

## **REDACTED VERSION**

Note to Reader: the formatting of the original report has changed in some places from the original as a result of the substitution of names for generic references to “Witness 1”, “Witness 2”, etc., but the content is unchanged.

## **INVESTIGATION REPORT**

**Pursuant to**

***Special Provincial Constable Complaint Procedure Regulation, B.C. Reg. 206/98***

**In the Matter of Allegations Regarding the Conduct of**

**Special Provincial Constable Gary Lenz**

**Investigator:** Doug LePard, O.O.M., M.A.

**Respondent’s Supervisor:** Hon. Darryl Plecas, Speaker of the Legislative Assembly

**Submitted:** September 9, 2019

**CONFIDENTIAL**

## INVESTIGATOR

**Doug LePard, O.O.M.** is an independent consultant providing services in the criminal justice sector. He is also a member of the Mental Health Review Board and Criminology faculty at the University of the Fraser Valley. After 35 years' service, he retired as the Deputy Chief commanding the Investigation Division in the Vancouver Police Department, then served for 2.5 years as the Chief of the Metro Vancouver Transit Police.

While in the VPD, he had multiple investigative assignments at several ranks where he conducted countless serious investigations, including in the Strike Force, the Sexual Offence Squad, the Domestic Violence & Criminal Harassment Unit, and the Home Invasion Task Force. He also taught various investigative skills to police officers throughout B.C., including interviewing and interrogation, reporting writing, and investigative file management. He has served as a Discipline Authority for *Police Act* matters.

He holds a Bachelor of Arts in Criminology and a Master of Arts in Criminal Justice. He has authored or co-authored articles, textbook chapters and major reports on a variety of policing issues, including wrongful convictions and serial murder investigations. He has presented on such matters in Canada, the United States, and Europe. His awards include numerous VPD commendations, the Queen Elizabeth II Diamond Jubilee Medal, the Governor General's Academic Medal, the Lieutenant Governor's Merit Award, and the Gold Medal of the International Society for the Reform of Criminal Law. He was invested as an Officer of the Order of Merit of the Police Forces by the Governor General of Canada in 2012.

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## PART 1: EXECUTIVE SUMMARY

### Background

In November 2018, Sergeant-at-Arms (SAA) Gary Lenz, who was appointed under the *Police Act* as a Special Provincial Constable (SPC), and Craig James, the Clerk of the Legislature, were placed on administrative leave in light of an ongoing criminal investigation.

In January 2019, Speaker Plecas submitted a report to the Legislative Management Committee (LAMC) detailing numerous alleged improprieties by Mr. James and SAA Lenz. One of them was that Mr. James had misappropriated a large amount of liquor in approximately the spring of 2013, and that SAA Lenz failed to adequately investigate this incident.

On March 7, 2019 the Right Honourable Beverly McLachlin, P.C., C.C. was appointed to conduct a Special Investigation into Speaker Plecas' allegations. Her mandate was limited to "administrative misconduct," i.e., conformity with Legislative Assembly rules, practices or policies. Justice McLachlin submitted her report May 3, 2019. While informed by Justice McLachlin's report, I made an independent assessment on matters regarding SAA Lenz.

On June 4, 2019, Alan Mullen, Chief of Staff to Speaker Plecas, submitted to the Speaker a "Special Provincial Constable Misconduct Complaint" regarding SAA Lenz, pursuant to the *Special Provincial Constable Complaint Procedure Regulation*. Mr. Mullen alleged SAA Lenz failed to adequately investigate the misappropriation by Mr. James of a large amount of liquor owned by the Legislative Assembly in April 2013. Mr. Mullen further alleged that SAA Lenz was involved in the suppression of evidence – several witness statements on a memory stick that SAA Lenz obtained in 2018 regarding the April 2013 liquor incident – and that this compromised the Special Investigation of Justice McLachlin. Mr. Mullen alleged the memory stick with the missing statements was not in SAA Lenz's safe on April 3, 2019 when Justice McLachlin asked for it to be produced, but it was there on May 6, 2019, after Justice McLachlin's investigation was concluded, and alleged SAA Lenz was responsible.

The *Special Provincial Constable Complaint Procedure Regulation* does not define misconduct, but as I detail later in my Report, I looked to section 77 of the *Police Act* for guidance. Based on s. 77, if the allegations against SAA Lenz were substantiated, the conduct would appear to constitute the *Police Act* disciplinary defaults of Neglect of Duty and Discreditable Conduct. Further, implicit in the allegations was that SAA Lenz did not tell the truth in his oral and written evidence to Justice McLachlin, which, if substantiated, would appear to constitute the disciplinary defaults of Discreditable Conduct and Deceit.

SAA Lenz is the head of the Legislative Assembly Protective Service (LAPS), which is comprised of 43 SPCs appointed under section 9 of the *Police Act*. Subject to restrictions specified in their appointments, the LAPS SPCs have "all of the powers, duties and immunities of a peace officer and constable at common law or under any Act" in B.C. The SPCs swear an oath that they will "prevent all offences against the persons and properties of Her Majesty's subjects" and

“faithfully, honestly and impartially perform” their duties as SPCs. Their appointments limit their authority to enforcing the *Criminal Code* and provincial statutes at, and in relation to, the Legislative Precinct.

On June 4, 2019, Doug LePard, O.O.M. (hereinafter referred to in the first person) was appointed by Speaker Plecas pursuant to the SPC Complaint Regulation to conduct an independent *Police Act* investigation into the allegations against SAA Lenz. My mandate was different than Justice McLachlin’s and was not limited by terms of reference or a timeline. While SAA Lenz has ceremonial, managerial, and operational duties as an employee of the Legislative Assembly that are governed by the Legislature’s policies, he also has sworn duties as a Special Provincial Constable. These duties are “public officer” duties that are governed by the common law and legislation, including the *Police Act*. My role was to determine whether SAA Lenz had violated his Oath of Office and committed a disciplinary default constituting a public breach of trust – using s. 77 of the *Police Act* as my guide - with respect to Mr. Mullen’s allegations. Of note, LAPS’ training material accepts that LAPS SPCs are subject to the *Police Act*, including s. 77, and explains in detail the s. 77 disciplinary defaults.

### The Investigation

In the course of my investigation, I interviewed 14 witnesses as well as SAA Lenz; reviewed numerous documents, including some of SAA Lenz’s cell phone records and emails; and carried out various other investigative inquiries, as summarized below. In the Executive Summary, I have noted if I found the witnesses credible and reliable; I provide details in the full report.

### Interview of Speaker Plecas

Speaker Plecas’ key assertions were that SAA Lenz told him on numerous occasions that Mr. James had committed a theft of a large amount of Legislative Assembly liquor in April 2013, and that he and Mr. Mullen should take this information to the Premier to compel Mr. James to retire. Speaker Plecas described that SAA Lenz asked Witness 5 to tell him what Witness 5 knew, and said Witness 5 also described to the Speaker the 2013 liquor removal incident as a theft.

Speaker Plecas described that he learned SAA Lenz subsequently wrote a statement about his involvement in the incident, obtained one from [REDACTED] Witness 7, who was involved in the loading of the liquor into Mr. James’ truck, and had Witness 5 provide one as well.

Speaker Plecas said he and Mr. Mullen (and Deputy Speaker Chouhan) did meet on July 30, 2018 with the Premier’s Chief of Staff, Witness 10, about the liquor incident and other alleged improprieties involving Mr. James and SAA Lenz.

Speaker Plecas learned that during SAA Lenz's interview with Justice McLachlin, SAA Lenz had denied completely that he had accused Mr. James of theft; claimed the 2013 incident only came up in the context of a conversation about a liquor inventory; claimed he assumed Mr. James had returned the liquor for a refund and he never believed anything wrong had occurred; and denied he repeatedly encouraged Speaker Plecas to use the liquor incident as a basis to have Mr. James removed from his position. Speaker Plecas considered all of those statements to be completely untruthful.

I found Speaker Plecas to be a credible and reliable witness regarding SAA Lenz's conduct.

### Interview of Mr. Mullen

Mr. Mullen's key assertions were that he had conversations with SAA Lenz told them – both together with Speaker Plecas and alone – on numerous occasions in person and by phone during which SAA Lenz alleged that Mr. James had committed a theft of Legislative Assembly liquor in 2013. He further corroborated Speaker Plecas in alleging that SAA Lenz said on many occasions and that Speaker Plecas and Mr. Mullen should take the information about the 2013 liquor incident to the Premier to force Mr. James to retire. Mr. Mullen recalled that he was present when Witness 5 described the incident as a theft (although Witness 5 said later that only Speaker Plecas was there).

Mr. Mullen was aware that SAA Lenz subsequently wrote a statement about his involvement in the incident, had obtained one from [REDACTED] Witness 7, who was involved in the loading of the liquor into Mr. James truck, and that SAA Lenz had Witness 5 provide a statement as well.

Mr. Mullen was with Speaker Plecas and Deputy Speaker Chouhan at the July 30, 2018 meeting with the Premier's [REDACTED] Witness 10, about the liquor incident and other alleged improprieties involving Mr. James and SAA Lenz.

When Justice McLachlin wanted to review the statements obtained by SAA Lenz in 2018, despite extensive searches, they could not be located where SAA Lenz told Justice McLachlin they would be, but they reappeared (on a memory stick) after she had completed her investigation.

Mr. Mullen noted he had searched SAA Lenz's office and two safes on April 3, 2019 and there was no memory stick there then (although he had not been looking for a memory stick). He noted only he and Witness 5 had a key to SAA Lenz's office. Mr. Mullen was present on May 6, 2019, when Witness 5 located the missing memory stick in the safe Mr. Mullen previously searched. Mr. Mullen alleged SAA Lenz was complicit in suppressing this evidence during Justice McLachlin's investigation.

Mr. Mullen learned that during SAA Lenz's interview with Justice McLachlin SAA Lenz had denied that he had accused Mr. James of theft for the 2013 liquor incident, and denied he

repeatedly encouraged Speaker Plecas and Mr. Mullen to use the liquor incident as a basis to have Mr. James removed from his position. Mr. Mullen considered those statements to be completely untruthful.

I found Mr. Mullen to be a credible and reliable witness regarding SAA Lenz's conduct.

#### Interviews of Ms. Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly

I interviewed Ms. Ryan-Lloyd 1 twice. She heard about but did not witness the 2013 liquor removal by Mr. James. She said SAA Lenz came to her about the incident in 2013 and told her that Mr. James told SAA Lenz he was taking the liquor to Speaker Barisoff. Ms. Ryan-Lloyd said SAA Lenz was very concerned this was inappropriate, and proposed a policy be developed to prevent such problems in the future. He did not tell Ms. Ryan-Lloyd that he assumed Mr. James had returned the liquor for a refund.

Ms. Ryan-Lloyd then spoke to Mr. James based on SAA Lenz's concerns. Mr. James was "offhand" and told her that he took the liquor to Speaker Barisoff, at Speaker Barisoff's direction.

A draft policy was created in the summer of 2013 specifically in response to SAA Lenz's concerns about the April 22, 2013 liquor incident. Ms. Ryan-Lloyd said she also spoke about the incident with then-Speaker Linda Reid in the context of policy discussions regarding Legislative Assembly property.

In 2018, during the time SAA Lenz was meeting with Speaker Plecas about the liquor incident, Ms. Ryan-Lloyd had several conversations with SAA Lenz about it, and he described it to her as a "theft" on at least one occasion. She also met with Speaker Plecas, and she said his descriptions of what SAA Lenz told him, i.e., that it was a theft, were consistent with what SAA Lenz told her directly.

Ms. Ryan-Lloyd said SAA Lenz's evidence on the liquor incident to Justice McLachlin was not accurate with respect to his assertion that he assumed Mr. James had returned the liquor, and regarding his discussions about the incident with Speaker Plecas.

