedure, Privileges and Legislative Officers. This open and frank dialogue was productive and very useful as we examined potential options to strengthen the relationship between legislative officers and the Legislative Assembly.

A series of conversations and meetings led us to draw from the experience of the 2011 report research team and we wish to acknowledge the contribution from Bernard Richard, Kevin Malone and Jessica (Albert) Guérette to our work as we attempted to capture as faithfully as possible the substance and rationale behind the 2011 report recommendations. We are greatly appreciative of the time they generously contributed as we attempted to reconcile their recommendations with the ones suggested as a result of our work.

Finally, our words of appreciation are directed at other individuals – namely present and former senior civil servants – who contributed advice and expertise as we navigated through a sea of potential options to meet our objectives.

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## **Part 1 – Guiding Principles and Structure of the Review**

### **1. Introduction – Terms of Reference**

On November 10, 2015, the Honorable Chris Collins, Speaker of the New Brunswick Legislative Assembly and Chair of the Legislative Administration Committee (LAC), formally announced that the legislative arm of government would engage in a review process similar to that of the executive arm through the Government of New Brunswick’s Strategic Program Review. Further, this review would be guided by compatible objectives to those of the executive arm, which are to be aligned with the elaboration and implementation of initiatives to address financial pressures and smarter government objectives.

The objectives of the review were listed as follows:

1. To revisit the terms of reference from the 2011 review, and refine/update the resulting final report titled *Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick’s Legislative Officers*, written by Bernard Richard at the request of the Legislative Administration Committee;
2. To ensure that the objectives relating to the various functions of the officers of the Legislative Assembly are clear and relevant, and that mechanisms exist to ensure that the officers are held accountable for meeting those objectives;
3. To determine how the functions and operations of the officers of the Legislative Assembly can be carried out more efficiently without degradation to the effectiveness of the officers’ oversight functions;
4. To contribute to the government objective of developing and implementing a plan to eliminate its budgetary deficit.

The final report was to include a description and analysis of the current situation, and recommendations to address the review objectives.

#### **1.1 *Terms of Reference – key points***

A tentative work plan was drafted to undertake the Review of the Officers of the Legislative Assembly as mandated by the Legislative Administration Committee. At that time, we planned on submitting in writing a copy of the outcomes of our research and, ideally, some recommendations submitted for the consideration of the members of the Legislative Administration Committee.

For the purposes of launching our research, some key points were underlined in the Terms of Reference of the review and they included the following:

- With respect to the 2011 review entitled *Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick's Legislative Officers* (hereinafter, the "2011 report"): we anticipated that this report would act as the foundation for our Review in three fundamental ways. First, several of the recommendations in the 2011 report remain pending and there is a need to revisit them to assess whether the Legislative Administration Committee should consider their immediate or short-term implementation. Secondly, the 2011 report could serve as the foundation on which other building blocks can be added in light of other objectives outlined in the Terms of Reference. Finally, the 2011 research committee's work remains relevant in many respects and will likely be used to resurrect/continue the discussion process on outstanding issues that may continue to impede on the optimization of efficiencies and effectiveness of legislative offices as well as on the consolidation of their independence.
- The relevance and clarity of the functions of legislative officers is an important component of any suggestion relating to any proposed accountability framework. This namely raises the importance of establishing and maintaining a working and collaborative relationship between the legislative officers and the Legislative Assembly through the Standing Committee responsible for their oversight.
- Although Offices of the Legislative Assembly are public agencies, a discussion needs to occur on how their mandate-related functions and operations differ from those agencies within the executive branch of government. In consultation with the interested parties, this would likely prove to be a key component to achieve one of the objectives of the review, which is to "determine how the functions and operations of the officers of the Legislative Assembly can be carried out more efficiently" (#3), and how this efficiency is measured and reported.
- Finally, while the objectives and parameters of the 2015 review were clear, we interpreted them as being sufficiently broad to include innovative and alternative options and suggestions that should lead the way to creative and fruitful discussions on how the offices of the Legislative Assembly can be active contributors to the "government objective of developing and implementing a plan to eliminate its budgetary deficit" (Terms of Reference, #4). This need for discussions falls within the spirit of the Strategic Program Review.

## 1.2 *Essential research steps*

A number of strategic research steps were initiated early on to review the content and background information pertaining to the 2011 report as well as explore possible options and alternatives as they relate to efficiency, accountability and independence of New Brunswick's legislative officers. These steps included but were not limited to the following:

- Review the 2011 report (with actions required to follow);

- Launch several jurisdictional scans on selected themes (operational, substantive, procedural and others);
- Review relevant and selected literature as they relate to the key points identified previously;
- Draft discussion points for planned and up-coming meetings and consultations (refer to “Actions Required” below);
- Plan the reporting methodology according to the Terms of Reference.

### 1.3 *Actions required*

In the spirit of the Strategic Program Review and to ensure that the review follows an inclusive process, the following actions were identified as essential in the context of our work plan:

- Meet and consult with the 2011 report research team;
- Meet and consult with all legislative officers of New Brunswick;
- Meet and consult with personnel from the offices of the Legislative Assembly (on-site visits and meetings);
- Meet and consult with the Clerk of the Legislative Assembly and members of his team;
- Request to meet and consult with the Chair, the Vice-chair and members of the Standing Committee on Procedure, Privileges and Legislative Officers;
- Potentially meeting and consulting with other stakeholders (to be determined).

### 1.4 *On-going considerations*

In addition to the steps and actions outlined previously, we also invested substantial efforts in researching and drafting a series of options and initiatives that could be considered by the interested parties as they work towards achieving optimal use of their resources as well as implementing initiatives that could lead to an increase in operational and substantive efficiencies. Also being explored as potential suggestions for consideration were models, initiatives and ideas to increase accountability, modernize the fulfilment of mandates while ensuring that the independence of legislative officers and their respective offices remained immune from erosion and was strengthened.

Throughout this exercise – namely as part of the consultation phase – particular attention would be given to the existing legislated mandates of New Brunswick’s legislative officers to “ensure that the objectives relating to the various functions of the officers of the Legislative Assembly are clear and relevant” (Terms of Reference, #2). We anticipated that this objective of the 2015 review would lead to constructive discussions and possible guiding principles on which to

achieve, in conjunction with other measures, long-term sustainability of the role of legislative officers in a fiscally responsible way.

## **2. The 2015 Review of Legislative Officers in the Context of Government’s Strategic Program Review**

### *2.1 Cohesion between the review of legislative officers and the Strategic Program Review*

In January 2015, the Government of New Brunswick formally launched its Strategic Program Review, a government-wide process aimed at tackling the province’s present fiscal challenges by developing and implementing sustainable expenditure-reducing, cost-controlling and revenue-generating initiatives to reach its ultimate goal of finding \$500 to \$600 million in revenue and savings.

Early literature published to educate members of the public on the objectives of the Strategic Program Review, the underlying guiding principles and the steps to achieve these objectives are revealing as to the intentions of government. In one of its initial discussion papers available online and distributed during the province-wide consultation tour in early 2015 entitled *EngageNB – A public discussion about addressing our fiscal challenges in New Brunswick*, those intentions were communicated to all New Brunswickers.

Excerpts from this discussion paper are relevant to our research insofar as they provided guidance in our effort to interpret the scope of the Terms of Reference and outline a rationale for our review process as well as outline a vision guiding our research. They also assist in outlining strategic steps to align the existing structure of legislative offices in New Brunswick with this vision and finally formulate problem statements in light of the factors identified throughout our consultations and research that impede on efforts to strategically align the existing structure with the initially stated vision.

Strategic Program Review is being undertaken with a goal of re-engineering government such that it has a financial framework that is sustainable. (...) We must also take a close look at government – a comprehensive analysis of programs, services, structure, and delivery mechanisms to ensure we are in line with the needs of our communities. And we must seek opportunities to innovate how government works so that we can deliver better services at lower costs. This is how we will return to sustainable balanced budgets and have a public service that meets the needs of New Brunswickers. (*Addressing Our Fiscal Challenges*, p. 3).

In short, how are services and programs delivered? How can these services be more efficiently delivered in a fiscally-sound way? And what steps – or “choices” – are required to meet those objectives? Put in those terms, this review process is not exclusive to the executive arm of government – it can be adapted and framed so as to allow the legislative arm to conduct a similar exercise of its own while respecting the fundamental principles related to the division of powers (i.e. respecting the legislative arm’s independence from the other two branches – the executive and the judiciary).

Without compromising the legislative arm's independence, it is important in our view to underline a few notable elements with respect to process, more specifically the consultation, collaborative and inclusive practices implemented as part of the Strategic Program Review within the executive branch of government.

First, the notion of consultation has been – and continued to be at the time of the drafting of this report – an integral part of the Strategic Program Review. Moreover, this notion has not only applied to New Brunswickers and stakeholders but it has also been extended to those responsible over provincial public agencies that are targeted by this review process. Officials from all provincial departments for example were consulted in various forms as the program review work progressed and, in most cases, took the lead on developing and proposing strategic initiatives to reduce expenditures, control costs and generate revenue opportunities. In short, the consultation process extended to factor in practical service-delivery operations.

Secondly, with respect to the consultation of provincial public agencies, this strategy – along with input, suggestions and ideas provided by citizens and stakeholders through various portals – allowed for consultation to evolve into a collaborative and inclusive process through which these agencies took on the role of both architects and leaders in the expenditure reduction and revenue-generating proposals they put forth to government for consideration. Stated differently, public agencies were given the opportunity to “buy in” to their proposals to assist government in reaching its financial objectives through the Strategic Program Review by taking ownership of the process as it related to their field of expertise and area of service delivery.

In light of this, our approach in determining which review methodology should be adopted in the context of the 2015 review's Terms of Reference required that a similar consultative, collaborative and inclusive process be respected and followed throughout. As a result, shortly after the announcement of the launch of the review of legislative offices, we proceeded to reach out to all of New Brunswick's legislative officers and invite them to be directly and actively involved in this exercise. It was and continues to be our belief that any proposal submitted to the Legislative Administration Committee for consideration as well as suggestions and recommendations resulting from this exercise should draw from the legislative officers' expertise, their experience and their ideas with regards to how they, as agents of the Legislative Assembly, could strategically consolidate and strengthen their independence while ensuring optimal and sustainable efficiencies as well as developing, in collaboration with the appropriate authority within the Legislative Assembly, an appropriate and effective accountability framework.

Furthermore, we took the position that while consultation, collaboration and inclusion of legislative officers were key to our research and analysis, it was also important to have an opportunity to consult and include staff from the legislative offices in the discussion. Legislative officers are supported in the exercise of their mandate by employees and, in our opinion and experience, they could provide valuable information for the purpose of meeting the objectives of this review – namely with respect to suggestions on how to achieve greater effectiveness and efficiency as well as ensuring that their mandate remain relevant.

Essentially, our approach with respect to the task we were assigned by the Legislative Administration Committee relied heavily on hearing from the main stakeholders themselves: New Brunswick legislative officers. We further felt that the spirit of the Strategic Program Review required no less and that the review of the offices of the Legislative Assembly should be inclusive and, ideally, involve an active contribution from all legislative officers. Moreover, this contribution needed to go beyond the traditional consultation process and include tangible and concrete strategic expenditure and operations-related options crafted and recommended by the legislature's agents, collectively or individually, to assist in meeting the objectives outlined in the Terms of Reference.

In our opinion, the importance of consultation, collaboration and inclusion was further underlined as a result of the Government of New Brunswick's update on the Strategic Program Review process, as reported in the document entitled *Choices To Move New Brunswick Forward*, released in November 2015. The latter contains one specific savings option that is relevant – but not forcibly conclusive – to our research and analysis. It reads:

New Brunswick currently has eight legislative officers. The federal government and the other provinces each have no more than eight legislative officers. The provinces of Quebec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador all have four or five legislative officers. If several of the offices were combined, government could realize savings either to reduce the deficit or to reinvest in the offices. [Emphasis added] (*Choices*, p. 6)

It is important to note that while this initiative is one “choice” amongst others that are presented as initiatives to save money, it needs to be placed in the broader context of *how* savings are determined as important to reach the objectives of the Strategic Program Review but, perhaps more importantly, how these savings are to be *strategically* crafted and implemented as not to compromise efficiencies but rather improve them in a fiscally-sound and sustainable way. For this, we again turn to the Government of New Brunswick's above-noted publication as part of Strategic Program Review:

Finding savings does not need to mean a reduction of services. There are opportunities to find efficiencies and modernize processes that improve services while delivering those services at a reduced cost. Savings can also be found through cost-recovery initiatives, cost-avoidance and finding alternate ways to deliver services. [Emphasis added] (*Choices*, p. 4)

We conclude that the option of strategically reinvesting part of the savings realized as part of this review could align sustainably well in an effort to find alternate ways for legislative officers and their respective offices to exercise their mandate, operate, increase their relevance and deliver their services more efficiently and effectively while maintaining – even strengthening – their independence.

Finally, as this exercise is part of the Strategic Program Review process, it is deemed necessary to insert a note with respect to New Brunswick's official languages.

From the onset of the Strategic Program Review, the Government of New Brunswick was unambiguous and took the firm position that while “everything was on the table”, matters regarding constitutionally enshrined rights related to official languages were not to be included in the scope of the review process. Government reiterated this pledge in the *EngageNB: What Was Said* report published in June 2015:

At the outset of the Strategic Program Review we stated that all options are on the table, except for constitutionally guaranteed rights. Included amongst those rights are official bilingualism and duality in the education system. In 1982 and 1993, these rights were enshrined in the Canadian Constitution.

Although this topic was raised by some New Brunswickers, bilingualism and duality along with other constitutional rights remain off the table in Strategic Program Review. (p. 4)

Since the legislative arm of the Government of New Brunswick is a key partner in protecting and promoting constitutionally guaranteed rights, throughout our research and analysis, every effort has been made to ensure that suggestions and recommendations for consideration by the Legislative Administration Committee would respect government’s position to leave constitutionally guaranteed rights “off the table”. Moreover, particular attention has been given to proposing initiatives that may result in strengthening and consolidating both constitutional and quasi-constitutional rights and guarantees in New Brunswick.

## 2.2 *Aligning key components of the 2015 review with Strategic Program Review*

While there are similarities in how the Strategic Program Review applies to provincial public agencies within the executive branch of government, a cautionary note must be flagged with respect to implementing a “one size fits all” approach and using the same process for agencies that operate within the legislative branch. Even though the executive and legislative arms interact with each other, their business is conducted in a different way, they use different processes and practices to achieve their goals, they measure their performance and are held accountable with respect to the value of the outcomes of this performance using a variety of instruments that link back to their enabling legislation, and so on. Put differently, while government-lead initiatives may include legislative offices, a clear rationale as well as a vision statement is required to ensure that the uniqueness of legislative offices in relation to agencies operating within the executive branch of government is acknowledged, understood and upheld if the end result is to be feasible, rational, respectful of the jurisdiction of both branches of government and consistent with – in this case – the goals of the Government of New Brunswick’s Strategic Program Review.

### Rationale

The following vision statement is presented for the purpose of discussion and debate and focuses on the various roles and responsibilities taken on by the specialized branches of the province’s Legislative Assembly. As well, it outlines fundamental considerations that may lead to greater operational efficiencies, increased accountability, strategic funding and a more robust autonomy for legislative officers and their respective offices.

## Vision

Whereas New Brunswick's legislative officers are ultimately mandated to serve the Legislative Assembly and the citizens who receive services from the administrative authorities of the government's executive branch by exercising oversight pursuant to enabling legislation, it is the Legislative Assembly's responsibility:

- To strengthen, better define and provide clarity with respect to the legislative arms' constitutional independence and its role as one of the three branches of government (Westminster model);
- To have the Legislative Assembly review, at a fundamental level, the mandate of its officers in relation to their historical tradition and modernize their role accordingly;
- Where appropriate, to reconcile, better integrate and coordinate the role of the oversight branch of the Legislative Assembly (through its legislative officers) with the role of government – namely its fiduciary duty with respect to the financial state of the province;
- To further promote and clarify the value of independent legislative oversight agencies and better integrate their role within the overall provincial executive governance structure;
- To clearly position, promote and endorse legislative officers as *recourse* and *resource* portals;
- To clarify and distinguish the role of the legislative officers with respect to and in relation to the judicial branch of government, namely as it pertains to upholding the principles of natural justice, procedural/administrative fairness and administrative law;
- To position legislative officers as strategic key players in the context of democratic governance;
- To enable legislative officers as agents of change and provide an accountability framework and performance measurements to ensure continuous improvement opportunities;
- And to provide the Legislative Assembly and its statutory officers with an operational structure and appropriate resources to exercise their respective legislative mandates efficiently and effectively in a fiscally-sustainable way.

Consideration should therefore be given to:

- Recognizing that the constitutional independence of the three branches of government – executive, legislative and judicial – does not exclude cooperation and collaboration between them;
- Strengthening the autonomy, efficiency and effectiveness of the oversight agencies of the legislative branch of New Brunswick to ensure the long-term sustainability of their services to citizens who interact with public provincial agencies;
- Enabling legislative officers by providing clearly defined mandates and the resources required for optimal use of existing resources, including in-house expertise and administrative support services;
- And increasing the accountability and performance measurements of legislative officers and their offices and align them with the high standards expected from the other branches of government – executive and judicial.

#### Strategic steps – Aligning the existing structure with the vision statement

The initial steps to align the existing structure of legislative officers (as it pertains to the respective mandates and their offices) with the vision should include (but not be limited to):

- Revisit and consider the feasibility and coherence of an on-going implementation of the recommendations made by Bernard Richard in December 2011 (*Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick's Legislative Officers*);
- Develop and implement a formal management strategy targeting the operations of legislative offices and the performance of legislative officers (i.e. meeting the expectations linked with the relevant mandates);
- Develop and implement a comprehensive education plan on the role of the legislative officers in the overall structure of government;
- Optimize the use of infrastructure, resources and allocated funds with the goal of increasing efficiency and effectiveness of legislative offices;
- Re-structuring and aligning mandates, responsibilities and operations to realize cost savings and strategic re-investments to increase productivity, relevance, efficiency and effectiveness of legislative offices;
- Ensure that the Legislative Assembly, namely through its committees, as well as the Clerk of the Legislative Assembly and his corporate/administrative staff continue supporting legislative officers by playing a leadership role.

## Problem statement – Impediments to the alignment of strategic steps with the vision statement

- Many of the recommendations made by Bernard Richard in his 2011 report remain pending despite potentially yielding substantial savings, generating greater efficiencies within the legislative branch and implementing an accountability framework that would allow better monitoring of the legislative officers' performance.
- The present decentralized organizational and operational structures of the legislative officers and the Legislative Assembly administration office impedes on potential efficiencies through shared services opportunities, cost savings and sharing of in-house expertise. The current structure of legislative offices and their organizational format could be restricting optimal use of resources and infrastructure.
- The present design forces legislative officers to operate in silos and may restrict key information sharing between offices thereby impacting productivity and efficiency.
- There is likely misunderstanding and/or lack of knowledge from civil servants and citizens with regards to some of the current mandates of and roles played by legislative officers in New Brunswick. This may adversely impact the legislative officers' ability to maximize the potential of their respective expertise and it may limit their contribution to improving the service delivery mechanisms within the public service.
- Opportunities to identify cost savings initiatives and implement performance improvement strategies may be unknown or unexplored within the legislative offices due to lack of consistent and set performance measurements.
- The Legislative Assembly as well as selected Legislative committees maintain marginal involvement, support or perceived interest in the legislative offices' operations and this may lead to scattered guidance and a lack of leadership.
- While recognizing that legislative officers' core business is substantially different than the executive branch, there is a legitimate need to clarify and rationalize the value of funding these offices under the existing structure.

### **3. Methodology and Work Plan**

Concretely, we established ambitious goals to meet the objectives outlined in the Terms of Reference. In an effort to be thorough, the methodology to achieve the objectives related to this task was structured around a series of steps that needed to be taken to fulfill our mandate. They included primarily the following.

#### *3.1 Steps as they pertain to the first objective:*

- Reviewing the 2011 report (analysis and recommendations);

- Reviewing the present status of the 2011 report recommendations (implemented, pending, stood);
- Reviewing the 2011 report recommendations pending implementation and ensure compatibility and alignment with the objectives of the Government of New Brunswick’s Strategic Program Review (resolving incompatibilities where deemed appropriate based on the respective roles of the different branches of government (executive and legislative));
- Where relevant and where the implementation of recommendations is pending, reiterating the rationale behind the implementation progress and suggesting considerations and steps to follow through on said implementation, where appropriate and/or feasible;
- Where relevant and required, updating selected 2011 report recommendations to ensure alignment with present key considerations (update process may include suggestions to partially implement or review the scope of certain recommendations);
- Consulting with research staff involved in the drafting and reporting of the 2011 exercise.

