



Legislative Reform

1. Enhancing the Role of MLAs and the Legislature

Our mandate: we must examine and recommend ways to enhance the role of MLAs and the legislature.

New Brunswickers live in a representative democracy. We elect MLAs to represent our interests, give us a voice in the legislature and in government, help solve problems we may have with government, and take decisions on our behalf that benefit our communities and our province. Our elected MLAs and the Legislative Assembly are at the heart of our democratic process.

MLA Roles and Expectations

The role of an MLA has changed over the years. Governing has become more complex with many more interests at stake. Legislation is often quite complicated. Public expenditures by government have grown tremendously, complicating legislative oversight. This has been accompanied by an increase in power and influence for the executive branch of government – the Cabinet and Premier's Office – at the expense of the legislative branch – the elected MLAs.

At the same time, public expectations have changed towards our MLAs. People want them to be more accountable for their actions. Increasingly, people want to be consulted in advance of decisions and have more of a say in the decisions MLAs take. We want their decisions to be taken in a more open and transparent manner. People expect their MLA to speak up for their local interests; yet, these may conflict with broader provincial interests.

The media is playing a larger role in determining priorities, challenging governments and legislatures alike, and allowing a broader range of interests to be voiced. This raises expectations and demands for even greater accountability of our elected representatives.

Here in New Brunswick, the role of urban and rural MLAs can vary in important respects. Some rural MLAs represent not just small towns, but also local service districts, which have no elected community representation. This can require such MLAs to take on the additional responsibility of having to deal with local municipal governance matters.

Party Discipline

Our democracy revolves around political parties. Parties nominate candidates seeking election in each constituency. People vote on the basis of their local

candidate, the political party they represent, the leader of that party, and the issues that matter to them at that time. MLAs, however, are typically bound to party discipline since voting in the legislature is almost always along party lines, and since they need the approval of their respective parties to secure a nomination.

Debate between the government and opposition parties can therefore become very partisan. Many people dislike this aspect of our political process. Party discipline forces MLAs to vote as a bloc, leaving little room for independent positions or actions as a private member. Others see partisan debate as an essential part of our democratic process since it provides opposing views on issues to help clarify issues for voters and enable them to decide on a more informed basis at election time.

All-party legislative committees can be less partisan than other aspects of the legislature, such as Question Period. They can provide more scope for collaborative, consensual deliberation and decision-making. This is often the case with select committees examining special policy issues.

The Main Roles for MLAs

Here are the main roles for MLAs in our representative democracy:

- Represent their constituency in the legislature
- Vote and debate on bills, motions, and public expenditures in the legislature
- Keep government accountable
- Act as an ombudsman to help their constituents solve problems with government
- Serve the political party to which they belong.

To carry out these roles, MLAs sit in the Legislative Assembly chamber, participate in Question Period, assist constituents, sit on various standing and select committees, attend constituency meetings and events, and participate in political party events.

Conflicting Roles for MLAs

When carrying out their roles as MLAs, there can often be a conflict between the interests of their local riding, the province as a whole, their own individual judgment, and the requirement to advocate for their political party. Here is a way of presenting this possible conflict:

MLAs are your Trustee – they use their own individual judgment and opinion when taking decisions even if this conflicts with the interests or views of their constituents; therefore, they act as a *trustee* for your interests and use their own judgment as required.

Did you know
that New Brunswick's
Legislative Assembly
currently has eight
Standing Committees
and three Select
Committees?

MLAs are your Delegate – they represent their constituents' interests exclusively so there is no conflict even if it means disagreeing with their own government or party or their personal judgment and opinion; therefore, they act as your *delegate* to the legislature.

MLAs are Party Representatives – they represent and advocate on behalf of the political party to which they belong; therefore, they act as *party representatives* tied to party discipline.

Accountability

Accountability allows voters to judge the effectiveness of their MLA and helps ensure they continue to represent their views and interests. We hold MLAs accountable every four or five years at election time, when we can vote them out or renew their mandate.

For their part, MLAs use both regular and informal reporting mechanisms to constituents to help keep themselves accountable to their constituents. This includes town halls, providing information on government and legislative decisions, attending community events, and holding meetings with individual constituents as well as stakeholders in their riding.

Holding our MLAs accountable is not as straightforward as it sounds. People do not always have the time or information to come to an informed view as to whether their MLA is doing a good job or the right job. As we have seen, the roles of an MLA are varied and complex. What might be seen as effective by one person, could be considered insufficient by another. There is no formal "code of conduct" or "job description" to help explain the role of MLAs and provide guidance to voters.

Legislative Accountability

The Legislative Assembly has several procedures to help ensure accountability. The daily Question Period allows opposition members to question the government on issues. Televised and website proceedings have made the legislature more accessible to people. Some legislative committees hold public hearings and travel to give people the chance to provide their direct input.