Regarding the missing statements, she coordinated searches for them, but was never advised they were on a memory stick until after Justice McLachlin's investigation was completed. She was present when the stick was found in SAA Lenz's safe on May 6, 2019 but had no knowledge of how it was there on May 6 but allegedly not on April 3; however, she was not looking for a memory stick prior to May 6.

Ms. Ryan-Lloyd's statement strongly rebuts SAA Lenz's evidence to Justice McLachlin regarding the liquor incident. Ms. Ryan-Lloyd was interviewed during Justice McLachlin's investigation, but not about the 2013 liquor incident or related matters.

I found Ms. Ryan-Lloyd to be a credible and reliable witness.

Interview of Witness 2, [REDACTED]

Witness 2's involvement was limited to searching SAA Lenz's computer and the Legislature network for the missing statements, and then searching the memory stick located on May 6 and locating the missing statements. He initially searched SAA Lenz's computer and the network because he was not advised (and it was not known by Legislature staff) that the statements were on a memory stick. (SAA Lenz did not provide this information in his interview with Justice McLachlin or in subsequent communications through his lawyer, saying only that the statements were in his safe.)

Witness 2 believed that Speaker Plecas and Mr. Mullen suspected he might somehow be trying to obstruct them to assist SAA Lenz, but he was clear (as was corroborating evidence I gathered) that Speaker Plecas and Mr. Mullen were mistaken. In fact, Witness 2 had utter disdain for SAA Lenz and Mr. James for what he described as their unethical behaviour. He also noted that Witness 5 (who Speaker Plecas and Mr. Mullen suspected of being involved in the memory stick going missing) was an extremely honest person.

I found Witness 2 to be a credible and reliable witness.

Interview of Witness 3, [REDACTED]

Witness 3 worked for SAA Lenz from 2009 until [REDACTED] when he fired her without cause. She recalled the April 2013 liquor removal incident, but said it was not remarkable to her because of other conduct involving SAA Lenz that she described to me and regarded as unethical. She described SAA Lenz being very close with Mr. James, and that they had a "scratch your back..." relationship. She recalled witnessing the liquor being loaded into Mr. James' truck by Facilities staff from her office window. She said Witness 5 came to her office at the time and expressed his serious concerns. (Witness 5 later denied he was present for the liquor loading, and this is corroborated by other evidence. He agreed he may have had such a conversation with Witness 3, but not on the day of the liquor incident.) She also recalled having a conversation with Witness 5 about the incident in which he said, "Well, we're going to have to keep a tight inventory on [liquor]...We're not going to have something happen again like happened with the Clerk's conference."

I found Witness 3 to be a credible witness, but concluded her recollections that Witness 5 was present for the 2013 liquor incident were not reliable and were the product of her conflating memories of separate incidents.

Interview of [REDACTED] Witness 5

Witness 5 had a distinguished career with [REDACTED] before joining LAPS. He retired from LAPS [REDACTED]. He was not aware of the 2013 liquor incident until some time after it occurred, learning about it through conversations with SAA Lenz and Witness 7. He was very

concerned about it, and told SAA Lenz “it should never have happened, and Gary you know that.” He told SAA Lenz it was a “theft” and said SAA Lenz agreed with him that it was wrong and promised to take it up with Ms. Ryan-Lloyd and the new Speaker, Linda Reid. SAA Lenz did not at any time suggest to Witness 5 that Mr. James had returned the liquor for a refund.

On May 28, 2018, SAA Lenz asked Witness 5 to tell Speaker Plecas what he knew of the liquor incident. Witness 5 said he described the liquor incident to the Speaker in the same way he’d described it to me (i.e., in strong terms as wrong and a theft).

Regarding the missing-then-found memory stick, Witness 5 strongly denied he had any knowledge of how it could have been gone on April 3 but present on May 6. He offered to take a polygraph. He was present when Mr. Mullen searched SAA Lenz’s safe on April 3 but couldn’t say there was not a memory stick in it because he wasn’t looking for one. He was extremely upset that the Speaker and Mr. Mullen had accused him of wrongdoing. He agreed that only he and Mr. Mullen had a key to SAA Lenz’s office, and thought only he should have had a key to ensure continuity of the sealed office.

I found Witness 5 to be a credible and reliable witness.

Interview of Witness 7, [REDACTED]

Witness 7 had clear memories of being directed by SAA Lenz to assist in loading Mr. James’ truck “full” on April 22, 2013 with many boxes of unopened liquor, including wine and hard liquor. He recalled a previous incident of this occurring. He “heard” the liquor went to Penticton with a desk and chair. He said he told SAA Lenz it was “stupid and wrong” but SAA Lenz just smiled. Witness 7 said SAA Lenz did not at any time tell him that he assumed Mr. James was returning the liquor for a refund. Witness 7 said SAA Lenz ignored his concerns. Witness 7 recalled Witness 5 always said in SAA Lenz’s presence regarding the liquor incident that, “this is wrong. It was wrong,” in regular meetings in SAA Lenz’s office.

In 2018, SAA Lenz asked Witness 7 to provide a statement about the incident, which he dictated and SAA Lenz typed on his computer. Witness 7 said that some time later, he asked SAA Lenz and Witness 5 what was going on with his statement – he was very worried about the impact it could have on him – and was told, “Oh, nothing, there was an investigation going on and our Premier doesn’t want to proceed.” (Witness 5 also recalled this conversation.) He noted Witness 5 was still upset about the matter.

Witness 7’s comment about “the Premier” corroborates Speaker Plecas and Mr. Mullen’s statements (and is consistent with the pattern of SAA Lenz’s cell calls to the Speaker and Mr. Mullen, summarized later). Witness 7 did not have occasion to provide the information about the Premier to Justice McLachlin when she interviewed him.

I found Witness 7 to be a credible and reliable witness for reasons set out later in this report.

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### Interview of former Speaker MLA Linda Reid

Ms. Reid declined, through her legal counsel, to be interviewed. As a result, I provided her through her counsel some written questions. She advised through counsel that SAA Lenz had not informed her in 2013 of the liquor incident involving Mr. James. She declined to respond to questions about whether she had knowledge of the incident from other sources, including conversations with Ms. Ryan-Lloyd.

### Interview of Witness 9, [REDACTED]

Witness 9 was very new to her position when the liquor incident occurred. She observed part of the loading of Mr. James' truck from [REDACTED]. She wasn't sure what was being loaded, but recalled the incident became the topic of conversation at the Legislature, i.e., that the Clerk's truck had been "loaded with alcohol left over from conferences..." She said she heard Mr. James took the liquor to Penticton, to Speaker Barisoff's home. She could not recall when these conversations occurred or who they involved.

Witness 9 said that SAA Lenz's claim (in his response to the Plecas report) that he reported to her that Mr. James took the liquor was incorrect. She said if SAA Lenz had reported it to her, she would have been very concerned and required follow-up to occur. She said SAA Lenz could have easily checked with her to determine if Mr. James had returned the liquor for a refund of monies to the Legislative Assembly, that this would have been a "normal" request to her as [REDACTED]. She noted SAA Lenz was close to Mr. James and could have asked him where the liquor was taken if he did not know.

Witness 9 also corroborated Ms. Ryan-Lloyd's recollections that policies related to Legislative Assembly liquor were initiated as a result of the incident, and produced documents and emails showing SAA Lenz had requested "inventory, gift and alcohol policies" be developed. Witness 9 said she did not accept that SAA Lenz assumed the liquor had been returned for a refund, and said if he did, he should have followed up to confirm. Witness 9 also thought the timing of SAA Lenz and Witness 5 requesting a liquor inventory policy made her think that they had concerns with the liquor incident.

Witness 9 was interviewed by Justice McLachlin, but not about the 2013 liquor incident.

Witness 9's evidence corroborates Ms. Ryan-Lloyd's statement and rebuts SAA Lenz's evidence to Justice McLachlin that he assumed the liquor was being returned for a refund. I found Witness 9 to be a credible and reliable witness for reasons set out later in this report.

### Interview of Witness 10, [REDACTED]

Witness 10 recalled meeting with Speaker Plecas and others on July 30, 2018 and that Speaker Plecas showed him a report with many allegations against Mr. James and SAA Lenz. He specifically recalled hearing from Speaker Plecas or reading in his report about the 2013 liquor

incident, and that SAA Lenz had not taken any action. He advised Speaker Plecas his information should be assessed by the police.

I found Witness 10 to be a credible and reliable witness.

#### SAA Lenz's emails

I acquired three relevant emails from SAA Lenz's Outlook account. The first is SAA Lenz's April 20, 2013 email to Witness 8, [REDACTED] at the time, asking him to arrange for Mr. James' truck to be loaded with a desk and chair for transport to Mr. Barisoff. The second is an email string on August 28/29, 2013 that SAA Lenz was a party to regarding development of the alcohol policies noted by Ms. Ryan-Lloyd and Witness 9. The third is a related email from SAA Lenz to Witness 8 on September 5, 2013 regarding the alcohol policies and includes a line noting it is a "high priority."

#### SAA Lenz's Cell Phone Records

I acquired SAA Lenz's cell phone records for a period from May 14 to November 13, 2018. These records are consistent with Speaker Plecas and Mr. Mullen's accounts that after SAA Lenz and Witness 5 reported the 2013 liquor incident to them, SAA Lenz repeatedly contacted them to urge them to use the incident as a basis to have Mr. James removed from his position.

As a baseline, in the last two weeks of May, there were only two calls to Speaker Plecas and none to Mr. Mullen. But from June 4 to July 31, there were 43 calls between SAA Lenz's phone and either the Speaker's or Mr. Mullen's. This was generally the period between SAA Lenz reporting the liquor incident to them and the Speaker's meeting at the Premier's office on July 30.

On August 2, Speaker Plecas told SAA Lenz the meeting at the Premier's office did not go well. From August 1 to September 25, there were only four calls between SAA Lenz's cell phone and the Speaker's and Mr. Mullen's cell phones. (This was consistent with Witness 7's recollection that SAA Lenz and Witness 5 told him the Premier didn't want to proceed with an investigation.)

From September 26 through October 11, another flurry of 29 calls occurred between SAA Lenz's cell phone and the Speaker's and Mr. Mullen's. Mr. Mullen advised this was a period when SAA Lenz began to bring them more information about Mr. James misappropriating Legislature property and SAA Lenz was again encouraging them to take the information to the Premier or the Attorney General.

### Interview of SAA Lenz

On September 5, 2019 I interviewed SAA Lenz. His counsel, Mr. Robert Cooper, Q.C., was present. SAA Lenz said he had a 24-year career in the RCMP, before joining LAPS as a constable, then was promoted to staff sergeant, Deputy SAA and eventually to SAA. He emphasized he did not have authority to conduct any investigation without approval of the Speaker. He confirmed his SPC Oath of Office documents. He described Ms. Ryan-Lloyd as an excellent and trustworthy Deputy Clerk, Witness 7 as trustworthy, and Witness 5 is having “integrity beyond reproach.”

Regarding the April 22, 2013 liquor incident, he agreed it was a large load of liquor Mr. James took, but said that he assumed he was taking it to the LDB for a refund. I put to SAA Lenz the statement of Witness 5 that he had confronted SAA Lenz about this incident as being wrong and a theft, and that SAA Lenz had agreed and promised to deal with it by going to see the Deputy Clerk and the Speaker. SAA Lenz said, “I don’t recall any part of that conversation,” but said if Witness 5 believed that, Witness 5 had a duty as a Special Provincial Constable to take action. He denied Ms. Ryan-Lloyd’s statement that SAA Lenz had informed her that Mr. James claimed to be taking the liquor to Mr. Barisoff. He denied knowledge that Ms. Ryan-Lloyd spoke to Mr. James as a result of her conversation with SAA Lenz, and that she was told directly by Mr. James that he had taken the liquor to Mr. Barisoff. He asserted Ms. Ryan-Lloyd must have been mistaken.