### 3.2 *Steps as they pertain to the second objective:*

- Identifying and reviewing all of the officers of the Legislative Assembly’s mandates, powers, authority, responsibilities and legislative parameters of operations;
- Completing an analysis of the preceding elements’ clarity through legislation review and consultation with legislative officers and their staff;
- Developing “relevance measurements” and applying them to relevant legislation, mandates and respective objectives;
- Developing and suggesting implementation process of performance measurements taking into account both statutory framework (legislation) and individual mandates and objectives (legislative officers and offices);
- Discussing in relative terms the notion of “accountability”;
- Identifying and suggesting the implementation of performance measures to reinforce legislative officers/offices’ accountability by reviewing (1) reporting mechanisms, (2) the role of certain Legislative Assembly Standing Committees, (3) the organizational distribution of statutory responsibilities, (4) the allocation of resources and (5) the funding mechanisms for legislative officers;
- Performing jurisdictional scan regarding the preceding points;
- Developing adaptable and updateable performance management/improvement strategies to ensure continuity in the efficiency and the relevance of mandates.

### 3.3 *Steps as they pertain to the third objective:*

- Reviewing and assessing, through legislation, relevant material (e.g. annual reports) and direct consultation (i.e. meeting with all legislative officers and their staff), the predominant mandate-related responsibilities of legislative officers;
- Consulting with legislative officers and their staff on potential efficiency improvements (e.g. financial, resources, realignment of responsibilities, relevancy of mandates, etc.);
- Reviewing selected literature on the accountability of legislative officers, with particular emphasis on maintaining financial and operational independence;
- Completing jurisdictional scan on other legislative offices with particular attention on similar jurisdictions (population, legislative mandates, etc.);
- Reviewing statutory instruments and proceeding with a jurisdictional scan (territorial, provincial and federal);
- Completing a jurisdictional scan on distribution of statutory mandates of parliamentary-style oversight agencies;
- Reviewing role and leadership of Legislative Assembly Standing Committees in supporting the legislative officers;
- Completing a jurisdictional scan of funding mechanism for legislative/parliamentary oversight agencies, including (if any) specific funding formulas;
- Reviewing the role and leadership (if any) the corporate/administration offices of the Legislative Assembly could play in the centralization and/or optimization of services (e.g. HR, financial management, legal services, communications, etc.).

### 3.4 *Steps as they pertain to the fourth objective:*

- Reviewing all relevant literature related to the Government of New Brunswick's Strategic Program Review;
- Recommending initiatives to optimize the use of infrastructure, resources and allocated funds with the goal of increasing efficiency and effectiveness of legislative offices;
- Reviewing the distribution and strategic alignment of mandates, responsibilities and operations for the purpose of outlining, for consideration, a distribution of legislative responsibilities that could lead to the optimization of cost savings and strategic investments to increase productivity, efficiency and effectiveness of legislative offices;
- In keeping with the relevant 2011 report recommendations, proposing a more robust leadership role to select Legislative Assembly Standing Committees as well as the Clerk of the Legislative Assembly and his corporate/administrative staff, namely to strengthen the legislative officers' independence.

We are satisfied that many of the preceding goals were met, thanks to the cooperation and collaboration of interested parties, stakeholders, the Clerk of the Legislative Assembly's office and the Legislative Library services. We recognize however that some of these targets will remain on-going and yield other options and solutions in the near future.

#### **4. Stakeholders consulted**

We wish to acknowledge the participation of the following persons and groups who have accepted to provide their thoughts, opinions and suggestions with respect to the objectives of the 2015 review as well as to help in crafting many of the recommendations that are submitted for consideration as a result of this exercise.

##### *Legislative Assembly*

- Donald J. Forestell, Clerk of the Legislative Assembly
- Corporate staff from the Office of the Clerk
- Kenda Clark-Gorey, Legislative Librarian, Legislative Library

##### *Legislative Committee*

- Members of the Legislative Assembly's Standing Committee on Procedure, Privileges and Legislative Officers

##### *Legislative Officers<sup>1</sup>*

- Anne Bertrand, Access to Information and Privacy Commissioner, and members of her team
- Kim MacPherson, Auditor General, and members of her team
- Michael Quinn, Chief Elector Officer and Supervisor of Political Financing, and members of his team
- Norman Bossé, Child and Youth Advocate, and members of his team
- Katherine d'Entremont, Commissioner of Official Languages, and members of her team
- Hon. Alfred J. Landry, former Conflict of Interest Commissioner and the administrative member of the Conflict of Interest Commissioner's Office
- Ronald Godin, former Consumer Advocate for Insurance<sup>2</sup>, and members of his team
- Charles Murray, Ombudsman, and members of his team

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<sup>1</sup>The legislative officers were consulted as a college and individually during separate meetings.

<sup>2</sup>Consultation with Mr. Godin and members of his team took place prior to his retirement as Consumer Advocate for Insurance.

## *2011 Report Research Team*

- Bernard Richard, former Ombudsman and Child and Youth Advocate
- Kevin Malone
- Jessica (Albert) Guérette

## *Other Stakeholder*

- Marc-Alain Mallet, Executive Director, New Brunswick Human Rights Commission

## **5. Results of the 2015 Review**

Throughout this review, our goal was to meet the objectives outlined in the Terms of Reference by producing a final report that would serve as a discussion paper and a guidance document that could be referenced when considering initiatives that may be adopted immediately as well as others that may be considered for implementation on a medium and longer-term. The issues raised throughout this report as well as the suggestions populating this document are guided by an appreciation of both government's goal to tackle the province's fiscal challenge but, as equally important, protecting the independence of legislative officers and emphasizing the importance of their contribution in a democratic society.

If finding immediate savings from the existing structure of New Brunswick's legislative officers had been the only anticipated result of this 2015 review exercise, little effort would have been required and arbitrary cuts to budgets and the elimination of certain positions would have yielded the desired savings. Little else in terms of analysis would have been required and consultation would have been pointless. However, the Government of New Brunswick's program review is a *strategic* process and, in that spirit, we strongly believe that this review required a dissection of the existing structure to, first and foremost, identify options that would likely lead to judicious and tactical changes. Furthermore, we are of the firm opinion that for any expenditure reduction initiative or strategic reinvestment to be successful and sustainable, it requires the participation *and* contribution of all primary stakeholders. This is not to say that all suggested options for consideration will receive 'thumbs up' from all those affected by or involved in the possible implementation of these suggestions, whether directly or peripherally. It is our hope nonetheless that this review will provide all parties with options that can lead to a new structure of provincial legislative officers that will serve *all* of those interested by its implementation.

In the hope of providing recommendations that are realistically feasible and that weigh in the fundamental principles of fairness, the results of this review and the recommendations are presented in two main categories:

- The first category is comprised of recommendations submitted for consideration that government could implement immediately or within a short-term time frame;
- The second category contains recommendations submitted for consideration with respect to a series of outstanding and unresolved issues that would require the legislative officers to work in collaboration with each other and Members of the Standing Committee on

Procedure, Privileges and Legislative Officers (PPLOC) over the next months to develop initiatives and solutions in time for implementation over the 2017-2018 and 2018-2019 fiscal years.

We trust that this model of implementation will serve all stakeholders in a sustainable and productive way and that it will launch a new era of solid collaboration between legislative officers and the Legislative Assembly. The model also ensures that accountability, efficiency, effectiveness and independence remain at the core of any initiative and solution developed and implemented.

## **6. Budget associated with the 2015 Review**

The Terms of Reference of this review provided that this review would operate within a budget established for the review by the Clerk of the Legislative Assembly. Resources for undertaking the review would be provided from within the budget of the Legislative Assembly.

For the purpose of full disclosure and in the spirit of the objectives of this exercise, concrete steps were taken to avoid all unnecessary expenditures and make optimal use of existing resources without compromising the desired quality of the outcome. During the allocated time for this review to be completed, the total amount of expenditures related to this exercise is approximately \$8,272.00. This amount was absorbed by the budget of the Legislative Assembly approved and published in the 2015-2016 Main Estimates and is mainly associated with the project lead's salary, translation services and information technology requirements.

## **Part 2 – Legislative Officers: the Present Context**

### **1. Legislative Officers in New Brunswick – General overview**

New Brunswick currently has eight legislative officer positions that report to the Legislative Assembly. These positions are provided for in various provincial statutes and are identified as:

- the Access to Information and Privacy Commissioner
- the Auditor General
- the Chief Electoral Officer and Supervisor of Political Financing
- the Child and Youth Advocate
- the Commissioner of Official Languages
- the Conflict of Interest Commissioner
- the Consumer Advocate for Insurance
- the Ombudsman

Whether a ninth legislative officer – a Registrar of lobbyists – could be established pursuant to subsection 22(3) of the *Lobbyists' Registration Act* remains to be determined. Subsection 22(2) of the Act provides that, unless stated otherwise, the provincial Ombudsman shall fill the position of Registrar of lobbyists.

Furthermore, a 2014 Liberal Party platform commitment opened the possibility for the creation of a tenth legislative officer that would be tasked with legislative responsibilities related to Seniors advocacy. While the *Ombudsman Act* was amended in 2014 to include jurisdiction over nursing homes, special care homes, home support services and certain community residences, the commitment to provide independent advocacy services to Seniors in the form of a specialized legislative branch (presumably under the leadership of a new legislative officer or as a specialized unit under the auspices of a current legislative officer) remains pending.

Noteworthy is the fact that at the time of the drafting of this report, two of the legislative officers' positions – the Conflict of Interest Commissioner and the Consumer Advocate for Insurance – were vacant and their respective mandate were filled on an interim basis by two other legislative officers, that is, the Access to Information and Privacy Commissioner and the Ombudsman respectively. In other words, New Brunswick currently has six sitting legislative officers that are tasked with one or several mandates and must assume the related responsibilities.

As of the end of the 2015 calendar year, New Brunswick's legislative offices had budget approval to employ a total of 78 employees (75 full-time employees and 3 part-time employees)<sup>3</sup>. The following breakdown indicates the distribution of these positions according to their classifications and/or areas of responsibilities:

- 7 deputy ministerial positions (which correspond to each legislative officer)
- 11 senior management positions

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<sup>3</sup>It must be noted that some of these positions remain vacant due to budgetary constraints.

- 18 research and planning positions
- 19 administrative positions (includes data administration, program administration and executive assistants)
- 4 communications positions
- 1 information technology position
- 1 finance position
- 17 audit related positions

The total wage bill associated to these positions is estimated at approximately \$5.8 million for the 2015-2016 fiscal year. This amount is absorbed by the total combined budget of legislative officers which stands at \$8.842 million<sup>4</sup> (2015-2016 Main Estimates) and represents approximately 80.73% of the expenditures. In reality, many of the legislative officers' individual budgets are mainly earmarked for staff salaries, varying from 85% to 90% in those cases.

The overall funding of legislative officers (and their offices) accounts for 40.71% of the total budget of the Legislative Assembly of New Brunswick which stands at \$21.721 million (2015-2016 Main Estimates).

The annual amount provided for infrastructure and maintenance-related costs is estimated at \$528,246.00. It is important to note that there are inconsistencies with regards to how these costs are covered. While some are absorbed by the Department of Transportation and Infrastructure through an agreement with individual legislative offices or the Legislative Assembly's corporate services, other legislative officers have to pay rent and incidental expenses from their respective operational budget.

## **2. Legislative Officers in New Brunswick – Specifics**

### *2.1 Access to Information and Privacy Commissioner*

The position of Access to Information and Privacy Commissioner was created in 2010. The legislative responsibilities pertaining to access to information and the protection of privacy were, at the time and with notable legislative changes since then, assumed by the provincial Ombudsman.

The Commissioner's current mandate is to oversee the "application of rules governing access to information and the protection of privacy in the public and health care sectors"<sup>5</sup>. The Office of the Access to Information and Privacy Commissioner conducts activities that range from inquiries to investigations that typically fall within the area of adjudication. It also dedicates some of its efforts in the areas of promotion, guidance, advice and education.

The Office of the Access to Information and Privacy Commissioner has six (6) full-time positions for an estimated annual wage bill of \$465,816.00:

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<sup>4</sup>This number includes amounts authorized by law and earmarked for the Province-wide Quadrennial Municipal Elections to be held in May 2016.

<sup>5</sup>Refer to the Access to Information and Privacy Commissioner's website at [www.info-priv-nb.ca](http://www.info-priv-nb.ca).

- 1 deputy ministerial position (the Commissioner)
- 4 research and planning positions
- 1 administrative position

The Commissioner's annual budget (2015-2016 Main Estimates) is \$597,000.00.

The Commissioner and her staff are located in Fredericton and are not collocated with any other legislative officer. Infrastructure and maintenance-related costs are covered exclusively by the Commissioner's annual budget. This amount is approximately \$46,800 annually.

The Commissioner and her staff perform internal performance assessments on a regular basis. These assessments may or may not be reflected directly in the Commissioner's annual report which acts as her main publication to present the activities and status of her office as well as account for how the office exercises its legislative mandates.

In addition to responsibilities outlined in the *Right to Information and Protection of Privacy Act*, the Access to Information and Privacy Commissioner cumulates additional legislative functions pursuant to the *Personal Health Information Privacy and Access Act*.

## 2.2 Auditor General

New Brunswick's Auditor General is one of the oldest legislative offices created in New Brunswick. Since 1967, successive Auditor Generals have been responsible for auditing provincial public agencies pursuant to the *Auditor General Act*.

The Auditor General "is responsible for leading and directing independent audits and advising on how well the provincial government is managing its responsibilities and resources"<sup>6</sup>. Currently, the Office of the Auditor General may employ 25 full-time employees for an estimated wage bill of \$1,809,674.00. These positions are divided as such:

- 1 deputy ministerial position (Auditor General)
- 3 senior management positions
- 2 administrative positions
- 1 communications position
- 17 audit related positions

The current budget (2015-2016 Main Estimates) allocated to the Auditor General is \$2,078,000.00. Staff salaries – including the Auditor General's – amount to approximately 87% of her office's total budget expenditures.

The Office of the Auditor General is located in Fredericton and does not partake in a co-location arrangement with any other legislative officer.

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<sup>6</sup>Refer to the New Brunswick Auditor General's website at [www.agnb-vgnb.ca](http://www.agnb-vgnb.ca).

Her enabling legislation – the *Auditor General Act* – has built-in performance measurements in the form of a business plan and an annual reporting obligation linked to this accountability framework. She is the only legislative officer in New Brunswick with a legislated obligation to publish a detailed annual account of the status of her performance measurements.

### 2.3 *Chief Electoral Officer and Supervisor of Political Financing*

The position of Chief Electoral Officer was created in 1967 and the responsibilities of Supervisor of Political Financing were subsequently added in 2008. The mandate of Elections NB (the legislative office that handles both mandates) is to “ensure the democratic rights of all New Brunswickers through the conduct of free and fair elections, by ensuring compliance with election laws and by enhancing public confidence in and awareness of the electoral process”<sup>7</sup>.

Elections NB has an approved budget to employ 15 staff:

- 1 deputy ministerial position (Chief Electoral Officer and Supervisor of Political Financing)
- 3 senior management positions
- 1 research and policy position
- 6 administrative positions
- 2 communications positions
- 1 information technology position
- 1 finance position

Elections NB’s current wage bill amounts to an estimated amount of \$1,133,288.00 and is absorbed through an operating budget (2015-2016 Main Estimates) of \$1,508,000.00.

The Chief Electoral Officer and Supervisor of Political Financing has responsibilities pursuant to the *Elections Act* and the *Political Process Financing Act*.

Elections NB has its headquarters in Fredericton although it conducts its activities over a two-year cycle in all regions of the province. They are not collocated with other legislative officers.

The office is statutorily responsible for publishing a number of reports pursuant to its enabling legislation. It is not however obligated to publish a business activities-type report or the results of a performance-based exercise.

### 2.4 *Child and Youth Advocate*

The Child and Youth Advocate was created in 2006 and, until 2011, the position was filled by the provincial Ombudsman. On April 1 of that year, the Child and Youth Advocate became independent of the Ombudsman although both offices remain collocated. Staff members were divided as was the annual budget.

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<sup>7</sup>Refer to Elections NB’s website at [www.electionsnb.ca](http://www.electionsnb.ca).

The Child and Youth Advocate's mandate is outlined as follows:

- Ensuring the rights and interests of children and youth are protected;
- Ensuring the views of children and youth are heard and considered where those views might not otherwise be advanced;
- Ensuring children and youth have access to approved services and that complaints about these services receive appropriate attention;
- Providing information and advice to government, government agencies and communities about the availability, effectiveness, responsiveness and relevance of services to children and youth;
- Acting as an advocate for the rights and interest of children and youth in general.<sup>8</sup>

The staff compliment is composed of nine (9) employees:

- 1 deputy ministerial position (Child and Youth Advocate)
- 2 senior management positions
- 3 research and planning positions
- 2 administrative positions
- 1 communications position

Salaries, estimated at \$673,504.00, account for approximately 75% of the operational budget of \$902,000.00 (2015-2016 Main Estimates). In addition, the Child and Youth Advocate Office may receive outside funding from time to time to participate in projects aimed at promoting provincially, nationally and internationally the rights of the Child.

The Child and Youth Advocate's enabling legislation is the *Child and Youth Advocate Act* and its responsibilities are fairly broad to include a number of advocacy-related initiatives. The legislative officer and his staff are collocated in Fredericton with staff from the Ombudsman Office and they currently share a receptionist, a toll-free line and facsimile services.

The Child and Youth Advocate and the Ombudsman also share office space in a satellite office located in Dieppe. All receptionist and administrative support services are provided from the Fredericton office.

The Advocate reports on his activities primarily through the office's annual report. The office has also published and tabled a number of special reports that speak to the Child and Youth Advocate's advocacy mandate.

## 2.5 *Commissioner of Official Languages*

The Commissioner of Official Languages was created in 2003 and finds her mandate in the *Official Languages Act* of New Brunswick. The Commissioner's role is "to investigate, report on, and make recommendations with regard to compliance with the *Official Languages Act*. She

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<sup>8</sup>Refer to the CYA's website at <http://www.gnb.ca/0073/Child-YouthAdvocate/index-e.asp>.

is also responsible for the promotion and the advancement of both official languages in the province.”<sup>9</sup>

The Commissioner of Official Languages has an annual budget of \$506,000.00 (2015-2016 Main Estimates) and an estimated \$403,936.00 (or approximately 80%) of this amount is used to cover the wages associated with the following positions:

- 1 deputy ministerial position (Commissioner of Official Languages)
- 2 research and planning positions
- 2 administrative positions

The *Official Languages Act* is the statute that drives the Commissioner’s mandate. She accounts on the activities of her office through her annual report, although the office has released investigation and research reports and studies that further add to the relevance of her promotional and education functions.

The Commissioner of Official Languages and her staff are located in Fredericton and are not collocated with another legislative officer.

## 2.6 *Conflict of Interest Commissioner*

Pursuant to the *Members’ Conflict of Interest Act*, the Conflict of Interest Commissioner has been under the auspices of the Legislative Assembly since 2000. The Commissioner is “responsible for administering the *Members’ Conflict of Interest Act* which sets out acceptable standards of conduct for all Members of the Legislative Assembly and of the Executive Council”<sup>10</sup>.

The Conflict of Interest Commissioner has a budget of \$221,000.00 (2015-2016 Main Estimates) and a wage bill of \$130,693.00 to pay for the following positions:

- 1 deputy ministerial position (Conflict of Interest Commissioner)<sup>11</sup>
- 1 administration position

The Conflict of Interest Commissioner Office is located in Fredericton and is not collocated with any other legislative officer.

Through its annual report, the Commissioner accounts for his activities over a given fiscal year. The *Members’ Conflict of Interest Act* also provides that a quinquennial report be submitted to the Legislative Assembly through the Legislative Administration Committee. The last quinquennial report was tabled in 2011.

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<sup>9</sup>Refer to the Commissioner of Official Languages website at [www.officiallanguages.nb.ca](http://www.officiallanguages.nb.ca).

<sup>10</sup>Refer to the Conflict of Interest Commissioner website at [www.gnb.ca/legis/conflict/index-e.asp](http://www.gnb.ca/legis/conflict/index-e.asp).

<sup>11</sup>The position is currently vacant and is filled in the interim by the Access to Information and Privacy Commissioner.

## 2.7 *Consumer Advocate for Insurance*

Created in 2007 pursuant to the *Consumer Advocate for Insurance Act*, the Consumer Advocate for Insurance is the only legislative office whose mandate applies to private industry. His role is “to monitor the practices of insurers, brokers and agents, while serving as an advocate for consumers. (...) The office of the Consumer Advocate has the responsibility to respond to requests for information with respect to insurance and to carry out investigations as a result of complaints received from consumers. The office also has the responsibility to develop and conduct educational programs with respect to insurance for the purpose of educating consumers.”<sup>12</sup>

The Office of the Consumer Advocate for Insurance is allocated a budget of \$470,000.00 (2015-2016 Main Estimates) and of that amount \$355,368.00 is earmarked to pay for the following 5 positions:

- 1 deputy ministerial position (Consumer Advocate for Insurance)
- 2 research and planning positions
- 2 administrative positions

Pursuant to the *Consumer Advocate for Insurance Act*, all expenditures related to the exercise of this legislative officer’s mandate are fully recovered from industry. Essentially, while money is disbursed for the Consumer Advocate’s activities during any given fiscal year, those expenditures are reimbursed at 100% meaning that there are no costs as such to operate this office.

