

MEMORANDUM

PUBLIC INTEREST DISCLOSURE AND WHISTLEBLOWER PROTECTION ACT

BACKGROUND:

In its review of Bill 25, *Public Interest Disclosure and Whistleblower Protection Act*, MLAs debated whether the appointment process for the Commissioner under the Act should include a role for the Lieutenant Governor in Council. Section 2 of the Bill provides for the appointment of the Commissioner by the Lieutenant Governor in Council, following a resolution of the Legislative Assembly supported by at least two-thirds of its members.

The appointment provision included in the Bill is based on the constitutional conventions that have developed over centuries in British and Canadian parliamentary democracy. These conventions are based on the following principles:

- there are three branches of government: Executive, Legislative and Judicial;
- the Executive Branch, comprised of the Lieutenant Governor and his or her Ministers, is responsible for the administration of all the departments of government;
- the Legislative Branch, comprised of elected members of the Legislative Assembly, is responsible for the enactment of legislation and the administration of the offices and other functions of the Legislative Assembly (i.e. election of members, oversight of member conduct).

Where an office is created for the purpose of overseeing the administration of government departments, governments in Canada have established a model for the responsible office that vests primary responsibility for the appointment with the Executive Branch. These offices include: public interest disclosure commissioners, ombudsmen and auditors general. In order to support the independence of those offices, the most common model used is a hybrid model whereby support must be received from the Legislative Branch prior to the appointment or removal of such office holders by the Executive Branch.

Auditor General

Role: The Office of the Auditor General, established under the *Audit Act*, conducts independent audits of the accounts and records of the receipt and disbursement of public money forming part of the Operating Fund, and the assets, liabilities, revenues, expenditures, trusts and funds held by any agency of government or Crown controlled or owned corporations that are not subject to financial audit by an external auditor. In short, the Auditor General is responsible for audit of the administration of the departments and agencies of government under the responsibility of the Executive Branch.

Appointment and Remuneration: Subsection 3(1) of the *Audit Act* provides that the Auditor General is appointed by the Lieutenant Governor in Council (LGIC) following a resolution of the Legislative Assembly supported by at least two-thirds of the members of the Legislative Assembly. The appointment is made following consultation by the LGIC with the Legislative Audit Committee of the Legislative Assembly. The Auditor General is paid remuneration as determined by the LGIC.

Comparable offices in other jurisdictions:

Jurisdiction	Method of Appointment
Canada	Governor in Council after consultation with the leader of every recognized party and approval by resolution of the Senate and House of Commons
British Columbia	Legislative Assembly by resolution
Alberta	LGIC on recommendation of the Legislative Assembly
Saskatchewan	Appointed by order of the Legislative Assembly
Manitoba	LGIC on recommendation of the Standing Committee on Legislative Affairs
Yukon	Audits by Auditor General for Canada
Northwest Territories	Audits by Auditor General for Canada
Nunavut	Audits by Auditor General for Canada
Ontario	LGIC on address of the Assembly after consult with Chair of Public Accounts Committee
Quebec	Motion made by Premier supported by at least 2/3 of members of National Assembly
New Brunswick	LGIC on recommendation of the Legislative Assembly
Nova Scotia	LGIC with approval of the House of Assembly
Newfoundland	LGIC on resolution of House of Assembly

Conflict of Interest Commissioner

Role: The Conflict of Interest Commissioner, appointed under the *Conflict of Interest Act*, provides advice to members respecting the Act, meets annually with members of the Legislative Assembly to review the disclosure of the member's private interests, and prepares a Public Disclosure Statement for each member. The Commissioner also receives, investigates and reports on complaints of alleged contraventions of the Act. In short, the Commissioner is responsible for providing advice and oversight respecting the compliance of members of the Legislative Assembly with their respective obligations under the Act.

Appointment and Remuneration: Section 2 of the *Conflict of Interest Act* provides that the Commissioner is appointed by the Legislative Assembly following a resolution of the Legislative Assembly supported by at least two-thirds of its members present. The appointment is made on the recommendation of the Standing Committee on Legislative Management. The Commissioner is paid remuneration as determined by the Standing Committee.

Comparable offices in other jurisdictions:

Jurisdiction	Method of Appointment
Canada	Governor in Council after consultation with the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the House of Commons
British Columbia	LGIC, on the motion of the Premier and recommendation of 2/3 of members of Legislative Assembly
Alberta	LGIC on the recommendation of the Legislative Assembly
Saskatchewan	Appointed by order of the Legislative Assembly
Manitoba	LGIC on the recommendation of the Standing Committee on Legislative Affairs
Yukon	Appointed by the Legislative Assembly
Northwest Territories	LGIC on the recommendation of the Legislative Assembly
Nunavut	LGIC on the recommendation of the Legislative Assembly
Ontario	LGIC on the address of the Assembly
Quebec	Motion of Premier with approval of 2/3 of members of National Assembly
New Brunswick	Integrity Commissioner, appointed by LGIC on the recommendation of the Legislative Assembly
Nova Scotia	LGIC in consultation with leaders of recognized parties with approval of majority of members of House of Assembly
Newfoundland	LGIC on resolution of House of Assembly