SAA Lenz agreed that the liquor policy he proposed in 2013 was a result of the liquor removal incident, but that it was about “optics,” not because he believed any wrongdoing had occurred. He admitted there were rumours in 2013 and 2014 that the liquor had been taken to Mr. Barisoff. He said, “everything I saw and heard from anybody who I dealt with indicated this was going to the Liquor Board.” When asked who specifically who he had heard from or dealt with, he was unable to provide any such information and said, “I should correct my testimony;” he then said he had not heard that information from anyone. SAA Lenz suggested if other senior staff had a concern, it was their responsibility to deal with it.

SAA Lenz subsequently admitted there were a lot of rumours about the incident and that his staff, including Witness 5, Witness 7, and Witness 8 were upset, but claimed they were upset about poor liquor management generally. This directly conflicted with those witnesses’ evidence that the conversations were specifically about Mr. James taking a load of liquor away from the Precinct. SAA Lenz denied the witnesses’ statements that he had never suggested the liquor had been returned, and that the conversations about the incident were always in the context of him and his staff believing the liquor had been transported to Mr. Barisoff. He had no explanation for the differences between his recollections and his staff’s.

I asked SAA Lenz why he didn’t simply go to Mr. James, who he had a close relationship with, explain he wanted to put an end to some rumours, confirm Mr. James had returned the liquor, and report back to his staff that everything was fine. He said he would have had to believe wrongdoing had occurred to even ask Mr. James, and that it was “normal” for the Clerk, the

highest paid employee of the Legislative Assembly, to return a large load of liquor for a refund. However, he also agreed that had never happened before.

When asked why he didn't simply confirm with the Finance Department whether the liquor had been returned for refund, he asserted that would be an unauthorized covert investigation to demand records – contradicting the statements of Ms. Ryan-Lloyd and [REDACTED] – and that he would have to seek permission from the Speaker to do that, which he couldn't justify seeking, allegedly because he had no reason to suspect wrongdoing.

Regarding his conversations with the Speaker and Mr. Mullen in 2018 about the liquor incident, he denied he had described it as a theft on multiple occasions and claimed the incident came up in the context of the importance of a liquor inventory policy. He subsequently stated that he may have said that *if* the liquor had been taken to Mr. Barisoff it would have been a theft, but he still assumed it had been returned for a refund. He denied that he had urged Speaker Plecas to use the alleged theft as leverage to force Mr. James to retire, and said he still had no reason to believe wrongdoing had occurred, but if *the Speaker* believed it was wrongdoing, then it was the Speaker's job to do something about it. As a result, SAA Lenz said he gave him advice and options.

SAA Lenz had no explanation for why Witness 5 and the Speaker would have a consistent recollection of their meeting about the incident, i.e., that Witness 5 described it as a theft. SAA Lenz also had no explanation for why Ms. Ryan-Lloyd would say that after SAA Lenz's meetings with Speaker Plecas about the liquor incident, SAA Lenz also told her that the liquor removal was a theft. He further had no explanation for why Ms. Ryan-Lloyd reported that how the Speaker described his conversation with SAA Lenz to her was consistent with what she said SAA Lenz said to her, i.e., that the incident constituted theft. SAA Lenz's response to Ms. Ryan-Lloyd's statement was, "I don't have any response for that aspect of it because my evidence as of this date consistently is the same." SAA Lenz said he didn't recall referring to the incident as a theft to Ms. Ryan-Lloyd, but may have said that "*if* alcohol had gone that way, that would a theft," suggesting again it was a hypothetical that was discussed.

Regarding his evidence to Justice McLachlin being inconsistent with the evidence of witnesses I interviewed, including Witness 5, Ms. Ryan-Lloyd, Witness 9, Witness 7, and Witness 8, he said his evidence was consistent with what he had told me, and he stood by it.

With respect to his assertion that the Clerk and the Speaker had never had a liquor inventory policy, I produced to him a detailed inventory from 2013 of liquor in the Clerk's vault, provided to me by Witness 9. He said he had never seen it before, and thought only the SAA Department had a liquor inventory.

We discussed SAA Lenz's evidence to Justice McLachlin where he said to her it was "inaccurate" that he had frequently communicated with individuals in the Speaker's office like Mr. Mullen about ways to compel Mr. James to resign, and that "regular" communications were only because the Speaker didn't seem to have a good grasp of "the process." He claimed to me he

only went to the Speaker and Mr. Mullen regularly because he wanted to know what they wanted of him as the SAA, which conflicted with his evidence to Justice McLachlin. I put his verbatim evidence to Justice McLachlin to him on this matter and asked him to estimate what “regularly” meant. His response was a long explanation of his lack of authority to do anything without the Speaker’s direction. In response to a suggestion that going to see the Premier was not very complicated and that the Speaker was a very educated man unlikely to require repeated explanations of a simple process, SAA Lenz disagreed and reiterated that the Speaker seemed confused and SAA Lenz was just being supportive.

Regarding the pattern of cell phone calls between his phone and those of the Speaker and Mr. Mullen, SAA Lenz said he had many other Parliamentary issues to discuss with them, even though the House had risen, and that the pattern could be because when the House is in session, the Speaker’s office and Mr. Mullen’s office are just down the hall and he wouldn’t need to phone them. He denied Mr. Mullen’s allegation that the pattern matched the timeline of SAA Lenz frequently pressuring the Speaker and Mr. Mullen to take the information about the liquor incident to the Premier to force Mr. James to resign. He had no explanation for why there were many calls in June and July but almost none in August or September, after the unsuccessful meeting at the Premier’s office (and when the House was not in session).

Regarding the new flurry of calls beginning at the end of September, which Mr. Mullen alleged were about SAA Lenz bringing new information about Mr. James misappropriating Legislature property, SAA Lenz claimed he had a duty to report when property was moved from the Premier’s vault. He then saw the missing property on display in Mr. James’ office, so it was accounted for and he was reporting that, not that it had been misappropriated. He said the Speaker and Mr. Mullen had misconstrued what he was telling them about the movement of items from the Premier’s vault.

Regarding the missing statement, SAA Lenz stated that when he didn’t mention in his evidence to Justice McLachlin that the statements were on a memory stick, he had simply forgotten this. Regarding Mr. Mullen’s allegation that he had somehow been involved in suppressing the memory stick until after Justice McLachlin’s investigation was completed, he provided a strong denial of any knowledge of why the memory stick wasn’t found on April 3, 2019, and there was no basis to conclude he was involved in removing the memory stick.

### Analysis of the Evidence

I have determined that there is clear and cogent evidence that satisfies the evidentiary standard of a balance of probabilities that SAA Lenz knew that Mr. James was not returning the liquor to the Liquor Distribution Branch, as he later said he had assumed had occurred in his oral evidence to Justice McLachlin on March 22, 2019, in his written Final Submission, and in his statements to me. The evidence rebutting SAA Lenz’s oral and written evidence to Justice McLachlin and to me is set out in detail in the main report. Most notably:

- SAA Lenz advised Ms. Ryan-Lloyd that Mr. James told SAA Lenz that he had taken the liquor to Speaker Barisoff's residence. SAA Lenz told Ms. Ryan-Lloyd of his concerns with Mr. James' actions, and proposed a preventative alcohol policy. As a result, Ms. Ryan-Lloyd spoke to Mr. James, who claimed to her as well that he had been directed by Speaker Barisoff to bring the liquor to him.
- [REDACTED] Witness 5, Witness 8 and Witness 7 were very concerned about the incident in 2013. Witness 5 and Witness 7 explicitly told SAA Lenz it was wrong. SAA Lenz did not suggest to any of them Mr. James had returned the liquor for a refund.
- Further, Witness 9 corroborated Ms. Ryan-Lloyd's recollections, in that she concluded that the high priority alcohol policy SAA Lenz requested was a direct result of the incident. Witness 9 said SAA Lenz's assertion that he had advised her of the liquor incident was false, and she would have required follow-up had he advised her.

If SAA Lenz assumed Mr. James had returned the liquor for follow-up, there were simple steps he could have taken to verify this. I concluded he did not because he knew the liquor was not returned for refund, as he discussed with Witness 5 and Ms. Ryan-Lloyd.

In my view, the evidence is clear that SAA Lenz was not telling the truth when he said orally and in writing to Justice McLachlin that he assumed the liquor was being returned for refund and "is not aware of any theft of alcohol." SAA Lenz was not telling the truth when he denied to Justice McLachlin that he had told the Speaker and Mr. Mullen in 2018 that the 2013 liquor incident was a theft. SAA Lenz was not telling the truth when he denied that on multiple occasions he had encouraged Speaker Plecas and Mr. Mullen to use the liquor incident as leverage to get rid of Mr. James. SAA Lenz was not telling the truth when he repeated the information summarized above to me during my interview of him.

Credible and reliable witness and documentary evidence strongly rebuts SAA Lenz's evidence to Justice McLachlin. SAA Lenz's more detailed statements to me regarding the 2013 liquor incident and his 2018 conversations about it with Speaker Plecas and others were not credible, and are strongly rebutted by credible witness evidence.

### Conclusion

I have concluded the evidence in its totality demonstrates that SAA Lenz did not uphold his Oath as a Special Provincial Constable and appears to substantiate that SAA Lenz committed Neglect of Duty for the failure in his sworn duty as an SPC to adequately investigate the misappropriation of liquor by Mr. James. I have also concluded that there are some mitigating factors that should be considered in deciding on disciplinary measures.

I have concluded there is no evidence to support the allegation that SAA Lenz was involved in suppressing the statements on the memory stick. This allegation is not substantiated.

I have concluded that SAA Lenz's untruthful oral and written statements to Justice McLachlin and oral statements to me were a violation of SAA Lenz's Oath as an SPC, constitute very serious misconduct, and that the disciplinary defaults of discreditable conduct and deceit appear to be substantiated. Investigators need to be able to rely on witnesses to be truthful, and this is particularly true of a peace officer who swore an oath to "faithfully, honestly and impartially perform [his] duties as a Special Provincial Constable."

I have come to a different conclusion than Justice McLachlin regarding whether SAA Lenz's actions or inactions in 2013 constituted misconduct. As I set out in greater detail at the end of my full report, our different conclusions are a product of different mandates and a different evidentiary record, including witness and documentary evidence not provided to Justice McLachlin. As I have noted, however, I do not believe the *outcome* should be different on this particular allegation, due to mitigating circumstances.

In my investigation into the allegations that SAA Lenz failed to tell the truth to Justice McLachlin about the 2013 liquor removal incident, and regarding his 2018 conversations with Speaker Plecas concerning the 2013 liquor removal incident, however, the evidence caused me to conclude SAA Lenz was not truthful in his evidence to Justice McLachlin and repeated to me. This finding was based largely on evidence not provided or not available to Justice McLachlin during her investigation.

I have provided information on disciplinary or corrective measures for consideration by SAA Lenz's supervisor, who must decide what measures are appropriate pursuant to section 8 of the *Special Provincial Constable Complaint Procedure Regulation*. This section provides for disciplinary or corrective measures ranging from a verbal reprimand to dismissal.

## PART 2: FULL REPORT

### ALLEGATION

On June 4, 2019, Alan Mullen (“Mr. Mullen”), Chief of Staff to Mr. Darryl Plecas, the Speaker of the Legislature (“the Speaker”), submitted to the Speaker a “Special Provincial Constable Misconduct Complaint” regarding Sergeant-at-Arms and Special Provincial Constable Gary Lenz (“SAA Lenz”) pursuant to the *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98). A copy of the complaint is included in Attachment “EE.”

Mr. Mullen alleged that SAA Lenz, the Sergeant-at-Arms in the B.C. Legislature and the Special Provincial Constable (SPC) in charge of the Legislative Assembly Protective Service (“LAPS”), failed to adequately investigate the alleged misappropriation of a large amount of liquor by the then-Clerk of the Legislature, Mr. Craig James (“Mr. James”), in April of 2013.