In keeping with the relevant provision of the Act, the Consumer Advocate for Insurance reports on the activities of his office to the Legislative Assembly through his annual report.

The Consumer Advocate for Insurance is located in Bathurst and is not collocated with other legislative officers.

## 2.8 *Ombudsman*

New Brunswick was the second Canadian province to create an Ombudsman – a month following Alberta – in May 1967. Since its creation, the Ombudsman has had significant changes made to its mandate and the scope of his responsibilities. Currently, the Ombudsman has jurisdiction over the following legislative mandates: the *Ombudsman Act*, the *Public Interest Disclosure Act*, the *Civil Service Act*, the *Archives Act* and additional functions are anticipated once the *Lobbyists Registration Act* comes into force.<sup>13</sup>

The 2015-2016 Main Estimates indicate that the Ombudsman is funded by an operational budget of \$902,000.00. The office employs 12 staff members and the total wage bill is approximately \$827,268.00. The Office of the Ombudsman currently has the following positions:

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<sup>12</sup>Refer to the Consumer Advocate for insurance website at [www.insurance-assurance.ca](http://www.insurance-assurance.ca).

<sup>13</sup>For more information on the Ombudsman, refer to the following website: <https://www.ombudnb.ca/site/en/>.

- 1 deputy ministerial position (Ombudsman)
- 2 senior management positions
- 6 research and planning positions
- 3 administrative positions

As stated previously, the Ombudsman is collocated with the Child and Youth Advocate and share a number of services including a receptionist and some administrative support functions.

The Ombudsman’s performance measures and assessment are presented in the office’s annual report. The office’s work consists primarily of receiving and following up on thousands of complaints annually.

### 3. Canadian context

#### 3.1 Comparison table – 2015-2016 Main Estimates

Four Canadian jurisdictions with smaller population numbers have been selected for the purposes of providing a comparison table on the level of funding for legislative officers with comparable mandates – yet substantially different in terms of the level of responsibilities in some cases. While funding is somewhat proportionate between jurisdictions for some (such as Chief Electoral Officers for example), the discrepancies between others in comparison to New Brunswick are striking. Such is notably the case with respect to the Child and Youth Advocate.

Legislative Officer	New Brunswick (754,000 <sup>14</sup> )	Nova Scotia (945,121)	Newfoundland and Labrador (528,190)	Manitoba (1,298,591)	Saskatchewan (1,138,879)
Access to Information and Privacy Commissioner	\$597,000.00	\$593,000.00	\$1,343,800.00	(Ombudsman)	\$1,469,000.00
Auditor General	\$2,078,000.00	\$3,889,000.00	\$3,958,900.00	\$6,917,000.00	\$8,742,000.00
Chief Electoral Officer	\$3,166,000.00	\$3,466,000.00	\$6,638,800.00	\$1,549,000.00	\$6,638,000.00 <sup>15</sup>
Child and Youth Advocate	\$902,000.00	(Ombudsman)	\$1,407,600.00	\$3,832,000.00	\$2,554,000.00
Commissioner of Official Languages	\$506,000.00	---	---	---	---
Conflict of Interest Commissioner	\$221,000.00	(Speaker’s Office)	(Chief Electoral Officer)	\$9,806,000.00 <sup>16</sup>	\$589,000.00
Consumer Advocate for Insurance	\$470,000.00 <sup>17</sup>	---	---	---	---
Ombudsman	\$902,000.00	\$1,724,000.00	\$832,400.00	\$3,433,000.00	\$3,429,000.00

With the exception of the Commissioner for Official Languages and the Consumer Advocate for Insurance which are unique to New Brunswick, a quick overview of other legislative officers in comparison with their selected Canadian counterparts carry similar oversight responsibilities

<sup>14</sup>Estimates of provincial population, as published by Statistics Canada for 2015 (Q4) – Refer to CANSIM table 051-0005 (www5.statcan.gc.ca/cansim/a26?lang=eng&id=510005).

<sup>15</sup>Saskatchewan is scheduled for a provincial election on April 4, 2016 and the amount projected would factor that in. According to the information available, the operational funding would be approximately \$2.2 million.

<sup>16</sup>Manitoba’s Conflict of Interest Commissioner is also the province’s Lobbyists Registrar and Information and Privacy Adjudicator.

<sup>17</sup>The Consumer Advocate for Insurance’s budget is recovered at 100% from private industry.

(e.g. Auditor General and Child and Youth Advocate) while others have considerably larger mandates or more demanding functions (e.g. Ombudsman, Chief Electoral Officer). Although it was not feasible during the time allocated for this review to conduct a more in-depth comparative study of the level of funding in comparison with other benchmarks (such as population, scope of mandate, legislated responsibilities, etc.), it would likely be a useful tool if productive discussions are to occur going forward regarding any potential strategic investments or reinvestments of public funds into legislative offices.

### 3.2 Overview of provincial and territorial legislative officers

While jurisdictional comparisons are not necessarily conclusive on all aspects, the information provided below and in Appendix A offers insight into how New Brunswick’s situation with respect to its legislative officers compare or differs from other Canadian jurisdictions. For the purpose of our review, specific information was requested from other provincial and territorial legislatures regarding the following elements:

- The number of legislative officers (positions);
- The authority to which the legislative officers account and how frequently (when the information is readily available);
- Whether any of the legislative officers are collocated;
- Whether any of the legislative officers share administrative and/or corporate services;
- Whether any of the legislative officers use performance measures and in what format;
- Whether any recent reviews (over the past five years) had been completed with respect to all or specific legislative officers.<sup>18</sup>

With respect to the number of legislative officer positions in each jurisdiction, the most recent and available data offers as follows:

Jurisdiction	Number of legislative officer positions
Alberta	7*
British Columbia	8
Manitoba	6**
Newfoundland and Labrador	5
Nova Scotia	6
Nunavut	5
Ontario	9
Prince Edward Island	5
Quebec	5
Saskatchewan	7*
Northwest Territories	7
Yukon	---

\* 1 vacancy

\*\* 1 legislative officer filling two positions

<sup>18</sup>Please refer to Appendix A for the details offered by those jurisdictions who provided answers to our questionnaire.

The information we were able to cumulate seems to indicate that, with a few exceptions, co-location of legislative officers has not been implemented in many Canadian jurisdictions. Further research would be required to determine whether this trend is by choice, by design or due to necessity (the limited availability of infrastructure, for example).

While there is little information available on the frequency of meetings between the legislative officers and their respective reporting authority, again, the data provided is inconclusive other than to confirm that there are reporting structures in place and that legislative officers have the obligation to account to specific bodies or agencies.

Interesting are the number of administrative and corporate services offered by the provincial or territorial legislatures to legislative officers. New Brunswick appears to have been following a similar practice over the past years.

Established performance measures vary from one jurisdiction to another and from one legislative officer to another as well. Notwithstanding the fact that most legislative officers report on their efficiency, effectiveness and overall performance through their annual reports (with Auditor Generals being the notable exception), a select few – such as in Newfoundland and Labrador, Nova Scotia and Québec – publish an additional report annually that focuses on performance-related accountability.

### **Part 3 – Revisiting the 2011 Report**

#### **1. Introduction to the 2011 report – Terms of Reference and summary of findings and conclusions**

In March 2011, the Government of New Brunswick launched a “process of review and reflection”<sup>19</sup> aimed at addressing the province’s fiscal challenges. The objectives of this exercise were then identified as follows:

1. To improve the culture of government to focus on core services, accountability through performance measures, and continuous performance improvements;
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;
4. To provide direction for the development of a three-year plan to return to a balanced budget by 2014-15.

In this context, Bernard Richard, former provincial Ombudsman and Child & Youth Advocate, was mandated to complete a review of New Brunswick’s Legislative Branch – with particular emphasis on reviewing the provincial legislative officers’ effectiveness, efficiency, operations and accountability<sup>20</sup> – while respecting established objectives:

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;
4. To contribute to the government objective of developing and implementing a three-year plan to return to a balanced budget by 2014-15.

At the time of the 2011 review process, there were eight legislative officers reporting to the provincial Legislature. The 33 recommendations issued in the 2011 report contained novel

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<sup>19</sup>Richard, Bernard et al., *Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick’s Legislative Officers*, Fredericton, New Brunswick, 2011, Appendix A: Terms of Reference, p. 47.

<sup>20</sup>*Ibid.*, pp. 48-50.

initiatives and concrete steps to strengthen the efficiency, effectiveness, accountability and independence of the legislative officers. It is important to note as well that a number of these recommendations also engaged other stakeholders such as the Clerk of the Legislative Assembly, the (then) Standing Committee on Legislative Officers (now known as the Standing Committee on Procedure, Privileges and Legislative Officers) and the Legislative Administration Committee as key actors in meeting the goals pertaining to the efficiency, the effectiveness, the accountability and the independence of New Brunswick's legislative officers.

The 2011 report recommendations focused on and underlined the relevance of the legislative officers as "agents" of the Legislative Assembly and reaffirmed that while they were independent of the executive arm of government and operationally autonomous from each other, they remained accountable and answerable to the provincial legislature. Furthermore, the very nature of the legislative officers' work as oversight agencies called for a better defined and structured collaboration with the Legislative Assembly as well as the executive arm of Government in order to affirm their relevancy in the structure of our parliamentary system.

Of equal importance, the 2011 report emphasized the role of the Legislative Assembly – namely through some of its Standing Committees – in supporting its legislative officers by providing them with the appropriate reporting mechanisms by which they not only could report to New Brunswick's House of elected officials but through which they could avail themselves of a permanent forum to discuss matters pertaining to – amongst others – efficiency, effectiveness, accountability and independence. Amongst other advantages, such a forum could provide a structured environment for constructive exchanges between legislators and their agents as well as offer regular opportunities for legislative officers to account on their performance and promote the value and relevancy of their work.

As well, in light of the 2011 review Terms of Reference, a select number of recommendations proposed concrete actions and steps to reduce or contain expenditures as well as to implement initiatives that would ensure future cost avoidances. These actions and steps were mainly focused on reducing the number of legislative officers, regrouping a number of legislative mandates and ensuring that legislative officers could conduct their daily operations while optimizing their resources and availing themselves of infrastructural options – namely through co-location of legislative offices.

Of notable interest is the fact that the 2011 research team were also asked to consider the possibility of expanding the scope of the Legislative Assembly's oversight branch by broadening the ambit of its jurisdiction. One specific consideration was to examine the feasibility of bringing New Brunswick's Human Rights Commission over to the legislative branch. This may have been requested as a follow up to a platform commitment made in 2010 by the governing party requesting the 2011 review<sup>21</sup>. Other recommendations focused on the redistribution of legislative mandates either through realignment through a subject-matter expertise re-assessment or by incorporating existing oversight-type functions into the mandate of existing legislative offices.

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<sup>21</sup>"Adopt legislation making the New Brunswick Human Rights Commission an Office of the Legislative Assembly." Progressive Conservative Party of New Brunswick, *Putting New Brunswick First... For A Change*, 2010, p. 33.

Finally, the 2011 review process concluded that legislative officers should be equipped with the necessary statutory, structural and organizational tools to work more effectively and efficiently as a college. From regular consortiums to shared confidentiality provisions, a number of 2011 report recommendations aimed at allowing New Brunswick’s legislative officers to work more collaboratively amongst themselves as well as a group in its relationship with the Legislative Assembly and its committees and the executive branch of government.

**2. Current implementation status of the 2011 report recommendations**

The table presented below is designed to offer a quick overview of the implementation status of the recommendations published in the 2011 report entitled *Fine-tuning Parliamentary Machinery: A Review of the Mandates and Operations of New Brunswick’s Legislative Officers*. The accuracy of the implementation status of each recommendation is based on the information we were able to gather from government and Legislative Assembly officials as well as the members of the 2011 research team.

The table is divided in three columns. The first column (to the left) is a *verbatim* copy of the 2011 recommendations. The second or middle column offers an update on the present status of each recommendation. The third column (to the right) offers additional information with regards to a specific recommendation (supporting information for example) or includes observations with respect to the recommendation that need to be addressed in the next section of this report (point 3) or in the recommendations for consideration that will be issued as part of the 2015 review process.

It is important to note that most of the observations raised in the third column were also raised during our consultations and exchanges with legislative officers, with committee members of the PPLOC as well as with other stakeholders (such as the Clerk of the Legislative Assembly and the 2011 report research team members). The results of these consultations and exchanges lead to the formulation of many of the recommendations and suggestions for consideration that will be outlined later in this document.

2011 Recommendation	Status	Additional information/Observations
1. That no new legislative officer positions be created until New Brunswick’s fiscal situation improves significantly and sustainably.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: it is difficult to define and measure clearly at which point a “significant and sustainable improvement” of the fiscal situation would allow for the creation of a new legislative officer position. Furthermore, the overall spirit of some of the other recommendations in the 2011 report – namely those that propose merger of offices and redistribution of mandates – tend to lean in the opposite direction. There is a need to review and reconcile these recommendations.</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		<ul style="list-style-type: none"> <li>• <u>Observation</u>: the creation of new legislative officers <u>in addition</u> to those already created does not appear to be a sustainable option. Alternatively, does reducing number of existing legislative officer positions amount to an erosion of their independence as a collective? Or is there an argument to be made with respect to the advantages of having one legislative officer leading several mandates which, in turn, are managed by subject-matter experts? Can reinforcement of capacity and multi-disciplinary cooperation within one legislative “office” increase efficiency and effectiveness while strengthening independence and relevancy?</li> </ul>
<b>Independence</b>		
2. That the Legislative Assembly take the leadership role in the recruitment and selection of its officers.	Implemented	<ul style="list-style-type: none"> <li>• Refer to Bill 28 (57<sup>th</sup> Legislature, Third Session, Royal Assent June 5, 2013), <i>An Act Respecting Officers of the Legislative Assembly</i>, and the amendments made to the relevant acts with regards to recruitment and selection process.</li> </ul>
3. That no legislative officer be appointed without the adoption of a legislative resolution approving the proposed appointment.	Implemented	<ul style="list-style-type: none"> <li>• As an example, see Motion 70 regarding the appointment of the Ombudsman (Journal of Assembly, June 14, p. 244 (61-62 Elizabeth II, 2012-2013)).</li> </ul>
4. That the requisite statutory changes be made so that the appointment of legislative officers clearly falls within the authority of the legislature.	Implemented	<ul style="list-style-type: none"> <li>• Amended legislation as a result of Bill 28 provides clarity in that respect and broadens the scope of assessors to include academia, the executive and the legislative arms of government.</li> <li>• <u>Observation</u>: in the spirit of fostering a more productive and sustainable relationship between legislative officers and the Legislative Assembly, should the Standing Committee on Procedure, Privileges and Legislative Officers (PPLOC) play a more active role in this process so as to solidify the</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		Legislative Assembly's ownership of the nomination and appointment process?
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.	Implemented	<ul style="list-style-type: none"> <li>• <u>Observation</u>: this initiative undoubtedly increases the perception of the legislative officers' independence from the executive arm of government.</li> <li>• <u>Observation</u>: should the PPLOC lead the initiative of developing and implementing a budget development process, reviewing the funding mechanism and developing a funding formula in collaboration with the legislative officers?</li> <li>• <u>Observation</u>: should the PPLOC also lead an initiative to develop and implement an administration manual applicable to the entire legislative branch (including the legislative officers)?</li> </ul>
6. That, in the preparation of its annual budgetary estimates, LAC be mindful of the fiscal guidelines being followed by the executive branch.	Implemented	<ul style="list-style-type: none"> <li>• This appears to have been the practice for the past several years.</li> <li>• <u>Observation</u>: should this component be incorporated into the previously mentioned budget development process and administration manual (see observations related to recommendation #5).</li> <li>• <u>Observation</u>: should a more robust and consistent collaborative process regarding the budgetary estimates preparation process be considered rather than one where LAC is "mindful" of the executive branch's guidelines?</li> <li>• <u>Observation</u>: should consideration be given to the PPLOC playing a more active role in this process to ensure that the fiscal guidelines developed are consistent with the overall mandates and priorities of the legislative officers?</li> </ul>

2011 Recommendation	Status	Additional information/Observations
<b>Accountability</b>		
<p>7. That the Legislative Officers Committee (LOC) (<i>now the</i> Standing Committee on Procedure, Privileges and Legislative Officers – PPLOC) require legislative officers to appear at least annually so as to answer questions about their tabled reports.</p>	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: should this initiative be a key component of a proposed accountability mechanism? In addition, should set performance measures be developed in collaboration with the Legislative Assembly (through the PPLOC) and its legislative officers for increased consistency and relevancy as part of their annual reporting? Alternatively, should a different reporting model be contemplated – one that would be presented as a stand-alone activities report or business update?</li> </ul>
<p>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.</p>	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: while no “one size fits all” template exists when comparing legislative officers’ legislation, resources, jurisdiction and other components across various jurisdictions, minimal thresholds could be selected to provide an assessment of the appropriateness of the officers’ resources (legislative, financial, etc.) when comparing, using <i>substance</i> as a reference point, their offices in relation to others in other provinces and territories.</li> </ul>
<p>9. That LOC direct each legislative officer to develop performance measures that can be tracked and reported annually.</p>	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: should consideration be given to those performance measures being developed under the leadership and guidance of the Legislative Assembly (through the PPLOC), possibly using the executive arm’s performance measurements as a model with the appropriate nuances implemented and the measures tailored to capture accurately the relevance of the legislative arm’s business – namely how the value of outcomes are measured?</li> <li>• <u>Observation</u>: as with the observation made regarding Recommendation #7, should a different reporting model be contemplated – one that</li> </ul>

