



**REPORT ON THE SPECIAL INVESTIGATION INTO ALLEGATIONS
AGAINST THE CLERK AND SERGEANT-AT-ARMS OF THE
LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA**



**THE RIGHT HONOURABLE BEVERLEY McLACHLIN, P.C., C.C.
MAY 3, 2019**

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A. INTRODUCTION.....	1
1. Mandate.....	1
2. History of Proceedings.....	2
3. Methodology.....	3
B. BACKGROUND AND CONTEXT	5
1. Governance Structure and Roles.....	5
2. Impetus for the Allegations	7
C. EXAMINATION OF ALLEGATIONS.....	10
1. Improper Receipt of Vacation Payouts.....	10
a) Questioned activity	10
b) Applicable rule, practice or policy.....	10
c) Did the activity breach the applicable rule, practice or policy?	11
2. Improper Purchases of a Personal Nature: Clothing, Office Gifts and Other Goods	12
a) Questioned activity	12
b) Applicable rule, practice or policy.....	12
c) Did the activity breach the applicable rule, practice or policy?	13
3. Improper Purchases of a Personal Nature: Travel Expenses.....	18
a) Questioned activity	18
b) Applicable rule, practice or policy.....	19
c) Did the activity breach the applicable rule, practice or policy?	19
4. Improper Purchases of a Personal Nature: Insurance Premiums.....	22
a) Questioned activity	22
b) Applicable rule, practice or policy.....	22
c) Did the activity breach the applicable rule, practice or policy?	22
5. Improper Benefits: Retirement, Resignation and Death.....	23
a) Questioned activity	23
b) Applicable rule, practice or policy.....	24
c) Did the activity breach the applicable rule, practice or policy?	25

6. Improper Removal and Use of Legislative Assembly Property: Alcohol	38
a) Questioned activity	38
b) Applicable rule, practice or policy.....	38
c) Did the activity breach the applicable rule, practice or policy?	39
7. Improper Removal and Use of Legislative Assembly Property: Wood Splitter	
and Trailer	42
a) Questioned activity	42
b) Applicable rule, practice or policy.....	43
c) Did the activity breach the applicable rule, practice or policy?	43
8. Additional Matters.....	47
The "Whistle-Blower" Event	47
a) Questioned activity	47
b) Applicable rule, practice or policy.....	48
c) Did the activity breach the applicable rule, practice or policy?	48
Assistance to "CD"	49
a) Questioned activity	49
b) Applicable rule, practice or policy.....	50
c) Did the action breach the applicable rule, practice or policy?	50
D. SUMMARY OF CONCLUSIONS.....	52
1. Improper Receipt of Vacation Payouts.....	52
2. Improper Purchases of a Personal Nature.....	52
3. Improper Benefits	52
4. Improper Removal and Use of Legislative Assembly Property.....	52
5. Additional Matters	53
E. FINAL OBSERVATIONS.....	54

A. INTRODUCTION

1. MANDATE

On March 7, 2019, I was appointed by motion of the Legislative Assembly of British Columbia to act as Special Investigator charged with conducting a fair, impartial and independent investigation of allegations raised by the Speaker of the Legislative Assembly, Darryl Plecas, against the Clerk of the House, Craig James, and the Sergeant-at-Arms, Gary Lenz. The Speaker outlined his allegations in a report that he submitted to the Legislative Assembly Management Committee on January 21, 2019 ("January Report").

The Special Investigation Terms of Reference ("Terms of Reference") state that the investigation is to be a confidential fact-finding process to determine whether Mr. James or Mr. Lenz engaged in misconduct in the course of their employment as permanent officers of the Legislative Assembly.

It is important to note what this investigation is not. First, it is not a legal investigation. My mandate confines me to finding facts relating to the allegations the Speaker has made against Mr. James and Mr. Lenz. It is not my task to draw legal conclusions or provide legal opinions. When I have submitted my findings of fact, it will be for the Legislative Assembly to determine what further steps, if any, it wishes to take. Second, my investigation is independent of and unrelated to any police investigation into these matters; it is limited to administrative misconduct, i.e. conformity with Legislative Assembly rules, practices or policies. Third, my investigation is confined to the allegations in the Speaker's January Report to the Legislative Assembly, as set out in Schedule "A" to the Terms of Reference.

In making my investigation, I have respected the rules of procedural fairness and justice. I have heard evidence from a wide spectrum of witnesses. Transcripts of the testimony of these witnesses were provided to Mr. James and Mr. Lenz so that they could challenge any statements with which they took issue. In addition, any relevant documentation I received during this process was shared with Mr. James and Mr. Lenz. Finally, Mr. James and Mr. Lenz, assisted by counsel, testified at length as to their version of the events and presented documents they deemed relevant. After each interview, I invited witnesses to provide me with any further evidence or thoughts they might have. Mr. James and Mr. Lenz were also given the opportunity to provide supplementary written submissions following the testimony of all witnesses, which they did. My goal was to hear all relevant evidence and points of view, in order to provide the Legislative Assembly with a fair, independent report on the facts relevant to the issues set out in the Terms of Reference.

The Legislative Assembly has asked me to report on the following matters, as set out in Schedule "A" to the Terms of Reference:

Did the Clerk or Sergeant-at-Arms engage in any of the following, which would constitute employee misconduct, in the course of their employment as permanent officers of the Legislative Assembly?

- a) Improperly (and knowingly) receive improper payouts of vacation pay by reason of their failure to record vacation leave;*
- b) Improperly make purchases of a personal nature and expense them to the Legislative Assembly;*
- c) Improperly claim and receive retirement allowances;*
- d) Improperly remove Legislative Assembly assets and property;*
- e) Improperly use Legislative Assembly property beyond an incidental or reasonable work-related purpose.*

I understand the matters listed in Schedule "A" to conform broadly to the allegations in the Speaker's January Report. Though not specifically named in Schedule "A", the Speaker's allegations about improper travel claims as well as claims for insurance premiums and purchases of suits, luggage and other objects fall within b). There are extensive allegations concerning one retirement benefit, one resignation benefit, and one standalone life insurance or death benefit. I have considered these all under c).

Some of the Speaker's allegations involve elements raised in Schedule "A" and some do not. I have considered matters explicitly included in or potentially connected to Schedule "A", provided they were raised in the January Report and canvassed in the interviews I conducted. This was necessary to ensure a thorough examination and to consequently clear actors of alleged wrongdoing. The novel allegations raised in the Speaker's supplemental February 2019 Report ("February Report") fall outside the scope of Schedule "A".

2. HISTORY OF PROCEEDINGS

In November 2018, Speaker Plecas met with the House Leaders to discuss allegations against the Clerk of the House, Craig James, and the Sergeant-at-Arms, Gary Lenz. The House Leaders brought the matter to the attention of the Legislative Assembly and by unanimous vote on November 20, 2018, it placed Mr. James and Mr. Lenz on administrative leave with pay and benefits. Mr. James and Mr. Lenz were not advised of this action or the allegations until after the House had voted to issue the suspensions. Following the decision in the House, Speaker Plecas advised Mr. James and Mr. Lenz of the suspensions and arranged for them to be removed from the grounds of the Legislative Assembly under police escort.

The allegations against Mr. James and Mr. Lenz were referred to the Royal Canadian Mounted Police. To my knowledge, no action has resulted from this referral. As indicated above,

I have had no contact with the police and have conducted my fact-finding inquiry in a completely separate and independent manner.

The Legislative Assembly appointed me as Special Investigator on March 7, 2019.

In addition to receiving the January Report, the February Report, written responses prepared by Mr. James, Mr. Lenz, and their counsel, and the Speaker's written response to those submissions, I have received various documents and records from the Legislative Assembly and witnesses.

In addition to Mr. James, Mr. Lenz and Speaker Plecas, I interviewed a number of individuals, including current and former employees and officers of the Legislative Assembly and members of the House. Following the completion of all of the interviews, Mr. James, Mr. Lenz and Speaker Plecas were given the opportunity to provide additional written submissions, which they did.

3. METHODOLOGY

My task is to determine whether Mr. James and Mr. Lenz acted in a way that would constitute misconduct "in the course of their employment as permanent officers of the Legislative Assembly", as set out in Schedule "A" to the Terms of Reference in reference to the Speaker's January Report.

Mr. James and Mr. Lenz have made written legal submissions on the threshold I ought to apply in determining whether the conduct in question constitutes misconduct. However, as I noted above, it is not within my mandate to pronounce on whether any conduct meets the legal threshold of "just cause" for the purpose of disciplinary decisions, for example. Whether any of the conduct I address constitutes "just cause" is a determination to be made at first instance by the employer.

As per Schedule "A", my task is limited to determining whether Mr. James and Mr. Lenz acted contrary to Legislative Assembly rules, practices or policies in the exercise of their roles in the matters identified.

To guide my fact-finding, I will address the following questions for each allegation of misconduct:

- (1) What is the questioned activity by Mr. James or Mr. Lenz?
- (2) What is the applicable rule, practice or policy, and has it been consistently applied?
- (3) Did the questioned activity constitute a breach of the applicable rule, practice or policy?

With respect to what constitutes a "breach", my focus is whether Mr. James or Mr. Lenz engaged in conduct that was inconsistent with the applicable rule, practice or policy either

knowing of the inconsistency (and proceeding in any event) or where they ought to have known of the inconsistency given the duties attached to their offices.

In addressing these questions, I will consider all of the evidence provided to me and will make factual findings relying on a balance of probabilities standard.¹

¹ Please note that references to exhibits denoted as "Ex." refer to the numbered exhibits attached to the Speaker's January Report.

B. BACKGROUND AND CONTEXT

1. GOVERNANCE STRUCTURE AND ROLES

In order to understand the roles of the Clerk, Mr. James, and the Sergeant-at-Arms, Mr. Lenz, and to ascertain whether their conduct complied with the proper discharge of those roles, it is necessary to describe the governance structure within the Legislative Assembly.

The Legislative Assembly is a unique organization. Management of its affairs reflects its unique nature. I was provided with the following organizational chart:



The following is what I have gleaned from the witnesses who testified as to how the Legislative Precinct was governed at all times relevant to this inquiry:

- (1) Ultimate responsibility for administration of the Legislative Precinct rests with the Legislative Assembly, consisting of the elected members of the Assembly.
- (2) The Legislative Assembly delegates its responsibility for administration of the precinct to the Legislative Assembly Management Committee ("LAMC"), which consists of members from the House and is chaired by the Speaker. The Clerk is clerk to the committee.
- (3) The Speaker of the House is elected by the Legislative Assembly and confirmed by the Lieutenant Governor under section 37 of the *Constitution Act*, R.S.B.C. 1996, c. 66 ("*Constitution Act*"). He acts as the delegate of the Legislative Assembly for purposes of overseeing the Legislative precinct, and answers to it. The Speaker is ultimately responsible for the overall functioning of the Legislative Assembly, both within the Legislative Chamber and outside it. To borrow a corporate analogy, the Speaker acts as a board of directors might, bearing responsibility for the organization as a whole. In exercising that role, various responsibilities are delegated to other positions.
- (4) Responsibility over administration outside the Legislative Chamber is largely delegated to the Clerk of the House, though the Speaker and the Legislative Assembly are ultimately responsible. The Clerk is the ranking permanent officer appointed by the Legislative Assembly under section 39 of the *Constitution Act*. Borrowing from corporate language again, the Clerk acts as the Chief Executive Officer of the Legislative precinct, being responsible for the day-to-day running of the organization, including expenditure and staff management. The Clerk answers to the Speaker, like a CEO answers to a board of directors. The other permanent officers, the Executive Financial Officer, and the heads of all other administrative divisions report to the Clerk.
- (5) The Sergeant-at-Arms is a permanent officer who is also appointed by the Legislative Assembly under section 39 of the *Constitution Act*. The Sergeant-at-Arms is responsible for the security of the Legislative precinct, the Parliament buildings and their occupants. This includes oversight of investigations of wrongdoing within the organization. In this capacity, I understand that the Sergeant-at-Arms reports to the Speaker. The Sergeant-at-Arms is also responsible for property management of the Legislative precinct, which includes maintenance and repairs. I understand that in this capacity, the Sergeant-at-Arms reports to the Clerk.
- (6) The Clerk, Deputy Clerk, Sergeant-at-Arms, and Executive Financial Officer (who is not a permanent officer) make up the Executive Committee, which plays an

advisory and approval role with respect to Legislative Assembly expenses and other administrative matters. For example, capital projects valued at below \$50,000.00 can be approved by the Executive Committee (sometimes referred to as the "Executive Team"), whereas higher-valued projects need to be approved by the Finance and Audit Committee (a sub-committee of the LAMC), or the LAMC itself.

I have learned that, in reality, this structure was not always respected. The LAMC met infrequently during the period in question, particularly during the 180 days each year that the House was in recess. The lines of authority between the LAMC and the Speaker, and between the Speaker and the Clerk and Sergeant-at-Arms, appear to have been unclear in many peoples' minds, including their own. Because the Clerk and Sergeant-at-Arms are permanent officers appointed by the Legislative Assembly, there may have been a sense in some peoples' minds that they were responsible only to the Legislative Assembly. The Speaker did not consistently exercise supervisory authority over the Clerk.

As a result of these weaknesses in the administrative structure, problems arose. The LAMC, because it met infrequently, did not exercise effective supervision over the permanent officers. The Speaker failed to exercise supervision over the Clerk and Sergeant-at-Arms in a consistent manner. As an example, the Clerk's subordinates, rather than the Speaker, were sometimes asked to approve his expense claims. The lack of clear lines of authority and responsibility resulted in a lack of accountability coupled with the entrenchment of wide-ranging authority in the Office of the Clerk. Even administrative policies were shaped by this lack of clarity. For example, under the Legislative Assembly's *General Expenditure Policy*, the Clerk, rather than the LAMC or the Speaker, is identified as bearing responsibility for the "overall stewardship of the financial resources...of the Legislative Assembly".

While the governance structure set out above suggests a hierarchy of distinct responsibilities, in fact lines between different functions often blurred, and the offices of the Speaker, the Clerk and the Sergeant-at-Arms worked in an overlapping way. The three officials talked together, met together and often travelled together without distinguishing who was responsible for what. For example, I heard that all three individuals would participate in security-related meetings even though the Clerk was not meant to be involved in security matters. Of the three of them, the Clerk appears to have played a dominant role in decision-making, particularly with respect to matters involving the Speaker.

