



Statutory Officers of the British Columbia Legislature

Fundamental Operating Principles
and Related Legislation

April 1998

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Report submitted by: Information and Privacy Commissioner, Conflict of Interest Commissioner, Ombudsman, Chief Electoral Officer, Auditor General and Child, Youth and Family Advocate. C.f. letter of transmittal.

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Madam:

We have the honour to transmit to the Legislative Assembly our report: *Statutory Officers of the British Columbia Legislature, Fundamental Operating Principles and Related Legislation.*

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April 1998

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Fundamental Operating Principles and Related Legislation

Introduction

Statutory Officers of the Legislature occupy a unique and valued position founded in the tradition of the Westminster model of democratic governance. They each play an important role in the process of holding the government accountable to the Legislative Assembly and the public. They are the elected Members' representatives—in large measure their eyes and ears—in monitoring and assessing government programs, procedures, and performance. It is essential, therefore, that the roles of Legislative Officers are safeguarded and the discharge of their duties facilitated.

It also is important that all those involved in the process of democratic governance—legislators, the government, public servants, the public, and the legislative Officers themselves—understand and acknowledge the fundamental principles in accordance with which the Officers are expected to carry out their legislated mandates.

The current Statutory Officers of the British Columbia Legislature are:

- Auditor General
- Chief Electoral Officer
- Child, Youth and Family Advocate
- Conflict of Interest Commissioner**
- Information and Privacy Commissioner
- Ombudsman
- Police Complaint Commissioner

*** The Conflict of Interest Commissioner is an Officer of the Legislative Assembly according to sec. 14 (1) of the Members Conflict of Interest Act.*

Fundamental Operating Principles

Over the past two years, the Statutory Officers of the British Columbia Legislature have given detailed consideration to those operating principles that are deemed by the Officers to be fundamental to the effective carrying out of their legislated responsibilities. The Officers believe that a clear statement of these principles should assist in confirming the expectations of the Legislature in respect of its Officers, and in ensuring that these principles are properly recognized and supported by all who play a role in the provincial governance process—Members of the Legislative Assembly, government officials and the public.

In the process of determining these principles, the Officers have reviewed relevant information available from other Canadian and Commonwealth jurisdictions, and have sought the views of persons having considerable knowledge of the provincial governance processes and institutions in British Columbia. These principles are described in this report under the following general headings:

- Legislated Mandate and Authority
- Accountability
- Independence: Personal and Managerial
- Reporting
- Access to Information
- Confidentiality

Enabling Legislations in British Columbia

The Officers further have reviewed the legislations establishing their respective Offices to determine the extent to which current legislative provisions adequately address the Officers' fundamental operating principles. The Officers have identified a number of inconsistencies and inadequacies in regard to those legislative provisions pertaining to the fundamental principles under which the Offices should be operating. The Officers believe it important to public sector governance in British Columbia that these legislative inconsistencies and inadequacies be rectified as soon as possible.

To assist the process of amending current legislation, the Officers have developed proposed generic wordings for incorporation of the fundamental operating principles in legislation for Statutory Officers. These wordings were arrived at after thorough review and consideration of relevant legislative provisions in jurisdictions across Canada and throughout the Commonwealth.

Section I of this document describes the Fundamental Operating Principles. Section II provides the proposed generic wording for inclusion of those principles in legislation. The shaded areas provide the principles, followed by the proposed wording for legislation.



Section I: Fundamental Operating Principles

Legislated Mandate and Authority

Officers of the Legislature should have their mandates and duties set out clearly in legislation, along with the authority needed to discharge their responsibilities. Each Officer should be appointed by the Lieutenant-Governor on the recommendation of the Legislative Assembly to carry out, independent from government, particular duties. It is essential that the mandate and authority of each Officer be incorporated in legislation passed by the Legislative Assembly.

Accountability

Officers of the Legislature should subscribe to the following recognized standards of public sector conduct: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Officers of the Legislature should conduct their work fairly, objectively and with due care. These attributes serve to ensure their independence is in the public interest, and to preserve the integrity of the Offices.

