

## Standing Committee on Legislative Offices

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

March 2017



Standing Committee on Legislative Offices  
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## **STANDING COMMITTEE ON LEGISLATIVE OFFICES**

March 2017

To the Honourable Robert E. Wanner  
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 for acting appointments for the role of Ombudsman and the role of Public Interest Commissioner for consideration by the Legislative Assembly.

Sincerely,

*[original signed by]*

David Shepherd, MLA  
Chair, Standing Committee  
on Legislative Offices

## Membership of the Standing Committee on Legislative Offices

**Chair:** David Shepherd, MLA  
Edmonton-Centre (ND)

**Deputy Chair:** Brian Malkinson, MLA  
Calgary-Currie (ND)

**Members:** Lorne Dach, MLA\*  
Edmonton-McClung (ND)

Mike Ellis, MLA  
Calgary-West (PC)

Trevor A.R. Horne, MLA<sup>[MS1]</sup>  
Spruce Grove-St. Albert (ND)

Jamie Kleinsteuber, MLA  
Calgary-Northern Hills (ND)

Jessica Littlewood, MLA  
Fort Saskatchewan-Vegreville (ND)

Jason Nixon, MLA  
Rimbey-Rocky Mountain House-Sundre (W)

Angela Pitt, MLA  
Airdrie (W)

Glenn van Dijken, MLA  
Barrhead-Morinville-Westlock (W)

Denise Woollard, MLA  
Edmonton-Mill Creek (ND)

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\* Substitution for Deborah Drever, MLA, Calgary-Bow, pursuant to Standing Order 56(2.1-2.4) on March 7, 2017.

At its Tuesday, March 7, 2017, meeting the Standing Committee on Legislative Offices considered the appointment of individuals to fill the roles of Acting Ombudsman and Acting Public Interest Commissioner following the retirement of Mr. Peter Hourihan, 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

The Committee passed the following motion in this respect:

**MOVED by** Ms Woollard that the Standing Committee on Legislative Offices recommend to the Legislative Assembly that Mr. Joe Loran be appointed Acting Ombudsman for the period beginning April 16, 2017, until such time as a replacement for the Ombudsman and Public Interest Commissioner is appointed.

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. Kleinsteuber that the Standing Committee on Legislative Offices recommend to the Legislative Assembly that Mr. Ted Miles be appointed Acting Public Interest Commissioner for the period beginning April 16, 2017, until such time as a replacement for the Ombudsman and Public Interest Commissioner is appointed.

Standing Committee on Legislative Offices:

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