2. IMPETUS FOR THE ALLEGATIONS

Many of the problems I was asked to investigate—and many of the frustrations expressed by employees who testified—arose from this lack of clarity and accountability in the administrative structure of the Legislative Assembly. Conscientious employees ensured that overall, the affairs of the Legislative Assembly were administered competently and with accountability. Taxpayers' money on the whole appears to have been carefully administered and spent according to established policies due to the diligence of employees in various sectors of

the organization. This said, the lack of accountability for the conduct of the permanent officers of the House led to incidents where the lines between the interests of the Legislative Assembly and personal benefit sometimes blurred, creating a space where self-interested opportunism could trump the interests of the Legislative Assembly.

When first appointed Speaker in the autumn of 2017, Mr. Plecas deferred to the Clerk, perhaps understandably, looking to him for advice and direction as to what the Speaker's responsibilities were and how things worked in the Speaker's and Clerk's offices. In the months that followed, the Speaker went along with conduct he later criticized and signed approvals for significant benefits he now impugns (in one case stating he always had the intention to rescind it).

As time passed, the Speaker became increasingly concerned with some of the conduct he observed by Mr. James and Mr. Lenz. Those concerns seem to have shed new light on prior conduct the Speaker had not previously questioned. Yet the Speaker said nothing. In or around June 2018, the Speaker's concern was such that he consulted a retired police officer and a criminal lawyer to discuss the conduct in question. He consulted additional counsel in subsequent months, including a constitutional lawyer, as well as the RCMP in late October or November 2018. Yet he never brought his concerns to the attention of the Clerk or the Sergeant-at-Arms or made attempts to intervene to curb any conduct that he identified as problematic. Finally, in November 2018, he took his concerns to the House Leaders, which resulted in the decision of the Legislative Assembly to suspend the Clerk and the Sergeant-at-Arms.

Much of the impugned conduct described in the Speaker's January Report only came to light after the Clerk and Sergeant-at-Arms were removed from their offices. Once they were removed, the Speaker asked various employees and former employees to speak about their experiences with Mr. James or Mr. Lenz and to provide documentation about those individuals' expense claims, for example.

It is not entirely clear why the Speaker did not bring his concerns to the attention of the Clerk and the Sergeant-at-Arms forthwith, as one would expect of a supervising officer, or in any event before taking the dramatic action of having them publicly expelled from the grounds of the Legislative Assembly building. By way of explanation, the Speaker pointed to the lack of internal processes to address misconduct by the Clerk and a belief that he lacked the authority to take action directly. The Speaker also suggested that the Clerk was powerful and had to be dealt with carefully—a sentiment echoed by other witnesses. The Speaker further noted that, on many occasions, he chose not to advise the individuals of his concerns for fear of tipping them off about his ongoing monitoring of their conduct.

What emerges from the evidence is that the Speaker viewed the matters that concerned him through the lens of a police investigation and criminal prosecution, rather than the lens of an administrator. He seems to have seen his task as to build a credible criminal-type case against Mr. James and Mr. Lenz, rather than promptly confronting and correcting the administrative practices that he questioned. He focused on an investigatory line of inquiry at the expense of his

duty to ensure that the affairs of the Legislative Assembly were properly administered on a current basis.

The events leading up to November 20, 2018 and the subsequent release of the January Report reflect the weaknesses in the reporting structure of the Legislative Assembly. When there is a lack of clarity about who is in charge of what, power seeps through the cracks and vigilant oversight is compromised.

C. EXAMINATION OF ALLEGATIONS

1. IMPROPER RECEIPT OF VACATION PAYOUTS

a) *Questioned activity*

There are two aspects to this allegation. First, the Speaker asserts that Mr. James and Mr. Lenz received excessive vacation payouts in contravention of the applicable rules. Second, the Speaker asserts that such payouts were possible only because Mr. James and Mr. Lenz did not accurately record their use of vacation days.

Mr. James and Mr. Lenz receive significant vacation time benefits. Currently, Mr. James receives 315 hours of vacation per year and Mr. Lenz receives 245 hours per year. Between 2012 and 2018, it was their practice to cash out more vacation time than they used each year. On average, Mr. James cashed out more than 2.5 days for every vacation day he actually used. For Mr. Lenz, the figure is closer to 7 days. Mr. James also had the practice of cashing out vacation time before the end of the year in which it was earned. In other words, he would make the choice to forego vacation time and receive an immediate payout instead.²

Mr. James and Mr. Lenz consistently record very few official holidays using their accrued vacation time. However, there are times when they are not in the office and for which they do not take vacation days.

b) *Applicable rule, practice or policy*

Section 4.4 of the Legislative Assembly vacation policy requires that employees use a minimum of fifteen vacation days each year. However, I have been informed that this rule is not generally enforced.³

Section 7.3 of the same policy provides that unused vacation time can be banked for the next year, paid out, or a combination of both. Any time that is carried over is meant to be used the following year. Again, e-mail records show that this rule is not generally enforced.

Section 8.3 of the policy provides that an employee can make a written request to have banked vacation time paid out. Older versions of the policy limited the amount of time that could be paid out. The vacation policy has become less stringent. Nevertheless, in Mr. James's case at least, his requests for payouts have consistently been granted by those tasked with approving them—in the past, his superiors, and currently, the Executive Financial Officer.⁴

[REDACTED]

While not captured in any formal document, I have been made aware of the fact that is acceptable practice for senior officials to take time off in lieu of payment for any overtime worked.⁵

c) Did the activity breach the applicable rule, practice or policy?

The practice of cashing out vacation time, even prior to the end of the year in which it is earned, falls within the applicable rules, and Mr. James and Mr. Lenz are not the only permanent officers or senior officials who receive such payouts.⁶ Although Mr. James and Mr. Lenz did not generally use the minimum fifteen vacation days required, it has been explained to me that this rule and others were not consistently enforced.

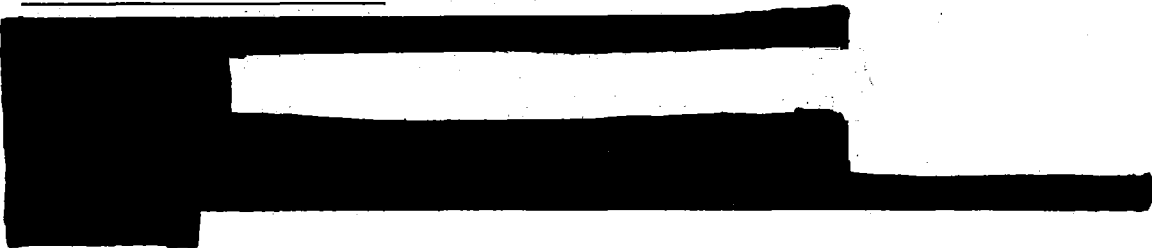
There is some suggestion that Mr. James and Mr. Lenz took time off without recording it. However, there is inadequate evidence to confirm this. While some have suggested that Mr. James has a practice of taking Fridays off without recording this as vacation time, records I received indicate that he participated in Audit Working Group meetings, which are held on Fridays. He also informed me that he often works from home.⁷

Mr. Lenz informed me that he works a lot of overtime and that he is remunerated with time-in-lieu of overtime pay.⁸ There is evidence that Mr. Lenz tracks his overtime.⁹

There is inadequate evidence establishing that Mr. James or Mr. Lenz improperly took advantage of their vacation time entitlements. Either their conduct fell within the applicable rules or was consistent with how the rules, in practice, were actually enforced. I note that in the case of Mr. James, his requests for payouts were consistently approved, even before he was appointed Clerk.

I conclude that there was no misconduct in relation to the receipt of vacation payouts by either Mr. James or Mr. Lenz.

I add this. The Speaker is neither the sole nor the first individual to express concern with the kinds of vacation payouts that have been common practice for senior officials at the Legislative Assembly. At least one past clerk expressed concern with the practice and financial officers at the Legislative Assembly informed me that large payouts can pose significant budget liabilities if they are unplanned.¹⁰ There also seems to be disagreement about whether the vacation policy applies to permanent officers or not.¹¹ I recommend that the Legislative Assembly



review and clarify its policies regarding the taking of vacations, overtime and claims for pay in lieu of vacations.

2. IMPROPER PURCHASES OF A PERSONAL NATURE: CLOTHING, OFFICE GIFTS AND OTHER GOODS

a) *Questioned activity*

Speaker Plecas alleges that Mr. James and Mr. Lenz made purchases of a personal nature while on business travel in the U.K. for which they claimed and obtained reimbursement from the Legislative Assembly. These include suits and accessories as well as items characterized as office gifts or display items.

The Speaker also alleges that Mr. James improperly purchased and claimed reimbursement for luggage and electronic equipment and servicing for that equipment.

b) *Applicable rule, practice or policy*

The clear rule or policy was and is that any claims made for goods or services purchased must: (a) represent actual expenses and (b) represent expenditures for Legislative Assembly purposes. This requirement for accountability is reflected in the "Objective" statements of three relevant policies: the *General Expenditure Policy*, the policy on *Capital Project Review and Approval* policy, and the policy on *Procurement and Contract Management*.

Many witnesses confirmed to me that claims for reimbursement must be documented and approved: first, to verify that the expense was actually incurred, and second, to verify that the expense was made for a Legislative Assembly purpose. Claims are then submitted to Finance Services for final vetting and payment.

Section 4.02 of the *General Expenditure Policy* provides that it is the responsibility of those tasked with approving an expense claim to "thoroughly review invoices, reimbursement requests, and payment requisitions to ensure accuracy of calculations, account coding, and appropriateness of payments" (emphasis added).

While in practice superiors' claims were often approved by subordinates—for example the Executive Financial Officer is tasked with reviewing and approving the Clerk's claims—this appears to have been done as a matter of convenience rather than policy.

Under section 1 of the *General Expenditure Policy*, "the Clerk of the House is responsible for the overall stewardship of the financial resources...of the Legislative Assembly of BC...and for ensuring appropriate control over the use of public monies".

c) *Did the activity breach the applicable rule, practice or policy?*

(i) Suits and accessories

Numerous witnesses informed me that purchases of official uniforms for all officers of the House are included in the budget of the Sergeant-at-Arms. This was confirmed in the documentary evidence.

While on two separate business trips to London, U.K., Mr. James acquired two suits and some accessories from the store Ede & Ravenscroft.

The first suit, at a cost of approximately \$1,150.00 (Cdn) was purchased in December 2017. Mr. James also acquired trousers, leather shoes and cufflinks.¹² Mr. Lenz made these purchases as part of a larger order that included replacement uniform hats for the Speaker and Sergeant-at-Arms. The cost of the suits and the accessories was included in Mr. Lenz's claim for reimbursement.¹³

The second suit, at a cost of approximately \$1,000.00 (Cdn), was purchased by Mr. James directly on a second trip to England, in August 2018, along with some cufflinks.¹⁴

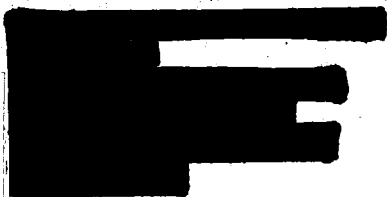
The Speaker alleges that these suits were not required for Legislative Assembly purposes.

Mr. James told me that he was engaged in a project to simplify the uniform of the Clerk by reducing it to a gown over a business suit and that these suits were purchased solely for that purpose and are meant to be used and kept at work.¹⁵

On the August 2018 trip to London, Mr. Lenz purchased a shirt and accessories at Ede & Ravenscroft in the amount of approximately \$660.00 (Cdn). He was reimbursed for this expense. He explained to me that the items he purchased formed part of his formal dress for ceremonial functions.¹⁶

There is inadequate evidence to suggest that the trousers and accessories purchased by Mr. James were for personal use. However, I find that the suits acquired by Mr. James were personal expenses and not special uniforms for exclusive use in the Legislative Assembly. I draw this conclusion for the following reasons.

First, Mr. James acknowledged that his alleged project to modify the officers' uniforms was only speculative; no such program was in place nor did he discuss it with anyone else.¹⁷



Although there may have been discussions between the Clerk and the Speaker about the cost of the traditional uniforms¹⁸, this does not amount to authority or approval for the proposition that the uniforms should change.

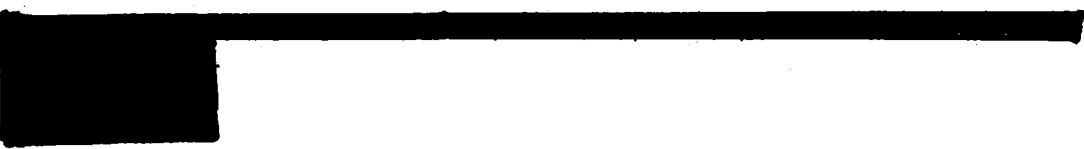
Second, if the suits had been part of the official uniform, they would have fallen under the Sergeant-at-Arm's budget for uniforms, which covered all uniforms worn in the Legislative Assembly. That only one of the suits fell under this budget suggests that at least one of the suits was not meant to be considered a uniform.

Third, the suits Mr. James purchased were not identical and were basic business suits. This means that, even accepting Mr. James's plan to modernize the uniforms, there was no existing standard or any indication that regular suits already owned by officers could not be used. Mr. James confirmed as much.¹⁹ Many employees in many different circumstances have no choice but to wear suits at work. I also accept the documentary evidence that one of the suits was navy and one was grey or "charcoal", neither of which, one suspects, would be appropriate to wear under the officers' black gowns if the plan was for the suits to be worn only in the House.

Fourth, Mr. James provided no explanation for why, if the suits were required for Legislative Assembly purposes, suitable suits could not have been purchased in Canada at a lower price.

Fifth, the purchase of the suits was, at best, premature. In the absence of an actual decision to change the Clerk's uniform in the House, the suits Mr. James purchased could only have been worn outside the chamber, either during a non-sitting day at work, or outside of work—both personal use. Mr. James admitted that no pertinent uniform requirement was in place when he purchased the suits. Speculative purchases are inappropriate; if the proposed requirement never comes to pass, taxpayers are nevertheless on the hook for the expense. Given the suits could only be worn by Mr. James, they could not be repurposed for some other valid Legislative Assembly use.

