

Ombudsman Act Investigation Report
File 2019-0404

July 2021

Manitoba  Ombudsman

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Manitoba Ombudsman

**REPORT UNDER
THE OMBUDSMAN ACT
FILE 2019-0404
MANITOBA FINANCE
REPORT ISSUED JULY 21, 2021**

THE COMPLAINT

Our office received a complaint regarding a June 5, 2019 Manitoba government news release entitled “Manitoba Lauds Andrew Scheer’s Pledge to Reduce Interprovincial Trade Barriers”.¹ The complainant is concerned that because the release supports the political position of a federal opposition party, civil service resources were used inappropriately to prepare, publish, and store this partisan news release. The complainant believes this use of civil service resources undermines the impartiality of the civil service.

OMBUDSMAN JURISDICTION AND ROLE

Under the Ombudsman Act, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, municipalities, and their officers and employees.

An administrative matter for investigation can include any practice, procedure, action or decision that government makes as it implements or administers its laws and policies. We assess whether administrative processes and procedures are followed according to applicable legislation, regulation and/or existing policies.

Manitoba Ombudsman investigations review complaints to identify areas requiring administrative improvement. Our reviews take a broad view that considers the fairness and reasonableness of government actions and decisions.

¹ The full news release is enclosed as Appendix A.

KEY ISSUES

We reviewed the following questions in response to the complaint:

1. Were the policies and procedures of Communication Services Manitoba with regards to the preparation and publication of news releases followed in this case?
2. Was the preparation, publication, and storage of the news release contrary to established values and ethics for civil servants?

SCOPE OF THE INVESTIGATION

Our investigation of this complaint included a review of the following:

- Documentation from Communications Services Manitoba, including:
 - The document “News Media Services: standards, principles, guidelines, policies and past practices”
 - The Manitoba government code of conduct, including Annex A – Code of Conduct for Political Staff
 - The Manitoba Civil Service Values and Ethics Guide
 - Manitoba’s “Guidelines for elected officials and political staff on ensuring a non-partisan civil service”
- Interviews with the Assistant Deputy Minister for Communication Services Manitoba (Department of Manitoba Finance)

BACKGROUND

Communications Services Manitoba (CSM) leads government communications in Manitoba, supporting the work of government departments to provide information to Manitobans. CSM helps the public understand the government’s vision and priorities and informs people about public services and how to access them. As part of the provincial government’s civil service, CSM must act in a non-partisan and politically impartial manner.

A team of five to eight CSM public affairs specialists who are civil servants help write and edit government news releases. Every news release is formatted and edited by the CSM news editor, who ensures the release meets style guides.

Staff appointed by cabinet as “technical officers”, working for the political side of government, work closely with CSM civil servants to prepare government news releases.

There has previously been a lack of clarity in Manitoba’s civil service legislation about whether political staff are public servants. Manitoba’s new Public Service Act states political staff are part of the public service under the category of the “allied public service.” This act sets out values to be established across the entire public service (including the allied public service), such as respect for others, integrity, accountability, skill and dedication.

ANALYSIS

We considered Manitoba government policy and procedure for the preparation of government news releases and guidelines for ensuring a non-partisan civil service.

WRITTEN POLICY

The only CSM policy and procedure document relevant to this investigation is an undated nine-page document written when CSM had a branch called News Media Services. The staff of this former team are now members of the Public Affairs branch. The document is entitled “News Media Services: standards, principles, guidelines, policies and past practices.” CSM states this document is the most recent version of written guidance that was developed internally about news media items. CSM indicates this was an internal document, not approved or reviewed by anyone beyond the staff and director. CSM staff do consult it, however, as it speaks to how the team operates and CSM states it continues to guide staff for issues to consider when developing news media items. It states in part that:

- CSM has a duty to ensure its work is done with integrity and impartiality, respecting the overarching principle that government services should not be used for a political purpose.
- CSM issues government news releases containing factual information about government programs, services and policies and provides final editing, independent advice, co-ordination and distribution of news releases.
- CSM’s role is to ensure releases are suitable in style and presentation, are legitimate news, and are presented in an unbiased, objective and professional fashion.
- Releases distributed by CSM are communications on behalf of government and the content must be newsworthy, factual and written objectively and without bias.
- The branch works with political communication staff and departmental communication co-ordinators to ensure content is relevant and accurate.