Officers of the Legislature should be accountable directly to the Legislature for carrying out their legislated responsibilities and for the administration of their offices.

Officers of the Legislature should be subject to independent audits of their offices.

Independence

Officers of the Legislature should have the legislated authority to discharge their duties as and when required, and the ability to report directly to the Legislative Assembly. It is important that this authority be provided in a manner that is as unfettered from government influence or control as possible. The Legislative Assembly has a responsibility to ensure that the Officers' independence from government is established clearly in legislation, and is maintained both in fact and in appearance.

Personal Independence

Officers of the Legislature, at the time of their appointment, should have the declared support of Members of the Legislative Assembly pursuant to a unanimous recommendation for such appointment by a special all-party committee of the Assembly. Officers must have the confidence of the legislators to whom they report to be effective in carrying out their mandated responsibilities.

Officers of the Legislature should have assured tenure in office to protect them from government influence and interference. Legislation should provide appointments for terms certain, with removal for cause or incapacity only.

Officers of the Legislature should have their remuneration and employment benefits guaranteed in legislation. Compensation of Officers should be in keeping with the senior nature of their responsibilities and, accordingly, be equal to that of the chief judge of the Provincial Court of British Columbia.

Officers of the Legislature should be protected by legislation from legal action for exercising their duties in good faith. As it is the Legislative Assembly that establishes in legislation the role and responsibilities of each of the Officers, it is appropriate that there be legislated provisions protecting the Officers, and any persons appointed, hired or engaged by them, from legal action for exercising those duties in good faith.

Managerial Independence

Officers of the Legislature should have the annual estimates of expenditure for their Offices reviewed and approved by a committee of the Legislative Assembly before they are presented to the Assembly for approval. It is appropriate for government officials to act in an advisory capacity only during the budget preparation and approval process.

Officers of the Legislature should have sufficient independence from government administrative controls to ensure that they can organize, staff and manage their offices, and engage outside expertise, as they see fit, within their budgets and within the provisions of legislation designed to protect the rights of public servants.

Reporting

Officers of the Legislature should report to the Legislative Assembly at least annually on anything that they consider should be brought to the attention of the Assembly resulting from work undertaken in the performance of their duties.

Officers of the Legislature should submit their reports directly to the Legislative Assembly through the Speaker, since they are Officers of the Legislature.

Officers of the Legislature should issue reports to the Legislative Assembly as frequently as is deemed appropriate by the Officers to ensure that the Legislature receives information from its Officers on a timely basis.

Access to Information

Officers of the Legislature should have, in accordance with their legislated authority, access to all records, information and explanations needed to carry out their mandated responsibilities.

Officers of the Legislature should have legislated authority to examine persons under oath, since much of the information obtained by Officers in the conduct of their work is acquired through oral evidence and may not be capable of substantiation by written or other corroborative means. The Officers should be commissioners for taking affidavits for British Columbia.

Confidentiality

Officers of the Legislature should keep confidential, except as required to perform their mandated duties, all information obtained in the performance of their work. Similar constraints should apply to persons appointed, hired or engaged by the Officers. The *Freedom of Information and Protection of Privacy Act* should not apply to a record that is created for or by, or is in the custody of, an Officer of the Legislature and that relates to the exercise of that Officer's functions under an Act.



Section II: Proposed Generic Wording for Legislation

Legislated Mandate and Authority

Principle

Officers of the Legislature should have their mandates and duties set out clearly in legislation, along with the authority needed to discharge their responsibilities. Each Officer should be appointed by the Lieutenant-Governor on the recommendation of the Legislative Assembly to carry out, independent from government, particular duties. It is essential that the mandate and authority of each Officer be incorporated in legislation passed by the Legislative Assembly.

No generic wording proposed

This section should be specific to the individual officers but should set out the purpose of the office, the scope of responsibility (including the authority to review other Officers of the Legislature, if applicable), and the expectations of the Legislative Assembly.

Accountability

Principle

Officers of the Legislature should subscribe to the following recognized standards of public sector conduct: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Officers of the Legislature should conduct their work fairly, objectively and with due care. These attributes serve to ensure their independence is in the public interest, and to preserve the integrity of the Offices.