I also note that the Speaker questions purchases made by Mr. James at Brooks Brothers in Vancouver on January 31 and August 21, 2018 and expensed to the Legislative Assembly.²⁰ It appears that both claims proceeded through the Office of the Sergeant-at-Arms as uniform claims. The bulk of the purchases are dress shirts. I have been informed by that store that they do sell wing-tip dress shirts that can be worn with tabs under gowns for approximately the price listed on the receipts. Mr. James confirmed that the tie he purchased at Brooks Brothers was part of his uniform modernization plan.²¹ Seeking reimbursement for that tie, which cost \$48.00, was improper for the reasons I outlined above.



I conclude that the suits acquired for Mr. James were for his personal use, and that the associated claims and reimbursement breached Legislative Assembly rules and policies and constituted misconduct by Mr. James.

I accept Mr. Lenz's explanation for his purchases at Ede & Ravenscroft in August 2018. I conclude that the items were not acquired for Mr. Lenz's personal use and therefore there was no breach of Legislative Assembly rules or policies. On the trip in December 2017, Mr. Lenz included one of Mr. James's suits in his uniform allowance; however, he was acting as Mr. James's subordinate and did not benefit from the inclusion. In the circumstances I do not find this to be in breach of Legislative Assembly policies and hence misconduct.

(ii) Luggage

Mr. James submitted claims and was reimbursed for luggage on three occasions: a claim for luggage purchased at the House of Fraser in Edingburgh, U.K. on December 8, 2017 for \$253.61 (Cdn); a claim for what is understood to be luggage purchased on December 10, 2017 in London, U.K. for \$743.92 (Cdn); and a claim for two pieces of Victorinox Luggage purchased in Hong Kong on June 17, 2018 for \$1,138.34 (Cdn). The total cost of the luggage purchased on these three occasions was therefore \$2,135.87 (Cdn).²²

The Speaker says that these luggage purchases were not for Legislative Assembly purposes and were therefore improperly claimed.

Mr. James says that he purchased this luggage for use by Members of the Legislative Assembly (MLAs) as part of a luggage bank he was setting up for them.²³

I reject Mr. James's explanation that he was setting up a luggage bank for the use of MLAs, even assuming the appropriateness of such a project. First, there is no evidence that he ever advised MLAs of the program or that the luggage was actually made available for their use.²⁴ Second, apart from one larger suitcase that may be in the Clerk's vault, all the luggage has at all times been kept in Mr. James's home.²⁵ Third, Mr. James admits that no MLA has ever used this luggage. Fourth, Mr. James acknowledges that he used the luggage.²⁶ Finally, the only documented record of any such luggage bank is an e-mail in which Mr. James provides an explanation for his expense claim after the claim was questioned by financial officers including [REDACTED] who was uncomfortable approving the claim.²⁷

I conclude that the luggage was acquired for Mr. James's personal use, and that the associated claims and reimbursement breached Legislative Assembly rules and policies and constituted misconduct.

(iii) Office gifts and display items

While on business trips to the U.K. in December 2017 and August 2018, Mr. James purchased various small items from galleries, the Houses of Parliament, and other establishments. These included decorative items, games, books, commemorative items, stamps, pens, notebooks, guidebooks, cufflinks, watches, greeting cards, bottle openers, and, memorably, three whisky cakes. He made claims for these items in the amount of \$2,063.36 (Cdn) and I understand that he received reimbursement for most of that amount.²⁸

On the same trips, Mr. Lenz made similar but less extensive purchases. Mr. Lenz claimed and was reimbursed for purchases in the amount of \$485.57 (Cdn), which included reimbursement for a book on Henry VII, called *The Winter King*, in the amount of \$16.75.²⁹

The Speaker questions whether these items were purchased for Legislative Assembly purposes.

Mr. James says that he purchased the items to put on display in the Legislative Assembly (in his office, for example), to give to employees or members in recognition of good service, to hand out to visiting delegations, or to provide examples of the kinds of souvenir items the Legislative Assembly could have produced and sold. He says they were all taken to and kept at his office at the Legislative Assembly. He says he bought the cakes to give to the Chef of the Legislative Assembly as an example of something the kitchen might try to make.³⁰

Mr. Lenz provided a similar explanation for the souvenir items he purchased.³¹ Mr. Lenz says that the book on Henry VII was purchased to further his work as Sergeant-at-Arms, by acquainting him with the historical aspects of his work as the usher of the Black Rod.³² Mr. Lenz provided documentary evidence to confirm the book in question is a historical account, rather than the similarly-titled fantasy novel identified in the Speaker's January Report.³³

Opinions may differ on whether the explanations provided for these purchases are compelling. In addition, it might seem unusual to purchase display and gift items abroad for use in the Legislative Assembly, rather than from a British Columbia source. However, I cannot conclude that, on the evidence before me, any of these items were purchased for personal use or consumption. While some of the expenses may have been speculative (i.e. gifts not yet



assigned), the evidence before me does not suggest personal use or consumption by Mr. James or Mr. Lenz. I note that Mr. James made no claim for a Christmas gift he purchased in the U.K. for his executive assistant.³⁴

I conclude that the purchase and claim for reimbursement of these miscellaneous items did not offend Legislative Assembly policy and did not constitute misconduct.

I note that witnesses agreed that there is a formal employee recognition program in place at the Legislative Assembly and, similarly, that "protocol" gifts are acquired so as to be presented to visiting delegations. To the extent that the Legislative Assembly may wish to constrain such purchases to formal programs or processes, it may wish to establish a clearer policy for the purchase of gift items for employees and visiting delegations.

(iv) Electronics

In the period from April 2017 to July 2018, Mr. James incurred, claimed, and was reimbursed for expenses worth over \$5,000.00 for various computer-related items, including adapters, cables, keyboards, computer mice, iPhone cases, iPad cases, power adapters, an Apple TV, an Apple pencil, and other items. During the same period he also incurred charges of \$785.85 for services provided by "Dial a Geek", a computer support service, for which he was reimbursed.³⁵

In the period from December 2017 to March 2018, Mr. James purchased over \$2,000.00 worth of camera equipment, including a waterproof camera, tripod, and memory cards.³⁶

In June, 2017, Mr. James was reimbursed \$504.44 for the purchase of Bose Noise-Cancelling Headphones.³⁷

The Speaker says these purchases were made for personal, not Legislative Assembly, purposes.

Mr. James informed me that the computer equipment and service were purchased for his home office, where he often worked on Legislative Assembly business.³⁸ He says the camera equipment was purchased in order to memorialize Legislative Assembly business and for a project of photographing architectural elements of the Legislative Assembly Building, with a view to a possible book.³⁹ He says the headphones were purchased to assist him in Legislative Assembly travel.⁴⁰

I accept Mr. James's evidence that these purchases were made for Legislative Assembly purposes. A review of the applicable expenditure management policies reveals that none of these purchases needed to go through the capital expenditure approval process given the costs involved. I also note that branches within the Legislative Assembly, which would include the Office of the Clerk, are given discretion under Part 7 of the policy known as *Computer Systems Policies and Procedures* to buy non-standard computer equipment. There is inadequate evidence to conclude that the equipment (and the associated service expenses) were solely to the benefit of Mr. James in a personal capacity.

I conclude that the claims for and reimbursement of expenses for electronics and related service did not offend Legislative Assembly rules and policies and did not constitute misconduct.

Given the fact that the line between personal and business use of expensive electronic equipment may be difficult to track given the portability of such equipment, the Legislative Assembly may wish to consider whether clearer protocols for the purchase of such equipment are required. This may be particularly important in the context of equipment used in home offices.

3. IMPROPER PURCHASES OF A PERSONAL NATURE: TRAVEL EXPENSES

a) *Questioned activity*

The Speaker suggests that at least five international trips taken by permanent officers raise concerns:

- (1) *A Legislative Assemblies Business Continuity Network Visit (LABCoN) conference held in Victoria and Washington, U.S. in August 2017 hosted by the Legislative Assembly and attended by the Clerk and Sergeant-at-Arms and others (held before Speaker Plecas was elected Speaker);*
- (2) *A trip to the U.K. in December 2017 by the Speaker, the Clerk and the Sergeant-at-Arms;*
- (3) *A trip to the U.K. in February 2018 by the Clerk;*
- (4) *A trip to China in June 2018 by the Speaker, the Clerk and Deputy Speaker; and*
- (5) *A trip to the U.K. in August 2018 by the Speaker, the Clerk and the Sergeant-at-Arms.*

The Speaker also questions several claims submitted by Mr. James and Mr. Lenz for travel within British Columbia in 2017 and 2018.

Three aspects of the Speaker's allegations are relevant under Schedule "A" to the Terms of Reference. First, the Speaker questions whether these trips and/or the events that occurred during them were actually for Legislative Assembly, rather than personal, purposes. The Speaker points to circumstances like the nature and length of the trips, the relevance of the included events, and delays between business meetings. As part and parcel of this suggestion, the Speaker suggests, as an example, that he was invited to select trips based on places he would like to visit rather than utility to the Legislative Assembly, citing an October 2018 meeting to plan upcoming travel where the Sergeant-at-Arms asked him, "Where in the world do you want to go?"

Second, the Speaker alleges that Mr. James and Mr. Lenz were reimbursed for specific expenses during the trips that were incurred during vacation or personal time. Of note, the Speaker alleges that Mr. James improperly claimed reimbursement for airfare between Victoria and Calgary during the August 2018 trip to the U.K. when he, in fact, drove that route and was only in Calgary to see family. Mr. James flew return to the U.K. from Calgary rather than Victoria. It is also alleged that Mr. James used his work-provided Assured Loading Card for B.C. ferries to pay for ferry transit when he was not on Legislative Assembly business.

Third, the Speaker alleges that Mr. James and Mr. Lenz claimed reimbursement for expenses that were otherwise covered or reimbursed. Specifically, the Speaker alleges that Mr. James and Mr. Lenz improperly claimed *per diem* expense payments to cover meals that were already paid for by hosts or provided at official functions.

b) Applicable rule, practice or policy

The same policies outlined in the previous section apply to travel claims. The Legislative Assembly does not have a unique travel expense policy for permanent officers or employees. I have been informed that, in practice, their travel is governed by the *Travel Guidelines* for MLAs. The *Travel Guidelines* are not extensive and they neither prescribe what constitutes a justification for business travel nor specific expectations for what is considered a "reasonable" expense. For example, hospitality and entertainment expenses can be reimbursed, and choices of transport are meant to be economical, but that is subject to "operational requirements". In other words, the *Travel Guidelines* are permissive.

c) Did the activity breach the applicable rule, practice or policy?

The Clerk and the Sergeant-at-Arms categorically deny these allegations. They provided me with detailed explanations for each of the events on each international trip and their connection to Legislative Assembly business. For many of the events, these explanations aligned with the Speaker's own understanding of the events he himself attended. With respect to specific expenses, both Mr. James and Mr. Lenz assert that they were incurred while they were on business travel status and were therefore warranted. They agree that any double-counting of *per diems* was an unintentional mistake or clerical error that can be corrected.

With respect to the use of his BC Ferries Assured Loading Card, Mr. James confirmed that he did use it for personal trips, but notes that this did not extend to his family.⁴¹ He explained that he did so on the basis of a longstanding informal policy that such use was permitted. Current financial officers are unaware of such a policy; however, Mr. James explains that the policy predated their tenure at the Legislative Assembly.

The Sergeant-at-Arms denies the Speaker's suggestion that trips would be planned to coincide with anyone's personal travel agenda; any remark he made to that effect was facetious.⁴²

Based on the evidence before me, I am satisfied that all of the impugned international travel was for legitimate business purposes. The trips with the Speaker to the U.K. were for the purpose of informing the Legislative Assembly's security practices, as was the conference in Washington. The trip to China was for diplomatic purposes. The Clerk's trip to the U.K. in February 2018 was related to his work on developing a new edition of the procedures book for the Legislative Assembly. These purposes fell within accepted Legislative Assembly practices.

I accept that there were personal aspects to the international trips and occasions when meetings fell through and personal events were substituted; that is not exceptional, nor necessarily wrong. I accept that it is difficult to plan business trips in such a way so as to eliminate delays between business functions. The cost of accommodations and travel arrangements were at an appropriate level for officers of the Legislative Assembly visiting their counterparts elsewhere and consistent with the MLAs' permissive *Travel Guidelines*. When family members accompanied the Clerk and the Sergeant-at-Arms, the documentary evidence indicates that resulting expenses were paid by them. The evidence regarding local travel costs in the U.K. in relation to alleged personal events is inconclusive and so provides an inadequate basis to conclude there was misconduct.

As for the travel within British Columbia, the Clerk and Sergeant-at-Arms provided adequate explanations of the nature of the business conducted. While in some instances there is debate over the purpose of specific trips, the testimony and documentary evidence I received is equivocal at best and therefore does not provide a basis to find the travel to be unrelated to the business of either the Clerk or the Sergeant-at-Arms.

I accept the evidence of Mr. Lenz and [REDACTED] that the meeting in which Mr. Lenz uttered "Where in the world do you want to go?" was a proper business planning meeting.⁴³ The utterance by Mr. Lenz may have been unfortunate or even inappropriate, but it does not amount to an open invitation for the parties to make personal

[REDACTED]

travel plans on the taxpayers' dime. In any event, the meeting was not a forum for pre-approving or pre-claiming any travel expenses, so Mr. Lenz's utterance had no financial implication.

I now turn to specific impugned expenses. There is evidence that any questionable *per diems* recouped were claimed as either a proxy for other potentially reasonable expenses for which there were no available receipts⁴⁴ or were claimed by mistake.⁴⁵ I accept these explanations. While they may not invoke confidence, there is no evidence to suggest personal benefit. It may be that the Legislative Assembly wishes to clarify its *per diem* policy if it prefers *per diems* not to be used to cover incidental expenses.