- As distribution is a government service, appropriate use does not include political announcements, third-party proponent events where provincial funding or involvement is not highly significant or opposition events.
- As it is inappropriate for a governing party to use government-funded communications apparatus to further a political agenda, partisan political language is not appropriate in government releases and must be edited out. Legitimate government information is covered in government releases, ensuring the public can have high confidence in the credibility and objectivity of the information. Partisan releases are distributed by political staff, usually caucus communications.

There are two other government documents that speak to ensuring a non-partisan civil service. The first, the Manitoba government code of conduct, states that regardless of which political party is in office, all employees must conduct themselves in a non-partisan manner and share the responsibility of respecting partisan and non-partisan roles to provide objective and stable delivery of government programs and services. The second document, the Manitoba Civil Service Values and Ethics Guide, echoes this guidance, stating the need to maintain a politically impartial civil service.

GUIDANCE FOR POLITICAL STAFF

Another issue in this matter was whether political staff acted in a manner consistent with expectations for a non-partisan civil service. Annex A to the Manitoba government code of conduct is a code of conduct for political staff. It states, in part:

Political staff take into account political considerations in undertaking their work. They work for the government in roles that have a clear political dimension and they are not required to operate in a politically neutral way. However, they often work closely with other government employees and must make sure their interactions with them are free from political influence. [...]

Although political staff share the governing party's political commitment, and are not required to operate in a politically neutral way, they do share the responsibility of maintaining a non-partisan public service. Where they interact with other government employees, they must ensure any interactions are free from political influence.

Manitoba's "Guidelines for elected officials and political staff on ensuring a non-partisan civil service" also state, in part:

- Non-partisanship is an essential requirement for a professional civil service to serve democracy by supporting the elected government of the day and provide the same

support regardless of which political party is in office. It also contributes to the objective and stable delivery of government programs and services to Manitobans.

- A non-partisan civil service is one where [...] civil servants perform their duties, and are seen to perform their duties, in a politically impartial manner.
- Civil servants, elected officials and political staff share the responsibility of maintaining a non-partisan civil service. These guidelines are intended to assist elected officials and political staff ensure that any instructions to civil servants are consistent with the principle of civil service non-partisanship.
- Considerations: The following factors may help assess whether instruction provided to the civil service is appropriate.
 - Does it conflict with the principle of political neutrality or the role of the civil service?
 - Is it likely to give rise to the perception of political partisanship if acted on by the civil servant?
 - Is it likely to withstand public scrutiny?
 - Has the issue, program or department been the subject of heightened political debate or sensitivity? [...]

THE USUAL PROCESS FOR DRAFTING AND APPROVING NEWS RELEASES

CSM states there is little documented procedure and guidance for staff about policy and procedure for news release content. Rather, the department relies on convention and past practices to guide decision making.

CSM indicates news releases can originate from anywhere in government. They might be drafted by CSM staff, political staff such as press secretaries, or elected officials. CSM advises that every release issued has input from political staff.

CSM states its convention is that the responsibility of approving press releases belongs to the political side of government and the CSM news editor's responsibility is to publish news releases approved by the political side. If CSM has concerns about a news release, CSM staff go to their political counterparts to explain their concerns. Approval on the political side is given by whoever is leading the process for that particular release.

How partisanship concerns are normally dealt with

CSM states that usually concerns about political partisanship in the content of a release are discussed early in the drafting process. The news editor can also flag unexpected or out of the ordinary releases for review by a CSM supervisor before they publish a release.

IN THIS CASE

The complaint we received was about a June 5, 2019 Manitoba government news release entitled “Manitoba Lauds Andrew Scheer’s Pledge to Reduce Interprovincial Trade Barriers”.² In June 2019 Andrew Scheer was the leader of the federal official opposition. The first sentence of the news release is “Deputy Premier Heather Stefanson today lauded federal Opposition leader Andrew Scheer’s pledge to work with provinces to reduce interprovincial trade barriers.”

CSM states that the impetus for this news release was from the political side of government rather than CSM and that it was written by political staff, not a civil servant. The main author of the release was the Director of Communications and Stakeholder Relations, who is a political appointee. This political staff position is now called the Executive Director of Communications.

