

Status Report

Review of New Brunswick Legislative Officers

July 7, 2011

A. The Project

In May 2011, the Speaker of the New Brunswick Legislative Assembly formally engaged the former Ombudsman and Child and Youth Advocate, Bernard Richard, to lead a review of legislative officers in New Brunswick. Essentially, the review is intended to find ways in which the efficiency, effectiveness and accountability of legislative officers can be enhanced without impairing their independence.

Presently, eight individuals have been appointed to discharge the responsibilities of ten (legislative officer) positions. These ten positions are governed or otherwise materially affected by fourteen pieces of legislation.

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

To the best of our knowledge, British Columbia is the only other Canadian jurisdiction to have undertaken a review of its legislative officers, at least in recent years.

Mr. Richard is to report his findings and advice to the Speaker no later than October 31, 2011.

B. The Project Context

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

During this same period, governments (with a few interruptions) have significantly expanded their program spending while also reducing tax burdens. As the global economy has faltered, surged and then faltered again, government deficits and debt have bloomed to unsustainable levels. Consequently, small and vulnerable jurisdictions like New Brunswick have begun to

closely scrutinize all aspects of their operations. As is the case in other jurisdictions, the Government of New Brunswick has launched a comprehensive review of all policy and operational areas.

This review of legislative officers starts with the widely acknowledged premise that there is only one taxpayer. It also recognizes that while there may be unequal capacities to contribute to the fiscal solution, since deficits and debt have been incurred on behalf of all citizens, communities and institutions, no branch of government and no one public body should be exempt from fiscal restraint. Consequently, the review aims to encourage and support legislative officers in finding ways to enhance their collective efficiency.

C. The Scope of Work

In the course of conducting the review, the following sources of information and perspective are being utilized in order to improve analysis and advice:

- Legislative Branch - the Clerk, all legislative officers and all relevant committees of the legislature.
- Executive Branch - the Clerk of the Executive Council, the DM of Finance and other DMs having frequent interactions with legislative officers.
- Legislative Branches of Other Jurisdictions – we are seeking the input of senior employees of other legislatures who can offer the perspective and experience of their jurisdictions on the questions and issues at the heart of our review.
- Subject Experts - in due course, contact will be made with academic experts and former public officials having acknowledged expertise relevant to legislative officers.

D. Work Undertaken in May and June

- All pertinent legislation has been reviewed.
- All New Brunswick legislative officers have been contacted, interviewed and given the opportunity to make an initial written submission.
- The Clerk of the New Brunswick Legislative Assembly has been interviewed.
- The project team has appeared before the Legislative Administration Committee (LAC) and the Legislative Officers Committee (LOC) to answer questions about the review.
- All legislative websites within Canada have been surveyed for information about the number, tasking, and resources of officers within each jurisdiction.

- Legislative officials in British Columbia have been interviewed and interviews are being arranged with appropriate officials in other jurisdictions.
- Some academic and historical literature has been reviewed.

E. Key Points from the Work-to-Date

1) About Resources

In the 2011-12 budget year, the eight individuals responsible for the ten legislative officer positions in New Brunswick have a budget of \$7.3 M. These officers employ approx. 70 individuals. While information gathering about officers, budgets and human resources in other jurisdictions is incomplete, the early perception is that New Brunswick has more officers than most other jurisdictions but provides fewer resources to these officers than other jurisdictions. This situation would be aggravated by the addition of similarly under-resourced officers.

Common services for legislative officers include reception, payroll, IT, bill paying, communications, translation, interpretation, postal and telephone service and the provision of office space and furnishings. Most officers receive the bulk of their common services from the Legislative Assembly and these officers are unanimous in declaring their satisfaction with the quality of these services and are unanimous as well in their reluctance to tamper with what works well for them. A few officers (notably the Auditor-General, the Ombudsman and the CYA) receive some administrative support from the executive branch (IT, HR and bill paying) while the balance of their common services are provided by the Legislative Assembly. These three officers seem satisfied with this arrangement.