With respect to Mr. James's use of his BC Ferries Assured Loading Card, I accept that there may have been a policy at some point that permits personal use. I have been provided with no record of such a policy, nor are financial officers at the Legislative Assembly familiar with such a policy. Mr. James, when discussing the alleged policy, referred to the practice of MLAs, who receive a credit card for travel expenses which includes assured loading access.⁴⁶ However, the *Travel Guidelines* specifically say that the credit card "should not be used for personal charges or any other charges not directly related to business travel". If the policy Mr. James described existed and was meant to be consistent with rules for MLAs, it appears as if it would now be at odds with MLAs' entitlements. However, I am unable, on the evidence, to draw a conclusion of wrongdoing. The Legislative Assembly may wish to clarify its policy regarding ferry usage moving forward.

Mr. James was reimbursed for return business class airfare from Calgary to London in relation to the August 2018 trip to the U.K.⁴⁷ He drove with his wife to Calgary prior to flying to the U.K. to arrange it so he would be in Calgary to attend [REDACTED]⁴⁸ He was reimbursed for the cost of a business class return flight between Victoria and Calgary because, by his calculation, the cost of that was less than what the cost of the mileage would have been.⁴⁹ Mr. James would have been entitled to be reimbursed for the cost of business class return airfare between Victoria and London. He chose to originate his trip in Calgary for personal reasons. Therefore, to the extent that Mr. James claimed reimbursement for an amount for airfare in excess of what he would have been entitled to claim had he originated the trip in Victoria, those excess funds were tied to personal travel and are thus not "reasonable" under the policy. Nevertheless, that conclusion is not necessarily one of misconduct. The claim was submitted with Mr. James's explanation and was approved. Presumably if claims of that type had been categorically impermissible, it would have been questioned at the time of the claim. I have seen no evidence of that. Nor was the item raised as an example of a time when individuals felt pressured into approving a questionable expense claim.

I conclude that claims and reimbursement for the impugned travel expenses by Mr. James and Mr. Lenz did not constitute misconduct.

As noted, the Legislative Assembly may wish to consider the scope of acceptable travel expenses for permanent officers and employees.

4. IMPROPER PURCHASES OF A PERSONAL NATURE: INSURANCE PREMIUMS

a) *Questioned activity*

The Speaker alleges that Mr. James improperly endeavoured to secure life insurance for himself, paid for by the Legislative Assembly, after he turned 65. Mr. James submitted claims and was reimbursed for the cost of private insurance premiums. At the same time, Mr. James asked the Speaker to approve a different benefit by which the Legislative Assembly itself would pay to Mr. James's beneficiary three times Mr. James's salary were he to die while still in office.

This allegation does not pertain to Mr. Lenz.

b) *Applicable rule, practice or policy*

All employees of the Legislative Assembly, including permanent officers, receive life insurance through a group insurance agreement with Great West Life Assurance Company ("Great West Life"), until they reach the age of 65. MLAs are covered through Great West Life as long as they hold office, regardless of age.

When employees or permanent officers turn 65, they can elect to maintain insurance through Great West Life but they must pay the premiums. Alternatively, they can seek insurance elsewhere or remain uninsured.

c) *Did the activity breach the applicable rule, practice or policy?*

On September 13, 2018, Mr. James, who was over 65, submitted a claim for reimbursement for life insurance premiums he had paid from October 2016 to September 2018.⁵⁰ The claim was partially denied on the basis that Mr. James had received alternative life insurance (i.e. a death benefit) from the Legislative Assembly, pursuant to a letter signed by the Speaker on November 19, 2017.⁵¹ It is difficult to understand how Mr. James could claim any reimbursement for the premiums since the existing Legislative Assembly policy was clear—after the age of 65, employees and permanent officers were responsible to pay the premiums for any life insurance. Witnesses from Financial Services and Human Resources could not point to an example of a

situation where the Legislative Assembly had assumed payment for death benefits or life insurance for someone over the age of 65.⁵²

My focus in this section is the claim for reimbursement of insurance premiums. As noted, during the period in question, Mr. James also worked with the Speaker to obtain a death benefit for himself from the Legislative Assembly after he turned 65 and was no longer eligible for life insurance coverage under the Great West Life group policy, in addition to his claim for reimbursement for private premiums. Since the Speaker's allegation concerning that death benefit is similar to the allegations that Mr. James improperly obtained a 2012 retirement benefit and a 2018 resignation benefit, I will deal with it when I discuss those allegations in the next section.

Mr. James told me that he knew his requests for life insurance coverage were outside of existing policy and that he was aware of the established entitlements.⁵³ His explanation for seeking coverage was that he felt, as a policy matter, that employees over the age of 65 should be covered.⁵⁴ While that may be true, no such policy existed at the time Mr. James pursued two separate and overlapping benefits. There is no evidence that Mr. James made any efforts to introduce a policy that covered all employees and permanent officers. The evidence establishes that Mr. James's efforts were to secure life insurance for himself, outside of established policy.

I conclude that Mr. James's claim and reimbursement for the cost of life insurance premiums breached Legislative Assembly policy and constituted misconduct on his part.

5. IMPROPER BENEFITS: RETIREMENT, RESIGNATION AND DEATH

a) *Questioned activity*

The Speaker's January Report expresses concerns with respect to three financial entitlements obtained or proposed by Mr. James:

- (1) A payment to Mr. James in February 2012 of \$257,988.00, ostensibly flowing from the termination of a retirement benefit program ("2012 Retirement Benefit");
- (2) A letter signed by the Speaker on April 9, 2018 providing that the Clerk, Deputy Clerk, Sergeant-at-Arms and Executive Financial Officer would continue to be paid their salary for twelve months if they were to resign, assuming certain conditions had been met ("2018 Resignation Benefit"); and
- (3) A letter signed by the Speaker on November 9, 2017 providing that the Clerk's estate would receive three times Mr. James's salary in the event of his death while

still working. I note that a similar letter to the benefit of Mr. Lenz was signed by the Speaker.

Though Mr. Lenz is implicated in items (2) and (3), there is no evidence of misconduct on his part in relation to these benefits.

With respect to the 2012 Retirement Benefit, the Speaker says that the \$257,988.00 payment to Mr. James was invalid because it was not supported by an existing entitlement. Mr. James says first, that he was entitled to the payout under arrangements to terminate a pre-existing retirement benefit established in 1984, and second, that he was not involved in the decision to secure him the benefit.

With respect to the 2018 Resignation Benefit, the Speaker says that Mr. James asked him to sign the April 9, 2018 letter, and that he agreed to do so because he wanted to preserve evidence of Mr. James's misconduct. He says he intended to rescind the benefit, which he did on June 26, 2018. The Speaker alleges that the letter represents an attempt on Mr. James's part to secure a lucrative benefit outside of the rules and policies. Mr. James, for his part, says the Speaker instructed him to draft the letter because the Speaker wanted permanent officers to have benefits similar to the transition benefits enjoyed by MLAs leaving office.

With respect to the final benefit, the Speaker signed a letter on November 9, 2017, whereby the Legislative Assembly agreed to provide a death benefit, or "life insurance" as it has been described, to Mr. James's estate in the amount of three times his annual salary, in the event of his death while still working. The Speaker says that he signed the letter at Mr. James's request, assuming it had already been vetted through proper channels. The Speaker now claims that the letter represents an attempt by Mr. James to secure a benefit outside of the applicable rules and policies. Mr. James, in contrast, says that he prepared the letter at the Speaker's request.

b) Applicable rule, practice or policy

There is currently no rule or policy in place that provides for financial retirement or resignation allowances for permanent officers of the Legislative Assembly.

Between 1984 and 1987 there was a retirement benefit for certain officers of the House. In 1984, Speaker K. Walter Davidson sent a Memorandum to the Officers of the House and Chief Table Officer, which established that Table Officers and the Chief of Hansard would receive a lump sum payment equal to thirteen days of current salary for every year of service up to twenty years, payable upon termination of office ("1984 Memorandum"). The rationale was that these officers did not "fall within the terms of the Public Service Act Retirement Allowance (or the Executive Benefit Plan, and/or similar benefits available to senior officials and managers)".⁵⁵

The retirement benefit secured by the 1984 Memorandum was capped on April 1, 1987 and the program ended. Officers impacted by the capping were given the choice of payout of any accrued funds or accepting a raise in salary in line with the Executive Benefit Plan that applied to the broader public service.⁵⁶ Since 1987, the evidence is clear that no retirement or resignation allowance for Table or other permanent officers has existed.

The Legislative Assembly policy regarding life insurance for employees and permanent officers, discussed above, terminates the benefit at age 65.

Under section 39(5) of the *Constitution Act*, permanent officers are entitled to a death benefit paid to their estates in an amount equivalent to six months' salary.

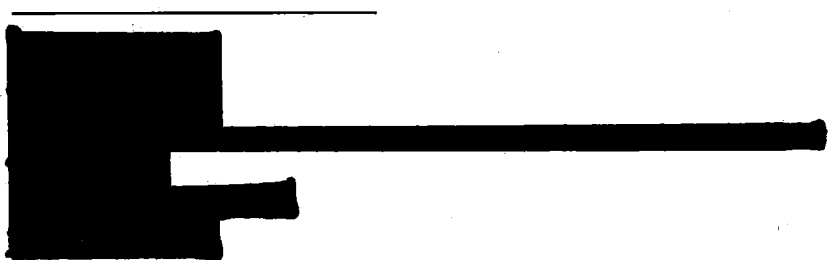
c) *Did the activity breach the applicable rule, practice or policy?*

(i) 2012 Retirement Benefit

The retirement benefit policy put in place by Speaker Davidson's 1984 Memorandum was frozen and terminated in 1987.⁵⁷ However, the benefits that accrued to individuals in office before the program was terminated remained payable to them. Law Clerk Ian Izard, for example, received an accrued benefit of \$80,224.00 upon his retirement.⁵⁸

Mr. James submits that the \$257,988.00 payment he received in 2012 represents his payout under the terminated 1984 Memorandum.⁵⁹ Based on my review of the documentary evidence, which is not in dispute, I cannot accept Mr. James's submission for the following reasons:

- (1) Benefits under the 1984 Memorandum ended on April 1, 1987, subject to payment of accrued benefits. Going forward, the 1984 Resignation Benefit would be replaced by a pay increase for covered officers "to allow for the Provincial Government's Executive Benefit Plan", which was unavailable to the listed officers in 1984. This is set out in an October 6, 1987 Memorandum from Speaker John Reynolds to Comptroller Ian Fraser.⁶⁰
- (2) Mr. James was appointed on February 2, 1987, two months before the 1984 program expired.⁶¹ However, benefits under the soon-to-be terminated scheme were not part of Mr. James's offer of employment, which he accepted. The offer letter lists various benefits, but does not include a retirement benefit.⁶² Mr. James



does not contradict this, but says only that he had some conversations about the program with the Clerk in 1987, Mr. Ian Horne.⁶³

- (3) Shortly after Mr. James started working at the Legislative Assembly, he received a 10% salary increase "to allow for the Provincial Government's Executive Benefit Plan", which is consistent with him being retained under the new regime established in 1987, but inconsistent with him having accrued any benefits under the 1984 program. This is set out in an October 6, 1987 Memorandum from Speaker Reynolds to Comptroller Fraser.⁶⁴
- (4) The payout to Mr. James did not occur in 1987 when the 1984 scheme was terminated, but twenty-five years later in February 2012. There is no evidence that Mr. James elected to defer any entitlements, or that this was even contemplated, as it was for the officers covered under the 1984 Memorandum.

This evidence leads me to conclude that the payout to Mr. James of \$287,988.00 in February 2012 was not linked to the 1984 Memorandum. Former Auditor General John Doyle and former [REDACTED] separately concluded that any entitlements provided for in the 1984 Memorandum had been capped in 1987 and that its relevance to the 2012 payout to Mr. James was unclear.⁶⁵ This is consistent with a statement made by [REDACTED] at the time, in a November 8, 2013 e-mail to [REDACTED] that "in the books, there was no accrued liability against the [retirement benefit] plan for the simple reason that it was already believed that the plan was no longer in play and had not been for years."

This leaves us with a mystery: why were lump sum payments made to different officers in late 2011 and early 2012, including a sum of \$257,988.00 to Mr. James?

The facts are these. Early in 2012, three Table Officers received lump sum payments: Craig James (Clerk), Kate Ryan-Lloyd (Deputy Clerk) and Ian Izard (Law Clerk). They received \$257,988.00, \$118,916.00, and \$80,224.00 respectively. When Mr. Robert Vaive (Clerk Assistant) retired at the end of 2011, he received \$197,474.00.⁶⁶

I pause here to note that there was a valid basis for the payment to Mr. Izard. He began work prior to 1984 and was therefore covered under the 1984 Memorandum. When it was capped in 1987, he elected to continue to accrue benefits under the program in lieu of a salary increase and was therefore entitled to the accrued benefits. While he was the only officer covered by the 1984 Memorandum to have so elected, the election was formally approved and

[REDACTED]

is consistent with the common understanding of the terms on which the 1984 plan was wound up.⁶⁷

In 2012, Speaker Bill Barisoff opined that the payments to Mr. James and Ms. Ryan-Lloyd also represented the accrued value of benefits under the 1984 Memorandum, which he said would cease as of February 13, 2012.⁶⁸ This raises the question of why a plan that Financial Services, Human Resources and others thought had been terminated in 1987 would need to be re-terminated. It also is inconsistent with the fact that Mr. James and Ms. Ryan-Lloyd were never beneficiaries under the plan—Mr. James because he had begun working only as the 1984 plan was being terminated (and he received a 10% salary increase in lieu of the benefit), and Ms. Ryan-Lloyd because she was not hired until 1992, long after the plan had been terminated.

Ms. Ryan-Lloyd was surprised to receive the payment and inquired into the reason for it. She was told that Speaker Barisoff had authorized the payments on the basis of a legal opinion. When despite pressing for the opinion she did not receive it, she returned the payment to the Legislative Assembly on the ground she could see no basis for it.⁶⁹ Mr. James, however, retained his payment.

Mr. James asserts that the justification for the payments was a legal opinion provided to the Speaker, which Mr. James admits he never saw until “recently”.⁷⁰ The written legal opinion purports to be an account of “verbal legal advice” provided to the Speaker in 2011.

