

IN THE LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

**REGARDING THE REPORT OF SPEAKER PLECAS CONCERNING ALLEGATIONS
OF MISCONDUCT BY SENIOR OFFICERS OF THE ASSEMBLY DELIVERED
JANUARY 21, 2019**

**BRIEF LEGAL SUBMISSION ON BEHALF OF CRAIG JAMES, CLERK OF THE
LEGISLATIVE ASSEMBLY**

**To the House Leaders, the Legislative Assembly Management Committee, and the
members of the Legislative Assembly of British Columbia**

A. Introduction

1. On January 21, 2019 the Legislative Assembly Management Committee passed a resolution urging all House Leaders to consider the serious allegations raised in the Speaker's report, invite a written response by the Clerk and Sergeant-at-Arms, and determine what action, if any the Legislative Assembly should take with respect to the motion adopted on November 20, 2018, regarding those officers.
2. In a letter dated January 22, 2019 the House Leaders invited responses from the Clerk and Sergeant-at-Arms and stated that the House Leaders will take those responses into account when considering the Speaker's report further, as well as the appropriate next steps to take in relation to the status of their employment with the Legislative Assembly.
3. Mr. James has provided a written response today. He has also asked that we provide a brief submission. We will not repeat what Mr. James has said in his submission.

B. Fundamental Principles to take into account

4. The determination of whether Mr. James should be returned to active service, or continue to be suspended, or removed from his office, is of vital interest to him and his family.
5. In making decisions of this kind, it is incumbent upon any decision maker to act with scrupulous fairness, to consider all of the information provided and to act reasonably, free from any partisan interest and collateral political considerations.
6. Perhaps this is obvious, but in case it is not, the Supreme Court of Canada has explained why it should be so:

The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated.

... A high standard of justice is required when the right to continue in one's profession or employment is at stake. . . . A disciplinary suspension can have grave and permanent consequences upon a professional career.

...The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.¹

7. Equally importantly, such decisions should stand the test of reasonableness, taking into account the facts and the information presented. Such decisions should not be hurried, or casual, or capricious².
8. These requirements of fairness and reasonableness are of even greater importance when, as here, questions and concerns are raised about the propriety and honesty of a person's actions; and when even the Speaker acknowledges that his investigation is preliminary in nature. (He recommends that an independent investigation be carried out).
9. Finally, the importance of these considerations of fairness and reasonableness are further heightened when, as here, the choice has been made to air these issues in public.
10. All of these considerations apply with equal vigour to the House Leaders, the LMAC and the Honourable Members themselves when considering the Plecas Report and the status of the Clerk of the Legislative Assembly and the Sergeant-at-Arms.
11. The House Leaders and the Members should take it upon themselves to ensure that Mr. James is given sufficient time to respond, given access to records and staff where necessary to respond properly to the allegations; and is afforded an impartial and thoughtful consideration of the facts, before making any decision.³

C. Application to the Facts

12. Mr. James has gone through the concerns raised in the Speaker's report and responded to as many of them as he has been able to address in the very short time that has been permitted to him. He has dealt with all the major concerns that have been raised. We will not go through that response since it there for you to read. But we urge the House Leaders and the members to review Mr. James' response carefully. The reasonable

¹ *Baker v. Canada*, [1999] 2 SCR 817 at paras. 25 to 28; *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113

² *Wells v. Newfoundland*, [1999] 3 S.C.R. 199 at para. 57/8

³ See also: *Roberts v. Commissioner of the NWT*, 2002 NWTSC 68 at paras. 75, 83; cited in *Turpel-Lafond v. Legislative Assembly*, 2019 BCSC 51 at para. 60 .

conclusion, when all is taken into account, is that he has done nothing wrong which justifies removing him from his office.

13. It should be self-evident that Mr. James (like Mr. Lenz) has been treated with extreme unfairness to this point.
14. He has been removed from the Legislative Assembly for unspecified reasons without being given any opportunity to defend himself. Nothing in the Speaker's report explains why that action was taken, or was justified.
15. Now he has been made the subject of a highly prejudicial report, which has been published, again without being asked for side of the story.
16. No part of that comports with fair procedure.
17. The facts put forward by Mr. James should be carefully considered. When that is done, it is our submission that the concerns raised by the Speaker do not justify Mr. James' removal. He should be restored to his position pending the conclusion of a fair process, and proper determinations of the matters raised by the Speaker based on information from both sides.
18. There is no reason why the RCMP investigation (and any other investigation deemed appropriate) cannot be completed with him back in his position. He position requires no involvement in such matters.
19. If, for whatever reason, the members do not restore Mr. James to active duty now, there is certainly no reason why any further disciplinary action should be taken against Mr. James at this time.
20. Fairness requires that there be a further investigation before any final determinations can be made. Even the Speaker's report recognises this, and acknowledges the preliminary nature of his statements and accusations.
21. In accordance with the principles set out above, further investigations must be carried out by someone independent of the Speaker, employing a fair process which gives Mr. James access to the necessary records and witnesses and a full opportunity to respond.
22. Pending the conclusion of that process there is no reason to take any further steps against Mr. James, particularly in light of what has been done to him so far.

All of which is respectfully submitted:

February 7, 2019



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