Proposed legislation

Oath of Office

Before assuming office, the Officer must take an oath before the Clerk of the Legislative Assembly to exercise faithfully and impartially the powers and perform the duties assigned to the Officer.

Principle

Officers should be accountable directly to the Legislature for carrying out their legislated responsibilities and for the administration of their offices.

Proposed legislation

Annual Report

- (1) The Officer must report annually to the Legislative Assembly on the affairs the office and transmit a copy to the Speaker.
- (2) The Speaker must lay the report in subsection (1) before the Legislative Assembly as soon as possible.

Principle

Officers of the Legislature should be subject to independent audits of their offices.

No generic wording proposed

Officers of the Legislature, except for the Auditor General, are subject to independent audits of their offices by the Auditor General. The Auditor General is subject to an independent audit of his/her Office under the provisions of the *Auditor General Act*.

Independence

Principle

Officers should have the legislated authority to discharge their duties as and when required, and the ability to report directly to the Legislative Assembly. It is important that this authority be provided in a manner that is as unfettered from government influence or control as possible. The Legislative Assembly has the responsibility to ensure that the Officers' independence from government is established clearly in legislation, and is maintained both in fact and in appearance.

Personal Independence

Principle

Officers of the Legislature, at the time of their appointment, should have the declared support of the Members of the Legislative Assembly pursuant to a unanimous recommendation for such appointment by a special all-party committee of the Assembly. Officers must have the confidence of the legislators to whom they report to be effective in carrying out their mandated responsibilities.

Officers of the Legislature should have assured tenure in office to protect them from government influence and interference. Legislation should provide appointments for terms certain, with removal for cause or incapacity only.

Proposed legislation

Appointment of the Officer

- (1) The Lieutenant Governor must, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature, a person as _____ to exercise the powers and perform the duties assigned to the _____ under this Act.
- (2) The Legislative Assembly must not recommend a person to be appointed as _____ unless a special all-party committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.
- (3) The Officer holds office for a term of _____ years. *[Depending on the mandate of the Office, the length of the term certain and the matter of reappointment, these may vary among Officers.]*

Resignation, removal or suspension of the Officer

- (1) The Officer may resign from office at any time by giving written notice
 - (a) to the Speaker of the Legislative Assembly, or
 - (b) if the Speaker is absent from British Columbia or there is no Speaker, to the Clerk of the Legislative Assembly.

- (2) Where 2/3 of the members present in the Legislative Assembly recommend that the Officer
 - (a) be suspended from office, with or without salary, or
 - (b) be removed from officefor cause or incapacity, the Lieutenant Governor must implement this recommendation.
- (3) The Lieutenant Governor in Council may suspend the Officer, with or without salary, for cause or incapacity for a period not exceeding 30 days if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days.

Appointment of an acting Officer

- (1) Where the Officer is suspended, or the office becomes vacant and an appointment under section _____ is not made, the Lieutenant Governor in Council must recommend to the Legislative Assembly a person to serve as acting Officer and, on the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint that person as acting Officer to exercise the powers and perform the duties assigned to the Officer under this Act until an appointment under section _____ is made or the suspension ends.
- (2) If the Legislative Assembly is not sitting and is not scheduled to sit for 5 days, and the Officer is suspended or the Office is vacant, the Lieutenant Governor in Council may appoint an acting Officer to serve for a period not exceeding 30 days or until an Officer is appointed under section _____, whichever occurs first.

Principle

Officers should have their remuneration and employment benefits guaranteed in legislation. Compensation of Officers should be in keeping with the senior nature of their responsibilities and, accordingly, be equal to that of the chief judge of the Provincial Court of British Columbia.

Proposed legislation

Salary and Expenses

The Officer must be paid out of the consolidated revenue fund a salary equal to that of the chief judge of the Provincial Court of British Columbia and must be reimbursed for reasonable travelling and out of pocket expenses necessarily and personally incurred to exercise the powers and perform the duties assigned to the Officer under this Act.