I do not accept the alleged legal opinion as a valid basis for the payments. There is no evidence of a written legal opinion before the payments were made, nor was one produced after the fact to Ms. Ryan-Lloyd. [REDACTED] also confirmed that she never saw a legal opinion contemporaneously.⁷¹ While there are debates about who had access to the written legal opinion and when, there is no debate that no written opinion was available to consult before the payments were made. I can only conclude that the written legal opinion that was eventually produced is being offered as an an after-the-fact effort to justify a questionable financial decision.

In any event, I conclude that the legal opinion does not actually provide a basis for the payments. As I noted, it post-dates the actual lump sum payments, being dated September 16, 2013. It purports to summarize oral advice provided to Speaker Barisoff by counsel in December 2011 regarding a possible payment to Mr. Vaive only. It does not address whether Mr. James or Ms. Ryan-Lloyd were covered under the 1984 Memorandum. While the letter summarizes Speaker Barisoff’s decision to “terminate” the program, it does not offer a legal opinion as to why that was necessary. The letter does not address the 1987 decision to terminate the benefit established by the 1984 Memorandum. I reject the proposition that this limited and incomplete assessment of the benefit—particularly given the fact that the decisions in the 1980s were all



recorded formally and kept—provides a foundation for the large lump sum payments made to Mr. James and others.

Of the three recipients of the payouts in 2012: one, Ms. Ryan-Lloyd, returned the payment; one, Mr. Izard, was entitled to the payment because of his election twenty-five years earlier; and one, Mr. James, simply retained the benefit.

On the evidence before me, I conclude that the payment of \$257,899.00 to Mr. James in February 2012, lacks any legal basis.

This brings me to the critical questions: was Mr. James involved in securing the 2012 Retirement Benefit payments, and if so, did that involvement constitute misconduct?

[REDACTED] and Ms. Ryan-Lloyd believed Mr. James to be involved in the administration of the 2012 payments.⁷²

Mr. James, by contrast, told me that he was not involved in the administration of the payments beyond providing an offer to Mr. Vaive, on the instructions of Speaker Barisoff, that, if he retired, Mr. Vaive would receive a retirement benefit.⁷³ He stated he wanted to remain at arm's length from the administration of the payments in view of the fact he could benefit from them.⁷⁴

I accept the evidence of [REDACTED] and Ms. Lloyd-Ryan that Mr. James participated in the decision-making process for the 2012 Retirement Benefit payments, for the following reasons:

- (1) Mr. James was clearly involved in delivering the retirement benefit to Mr. Vaive. In a letter dated December 19, 2011, Mr. James informed Mr. Vaive [REDACTED] that he would be eligible for various lump sum payments—including the retirement benefit (referred to as a "long service award")—only if he retired as of December 31, 2011.⁷⁵ This letter suggests that Mr. James was not only intimately involved in the decision-making process on the retirement benefits payments, but that he was taking an aggressive stance on the issue. It is inconsistent with Mr. James's evidence that he was a passive bystander on the matter.

Mr. James, when confronted with this letter, explained that he produced and delivered it on behalf of Speaker Barisoff and was not involved in its development or the decisions underlying it.⁷⁶ He said he did not know why the letter included the information it did. I reject this explanation. It is improbable that a person with

[REDACTED]

the responsibilities Mr. James carried would simply rubber stamp a letter under his own signature that carried such serious consequences for the recipient.

- (2) Mr. James's involvement in Mr. Vaive's payment and therefore the 2012 Retirement Benefit process in general is confirmed by the fact that a bill for legal services, dated January 10, 2012, was sent to Mr. James and included fees and charges for, among other things, "preparing opinions re: Robert Vaive... November 10, 2011". The bill particularizes meetings with Mr. James: "conference with Craig James and letter re: retirement allowance wording, November 16, 2011", "conference with Craig James and drafting letter for Speaker Barisoff, December 4, 2011", and "conference with Craig James, Robert Vaive, Speaker Barisoff's office and Craig James' office, December 16, 2011".
- (3) Mr. James's involvement with the process is captured in the November 8, 2013 e-mail between [REDACTED] and [REDACTED], wherein [REDACTED] confirms that Mr. James had discussed the plan to make the payments with [REDACTED] and that Mr. James had secured a legal opinion justifying the plan. Mr. James's involvement is captured in additional e-mails wherein he instructs financial officers to make the payments and confirms that only "Table Officers" are to be included in the payouts.⁷⁷
- (4) Ms. Ryan-Lloyd, in discussions with [REDACTED] (at the time retained as a consultant to the Clerk's office), was told that she should trust Mr. James with respect to the 2012 Retirement Benefit.⁷⁸
- (5) Ms. Ryan-Lloyd stated that she took her concerns with the payment to Mr. James and that he responded by saying that there was a legal opinion that justified the payments that was in the hands of either the Speaker's office or the Clerk's office.⁷⁹ Her understanding that Mr. James was in charge (even though the official letter authorizing the payments was signed by Speaker Barisoff) is further confirmed by the fact that she addressed her official letter returning the funds to Mr. James.⁸⁰
- (6) Mr. James was Clerk at the point the possible payments were raised.⁸¹ He understood his role to be like a "Chief Executive Officer" and told me that the Clerk makes the final decision on "[v]irtually any matter relating to...administration of the Legislative Assembly".⁸² It was therefore his duty to supervise the administration of the payment program. As attested by his dealings with Mr. Vaive, Ms. Ryan-Lloyd and the lawyers, far from recusing himself, he did just that.



I therefore conclude that Mr. James had direct participation in the administration of the 2012 Retirement Benefit payments.

The remaining question is whether Mr. James's participation in these payments constitutes misconduct. His participation would be improper as understood by the terms of Schedule "A" to the Terms of Reference if he participated in the creation of and received the benefit in February 2012, either knowing it had no justification or by knowingly omitting to ensure it was justified.

On the basis of the evidence before me, I cannot definitively conclude that Mr. James actually knew that there was no foundation for the payments.

I can, however, conclude that Mr. James turned a blind eye to the question and in so doing failed to meet his duty to confirm if there was any foundation for the lump sum payments before they were paid out. As I noted above, Mr. James told me that the Clerk is responsible for "virtually all" administrative matters, which would clearly include being accountable for large lump sum benefits payments.

Mr. James conceded that he did not "think there was a lot of logic" underlying the December 19, 2011 letter to Mr. Vaive.⁸³ Yet without looking into the validity of what was being proposed, he signed and issued the letter telling Mr. Vaive he was entitled (provided he resigned) to the retirement benefit, while at the same time stating, "we continue to have some concerns about the applicability of the Long Service Award to your situation".⁸⁴ Mr. James knew the proposal was illogical, yet pushed it on Mr. Vaive. Given the timing of the letter to Mr. Vaive, I also note that the remaining "concerns" identified in the letter would have persisted after Speaker Barisoff allegedly received oral legal advice on the matter.

Since Mr. James was aware of who received the payments, he must also have known that the Chief of Hansard was not included, despite that position being named in the 1984 Memorandum—a clear inconsistency with the assertion that the 1984 Memorandum and an alleged legal opinion on the point provided a justification for the 2012 payments.

With these red flags waving, Mr. James made no inquiries and in due course accepted, apparently without question, the \$257,988.00 sum it conferred on him.

Mr. James in his evidence confirmed that he wrote the letter to Mr. Vaive and accepted his own payment in February 2012 without seeing a legal opinion justifying the payments and without knowing if human resources officials had been consulted.⁸⁵ [REDACTED] told me that human resources officials were never consulted and that [REDACTED] found out about the payments only when

it was time to make them.⁸⁶ The November 8, 2013 e-mail from [REDACTED] to [REDACTED] provided to me confirms the lack of consultation in cryptic terms: "No, [Mr. James] never asked my opinion".

Mr. James could not both discharge his duties as Clerk and remain "hands off" because the payment scheme would benefit him. As long as he was Clerk, he had a duty to ensure that the payments were in discharge of valid obligations owed by the Legislative Assembly to the recipients. This he failed to do. He abdicated his responsibility to make sure the payments were proper. In his own words, he stood at arm's length and allowed a complex human resources and financial process to unroll to his own significant benefit, relying solely on a legal opinion that no one who should have been involved in the process, including apparently him, ever saw.

Based on the evidence I have received, I conclude that Mr. James's inaction in contravention of his duty to oversee administrative matters to the benefit of the Legislative Assembly (and not in his own self-interest) contributed to the 2012 Retirement Benefit payments being awarded. As a result, the Legislative Assembly lost funds equal to at least \$257,988.00.

I conclude that Mr. James's conduct with respect to the 2012 Retirement Benefit constitutes misconduct, whether by participating in the decision to award payments to individuals, including himself, without proper justification, or by deliberately standing at arm's length and turning a blind eye toward whether Legislative Assembly funds were managed appropriately. Either state of affairs resulted in a significant personal benefit to Mr. James, without any evidenced justification.

(ii) 2018 Resignation Benefit

At the end of March or early April, 2018, Mr. James drafted a letter purporting to create resignation benefits for members of the Executive Committee. On April 9, 2018, the Speaker signed the letter.⁸⁷ The letter states that the Clerk, Deputy Clerk, Sergeant-at-Arms and Executive Financial Officer would receive a "resignation benefit" upon their resignation, assuming the person had ten years of uninterrupted service with the Legislative Assembly either on its own or in conjunction with provincial public service. The benefit was to an additional year's salary, paid bi-weekly. In other words, the beneficiaries would continue to earn their salary for a year post-resignation.⁸⁸

According to communications from the [REDACTED] the 2018 Resignation Benefit represents a new and unbudgeted liability of approximately \$1.2 million, based only on the salaries of the four individuals currently in the affected positions. Those who succeed the current officers would presumably also be so entitled. The estimated future payout to Mr. James alone is \$370,315.00.

[REDACTED]

The Speaker rescinded the 2018 Resignation Benefit on June 26, 2018 by letter.⁸⁹

The Speaker alleges that Mr. James brought him the letter and induced him to sign it in order to secure for himself a lucrative financial benefit in a manner inconsistent with proper approval processes by the LAMC or the Finance and Audit Committee.⁹⁰ The Speaker says he found the letter and process strange and “outrageous”, but signed the letter because he wanted a record of Mr. James’s misconduct, and because he intended to rescind it.⁹¹

Mr. James offered a different version of the events. He says that the Speaker instructed him to draft the letter because he was concerned that there was no policy for permanent officers similar to the *Transitional Assistance Program* available to MLAs leaving public office.⁹² He adds that he did not believe the letter would have any legal effect unless it was approved by the LAMC.⁹³ Mr. James confirmed that he did not discuss the matter with human resources officials, nor did he bring it up with the LAMC; he added that he may have discussed the matter with [REDACTED].⁹⁴

[REDACTED] and [REDACTED] informed me that they only became aware of the 2018 Resignation Benefit in May 2018.⁹⁵ [REDACTED] received a copy of the April 9, 2018 letter from Mr. James because, as [REDACTED] understood it, [REDACTED] was a named beneficiary. [REDACTED] became concerned about the potential financial liability associated with the benefit and brought it to the attention of [REDACTED]. This evidence is corroborated in a series of e-mails between May and August, 2018 that were provided to me.

It is clear from this evidence that the Speaker, Mr. James, [REDACTED] and [REDACTED] all recognized that the benefit conferred by the April 9, 2018 letter was problematic—either because it did not follow usual approval processes, because it represented a significant unplanned liability to the Legislative Assembly, or both.

The fundamental disagreement between the Speaker and Mr. James is twofold: who was the instigator of the letter and who bore responsibility for assessing the validity of the proposal and following proper approval processes? Each of them points to the other.

On the first question, I conclude that Mr. James instigated the April 9, 2018 letter. I reject Mr. James’s evidence that he was simply replicating the Speaker’s suggestion to provide Executive Committee members with the same benefit MLAs receive under the *Transitional Assistance* program.

[REDACTED]

First, this explanation makes little sense. The benefits conferred by the April 9, 2018 letter are very different from the benefits under the *Transitional Assistance* program, and the situations of the recipients and the motivations for the payments are not analogous. For example, the *Transitional Assistance* program is meant to assist MLAs who are not eligible for employment insurance to transition back into the workforce if they do not run for re-election or if they are defeated. The April 9, 2018 letter, on the other hand, provides a lucrative benefit for the individuals regardless of the reason for their departure and notwithstanding the fact that the Executive Committee members all pay into the employment insurance program.

Second, the testimonial evidence supports the conclusion that Mr. James, contrary to his evidence that he was only following instructions, was active in orchestrating the new benefit from the start. I accept the evidence of Sergeant-at-Arms Lenz that he "was aware that [Mr. James] was going to make a request to the Speaker" for what turned out to be the 2018 Resignation Benefit.⁹⁶

On the evidence received, I cannot exclude the possibility that some conversation about the new benefit occurred between the Speaker and the Clerk prior to April 9, 2018 as a result of which Mr. James drafted the letter and the Speaker signed it without questioning it. It may be that on mature consideration, the Speaker regretted signing the letter and decided to rescind it. But this does not change the clear evidence that this benefit in its ultimate form was primarily the brain-child of Mr. James.

I conclude that Mr. James instigated the creation of the 2018 Resignation Benefit.

The next question is whether Mr. James orchestrated the creation of the benefit and its approval outside of the proper channels. As noted, Mr. James points to the Speaker and the Speaker points to Mr. James in this regard.

Before addressing this question, I digress to note that the potential financial impact of the benefit created by the April 9, 2018 letter is significant. Both the Speaker and Mr. James suggested the letter would have no impact because, without LAMC approval, the benefit was invalid. I do not accept this proposition as a certainty for two reasons.

First, this explanation begs more questions than it answers. If Mr. James viewed the letter as lacking force, why did he prepare it and present it to the Speaker for signature? If the Speaker viewed the letter as lacking force, why did he sign it, and why, having signed it, did he prepare another letter rescinding it? Why finally, did Mr. James take the trouble to have the letter certified (as I find he did) and why did he tell [REDACTED] (whose evidence I accept) to keep it in a safe place?⁹⁷

[REDACTED]

The second reason I reject the “no force” explanation is that it is contradicted by the Legislative Assembly’s financial officers. [REDACTED] is of the view that the letter may have taken effect upon signature on April 9, 2018. [REDACTED] testified that while such a benefit would ideally be vetted by [REDACTED] office and other bodies within the Legislative Assembly, [REDACTED] confirmed there is no formal requirement that this occur because this is not a capital expenditure.⁹⁸ A review of the *General Expenditure Policy* and related policies confirms this. The Speaker has delegated approval authority for large expenditures, with the result that his signature could be viewed as enough to set the policy in motion. The e-mail record I received confirms that [REDACTED] and [REDACTED] agreed that the liability should be recorded as existing (i.e. not speculative).