The *Special Provincial Constable Complaint Procedure Regulation* does not specifically define misconduct, therefore, I used the misconduct concepts and definitions set out in s. 77 of the *Police Act* as my guide.<sup>1</sup>

Based on a review of the information from Mr. Mullen, the allegation, if proven, would appear to constitute an offence of “Neglect of Duty” pursuant to section 77(3)(m) of the *Police Act*, as follows:

"neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:

- (i) properly account for money or property received in one's capacity as a member;
- (ii) promptly and diligently do anything that it is one's duty as a member to do;
- (iii) promptly and diligently obey a lawful order of a supervisor.

Mr. Mullen also alleged that SAA Lenz “appears likely to have participated in the suppression of evidence relevant to Justice McLachlin’s Special Investigation.” Based on a review of the information from Mr. Mullen, the allegation, if proven, would appear to constitute an offence of “Deceit” pursuant to section 77(3)(f), which is any of the following:

(i) in the capacity of a member, making or procuring the making of

- (A) any oral or written statement, or
  - (B) any entry in an official document or record,
- that, to the member's knowledge, is false or misleading;

(ii) doing any of the following with an intent to deceive any person:

- (A) destroying, mutilating or concealing all or any part of an official record;

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<sup>1</sup> I discuss this issue in more detail on p. 26.

(B) altering or erasing, or adding to, any entry in an official record;

(iii) attempting to do any of the things described in subparagraph (i) or (ii).

## APPOINTMENT OF INVESTIGATOR

On June 4, 2019, I was appointed by the Speaker pursuant to the *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98, which provides that the Speaker, as the “supervisor” of SAA Lenz, may appoint an investigator to determine whether the complaint is substantiated. A copy of the Appointment Letter is included in Attachment “FF”. A copy of the Regulation is included in Attachment “GG”.

While appointed by the Speaker, my investigation is independent. That independence was completely respected throughout my investigation and my only contact with the Speaker was for an interview and follow-up questions provided and answered in writing. I should note, however, that the Speaker’s legal counsel and the current Acting Clerk of the Legislature, Ms. Kate Ryan-Lloyd, were of great assistance to me in gathering information I requested and, in the case of Ms. Ryan-Lloyd both locating documents and facilitating interviews with Legislative Assembly employees.

Unlike the complex process for investigating municipal police officers set out in the *Police Act*, the Regulation for Special Provincial Constables is intended to outline “a simplified process for dealing with complaints, that involves limited steps: review, investigate, report, impose discipline or corrective measures, and report results to the Director” of Police Services.<sup>2</sup>

One key difference with the process for municipal police officers is that, rather than the Investigator recommending to a “Discipline Authority” that an allegation be substantiated, the SPC Regulation sets out that the Investigator determines if the allegation is substantiated. The SPC’s “Supervisor” then considers this report in determining what penalty or corrective measures to impose. In this case, SAA Lenz’s “Supervisor”, for the purposes of his LAPS duties, is the Speaker, who is in charge of security at the Legislative Assembly.

I note here that my mandate and Justice McLachlin’s were quite different. Justice McLachlin’s mandate was an “administrative” one, in which she had to determine whether policies, rules, or processes of the Legislature had been violated by SAA Lenz as an employee of the Legislative Assembly. Justice McLachlin’s terms of reference made no mention of the Special Provincial Constable legislative regime.

In contrast, my mandate flows from the *Special Provincial Constable Complaint Procedure Regulation* of the *Police Act*. SAA Lenz has ceremonial, managerial, and operational duties as an employee of the Legislative Assembly that are governed by the Legislature’s policies. He

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<sup>2</sup> See <http://www.qp.gov.bc.ca/police/info.htm>, at point 9.

also has sworn duties as a Special Provincial Constable. These duties are “public officer” duties that are governed by legislation, including the *Police Act*.

My role was to conduct an investigation to determine whether SAA Lenz had fulfilled his duties as required by his Oath, or whether he had committed a disciplinary default constituting a public breach of trust, as defined in section 77 of the *Police Act*. Extensive experience in policing and *Police Act* matters is essential for a *Police Act* investigation. The investigative processes in a *Police Act* investigation are different, and it was not constrained by the time pressures Justice McLachlin had, or the directions she had as to what she should refer to and rely on as set out in her Terms of Reference. I have provided more detailed information about the differences in our investigations in the Conclusion section in my report.

The following is my Investigation Report (hereinafter referred to as the “Report”) into the allegations against SAA Lenz.

## WITNESS LIST

Alan Mullen, Chief of Staff to the Speaker of the Legislature Assembly	Complainant
Darryl Plecas, Speaker of the Legislative Assembly	Witness
Kate Ryan-Lloyd, Acting Clerk, Legislative Assembly	Witness
Witness 2, [REDACTED]	Witness
Witness 3, [REDACTED]	Witness
Witness 4, [REDACTED]	Witness
Witness 5, [REDACTED]	Witness
Witness 6, [REDACTED]	Witness
Witness 7, [REDACTED]	Witness
Linda Reid, MLA, former Speaker of the Legislative Assembly	Witness
Witness 8, [REDACTED]	Witness
Witness 9, [REDACTED]	Witness
Witness 10, [REDACTED]	Witness
Gary Lenz, Sergeant-at-Arms	Subject SPC

## BACKGROUND

In November 2018, as a result of a, Mr. James and SAA Lenz were placed on administrative leave by the B.C. Legislative Assembly in light of an ongoing criminal investigation into their conduct.

In January 2019, the Speaker submitted to the Legislative Assembly a 73-page report describing numerous alleged improprieties by the then-Clerk of the Legislature, Mr. James, and the Sergeant-at-Arms, Gary Lenz. The allegations included “flagrant overspending on luxurious trips overseas,” improper expensing of personal purchases, inappropriate cash payouts and highly questionable benefits, and “instances where thousands of dollars of alcohol...may have been misappropriated from the Legislative Assembly.” The Speaker’s report is included in Attachment “A”.

Mr. James and SAA Lenz both provided written responses to the Speaker’s report denying the allegations, which are included in Attachments “B” and “C”, respectively.

The Speaker then submitted a supplementary report in reply to the responses of Mr. James and SAA Lenz, which is included in Attachment “D”.

On March 7, 2019, the former Chief Justice of the Supreme Court of Canada, the Right Honourable Beverley McLachlin, P.C., C.C. was appointed by the Legislative Assembly of B.C. to conduct an independent investigation of the Speaker’s allegations. Her investigation was limited to determining if “administrative misconduct” had occurred, i.e., “conformity with Legislative Assembly rules, practices, or policies.”

In keeping with the constraints of her mandate, Chief Justice McLachlin submitted her report into the numerous allegations on May 3, 2019, less than two months after her appointment. She determined that Mr. James had committed several acts of misconduct, including 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” (p. 41). Chief Justice McLachlin did not find that SAA Lenz committed misconduct “with respect to the removal of alcohol from the Legislative precinct” (p. 42) or with respect to any of the other allegations in the Speaker’s report.

A copy of Justice McLachlin’s report, which along with transcripts of her interviews, provided useful background and evidence for my investigation, is included in Attachment “E”. (I note its findings were not binding on me.)

## BASIS OF POLICE ACT ALLEGATIONS BY MR. MULLEN AGAINST SAA LENZ

The basis of the allegations by Mr. Mullen, can be summarized as follows.

Pursuant to an April 19, 2013 request of Mr. James, SAA Lenz directed his Facilities staff to load a Legislative Assembly desk and chair – which were being gifted to the retiring Speaker, Bill Barisoff – into Mr. James’ truck on April 22, for Mr. James to transport to Mr. Barisoff’s home in Penticton. SAA Lenz also directed that staff load a significant amount of liquor into Mr. James’ truck, which had been left over from a conference. These facts are not in dispute. The Speaker and Mr. Mullen allege that SAA Lenz, knowing the Speaker had serious concerns about Mr. James, told them on several occasions beginning in April or May 2018, in very strong terms, that Mr. James had stolen the liquor in 2013. They further alleged that SAA Lenz encouraged the Speaker to take this information to the Premier to use to force Mr. James to resign.

SAA Lenz claimed, however, when interviewed by Justice McLachlin, that his discussions with the Speaker regarding the liquor incident were in the context of the importance of establishing a liquor inventory system, that at no point did he feel the liquor was stolen, that in 2013 and thereafter he assumed Mr. James had returned it to the Liquor Distribution Branch for a refund, and that any mention of the Premier was to explain the process or protocol for the Speaker to have Mr. James dismissed.

Mr. Mullen’s view is that SAA Lenz in his role of Sergeant-at-Arms and the “chief” of LAPS should have properly investigated the incident in 2013 if he believed it was a theft, but Lenz took the position with Justice McLachlin that he did not at any point believe the liquor had been stolen, and denied he had alleged it was stolen to Speaker Plecas. Given that the *Special Provincial Constable Complaint Procedure Regulation* does not specifically define misconduct, I used the misconduct concepts and definitions set out in s. 77 of the *Police Act* as my guide.<sup>3</sup> Based on those definitions, if the allegation that SAA Lenz failed to adequately investigate the theft of liquor was proven, this would appear to substantiate the disciplinary default of “Neglect of Duty.”

Neglect of Duty is defined in section 77(3)(m) of the *Police Act* as follows:

"neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:

- (i) properly account for money or property received in one's capacity as a member;
- (ii) promptly and diligently do anything that it is one's duty as a member to do;
- (iii) promptly and diligently obey a lawful order of a supervisor.

Further, SAA Lenz’s very different versions of events from that of Speaker Plecas and Mr. Mullen, if proven to be false, would appear to substantiate additional disciplinary defaults of “Discreditable Conduct” and “Deceit” on the basis that he did not tell the truth to Justice

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<sup>3</sup> I discuss this issue in more detail on p. 26.

McLachlin when she interviewed SAA Lenz for her Independent Investigation, and was not truthful in his written submission to Justice McLachlin.

Discreditable Conduct is defined in section 77(3)(h) of the *Police Act* as follows:

"discreditable conduct", which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department, including, without limitation, doing any of the following:

- (i) acting in a disorderly manner that is prejudicial to the maintenance of discipline in the municipal police department;
- (ii) contravening a provision of this Act or a regulation, rule or guideline made under this Act;
- (iii) without lawful excuse, failing to report to a peace officer whose duty it is to receive the report, or to a Crown counsel, any information or evidence, either for or against any prisoner or defendant, that is material to an alleged offence under an enactment of British Columbia or Canada;

Deceit is defined in section 77(3)(f) of the *Police Act* as follows:

"deceit", which is any of the following:

- (i) in the capacity of a member, making or procuring the making of
  - (A) any oral or written statement, or
  - (B) any entry in an official document or record,that, to the member's knowledge, is false or misleading;
- (ii) doing any of the following with an intent to deceive any person:
  - (A) destroying, mutilating or concealing all or any part of an official record;
  - (B) altering or erasing, or adding to, any entry in an official record;
- (iii) attempting to do any of the things described in subparagraph (i) or (ii);

While the allegations of SAA Lenz being untruthful to Justice McLachlin were not expressly stated in those terms in the formal complaint by Mr. Mullen, they were nonetheless implicit in the conduct that was alleged and are closely tied to the allegations. When information about an additional alleged disciplinary default is revealed in a *Police Act* investigation, it is appropriate and necessary to investigate it, particularly when it involves such a serious allegation, and one that goes to the core duties of the senior law enforcement officer in the Legislative Assembly Protective Service.