Application of the Pension (Public Service) Act

- (1) Subject to this section, the *Pension (Public Service) Act* applies to the Officer as an employee.
- (2) When calculating the amount of a superannuation allowance for the Officer or for the surviving spouse of the Officer, each year of service as Officer counts as 1½ years of pensionable service.
- (3) Subsection (2) does not apply to the calculation under section 9(9) of the *Pension (Public Service) Act*.

Principle

Officers of the Legislature should be protected by legislation from legal action for exercising their duties in good faith. As it is the Legislative Assembly that establishes in legislation the role and responsibilities of each of the Officers, it is appropriate that there be legislated provisions protecting the Officers, and any persons appointed, hired or engaged by them, from legal action for exercising those duties in good faith.

Proposed legislation

Protection against actions

- (1) No proceedings lie or shall be brought against the Officer or any person appointed, hired or engaged under section _____ because of anything done or omitted in good faith
 - (a) in the exercise or intended exercise of any power under this Act, or
 - (b) in the performance or intended performance of any duty under this Act.
- (2) Subsection (1) does not absolve the government from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.
- (3) The government must indemnify any individual referred to in subsection (1) for any costs or expenses incurred by the individual in any legal proceedings taken against the individual for anything done or not done by the individual in good faith acting or purporting to act under this Act.

Managerial Independence

Principle

Officers of the Legislature should have the annual estimates of expenditure for their Offices reviewed and approved by a committee of the Legislative Assembly before they are presented to the Assembly for approval. It is appropriate for government officials to act in an advisory capacity only during the budget preparation and approval process.

Proposed legislation

Preparation of estimates for appropriation purposes

- (1) The Officer must present each year to the Legislative Assembly Management Committee an estimate of the resources that will be required to exercise the powers and perform the duties assigned to the Officer under this Act during the upcoming fiscal year.
- (2) The Legislative Assembly Management Committee must review and may adjust as it considers appropriate the estimate it receives under subsection (1) and transmit the resulting estimate to the Minister of Finance.

- (3) The estimate as transmitted under subsection (2) must be submitted by the Minister of Finance as part of the estimates for the upcoming fiscal year submitted to the Lieutenant Governor for recommendation to the Legislative Assembly.
- (4) Notice of meetings of the Legislative Assembly Management Committee for the purposes of subsection (2) must be given to the Officer, who may attend these meetings.

Principle

Officers of the Legislature should have sufficient independence from government administrative controls to ensure that they can organize, staff and manage their offices, and engage outside expertise, as they see fit, within their budgets and within the provisions of legislation designed to protect the rights of public servants.

Proposed legislation

Staff

- (1) The Officer has the status of a deputy minister for the purposes of the *Public Service Act*.
- (2) The Officer may appoint, in accordance with the *Public Service Act*, a Deputy Officer and hire other employees necessary to exercise the powers and perform the duties assigned to the Officer under this Act.
- (3) The Officer may engage persons that the Officer considers necessary to exercise the powers and perform the duties assigned to the Officer under this Act and may determine their remuneration, and the *Public Service Act* does not apply to the engagement or remuneration of these persons.
- (4) The Officer may issue directives in respect of persons appointed or hired under subsection (2) respecting the same matters for which policies and regulations may be issued under the *Public Service Act* and, where for these persons a directive issued under this subsection conflicts with policies and regulations issued under the *Public Service Act*, the directive under this subsection applies.
- (5) The Officer must report each year to the Legislative Assembly Management Committee the job classifications used to remunerate staff, the average number of staff employed during the year in each classification, and the average salary paid to staff in each classification.

Reporting

Principle

Officers of the Legislature should report to the Legislative Assembly at least annually on anything that they consider should be brought to the attention of the Assembly resulting from work undertaken in the performance of their duties.

Officers of the Legislature should submit their reports directly to the Legislative Assembly through the Speaker since they are Officers of the Legislature.