Having established that the impact of the letter was significant, I return to the question of whether Mr. James violated Legislative Assembly rules or policy in failing to vet or assess the new benefit against Legislative Assembly rules, policies, resources or priorities.

I conclude that he did. Mr. James did not turn his mind to what was best for the Legislative Assembly, as he was duty-bound to do. As soon as he began to draft the letter, he had an obligation to assess the validity of the plan critically with an eye to the effective management of the Legislative Assembly. Mr. James did not consult with others, and he provided no other example of efforts he took to assess the plan. Therefore, his conduct fell well short of his admitted responsibilities as Clerk.

Mr. James bears responsibility for failing to protect the financial interests of the Legislative Assembly with respect to the April 9, 2018 letter. As noted earlier, the applicable *General Expenditure Policy* states that: “the Clerk of the House is responsible for the overall stewardship of the financial resources...of the Legislative Assembly of BC...and for ensuring appropriate control over the use of public monies.” Mr. James’s conduct with respect to the letter of April 9, 2018 purporting to create a significant new benefit was contrary to this and there is no evidence that he did anything to reconcile the new benefit with the applicable policies. The evidence leads me to the conclusion that Mr. James identified a lucrative benefit for himself and focussed on getting it approved expediently, rather than assessing it critically.

I conclude that Mr. James’s conduct with respect to the April 9, 2018 letter violated Legislative Assembly policies and procedures and constitutes misconduct.

It may be that in view of the rescission of the 2018 Resignation Benefit, the April 9, 2018 letter will have no financial consequences. However, the Legislative Assembly may wish to monitor any consequences appearing in annual budgets or quarterly reports to determine what liabilities, if any, persist.⁹⁹ In view of the Speaker’s failure to properly review or consult with Human Resources or Financial Services about the purported benefit, any improper liability may not be the sole responsibility of Mr. James.

(iii) Death Benefit

On November 9, 2017, Mr. James presented a letter to the Speaker for his signature, which the Speaker signed, providing that Mr. James's estate will receive a payment equal to three times Mr. James's annual salary at the time of his death, if he dies over the age of 65 and is still working. This amount, to be paid directly by the Legislative Assembly out of its budget, represents a potential liability of just under \$900,000.00. The letter has not been cancelled or rescinded, so far as I can glean. Given that there is no formal requirement for such benefits to be approved by specific departments or the LAMC¹⁰⁰, and given that the Speaker possesses delegated approval authority for large expenditures, it is possible (I do not offer a legal opinion on this) that his signature suffices to establish liability for this amount. A similar letter was signed to the benefit of Mr. Lenz and its current status is similarly unclear. The death benefit the letter of November 9, 2017 purports to create was referred to in the January Report and throughout as "life insurance".

The Speaker says that Mr. James brought him the letter and, being new to his position, he signed it on the understanding that the letter merely formalized an arrangement that had been approved through the appropriate channels.¹⁰¹

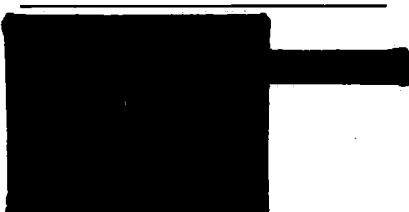
Mr. James says that the Speaker asked him to prepare and sign the letter. He says they had a conversation in which Mr. James told the Speaker that only MLAs are covered for the duration of their tenure and the Speaker responded that all permanent officers should be covered by some sort of life insurance regardless of age.¹⁰² Mr. James recounted an agreement for such extended insurance with the former Speaker Barisoff, represented by a "note to file"¹⁰³, and says that Speaker Plecas asked him to formalize the arrangement in a letter for signature.¹⁰⁴

Mr. James concedes that he did not discuss the matter with Human Resources or Financial Services before drafting the letter, nor did he raise it with the LAMC. He adds that he did not believe the letter would have any legal effect until it was approved by the LAMC.¹⁰⁵

The first question is who instigated the November 9, 2018 letter purporting to create a new life insurance benefit for Mr. James—Mr. James or the Speaker?

I reject Mr. James's evidence that he did not instigate the insurance agreement captured in the November 9, 2017 letter because it does not fit with the other evidence:

- (1) If the intention was to formalize a prior agreement with Speaker Barisoff as Mr. James asserts, the letter of November 9, 2017 does not do this. There are critical



differences between the “note to file” purporting to reflect Speaker Barisoff’s intention and the letter of November 9, 2017: (1) the “note to file” does not refer to an age cut-off; (2) the “note to file” does not suggest the Legislative Assembly would be the insurer; and (3) the benefit calculation indicated in the “note to file” is the average of the most recent ten years of service rather than salary at the time of death. The last deviation significantly expanded the value of the benefit. These changes reveal that Mr. James, who drafted the letter himself or had counsel do it,¹⁰⁶ had control over the design of the benefit described in the November 9, 2017 letter.

- (2) If Speaker Plecas’s intention was to provide coverage similar to that enjoyed by MLAs as Mr. James contends, this could have been done by securing group plan coverage for permanent officers over 65, as was clearly possible (as it had been done for MLAs). The letter, however, made the Legislative Assembly the insurer. The benefit captured by the letter is not equivalent to what was received by MLAs. If Mr. James’s plan was ever to apply to all employees over 65, it would represent an entirely different sort of benefit, entirely funded by the Legislative Assembly itself. This suggests that the letter was not part of any broader policy development and that, instead, Mr. James instigated the letter on his behalf.
- (3) The letter was personalized to Mr. James and does not reflect Mr. James’s stated position that “any employee in the Legislative Assembly...working beyond 65...should be entitled to life insurance”.¹⁰⁷ This supports the view that Mr. James instigated the letter.
- (4) Mr. James’s proposed new wording for the benefit at some point in October 2018.¹⁰⁸ This suggests direct involvement in the design of the benefit.
- (5) The “note to file” of the alleged discussion with Speaker Barisoff from years before was made only four weeks before the November 9, 2017 letter. While not determinative, it seems interesting that Mr. James would make the “note to file” on October 11, 2017 and have it signed, only then to have a discussion with the new Speaker on the same topic within a few weeks. This is consistent with Mr. James deciding to obtain the new Speaker’s consent to a life insurance benefit he may have long desired, but had not yet secured.

Having concluded that Mr. James instigated the April 9, 2018 letter, the next question is whether his conduct with respect to this benefit violated the practices of the Legislative Assembly. I conclude it did, for substantially the same reasons I have outlined with respect to Mr. James’s claims for reimbursement for private insurance premiums.

First, Mr. James knew that any effort to secure life insurance coverage beyond age 65 would depart from standard practice. He knew that the Legislature had turned its mind to benefits upon death for permanent office; he confirmed that he explained to Speaker Plecas section 39(5) of the *Constitution Act*, which provides a death benefit to permanent officers equivalent to six months' salary.¹⁰⁹ He also informed me that in speaking with [REDACTED] he became aware that if the Legislative Assembly were to fund private insurance, a beneficial amount of \$100,000.00 would be appropriate¹¹⁰—significantly less than the benefit in the April 9, 2017 letter. Finally, Mr. James's attempt to capture an alleged oral agreement in his "note to file" evinces awareness that the benefit was unusual and not otherwise available. This is consistent with the evidence of [REDACTED] and [REDACTED] that it was highly unusual and unprecedented for the Legislative Assembly to take on the role of insuring an individual.¹¹¹

Second, Mr. James did not consult with Human Resources or Financial Services, despite the anomalous nature and high value of the benefit created by the April 9, 2017 letter.

Third, legal support for the arrangement was inadequate. I accept that Mr. James told [REDACTED] that a legal opinion supporting the benefit existed. It did not.¹¹²

Fourth, when [REDACTED] confronted Mr. James about the proposal in September 2018, his only documented response was that he sought to correct the recipient of the proceeds in the original letter. [REDACTED] had a number of concerns: the propriety of the Legislative Assembly assuming the role of insurer; the duplicative nature of the benefit in view of Mr. James's claims for reimbursement for premiums paid on his own life insurance policy; and the existence of a statutory death benefit under the *Constitution Act*.¹¹³ There is no documentary record or other evidence of Mr. James responding to the concerns [REDACTED] raised with him.

These facts establish that Mr. James's primary focus was not the appropriate management of Legislative Assembly resources, but his personal desire for life insurance paid for by the Assembly. Although he couched his efforts in terms of his support of a broader coverage policy for all employees over 65, that is not what the April 9, 2017 letter captures and there is no other evidence—excepting another personalized letter to Mr. Lenz—to suggest Mr. James's plan was anything other than self-interested.

I conclude that Mr. James's actions with respect to the April 9, 2017 letter violated Legislative Assembly policy by attempting to secure a lucrative benefit outside of proper channels and inconsistent with established practice. I conclude that this constitutes misconduct.

[REDACTED]

I add this note for the attention of the Legislative Assembly. The April 9, 2017 letter and a similar letter to Mr. Lenz (whose conduct has not been impugned in this matter) have not been formally cancelled or rescinded as far as I am aware; the status of the benefits they purport to create remains unclear. Given the Speaker's plenary approval authority, the benefits they purport to confer may be enforceable (though I offer no legal opinion on this). It is therefore unclear what financial consequences, if any, flow from them. As is the case for the other benefits discussed in this report, it behooves the Legislative Assembly to take steps to ascertain whether there are any lasting and possibly unintended consequences from the letter signed for Mr. James and the similar letter signed for Mr. Lenz.

6. IMPROPER REMOVAL AND USE OF LEGISLATIVE ASSEMBLY PROPERTY: ALCOHOL

a) *Questioned activity*

The Speaker alleges that Mr. James appropriated Legislative Assembly property by instructing boxes of alcohol purchased and being held by the Legislative Assembly to be loaded onto his truck in the latter part of April 2013. The allegation is that Mr. James removed the alcohol from the Legislative precinct, without payment or accounting. The Speaker alleges that Sergeant-at-Arms Lenz was complicit in the removal of the alcohol by Mr. James by failing to adequately investigate the matter.

The assertion that Mr. James wrongfully removed alcohol from the Legislative precinct raises related concerns about the management of alcohol purchased for Legislative Assembly purposes.

b) *Applicable rule, practice or policy*

There are no formal policies governing the purchase of alcohol; the same expenditure management policies referred to in previous sections apply. I note again that the *General Expenditure Policy* confirms that the Clerk is responsible for the "overall stewardship" of the Legislative Assembly's finances.

It has been the practice to purchase wine, beer and liquor for conferences and events hosted by the Legislative Assembly and store the alcohol in the Speaker's or Clerk's vaults. An arrangement between Government House and BC Liquor was used to facilitate purchases and to obtain favourable prices.

No formal procedures for acquiring, tracking and storing alcohol appear to have been in place. Purchases were recorded as part of the budget for the conference or event. If the event was outside the Legislative precinct, staff would transport the liquor to the venue of the event. Unused alcohol could be returned to BC Liquor. However, sometimes it was returned to the vaults

of the Legislative Assembly building, perhaps for use on a future occasion.¹¹⁴ (Alcohol used for the Legislative Dining Room is dealt with separately and is of no concern to this investigation.)

With the exception of informal processes in particular offices, no alcohol inventories appear to have been kept, and no system existed for accounting for alcohol purchases as they were used and re-stored. No inventory process, for example, was ever in place in the Clerk's office during the period in question (or subsequently as I understand).

c) Did the activity breach the applicable rule, practice or policy?

In July 2012, Mr. James's Executive Assistant at his request purchased a large quantity of wine, beer and liquor for a cost exceeding \$8,700.00 (including taxes)¹¹⁵ for use at two conferences hosted by the Legislative Assembly—one for about 100 attendees in August 2012 and one for about 60 attendees in February 2013. Both conferences included several meals, receptions, and a hospitality suite with an open bar. Witnesses agreed that unused alcohol would have been returned to the vaults at the Legislative Assembly.

On or about April 22, 2013, facilities management staff loaded boxes of alcohol as well as a chair and desk onto Mr. James's truck. The chair and desk were described as belonging to former Speaker Barisoff, and were loaded into the back of the cab portion of the truck. The boxes of alcohol were loaded into the flatbed of the truck.

Mr. James asked the Office of the Sergeant-at-Arms to direct facilities staff to help load the truck, and four staff members—[REDACTED], [REDACTED], [REDACTED] and [REDACTED]—were tasked with doing so. Mr. Lenz says that Mr. James informed him that the loading would include alcohol¹¹⁶, and Mr. James acknowledged that he allowed alcohol to be loaded onto his truck as part of the process he directed, though he did not personally supervise the loading.¹¹⁷ There is no evidence on how the articles to be loaded had been selected. Those involved in the loading agreed that they were meant to load boxes of alcohol onto Mr. James's truck.¹¹⁸

Mr. Lenz and [REDACTED] recall two separate loadings on two separate days.¹¹⁹ The remaining staff members tasked with loading the alcohol recall only one incident, which also involved loading the desk and chair.¹²⁰ These individuals said that they had been involved in

[REDACTED]

moving boxes of alcohol for work-related purposes on other occasions.¹²¹ It is troubling that no paper record exists of alcohol ever being removed much less by whom or for what purpose.

I conclude that on at least one occasion around April 22, 2013, facilities staff loaded alcohol onto Mr. James's personal vehicle along with a chair and desk, on instructions that came from Mr. James.