Regarding the allegation of suppression of evidence, in 2018 after Lenz brought the information about the liquor incident to the Speaker and Mr. Mullen, Lenz wrote a brief statement

documenting his involvement in 2013, and also took one from [REDACTED], Witness 7. Rather than saving these statements to the Legislative computer network (as required by policy) he saved these statements to a USB memory stick. When Justice McLachlin learned of these statements and requested copies, SAA Lenz advised during his interview they could be found in his safe. He did not advise that the statements were on a memory stick. Legislative staff searched for document-based statements but could not find them. Justice McLachlin's counsel, Mr. Abraham, subsequently communicated with SAA Lenz's counsel requesting assistance from SAA Lenz to find the statements. SAA Lenz's counsel then advised of several locations to look for the statements but did not indicate they were on a memory stick.

In the course of my investigation, I obtained the excerpt regarding the 2013 liquor incident from SAA Lenz's written "Final Submission" to Justice McLachlin. In it, he wrote only that "Statements from Witness 5 and Witness 7 should be located in my safe" (at p. 7.) A copy of this excerpt is included in Attachment "CC."

(Mr. Abraham actually knew the statements were on a memory stick because witness Witness 7 had testified to that fact on March 22, 2019, but Mr. Abraham did not communicate this information to Legislature staff searching for the statements.) The memory stick was located in SAA Lenz's safe on May 6, 2019, after Justice McLachlin had completed her investigation, only because when Witness 7 learned staff were looking for the statements, he advised Witness 9 that SAA Lenz had saved their statements to a memory stick.

These circumstances could conceivably be attributed to miscommunication, but for the fact that Mr. Mullen searched SAA Lenz's safe on April 3, 2018 for another item, alleged there was no memory stick in the safe, and took photographs he alleged prove this. In other words, the memory stick appeared to Mr. Mullen to have been removed from the safe sometime before Mr. Mullen searched it on April 3, 2018 and put back sometime before May 6, when it was located. Mr. Mullen alleges that SAA Lenz was somehow involved in ensuring the statements on the stick were not made available to Justice McLachlin's and that this compromised her investigation. If these allegations were proven, this would appear to substantiate the disciplinary default of deceit, as set out previously.

## THE LEGISLATIVE ASSEMBLY PROTECTIVE SERVICE (LAPS)

LAPS is a unit of Special Provincial Constables and other staff responsible for providing safety and security at the Parliament buildings and grounds, and other property used by the Legislative Assembly, in Victoria, B.C.

Currently, there are 43 SPC positions, with the Sergeant-at-Arms in charge. Below the Sergeant-at-Arms there is one Deputy Sergeant-at-Arms, who holds the rank of Inspector; one Staff Sergeant; six Sergeants; and 34 Constables. The SPCs are uniformed and armed with pistols. There are also 26 "Sessional Officers" and seven "Screening Officers," who are

unarmed civilian staff and also report to the Sergeant-at-Arms. The sessional staff assist in the Chamber and adjacent corridors as messengers and assistants. They also coordinate access to the public gallery. The screening officers coordinate access to the front of the building. They are part of the Sergeant-at-Arms department and work closely with LAPS but are not part of that group of SPCs. The sessional staff and the screening officers each have their own uniforms, distinct from the SPCs in LAPS.

The SPCs in LAPS are appointed pursuant to Section 9 of the *Police Act*, R.S.B.C., which provides that:

**Special provincial constables**

**9** (1) The minister may appoint persons the minister considers suitable as special provincial constables.

(2) A special provincial constable appointed under subsection (1) is appointed for the term the minister specifies in the appointment.

(3) Subject to the restrictions specified in the appointment and the regulations, a special provincial constable has the powers, duties and immunities of a provincial constable.

**Jurisdiction of police constables**

**10** (1) Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has

(a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and

(b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

Further information about LAPS provided by Police Services in the Ministry of Solicitor General and Public Safety is included in Attachment “F”.

SAA Lenz was first appointed as an SPC for duty as a member of the Sergeant-at-Arms staff on August 29, 2005 by David Morhart, the Deputy Minister in the Ministry of Public Safety and Solicitor General, for a term ending on February 29, 2020.

As part of that appointment process, pursuant to the *Police Act*, SAA Lenz swore an “Oath of Allegiance and Office” as a Special Provincial Constable on August 23, 2005 before a Commissioner for Taking Affidavits in and for the Province of British Columbia, as follows:

I, Richard Gary Lenz, do swear that:

- I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, her Heirs and Successors;
- I will, to the best of my power, cause the peace to be kept and prevent all offences against the persons and properties of Her Majesty's subjects;
- I will faithfully, honestly and impartially perform my duties as a Special Provincial Constable.

The appointment specified that his authorities were limited to duties "at the Parliament Buildings, its grounds and adjacent Provincial Crown Property in Victoria, British Columbia, and any other property used from time to time by the Legislative Assembly." Further, the appointment specified that it was for the purpose only of enforcing the following enactments:

- a) British Columbia Provincial Statutes
- b) *Criminal Code of Canada*

On January 28, 2015, SAA Lenz was re-appointed by Lori Wanamaker, the Deputy Solicitor General in the Ministry of Public Safety, for a term ending March 31, 2021. The language in the second appointment was identical to that in the first.

On February 5, 2016, SAA Lenz was again reappointed by Deputy Solicitor General Wanamaker; this time the language was briefer in describing the "Legislative Precinct" but referred to a definition in the *Legislative Assembly Management Committee Act* (RSBC 1996) Ch 258. The Appointment as an SPC was again for the same purpose of enforcing provincial statutes and the *Criminal Code*.

The appointment documents described above are included in Attachment "G".

I note here that the Section 77 definitions in the *Police Act* define categories of misconduct for the purposes of municipal police officers, Special Municipal Constables, and police officers in Designated Policing Units (e.g., Transit Police, Organized Crime Agency, and Stl'atl'imx Tribal Police Service). It is also a useful codification of behaviour that is considered unacceptable for public officers, whether police or peace officers. As noted above, SPCs have "all the powers, duties and immunities of a peace officer and Constables at common law or under any Act," so I consider it appropriate, in the absence of specific legislative guidance on the subject, to apply the same categories of misconduct as are set out in s. 77, adjusted as appropriate to the SPC context, and keeping in mind that in some cases the standard of conduct for an SPC may be lower than for a police officer (for example, how they behave in the conduct of an "investigation").

Indeed, I note that this approach to using s. 77 as a guide or framework to addressing misconduct for a LAPS officer is consistent with LAPS' own internal training materials, provided by Witness 5 (see Attachment "JJ"), which emphasize that, "In our context as LAPS members of the Sergeant-At-Arms staff, we will likely be assessed by the public against the current BC Police

Act Standards.” The training material then goes on to explain each of the Disciplinary Defaults set out in s. 77 of the *Police Act*.

Last, I note that even if misconduct were applied narrowly to mean only a contravention of the oath that SAA Lenz took as an SPC in LAPS, the conduct that I have found in this investigation to have occurred contravened both elements of the oath (preventing offences against property and honestly performing his duties).

## THE INVESTIGATION

### Introduction

After reviewing the Speaker’s report, the responses from SAA Lenz and then-Clerk James, the report from the Speaker in reply to these responses, and the report of the Special Investigation conducted by Justice McLachlin, I conducted a series of interviews and other investigative steps that are set out in this Report.

Prior to conducting interviews, I had the authorization of LAMC to obtain relevant portions of the transcripts of witness interviews with Justice McLachlin where I was seeking to interview the same witness. I have noted where this occurred and provided analysis of any additional information obtained.

With respect to my audiotaped interviews, I have summarized key information from each one. I have also provided brief comments where helpful to provide context and explanation for the interview summaries.

### Interview of Speaker of the Legislature Darryl Plecas

On June 19 at 9:45 am, I conducted an audio recorded interview of the Speaker at his MLA office in Abbotsford. I also sent several follow-up questions by email. The following is a summary of the key information obtained from my interview and subsequent communications with the Speaker. The full transcript of the interview is included in Attachment “H”.

The Speaker learned of the 2013 liquor incident in either the end of April or beginning of May 2018 because SAA Lenz told him about it. The conversation occurred in the context of the Speaker’s concerns about Mr. James’ honesty, about which he said SAA Lenz agreed with him. SAA Lenz told him Mr. James had “committed this theft of booze” and “there’s a theft we can get him on.” He proposed the Speaker use this information to confront Mr. James or to take it to the Premier as a strategy to make Mr. James resign. SAA Lenz then asked his deputy, SPC Witness 5, to meet with the Speaker and tell the Speaker what he knew of the incident, despite Witness 5 not having been present that day and only learning about the removal of liquor by Mr. James from SAA Lenz – who was present – and from Facilities staff involved in loading the

liquor. The Speaker advised Witness 5 confirmed the story and also told him about a wood splitter, which was another issue dealt with in Justice McLachlin's report. SAA Lenz advised Speaker Plecas he would conduct an investigation, and the Speaker later learned that he had obtained several statements.

The Speaker advised that SPCs Lenz and Witness 5 both referred to the incident as a theft and as criminal.

When he first described it to me, he called it a theft. He didn't describe it in any other way. And before that I never had a conversation with him about booze, it was all about, well was there anything that we can nail him on...in his words to me, he knew it was a theft...But I may say this about Gary, that one of the things Mr. James had a reputation for was, you get in his way, you cross him, you even raise a question that he doesn't like, and you're gone – which happened to, I think over 20 people...

The Speaker subsequently learned that the evidence SAA Lenz gave to Justice McLachlin completely contradicted what he had said to him, i.e., denying he had said a theft had occurred, and denying he had said to Witness 7 words to the effect he had been doing an investigation for the Premier. He commented on SAA Lenz's evidence to Justice McLachlin that the conversation about the liquor incident only came up because SAA Lenz recommended a liquor inventory policy, noting, "if that was the case, if that were true, why get Witness 5 to come and give a statement?" He also noted that since SAA Lenz and Mr. James had been suspended, SAA Lenz had "stood by him all the way...he was right there basically not coming forward and saying he's lying. And I know that Mr. Lenz knows that Craig James was lying, because he told me himself."

He also learned that the statements SAA Lenz had obtained in 2018 from Witness 7, Witness 5 as well as SAA Lenz's own statement, had gone missing until after Justice McLachlin's investigation was concluded and was very suspicious of the circumstances. He did not know who he could trust of the staff at the Legislative Assembly and became suspicious that others might be somehow involved in assisting SAA Lenz. When he learned of the missing statements, he wanted to go to the police, but the Acting Clerk, Kate Ryan-Lloyd, suggested he delay this while she made other efforts to find the statements, which she did. He found the circumstances extremely suspicious (although I later determined there was a reasonable and innocent explanation for Ms. Ryan-Lloyd's actions because of staff not learning the statements were on a data stick until the beginning of May 2019).

The Speaker did in fact seek a meeting with the Premier regarding his concerns about both Mr. James and SAA Lenz, which he had documented in a lengthy report. Instead, he was met by the Premier's [REDACTED] Witness 10, who thought the allegations were very serious and advised him he should bring his information to the police.

(This meeting occurred on July 30, 2018. Also present were Mr. Mullen and Deputy Speaker Raj Chouhan. Present with Witness 10 was [REDACTED], another staff member from the Premier's office. Witness 10 later explained the Premier did not want to meet with the Speaker because the Premier had not supported Mr. James' appointment and did not want to be involved in any action against him to avoid a perception of bias.)

The Speaker informed SAA Lenz on August 2, 2018 that the meeting at the Premier's office "did not go well." He said SAA Lenz believed the meeting was only about the alleged theft of liquor and a plan to get Mr. James to retire. He did not know that the meeting also concerned many other allegations against both Mr. James and Lenz, and that the report he brought to Witness 10 had already been provided to police (which, in time, resulted in an RCMP investigation and the appointment of two Special Prosecutors).

