
The Role of Legislative Officers in Alberta

by Donald M. Hamilton

This article focuses on the roles played by Legislative Officers in the provinces and especially Alberta. Annual opinion polls say Canadians do not trust politicians. Do Legislature Officers offer services that will help to change this perception?

When you talk to people who serve as Legislative Officers, they will stress their independence as critical to the success of their office. In Alberta, most Officers are hired after an open competition and an interview process conducted by an all-party Committee of the House. An exception is made for the Auditor General since that person must have audit experience. Even in that case, more than one person is usually considered and the appointment is recommended by the all-party Committee.

Are Legislature Officers truly independent? I would say yes, based on their qualifications. Most of my colleagues as Ethics Commissioners are retired judges or are lawyers. A number of Information and Privacy Commissioners have legal or academic backgrounds. Chief Electoral Officers have elections experience. Alberta's Ombudsmen have tended to have policing backgrounds. Some Officers have government experience or have served in elected office, but I believe they have had the independence to speak openly, and when necessary, critically, of the government or elected officials in their jurisdiction.

While some Legislative Officers are not re-appointed, it has been rare that an Officer has not completed a term. There are also, no doubt, cases where an Officer would have liked to have been re-appointed but was told it either would not happen or they could apply (which is

usually a message that you should not bother to do so). A fixed term allows the Legislature to review an Officer's performance just as voters review a Member's performance during elections.

In Alberta, Officers' budgets are not approved by the "government" but by an all-party Committee. We are questioned about our estimates and the Committee can refuse to approve the amounts sought. When an Officer's budget is reduced, that Officer must decide whether his or her independence is being threatened or whether the reduction was in keeping with an overall effort to keep expenditures within certain percentages. When the House in Alberta considers the main estimates each year, the first item of business is a vote on each Officer's budget and there is no debate or amendment allowed [Standing Order 61(8)].

Along with our budget submissions, we are encouraged to submit a business plan. Within the business plan, an Officer may choose to set goals and may measure the achievement of the past year's goals. The Ombudsman in Alberta identifies his performance measurements in his annual report. The Auditor General sets and measures the performance of his Office in his business plans. He advocates that the other Legislative Officers do so as well. My office identifies goals but does not measure performance.

Each Officer is also audited by the Office of the Auditor General annually. We post our travel expenses online. We rarely receive access to information requests and, for the most part, are exempt from that legislation. I believe we all try to be as open and transparent as possible while respecting the confidentiality provisions in our legislation.

Donald M. Hamilton is the Ethics Commissioner in Alberta. This article is based on remarks prepared for a conference of the Canadian Study of Parliament Group held in Winnipeg, Manitoba on December 9, 2006.

We are fortunate in Alberta that the Legislature has started to put into most Acts a requirement that the Act be reviewed from time to time. My legislation just went through such a review. I believe that speaks to the need to address changing expectations from the public and from Members as well. If the public wants to see more oversight, more transparency, it is likely that our legislation will be amended to reflect that – or, at the very least, those opinions are likely to be part of the debate.

My office has been asked on more than one occasion whether the *Conflicts of Interest Act* for MLAs is really necessary or whether Members would act ethically regardless of it. I believe Members generally do act ethically and would do so whether they were obligated to do so by legislation or not.

That having been said, I believe the Act does make a difference. It gives the public some assurance that there are rules and that there is someone – and an independent someone – who can look into allegations of wrongdoing. It also gives Members a source for guidance on ethical issues that are not always clear.

Alberta was the first jurisdiction in North America to have an Ombudsman. The Ombudsman has played a key role in reviewing administrative decisions and has conducted broader reviews when needed (examples include correctional facilities and child care centres). The role of that Officer has expanded over the years, most recently to include the authority to review matters involving some professional organizations, e.g. persons under the health professions, regulated accounting professions, etc.