I do not accept Mr. James's suggestion that the alcohol may have been loaded onto his truck inadvertently.¹²² Having heard the evidence of those involved in the loading, I am satisfied that neither the staff members nor the Sergeant-at-Arms would have loaded anything on Mr. James's truck without his instruction. Moreover, Mr. James does not take issue with Mr. Lenz's recollection that the Clerk informed him that the loading would include alcohol.¹²³

Evidence varies on how much alcohol was loaded on Mr. James's truck. Mr. James referred to "some boxes" of port and "very few" or "several" boxes of wine being loaded.¹²⁴ He says the wine was the property of the Legislative Assembly and the port belonged to former Speaker Barisoff. He says the wine was paid for by Mr. Barisoff, by a cheque in the amount of \$370.00, dated June 26, 2013.

Former Speaker Barisoff and [REDACTED], who worked in Speaker Barisoff's office at the time, separately informed me that, in their recollections, the load included three bottles of port, each kept in its own commemorative wooden box. Speaker Barisoff's memory was not firm on this point, but he estimated that were a few other cases of wine included in the load.

The four individuals who loaded the truck understandably struggled to recall the nature and quantity of the alcohol they loaded, given the passage of six years. One estimated that 20 cases of alcohol were loaded. Another recalled about ten boxes of wine and five or six boxes of liquor, for a total of around 16 boxes. Yet a third said he had difficulty recalling but thought there were probably five or six boxes of alcohol loaded. One witness spoke of the flatbed of the truck being full of the boxes (the desk and chair were put in the cab).¹²⁵ On all of the evidence before me, I conclude that much more alcohol than Mr. James admits to taking—consisting of wine, liquor, approximately three bottles of port, and possibly beer—was loaded on his truck, and removed from the Legislative precinct. Mr. James testified that after the truck was loaded, he drove it to the residence of former Speaker Barisoff in Penticton.¹²⁶

No record was kept and Mr. James never accounted for the alcohol he removed. For his part, Speaker Barisoff recalls that the cheque he issued would have included payment for the three bottles of port. This makes sense as records made available to me indicate that the only

[REDACTED]

port purchased on record (going back to 2006) was paid for by the Legislative Assembly. Therefore, I find that the cheque from Speaker Barisoff for \$370.00 could only have paid for a portion of the alcohol that I find was removed from the Legislative precinct.

In Speaker Barisoff's recollection, he made and signed the cheque at the time of the purchase. Mr. James agrees that the cheque was received when it was signed in late June 2013. However, he has not explained why he received the cheque potentially two months after he removed the alcohol and furniture from the Legislative precinct and after he says he delivered it to Penticton.

It was Mr. James's responsibility as Clerk to protect the Legislative Assembly's interests and its property. The absence of any inventory or accounting of alcohol purchased for Legislative Assembly purposes represents a failure to properly discharge this responsibility.

I find that Mr. James improperly managed the inventory of alcohol and its use and removal, and that this triggered unrecorded losses to the Legislative Assembly. This constitutes a failure of expenditure management, a duty fundamental to the office of Clerk. As Clerk, it was Mr. James's obligation to ensure that an accounting system for alcohol was in place. His failure to do so enabled the situation that came to pass: missing alcohol. In this case, the lack of any system of accounting meant that Mr. James, unchecked, could do whatever he wanted with the alcohol he had loaded onto his truck. Instead of considering his duty to protect Legislative Assembly property, Mr. James allowed a situation to develop where the property could be dissipated and lost without recourse.

I conclude that Mr. James knowingly removed a significant quantity of alcohol from the Legislative precinct, without accounting for what he took or providing verifiable payment for it. This constitutes misconduct by Mr. James.

In view of the lack of accounting, I am unable to draw any conclusions on the Speaker's allegation concerning a purchase of wine from Painted Rock Estates.

I turn now to the allegations against Mr. Lenz. The Speaker alleges that Mr. Lenz participated in the improper removal of the alcohol and failed to adequately investigate its removal.

Mr. James told Mr. Lenz to send workers to load the truck and mentioned that alcohol was involved, as discussed above. This alone is insufficient to establish misconduct; alcohol was sometimes moved for legitimate reasons. Mr. Lenz denies any involvement in wrong-doing, apart from relaying Mr. James's request.¹²⁷ In the absence of evidence that Mr. Lenz knew the incriminating details of the removal of the alcohol at the time, there is no basis to conclude that he participated in any misconduct.

[REDACTED]

Nor is the allegation of failing to properly investigate Mr. James's removal of the alcohol from the legislative precinct established. The Speaker points to concerns raised by [REDACTED]. But [REDACTED] learned of the incident only after it occurred.¹²⁸ In 2018, Mr. Lenz and [REDACTED] told the Speaker about the incident and raised concerns. The result is part of the saga that brings us to this investigation. However, [REDACTED] and Mr. Lenz's reflections on the event in 2018 are not adequate evidence that Mr. Lenz previously failed to conduct an investigation in a manner that constitutes misconduct.

I find no misconduct by Mr. Lenz with respect to the removal of alcohol from the legislative precinct.

I recommend that the Legislative Assembly consider putting in place proper protocols for the management of alcohol.

7. IMPROPER REMOVAL AND USE OF LEGISLATIVE ASSEMBLY PROPERTY: WOOD SPLITTER AND TRAILER

a) *Questioned activity*

In the fall of 2017, the Executive Committee approved a package of purchases of emergency equipment in the sum of \$65,000. Among the items to be purchased were a wood splitter to cut wood in the event of a prolonged electrical failure and a trailer to carry it and serve other purposes during an emergency. These items were duly purchased and paid for by the Legislative Assembly.¹²⁹ On November 17 and 18, 2017, Mr. James travelled to the mainland to pick up the trailer and picked up the wood splitter from a local location. This was known to others. He took them to his home, where he kept them for approximately a year and used them.¹³⁰ The trailer, for part of this period, was kept at a private storage facility, though Mr. James retained control over it.¹³¹

At some point in November 2018, Mr. James returned the trailer to the Legislative precinct.¹³² After Mr. James was suspended, the RCMP brought the wood splitter to the Legislative precinct.¹³³ Both the wood splitter and trailer are now on the property of the Legislative Assembly.

The Speaker alleges that Mr. James's actions with respect to the wood splitter and trailer constitute misconduct. In addition to retaining the property away from the Legislative Assembly, the Speaker alleges that the purchases may have been motivated by personal needs.¹³⁴

[REDACTED]

The Speaker also alleges that Mr. Lenz's failure to investigate Mr. James's conduct in this regard was improper.

b) Applicable rule, practice or policy

Two sets of policies are relevant to this allegation of misconduct: (1) policies with respect to procurement and purchase of assets for the Legislative Assembly, and (2) policies with respect to taking and retaining Legislative Assembly property.

The policy on *Capital Project Review and Approval* sets out the approval process for capital purchases. The level of approval required for a particular purpose is determined by funding thresholds. At the time in question, a purchase of over \$5,000.00 would need to have been approved by the Finance and Audit Committee of the LAMC, at the very least.

There is no written policy governing property retention. However, in the case of most Legislative Assembly assets and in particular any goods intended for emergency use on the Legislative precinct, the need to have them on the precinct at all times is self-evident.

c) Did the activity breach the applicable rule, practice or policy?

For the most part, the salient facts are not in dispute. The wood splitter and trailer were purchased by the Legislative Assembly and kept at Mr. James's home or under his control for a year, where he used them. The dispute concerns whether they were acquired for personal reasons and, even if they were not, whether Mr. James's control over them was improper.

The wood splitter and trailer were part of a funding request for \$65,000 for emergency equipment.¹³⁵ Mr. James and Mr. Lenz decided together to recommend the purchase of the wood splitter and trailer to the Executive Committee.¹³⁶ The purpose was to keep the Legislative precinct secure in the case of a major calamity such as an earthquake which could entail prolonged power outages. In such circumstances, it was thought that staff guarding the precinct could split branches from trees on the precinct to burn for heat. The wood splitter and trailer were thought to be useful for this purpose.

Questions have been raised about whether the necessary steps to obtain approval for the purchase of the wood splitter and trailer were followed. Two points in particular were the source of commentary.

First, there was no indication of the cost of either piece of equipment in the formal request for approval, which was provided to me; they were simply included as items in the blanket \$65,000.00 emergency equipment approval order. The Executive Committee approved

the order in the absence of any indication of specific prices.¹³⁷ Once the order was approved, it was left in the hands of facilities officials to choose the equipment and arrange its purpose, without requiring further approval.¹³⁸ [REDACTED] explained that, in order to ensure that the proper approvals channels were followed, it should have been the case that the items' costs were identified so as to verify if any of the items costed more than \$5,000.00 and thus required approval beyond the Executive Committee.¹³⁹

Second, at least two managers in the Office of the Sergeant-at-Arms questioned the need for the wood splitter and trailer. [REDACTED] asked Mr. Lenz why these items were being ordered, because in [REDACTED] opinion they were not needed. Mr. Lenz told [REDACTED] it was part of a business continuity plan and had already been approved.¹⁴⁰ [REDACTED] similarly questioned the utility of the purchases.¹⁴¹

It would have been preferable to stipulate the amount to be spent on the wood splitter and trailer (and other items) in the approval order. However, Mr. James and Mr. Lenz were not the only individuals who approved the order in the absence of such information. In addition, while there is certainly debate about the utility of the purchases—comments on the utility of these items for emergency purposes ranged from derisive to skeptical to excited—I conclude that there is evidence of a business-related purpose for the purchases, and this purpose was known to the Executive Committee. It would have been better to have consulted more of the “on the ground” staff to see if such purposes made sense before their approval. It seems odd that two executives—the Clerk and Sergeant-at-Arms—would put forward the proposal to buy this equipment without talking to those who would be expected to use it to protect the property. However, that failure in and of itself is not enough to establish misconduct.

Therefore, notwithstanding e-mail communications provided to me that confirm that Mr. James played a role in actually choosing the specific pieces of equipment in question once the request was approved, there is insufficient evidence to conclude that Mr. James engineered the purchase for a personal purpose.

I conclude on the evidence before me that Mr. James's involvement in the purchase of the wood splitter and trailer did not constitute misconduct.

I now turn to the question of whether Mr. James's conduct following the purchase of the wood splitter and trailer constituted misconduct. I conclude that it does.

When the wood splitter and trailer had been purchased, Mr. James arranged to pick them up. He did so on November 17 and 18, 2017 and brought them directly to his home.

[REDACTED]

Normally, Facilities Services would arrange for a staff person to pick up purchased equipment or arrangements to have it delivered would be made.¹⁴² In this case, Mr. James says he offered to pick the trailer up because the shipping charge (\$1,000.00) was high. The wood splitter was available locally, but he also picked it up due to the delivery charge (\$200.00).¹⁴³ I note however that Mr. James claimed reimbursement for at least some of this travel, offsetting the savings.¹⁴⁴

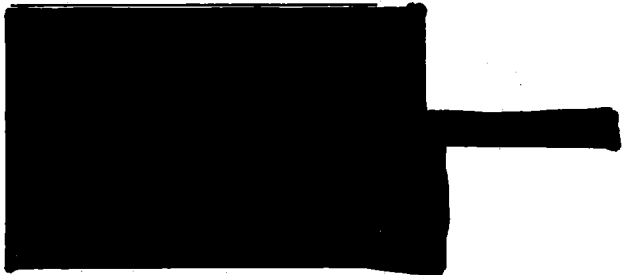
Mr. James kept the wood splitter and trailer in his custody until November, 2018—almost a year after he brought them home. The critical question is: why?

Mr. James says he kept the wood splitter and trailer because there was no suitable place to store them on the Legislative precinct. I reject this explanation; indeed it borders on nonsensical.

With the exception of Mr. Lenz, all other witnesses who testified on this matter stated unequivocally that there was suitable space to store the wood splitter and trailer at the Legislative precinct. In particular, [REDACTED] and [REDACTED] who oversaw the premises and equipment storage, said there was space for both the trailer and wood splitter within a month of their purchase. In fact, the space where the trailer is now stored was available in December 2017, and possibly before.¹⁴⁵ [REDACTED] no doubt concerned about expensive public assets being store off-site, was also aware of the availability of suitable space.¹⁴⁶ For his part, Mr. Lenz informed me that he delegated the task of finding storage to [REDACTED] and [REDACTED].¹⁴⁷ E-mail records provided to me reveal that Mr. Lenz was made aware that suitable storage had been identified in December 2017.

Mr. James maintains that a concrete pad was required for the trailer.¹⁴⁸ [REDACTED] and [REDACTED] rejected this, saying packed gravel provided a suitable or even preferable base.¹⁴⁹

As has been sensibly observed by others, why would Mr. James have endorsed the purchase of this equipment if there was no room on the Legislative precinct to store it? Had the anticipated emergency occurred, the equipment would have been useless unless stored at the Legislative precinct.



Mr. James admitted that locations to store the equipment on the Legislative precinct were proposed to him—as [REDACTED] and [REDACTED] informed me¹⁵⁰—but he considered them to be unsuitable. Though he was asked to return the equipment, he did not do so. He insisted the trailer must be stored on a concrete pad, apparently, he says, to protect it in case of an earthquake. No such explanation was offered for why he could not return the wood splitter. In sum, Mr. James's response is that he genuinely believed there was no place for the equipment on the Legislative precinct, that he was frustrated by the delay in finding space, that he was waiting for facilities staff to let him know where they proposed to store it.¹⁵¹

Absent a concrete pad, Mr. James chose to store the equipment in his yard or garage. It emerged that at some point, Mr. James arranged to have the trailer stored at a storage lot for recreational vehicles, paying for the storage himself.¹⁵² One can only draw the conclusion that Mr. James found it preferable, for some reason, to store the equipment at his home (or otherwise in his control), some distance away from the property where it was actually needed. There is no evidence that Mr. James took steps to find available concrete locations closer to the Legislative precinct. Staff members cannot be faulted for not doing so; they had already identified suitable storage.

It is hard to understand what was going through Mr. James's mind. Was he generously protecting Legislative Assembly property at his own expense, or did he somehow think he was entitled to retain the equipment? Whether I accept the more generous view or the more skeptical one, neither explanation, with respect, withstands scrutiny. The first is neither coherent nor credible enough to stand against the array of contrary evidence. The second explanation is clearly inappropriate.