I found the Speaker to be a credible witness motivated to address misconduct in challenging circumstances (including hostility from the BC Liberal Party over his decision to take the Speaker's role,<sup>4</sup> and controversy some of his alleged extraordinary actions have generated<sup>5</sup>). While mistaken or misinformed on some non-significant points, the main parts of his evidence were strongly corroborated by other witnesses as well as documentary evidence, and therefore I found it to be reliable.

### Interview of Alan Mullen, Chief of Staff for the Office of the Speaker

On June 19, 2019 at 11:30 am, I conducted an audio recorded interview of Mr. Mullen at the Speaker's MLA office in Abbotsford. The following is a summary of the key information obtained from my interview and subsequent email communications with Mr. Mullen. The full transcript of the interview is included in Attachment "I".

Mr. Mullen advised that the Speaker discussed with him his concerns regarding the behaviour of SAA Lenz and Mr. James while he was on a trip with them. He said the Speaker told him he had advised SAA Lenz that he didn't trust Mr. James and said that SAA Lenz's response was "well you can nail him on the booze. There was a theft of booze. He loaded up his truck and took this shipment of booze away." Mr. Mullen believed this conversation occurred in May 2018, that the Speaker didn't know what to make of it and didn't take any action for a short period of time. Mr. Mullen said he was later in the Speaker's office with the Speaker and SAA Lenz came into the office and said, "Okay, so are we going to move forward on this theft of booze?" He said the Speaker then asked him for more information. Mr. Mullen said SAA Lenz

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<sup>4</sup> See, for example: <https://www.theglobeandmail.com/news/british-columbia/bc-liberals-expels-darryl-plecas-from-party-after-he-takes-role-as-speaker/article36221530/>; <https://www.theglobeandmail.com/news/british-columbia/bc-liberals-darryl-plecas-to-serve-as-speaker/article36220621/>

<sup>5</sup> See, for example: <https://vancouversun.com/news/local-news/speaker-darryl-plecas-survives-a-day-of-chaos-in-the-legislature>

described that Mr. James backed up his truck at the Legislature and had Facilities staff load his truck with “cases and cases of booze.” He said the amount of liquor filled the back of the truck and the back of the cab as well, and that he thought the value might be “in the neighbourhood of ten grand.”

When they asked him when this incident occurred and SAA Lenz said in 2013, Mr. Mullen asked him, “Why are we talking about this now...it’s 2018...You’re describing it as a theft.” He said SAA Lenz’s response was “Oh, it was a full blown theft...Well, look, obviously we all agree the Clerk’s got to go. You know, we can nail him on that.” Mr. Mullen said the same day SAA Lenz arranged for Witness 5 to come up to speak to them, which he did, and also described the incident as a theft, but only based on speaking to those who were there, not from personal knowledge. (Witness 5 later recalled that it was May ■■■, his birthday, but insisted only the Speaker was there, not Mr. Mullen.)

Mr. Mullen said SAA Lenz came to him from May to October 2018 a minimum of two dozen times, and he knows he went regularly to the Speaker as well from his conversations with the Speaker, saying they didn’t want outside police involved and didn’t want an audit. He suggested instead that “we could investigate it and bring it to Craig and say, look you’re going to resign or take early retirement or whatever the case, ride off into the sunset, because if you don’t we’re going to take this information and we’re going to go to the police.” Mr. Mullen advised SAA Lenz came up with a further plan:

that we would take this information to the Premier. That, you know, obviously the Speaker doesn’t have faith in the Clerk, and he had this great idea of presenting it to Premier Horgan...Gary was of the opinion that the Premier didn’t like the Clerk anyway. And, now we’ve got this theft of booze from 2013. Gary would investigate it and, you know, build sort of the case to present...to the Premier.

When Mr. Mullen later told him they had met with the Chief of Staff to the Premier who just said “take it to the police,” SAA Lenz told him, “No, no, no, we don’t want to do that...we’re going to have to go a different angle. Maybe the Attorney General.”

Mr. Mullen reported that there was really no reason for SAA Lenz to be contacting him over the summer because the House had risen at the end of May, but that Lenz was “constantly contacting me or texting me...sometimes five, six, seven times a day.” He said Lenz repeatedly asked, “Have you talked to them yet?” meaning the Premier or the Attorney General. He said when he suggested, again, they call the police, SAA Lenz was adamant that the police not be called, saying “...we do not want police here, and in fact if they come here, I’ll them they can’t come here. Not interested in having outside police. We are the police here; we are more than capable.”

Mr. Mullen said he knew the SPCs were not police officers, but that SAA Lenz would say they were police officers and he was the de facto Chief of Police, yet he was describing a theft that he didn’t do anything about.

In recalling his conversations with SAA Lenz, Mr. Mullen said, “I was actually a little bit shocked that [SAA Lenz is] telling the Speaker of the Legislative Assembly and myself about this full blown theft, in his words, that happened five years ago, under your watch, you were aware of it, you’re describing it as a full blown theft, and now you want to nail the guy for it. Well, where were you five years ago? Where were you four years ago? Why now? Because it suits your purposes.” Mr. Mullen also reported that he was aware that Witness 7 had reported to the Speaker that SAA Lenz had said to him words to the effect that he had been conducting an investigation for the Premier.

Regarding the statements on the missing memory stick, Mr. Mullen stated that when Justice McLachlin wanted the statements SAA Lenz had taken and they couldn’t be located, on April 3, 2019 he went with Witness 5 to SAA Lenz’s office. Notably, after Mr. James and SAA Lenz were suspended in November 2018, the locks on their offices were changed and only Witness 5, as the Acting Sergeant-at-Arms, and Mr. Mullen had a key. They went into SAA Lenz’s office where there were two safes. He said one was completely empty, and the other one had an envelope with an unrelated letter in it and some unrelated articles, but no memory stick (which he didn’t know to look for, as the statements were still believed to be physical documents). Mr. Mullen took photos of the contents of this safe as well, showing there was no memory stick in the safe.

On May 6, 2019, Ms. Ryan-Lloyd asked Mr. Mullen to come to SAA Lenz’s office with her and several others, including Witness 5. When Witness 5 again looked in one of the safes, he found the memory stick in question. Mr. Mullen thought that the finding of the memory stick was highly suspicious, and he suspected Witness 5, since he had the only other key to the office, and he believed Witness 5 was also the only one who knew the code to the safe. (In fact, it appears that while Witness 5 was the only other person besides Mr. Mullen with a key to the office, the battery had burned out for the electronic safe and so no code was necessary to open it and the key was in the safe door.) Mr. Mullen was also suspicious that Ms. Ryan-Lloyd must be involved, since she had arranged for the search.

In fact, there is a very plausible and innocent explanation for Ms. Ryan-Lloyd’s behaviour, which was that she had just recently learned that the statements were on a memory stick. This information had never been communicated to staff until a serendipitous conversation between Witness 7 and another senior staffer, Witness 9, who informed Ms. Ryan-Lloyd. That was why Ms. Ryan-Lloyd had a reason to organize the search a few days later. So not knowing Mr. Mullen had previously searched the safe and no stick should be there, she thought it should be searched for a memory stick then.

Mr. Mullen was also suspicious of Witness 2, [REDACTED], being involved, because he believed Witness 2 had lied to him about a matter connected to the subsequent examination of the memory stick. Again, there was innocent explanation that involved a miscommunication; it was very clear that Witness 2 had been completely honest about his involvement and would certainly have not done anything unethical to assist SAA Lenz.

Unfortunately, because of the circumstances in which they found themselves, the Speaker and Mr. Mullen were suspicious of Legislative staff, which was justified in several cases, but not in others, such as with Ms. Ryan-Lloyd and Witness 2, both of whom I found to be entirely credible and reliable witnesses.

When Mr. Mullen did receive the memory stick with the statements of SAA Lenz, Witness 7 and Witness 5 he took copies of them, and they were included in his complaint, which is included in Attachment “EE”.

I found Mr. Mullen, although mistaken on some points and unjustifiably suspicious of some staff – which he seemed to have transmitted to Speaker Plecas – to be a credible witness because his main evidence was strongly corroborated by other evidence, including documentary evidence. I therefore considered his evidence to be reliable.

#### **Interviews of Ms. Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly**

Prior to interviewing this witness, I requested any portion of Ms. Ryan-Lloyd’s interview relevant to the liquor incident through LAMC counsel Marcia McNeil. She advised there was nothing responsive to my request in the transcript, i.e., she had not been questioned about the liquor incident.

On June 26, 2019 at 10:30 am, I conducted an in-person audio recorded interview of Ms. Ryan-Lloyd in a boardroom at the offices of the Farris law firm in Victoria, at 1005 Langley Street (the boardroom was made available to me as needed at no cost). On July 24 at 4:40 pm, I conducted a follow-up interview of Ms. Ryan-Lloyd by phone, which I also audio recorded. The following is a summary of those interviews. The full transcripts are included in Attachment “J”.

Ms. Ryan-Lloyd has worked at the Legislative Assembly for two decades and became the Deputy Clerk in 2011. She became the Acting Clerk in 2018 when Mr. James was suspended. As an executive-level colleague, she met regularly with SAA Lenz at meetings of the executive group, which met once a week and sometimes twice. She noted SAA Lenz worked very closely with Mr. James and had a “much more active” relationship with him than with her, but they were cordial colleagues.

Regarding the 2013 liquor incident, Ms. Ryan-Lloyd recalled that it started with Mr. James’ purchase in 2012 of a large amount of liquor for a hospitality suite at a conference the Legislature was hosting. She understood that the amount of liquor was quite considerable because the Legislature was hosting one or perhaps two more conferences in 2013.

She recalled that in 2013, there was an election in May and then-Speaker Bill Barisoff wasn’t seeking re-election. She recalled that on at least two occasions Mr. James explained that he was going to drive to Mr. Barisoff’s personal residence and bring him certain items from his office. She later learned that on at least one of those trips, boxes of alcohol were loaded into his vehicle by staff, but she did not witness that. She was unsure of when this occurred in 2013, but believed it was some weeks after the election.

She recalled that Mr. Lenz came to her shortly after that event “to express concern that some of the staff under his area of responsibility had been asked to load alcohol into Mr. James’ vehicle, and that there was quite a bit of alcohol that was intended, as we understood, to go to Speaker Barisoff’s residence.” She said that SAA Lenz said to her that Mr. James had told him the liquor was going to Speaker Barisoff’s office or personal residence. She said Mr. James was away for a period of time and when he returned, she raised the issue of the liquor removal with him. She said he was very offhand and simply said, “Well, the Speaker instructed me to do so.”

Ms. Ryan-Lloyd was clear that in 2013, in several conversations with her, SAA Lenz characterized the removal of taxpayer funded liquor by Mr. James as inappropriate. She did not recall if he used the word “theft” in 2013 but said “I wouldn’t be surprised if that was the case. I think he was equally concerned...about the removal of objects...so on both fronts they were – my understanding was that he felt very uncomfortable and felt that there was a – a real need to ensure that we had some policy in place.” She reported there were some efforts to develop such a policy, but they did not come to fruition until 2019.

Ms. Ryan-Lloyd reiterated in her second interview that “Mr. Lenz described the incident as wrong, that something wrong had taken place, that he was uncomfortable, very concerned about the removal of the liquor and the furnishings...he was upset, concerned about what he perceived as wrongdoing...We had the understanding...that it was going to the Speaker’s home. But that was not a satisfactory explanation for the removal of the liquor.”

Regarding Witness 5’s statement that SAA Lenz had told him he would speak to the new Speaker, Linda Reid about it, and whether she herself ever discussed it with Ms. Reid, Ms. Ryan-Lloyd had this to say:

I have a general recollection that I did. I can’t point to a specific occasion. I do recall Ms. Reid expressing concern with Speaker Barisoff in terms of the removal of some of the items in the office that she then entered...and I think in the context of those discussions it was often within the same incident that the other removal of the liquor was also referenced.