2011 Recommendation	Status	Additional information/Observations
<p>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.</p>	<p>Pending</p>	<p>would be presented as a stand-alone activities report or business update?</p> <ul style="list-style-type: none"> <li>• <u>Observation</u>: it appears that the Speaker of the Legislative Assembly is typically the designated individual who, through the Clerk of the Legislative Assembly, receives complaints from members of the public against a legislative officer. Given its mandate, should PPLOC be the approving authority rather than LAC?</li> <li>• <u>Observation</u>: to avoid inefficiencies, delays and potentially costly expenditures, consideration should be given to developing a formal review and audit process that includes set components that may trigger – upon the appreciation of the Speaker of the Legislative Assembly and PPLOC – a review and/or audit by or in partnership with a third party where deemed necessary.</li> </ul>
<p>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.</p>	<p>Partially implemented</p>	<ul style="list-style-type: none"> <li>• <u>Observation</u>: in addition to the preceding observations with respect to Recommendation #10, for practical and financial reasons, a simpler yet formal written complaint-handling process should be considered, allowing the Speaker and the Clerk of the Legislative Assembly to process and proceed with a preliminary investigation into the merit of the complaint before recommending subsequent action (when deemed necessary).</li> <li>• <u>Observation</u>: should consideration be given to empowering the PPLOC with some leadership in this process?</li> </ul>
<b>Efficiency</b>		
<p>12. That the Clerk of the Legislative Assembly be formally designated as the accounting officer for the Legislative Assembly.</p>	<p>Pending</p>	<ul style="list-style-type: none"> <li>• <u>Observation</u>: arguably, the notion and scope of the legislative officers' independence may prove to be a barrier to certain initiatives coming forth from the Legislative Assembly</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		regarding this proposed initiative. Consultation with the Clerk of the Legislative Assembly on the feasibility of this initiative or alternative proposals to implement this recommendation is necessary.
13. That the Clerk of the Legislative Assembly manage and administer the legislative officers as a group.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: refer to observation relating to Recommendation #12.</li> </ul>
14. That legislative officers be co-located at the earliest feasible time.	Pending	<ul style="list-style-type: none"> <li>• Read in conjunction with Recommendation #17.</li> <li>• <u>Observation</u>: this recommendation would require consultation with the Department of Transportation and Infrastructure to assess potential savings and cost avoidances related to this recommendation. As well, its implementation may require initial investments.</li> <li>• <u>Observation</u>: should legislative officers, in collaboration with LAC or the PPLOC and the Clerk of the Legislative Assembly, be involved in developing a feasible, efficient and sustainable plan to implement this recommendation?</li> </ul>
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.	Partially implemented	<ul style="list-style-type: none"> <li>• <u>Observation</u>: consideration should be given to consulting with legislative officers <u>and</u> members of their respective staff to assess the potential efficiencies resulting from the centralization and/or sharing of common services – both administrative and specialized services – between legislative officers and legislative offices.</li> </ul>
16. That the following legislative mandates be assigned to the Ombudsman: <i>Ombudsman Act, Public Interest Disclosure Act, Members' Conflict of Interest Act, Conflict of Interest Act</i> and the <i>Registration of Lobbyists Act</i> .	Partially implemented	<ul style="list-style-type: none"> <li>• The Ombudsman is presently responsible for administering or exercising some legislated role as per the <i>Ombudsman Act</i>, the <i>Public Interest Disclosure Act</i>, the <i>Civil Service Act</i> and the <i>Archives Act</i>. The Ombudsman has not been assigned with the mandate pursuant to the <i>Members' Conflict of Interest Act</i> or the <i>Conflict of Interest Act</i>. The Ombudsman's responsibilities</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		<p>pursuant to the <i>Registration of Lobbyists Act</i> await enactment of the legislation.</p> <ul style="list-style-type: none"> <li>• <u>Observation</u>: this recommendation requires further consultation and research with regards to its implementation or the development of alternative options.</li> </ul>
<p>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.</p>	<p>Pending</p>	<ul style="list-style-type: none"> <li>• Read in conjunction with Recommendation #14 (including the observation).</li> </ul>
<p>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.</p>	<p>Pending</p>	<ul style="list-style-type: none"> <li>• <u>Observation</u>: this recommendation is closely linked with Recommendations #12 and #13 and its implementation will largely depend on the outcome of the proposed consultation with the Clerk of the Legislative Assembly.</li> <li>• <u>Observation</u>: ideally, the Clerk should also benefit from the assistance of the legislative offices' senior management team who are familiar with the operations of their offices and the scope of their mandate.</li> </ul>
<p>19. That a single statute for the creation, mandating and resourcing of legislative officers be drafted and approved by the legislature.</p>	<p>Pending</p>	<ul style="list-style-type: none"> <li>• <u>Observation</u>: consideration should be given to adopting a legislation structure that is tailored to any new proposed structure of legislative offices that may result from this review. This statute should ideally provide legislative support for the specific mandates. This could also enable and facilitate the sharing of confidential information amongst the various units within individual legislative offices.</li> <li>• <u>Observation</u>: one statute for the creation, mandating and resourcing of each legislative oversight branch (i.e. each legislative office) may also facilitate the incorporation into</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		statute of the legislative officers' accountability framework and support any additional measures taken by the Legislative Assembly – namely by the PPLOC – to ensure continued performance management from the legislative officers and the units within their respective legislative offices.
<b>Effectiveness</b>		
<p>20. That provisions bearing on effectiveness be harmonized across the officer class, namely:</p> <ol style="list-style-type: none"> <li>i. recruitment and selection,</li> <li>ii. compensation under the Deputy Minister compensation and benefits plan,</li> <li>iii. removal from office,</li> <li>iv. immunity from prosecution and suit, and</li> <li>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.</li> </ol>	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: a jurisdictional scan would likely yield some useful information with regards to this recommendation.</li> <li>• <u>Observation</u>: should consideration be given to having the PPLOC take the lead on developing and implementing a PDQ-type structure where the compensation and benefits of legislative officers are directly linked to their responsibilities and the performance measurements? Could this potentially tie in well with the PPLOC's role with respect to ensuring legislative officers respect an established and consistent accountability framework?</li> </ul>
<p>21. That the Auditor General and the Chief Electoral Officer have non-renewable ten year terms of office with provision for a six month extension in exigent circumstances.</p>	Implemented (*)	<ul style="list-style-type: none"> <li>• (*) The relevant provisions provide for a twelve month extension in both cases (as opposed to a six month term as recommended initially).</li> </ul>
<p>22. That all officers have a non-renewable term of seven years with provision for a six month extension in exigent circumstances.</p>	Implemented (with modification)	<ul style="list-style-type: none"> <li>• Legislation provides for twelve month extension rather than six as recommended in the report.</li> </ul>
<p>23. That legislative officers adopt the practice of regular business meetings with the chair of the group being rotated on an annual basis.</p>	Partially implemented	<ul style="list-style-type: none"> <li>• <u>Observation</u>: confirming the status of this recommendation will require consultation with the legislative officers.</li> </ul>
<p>24. That the chair of the legislative officers' group meets periodically with the Clerk of the Executive Council for the purpose of identifying common issues and information needs.</p>	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: can this recommendation be deemed to be key to collaborative work with the executive branch? Could its implementation potentially lead to considerable cost avoidances (financial and other resources) by focusing on prevention and education</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		rather than remedial/corrective measures?
25. That there be an annual meeting of deputy ministers and legislative officers with an agenda dedicated to shared interests and issues.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: in addition to the observations with respect to Recommendation #24, this initiative could be considered part of a broader on-going transformational agenda focused on vision statements and high level initiatives with measurable outcomes.</li> </ul>
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.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: in addition to the observations above (Recommendation #24), it would appear that this initiative is key to ensuring that the Legislative Assembly's oversight agencies can effectively exercise their mandate and work collaboratively with the executive arm of government to improve the overall functioning of service/program delivery to citizens, compliance with policy, regulation, legislation as well as the principles of administrative law, the scope and purpose of advocacy, etc.</li> <li>• <u>Observation</u>: would there be an opportunity to integrate this component into the Government of New Brunswick's Formal Management System?</li> <li>• <u>Observation</u>: should consideration be given to providing access to this workshop online for Parts I through IV (notwithstanding the limited scope of some of the legislative officers' jurisdiction over the latter)?</li> </ul>
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.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: the work performed by the executive branch and the legislative branch should not be presented or perceived as mutually exclusive or on opposite ends of a continuum (i.e. the daily business of government). This initiative would likely be helpful to achieve this goal.</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		<ul style="list-style-type: none"> <li>• <u>Observation</u>: a broader cultural shift is likely required within both branches (executive and legislative) to ensure buying-in to this, namely by shifting from a “civil servant vs watchdog” approach to a converging point where all recognize themselves as public servants.</li> </ul>
<p>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.</p>	<p>Pending</p>	<ul style="list-style-type: none"> <li>• <u>Observation</u>: should the same be done with newly appointed senior government officials (deputy ministers, assistant deputy ministers and directors)?</li> <li>• <u>Observation</u>: should it also be incumbent on the Chair of the PPLOC or his/her designate to brief members of the Legislative Assembly (not restricted to Cabinet or Caucus) on the role, mandates and scope of jurisdiction of legislative officers?</li> </ul>
<b>Other recommendations</b>		
<p>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.</p>	<p>Pending full implementation</p>	<ul style="list-style-type: none"> <li>• Legislation provides that the totality of the Consumer Advocate for Insurance’s expenditures be recovered from industry.</li> <li>• <u>Observation</u>: considering that this legislative mandate is primarily one of advocacy, should the existing interim arrangement be formalized as such (regrouping with the Ombudsman) and implementing the required legislative amendments to the <i>Ombudsman Act</i> and the <i>Consumer Advocate for Insurance Act</i>, or should an alternative option be considered – such as merging this mandate with an “advocacy branch” ?</li> <li>• <u>Observation</u>: should consideration be given to outsourcing these advocacy services to a third-party?</li> <li>• <u>Observation</u>: given that this legislative office operates at no</li> </ul>

2011 Recommendation	Status	Additional information/Observations
		costs to the provincial purse and considering its unique mandate, should the status quo remain, pending a future review?
30. That the <i>Human Rights Act</i> be amended so that the Human Rights Commission has the sole and final authority to initiate a Board of Inquiry.	Implemented	<ul style="list-style-type: none"> <li>• <u>Observation</u>: is there a need to revisit the possibility of bringing the Human Rights Commission over to the legislative branch as a legislative officer or, in the alternative, as part of a specialized legislative office under the leadership of an existing legislative officer?</li> <li>• <u>Observation</u>: discussion with the Human Rights Commission is required.</li> </ul>
31. That the Labour union-affiliation of Human Rights Commission Investigators be terminated.	Implemented	<ul style="list-style-type: none"> <li>• <u>Observation</u>: refer to observation related to Recommendation #30.</li> </ul>
32. That as a consequence of recommendations 30 and 31, the Human Rights Commission should remain under the purview of the executive branch.	Status quo	<ul style="list-style-type: none"> <li>• <u>Observation</u>: refer to observation related to Recommendation #30.</li> </ul>
33. That Section 10 of the <i>Archives Act</i> be amended so that in every instance where the term “Ombudsman” now appears, the term “Access to Information and Privacy Commissioner” be substituted therefor.	Pending	<ul style="list-style-type: none"> <li>• <u>Observation</u>: considering that this mandate falls within an adjudication process, is there a need to revisit this recommendation and suggest that steps be taken to ensure it can be implemented so as to ensure it is exercised effectively and efficiently?</li> </ul>

### 3. Incorporating the pending 2011 report recommendations in the 2015 review

The 2011 report contains 33 recommendations bearing primarily on matters related to the independence of legislative officers, their efficiency, their effectiveness and their accountability. Five additional recommendations were submitted, two of which suggested the redistribution of specific mandates (Recommendations #29 and #33) and the three remaining addressing issues with respect to the independence and autonomy of the New Brunswick Human Rights Commissions (Recommendations #30, #31 and #32).

Presently, of the 33 recommendations submitted in 2011

- 9 have been implemented
- 5 have been partially implemented
- 1 has not been implemented (due to the implementation of two others which offered alternate options)
- 18 remain pending

While it is not within our explicit mandate to elucidate the reasons why more than half of the 2011 report recommendations have yet to be formally implemented<sup>22</sup>, the fact that the 18 pending recommendations primarily have bearing on the legislative officers' accountability, efficiency and effectiveness is possibly revealing of a reluctance to address issues that could be perceived as government's attempt to erode or weaken the structural and operational independence of legislative officers. Given that most of the nine recommendations implemented following the 2011 Report bear impact on the legislative officers' independence – most in a positive way – is further evidence of this.

The pending implementation of the 18 remaining recommendations from the 2011 report are nonetheless highly relevant today as they continue to speak to on-going concerns and outstanding issues that should ideally be resolved in order to allow the oversight branch of the Legislative Assembly to operate efficiently, effectively and with greater clarity. Moreover, uncertainty with respect to the potential substantive impact of some of the pending recommendations clearly does not serve to support the independence of legislative officers. In short, decisions must be made.

As we prepared discussion topics for the purposes of our exchanges with legislative officers, their staff as well as other stakeholders – namely the members of the PPLOC and the Clerk of the Legislative Assembly – the following outstanding issues that stem mostly from the pending 2011 recommendations<sup>23</sup> and that would likely be addressed by way of recommendations or suggestions for consideration as a result of the 2015 review process were drafted with the relevant 2011 report recommendation included when applicable:

- **No new legislative officers** – Whether the proliferation of new and “specialized” legislative officers should be halted permanently and that the creation (not solely the selection) of new legislative officers follow a legislative and more thorough process that rationalizes its creation [Recommendation #1];

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<sup>22</sup>It should be noted that with respect to some of the pending recommendations, some work has been initiated since the tabling of the 2011 report to discuss their implementation further. However, to the best of our knowledge and based on the information we were able to gather, there have been no formal steps taken by government to implement them on a permanent basis.

<sup>23</sup>In a few cases, observations are made with respect to some of the recommendations that have already been implemented due to the potential future structural or operational relationship they may have with those that remain pending.

- **New structure of legislative oversight specialized branches** – Whether the legislative assembly’s oversight functions could shift to a structure where several substantively similar mandates are grouped under the leadership of one legislative officer in the form of autonomous units that are managed by subject-matter experts, each manager reporting directly to the legislative officer;
- **Selection and nomination process** – Whether, in the spirit of fostering a more productive and sustainable relationship between legislative officers and the Legislative Assembly, the PPLOC should play a more active role in the selection and appointment process of new legislative officers so as to solidify the Legislative Assembly’s ownership over the nomination process [Recommendation #4];
- **Financially-sound checklist for budget submissions** – Whether steps should be taken to ensure that while the legislative officers follow a budget submission process that is not curtailed by the executive branch and thereby protecting their independence, there are safeguards implemented to ensure that the legislative arm of government, as a whole, respects and participates in reaching provincial financial objectives and that the budget submission process does not impede on collaborative efforts by all branches of government to achieve sound fiscally-driven objectives [Recommendation #5];
- **Budget development and funding formula** – Whether the PPLOC should lead the initiative of developing and implementing a budget development process, reviewing the funding mechanism of legislative officers and developing a funding formula in collaboration with the legislative officers [Recommendation #5];
- **Administrative consistency** – Whether the PPLOC should lead an initiative to develop and implement an administration manual applicable to the legislative branch in its entirety (including the legislative officers);
- **Budget development framework** – Whether a more robust and consistent collaborative process regarding the preparation of budget estimates be considered rather than one where the Legislative Administration Committee (LAC) is “mindful” of the executive branch’s guidelines [Recommendation #6];
- **Annual convocation of legislative officers** – Whether this initiative should be a key component of any proposed accountability mechanism. In addition, whether set performance measures should be developed in collaboration between the Legislative Assembly (through the PPLOC) and its legislative officers for increased consistency and relevance as part of their annual reporting [Recommendation #7];
- **Annual reporting of legislative officers** – Whether, as part of their annual convocation, a different reporting model should be implemented for legislative officers, one that would be presented as a stand-alone activities report or a business update;
- **Assessing the adequacy of their resources** – Whether minimal thresholds should be selected to provide an assessment of the adequacy of the legislative officers’ resources

(legislation, financial, etc.) and using *substance* as a reference for comparison between their offices in relation to their counterparts in other Canadian jurisdictions;

- **Performance measures** – Whether performance measures should be developed and implemented under the leadership and guidance of the Legislative Assembly (through the PPLOC), using the executive arm’s performance measurements as a model with the appropriate nuances implemented and the measures tailored to capture accurately the relevance of the legislative arm’s business – namely how the value of outcomes are measured [Recommendation #9];
- **Complaints process against legislative officers (approving authority)** – Whether the PPLOC (rather than LAC) should be the approving authority in the selection by the Speaker of the Legislative Assembly of a qualified independent party to participate in the review or audit another legislative officer [Recommendation #10];
- **Complaints process against legislative officers (consistency)** – To avoid inefficiencies, delays and potentially costly expenditures, whether to consider developing a formal review and audit process that includes set components that may trigger, upon the appreciation of the Speaker of the Legislative Assembly and the PPLOC, a review and/or audit by or in partnership with a third party where deemed necessary [Recommendation #10];
- **Complaints process against legislative officers (expediency)** – Whether, for practical and financial reasons, a simpler yet formal written complaint-handling process should be considered, allowing the Speaker and the Clerk of the Legislative Assembly to process and proceed with a preliminary investigation into the merit of the complaint before recommending further action when deemed necessary [Recommendation #11]; and whether the PPLOC should be given some leadership in this process;
- **Clerk as accounting officer** – In discussion with the Clerk of the Legislative Assembly, whether he should be designated as the accounting officer for the Legislative Assembly – including for the legislative officers – or if, due to issues with respect to feasibility, an alternate proposal should be drafted with respect to this recommendation [Recommendation #12];
- **Clerk as manager and administrator of legislative officers** – In discussion with the Clerk of the Legislative Assembly, whether he should be designated as manager and administrator of the Legislative Assembly – including for the legislative officers – or if, due to issues with respect to feasibility, an alternate proposal should be drafted with respect to this recommendation [Recommendation #13];
- **Co-location of legislative officers** – Whether consultation with the Department of Transportation and Infrastructure is required to assess potential savings and cost avoidances related to co-location of legislative officers. Consideration should be given to potential initial investments required to implement this recommendation [Recommendations #14 and #17];

- **Co-location of legislative officers** – Whether, in collaboration with the PPLOC and the Clerk of the Legislative Assembly, the legislative officers should be tasked with developing a feasible, efficient and sustainable plan to implement this recommendation [Recommendation #14];
- **Centralization/sharing of administrative and specialized services** – Whether legislative officers and members of their staff should be consulted to assess the potential efficiencies resulting from the centralization and/or sharing of administrative and specialized services between legislative officers and legislative offices [Recommendation #15];
- **Mandates assigned to the Ombudsman** – Whether the 2011 report recommendation related to the assignment of new legislative mandates should be reviewed in light of the results of this report [Recommendation #16];
- **Maximizing the assignment of mandates** – Whether the Clerk of the Legislative Assembly should develop an on-going consultation process with legislative officers in monitoring the relevance of their mandates, namely by benefiting from assistance from the legislative officers’ senior management team who are familiar with the operations of their offices and the scope of their mandate [Recommendation #18];
- **Single statute** – Whether it should be considered to adopt a legislation structure that is tailored to any proposed structure of legislative offices that may result from this review. This statute should ideally provide legislative support for the specific mandate and enable as well as facilitate the sharing of information amongst the various units within individual legislative offices or between them [Recommendation #19];
- **Single statute (accountability)** – Whether one statute for the creation, mandating and resourcing of each legislative oversight branch (i.e. each legislative officers) could facilitate the incorporation into legislation of the legislative officers’ accountability framework and support any additional measures taken by the Legislative Assembly (through the PPLOC or another committee) to ensure continued performance management of the legislative officers and their offices [Recommendation #19];
- **Privileges, benefits and compensation of legislative officers** – Whether to consider giving the PPLOC the lead on developing and implementing a PDQ-type structure for legislative officers where their compensation, benefits and privileges are directly linked to their legislated responsibilities and their performance measurements to ensure consistency with the PPLOC’s role in overseeing that legislative officers respect an established and consistent accountability framework [Recommendation #20];
- **Regular business meetings** – Whether consultation with legislative officers with respect to formalizing their regular business meetings (including minutes) is required [Recommendation #23];

- **Relations with the executive arm** – Whether the PPLOC, with the assistance of the Clerk of the Legislative Assembly, take the lead on developing and implementing a plan to increase dialogue and education opportunities between legislative officers and the executive branch of government [Recommendations #24, #25 and #26];
- **Relations with executive arm (best practices)** – Whether more rigorous relations between the legislative officers and the executive arm of government could provide opportunities to integrate some of the formal management and process improvement best practices from the executive branch to the legislative branch [Recommendations #26 and #27];
- **Briefing material (new appointments)** – Whether briefing material for new appointees within the legislative arm’s oversight agencies also including a briefing process for newly appointed deputy ministers, assistant deputy ministers and executive directors within the executive arm of government [Recommendation #28];
- **Briefing material (Members)** – Whether it should be incumbent upon the Chair of the PPLOC or his designate to brief all Members of the Legislative Assembly on the role, mandates and scope of jurisdiction of legislative officers;
- **Consumer Advocate for Insurance (merge)** – Given that the Consumer Advocate for Insurance’s legislative mandate is primarily one of advocacy, whether it should be considered to formalize the existing interim arrangement by amending the *Ombudsman Act* or whether an alternate option should be considered – such as merger within an “advocacy branch” of the Legislative Assembly [Recommendation #29];
- **Consumer Advocate for Insurance (outsourcing)** – Whether consideration should be given to have the services provided by the Consumer Advocate for Insurance outsourced to a non-governmental third-party;
- **Consumer Advocate for Insurance (status quo)** – Considering that this legislative office’s expenditures are fully recovered from industry and given its unique mandate, should the status quo remain, pending a future review;
- **Human Rights Commission** – Whether there is an opportunity within the context of this review to reconsider bringing the Human Rights Commission under the auspices of one of the legislative oversight branches [Recommendations #30, #31 and #32];
- **Archives Act mandate** – Given that the mandate pursuant to the *Archives Act* is essentially adjudicative, whether there is a need to revisit the recommendation to transfer it to the Access to Information and Privacy Commissioner and suggest steps be taken to ensure it can be implemented so as to ensure it is exercised effectively and efficiently [Recommendation #33].

## **Part 4 – Consultation Outcomes, Research Results and Discussion**

As mentioned earlier in this report (Part 1, Section 2 – the 2015 review in the context of Strategic Program Review), most of our work centered around a consultative, collaborative and inclusive process that involved key stakeholders, namely the legislative officers themselves and members of their staff. In addition, other partners whose contribution was deemed essential to the implementation of strategic changes to the governance, structure and service-delivery models of the agents of the Legislature were also consulted and actively contributed in providing guidance, suggestions, ideas and initiative proposals that were relevant to the objectives outlined in the Terms of Reference.

In addition, jurisdictional scans throughout Canadian provincial and territorial jurisdictions also offered interesting options with respect to some of the themes outlined below. As well, there is relevant literature – albeit limited for the purpose of this exercise – from which we have gathered potential novel and innovative ideas to improve the business of legislative oversight in New Brunswick.

Stated otherwise, this chapter of our reports contains:

1. Opinions and suggestions provided through an inclusive consultation process;
2. Options gathered through research (jurisdictional scan and literature) and observations;
3. Options developed from (1) and (2) for further consideration by government.

It is also important to note that the observations, positions and suggestions raised in the context of the 2011 review process remain highly relevant in most respects. Therefore, the options and suggestions that follow should be read as additions to those outlined in the 2011 report.

For greater clarity and, where relevant, easier linkage to points of discussion or recommendations issued in the next section of this report, the information gathered through the consultation outcomes and our research is presented under a variety of themes that draw from or are relevant to the Terms of Reference of the 2015 review process.

### **1. Independence**

#### *Of perception and effectiveness of independence*

Regardless of the organizational chart of the legislative officers of New Brunswick or of the allocation of statutory responsibilities, there is a fundamental and crucial need to highlight and promote the independence of legislative agents. The notion of independence in this context must extend to two fundamental areas: the public's perception of the independence of legislative officers and the effectiveness of this independence when legislative officers manage their respective mandates and when it comes to their relationship with the other two branches of government, the executive branch and the judicial branch.