In this instance, the Director of Communications and Stakeholder Relations emailed the news release to the CSM news editor at 8:23am on June 5, 2019. She wrote that it was “an unanticipated draft news release for formatting/check” and to please let her know when it was ready. The news editor reviewed it and at 8:49am sent the Director of Communications and Stakeholder Relations an email in which she indicated the release was a “Bit different but we’ve put out supportive statements of other decisions, usually by sitting government, but this ties directly to a mandate by the premier so it’s an easy connection.”

At 9:02 am the news editor flagged the release to her supervisor, the CSM Director of Public Affairs, stating that the release was scheduled to go out at 9:30am. She stated that it was “a little odd in that it’s supportive of an opposition position but it ties directly into something the premier has been asking for.” However, the Director of Public Affairs was away from her desk and was unaware that a news release had been flagged for her attention. The news editor proceeded to publish the release on June 5, 2019 without a response from her supervisor.

After the CSM issued the release, the partisan nature of the release was raised by the media. One journalist contacted the province to ask why it had issued a news release supporting or lauding the federal opposition leader. The journalist asked if this news release had been reviewed from the point of view of using government resources for a political purpose.

² The full news release is enclosed as Appendix A.

An internal review of what occurred was conducted by the CSM Assistant Deputy Minister. The Assistant Deputy Minister informed us that the content of the release would have been more fully discussed if the Director of Public Affairs had been available to review the release.

We asked the CSM whether, if the supervisor had received the news editor's email in time, if the CSM would have advised the Director of Communications and Stakeholder Relations that the wording of the release should change. The previous CSM Director of Public Affairs (the person to whom the release was flagged) informed us that CSM would have likely proposed different language or looked at a different way of framing the issue. This is supported by our search of previous government news releases. We could not find any other news releases on the government website that mentioned a provincial or federal opposition leader by name.

WERE CSM POLICIES FOLLOWED?

Government-wide policy in the Manitoba government code of conduct and the Manitoba Civil Service Values and Ethics guide is clear that a politically impartial civil service must be maintained. The News Media Services policy we reviewed, which is out of date but continues to be used by CSM staff for guidance, also states that staff have a duty to ensure work is done with integrity and impartiality, respecting the overarching principle that government services should not be used for a political purpose. It states that releases distributed on behalf of the government must be written objectively and without bias. The policy also states that as it is considered inappropriate for a governing party to use the government-funded communications apparatus to further a political agenda, partisan political language is not appropriate in government releases and must be edited out.

CSM relies on written guidelines in the News Media Services document to provide direction to its decision-making. We are of the view that publication of this release runs counter to the statements in the News Media Services document. We are concerned that the circumstances of this release could give rise to a perception that civil servants performed their duties for a political purpose because of the partisan nature of the release. In our view, by supporting a policy position of a federal opposition party, this release was not in keeping with the spirit of government policy to maintain a non-partisan public service. As such the complaint is supported.

WAS GUIDANCE FOR POLITICAL STAFF FOLLOWED?

With respect to relationship between political staff and CSM in this matter, the CSM Assistant Deputy Minister indicated that he found no evidence of political pressure on CSM staff to send out the release. As part of his review of this matter, the Assistant Deputy Minister debriefed with the Director of Communications and Stakeholder Relations to discuss the role of the civil service communications apparatus and what language would be considered partisan.

However, the circumstances of this matter raise the question of whether the Director of Communications and Stakeholder Relations (a political staff member) gave appropriate instructions to the CSM news editor when the director drafted the release and sent it to the news editor to publish. As explained earlier in this report, Manitoba's guidelines for political staff on ensuring a non-partisan civil service state that political staff must ensure that any instructions to civil servants are consistent with the principle of civil service non-partisanship. In our view, the news release in this case was partisan in nature because it supported the policy position of the federal opposition party. As such, the director's instructions to the news editor to publish this release were not in keeping with the guidelines for political staff on ensuring a non-partisan civil service.

IDEAS FOR IMPROVEMENT AND RECOMMENDATIONS

As we have stated in a previous matter involving concerns about partisan activities by the Manitoba government civil service, any perceived erosion of the impartiality of civil servants can undermine public confidence in the administrative actions of civil servants.³

When government resources are used to share news with the public, citizens should not be footing the bill for communication that is partisan or political. It is important that the separation between the non-partisan civil service and the political realm remain intact. This case clearly demonstrates the lack of clarity in roles and responsibilities of government communications staff and political communications staff, and without appropriate structures in place, it paves the way for these lines to be crossed.