My own office was set up to deal with conflicts of interest for Members of the Assembly only. Shortly after the office opened, my predecessor was asked if he would also assume responsibility for senior officials (deputy minister-level appointees) and that happened. The Alberta Legislature is expected to consider creating a lobbyists registry next year. My office has offered to take on that role. In Ontario, the Integrity Commissioner has responsibility for MPPs, reviewing and recommending salaries for Members, reviewing Ministerial expense claims, lobbyists registration, and, according to the *Globe and Mail*, they may soon be responsible for whistleblower protection legislation. Many of my Canadian colleagues have more than one role – some are responsible for both Members and senior public servants and, in Newfoundland, the person serves as both Conflicts Commissioner and Chief Electoral Officer.

One area where public expectations have not been met is with respect to leadership campaigns. Alberta, like most provinces, does not have legislation to deal with leadership campaigns. The public may or may not find

out who contributed how much to any candidate. The Chief Electoral Officer has no authority to monitor contributions or expenses. I believe there will be changes in this area throughout the country in the next few years.

The response by government to the Officers' recommendations or reports is perhaps one measurement of the success of independent Officers. Most (although not all) of the Auditor General's recommendations are accepted each year. The Ombudsman's recommendations are generally well received. Few of the Information and Privacy Commissioners' Orders are sent for judicial review. Regarding Conflict of Interest Commissioners, very few serious breaches are reported. Most often, where a serious breach has occurred, the politician involved resigns so the Legislature does not have to deal with a recommendation of the Commissioner.

Do the Legislative Officers meet public expectations about holding elected officials accountable? Probably not. A recent survey by the Alberta Ombudsman revealed that many citizens are not aware of his office. I would expect the same result if my office were to conduct a survey. Our offices are similar in that much of our routine work is probably not "newsworthy" to the media. Special reports by the Ombudsman and investigations by my office attract more attention because there may be a hint of scandal or wrongdoing involved. The case resolved to everyone's satisfaction by the Ombudsman or the Member following my advice and avoiding conflicts of interest is not a "story." The public may therefore not know what we do. We do – quietly and, I hope, responsibly – carry out our functions and in doing so, we help to ensure accountable and transparent government.

I can say for myself and my office that I have never felt pressured by any politician, senior official or the media to change the way I do things or to change a decision I made. My office has brought together representatives from all parties to discuss a matter and found that such a gathering is very useful. It allowed the office to learn more about the role of Members which I believe resulted in better advice to Members.

Criticism in the media can be difficult for Legislative Officers. Most Officers would take the point of view that their decisions, like those of the judiciary, must speak for themselves and the Officers will not be drawn into a debate on their decisions.

What more would citizens want? From my office's experience, some citizens want us to make elected officials act ethically according to the citizen's interpretation of what is ethical. This may mean finding a Health Minister to be unethical if abortions are publicly funded or an Education Minister unethical if junk food is served in school

cafeterias. But we cannot meet all the expectations of all the citizens.

What my office does encourage is ethical leadership. I wrote in my 2004-05 annual report:

As has been noted by many others – the media and academics, among others – what the public appears to want most from its leaders is accountability. It is not sufficient to only step forward when credit is due for good work. Canadians would like to see officials step forward immediately when mistakes are made or programs are not carried out in the manner intended. Citizens would like to know what went wrong and how it went wrong and, yes, they are interested in who was responsible. Simply assigning blame, however, is not enough (nor, obviously, is not accepting responsibility at all). I would agree with what I feel the majority of Canadians believe: officials need to demonstrate more accountability in providing Canadians with information

about what government is doing, how decisions are made and carried out, and on results – good or bad.

Together with my Legislative Officer colleagues in Alberta and across Canada, I believe we are independent persons who serve the public and the public interest by reviewing decisions, advising on or interpreting legislation, recommending changes to policies or procedures, and ordering government departments and elected officials to do the things the public expects and wants them to do. Not everyone will agree with every decision we make, but I do believe the majority of citizens would agree that our offices should exist, we should be independent of government, and that we do, in fact, serve to keep government and elected officials accountable.