There are six statutory "officers" of the Legislative Assembly who help ensure accountability by raising issues and reporting to the legislature as a whole, rather than just the government. Through legislation, they set out acceptable standards of political behaviour for MLAs and parties in the areas of conflict of interest and political party financing. These officers include:

- Auditor General
- Ombudsman

- Commissioner of Official Languages
- Chief Electoral Officer
- Conflict of Interest Commissioner
- Supervisor of Political Financing

Many improvements have been made to the political and legislative process over the years to enhance accountability. The chart below sets out some accountability improvements over the years:

Accountability Improvements in New Brunswick

1974 - Public Purchasing Act

1978 – Political Process Financing Act

1978 – Conflict of Interest Act

1981 – Auditor General Act

1999 – Members Conflict of Interest Act

Party Democracy

Increasingly, citizens are watching and reacting to the democratic workings of political parties. This involves party financing, candidate nomination processes, and leadership selections. People are influenced by how open and democratic political party processes are. It affects the legitimacy of nominated candidates and party election campaigns. Ultimately, it can affect the credibility of the elected legislature and the basic democratic process.

A change to our electoral system will impact upon the democratic behaviour of parties. Nevertheless, how parties behave under the current electoral system is also an issue.

The federal government has recently moved to public financing of political parties to supplement personal donations. Canada, Manitoba and Quebec now ban corporate and union donations. Party leaderships – federal and provincial - are increasingly one member-one vote, rather than traditional delegate conventions, in an attempt to make the process more open and participatory.

Examining questions of party democracy could help strengthen and enhance the overall legitimacy of our democratic institutions and practices.

2. Appointments to Agencies, Boards, and Commissions

Our mandate: we must examine and recommend ways to make appointments to government agencies, boards, and commissions more transparent and accountable.

There are approximately 130 provincial agencies, boards, and commissions (ABCs) to which government makes appointments. These range from the Public Utilities Board to the Assessment and Planning Appeal Board to the NB Police Commission to Mental Health Review Boards.

Generally speaking, ABCs can be classified in the following way:

Advisory - provides information that will assist in the development of policy or the ongoing delivery of programs;

Regulatory - exercises a licensing, inspection or review function; or exercises an appeal function with respect to third party and government decisions, and

Operational - controls public or private sector activities as authorised by legislation; or provides goods and/or services contributing to approved government policy and programs.

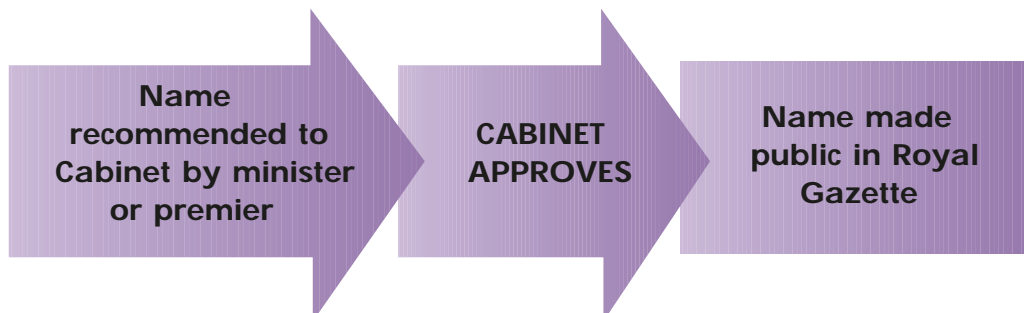
Current Appointments Process

Appointment qualifications vary depending upon the actual agency, board, and commission (ABC). Some that are more technical and professional require academic credentials and work experience in the area. Others are more general in requirement.

Currently, many ABC appointments are made by Cabinet. Cabinet passes a formal Order-in-Council for each appointment which is then published in the Royal Gazette. All such appointments are therefore made public.

Some appointments are formally approved by the Legislative Assembly. This includes all officers of the legislature. Recommended names are submitted to the legislature by the government. This is usually preceded by informal consultation with opposition parties in order to arrive at a consensus.

The diagram below illustrates the usual appointment process:



New Brunswick tried an all-party legislative committee approach to reviewing names after 1999, but it was discontinued.

Other Provinces

Several provinces have taken steps to open up their appointments process and allow for public applications. Some involve legislative committees made up of MLAs to review names. In Nova Scotia and BC, open positions are advertised. In BC, there is a central screening process that recommends names to Cabinet. In Alberta, there are review panels with outside government stakeholders to advise on names in particular policy areas.

The federal government recently announced its intention to allow for parliamentary review of all names recommended to head Crown Corporations. Some feel this would help make the process more open, while others think that this would lead to more partisan politics and discourage qualified people from applying.

Some Issues

Many people feel that governments simply appoint political friends and allies to ABCs as a form of patronage. Others feel that it is the government's right to appoint individuals with whom they can work to implement their agenda.

In most cases, no formal job descriptions, application forms or procedures are set out for appointments. An open, standardized application and review process could make the appointments process more transparent and accountable.

Most appointments are for a set term, but some serve "at pleasure", which means they can be removed by the government at any time, although appropriate legal processes must still be followed. Having fixed terms for appointments or regular reviews could improve accountability.

New Brunswick currently has no Public Service Commission to independently supervise hiring and appointments. Many other provinces do. Such a commission could help provide more centralized management of the appointments process and help ensure a truly merit-based hiring basis for government positions.