In this regard, special consideration must be given to the role of the Legislative Assembly as a body speaking with one voice, albeit with different opinions, that ensures the smooth operation

of legislative offices. While it might not be realistic to consider having all elected provincial representatives look into the issues raised by legislative officers, or carry out an assessment of their performance or human resource or financial needs, or ensure smooth communication between the two institutions, it is reasonable to expect a legislative committee to be able to take on such responsibilities. Otherwise, the notion of accountability from legislative officers will remain just that, a notion, or even an abstract concept, that will often be ineptly or inconsistently interpreted.

### *Realigning mandates and bearing on independence*

Before transferring a mandate from the executive arm of government to a legislative officer, special consideration must be given to such an initiative's bearing on the independence of this specific legislative officer, particularly in relation to other mandates he or she is responsible for and how these newly transferred responsibilities could impede on their operational or perceived neutrality, impartiality or credibility<sup>24</sup>.

### *Selecting the right physical environment*

Legislative officers often conduct highly confidential investigations which include dealing with sensitive information. Some legislative mandates require legislative officers to conduct mandatory interviews with clients who are obligated to appear before them and disclose a plethora of personal information that are required to be disclosed by law. Such activities should not be deemed as appropriate to conduct within the context of an "open door" environment. In an effort to avoid infrastructure-related costs (by renting separate offices to conduct these activities for example), some of these activities could be conducted in an appropriate location within the Legislative Assembly building to ensure discretion. The infrastructure-related costs could be absorbed from within the existing budget of the Legislative Assembly thereby generating future cost avoidances.

### *Status of legislative officers and compliance*

It has also been pointed out that independence and the status of legislative officers insofar as they account directly to the Legislative Assembly can act as an incentive to comply with legislation and cooperate in achieving the objectives set down by the Legislator. While this is clearly applicable to legislative officers that deal primarily with provincial bodies such as departments or agencies, the same has been said for the Consumer Advocate for Insurance in its relationship with partners from the insurance industry. The prospect of transferring the Consumer Advocate for Insurance's responsibilities to the executive branch or to another non-governmental body could possibly have an unintended impact on the office's credibility and authority of persuasion with regards to the advocacy services it provides.

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<sup>24</sup>This concern was namely raised in regards to the implementation of the 2011 report recommendation #16, more specifically with respect to transferring responsibilities pursuant to the *Conflict of Interest Act* to the Ombudsman given the working relationship the latter has with deputy heads and how this could, in some cases, give way to a possible conflict of interest. In turn, this could force the Ombudsman to outsource some of inquiries conducted under the *Conflict of Interest Act* to independent third parties which, in turn, would generate additional pressures on the office's budget.

## 2. Accountability and Oversight

### *Accountability serves independence*

It is generally agreed that accountability must not be perceived as a threat to independence and that, inversely, independence does not exclude accountability. Furthermore, increased transparency – which has close ties with accountability – may serve operational and perceived independence well.

### *Getting performance assessment right*

The business in which legislative officers are involved in is not necessarily compatible with the same notion of accountability to which the executive branch is subjected to. While most provincial departments and public agencies share the obligation of publishing an annual report on the activities of their agency, they also enjoy a series of legislated or policy-driven checks and balances as well as overarching performance management blueprints that ensure consistent tracking of their performance and the value of the outcomes of their operations. With the exception of the tabling of their annual report, legislative officers on the other hand operate mainly in silos and answer essentially to one body – the Legislative Assembly – and in an inconsistent and sporadic manner. This is not due to a lack of willingness of legislative officers to account for their activities; it can rather be explained by the lack of mechanisms allowing them to do so. An accountability checklist therefore needs to be established and should ideally result from a dialogue and concerted efforts between the legislative officers and the Standing Committee responsible for the legislative officers, the PPLOC.

### *Legislation review*

Consideration should be given to include provisions in the enabling legislation of legislative officers to allow the Act to be reviewed from time to time. This would allow regular review of the relevance and clarity of the role and functions of legislative officers and, when deemed necessary, also act on the changing needs and corresponding expectations (e.g. greater accountability, increased oversight or transparency) of the public and members of the Legislative Assembly.<sup>25</sup>

### *Annual stand-alone performance reports*

Annual reports may speak in general or specific terms about self-assessed performance results but they often lack objective and relevant measures. It has been suggested that building into legislation the mandatory requirement to submit an annual “business plan” or an “activities report” to the Legislative Assembly – through the PPLOC or the Clerk – in addition to each legislative officers’ annual report may serve as an additional measure to increase accountability but to serve in identifying objective criteria from which to rate efficiency and effectiveness and take corrective steps when required.

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<sup>25</sup>See namely Donald M. Hamilton, “The Role of Legislative Officers in Alberta”, *Canadian Parliamentary Review*, vol. 30, no. 1, spring 2007.

In terms of accountability framework, section 15.1 of the *Auditor General Act* offers an interesting performance report and business plan model that could be adapted and tailored to other legislative officers as well. Furthermore, such a model offers advantages for the PPLOC members and their oversight responsibilities as it may serve to guide their work and the discussion.

Other jurisdictions offer similar models whereby legislative officers are requested by legislation to submit an annual business or activities report as a stand-alone document in addition to their respective annual report. An alternate option may lie in the model used in Newfoundland and Labrador<sup>26</sup> and amend the province's *Accountability and Continuous Improvement Act* to include legislative officers while ensuring that the reporting structure is amended accordingly (i.e. reporting back to the PPLOC and not to the Executive Council).

#### *Working closely and frequently with the Legislative Assembly*

Legislative officers are unanimous in their willingness and desire to work more closely with the Legislative Assembly, through the PPLOC and LAC, in an effort to foster a productive and constructive dialogue which includes their ability to report on the activities of their respective office and be held accountable with respect to their individual performance. However, for this to happen, it is suggested that a respectful forum of exchanges and dialogue be permanently established with the PPLOC. In addition, the legislative officers suggest that consideration should be given to implementing, when deemed appropriate by all parties and due to the nature of the issues discussed and to avoid having partisanship act counterproductively, the privacy protocol that governs selected *in camera* meetings of LAC.

There is unanimous consent as well with respect to an annual reporting mechanism, one that would provide sufficient time for legislative officers to elaborate on the activities of their office, raise challenges, propose solutions and receive guidance from the PPLOC on how they can work at improving the overall exercise of their mandate – including efficiency, effectiveness and accountability.

The PPLOC is seen as the authority with which legislative officers should engage to review the relevance and clarity of their role and functions and how they can be improved in order to better align themselves with the will as expressed by the Legislative Assembly. It has been underscored that legislative officers exist at the behest of the provincial Legislature, they are creatures of the Legislative Assembly and, as such, they must have an opportunity to appear before the Legislature to raise issues that are of concern not only to them as agents of Parliaments but to the citizens of New Brunswick.

There is also a need to clarify the relation and the respective responsibilities of both the PPLOC and LAC, especially where budget considerations are concerned and where they should be discussed. From all of the information we have gathered over the course of the past weeks, we conclude that a forum of exchanges on creative initiatives needs to be implemented to address the legislative officers' budgetary concerns and the government's willingness to tackle its fiscal challenges. We further concluded that collaboration in establishing clear goals and implementing

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<sup>26</sup>*Transparency and Accountability Act*, SNL 2004, c T-8.1.

strategic steps to achieve them is paramount to fostering collaboration amongst the legislative officers and government as well as developing and implementing concrete measurements to hold the agents of the Legislature accountable without eroding on their independence.

#### *Forum of discussion and exchange on expenditure reduction initiatives*

For legislative officers to be accountable, we believe they require an opportunity to discuss all aspects of their work in an environment that is conducive to a respectful and productive dialogue. A forum is also required for legislative officers to discuss and propose strategic expenditure reduction initiatives that could yield substantial and sustainable savings to government's consolidated fund and the budget of the Legislative Assembly. It has been suggested that the PPLOC or LAC could hold such a forum dedicated to cost savings and cost avoidances rather than submitting these suggestions directly to the Executive Council Office.

### **3. Efficiency**

#### *Optimize administrative services*

Opportunities to optimize administrative support services need to be explored and measures implemented to reduce duplication, particularly in the context of co-location, in situations where offices and/or mandates are regrouped and where administrative support staff can be shared with other legislative offices to take on additional responsibilities or to avail themselves of professional development opportunities without compromising fair and just working conditions.

#### *Tracking and assessing efficiencies*

With the exception of a few legislative officers, the efficiency-tracking tools used by legislative offices are not formally designed and implemented so as to provide the overall productivity of the legislative arm of government and, in some cases, an accurate picture of each legislative officer's business. Legislative officers have suggested that standard performance measures should be developed and implemented to improve accountability but, as importantly, increase efficiencies within their own offices by understanding the issues that need to be addressed with respect to efficiency.

#### *Centralization and sharing of services*

There is a need to review how oversight offices with similar mandates could work more collaboratively together – namely by sharing expertise and information – to increase output capacity and outcome quality, all the while reducing the pressure on capacity and allowing optimal use of internal resources.

Greater efficiencies could also be realized through the centralization of some administrative and corporate services presently offered by the Legislative Assembly – primarily under the Clerk of the Legislative Assembly's office. Some legislative officers already avail themselves of the services provided by the Clerk's office with respect to human resources, financial support and information technology support. There could be efficiencies gained for all legislative officers if

more administrative and corporate services were offered by the Legislative Assembly and some initial investments could be required.

It has been suggested further that the Legislative Assembly's human resources services should provide more support and screening when filling positions within legislative offices to alleviate part of the administrative work involved in the recruitment process.

While it is anticipated that greater efficiencies could be gained by having additional administrative and corporate services provided by the Clerk of the Legislative Assembly's office to all legislative officers, efforts should be made to modernize some of these services – namely by reducing the paper-based administrative services – and take on the responsibilities that are corporate in essence, thereby allowing legislative offices to redirect their resources to their legislative responsibilities pursuant to their mandate.

#### *Shared communications services*

Communications services should ideally be provided by a single in-house source from the Legislative Assembly's corporate services to increase the legislative officers' visibility. Communications include public releases of reports and publications as well as website management and other promotional tools that are of a general nature (such as distribution of information on the legislative officers and their respective mandate and responsibilities).

#### *Shared translation services*

Translation services have also been flagged as an essential yet financially onerous service to most legislative offices. Over the course of the 2014-2015 fiscal year, a total of \$146,700.69 was spent from legislative officers' budgets to cover the cost of translation of reports and publications. It has been suggested that translation services should be offered under the leadership of the Legislative Assembly's corporate services and could be shared with Hansard services. The investments required to offer these services centrally (i.e. through the Legislative Assembly) would be offset by two main medium and long-term financial considerations: the first in the cost reductions to legislative offices and secondly, the value of having a pool of translators who would acquire the expertise with respect to the legislative arm's mandate and the terminological nuances that are to be applied.

#### *Sharing expertise*

It has also been suggested that in addition to implementing a formal framework allowing all legislative officers to work collegially or collaboratively on projects of shared interest, the legislative officers should also have the opportunity to share resources from time to time, namely for special assignments requiring an expertise that extends beyond one legislative officer's but falls within another's (e.g. legal expertise, auditing functions, etc.). Lowering the "silos" explicitly or implicitly present in the legislative officers' enabling legislative framework would facilitate temporary exchanges or secondment of internal capacities from each office when required and could result in greater cost-control efficiencies by reducing the need to outsource the work to third-parties. In addition, such initiatives could have a positive and cost-efficient

impact on professional development for staff members who wish to increase their knowledge, experience and exposure to the inner workings of the broader aspect of the Legislature's oversight agencies mandates. Legislative officers could be responsible to establish amongst themselves a charge-back formula that is reasonable and sustainable in keeping with their respective budgets.

### *Co-location*

The 2011 report contains recommendations with respect to co-location of legislative officers and their respective offices. Under the leadership of the Clerk of the Legislative Assembly, it was recommended that steps be taken as early as possible to initiative work on this recommendation. While we understand some discussions have occurred since the 2011 report, no concrete measures have been taken to follow up on this project. Our research and our consultations have revealed however that the 2011 report recommendations pertaining to co-location are as relevant today as they were when Bernard Richard led his review. In addition, there is an openness to review potential opportunities with respect to co-location.

According to the stakeholders consulted, there are pros and cons to co-location. Some of the obvious advantages include cost savings to certain offices, sharing of front line services (such as reception) and administrative support services as well as facilitating collaboration amongst offices and sharing of specialized services (such as legal expertise, information technology services and communication services for example). While the advantages represent potential savings for each legislative officer, they also offer opportunities to increase effectiveness and efficiency of each office.

For others, the disadvantages of co-location outweigh the value of any advantage and cannot be contemplated as part of an expenditure reduction process for legislative officers. While certain legislative officers argue that the nature and operational requirements linked to the statutory responsibilities do not allow for their office to be collocated for logistical purposes, others invoke their operational independence as the primary factor in restricting their ability to be collocated with other agents of the Legislature they could ultimately (and upon legitimately conferred authority) be called to investigate or audit.

Ultimately, this fiscal year alone, infrastructure and maintenance costs directly related to the operations of New Brunswick's legislative officers are estimated to amount to \$528,246.00<sup>27</sup>.

In our opinion, it is not within our mandate to weigh the value and legitimacy of the advantages and disadvantages made for or against the case of co-location of legislative officers. However, we are of the opinion that the infrastructure and maintenance-related annual costs of legislative offices are unsustainable at the present time and cannot go unaddressed and solutions need to be found in order to realize savings which could potentially be reinvested into the budget of these offices to increase capacity and productivity. We would further argue that the present infrastructure and maintenance spending lacks strategic vision with respect to the expenditures of public funds.

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<sup>27</sup>\$493,544.00 when the amount related to the operations of the Consumer Advocate for Insurance are recovered.

#### **4. Effectiveness**

##### *Educating government*

In an effort to increase compliance within the executive arm of government with legislative, regulatory or policy over which legislative officers have oversight, some legislative officers and their staff believe that there is a need to invest time and resources in educating civil servants on the scope of their enabling legislation by, amongst other initiatives, using the exercise of their mandate as an opportunity to raise awareness and implement helpful resources through their investigation work.

A more collaborative relationship between both the executive and legislative branches of government can lead to an increase in understanding and compliance with the legislation provisions over which legislative officers have oversight. On the medium and long term, this may translate in less need for legislative oversight and improved services to New Brunswickers.

##### *Empowering the executive arm of government*

A more robust and established relationship between legislative officers and senior management from the executive arm of government should ideally lead to greater leadership by the latter, especially at the departmental level, to assist legislative officers in promoting their mandate and educating civil servants on its scope as well as the relevant legislated obligations over which they have oversight. It has been shared that in some instances, executive branch staff rely too heavily on staff from the legislative office for internal promotion of the legislative responsibilities which fall on departmental staff (as opposed to their mandate). The executive branch needs to take leadership and ownership of its legislated responsibilities or the principles of fairness rather than relying on legislative officers to implement them within their respective provincial public agency. In short, governmental departments and agencies should adopt the goal of working towards full compliance with the statutes rather than relying on independent oversight agents to compel them (using various initiatives) to do so.

As many mandates are exercised in collaboration with provincial public agencies directly over which legislative officers have jurisdiction, there is a need to establish respectful working relationships between the two parties. Again, for greater effectiveness in the output of issues resolved, education is key.

This is of notable importance in areas where the provincial legislative framework implies that there is a “shared mandate” between the executive arm and the legislative branch of government to reach the objectives outlined in the Act. This would namely appear to be the case where the *Official Languages Act* is concerned. A collaborative approach is also implicit to reaching the intended targets set out in provincial privacy legislation as well as those objectives outlined the *Public Interest Disclosure Act*.

However, it has been raised by several stakeholders that with regards to some legislated responsibilities and functions, the line separating each branches’ core mandate may be uncertain due to a lack of clarity in the Act itself, in the policies developed pursuant to the provisions of the

Act or in the practices, processes and initiatives implemented to ensure compliance with those provisions. In addition, for some legislative officers, the role of “compliance officer” is sometimes difficult to reconcile with that of a “promoter” and “educator” of the values, rights and obligations outlined in their enabling legislation. Stated differently, while the role to oversee compliance with the provisions of an Act that outlines duties and obligations typically falls within the mandate of a legislative officer, should promotional and educational initiatives *to meet and comply* with those duties and obligations not be incumbent upon the executive branch of government?

The preceding questions also raise an issue that is relevant to the funding of legislative officers that “share” a role with the executive arm of government in meeting the objectives outlined in legislation. Where legislative officers are tasked by legislation to assume both a compliance role as well as one involving educational and promotional responsibilities, consideration may need to be given to reviewing the funding framework associated with those legislated responsibilities to ensure that the operational budget is appropriate to exercise all related duties and, as result, meet the objectives outlined in legislation.

#### *Providing in-house expertise to the executive branch*

A more robust collaboration between the executive and legislative arms of government could also allow for cost savings initiatives by tapping into the in house expertise that legislative officers could possibly provide to provincial departments and agencies. If savings resulting from this review were to be strategically reinvested into legislative offices providing specialized services, these legislative bodies could in turn provide officials from the executive branch with guidance and suggestions on how to comply with legislated responsibilities or assist them with services occasionally outsourced to private third parties – such as facilitation or mediation services.

#### *Strengthening capacity*

Most of the legislative officers and their staff have raised the *constant* challenge with respect to capacity as a major obstacle to their effectiveness. This creates instability with regards to setting medium and long term work priorities as the assignments have to be re-prioritized on – in many cases – a weekly basis. Arguably, this serves no one well. Despite limited financial and human resources, legislative offices are highly productive and generate substantial output considering the number of responsibilities they have. In addition, they are able to achieve short-term goals with fair success but medium and longer-term objectives may fall victim to recurring priority shifts in the day-to-day work.

#### *Regional representation*

While most legislative officers have their office in Fredericton – the Consumer Advocate for Insurance being the only exception with his office located in Bathurst – some provide regional representation or have satellite offices to accommodate clients and staff or to facilitate the exercise of their mandate, namely in the interactions required with officials from the executive branch of government. Both the Ombudsman and the Child and Youth Advocate share a satellite office in Dieppe. Apart from modest infrastructure costs that are shared between both offices, there are no additional fees incurred by the presence of these regional offices. In addition, this

practice has proven to generate cost avoidances as business-related traveling is reduced and staff communications are handled by audio and video conferencing. In addition, all reception and intake duties are centralized in Fredericton and, in the case of the Ombudsman and Child and Youth Advocate, they are also shared and collocated.

#### *Strategic combination of mandates*

Any regrouping or merging options should be mindful of the subject-matter expertise of legislative offices and their operational approaches to their work. It has been suggested for example that regrouping the Child and Youth Advocate office with the Ombudsman office would not be an effective initiative nor would it lead to greater efficiencies as their mandates are substantially and operationally different, where one has an advocacy role while the other must approach matters with neutrality and impartiality. Additionally, combining mandates that are essentially geared towards promoting, providing education and ensuring compliance of constitutional and quasi-constitutional rights would not fit well within an adjudication legislative branch – although it could function within an advocacy-type environment.

Any redistribution of mandates should also follow the same approach described above. As an example, it has been suggested that the Seniors mandate would fit better under an advocacy branch than an adjudicative one, particularly in light of how the Seniors who benefit from the services of the legislative oversight branch are also a potentially vulnerable segment of our population, much like children and youth are.

#### *Consumer Advocate for Insurance*

During the course of this review, responsibilities pursuant to the *Consumer Advocate for Insurance Act* were transferred on an interim basis to the provincial Ombudsman following the retirement on January 1, 2016 of the former Consumer Advocate for Insurance. Section 4 of the Act provides that this interim situation may be in place for a term of up to one year (12 months). To the best of our knowledge, no formal initiative has been taken at this point to fill the position of Consumer Advocate for Insurance on a permanent basis.

It should be noted that recommendation #29 of the 2011 report specifically recommended that the mandate of the Consumer Advocate for Insurance be transferred to the Ombudsman on a permanent basis. While government's latest decision implies that steps may be taken to implement this 2011 recommendation, it may consider, in light of the overall recommendations and suggestions for consideration we are proposing as part of this review, holding off on a permanent transfer pending the implementation of broader initiatives that will likely result in an increased working relationship between the legislative officers and the PPLOC. This relationship may, amongst other advantages, allow for regular discussions on the development of a long-term and sustainable distribution of legislative mandates that may include the redistribution of current responsibilities amongst different legislative officers. Therefore, in the spirit of the exercise, consideration should be given to allowing the interested parties to work and develop such a plan before a formal decision is made with respect to immediately transferring responsibilities pursuant to the *Consumer Advocate for Insurance Act* to a specific legislative officer on a permanent basis.