Within the context of independent and separate offices, each legislative officer appears to be judicious and sparing in the use of resources allocated to their office. Apart from the work of the Ombudsman and the CYA whose operations are co-located, there are no examples of officers sharing administrative support. That said, no officer objected to the principle of sharing services with other officers provided it did not reduce the effectiveness or timeliness of their work. These officers rightly guard their independence and take a skeptical view of arrangements that could raise questions about improper access to sensitive files or arrangements that could raise questions about their ability to oversee a branch of government that in turn provides them with important administrative support such as payroll and IT. There may be an inherent conflict in such an arrangement.

In terms of the annual budget process for the officers of the Legislative Assembly, no officer is satisfied with the way in which resources are allocated. That said, no alternate budget process has been identified or recommended by the officers.

2) About Legislation

In the case of the Ombudsman and the Child and Youth Advocate, recent changes have been enacted to clarify and strengthen their legislation (terms of office, investigatory authority etc). Several other officers also believe their legislation requires amendment. The desired changes cover a diverse range of matters such as:

- clarification of authority (Commissioner of Official Languages)*
- sanctions for those who take reprisals against whistleblowers
- reshuffling of responsibilities (Conflict Commissioner to be responsible for Deputy Ministers and political staff as well as members and ministers)
- comprehensive statutory change (Auditor General)

*Note: a mandatory review of the Official Languages Act (which includes provisions respecting the Commissioner of Official Languages) is to commence shortly.

3) About Stakeholders

Aside from the Auditor General who has regular contact with the Public Accounts Committee and the Crown Corporations Committee, all remaining officers expressed regret that the Legislative Officer Committee (LOC) has not been active since its creation in 2005. That said, they look forward to a more active LOC and welcomed the beginning of such meetings in late June. LOC is regarded as an essential element in holding legislative officers to account.

Insofar as their work requires close contact with the executive branch, all officers reported a satisfactory (or better) relationship with officials in the executive branch.

Relationship issues with the media did not emerge as a concern for legislative officers in this first round of interviews.

Perhaps understandably, officers reported more interaction with their counterparts in other jurisdictions than with other legislative officers in New Brunswick. All officers in New Brunswick appear to hold the view that they ought to interact more frequently with each other in order to share information, resources and best practices.

4) About Accountability

Beyond the accountability mechanism of public reports and regular meetings with legislative committees regarding those reports, there are at least three other (inter-related) types of accountability for legislative officers: 1) meetings and discussions with legislators in relation to annual budgets, 2) performance measures in relation to the efficiency and effectiveness of work done by legislative officers and 3) periodic third party reviews (not necessarily peer

reviews). In this first round of meetings with legislative officers, only the Auditor General reported using performance measures and periodic peer reviews of the work of her office.

5) About Recruitment

There were a variety of methods reported for the recruitment of the current crop of legislative officers. These recruitment methods ranged from an exclusive executive branch-based process to a formal and open process of application, review, interview and credential-checking.

Save for the Auditor General, the legislation governing the various officers says nothing about the qualifications required to be a legislative officer. Sometimes a resolution of the Legislative Assembly is required prior to appointment, sometimes not. Sometimes the Opposition is consulted, sometimes not. Almost always the executive branch both leads and dominates the recruitment process. While some other jurisdictions have recruitment practices similar to New Brunswick, only British Columbia (apparently) follows the practice of having the entire process of recruitment and appointment driven by legislators. This latter model seems more in keeping with the principle of the supremacy of parliament and the right of the parliament/legislature to choose its own officers.

There are a variety of term lengths for the ten legislative officers of New Brunswick. The current range is five to ten years and most appointments are open for renewal. At this stage of the review, it is not clear whether greater consistency in the terms of office is desirable.

There appears to be little orientation and training for officers when they are appointed.

6) About Uncommon Arrangements

At this point the argument for leaving the Human Rights Commission under the purview of the executive branch seems stronger than the one for making its functions the responsibility of the legislative assembly. The principal considerations appear to be the wide scope of the current HRC mandate (overseeing government is but an incidental component of its current work), the fact there is no precedent for this arrangement elsewhere in Canada and the fact that the HRC is content with its present placement. As our work progresses, we will continue to probe the arguments for and against this proposal.