Regarding Mr. Barisoff wanting liquor, by the summer of 2018 when she knew SAA Lenz was “discussing the conduct of the Clerk on an ongoing basis,” Ms. Ryan-Lloyd noted her view that:

...at least in my mind, I thought it was unlikely that the liquor had gone to Mr. Barisoff’s residence. Just knowing what I know about Mr. Barisoff, I didn’t think that was a likely thing...I could see him having an interest in receiving items that he felt a personal connection from his own office – he’d been a member here for many, many years...I would be very surprised if Mr. Barisoff had an interest in receiving a large volume of liquor.

Ms. Ryan-Lloyd noted that if Mr. Lenz thought the liquor might have been returned for a refund, he absolutely had the option of checking with Finance staff to see if that had occurred.

She acknowledged it was unlikely SAA Lenz believed it had been returned, because he could have easily confirmed this and reported back to her and his staff – who were very concerned about having been involved – that the liquor had been returned for a refund and all was well.

Ms. Ryan-Lloyd advised that until she read Justice McLachlin’s report, she didn’t have any knowledge that there was a significant discrepancy between the amount of liquor Mr. James removed and the amount that had been delivered to Speaker Barisoff, and that Mr. Barisoff had paid for the small amount he had received. She noted again that Mr. James had told her that the Speaker had insisted that the liquor be provided to him.

In 2018, following SAA Lenz’s discussions about the liquor matter with the Speaker, he spoke to Ms. Ryan-Lloyd about it. She said the issue was “very much on his mind again following conversations with Speaker Plecas” and that when speaking to her about it he “characterized it as a theft at least on one occasion.”

She further noted that the Speaker came to her and discussed what Lenz had told him about the liquor, i.e., that it was serious wrongdoing, and what he said was consistent with her 2018 conversations with SAA Lenz. She said the Speaker was “quite shocked” to hear of the 2013 liquor incident.

When provided the information that SAA Lenz had told Justice McLachlin that he never believed that Mr. James had engaged in wrongdoing regarding taking the liquor and assumed it had been returned for a refund, she said that was “not accurate.” When provided the information that SAA Lenz had told Justice McLachlin that he had never told the Speaker that Mr. James had done something wrong in taking the liquor, she said, “I would not think that is accurate.”

Regarding the missing memory stick, Ms. Ryan-Lloyd prepared careful notes of her involvement, which are included in Attachment “K”. In summary, on April 4, 2019, Justice McLachlin’s associate, Mr. Abraham, advised her that the statements SAA Lenz advised could not be located and asked for them to be located on his computer or the network. As a result, Witness 2, [REDACTED] searched both the Legislature network and SAA Lenz’s hard drive, but did not find the statements (and found very few other documents created by SAA Lenz on the network, despite policy requiring that all work documents be stored there). She reported to Mr. Abraham on April 18 that they had not been able to find the statements. Mr. Abraham did not advise Ms. Ryan-Lloyd (and had not previously advised Witness 5) to look for a memory stick rather than paper documents, despite Witness 7 advising in his interview with Justice McLachlin on March 22 that SAA Lenz had saved their statements to a memory stick.) Ms. Ryan-Lloyd advised that she had been managing many requests from Justice McLachlin, and the request to locate the statements was the only one they had not been successful in complying with.

On April 30, Ms. Ryan-Lloyd was discussing issues regarding Justice McLachlin’s investigation with Witness 9, [REDACTED], and noted the statements couldn’t be located. Later that day, she learned Witness 9 spoke to Witness 7 who advised her SAA Lenz had saved

their statements to a memory stick. That evening, the Speaker was upset that the statements couldn't be found and told Ms. Ryan-Lloyd he was going to report it to the police. Ms. Ryan-Lloyd asked him to hold off on that while she made further inquiries (which fed the Speaker and Mr. Mullen's suspicions that she might somehow be involved). The next day – May 1 – Witness 9 advised Ms. Ryan-Lloyd of her conversation with Witness 7, who was unfortunately away sick so Ms. Ryan-Lloyd couldn't speak to him about it immediately.

On May 6 in the morning, Ms. Ryan-Lloyd met with the Speaker, confirmed that to his knowledge the statements hadn't been located, which he was very upset about, particularly because Justice McLachlin had now submitted her report. As a result, Ms. Ryan-Lloyd coordinated a search of SAA Lenz's office for later that day, but this time they were searching for a memory stick rather than hard copy documents. She accompanied Mr. Mullen, Witness 5, another SPC (██████████) and ██████████, Witness 2, to Mr. Lenz's office. They located 10 USB sticks strewn around his desk, and Witness 5 located one in one of his two safes. She recalled that Witness 5 noted that the code had never been changed from its original setting of "1 2 3 4". She noted that when the Auditor General's office previously requested all SAA Lenz's electronic devices and his computer was removed from his office, it didn't occur to her to think of USB devices.

Ms. Ryan-Lloyd advised that Witness 5 appeared upset by finding the memory stick in the safe and she believed it was because he knew from being present at the earlier search that it had not been there and was concerned his own conduct would be questioned, that he thought he was being "framed."

Ms. Ryan-Lloyd advised she did not have any knowledge, nor could she explain, how the memory stick with the statements on it could be in the safe on May 6 if it was not there when it was searched on April 3. She provided highly plausible explanations for any of her behaviour the Speaker was suspicious of – which can be attributed to failures in communication and a understandably heightened sense of distrust by the Speaker and Mr. Mullen – and appeared to be a credible and highly dedicated employee.

Ms. Ryan-Lloyd acknowledged that, much to her distress, the Speaker did not know who he could trust among the Legislature staff and she was very much trying to assist him in any way she could. She noted how challenging the environment had been since Mr. James and SAA Lenz had been suspended because of the multiple investigations, and how important it was to sustain the trust of the Speaker.

On July 21, 2019 I received the results of a request for SAA Lenz's Outlook account to be searched for relevant emails. One was an email to SAA Lenz from ██████████ providing details of a Legislative Assembly liquor policy he had been asked to create as a high priority. On the same day, Ms. Ryan-Lloyd confirmed to me by email that ██████████ was a contractor "hired by the Legislative Assembly to assist with specific project and policy work following a critical pair of audits by the Office of the Auditor General in 2012-13." She also agreed that the email reflected her recollection that SAA Lenz wanted to see a liquor policy created as a result of his

concerns with the 2013 liquor incident. A copy of that email string is included in Attachment "L".

I found Ms. Ryan-Lloyd to be a cautious and credible witness. Other witnesses spoke very highly of her dedication to her work. Her evidence was corroborated by other evidence, and therefore I found her to be a reliable witness.

Her evidence is significant because it strongly and credibly rebuts SAA Lenz's evidence to Justice McLachlin during which he claimed that he assumed Mr. James was returning the liquor for a refund, and that he never believed anything wrong had occurred. Ms. Ryan-Lloyd's evidence also corroborates Speaker Plecas and Mr. Mullen where they recall SAA Lenz describing the liquor incident as a "theft." SAA Lenz denied this to Justice McLachlin.

Specifically:

- SAA Lenz told Ms. Ryan-Lloyd that Mr. James told SAA Lenz he was taking the liquor to Mr. Barisoff, that SAA Lenz was very concerned it was inappropriate and wrong, and proposed a policy be developed to prevent such problems in the future;
- She then raised the issue with Mr. James based on SAA Lenz's comments and Mr. James also told her personally that he took the liquor to Mr. Barisoff, at Mr. Barisoff's direction;
- A draft policy was created in the summer of 2013 specifically in response to SAA Lenz's concerns about the April 2013 liquor incident; and
- In 2018 during the time SAA Lenz was meeting with Speaker Plecas about the liquor incident, SAA Lenz described it to Ms. Ryan-Lloyd as a "theft" on at least one occasion.

Interview of Witness 2, [REDACTED]

On June 26, 2019 at 1:00 pm, I conducted an audio recorded interview of Witness 2, the [REDACTED] at the Legislative Assembly [REDACTED] at the offices of the Farris law firm in Victoria. The following is a summary of that interview. A transcript of the full interview is included in Attachment "M".

Witness 2 had held the [REDACTED] at the Legislative Assembly. He was a member of the Senior Management Team (SMT), one step below the Executive level comprised of the highest-ranking staff, including the Clerk, Mr. James; the Deputy Clerk; the Executive Finance Officer, [REDACTED]; and SAA Lenz. Witness 2 reported to Ms. Ryan-Lloyd. He advised that members of the Executive attended the meetings of the SMT, but not vice versa, and so he would have nine or ten meetings a year at which SAA Lenz was present. Witness 2 made no attempt to conceal his disdain for SAA Lenz

and advised he avoided meetings with him whenever he could, because he thought they were a waste of time.

He said that SAA Lenz made a point of telling him he would not save data on the Legislative Assembly's network drives, where it was backed up on a regular basis. When Witness 2 had occasion to search the network drive and SAA Lenz's computer hard drive, he found that a "vast number" of documents were personal, i.e., unrelated to the Legislative Assembly.

He noted SAA Lenz was not noted for sending or responding to emails, and that it was unusual for him to put anything in writing.

In contrast, Witness 2 viewed Witness 5 as "one of the straightest guys I have ever known and I would trust the guy with my life."

Witness 2 had heard hearsay about the incident of Mr. James' truck being loaded with liquor in 2013, but did not witness it himself, nor did he speak to anyone directly involved.

Witness 2 was unaware of SAA Lenz's 2018 investigation into the 2013 liquor incident until Mr. James and SAA Lenz had been suspended. But while Justice McLachlin was conducting her investigation, he was asked by Ms. Ryan-Lloyd to search SAA Lenz's network drive for the missing statements. He was unable to find them. He did know that SAA Lenz had a habit of "keeping stuff on his hard drive" and as a result, the Office of the Auditor General was contacted because it had already seized SAA Lenz's computer. They provided a copy of the hard drive and Witness 2 searched it but didn't find the documents. He had received no information to suggest the statements might be on a memory stick.

On May 6, 2019, Witness 2 was part of the group that searched SAA Lenz's office, now that Ms. Ryan-Lloyd had learned from Witness 7 that SAA Lenz had saved the statements to a memory stick and told him he would keep it in his safe. Witness 2 had learned of this information from Ms. Ryan-Lloyd a day or two earlier. He made concise notes of his involvement in this search and related matters, and had several relevant emails, which are included in Attachment "M" along with his interview transcript. Witness 2 recalled several memory sticks were found in the drawers of SAA Lenz's desk, and that there was a silver memory stick in a safe in a cabinet beside the outside window. He recalled that he was "almost positive" the safe was unlocked and Witness 5 simply pulled it open and removed the memory stick. He said that Witness 5 didn't make any comments that he remembered, just held up the stick indicating another one had been found. No additional memory sticks were located. They were all turned over to Witness 2 to search. He searched the silver stick from the safe first, on the basis it was more likely to contain confidential information, and found the missing statements of SAA Lenz and Witness 7, as well as a copy of Witness 5's statement which Witness 5 had created, kept in his files, and previously produced. He also found one unrelated file.

Witness 2 printed out a copy of each of the statements and delivered them in an envelope to Ms. Ryan-Lloyd's office, but she wasn't there so he gave the sealed envelope to her [REDACTED] and requested that she see the contents as soon as possible.

(Ms. Ryan-Lloyd did see the statements that day and delivered copies to the Speaker, without having spoken to Witness 2. Mr. Mullen recalled meeting with Witness 2 and asking for the statements and that Witness 2 said he hadn't had a chance to talk to Ms. Ryan-Lloyd about it yet. Mr. Mullen thought he was lying, because Ms. Ryan-Lloyd already had the statements. In fact, Witness 2 had NOT spoken with her yet in person. In any case, Witness 2's records, including emails, demonstrated that it was the USB sticks themselves that Mr. Mullen had asked about, that Mr. Mullen hadn't spoken to him but rather had left him a voice mail, and that he did want to seek approval from his superior, Ms. Ryan-Lloyd, before he turned them over, which he did. The concern of Mr. Mullen regarding Witness 2 was a product of the general lack of trust of Legislative Assembly staff by the Speaker and Mr. Mullen and simple miscommunication; Witness 2 did not in any way misinform Mr. Mullen.)