In addition, other options with regards to consumer advocacy for insurance services may eventually be considered as part of potential medium or longer-term options with respect to the Consumer Advocate of Insurance's mandate. For example, the option of having the services provided by this legislative office moved out of the legislative branch and rolled in with the services provided by the New Brunswick Financial and Consumer Services Commission has been raised as a potential alternative to service delivery. Another option could see these advocacy services taken on by a not-for-profit third party that offers advocacy services to citizens of other Canadian jurisdictions, such as the General Insurance Ombudservice – an independent organization “with the sole purpose of helping Canadian consumers resolve disputes or concerns with their home, auto or business insurers”<sup>28</sup>.

## **5. Support**

### *Supporting expenditure reduction proposals*

All legislative officers invest substantial efforts in tweaking their operational processes on a regular basis to adjust to financial pressures and increase their efficiency. While some cooperate on specific cost-saving initiatives (such as sharing the cost associated with the development and implementation of case management system), the opportunity to discuss the value and cost-efficiency of joint projects should be discussed, elaborated and supported by the Legislative Assembly.

### *Tenure-related issues*

Legislative officers have also raised the importance of having a body with which they may raise their own individual human resources and tenure-related issues. Some of the issues that could be raised should not fall solely on the Clerk of the Legislative Assembly for consideration and follow-up. The present structure of the Legislative Assembly's committees suggests that the PPLOC would be the body to which these matters should be deferred. Furthermore, consideration should be given to holding any meetings to discuss matters of this nature *in camera*.

## **6. Funding**

### *Impact of funding*

There is an overall agreement amongst legislative officers and their staff that without any additional resources or under the existing structure, broadening the scope of existing mandates is not realistic and could compromise the ability to exercise mandates effectively and efficiently.

The existing structure and operations of legislative offices puts the notion of compromised efficiency and that of under-funded operations in an intimate relationship of causal link. Most of the legislative officers consider themselves to be considerably – some chronically – under-funded.

What appears to be the actual case is that, in fact, legislative officers are under-funded *in the context of the present organizational structures and operational practices*. Some legislative

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<sup>28</sup>Refer to the organization's website at [www.giocanada.org](http://www.giocanada.org).

officers have suggested that the operations within their offices are unsustainable under the present funding structure and it could force them into eliminating positions from a pool of staff that is already stretched to capacity.

This situation is not unique to New Brunswick nor is it a new phenomenon. Other Canadian provincial jurisdictions have struggled with the same situation. In addition, countries that share the Westminster model have also had to contend with similar issues. Some legislative officers have made a clear case of how an under-funded agent of parliament could actually worsen problems for which they were created to address. Sir Brian Elwood, then New Zealand's Chief Ombudsman, stated in his *Report on Leaving Office* in 2003:

An effective Ombudsman's office requires adequate funding in order to fulfill its extensive mandate. In its primary role it allows citizens who consider they have been treated unfairly by the government, its various agencies or by local government, to complain to an Ombudsman who is empowered to conduct an independent investigation and where justified, to recommend a means by which the matter complained about can be remedied. An under-sourced office is unable to carry out such a mandate effectively. It risks becoming part of the problem – namely an unsatisfactory interaction between a citizen and the agencies of government – rather than a means by which that relationship can be improved and injustice avoided when disputes or misunderstandings arise.<sup>29</sup>

#### *Distribution of funds*

It has been suggested that the fairness of the distribution of funds amongst legislative officers (the “shares of the pie”) and how this distribution is established should be reviewed. Some legislative officers maintain that there are in fact discrepancies in the distribution of funds and this has a direct impact on certain legislative offices and their ability to take on the responsibilities that fall within their jurisdiction. In addition, some legislative officers are forced to absorb additional costs that others do not – such as rent. This should be addressed at the earliest opportunity and it should also be raised with the Legislative Assembly through the PPLOC for consideration and action.

Another issue related to individual funding of legislative officers is the lack of proportionality of the funding provided annually and the level of responsibilities taken on by each of them or the number of mandates they are being assigned. While it is agreed the legislative officers should not be compared to each other for the purposes of allocating financial resources but that they should be compared amongst their counterparts in other Canadian jurisdiction, it is also agreed that any assessment of the present funding resources should be assessed by an independent and non-governmental third party. Such a study could be advantageous as budget exercises are difficult for governments and they are potentially explosive.

Consideration should also be given to ensuring that budgets are established on an individual office basis and not by allocating percentages of one lump sum to all legislative officers. While

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<sup>29</sup>Sir Brian Elwood, *Report of the Chief Ombudsman – On Leaving Office*, June 30, 2003, New Zealand Parliament ([http://www.parliament.nz/en-nz/pb/presented/papers/47DBHOH\\_PAP9309\\_1/chief-ombudsman-report-of-sir-brian-elwood-cbe-dlitt](http://www.parliament.nz/en-nz/pb/presented/papers/47DBHOH_PAP9309_1/chief-ombudsman-report-of-sir-brian-elwood-cbe-dlitt)), p. 4.

the end result may be the same or similar to past budgetary exercises, the discussion would not be restricted by considerations that should not be relevant when assessing the value of a given service with the Legislative Assembly's oversight branch – such as debating why one legislative officer should have more of its fair share of the pie as opposed to another officer.

### *Impact of uncertain funding*

Legislative officers believe that decisions regarding budget cuts and sporadic and unpredictable restraint measures need to be taken once and for all to allow legislative offices to adapt to a restraint period accordingly. The present cloud of uncertainty that hovers over legislative officers and their staff impacts morale and productivity and, on the longer term, could end in increased costs to government. The present context also has a negative impact on the legislative officers' ability to recruit and retain skilled employees.

### *Reviewing the budget-approval process*

While legislative officers have their respective budget approved in the same way governmental departments and agencies do, their budget-related concerns are not necessarily of the same nature and require a different approach to that taken to assess the value of a multitude of considerations that differ from the concerns of those shared by agencies that report to or work within the executive branch of government. Consideration should therefore be given to reviewing the budget-approval process and which authority has the responsibility to assess and approve it.

### *Funding impact on discretionary authority*

As per the relevant provisions of their enabling legislation, some legislative officers have the authority to exercise discretion with respect to deciding how to proceed with regards to a complaint lodged with their office. In short, they *may* investigate a complaint further if deemed warranted. When faced with financial hardship and limited resources, while the Legislative Officer may wish to pursue and further study issues that are relevant to his or her mandate but resource-consuming, he or she may, due to financial constraints, be forced into using his or her discretionary powers broadly and not necessarily for the intended purpose of the legislated provisions. In short, discretion is decided by means, not intent. One would argue that this phenomenon is not sustainable in a democratic society.

This is a moot point where there is no discretion and the legislative officer *must*, by law and pursuant to enabling legislation, inquire further into matters brought to his or her attention by complainants. However, qualifying as mandatory the obligation to investigate a matter does by no means fix the problem or address the underlying issue. It may in fact worsen it as capacity may not be able to absorb the demand. This could lead to poor performance outcomes resulting from no fault by the legislative officer and his or her staff. Legislative officers who have seen their mandates expanded to include a broader jurisdiction, either through an increase in responsibilities or the introduction of new agencies under the ambit of their oversight authority, are particularly vulnerable to this reality, particularly where no additional funds are provided to strengthen capacity.

### *Charge-back as an alternate source of funding – a double-edged sword*

Legislated provisions or, in some cases, established practice allows for legislative officers to charge back costs related to their operations to the executive branch of government. Recent amendments to the *Auditor General Act* for example allow the executive arm to contract for special auditing reports through the Auditor General.

Further consideration should be given to assessing the impact of mandatory reporting of some legislative officers and how this obligation could not yield itself well to some matters that are referred for independent review by the legislative branch. In addition, these potentially financial advantages of such “contracting in” practice by the legislative officers should be weighed against the possible compromising of their independence. In other words, legislative officers should not be forced to rely on these contractual opportunities to meet their budgetary needs.

Mechanisms facilitating the development of charge-back between legislative officers who may provide expert and impartial advice and departments and agencies from the executive branch of government who are potential clients should be enshrined in legislation, allowing – even promoting – departments and Crown agencies to draw independent advice or consultation from legislative officers rather than outsourcing to outside consultants, thereby avoiding out-of-public purse expenditures. In turn, legislative officers could recover from departments and Crown agencies the reasonable costs associated with these services. Considerations should however be factored in:

- The potential danger of eroding on financial independence of legislative officers by creating a dependence on the financial incentives of departmental or Crown agency demands;
- The risk of prioritizing departmental or Crown agencies requests over regular caseload;
- The risk associated with a lack of mechanism to ensure payment for resources;
- The need to develop a quality-assessment of service provided by legislative officers;
- The need to establish a “filter” between the executive branch agency and the legislative officer in the form of an independent party or a committee of the Legislative Assembly that would oversee the fairness of the service agreement and the respect of its provisions;
- The overall risk of compromising the legislative officers’ independence – legislative officers can be part of a discussion on how to remediate to a problem but should avoid being part of the solution with regards to that problem.

While charge-back options could generate additional funding opportunities for legislative officers, these options should not be factored in to the guarantee of an annual base budget for legislative officers which ensures:

- Predictability for staffing and professional development;

- Predictability to follow through on outlined objectives as reported for in the legislative officer's business plan;
- Predictability to provide for an envelope earmarked for unforeseen assignments;
- Stability for operations and staff (which, in turn, should maintain – likely increase – efficiency and productivity of the office).

In addition, charge-back options should not influence negatively the budgetary process and the approval of main estimates for the subsequent fiscal year. Budget submissions should be assessed on the previous year's base budget and any initiatives developed to assess funding requests versus performance outcomes.

### *External funding*

Consideration should also be given to exploring possible sources of external funding for legislative officers. Some New Brunswick legislative officers have been benefiting from modest funds provided by other departmental and non-governmental agencies to assist in covering the cost of specific responsibilities – such as official languages, administrative fairness and advocacy. Legislative officers should work closely with executive branch officials as well as members of the PPLOC in exploring other venues of external funding.

### *Impact of wage bill*

Another common challenge shared by legislative officers is that in all but a few cases, 85% to 90% of their annual budget is absorbed by staff salaries. This leaves little room for other initiatives, namely educational and promotional activities intended for the public. It also impedes on the ability to take on extraordinary projects. Furthermore:

- It severely restricts the capacity to take on extraordinary or unforeseen files or systemic projects;
- It impedes on professional development opportunities for staff, keeping in mind that professional development is directly linked with an office's efficiency, effectiveness and the quality of measurable performance outcomes;
- It forces the prioritization of files and projects based almost exclusively on the availability of resources rather than the opportunity to address systemic issues that could potentially lead to long-term strategic changes;
- And it has a direct impact on the health, well-being and ultimately the productivity of staff – which, in turn, can also lead to expenditures to the overall public purse.

### *Developing a funding formula*

New Brunswick's legislative officers, much like all other provincial departments and public agencies, are funded through an established funding mechanism which is essentially managed by LAC and implemented by the Department of Finance. While the legislative officers as well as Members of the PPLOC have agreed that they should cooperate more closely with respect to the *substance* of the budget of the legislative officers' budget submissions, efforts should be made to link more closely each legislative officer's annual funding with their accountability *and* their independence. The funding of legislative officers should not be limited to an annual 'formality' and lead to a sense of frustration generated from the inability for legislative officers *and* the Legislative Assembly to discuss – much like employees would discuss with their employer – *why* the funds are requested, *how* these funds tie in directly to the core responsibilities and how legislative officers are able to *account* substantively and operationally on the value of these funds as opposed to leaving the discussion hovering over *what* is being requested.

In essence and for the purpose of our research, a funding formula can be defined as funds granted to a public body according to a funding framework that may include – such as in the situation at hand – a series of standards and performance measures from which the appropriate amount of financial resources is established.

Therefore, the fundamental distinction between a “funding mechanism” (refer to the recommendations in the 2011 report) and a “funding formula” is essentially found in that the funding formula is developed and implemented to legitimize a specific amount of funding. The legitimacy is assessed and established by neutral measurement tools that could be established by the PPLOC in collaboration with the legislative officers. All requests for funds by legislative officers would be measured in accordance with the measurements and, once approved by the PPLOC, each individual request could be sent off to LAC for approval.

In that respect (and in keeping with previous discussions), the funding formula would assist both legislative officers and the Legislative Assembly (through the PPLOC) in suggesting funding for individual offices by following an established and consistent process that, when required, could be reviewed from time to time.

One author has also suggested that the implementation of a funding formula can not only service legislative officers by providing them with a predictable and consistent funding mechanism but also offering the advantage of maintaining a just and healthy balance between the legislative officers' independence and government's willingness to exercise fiscally sound expenditure activities: “The next stages of the funding panel experiment should focus on ensuring that it actually makes a difference to the independence of officers of Parliament, while seeking a better balance between the protection of officer independence and the maintenance of administrative and fiscal controls.”<sup>30</sup>

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<sup>30</sup>Jack Stilborn, “Funding the Officers of Parliament: Canada's Experiment”, *Canadian Parliamentary Review*, vol. 33, no. 2, summer 2010.

This in turn raises an issue that cannot be overlooked, that is who ultimately is responsible for overseeing “responsible” expenditures of public funds and who should be involved without compromising the independence of oversight bodies? Should involving the executive arm of government be considered, namely for the purpose of providing input on the proposed budget of each legislative officer? In 2004-2005, the Canadian Parliament’s Standing Committee on Access to Information, Privacy and Ethics examined and debated the pros and cons of a various funding models and formulas to address concerns brought forth by the federal Information and Privacy Commissioners as well as the Ethics Commissioner. The Committee would also hear from other Officers of Parliament – the Auditor General and the Official Languages Commissioner. With regards to the oversight responsibility of the Executive branch with respect to budget submissions of Officers of Parliament and their approval, the Committee agreed that Parliament should play a more proactive role in this process as the interested parties were accountable to it and that came to the following conclusion:

It was also agreed that the process must include the elements of the government-side budget design and approval process that ensure accountability to the public for expenditures of public funds. (...) Annual budget submissions of Officers of Parliament would be made directly to the parliamentary body along with an accompanying submission from the Treasury Board Secretariat setting out budget parameters and providing analyses, challenges and advice on the feasibility of the Officers’ submissions.<sup>31</sup>

It has been suggested as well in the course of our consultation that, in addition to the PPLOC, other Standing Committees of the Legislative Assembly or Special Committees could act as a forum of discussion for “specialized” areas of operations. These discussions could – and possibly should – include matters pertaining to the funding of those offices, particularly where a given mandate is linked specifically with a government-wide plan. For example, would the Commissioner of Official Languages benefit from having her business approach presented and discussed with a legislative committee or another body which oversees the Government of New Brunswick’s strategy with respect to official bilingualism in the province?

It has further been cautioned that any funding formula developed should not rely exclusively on the number of files processed during a given fiscal year. This observation stems from the fact that not all files, investigations or projects generate the same amount of work from available resources.

A funding formula could allow legislative officers to implement a more comprehensive budget-drafting process that would outline in details how the funds requested are to be distributed in the budget year. Furthermore, this budget-drafting process could be directly linked to each legislative officer’s business case and tied into their respective office’s performance measures. Legislative officers submit annually their budget for consideration by the Legislative Administration Committee.

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<sup>31</sup>Kristen Douglas and Nancy Holmes, “Funding Officers of Parliament”, *Canadian Parliamentary Review*, vol. 28, no. 3, Fall 2005. *Read in conjunction with recommendations 5 and 6 of the 2011 Report.*

Professor Forcese [Craig Forcese, University of Ottawa] promoted a sustainable and long-term funding formula that would be pre-established to increase according to an objective benchmark over a fixed period of time (...). Annual increases in funding could be based on objective criteria that are tied to the individual functions of each Officer of Parliament (...). If the formula were legislated, criteria could be set out in the legislation.<sup>32</sup>

### *Establishing shared budget principles*

Consideration should finally be given to encouraging legislative officers to work collaboratively in developing a budgetary-drafting process that sets out shared fundamental principles on which the elements of the legislative officers' budget are directly linked to the cornerstones of accountability, efficiency and independence.

## **7. Relevance**

### *Importance of promotion and education*

Taken individually, the relevance of each legislative mandate in the eyes of the public should not be the only determining factor if the regrouping or merging of legislative offices is contemplated. Present financial pressures on individual legislative offices may impact the ability to redirect resources to educational and promotional initiatives, thereby impacting the relevance of the work and the value of the overall mandate.

Some legislative offices appear to dedicate an inordinate amount of time and resources to explaining and clarifying their mandate to members of the public and civil servants and these activities reduce the ability to invest time in the actual exercising of the substance of the mandate. In that respect, educational initiatives (such as training opportunities) should be contemplated to increase understanding of the legislative officers' mandates as well as the civil servants' understanding of the scope of the relevant legislation.

### *Reviewing core responsibilities*

Another issue directly linked to the relevance of the functions of each legislative officer requires that an assessment of core responsibilities be undertaken on a regular basis. A core responsibilities review can also lead to greater efficiencies and heightened effectiveness as short-term priorities and objectives are set according to the essential role of each legislative officer while allowing resources for medium and longer-term goals. In that respect, having the opportunity to establish a multi-year business plan may also be directly linked to performance measurements as they relate to clearly outlined core responsibilities. In short, legislative officers and their staff should regularly review:

- What are the responsibilities they must take on as per the enabling legislation?

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<sup>32</sup>Kristen Douglas and Nancy Holmes, *op.cit.*

- What are the responsibilities they can take on as per the enabling legislation (i.e. discretionary authority)?
- Which responsibilities (mandatory or discretionary) are relevant to their mandate?
- Which responsibilities (mandatory or discretionary) could be
  - Outsourced to another legislative officer?
  - Outsourced (or rolled back in) to the executive branch of government?
  - Outsourced to a private third-party service provider?
- Which responsibilities could be insourced from other service providers (private or public agencies)?
- Which new responsibilities could be introduced and incorporated into their mandate to increase the relevance and accuracy of the legislated mandate?
- Do any of these measures result in a strategic and cost-efficient re-alignment of financial resources with the office?
- Where responsibilities are outsourced to another public body, are the financial burden transferred with them or are there overall savings to government generated from the initiative?

#### *Regular review of enabling legislation*

Steps should also be taken to ensure legislative officers are consulted and involved in the regular review of their enabling legislation, of commenting on what works and what does not, and of being the driving force behind suggestions to improve their mandates through legislative amendments<sup>33</sup>. Legislative officers and their staff are perhaps the most knowledgeable sources of insight into the practical implementation of the statutory provisions that set the parameters for the exercise of their functions.

#### *Increased accountability, increased relevance*

While the implementation of performance measures and a reporting mechanism on the assessment of the outcomes are important in the context of ensuring legislative officers are accountable to the Legislative Assembly, it can also be pointed out that performance assessments and relevance are closely linked to each other as well. By implementing enhanced reporting and accountability initiatives, legislative officers, through their annual reports as well as other publicly accessible reports (such as a business case activities report or a strategic implementation

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<sup>33</sup>It has been suggested that amending the *Members' Conflict of Interest Act* to ensure that resignation, retirement or non-re-election does not pre-empt investigation into alleged wrongdoing is a current example of how reviewing enabling legislation is closely linked with maintaining relevance of the core mandate and responsibilities.

plan report) can ensure the clarity, relevance and credibility of their work and their mandated responsibilities.

## **8. Capacity Development**

### *Professional development*

Legislative offices are populated with subject-matter experts and professional development is essential to maintain the quality of services they provide to New Brunswickers. In many cases and in light of their expertise, in-house professional development is not available to legislative officers' staff. In turn, this forces professional development to be reduced or accessed remotely. In both cases, it has an impact on resources and the ability to exercise the mandate efficiently.

Staff from the legislative arm of government should be allowed (and encouraged) to access professional development opportunities that are offered within the executive branch. This would be consistent with government's approach to implementing its "smarter government" initiative.

### *Recruitment and retention*

Recruitment and retention is a challenge for some legislative officers. In part, this is the result of the limited availability of qualified candidates to take on the specialized work that come with the legislative mandates. While job training is available, it impacts productivity as resources have to be re-assigned to new employees and this takes away from internal capacity. Furthermore, due to limited financial resources, legislative offices are not always able to be as competitive as other potential employers, particularly in the benefits and remuneration offered in the private sector. This, for example, forces legislative offices' budgets to earmark funding for professional membership fees and other benefits that could be invested into other office resources but would run the risk of losing the employment appeal of their office.

Retention is also impacted by the relatively few opportunities for advancement legislative offices are able to offer. While staff from the legislative branch are able to qualify as candidates for certain positions within the executive branch of government, there are no formal processes that allow for employees from both branches to explore professional development and advancement opportunities in one or the other.

Others have suggested that while advancement options are limited within the legislative offices, regrouping different mandates under one legislative officer could allow for professional development by offering the opportunity to work in another field of expertise.

Legislative offices should review their positions structure and the remuneration scales to implement pay parity, namely by categorizing and rating junior staff as well as senior staff. This would likely help with retention of experienced staff members and contribute to efficiencies within the offices.