No other Canadian jurisdiction has a Consumer Advocate for Insurance under the auspices of the Legislative Assembly. However, other jurisdictions do have consumer advocacy functions as part of their broader utilities regulation infrastructure. In May, the New Brunswick Energy Commission issued its final report in which it recommends that New Brunswick adopt a more expansive and rigorous utilities regulatory framework (energy rates, insurance rates, water rates and property tax assessment appeals). There may be a sound argument for folding the

consumer advocate for insurance role into the wider advocacy function within such an expanded public utilities body. However, before such a conclusion is reached, more information needs to be gathered about the advocacy arrangements in other jurisdictions.

F. Questions and Issues for the Next Stage of the Review

1) About Resources, Sharing and Alignment of Responsibilities

Has New Brunswick taken on more legislative oversight responsibilities than it has the capacity to sustain?

Is there important work that legislative officers are failing to undertake (or undertake in a timely way) because of the current level of resources?

What is the likely impact on the work of legislative officers if their budgets are reduced by 2 - 3% in each of the next three fiscal years?

Are there significant efficiencies to be obtained through shared services? If yes, what are these efficiencies?

Are there other sources of revenue available to officers that could be tapped without compromising the work and responsibilities of the officers?

Is it possible to reconfigure the work of the officers so that there are fewer officers and to do so without compromising the essential work of these officers? If yes, what are the reconfigurations? In this spirit, do the proposed duties of a Registrar of Lobbyists align best with the Conflict of Interest Commissioner? Are there better options?

A key consideration in this review is whether individual officers can discharge their legislative duties with their current levels of resources and the impact on those obligations if the current fiscal restraint persists. To date, only the Auditor General has voiced a concern about an imbalance between resources and obligations. This leads us to pose a bigger question, namely, what is the best advice available in terms of an annual budget process for the legislature as a whole that i) would facilitate fiscal restraint, ii) that would enable informed trade-offs between spending options within the legislative assembly and iii) that would be respectful of the independence and supremacy of the legislature?

2) About Legislation, Functions and Best Practices

Should any proposed change to the legislation of a legislative officer be revenue neutral?

Should some sections of the legislation for each officer be identical, or virtually so? For example, should there be similar or identical statutory provisions in relation to recruitment methods, term of office, public reporting, periodic reviews and access to privileged information? On the latter point, what constraints should officers observe in the use of privileged information accessed during an audit, investigation or inquiry?

3) About Stakeholders

If regular meetings with committees of the legislature is desirable for each officer of the legislature, without limiting the exchange between the officers and the legislators, is there a standard battery of issues and questions that officers should be obliged to answer?

While the requirements of transparency and openness partly require that legislative officers interact with the media, are there constraints that officers ought to observe if the subject matter at the centre of interaction with the media is unknown to the legislators to whom officers are accountable?

If there are benefits to be gained by legislative officers meeting regularly with each other, are there also benefits to be gained through periodic meetings of officers with senior officials in the executive branch?

4) About Accountability

For each officer, what are the best indicators of efficiency, effectiveness, accountability and independence?

For each officer, which of their counterparts in other Canadian jurisdictions do they regard as exemplary in terms of accountability?

Apart from Auditors General who have long-campaigned for improved performance reporting by the executive branch, what indicators do other officers use to assess the response and cooperation of the executive branch?

5) About Recruitment and Professional Development

Aside from qualifications that may relate to a specific profession such as accounting, and aside from competence in both official languages, are there skills and attributes that are common among those legislative officers who are widely regarded as effective?

What ought to be the standard elements of an orientation process for a new legislative officer? Should this orientation be written and/or conducted by the Clerk of the Legislature together with the Clerk of the Executive Council?

What are the least expensive and most important sources of professional development for a legislative officer during a term in office?

G. Work Remaining

- Gather and analyze additional information on the operations of each legislative officer. (July)
- Continue interviews with current (and former) legislative officials in other Canadian jurisdictions. (July)
- Convene a plenary meeting of New Brunswick legislative officers to consider, among other things, the questions posed in this status report. (July)
- Through the Office of the Clerk of Executive Council, convene a plenary meeting of those Deputy Ministers having frequent and substantive interactions with legislative officers. (July or August)
- Draft an interim report. (August)
- For the purpose of debating the merits of the interim report, convene a roundtable meeting of legislative officers, the Clerk of the Legislative Assembly, the Clerk of the Executive Council and a few acknowledged experts from academe and other jurisdictions. (Early to mid-September)
- Revise and submit a final report. (October)