CSM informed us that after this event it made an administrative change to better ensure that unusual releases such as the one in this case are more fully reviewed by CSM staff before being published. Now, if the news editor flags a time-sensitive release to her supervisor, she is expected to do so by phone rather than email so her supervisor knows the matter is urgent.

CSM also told us that it has started to draft guidance on news release issuance, procedure documents including approval requirements, and a separate piece of guidance on politically impartial communications. However, this work is still at the drafting stage.

We are concerned that CSM has no up to date policy and procedure approved by CSM management that guide news release content. Written policy and procedure could be shared with all civil servants and political staff involved in government communications to clarify CSM expectations for news release content and the roles civil servants and political staff have in the drafting and approval process for government news releases. For example, the Government of

³ See our [December 2013 report](#) on "Complaint of alleged partisan action by civil servant."

Alberta Communications Policy states how communication responsibilities are divided among the Premier and cabinet ministers, political communications staff, the Alberta public service communications staff, and deputy ministers.

As noted by the Provincial Auditor of Saskatchewan in its 2019 study of processes about communicating to the public about government programs and services in a non-partisan way, the public expects communications of government agencies to inform them about government programs and decisions in a politically neutral way. The provincial auditor also stated that “Making criteria for non-partisan communications public could increase transparency. It could also build public confidence in government agencies’ ability to communicate about programs and services in a neutral manner. Furthermore, this criteria could be useful in efficiently educating government officials involved with external communications.” When time-sensitive or urgent decisions must be made by civil servants and political staff about government news release content, written policy and procedure can help prevent that content from straying into the partisan realm.

The Provincial Auditor noted that the federal, Alberta, and Ontario governments have criteria or guidance about non-partisan government communication.

On May 1, 2019, the Manitoba government released a report by lawyer Michael Green on proposed Manitoba legislation concerning government advertising.⁴ The report recommends that the government consider implementing policy and guidelines on paid government advertising instead of legislation. While this report focuses on preventing abuse of government advertising, some of the report relates to the broader issue of how to ensure non-partisan government communication in general. It notes that defining partisan communication is a difficult task, and the definition should not be too narrow or too unpredictable. Page 42 of the report states that written policy on government advertising has the following advantages:

- Doing so would be in accordance with the practice that has been adopted in many other jurisdictions.
- A policy and guidelines would allow the flexibility to make changes more easily.
- Implementing a policy and guidelines would give the government time to gain experience in regulating partisan advertising, to experiment with adjustments which may be needed and be in a position at a later date to pass legislation that has a better chance of achieving the desired outcome.

⁴ https://www.manitoba.ca/asset_library/en/proactive/green-report.pdf (accessed March 25, 2021)

When the government released this report, it stated it was developing options based on the report's findings and recommendations. To our knowledge, the government has not implemented policy and guidelines on paid government advertising.

Written procedure could also explain who is responsible for which duties if certain employees are absent, such as what process is in place if the CSM news editor or Director of Public Affairs are away and a time-sensitive decision must be made. As noted by the Provincial Auditor of Saskatchewan, documented criteria for what constitutes non-partisan communications could help train communications staff or other government officials involved in making decisions about external communications, especially during staff turnover. Policy and procedure could state what kind of language or messaging should be elevated to CSM management for their review before publication and which CSM staff have authority to determine whether proposed language is partisan.

CSM communications policy could also specifically define what language is considered politically partisan. For example, the Government of Canada's communications policy defines "non-partisan" communication as:

- Objective, factual and explanatory;
- Free from political party slogans, images, identifiers; bias; designation; or affiliation;
- The primary colour associated with the governing party is not used in a dominant way, unless an item is commonly depicted in that colour; and
- Advertising is devoid of any name, voice or image of a minister, member of Parliament or senator.

In June 2019, the Saskatchewan government published its policy for non-partisan communications on its website, including the following criteria for what constitutes non-partisan communications:

- Communications that are objective – Government communications are presented in a factual manner and focused on informing and educating the public about government programs, services and policies;
- Communications that do not reference, promote, or criticize the interests of political parties – Government communications will not reference political parties, will not include identifiers (logos), and will not promote or criticize the interests of political parties.