## 9. Considerations for the distribution and strategic alignment of legislative mandates

### 9.1 *Revisiting the structure and alignment of mandates*

Through our consultations and research, underlying interests and needs have been uncovered that prompted us to consider the fundamental role of legislative officers in relation to the responsibilities taken on by their individual offices. While financial considerations were taken into account, our observations focused more intensively on *how* the oversight functions and services are being delivered to the citizens of New Brunswick. Our interest shifted from obvious problems and concerns raised by stakeholders (e.g. lack of funding, misaligned or irrelevant functions, etc.) to a more rudimentary problem which appears to stem from how, in certain cases, the distribution of some legislated responsibilities do not allow for an optimized harmonious, coherent or symbiotic exercise of statutory functions while, in other cases, the practical nature of certain mandates appear to call for their realignment within existing legislative offices.

Amongst other key points raised, increasing and strengthening capacity, implementing cooperation and expertise-sharing opportunities and providing appropriate funding to legislative officers were raised during our consultations and discussions. In addition and acknowledging the province's financial challenges, the value and potential advantages of redistributing or realigning legislated responsibilities and sharing common services within existing or new operational structures were discussed as part of some initiatives that could lead to strategic reinvestments of resulting savings. Moreover, the prospect of reducing the number of legislative officers as one of the options to achieve objectives linked to performance and relevance was not perceived as a *de facto* solution or that it translated into a reduction of their independence provided that such a measure be considered part of a broader strategic and sustainable plan to increase legislative offices' efficiencies, capacity and productivity with respect to the exercise of their respective legislative mandates.

In light of this, it is our respectful opinion that a discussion needs to occur and that consideration should be given to structuring the organizational layout of mandates through a strategic realignment of certain legislated responsibilities to avoid a potential increase in the current number of legislative officers.

One of the options government could consider with respect to a revised legislative oversight model (illustrated below) could structure itself around the substance of each legislative mandate rather than the mandate vested onto an appointed individual ("what needs to be done" rather than "who is responsible for doing it"). This model would ensure that capacity and expertise are strengthened while yielding savings that could be reinvested into current legislative offices.

It is suggested that, through new or amended legislation and with the support of corresponding policies, the distribution and strategic alignment of legislative mandates could in fact serve many of the issues and concerns raised thus far in a positive way. Those would include but not be limited to:

- Co-location of legislative officers while respecting their needs and their independence;

- Lowering the “silos” and providing an opportunity for an exchange of subject-matter expertise;
- Strengthening the capacity of offices;
- Providing staff with professional development opportunities while contributing to the improvement of effectiveness and efficiency within legislative offices;
- Eliminating the duplication of back office services through shared administrative support and corporate services.

The proposed model further relies on the implementation of some key initiatives which are considered crucial to ensure a smooth transition and a sustainable model:

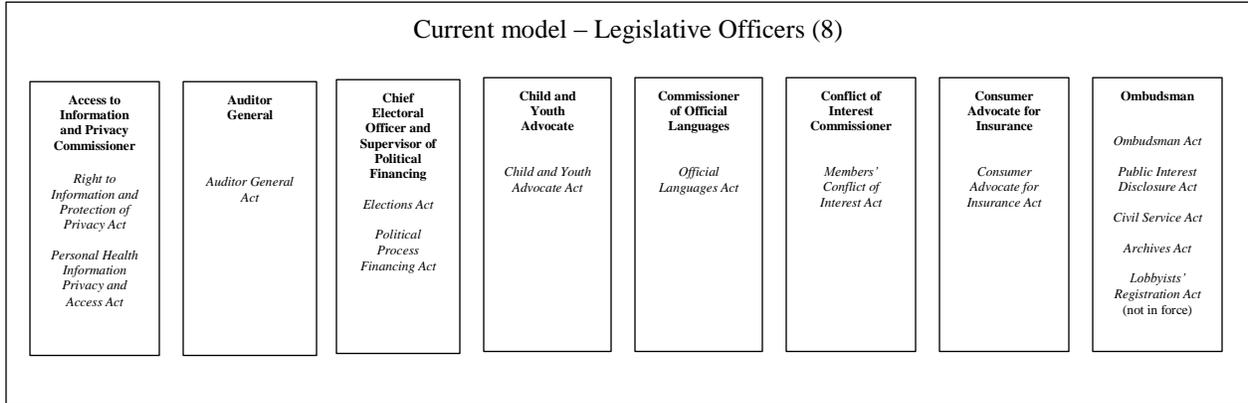
- Ideally and where deemed necessary for greater efficiency, the merging of legislative mandates should respect existing appointment terms and be implemented through attrition upon expiry of non-renewable terms.
- Administration support and clerical positions should also be redistributed amongst the various offices or branches but duplication of support services should be carefully avoided and position-related responsibilities should be reviewed in relation to the front-line services provided, particularly where reception and intake functions are concerned.<sup>34</sup>
- Consideration should be given to strategically reinvesting some of the savings resulting from the implementation of a preferred model to ensure that no legislative officer is disadvantaged financially or in his or her ability to exercise the new mandates due to a lack of staff capacity.
- Consideration should also be given to allowing nomadic opportunities to specialized personnel who wish to contribute their expertise to other branches (e.g. legal services, auditing services, communications services).
- Measures should be implemented to ensure that corporate services from the Legislative Assembly – namely financial, human resources, information technology – as well as translation services be provided consistently and efficiently to all legislative offices.

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<sup>34</sup>To avoid the termination of active employment, a redeployment strategy should be developed immediately to ensure that active employees whose positions are eliminated are redeployed to another similar position within the legislative branch or the executive branch of Government. Other positions could be eliminated through attrition or by not filling vacancies.

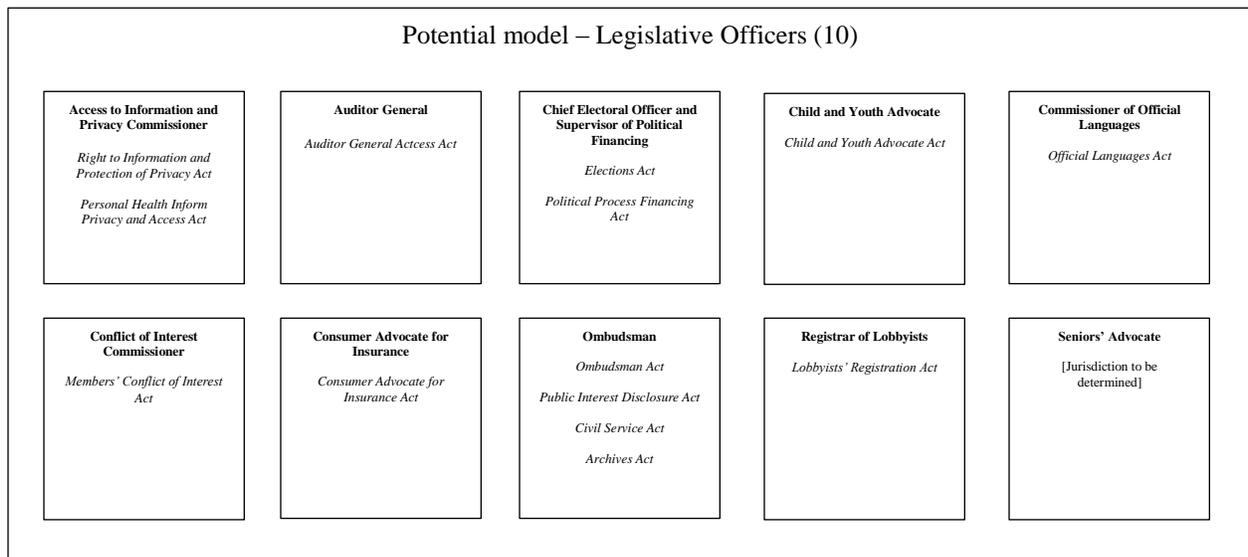
9.2 *Current, potential and proposed models*

Currently, New Brunswick has eight legislative officer positions that report to the Legislative Assembly (refer to Part 2 for additional information).



The number of legislative officers has been a matter of considerable interest because New Brunswick has more officers than most provinces, with the potential to add even more.

As previously discussed in Part 2 (refer to “general overview”), there are currently eight officers, with unproclaimed legislation to create a ninth (Registrar of Lobbyists) and a government platform commitment to create a tenth (Seniors’ Advocate). While both of these latter officers have been contemplated to be a shared role or an additional mandate for the Ombudsman, merging some of the legislative officers with similar mandates, or some of those who have narrower mandates than others is not necessarily consistent with efforts to increase efficiencies and the effectiveness of legislative offices. The following illustrates the potential expansion and distribution of legislative mandates:



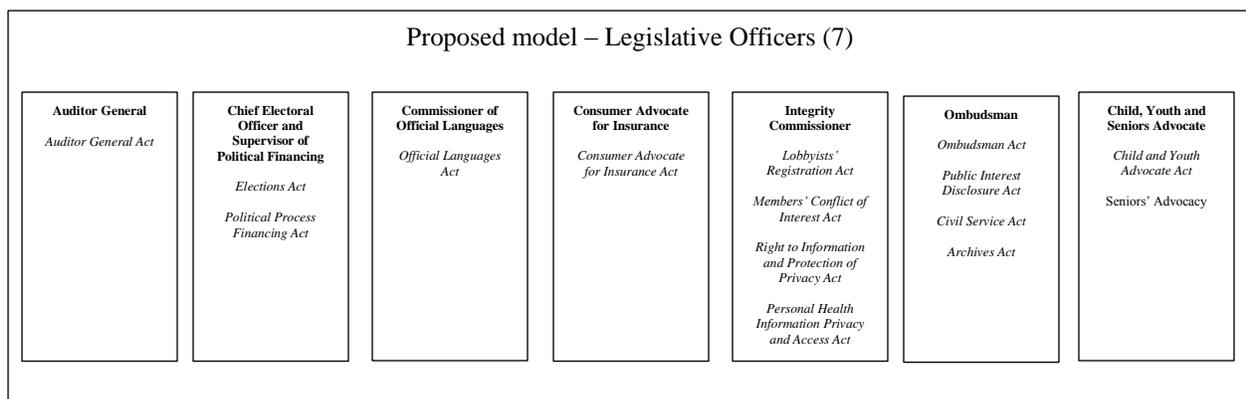
For reasons outlined throughout this report, it is our respectful submission that such a potential model would not serve the goals of achieving a financially sustainable distribution of legislative mandates nor would it be in line with an efficient alignment of oversight responsibilities.

With respect to revisiting the distribution and realignment of legislative responsibilities without focusing solely on the similarities between mandates or their narrowness but rather by underlining their substance-driven synergy, there is one option (or model) that may be proposed for further consideration. This option would be consistent with the objectives of achieving greater efficiencies while strengthening legislative oversight mandates that aim at ensuring the integrity, the transparency as well as the accountability of government, its elected officials and civil servants who have the responsibility of implementing executive decisions while respecting fundamental safeguards related to the protection of privacy.

The proposed model would lead to the creation of an Integrity Commissioner who would be mandated with responsibilities pursuant to the *Members' Conflict of Interest Act*, the *Lobbyists' Registration Act*, the *Right to Information and Protection of Privacy Act* as well as the *Personal Health Information Privacy and Access Act*.

In addition, the suggested option would broaden the scope of the only legislative officer whose responsibilities involve advocating on behalf of individuals who otherwise may not draw attention to their fundamental rights and interests. The Child, Youth and Seniors Advocate would primarily serve as the voice for the most vulnerable persons in our province. This legislative officer would also work closely with departments that provide services to this segment of the population. This officer should also be provided with the necessary resources to effectively and efficiently exercise his mandate.

While the *Ombudsman Act* provides oversight authority over nursing homes, special care homes, home care services and designated community residences, the Ombudsman must remain neutral and impartial. It has been suggested that seniors – like children and youth – are also vulnerable citizens and that neutrality and impartiality may not be sufficient to fully implement an effective and efficient oversight strategy. Consideration should be given to extending the scope of the Child, Youth and Seniors Advocate to include vulnerable seniors as well as those individuals receiving specialized care in special care homes.



## **Part 5 – Recommendations and Suggestions for Consideration**

### **1. CATEGORY A – Recommendations for immediate and short-term consideration**

*The following are recommended for consideration:*

#### General recommendations

1. **Consultation process** – That the Government of New Brunswick be mindful and consider all relevant suggestions that stem from public input following the release of the working document entitled *Choices To Move New Brunswick Forward* as well as the relevant input generated through the January 2016 public consultation meetings.
2. **No new legislative officer positions** – That the creation of additional legislative officer positions be suspended pending the implementation of a legislated and more thorough process that justifies and rationalizes the creation of such positions. [Read in conjunction with Rec. #1, 2011 report]
3. **Incumbent legislative officers** – Due to the presence of incumbents with several years remaining in their terms for four legislative officers, it is recommended that any consolidation be done with care and when attrition permits.
4. **Reporting authority** – That the Standing Committee on Procedure, Privileges and Legislative Officers (PPLOC) be designated by the Legislative Assembly as the formal body to which legislative officers report and that the Legislative Assembly clarify the respective roles of the PPLOC and the Legislative Administration Committee (LAC) with respect to legislative officers.

#### Recommendations bearing on the independence of legislative officers

5. **Selection and nomination process** – In the spirit of fostering a more productive and durable relationship between legislative officers and the Legislative Assembly, that the PPLOC play a more active role in the selection and appointment process of new legislative officers so as to solidify the Legislative Assembly's ownership of the nomination process. [Read in conjunction with Rec. #4, 2011 report]
6. **Strengthening independence** – That the PPLOC establish a forum of exchanges to discuss and address issues pertaining to the structural, operational and perceived independence and autonomy of legislative officers.

#### Recommendations bearing on the accountability and support of legislative officers

7. **Principles of accountability** – That the PPLOC implement a forum of discussion with legislative officers to develop, implement and monitor the fundamental principles and parameters of accountability with respect to the agents of the Legislative Assembly's oversight branch.

8. **Support for relevance** – Supported by the Clerk of the Legislative Assembly’s role in maximizing the strategic alignment of mandates, that the PPLOC implement a forum of regular exchanges to monitor the relevance of the mandates and the functions of legislative officers, with an emphasis on the processes required to optimize this relevance through the realignment of functions and responsibilities.
9. **Financially-sound checklist for budget submissions** – That measures be taken to ensure that while legislative officers follow a budget submission process that is not curtailed by the executive arm, safeguards are implemented to guarantee that the legislative arm of government respects and contributes to the province’s financial objectives and that the budget submission process does not impede on collaborative efforts by all branches of government in achieving sound fiscally-driven objectives. [Read in conjunction with Rec. #5, 2011 report]
10. **Budget development framework** – That a more robust and collaborative process between legislative officers and LAC with respect to the preparation of budget estimates be implemented so that the executive branch’s budget guidelines are respected. [Read in conjunction with Rec. #6, 2011 report]
11. **Complaint process (approving authority)** – That the PPLOC be designated as the approving authority in the selection by the Speaker of the Legislative Assembly of a qualified independent party to participate in the review or audit of another legislative officer. [Read in conjunction with Rec. #10, 2011 report]
12. **Complaint process (consistency)** – To avoid inefficiencies and delays, that a formal review and audit process be developed with respect to complaints against legislative officers. This process should include clear components that may trigger, upon the appreciation of the Speaker of the Legislative Assembly and the PPLOC, a review and/or audit by or in partnership with a third party when deemed necessary. [Read in conjunction with Rec. #11, 2011 report]
13. **Complaint process (expediency)** – In discussion with the PPLOC, that a simpler yet formal written complaint-handling process be considered, allowing the Speaker and the Clerk of the Legislative Assembly to process and proceed with a preliminary investigation into the merit of the complaint before recommending further action when deemed necessary. [Read in conjunction with Rec. #11, 2011 report]
14. **Addressing performance issues** – That the PPLOC identify the role and responsibilities of the body tasked with addressing, managing and resolving performance-related issues that fall within the scope of each legislative officer’s legislated responsibilities.

### Recommendations bearing on the efficiency of legislative officers

15. **Clerk as administrator** – Without prejudice to the legislative officers’ autonomy as deputy heads, that the Clerk of the Legislative Assembly be designated as the administrator responsible for overseeing and monitoring their independence as well as their compliance with the fundamental operational, procedural and financial rules that apply to the Legislative Assembly. [Read in conjunction with Rec. #12 and #13, 2011 report]
16. **Maximizing the alignment of mandates** – That the Clerk of the Legislative Assembly develop and implement a recurring consultation process with legislative officers and their management team to monitor the relevance of their mandates and, where deemed appropriate or necessary, collectively draft realignment of responsibilities proposals for consideration by the PPLOC.
17. **Performance measures** – In collaboration with the PPLOC, that performance measures be developed for legislative officers and implemented under the leadership and guidance of the Legislative Assembly (through the PPLOC), using the executive branch’s performance measurement template as a model with the appropriate nuances factored in as well as the measures tailored to capture accurately the relevance of the legislative branch’s business – namely how the value of outcome is determined. [Read in conjunction with Rec. #9, 2011 report]
18. **Operational challenges** – That the PPLOC establish a forum of discussion and address issues pertaining to the legislative officer’s operational challenges while engaging them – collectively or individually – on the steps suggested to increase their capacity in a fiscally-responsible and sustainable way.

### Recommendations bearing on the effectiveness of legislative officers

19. **Relations with the executive arm of government** – That the PPLOC, with the assistance of the Clerk of the Legislative Assembly, take the lead on developing and implementing a plan to increase dialogue and education opportunities between legislative officers and the executive branch of government. [Read in conjunction with Rec. #24, #25 and #26, 2011 report]
20. **Integration of best practices** – That measures be implemented to improve relations between legislative officers and the executive arm of government and explore opportunities to integrate formal management and process improvement best practices into the legislative branch. [Read in conjunction with Rec. #26 and #27, 2011 report]
21. **Briefing material (new appointments)** – That measures be taken to extend the scope of Recommendation #28 of the 2011 report (briefing material prepared for new legislative officers to ensure a successful transition of leadership) to include a briefing process for newly appointed deputy ministers, assistant deputy ministers and executive directors within the executive branch of government.

22. **Briefing material (Members)** – That it be incumbent on the Chair of the PPLOC or his designate to brief all Members of the Legislative Assembly on the role, the mandates and the jurisdictional scope of each legislative officer.
23. **Administrative consistency** – That the Legislative Assembly, through the Clerk, lead an initiative to develop and implement an administration policies manual applicable to the legislative branch in its entirety (including legislative officers and their respective offices) and that these policies be tabled with the Legislative Assembly to ensure accountability and transparency.

Recommendations bearing on the funding of legislative officers<sup>35</sup>

24. **Budget development and funding formula** – In collaboration with legislative officers, that the PPLOC lead the initiative of developing and implementing a budget development process, of reviewing the current funding mechanism of legislative officers and of developing and implementing a funding formula for each legislative officer. [Read in conjunction with Rec. #5, 2011 report]
25. **Assessing the adequacy of resources** – That legislative officers work collaboratively with the PPLOC to identify and select minimal thresholds to assess the adequacy of each legislative officer's allocated resources, namely by using substance (scope and level of oversight) as a reference for comparison between their respective offices in relation to their counterparts in other Canadian jurisdictions.
26. **Adequacy of funding** – That the PPLOC initiate and lead an annual discussion with legislative officers on the adequacy of the funding mechanism and, with their assistance, review the adequacy of any funding formula and funding framework that may be developed in the course of the collaborative process suggested in Category B suggestions.
27. **Earmarking economic increases** – That, in preparing budget proposals, an envelope be earmarked for annual economic increases and kept separate and not factored into the individual operational budget requests from each legislative officer.

Other recommendations

28. **Consumer Advocate for Insurance** – That the mandate pursuant to the *Consumer Insurance Advocate Act* remain as is until such time as the Legislative Assembly requests a review of the Consumer Advocate for Insurance's status as a legislative officer. Until such review is requested, it is also recommended that the Office of the Consumer Advocate for Insurance be excluded from any consolidation.

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<sup>35</sup>The recommendations included in this section may also have bearing on the independence and accountability of legislative officers. For the purpose of ensuring greater clarity and specificity, we have chosen to insert them under a funding category.