Proposed legislation

Reporting

- (1) The Officer must report at least annually to the Legislative Assembly on the work of his or her office.
- (2) A report under subsection (1) must
 - (a) be transmitted by the Officer to the Speaker,
 - (b) if the Legislative Assembly is sitting or is scheduled to sit within 5 days of receipt of the report by the Speaker, be laid by the Speaker before the Legislative Assembly as soon as possible,
 - (c) if the Legislative Assembly is not sitting and is not scheduled to sit within 5 days of receipt of the report by the Speaker, be forwarded by the Speaker to all Members of the Legislative Assembly as soon as possible and released to the public, and
 - (d) be referred to ...[an appropriate committee of the Legislative Assembly]

Principle

Officers of the Legislature should issue reports to the Legislative Assembly as frequently as is deemed appropriate by the Officers to ensure that the Legislature receives information from the Officers on a timely basis.

Proposed legislation

Other reports

The Officer may make a report at any time to the Legislative Assembly, a minister, the Treasury Board, the Lieutenant Governor in Council or any other person or organization on any matter that, in the opinion of the Officer, should be brought to the attention of that person or organization.

Access to Information

Principle

Officers of the Legislature should have, in accordance with their legislated authority, access to all records, information and explanations needed to carry out their mandated responsibilities.

Proposed legislation

Power to obtain information

Notwithstanding any other Act, including the *Freedom of Information and Protection of Privacy Act*, the Officer, in the conduct of the Officer's duties, must be given access to records, information and any explanations required from a person or organization for the Officer to exercise his or her powers and perform his or her duties under this Act.

Principle

Officers of the Legislature should have legislated authority to examine persons under oath, since much of the information obtained by Officers in the conduct of their work is acquired through oral evidence and may not be capable of substantiation by written or other corroborative means. The Officers should be commissioners for taking affidavits for British Columbia.

Proposed legislation

Inquiry powers

The Officer may examine any person on oath on any matter pertaining to that person's responsibilities and for that examination the Officer has all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

The Officer is a commissioner for taking affidavits for British Columbia.

[If it is deemed necessary for any of the Officers, the following can also be included in legislation.]

Offences

A person commits an offence who does any of the following:

- (a) without lawful justification or excuse, intentionally obstructs, hinders or resists the _____ or another person in the exercise of a power conferred or a duty imposed under this Act;
- (b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the _____ or another person under this Act;
- (c) intentionally makes a false statement to or misleads or attempts to mislead the _____ or another person in the exercise of a power conferred or a duty imposed under this Act.

Confidentiality

Principle

Officers of the Legislature should keep confidential, except as required to perform their mandated duties, all information obtained in the performance of their work. Similar constraints should apply to persons appointed, hired or engaged by the Officers.

Proposed legislation

Confidentiality

- (1) Except as otherwise provided by this Act or the *Freedom of Information and Protection of Privacy Act*, the Officer, or a person appointed, hired or engaged under section _____, must keep confidential all information obtained in the performance of a duty under this Act.
- (2) The Officer, or a person appointed, hired or engaged under section _____, must not be compelled by the Legislative Assembly or a committee of the Legislative Assembly to give testimony relating to any information obtained in the performance of a duty under this Act or to produce any document containing such information.

Principle

The Freedom of Information and Protection of Privacy Act should not apply to a record that is created for or by, or is in the custody of, an Officer of the Legislature and that relates to the exercise of that Officer's functions under an Act.

Proposed legislation

[Section 3(1)(c) of the Freedom of Information and Protection of Privacy Act should provide that the Act does not apply to a record created for or by, or is in the custody of, an Officer and that relates to the exercise of that Officer's functions under an Act.]

Application of other laws respecting disclosure

- (1) A rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest, does not apply to production of the document or thing or the disclosure of the matter to the Officer.
- (2) A person who is bound by an enactment to maintain confidentiality in relation or not to disclose any matter must not be required to supply any information to or answer any question put by the Officer in relation to that matter, or to produce to the Officer any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.
- (3) If a person is bound to maintain confidentiality in respect of a matter only because of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Officer.

Privileged information

- (1) Subject to section _____, a person has the same privileges in relation to giving information answering questions or producing documents or things to the Officer as the person would have with respect to a proceeding in a court.
- (2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Officer and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

Testimonial capacity

Neither the Officer nor any person appointed, hired or engaged under section _____ is a competent or compellable witness in any civil proceeding outside the Legislative Assembly in connection with anything done or omitted under this Act.

