

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 GARY LENZ, SERGEANT-AT-ARMS

FEBRUARY 7, 2019

**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, to invite a written response by the Clerk and Sergeant-at-Arms, and to 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. Lenz has provided a written response and covering letter today. He has also asked that we provide a brief submission. We will not repeat what Mr. Lenz has said.

B. Fundamental Principles to take into account

4. The determination of whether Mr. Lenz should be returned to active service, or continue to be suspended, or removed from his office, is obviously a matter of great moment to him and has a very significant impact upon his life and the life of his family.
5. In making decisions of this kind, the Supreme Court of Canada has pointed out that there is a heightened reason to act fairly:

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

6. The Assembly must afford Mr. Lenz a fair process. He should be given sufficient time to respond, given access to records and staff where necessary to respond properly to the allegations; and the members should afford him an impartial and thoughtful consideration of the facts before making any decision.²
7. Equally importantly, any decision made by the House Leaders and the members of the Assembly should be a reasonable one that takes into account the facts and the information presented. It should not be a casual or capricious decision³.

C. Application to the Facts

8. The members of the Assembly are faced with a very weighty decision, which calls upon them to act fairly and reasonably.
9. The facts put forward by Mr. Lenz should be carefully considered. When this is done, it is our submission that there are no valid, objective, reasons to conclude that he is unfit to carry forward with his duties as Sergeant-at-Arms at this time.
10. Mr. Lenz has gone through the concerns raised in the Speaker's report and refuted them. We will not go through the allegations and Mr. Lenz's response. He has done that in his response (and summarised it in his Executive Summary). But we urge the House Leaders and the members to review his response carefully. The reasonable conclusion on this record is that he has done nothing wrong.
11. Mr. Lenz has not received fair treatment to this point. First, he was removed from the Legislative Assembly for unspecified reasons without being given any opportunity to defend himself. On the record now before the LAMC, there was no basis for that removal. He should not have been removed from the Legislature in such humiliating

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 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 .

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


circumstances when the allegations did not give rise to any reasonable grounds for believing that he could not be trusted to do his job while the Speaker's concerns were being investigated.

12. Second, he was not afforded fair treatment when the report was provided to media without first obtaining and including his response.
13. The fair and reasonable thing to do now is to restore Mr. Lenz to active duty.
14. There is no reason why the RCMP investigation (and any other investigation deemed appropriate) cannot be completed with him back in his position. There is no reason why he would have to have any involvement in matters relevant to that investigation.
15. If, for whatever reason, the members do not restore him to active duty now, there is certainly no reason why any further disciplinary action should be taken against Mr. Lenz at this time.
16. A fair review of the evidence supports Mr. Lenz's position. But if the House Leaders and members are not prepared to accept his position at this time, fairness requires that there be a further investigation before any final determinations can be made; and the investigation must be carried out by someone independent of the Speaker, with a fair process which gives Mr. Lenz the opportunity to respond fully, with access to the necessary records and witnesses
17. Pending the conclusion of that process there is no reason to take any further steps against Mr. Lenz, particularly in light of what has been done to him so far.

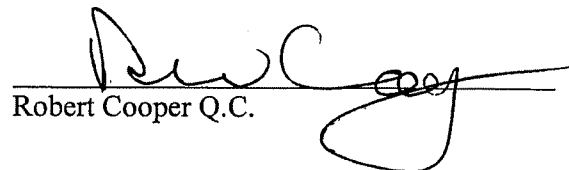
D. Conclusion

18. Mr. Lenz's response satisfactorily answers the allegations against him. Fairness and reasonableness requires that he should be restored to active duty. There is no good reason to be concerned that he cannot carry out his duties conscientiously and effectively.
19. If the House Leaders reject that course of action, any issues about which they continue to be concerned should be the subject of further investigation by an independent investigator affording Mr. Lenz fair process. No further penalties should be imposed upon him pending the conclusion of that investigation.

All of which is respectfully submitted:



Mark Andrews Q.C.



Robert Cooper Q.C.

February 7, 2019