Written policy and procedure for government communications could help protect against perceived partisan use of government resources in the future, even if such guidance documents

could not speak directly to every kind of situation that might arise. As such we make the following recommendation:

That Communications Services Manitoba establish written policy and procedure to guide news release content, including guidance about what news release language is considered partisan.

We will monitor the implementation of this recommendation.

We also make the following recommendation concerning political staff as it relates to their interactions with civil service employees:

That an annual reminder be provided to political staff as to the importance of maintaining an impartial and unbiased civil service. In addition, political staff should be briefed and made familiar with the Communication Services Manitoba written policy concerning news release content once it is complete.

ADDITIONAL COMPLAINTS ABOUT AN AUGUST 2020 NEWS RELEASE

We received two complaints about a subsequent Manitoba government news release published on August 11, 2020.⁵ The complainants are concerned the release contained partisan language in its characterization of opposition parties. The release is a statement by the Minister of Families and includes these quotations which were referenced by the complainants:

- “The opposition parties continue to spread misinformation about our government’s position on child care and it is important that we correct the record.”
- “The opposition parties continue to take an ideological approach to child care.”
- “In contrast with the fearmongering of the opposition parties, the Manitoba government will continue to support the child-care sector and Manitoba families as we safely restart our economy.”

We asked CSM about this release. CSM initially told us that the news release could have used different words to get the message across. CSM subsequently provided us additional information, stating that the release was drafted by a press secretary who was political staff and the first draft was quite partisan. CSM states its civil servants worked with political staff to depoliticize the language and the release that was published was approved by the CSM Director of Public Affairs.

⁵ The full release is enclosed as Appendix B.

We share the complainants' concerns about the partisan nature of certain language in the release. We are concerned that the August 2020 press release raises a perception of lack of neutrality and we question whether it complied with the spirit of government policy to maintain a non-partisan public service.

So as to not duplicate our efforts, however, we have not opened an investigation into the August 2020 press release. In our view, our recommendations arising from the June 2019 matter in this report directly relate to the concerns the complainants brought forward about the August 2020 matter. If our recommendations are followed, they may prevent future complaints about improper use of government communication resources.

RESPONSE TO RECOMMENDATIONS

The deputy minister of Manitoba Finance provided the following response explaining the department's acceptance of our two recommendations:

Communications Services Manitoba (CSM), a division of Manitoba Finance is committed to delivering the message of government policy and programs to staff, the media and the public in dynamic, effective ways, advancing openness and transparency across government, and increasing the engagement and participation of Manitobans in the government decision-making process. In pursuing that mandate, CSM apply their oaths and the values and ethics of the public service in every project, communications product, and interaction, aiming to provide non-partisan and trustworthy service to Manitobans. Your report provides helpful observations and recommendations that will serve to strengthen the division's work.

Your recommendations are timely, as Communications Services Manitoba is now embarking on a divisional reorganization that was initiated in 2019, but delayed by the COVID-19 pandemic. Notably, the new leadership structure of the division includes new roles, an Executive Director of Strategy and Governance and Policy and Project Leads, which will provide oversight to communications policy development, and the creation and maintenance of clear accountability and governance structures for communications activity across government. The Assistant Deputy Minister, with the support of this new Executive Director and their team, has committed to prioritizing the development of a policy framework for non-partisan communications this fall, including cross-jurisdictional analysis and consultation with key stakeholders. The new policy will include a routine review with all involved staff and stakeholders, as you recommend.

The department also states it is working on a procedure to ensure political staff are reminded annually of the importance of maintaining an impartial and unbiased civil service.

CONCLUSION

We are pleased with the department's response to the recommendations. We will follow-up with the department in six months to see if the recommendation to establish written policy and procedure for Communication Services Manitoba news release content was implemented.

MANITOBA OMBUDSMAN

APPENDIX A

News Release - Manitoba

June 5, 2019

MANITOBA LAUDS ANDREW SCHEER'S PLEDGE TO REDUCE INTERPROVINCIAL TRADE BARRIERS

Deputy Premier Heather Stefanson today lauded federal Opposition leader Andrew Scheer's pledge to work with provinces to reduce interprovincial trade barriers.