**2. CATEGORY B – Recommendations for consideration through a collaborative process**

*The following are submitted as recommendations for consideration by legislative officers and the PPLOC as potential initiatives to meet the objectives of the 2015 review:*

Recommendations bearing on the independence and the accountability of legislative officers

29. **Single statute (accountability)** – That consideration be given to developing and drafting new legislation that would facilitate the incorporation of a legislative officers’ accountability framework and support any additional measures taken by the Legislative Assembly (through the PPLOC or another committee) to ensure continued performance management of legislative officers and their offices. [Read in conjunction with Rec. #19, 2011 report]
30. **Privileges, benefits and compensation of legislative officers** – That consideration be given to have the PPLOC take the lead on developing and implementing a position description checklist for legislative officers through which their compensation, benefits and privileges are directly linked to their legislated responsibilities and their performance measures to ensure consistency with the PPLOC’s role in overseeing that legislative officers respect a solid and consistent accountability framework. [Read in conjunction with Rec. #20, 2011 report]

Recommendations bearing on the efficiency and effectiveness of legislative officers

31. **Single statute (structure of legislative officers)** – That consideration be given to drafting a single legislation that is tailored to any proposed structure of legislative officers (and offices) that may result from the proposed collaborative process between legislative officers and the PPLOC. This statute should provide legislative support for the specific mandates and enable as well as facilitate the sharing of information and expertise amongst the various units within individual legislative offices and between legislative officers. [Read in conjunction with Rec. #19, 2011 report]
32. ***Members’ Conflict of Interest Act (Commissioner qualifications)*** – That consideration be given to drafting new legislation or amend the *Members’ Conflict of Interest Act* to include the minimal professional qualifications to be met by the person who is appointed to fulfill the duties of the Commissioner before a new person is appointed on a permanent basis.
33. **Conflict of Interest Commissioner** – That consideration be given to having all statutory responsibilities currently vested onto the Conflict of Interest Commissioner transferred to the Integrity Commissioner while remaining functionally autonomous.
34. **Conflict of Interest Commissioner** – That consideration be given to ensuring that the physical location and all activities undertaken pursuant to the *Members’ Conflict of Interest Act* by the Integrity Commissioner as well as administrative support operations be located and held within offices appropriately located within the Legislative Assembly.

As a result, all infrastructure and maintenance-related expenditures with regards to the current Conflict of Interest Commissioner's office be terminated. It is suggested that only the operational budget be transferred with the new office, not the amount earmarked to cover the remuneration and benefits of the Conflict of Interest Commissioner.

35. **Registrar for Lobbyists** – That consideration be given to having all statutory responsibilities pursuant to the *Lobbyists Registration Act*, currently vested onto the provincial Ombudsman, be transferred to the Integrity Commissioner.
36. **Seniors mandate** – That consideration be given to having all legislated oversight responsibilities over nursing homes, special care homes, home care services and accredited community services transferred from the Ombudsman to the Child, Youth and Seniors Advocate. Further consideration should be given to providing the Child, Youth and Seniors Advocate with appropriate resources to take on these new responsibilities.
37. **Co-location of legislative officers** – While ensuring that each legislative officer's structural and operational independence are not compromised, that consideration be given to having legislative officers collaborate with the PPLOC, the Clerk of the Legislative Assembly and government to develop a feasible, efficient and sustainable plan to implement Recommendation #14 of the 2011 report.
38. **Access to information and Protection of Privacy** – That consideration be given to having all statutory responsibilities currently vested onto the Access to Information and Privacy Commissioner transferred to the Integrity Commissioner.
39. **Professional development** – Without compromising the legislative arm's independence, that consideration be given to facilitating professional development for legislative offices staff members by developing and implementing a policy which enables members of the legislative branch to avail themselves of on-going professional development opportunities offered by the executive branch of government.

#### Recommendations bearing on the funding of legislative officers

40. **Translation services** – That consideration be given to having the Legislative Assembly provide translation services to all legislative officers and that funds allocated for these services be included in the Legislative Assembly's annual tabled budget submissions.
41. **Communications services** – That consideration be given to having the Legislative Assembly, through its corporate services branch, provide, as required, communications services to all legislative officers and that the funds allocated for these services be included in the Legislative Assembly's annual tabled budget submissions.
42. **Supplementary funding and unforeseen expenses** – That consideration be given to drafting legislative amendments that would implement a formal process by which legislative officers may, with the approval of the PPLOC, submit a request to the

Legislative Assembly for supplementary funding due to unforeseen expenses incurred during the fiscal year.

Other recommendations

43. **Human Rights Commission** – In consultation with the Chair of the Human Rights Commission and the executive arm of government, that consideration be given to reviewing the feasibility and relevance of bringing New Brunswick’s Human Rights Commission under the auspices of the legislative branch as initially raised in the 2011 report.
44. **Archives Act** – It is recommended that the Ombudsman and the Integrity Commissioner, in consultation with the PPLOC, determine the feasibility of implementing Recommendation #33 of the 2011 report (transferring responsibilities pursuant to the *Archives Act* to the Access to Information and Privacy Commissioner).

## **Part 6 – Potential savings and cost avoidances**

At the present time, it is difficult to provide precise numbers with respect to potential expenditure reductions, cost avoidances and the estimated value of efficiencies. This is mainly due to the fact that our recommendations encourage a collaborative process between the legislative officers and the PPLOC to develop a proposal that would outline expenditure reduction initiatives and propose strategic reinvestments to be implemented in the 2017-2018 and 2018-2019 fiscal years. In our respectful opinion, speculating on the potential financially-relevant outcomes of unknown proposals would be flawed and potentially misleading.

Based on various scenarios, some expenditure reduction and cost avoidance initiatives in 2017-2018 and 2018-2019 could yield substantial savings and reach the originally set target range in *Choices*, which is from \$400,000.00 to \$700,000.00. Cost-containing and expenditure reduction measures could result from the following non-exhaustive list:

- The creation of the Office of the Integrity Commissioner;
- Savings generated by the centralization of translation services;
- Savings generated by the centralization of communication services;
- Savings generated by various scenarios of co-location (infrastructure and maintenance expenditures);
- Savings generated by various scenarios of co-location (sharing of reception and administrative support);
- Savings generated by regrouping certain offices (administrative support and intake services);
- Savings generated by insourcing or providing in-house legal services to legislative officers.

While savings are possible and anticipated, there are opportunities for government to consider strategically reinvesting some of these expenditure reductions to increase legislative officers' independence and efficiency. In the spirit of the recommendations and suggestions for considerations outlined earlier, it is hoped that a constructive and productive dialogue between legislative officers and the Legislative Assembly, namely through the PPLOC, will foster innovative and sustainable proposals for such reinvestment opportunities.

In addition, in the event some initiatives impact human resources, we are hopeful that most – if not all – elimination of positions will be done through attrition or by not filling vacant positions that are deemed expendable under a newly designed operational structure. Furthermore, special consideration should be given to implementing a redeployment list for qualifying staff members to provide them with work opportunities in other sectors of the legislative branch or within the executive branch of government.

## Conclusion

The exercise through which ideas and suggestions were provided to populate this report has been a challenging journey into uncharted territory, one where individuals and institutions were invited to think and execute differently to surmount emerging or increasingly frustrating obstacles. While the suggestions and recommendations contained in this report may not ultimately lead to a perfect outcome, it is hoped that a collaborative working relationship between all stakeholders will establish a solid basis for on-going exchanges and a sustainable framework of cooperation from which innovative solutions will be developed and shared.

In our humble opinion, if anything can be learned from this review of New Brunswick's legislative officers, it is that challenges provide opportunities. And in the end, those opportunities must benefit all New Brunswickers through the implementation of fiscally-sound measures that must also weigh the value of complying with fundamental democratic rights and providing all citizens with individuals and institutions that oversee compliance, promotion and enforcement of those rights. The discussion and resulting recommendations contained in this report should always be read in conjunction with the preceding principles.

The Government of New Brunswick has set the laudable goal of tackling its fiscal challenges by reducing its expenditures, avoiding unnecessary costs and increasing its revenue sources. Legislative officers – and, to a greater extent, the legislative branch of government as well – are called to take part in this exercise by contributing to government's efforts. This report proposes ways to guide legislative officers and government in supporting this effort through realignment initiatives and a series of recommendations resulting from consultation outcomes, research and input from various sources. Furthermore, some key recommendations rely on a stable working relationship between the Legislative Assembly and its legislative officers to work collaboratively on setting objectives and implementing the means to achieve them.

Where legislative officers are concerned, the desire by government to implement a solid accountability framework will hopefully be accompanied by and balanced with measures that ensure and support optimization of efficiencies and effectiveness that speak to the officers' relevance and affirm their independence.

## Appendix A

### Overview of Provincial and Territorial Legislative Officers

The following information consists of relevant excerpts taken from answers provided by the various jurisdictions who responded to our questionnaire.

<b>Alberta</b>	
Number of legislative officers	<p><b>7</b> (1 vacancy)</p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Chief Electoral Officer</li> <li>3. Child and Youth Advocate</li> <li>4. Ethics Commissioner</li> <li>5. Information and Privacy Commissioner</li> <li>6. Ombudsman</li> <li>7. Public Interest Commissioner (filled by Ombudsman)</li> </ol>
Authority	<p>Standing Committee on Legislative Officers (all-party committee) reviews budgets and legislative officers' salaries on an annual basis.</p> <p>The Committee can receive requests for legislative changes and forward to the appropriate department.</p>
Co-location	<p>The following are collocated (same building, different floors):</p> <ul style="list-style-type: none"> <li>- Auditor General</li> <li>- Child and Youth Advocate</li> <li>- Ethics Commissioner</li> <li>- Information and Privacy Commissioner</li> </ul>
Shared administrative/corporate services	<p>Ombudsman and Public Interest Commissioner (same legislative officer) share corporate services, communications, executive assistant and legal services. Some library services are also provided to legislative officers on request.</p>
Performance measures	<p>All table annual reports.</p> <p>The Auditor General has external peer reviews and publishes performance reports.</p> <p>Other legislative officers have published varying forms of performance measures in their annual reports or through stand-alone reports.</p>
Recent reviews	None.

<b>British Columbia</b>	
Number of legislative officers	<p><b>8</b></p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Conflict of Interest Commissioner</li> <li>3. Chief Electoral Officer</li> <li>4. Information and Privacy Commissioner</li> <li>5. Merit Commissioner</li> <li>6. Ombudsperson</li> <li>7. Police Complaint Commission</li> <li>8. Representative for Children and Youth</li> </ol>
Authority	<p>Select Standing Committee on Finance and Government Services, through an annual budgetary review.</p>

<b>British Columbia</b>	
Co-location	The following legislative officers are collocated: - Ombudsperson - Information and Privacy Commissioner - Merit Commissioner - Police Complaint Commissioner
Shared administrative/corporate services	Some services are shared – includes an Executive Director of Shared Services.
Performance measures	Some legislative officers have their own performance measures published in their annual reports: Elections BC, Auditor General and Representative for Children and Youth.
Recent reviews	A committee is currently reviewing the <i>Freedom of Information and Protection of Privacy Act</i> .

<b>Manitoba</b>	
Number of legislative officers	<b>6</b> (1 person filling two positions)  1. Auditor General 2. Chief Electoral Officer 3. Children’s Advocate 4. Conflict of Interest Commissioner (same person as Information and Privacy Adjudicator) 5. Information and Privacy Adjudicator (same person as Conflict of Interest Commissioner) 6. Ombudsman
Authority	All legislative officers – except the Children’s Advocate – present their annual report to the Speaker of the Assembly. The Children’s Advocate’s report is presented to the Minister responsible for Child and Family Services.
Co-location	None.
Shared administrative/corporate services	Some shared services between the Conflict of Interest Commissioner and the Information and Privacy Adjudicator.  Human resources and financial services are provided by the Legislative Assembly, Finance and Administration Office to the Ombudsman, the Children’s Advocate, Elections MB and the Auditor General (with the exception of human resources for the latter). They also provide IT services to the Ombudsman and Children’s Advocate. Elections MB and the Auditor General have their own information technology services.
Performance measures	None specific other than annual reports.
Recent reviews	The Children’s Advocate is mentioned in a recent inquest report ( <i>Achieving the Best for All our Children: the Legacy of Phoenix Sinclair</i> , December 2013). The Report recommends providing more independence and investigative powers to the Children’s Advocate. It also recommends that the Children’s Advocate report directly to the Speaker of the Legislative Assembly.

<b>Newfoundland and Labrador</b>	
Number of legislative officers	<b>5</b>  1. Auditor General 2. Chief Electoral Officer and Commissioner for Legislative Standards 3. Child and Youth Advocate 4. Citizen’s Representative 5. Information and Privacy Commissioner

<b>Newfoundland and Labrador</b>	
Authority	<p>All report to the Speaker of the House of Assembly.</p> <p>The Auditor General may appear before the Public Accounts Committee.</p> <p>The Management Commission establishes, implements and controls financial and administrative policies applicable to all legislative officers.</p>
Co-location	One legislative officer holds the position of Chief Electoral Officer and that of Commissioner for Legislative Standards. Both working units are collocated.
Shared administrative/corporate services	<p>The Chief Electoral Officer and Commissioner for Legislative Standards share reception and administration services.</p> <p>Information technology services are offered by the Office of the Chief Information Officer to all Government (with the Auditor General transitioning to these services).</p> <p>Human resources, legal services and financial administration services are offered by the House of Assembly to all legislative officers (with the exception of the Auditor General who does not receive financial administration services).</p> <p>Communications services are offered to some offices by the House of Assembly Policy and Communications teams.</p>
Performance measures	<p>As part of its business plan, the Auditor General Office identifies issues and sets goals and objectives measures to report and resolve these issues (reported in the annual report) – includes performance measures and indicators.</p> <p>The Chief Electoral Officer and Commissioner for Legislative Standards, the Child and Youth Advocate, the Citizen’s Representative and the Information and Privacy Commissioner publish Annual Performance Reports with strategic issues and goals, measures and indicators, pursuant to the <i>Transparency and Accountability Act</i> (as Category 3 entities). The accountability also includes the publication of a three-year activity plan.</p>
Recent reviews	The <i>Access to Information and Protection of Privacy Act</i> was reviewed in 2014.

<b>Nova Scotia</b>	
Number of legislative officers	<p><b>6</b></p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Chief Electoral Officer</li> <li>3. Conflict of Interest Commissioner</li> <li>4. Director and CEO of Human Rights Commission</li> <li>5. Freedom of Information and Protection of Privacy Review Officer</li> <li>6. Ombudsman</li> </ol>
Authority	<p>A special committee convenes annually to review the estimates of the Auditor General and the Chief Electoral Officer.</p> <p>Other legislative officers submit their budgetary materials to Treasury Board; they are then brought before the Legislature through the estimates process.</p>
Co-location	None.
Shared administrative/corporate services	The Conflict of Interest Commissioner has office space in the Speaker’s Administration Office.
Performance measures	All but the Conflict of Interest Commissioner and the Chief Electoral Officer publish an annual Accountability Report.
Recent reviews	None.

<b>Nunavut</b>	
Number of legislative officers	<p><b>5</b></p> <ol style="list-style-type: none"> <li>1. Chief Electoral Officer</li> <li>2. Information and Privacy Commissioner (shared with the Northwest Territories)</li> <li>3. Integrity Commissioner</li> <li>4. Languages Commissioner</li> <li>5. Representative for Children and Youth</li> </ol>
Authority	<p>All report to the Legislative Assembly. With the exception of the Integrity Commissioner who reports solely to the Legislative Assembly, the other legislative officers report to the Standing Committee on Oversight of Government Operations and Public Accounts.</p> <p>Management Services Board has oversight over all legislative officers to ensure compliance with several other acts.</p>
Co-location	The Languages Commissioner and the Representative for Children and Youth share a reception area.
Shared administrative/corporate services	<p>Legislative Assembly provides administrative and corporate support to all legislative officers (payroll, human resources and other corporate services).</p> <p>Information technology support is offered to all legislative officers except the Chief Electoral Officer.</p>
Performance measures	Through their respective annual reports delivered to the Legislative Assembly.
Recent reviews	None but the enabling legislation for the Representative for Children and Youth as well as the Integrity Commissioner provide for a five-year review.

<b>Ontario</b>	
Number of legislative officers	<p><b>9</b></p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Chief Electoral Officer</li> <li>3. Environmental Commissioner</li> <li>4. French Language Services Commissioner</li> <li>5. Financial Accountability Officer</li> <li>6. Information and Privacy Commissioner</li> <li>7. Integrity Commissioner</li> <li>8. Ombudsman</li> <li>9. Provincial Advocate for Children and Youth</li> </ol>
Authority	Legislative Assembly, through the Speaker.
Co-location	The Integrity Commissioner and Financial Accountability Officer are collocated in the same building but occupy different floors.
Shared administrative/corporate services	<p>There are no shared administration services between offices. Corporate services are offered by the Office of the Assembly but usage is reported to be scattered and inconsistent.</p> <p>Limited information technology services are offered.</p>
Performance measures	Through annual reports or for internal purposes only. There is no apparent statutory obligation to report.
Recent reviews	None.

<b>Prince Edward Island</b>	
Number of legislative officers	<p><b>5</b></p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Chief Electoral Officer</li> <li>3. Conflict of Interest Commissioner</li> <li>4. Indemnities and Allowances Commissioner</li> <li>5. Information and Privacy Commissioner</li> </ol>
Authority	<p>Legislative Assembly through the Speaker.</p> <p>In matters of administrative support, legislative officers are accountable to the Standing Committee on Legislative Management.</p> <p>The Auditor General reviews her annual report with the Standing Committee on Public Accounts.</p>
Co-location	The Conflict of Interest Commissioner and the Information and Privacy Commissioner are located in the same building.
Shared administrative/corporate services	<p>Administrative support services are provided by staff from the Office of the Clerk to the Conflict of Interest Commissioner and the Indemnities and Allowances Commission.</p> <p>All legislative officers share information technology services provided by Government.</p> <p>With the exception of the Auditor General, legislative officers rely on the Office of the Clerk for human resources and payroll services.</p>
Performance measures	None specific.
Recent reviews	None.

<b>Québec</b>	
Number of legislative officers	<p><b>5</b></p> <ol style="list-style-type: none"> <li>1. Auditor General</li> <li>2. Chief Electoral Officer</li> <li>3. Ethics Commissioner</li> <li>4. Lobbyists Commissioner</li> <li>5. Public Protector (Ombudsman)</li> </ol>
Authority	<p>Committee on the National Assembly.</p> <p>Legislative officers may also be heard by other committees.</p>
Co-location	None.
Shared administrative/corporate services	The following are offered by the National Assembly and may be used at the discretion of the legislative officers: human resources (staffing, pay roll); financial administration; information technology; translation; security; library services.
Performance measures	<p>The following publish a Strategic Plan in addition to their annual report:</p> <ul style="list-style-type: none"> <li>- Ombudsman</li> <li>- Chief Electoral Officer</li> <li>- Auditor General</li> </ul>
Recent reviews	None.

<b>Saskatchewan</b>	
Number of legislative officers	<p>7 (one vacancy)</p> <ol style="list-style-type: none"> <li>1. Advocate for Children and Youth</li> <li>2. Chief Electoral Officer</li> <li>3. Conflict of Interest Commissioner</li> <li>4. Information and Privacy Commissioner</li> <li>5. Ombudsman</li> <li>6. Provincial Auditor</li> <li>7. Public Interest Disclosure Commissioner (position filled by the Ombudsman since 2012)</li> </ol>
Authority	The Board of Internal Economy has oversight over all legislative officers with the exception of the Provincial Auditor who is overseen by the Public Accounts Committee.
Co-location	The Ombudsman and Advocate for Children and Youth share a location in Saskatoon.
Shared administrative/corporate services	<p>Some administration services are shared between the Ombudsman and the Advocate for Children and Youth.</p> <p>The Chief Electoral Officer, the Conflict of Interest Commissioner, the Information and Privacy Commissioner, the Ombudsman and the Advocate for Children and Youth receive services from the Legislative Assembly (payroll, financial, human resources and information technology).</p>
Performance measures	Mainly through their respective annual reports, with the exception of the Provincial Auditor who uses a variety of performance measures.
Recent reviews	<p>The Office of the Chief Electoral Officer was reviewed in 2009.</p> <p>In addition, new legislation was enacted in 2015: <i>The Officers of the Legislative Assembly Standardization Amendment Act</i> and the <i>Legislative Assembly Amendment Act, 2015</i>.</p>

<b>Northwest Territories</b>	
Number of legislative officers	<p>7</p> <ol style="list-style-type: none"> <li>1. Chief Electoral Officer</li> <li>2. Conflict of Interest Commissioner</li> <li>3. Equal Pay Commissioner</li> <li>4. Human Rights Commission</li> <li>5. Human Rights Adjudication Panel</li> <li>6. Information and Privacy Commissioner</li> <li>7. Languages Commissioner</li> </ol>
Authority	The Standing Committee on Government Operations reviews the annual and other reports of the legislative officers of the Legislative Assembly. The annual reports are also delivered in the House. There are public hearings on the annual reports if requested by the Standing Committee.
Co-location	<p>The Information and Privacy Commissioner, the Languages Commissioner and the Human Rights Adjudication Panel are located in the same building.</p> <p>The Equal Pay Commissioner and the Conflict of Interest Commissioner work independently out of their own private offices on as need basis. Working space for the Conflict of Interest Commissioner is provided in the Legislative Assembly Building.</p>

Shared administrative/corporate services	<p>The Information and Privacy Commissioner, the Languages Commissioner and the Human Rights Adjudication Panel share administrative services.</p> <p>Human resources and Information technology services are provided by the Government of the Northwest Territories. The requests for these services from the legislative officers are channeled through the Legislative Assembly.</p> <p>The Legislative Assembly provides financial assistance whereby the Legislative Assembly Office processes all financial payments.</p>
Performance measures	Through annual reports.
Recent reviews	Northwest Territories Human Rights Act Comprehensive Review (2015).

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