The trailer and wood splitter were returned to the Legislative precinct showing signs of use.¹⁵³ Mr. James says that he used the wood splitter maybe "three times" to teach himself how to use it. He explained that a broken mirror found in the trailer was from his house. He had been doing renovations in his main floor bathroom and stored the mirror in the trailer.¹⁵⁴

Limited or not, these uses were clearly not for Legislative Assembly purposes. It was not necessary for Mr. James to know how to use the wood splitter; it was doubtless facilities staff or emergency personnel who would have been splitting wood to keep themselves and the guards warm in the case of an emergency. And renovating his bathroom had nothing to do with the Legislative Assembly.

Mr. James actively prevented the equipment from being where it needed to be. He ignored the recommendations of the individuals tasked with storing the equipment. His insistence of a need for a concrete pad is not reflected in the e-mail communications I received

or in the recollections of those individuals whose job it was to oversee management of the equipment. Furthermore, there is no evidence that Mr. James, in his alleged frustration, took any steps to find an appropriate solution—for example, identifying available space closer to the Legislative Assembly. The only evidence is that the equipment was in his control for almost a year and that he used it for personal reasons. Mr. James’s conduct after the equipment was purchased undermined the very purpose for which the wood splitter and trailer were acquired. Had there been an earthquake, the equipment would have been unavailable. It was, however, available for Mr. James to use as he wished.

I conclude that Mr. James’s retention and use of the wood splitter and trailer violated Legislative Assembly policy and constituted misconduct.

Apart from participating in the approval of the purchase of the wood splitter and trailer, Mr. Lenz had no involvement with them. While it may be the case that as the executive officer in charge of facilities, the Sergeant-at-Arms should have taken more care to communicate his staff members’ concerns about storage to Mr. James, there is no evidence that any omission on his part was self-interested or in breach of applicable rules or policies. If the Speaker had concerns about the Sergeant-at-Arms not investigating the matter, he should have made his concerns known when they arose in the spring of 2018, only a few months after the purchases. A few months after that, Mr. Lenz was removed from his position. On the evidence before me, I cannot find that Mr. Lenz acted improperly in relation to the wood splitter and trailer.

I find no misconduct by Mr. Lenz with respect to the wood splitter or trailer.

8. ADDITIONAL MATTERS

In the January Report, the Speaker points to other incidents that concerned him. Most of these matters fall outside of the scope of Schedule “A” to the Terms of Reference. At the beginning of this investigation, it was unclear if two such matters involved impropriety of the type contemplated in Schedule “A”. These matters—one involving a whistle-blower making claims that an MLA filed improper travel claims and another involving a plan to help a sick employee figure out a way to die while still working—invoked serious allegations and implicated multiple individuals in potentially controversial conduct. For those reasons, these matters were canvassed during my investigation and I address them in this section.

The “Whistle-Blower” Event

a) Questioned activity

A whistle-blower (“AB”) who had worked for MLA Linda Reid, contacted Mr. Alan Mullen, the Speaker’s Special Advisor, alleging that Ms. Reid had caused him to submit expense claims that improperly claimed taxi fares and mileage for the same trips, related to attendance on Legislative Assembly business. At Mr. Mullen’s request, Mr. Lenz and Deputy Sergeant-at-Arms

Ennis interviewed AB on June 13, 2018. Mr. Mullen and Speaker Plecas allege that Mr. Lenz, in concert with Mr. James, improperly shut the investigation down on June 13, 2018.

b) Applicable rule, practice or policy

It seems to be accepted that the Sergeant-at-Arms is responsible for investigating allegations of wrongdoing. I have also been informed that Financial Services has a process for investigating anomalous travel claims, which involves meeting with the MLA in question to seek clarification.

c) Did the activity breach the applicable rule, practice or policy?

During the course of this investigation, I was provided with a statement and letter from AB as well as several samples of the impugned travel claims. I also heard evidence from the four individuals who participated in the investigation—Mr. Lenz, Mr. Ennis, [REDACTED] [REDACTED]—and others. Based on the evidence I heard and the documentation I considered, I find the following facts:

- (1) When contacted by Mr. Mullen, Mr. Lenz agreed to interview AB. At approximately 1:15 p.m. on June 13, 2018, Mr. Lenz and Mr. Ennis met with AB and took his statement. The interview in the main was conducted by Mr. Ennis.
- (2) After taking AB's statement, Mr. Lenz asked Financial Services to produce documentation related to the impugned claims.
- (3) Mr. Lenz and Mr. Ennis discussed AB's statement and the documentation with [REDACTED]
[REDACTED]
- (4) Later that day, at or around 4:30 p.m., Mr. Lenz contacted Mr. Mullen and said that he and Mr. Ennis had pulled the expense claims and there was nothing there to pursue, and that while he could see how AB might think there was a problem, the claims were explainable. Mr. Mullen asked if there were any claims for mileage and taxi fares for the same trip, and Mr. Lenz replied that there were but that they were explainable. Mr. Mullen's version differs slightly; he says that Mr. Lenz said that some of the claims still had problems. Mr. Lenz asserts that he simply told Mr. Mullen there was nothing there and the apparent double charges were explainable. On this, I prefer Mr. Lenz's evidence to Mr. Mullen's.
- (5) The Speaker was in China having breakfast with Mr. James at this time. Mr. James, who had apparently just spoken with Ms. Ryan-Lloyd on the telephone, said words to the effect of, "I spoke with Kate and told her to rein Gary in and put a stop to this, otherwise we will all wear it."

(6) Having heard the evidence of [REDACTED] Mr. Lenz, [REDACTED], Ms. Ryan-Lloyd, [REDACTED] and Mr. James, and having examined the claims, I am satisfied that what AB took to be duplicative claims for taxis and mileage are explainable, as Mr. Lenz and Mr. Ennis concluded after looking at the documents on June 13, 2018. The trips were by air. Ms. Reid had to get to the heliport from her home in Richmond, and having arrived at her destination, had to get to her home in Victoria. She did one of the legs to the heliport by car, the other by taxi. The impugned claim for a trip to Terrace was explained on the same basis. Put simply, the claims were explainable.

It is true that [REDACTED], while agreeing that there was no obvious duplication, said that [REDACTED] would have wanted to speak to Ms. Reid before concluding the investigation. However, Mr. Lenz had ample grounds to conclude the alleged double-claim was explainable on the documentation before him. In addition, nothing prevented Financial Services from pursuing the matter further to satisfy its internal requirements.

(7) Mr. James's comment to the Speaker in China is at best ambiguous. There is no evidence Mr. James was involved in the decision by Mr. Lenz to terminate the investigation. Ms. Ryan-Lloyd, for her part, does not recall receiving any instructions on the matter from Mr. James and I accept her evidence.

I conclude that Mr. Lenz's termination of the investigation into AB's allegation on June 13, 2018 did not constitute misconduct.

I conclude that Mr. James was not involved with the investigation and that his words to the Speaker do not constitute misconduct.

I turn now to the remaining incident.

Assistance to "CD"

a) Questioned activity

It is alleged that Mr. Lenz and Mr. Ennis were improperly planning to create a new position for a constable in the Office of the Sergeant-at-Arms ("CD"), so that he could continue to work for the Legislative Assembly after he was no longer able to carry out his duties because of a degenerative health condition. The Speaker also alleges that they created a plan whereby CD would commit suicide while he was still on staff so that his beneficiaries would receive insurance proceeds.

b) Applicable rule, practice or policy

Two basic rules are engaged.

First, an employee must be able to discharge the duties for which he or she is hired. It is not permissible to simply create a new position so that an employee who can no longer perform his job continues to be paid.

Second, the employer has a duty to reasonably accommodate an employee's disability. I note that the Legislative Assembly does have a policy regarding flexible work arrangements.

c) Did the action breach the applicable rule, practice or policy?

In reviewing this matter, I considered the Sergeant-At-Arms's formal strategic plan document—which proposed the new duties for CD. I also received evidence from the two individuals who make the allegations, the Speaker and Mr. Mullen, and the two individuals said to have been responsible for the plan, Mr. Lenz and Mr. Ennis. My findings are drawn from that evidence and are described below.

I note at the outset that the Speaker's concerns relate only to a "plan" that he concluded Mr. Lenz and Mr. Ennis were making. The Speaker does not allege that the "plan" was ever implemented. I am not satisfied that discussing an employment arrangement that might not in the end be justified amounts to misconduct. Clearly Mr. Lenz and Mr. Ennis were deeply concerned over the future of the constable and wanted to find a way to help him.

The Speaker says he was concerned about the conversation on two counts: first that it seemed to incentivize CD's suicide, and second because of its implications for the use of public funds. I conclude that neither of these concerns were justified.

The "plan" that the Speaker says was being hatched proposed that CD would commit suicide while he was still employed and before his condition had deteriorated too far, in order to preserve his life insurance. In other words, the new job being proposed was "false" and only for the purpose of preserving CD's employment status. No one was able to explain the logic of this to me. The evidence I received was that if CD was forced to go on disability status, his life insurance would have remained in place as long as he qualified for that status. But more importantly, the Speaker's allegations are inconsistent with the straight-forward explanation of the incident provided by Mr. Lenz and Mr. Ennis, who denied any talk of suicide and explained that the discussions were aimed at finding reasonable accommodation for CD by finding alternate duties when he reached the point that he could no longer use a firearm. By this time, the Speaker was deeply distrustful of Mr. Lenz, which may explain how he transformed fragments of an exploratory proposal from Mr. Lenz and Mr. Ennis into a bizarre go-forward plan involving CD committing suicide.

The Speaker's second concern was that the plan to create a new position for CD would impose unjustified costs on the Legislative Assembly. Discussion of creating a new position so an employee can work from home, or otherwise modifying the way the work is discharged, does not appear on its face to be unreasonable, provided the proposed work would contribute to the business of the Legislative Assembly. Mr. Lenz said the concern was that CD would reach the point where he could not use a firearm, a job requirement for a constable, but where he would still have lots to offer the organization. The discussions, according to Mr. Lenz and Mr. Ennis, related to whether CD could continue to do useful work without being able to carry a firearm. I accept this evidence.

Finally, I note the Speaker's twin concerns appear to be in tension with one another. If a new "false" job for CD were created, he would continue to be employed until his death and there would be no need for the alleged suicide pact.

On the evidence before me, I conclude that Mr. Lenz's conduct in regard to plans for CD's work did not constitute misconduct.

D. SUMMARY OF CONCLUSIONS

1. IMPROPER RECEIPT OF VACATION PAYOUTS

On the evidence before me, I conclude that neither Mr. James nor Mr. Lenz engaged in misconduct by improperly receiving vacation payouts by reason of a failure to record vacation leave.

2. IMPROPER PURCHASES OF A PERSONAL NATURE

On the evidence before me, I conclude:

- Mr. James engaged in misconduct in relation to expense claims for two suits, three purchases of luggage, and private insurance premiums to the Legislative Assembly.
- Mr. James did not engage in misconduct in relation to the purchases of office gifts and display items and electronics.
- Mr. Lenz did not engage in misconduct in relation to expense claims for clothing, office gifts and display items, or vacation expenses to the Legislative Assembly.
- Neither Mr. James nor Mr. Lenz engaged in misconduct by recommending the purchase of and participating in the approval of a wood splitter and trailer by the Legislative Assembly.

3. IMPROPER BENEFITS

On the evidence before me, I conclude that Mr. James engaged in misconduct by directing the creation of three benefits to his personal advantage outside of established protocols: the 2012 Retirement Benefit, the 2018 Resignation Benefit, and the death benefit proposed in the November 9, 2017 letter.

These allegations do not pertain to Mr. Lenz.

4. IMPROPER REMOVAL AND USE OF LEGISLATIVE ASSEMBLY PROPERTY

On the evidence before me, I conclude:

- Mr. James engaged in misconduct by removing alcohol from the Legislative precinct without accounting for it.
- Mr. Lenz did not engage in misconduct in relation to the removal of alcohol.

- Mr. James engaged in misconduct by keeping the wood splitter and trailer under his personal control for almost a year and using both for personal purposes during that time, in the face of clear consensus that there was no reason for the equipment not to be on Legislative Assembly property.
- Mr. Lenz did not engage in misconduct in relation to Mr. James's retention and use of the wood splitter and trailer.

5. ADDITIONAL MATTERS

On the evidence before me, I conclude:

- Neither Mr. James nor Mr. Lenz engaged in misconduct in relation to the investigation of Ms. Reid's travel expense claims.
- Mr. Lenz did not engage in misconduct in relation to identifying and proposing a plan to accommodate CD.

E. FINAL OBSERVATIONS

During the course of this investigation, I have become aware of certain areas of concern that the Legislative Assembly may wish to examine. These have been identified in the body of this report; I summarize my observations here.

1. There is a lack of clarity regarding who has authority for administrative matters at the Legislative Assembly. The structure of the organization and the applicable legislation indicates that it is the Legislative Assembly through the Office of the Speaker. On the other hand, in practice, and as stated in certain policies, it is the Clerk that seems to hold such authority. This has caused confusion for subordinate employees who are sometimes unsure as to how to report problems they identify. The Legislative Assembly should clarify the applicable lines of authority and communicate this to those working in the organization.
2. There is a lack of clarity concerning various aspects of vacation entitlement policies and practices. The Legislative Assembly may wish to clarify its policies in this regard, with particular focus on: (1) expectations that employees take the vacation allotted to them; (3) how overtime is to be recorded and applied to vacation entitlements; and (2) how payouts in lieu of vacation time should be managed.
3. The Legislative Assembly may wish to clarify how expenses that appear to be both business-related and personal in nature—e.g. uniforms, gifts, display items and electronics—ought to be managed. In particular, the Legislative Assembly may wish to consider its practices regarding the expensing of electronic devices that are used in home offices.
4. The Legislative Assembly may wish to develop specific travel expenditure rules for employees and permanent officers. In this regard, it may wish to consider providing clearer parameters for what constitutes reasonable travel expenses.
5. The Legislative Assembly should take steps pertaining to some of the benefits described in this report:
 - The Legislative Assembly should determine what liability, if any, might arise under the November 9, 2017 letters setting out death benefits for Mr. James and Mr. Lenz.
 - The Legislative Assembly should investigate the financial consequences of the April 9, 2018 letter setting out the 2018 Resignation Benefit.
6. The Legislative Assembly may wish to put in place a formal policy for the management of alcohol purchases.