"We welcome this strong commitment of federal engagement on the reduction of interprovincial trade barriers," said Stefanson. "Freer trade within Canada will encourage greater economic growth and business competitiveness."

Premier Brian Pallister has previously called for a grand bargain between the federal and provincial governments to address two of the most important issues facing Canadians – the enormous cost of interprovincial trade barriers and inadequate federal support for health care. Federal support for health care remains unacceptably low, and interprovincial trade barriers cost Canadians the equivalent of a seven per cent sales tax.

The grand bargain envisioned with the federal government is more fully described in an op-ed at <https://financialpost.com/opinion/how-to-stop-the-provinces-from-blocking-free-trade-offer-this-grand-bargain>.

Stefanson added the commitment to reduce interprovincial trade barriers is complementary to the provincial government's passage of The Reducing Red Tape and Improving Services Act, which eliminates unnecessary regulatory requirements that hamper growth and improve private-sector job creation.

"These commitments have resulted in improved economic stability and competitiveness, and have helped to reinforce Manitoba's reputation as one of the most improved provinces," said Stefanson. "We would welcome an opportunity for a discussion with the federal government to eliminate inter-provincial trade barriers and ensure we can unlock economic opportunities that will benefit our province and our country."

APPENDIX B

News Release - Manitoba

August 11, 2020

STATEMENT FROM FAMILIES MINISTER HEATHER STEFANSON ON CHILD CARE IN MANITOBA

“The opposition parties continue to spread misinformation about our government’s position on child care and it is important that we correct the record. We are not reducing funding for child care in Manitoba – in fact, we continue to make significant investments in child care including nearly \$70 million since the beginning of the COVID-19 pandemic. These investments have helped ensure that 914 child-care facilities are now open across the province, offering over 22,000 spaces. In fact, the supply of child care has now exceeded demand as we reopen – there are now over 3,500 vacant child-care spaces in Manitoba.

This summer, the Manitoba government posted amendments to The Child Care Regulation that reflect changes contained in The Community Child Care Standards Amendment Act (Enhanced Powers Respecting Governance and Accountability) that was passed by the legislative assembly in 2018. As part of the development of this legislation and its regulations, the Manitoba government consulted widely with the child-care sector including with the Manitoba Child Care Association and the Child Care Coalition of Manitoba.

What we heard from stakeholders was the need to streamline regulatory requirements so that child-care providers can focus on what matters most – providing accessible, quality early learning and child care for Manitoba families. That is why these regulations simplify the licensing process, reduce duplication in codes of conduct, and improve financial and board governance accountability for child-care providers across our province. Despite false claims by the opposition parties, the regulations also strengthen supports for children with exceptional additional support needs, ensuring that all licensed child-care providers develop written inclusion policies and inclusive programming for the children that they support.

It is also clear the current enhanced nursery school grants established by the former administration are not working for Manitoba families, which is why these regulations provide the legal foundation for change. The current system creates two tiers of nursery schools in Manitoba – those that receive enhanced operating grants and charge reduced fees, and those that do not. There is no difference in the services provided between these two tiers and there is no income test for parents accessing child care at reduced fees. The regulatory changes reflect our intention to move toward a fair funding model that better supports all nursery school programs in Manitoba so that we give families equal access to child care. We are not making these changes immediately and when we do, parents and children across our province will be better served by our child-care system.

APPENDIX B

The opposition parties continue to take an ideological approach to child care. In contrast, the Manitoba government continues to invest in choice in child care, which is why we have launched a funding model review to ensure that Manitoba families have access to the child care that they need regardless of whether that care is delivered by a non-profit, private or home-based provider. The review of the enhanced nursery school grants is part of that critical work.

The Manitoba government also recognizes that child care is critical to our economic recovery, and that those who work in the sector are truly heroes helping heroes, which is why we have invested in over 25,000 individual personal protective equipment items to help them stay safe. Many child-care staff are also eligible for the \$120-million Manitoba Risk Recognition Program, which is providing a one-time payment of \$1,377 to more than 78,000 essential front-line workers who have taken extraordinary risks to keep Manitobans safe.

In contrast with the fearmongering of the opposition parties, the Manitoba government will continue to support the child-care sector and Manitoba families as we safely restart our economy.”