



Standing Committee on Legislative Offices

Report on the Appointment of an Acting Ombudsman and an Acting Public Interest Commissioner

April 2022



COMMITTEES
OF THE LEGISLATIVE ASSEMBLY

Standing Committee on Legislative Offices
3rd Floor – Federal Building
9820 107 Street NW
Edmonton, Alberta T5K 1E7
780.644.8621
Committee.Admin@assembly.ab.ca



STANDING COMMITTEE ON LEGISLATIVE OFFICES

April 2022

To the Honourable Nathan M. Cooper
Speaker of the Legislative Assembly
of the Province of Alberta

The Standing Committee on Legislative Offices has the honour to submit its report relating to the recommendation to the Lieutenant Governor in Council for acting appointments for the role of Ombudsman and the role of Public Interest Commissioner for the information of the Legislative Assembly.

Sincerely,

[original signed by]

Brad Rutherford, MLA
Chair, Standing Committee
on Legislative Offices

Membership of the Standing Committee on Legislative Offices

Chair: Brad Rutherford, MLA
Leduc-Beaumont (UC)

Deputy Chair: Nicholas Milliken, MLA
Calgary-Currie (UC)

Members:	Tracy L. Allard, MLA Grande Prairie (UC)	Miranda D. Rosin, MLA Banff-Kananaskis (UC)
	Joe Ceci, MLA Calgary-Buffalo (NDP)	David Shepherd, MLA Edmonton-City Centre (NDP)
	Lorne Dach, MLA Edmonton-McClung (NDP)	Mark W. Smith, MLA Drayton Valley-Devon (UC)
	Martin M. Long, MLA West Yellowhead (UC)	Glenn van Dijken, MLA Athabasca-Barrhead-Westlock (UC)
	Rod Loyola, MLA Edmonton-Ellerslie (NDP)	

Substitutions:

Roger Reid, MLA*
Livingstone-Macleod (UC)

* Substitution for Nicolas Milliken, MLA, Calgary-Currie, pursuant to Standing Order 56(2.1-2.4) on April 27, 2022.

At its Wednesday, April 27, 2022, meeting the Standing Committee on Legislative Offices considered the appointment of an Acting Ombudsman and an Acting Public Interest Commissioner following the retirement of Marianne Ryan, Ombudsman and Public Interest Commissioner, and prior to the appointment of the next Ombudsman and Public Interest Commissioner.

Section 7 of the *Ombudsman Act*, excerpted below, relates to a vacancy in the position of Ombudsman:

Vacancy in office

7(1) If the Ombudsman dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an Ombudsman to fill the vacancy and unless the office sooner becomes vacant, the person so appointed holds office until the person's appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next regular session, the appointment lapses and there is deemed to be another vacancy in the office of Ombudsman.

RSA 1980 cO-7 s7

Sections 38 and 41 of the *Public Interest Disclosure (Whistleblower Protection) Act*, excerpted below, relate to the appointment of the Public Interest Commissioner and an Acting Commissioner:

Appointment of Public Interest Commissioner

38(1) Subject to subsections (2) and (5), the Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Public Interest Commissioner to carry out the duties and functions set out in this Act.

(2) Notwithstanding section 3(1) of the *Ombudsman Act*, the Legislative Assembly may, by resolution, appoint the Ombudsman as the Commissioner.

(3) The Commissioner is an officer of the Legislature.

(4) The Commissioner may not be a member of the Legislative Assembly.

(5) For the purposes of appointing the first Commissioner, if the Legislative Assembly is not sitting, the Lieutenant Governor in Council on the recommendation of the Standing Committee may appoint a Commissioner, and unless the office sooner becomes vacant, the individual appointed holds office until the appointment is confirmed by the Legislative Assembly or a successor is appointed under subsection (1) or (2).

Acting Commissioner

41(1) The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

- (a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Commissioner is suspended when the Legislative Assembly is not sitting, or
- (c) the Commissioner is removed from office or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation to appoint the Commissioner is made by the Assembly under section 38 before the end of the sitting.

(2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

(3) An acting Commissioner holds office until

(a) an individual is appointed as Commissioner under section 38(1) or (2),

(b) the suspension of the Commissioner ends, or

(c) the Commissioner returns to office after a temporary absence.

The Committee passed the following motion in this respect:

MOVED by Mr. Reid that the Standing Committee on Legislative Offices recommend to the Lieutenant Governor in Council that Peter Sherstan be appointed

(a) under section 7(3) of the *Ombudsman Act* as the acting Ombudsman until such time as an individual is appointed to the position of Ombudsman or the appointment expires in accordance with section 7(4), whichever occurs first, and

(b) under section 41(1) of the *Public Interest Disclosure (Whistleblower Protection) Act* as the acting Public Interest Commissioner until such time as provided under section 41(3) of that Act.

The Committee also passed the following motion:

MOVED by Mrs. Allard that the Standing Committee on Legislative Offices approve Peter Sherstan, in his capacity as Acting Ombudsman and for the duration of his acting appointment, to exercise all powers of delegation provided to the Ombudsman under section 27 of the *Ombudsman Act*.