Witness 2 had no knowledge of how a memory stick, if it not in a safe when it was searched on April 3, could have been placed there to be found on May 6. As far as he knew, only Witness 5 had a key to the office (Mr. Mullen had one as well) but "the thought of him doing something inappropriate like that is just to me is unimaginable."

I found Witness 2 to be a credible witness whose recollections were strongly corroborated by other witnesses and by his own records, and therefore I found his evidence to be very reliable.

#### Interview of Witness 3, [REDACTED]

Witness 3 became known to me as a potential witness via the Speaker's counsel. She was not interviewed by Justice McLachlin.

On July 10, 2019 at 9:30 am I spoke to her by phone to determine an outline of what she knew. I learned she had been SAA Lenz's [REDACTED] until [REDACTED], when he fired her without cause. She alleged she had direct knowledge of the liquor removal incident in 2013. As a result, I arranged to conduct an in-person interview with her.

On July 12, 2019 at 1:30 pm, I conducted an audio recorded interview of Witness 3 at the law offices of Farris in Victoria. The following is a summary of the relevant portions of the interview; a transcript of the full interview is included in Attachment "N".

Witness 3 started working at the Legislature in the Office of Public Education in 2008. In early 2009, a posting came up for the position of Administrative Coordinator for SAA Lenz and she was the successful candidate. She described his managerial style as not wanting to "deal with anything difficult" and wanting to "be everybody's friend." She described his role as, "Basically Gary's job was talking to people, so he was just sort of walking around with a cup of coffee in

his hand most of the day just chitchatting,” and she noted he was “very generous with Legislative assets.”

When Mr. James became Clerk, Witness 3 said:

...things changed a lot. Gary just went on a massive spending spree. They started travelling all over the world all the time at the drop of a hat for no particular reason. Gary never provided any value for these trips...as far as I was concerned...he basically just did whatever he wanted all the time, and whatever Craig wanted, Craig got...he really was a creature of opportunity. Any power grab that he could possibly get he did. He ended up rewriting his job description under Mr. MacMinn (the former Clerk) and asked for a significant raise...like 40 percent, and Mr. MacMinn declined it...after Craig became the Clerk, he asked me to change the dates on it and he resubmitted it and it was rubber stamped. So, they definitely had a scratch your back, I'll scratch...you know, kind of situation, in my opinion.

Regarding the 2013 liquor incident, Witness 3 admitted her memory was “not 100 percent” because of how much time had passed, but recalled that Witness 5 had come into her office very concerned that SAA Lenz had directed him to get all the liquor out of the Clerk’s vault and load it up into Craig’s truck to take to Speaker Barisoff, and he didn’t agree with him doing that. Witness 3 recalled that she looked out her window and could see Mr. James’ pick-up truck and facilities staff – she remembered “██████” and “██████,” and that ██████ had a fairly common last name ██████ and ██████ surname was ████████████████████. She observed they were loading boxes into the back of Mr. James’ big truck. She recalled a desk and chair in the back of the truck, and the bed was full of boxes. She thought this incident was sometime in the summer of 2013. She said Witness 5 made remarks about being fired, and that he thought it was wrong for SAA Lenz to have directed him to do this. She said when Witness 5 picked up liquor for a future conference, he said something like, “Well, we’re going to have to keep a tight inventory on it. No one’s going to – no one’s going to have access to it except me.... We’re not going to have something happen again like happened with the Clerk’s conference.”

Witness 3 described that while SAA Lenz early on was very open with her, when she started raising concerns about his actions, he confided in her less and less. For example, Legislative Assembly IT staff provided and supported Blackberrys, but Mr. James wanted an iPhone, so he bought it on the work credit card, then SAA Lenz decided he wanted one too, and she purchased it for him. IT was “annoyed” because iPhones weren’t secure, couldn’t be “wiped” remotely, and they were not on the Legislative Assembly network. She described other similar issues she disagreed with. These included a “junket” by Mr. James and SAA Lenz to Christchurch, NZ, and how SAA Lenz indulged Mr. James’ desire for items she disagreed with, like an iMac and a satellite phone. She described how “he was buying things from other countries to give away as protocol gifts in B.C. to B.C. dignitaries when that wasn’t his job...everything went on the card...every expense was, in my opinion a misappropriation of taxpayer money.”

Witness 3 noted that when she worked in her previous role at the Legislative Assembly, there were very tight budget controls and she described being turned down for purchasing crayons for a children's event at the Legislature. But when she went to work for SAA Lenz, "there was no one above him other than Craig. So, Financial Services didn't really have a choice...at the time the Comptroller was [REDACTED], and he was quite strict...and he ended up getting fired as well." She noted that SAA Lenz "idolized Craig and they were extremely aligned on many things."

Witness 3 stated she had read the Plecas report and said she thought it was "spot on...nothing in it surprised me whatsoever" other than the "suicide pact thing."

Witness 3 described that SAA Lenz was reluctant to put anything in writing: "Gary never wrote down anything...He was very clear that if you don't put anything in writing...He was famous for not ever putting anything in an email. If I would send him an email asking him for clarification, I just wouldn't get a response, and then he would pop into my office to just chat."

Finally, Witness 3 noted that SAA Lenz was "big about building bridges, and so he would consult with Del Manak (then the Deputy Chief of the Victoria Police Department)...he had sort of a network of people to call upon...Gary was very involved with the Sergeants at other legislatures...he would basically just meet with people. Witness 5 would be there. Witness 5 would have to do all of the work."

Although I found that Witness 3 appeared to be telling the truth to the best of her ability, she was understandably biased against SAA Lenz given that he had fired her without cause. This was an event that caused her significant distress for a considerable period. In addition, six years had passed since the liquor removal incident, which she advised she didn't find remarkable in the context of other conduct she had witnessed. Given these factors and other information I gathered, I concluded it was most likely that she had conflated her recollection of witnessing the liquor being loaded into Mr. James' truck with a related conversation with Witness 5 on another day; in other words, she saw Mr. James' truck being loaded with liquor, and she also had a conversation with Witness 5 about the event, but those two things did not occur on the same day. The evidence is clear even from SAA Lenz that Witness 5 was not present on the day of the liquor removal. Further, Witness 5 later acknowledged a conversation like the one Witness 3 described was quite possible but insisted that it did not occur the same day as the liquor removal.) I did not rely on Witness 3's evidence in arriving at my conclusions.

#### Interview of Witness 4, [REDACTED]

Witness 4 became known to me as a potential witness via the Speaker's counsel. He was not interviewed by Justice McLachlin.

On July 12, 2019 at 9:30 am, I conducted an audio recorded interview of Witness 4 at the offices of Farris in Victoria. The following is a summary of the relevant portions of the interview; a transcript of the full interview is included in Attachment "O".

Witness 4 started working at the Legislature in January 2001 and has been in his current position since [REDACTED]. He reports to the [REDACTED]. In addition to [REDACTED] which is near the location where liquor for legislative functions was stored. Witness 4 said he knows SAA Lenz "very well," not only from their time at the Legislature but also from [REDACTED].

Witness 4 described an incident after the legislative session in 2013 – he estimated it was May or June – in which he was walking by the safe where all the liquor was stored – and he saw Witness 5 in the hallway supervising some boxes of liquor being moved. Witness 4 said he made a joke to Witness 5 about bringing his own vehicle to be loaded with some liquor, but Witness 5 brusquely told him to move on. He described Witness 5 directing other staff telling them where to take the liquor. He described fridge dollies and push dollies being used, each with multiple boxes of liquor, and estimated a total of 10 to 15 boxes of liquor being moved. Witness 4 recalled seeing a black truck in the courtyard. He doesn't know whose vehicle it was, but assumed it was Speaker Barisoff's, who he knew was retiring. He thought it could have also been Mr. James' or SAA Lenz's. Witness 4 heard about a desk being moved but did not see it that day. He also did not see SAA Lenz, but assumed that "Witness 5 was there on dispatch by Lenz..."

Witness 4 did not recall ever discussing the incident with Witness 5 after that day and was sure he had never discussed it with SAA Lenz.

Witness 4 described other issues at the Legislature that he was concerned were wrong, such as an employee running a private business during work hours, and Mr. James asking him to transfer eight hours of video from somewhere in the Caribbean on to a hard drive so Mr. James could "run that at home on a big TV so that he felt like he was in the Caribbean." Witness 4 said he spent a week working on this task. Witness 4 said he was "really invigorated when the Speaker released his report" and later that "it kind of solidified...the air of entitlement that I was working around, not in just our office but all over...it just confirmed everything and I was very thankful...I was actually quite proud of him...I wrote him an email saying, thank you. I appreciate what you're doing and it takes a lot of guts because you have [been] ostracized and painted into a corner." Witness 4 decided to come forward to the Speaker's counsel to tell him what he knew.

Regarding the memory stick that went missing, he didn't know anything about it other than what Mr. Mullen had told him about it when they spoke.

After our interview was over, but on the same day, Witness 4 sent me an email advising he'd thought more about the liquor incident and had narrowed it down to occurring the last week of

April or first week of May 2013, that it was Facilities staff doing the loading, and that he had become certain the truck involved was Mr. James' GMC.

Witness 4 was very eager to assist my investigation. He describes Witness 5 being there, which Witness 5 strongly denies, and even SAA Lenz said in his evidence to Justice McLachlin that he (SAA Lenz) was there but Witness 5 was not. Witness 4 describes the loading of liquor he saw as taking over an hour, which was unlikely to be necessary to load one pick-up with liquor, vs. a larger load of liquor being *unloaded* after purchase for the 2013 conference (as later described by Witness 5). He also didn't see a desk or chair, which was known to have been also loaded in the truck in April 2013.

Witness 4 appeared to be trying his best to be accurate, but may have been influenced by reading the Plecas report and other sources of information, which led to him conflating a "routine" movement of liquor he had seen six years earlier with the incident involving Mr. James misappropriating liquor. That, combined with his concern about what he saw as inappropriate abuse of Legislative assets, likely contributed to him honestly believing he had witnessed the incident of James' misconduct in misappropriating liquor in 2013.

For the reasons described above, I did not find Witness 4's recollections to be reliable regarding the 2013 liquor incident.

#### Interview of [REDACTED] Witness 5

Prior to interviewing Witness 5, I requested of LAMC counsel Marcia McNeil any portion of Witness 5's interview with Justice McLachlin. She provided me the seven-page excerpt, which I reviewed prior to interviewing him. That excerpt is included in Attachment "P".

On July 15, 2019 at 10:00 am, I conducted an audio recorded interview of retired Witness 5 at the offices of Farris in Victoria. The following is a summary of the relevant portions of the interview; a transcript of the full interview is included in Attachment "Q".

Witness 5 held the rank [REDACTED] in LAPS, and became the [REDACTED]. He advised that the SAA is considered the equivalent of Chief of Police in the LAPS rank structure. Witness 5 [REDACTED].

Witness 5 spent [REDACTED]  
[REDACTED]  
[REDACTED].

Witness 5 joined LAPS in [REDACTED]. He described the responsibilities of LAPS as security of the Legislative Precinct, law enforcement regarding certain provincial statutes and the *Criminal Code*, and being ambassadors to the public. He

described that if faced with a criminal offence at the Legislative Precinct, such as a mischief or assault, they would:

arrest them obviously, and then at that point make sure we follow all the proper procedures in regard to arrest and Charter and caution and those type of things. We would contact the PD, and the PD would actually take that person into custody. Any criminal charges would normally be laid by a Victoria PD [member] in support with our evidence in regard to the situation.

Witness 5 also described that if there was an internal theft, LAPS would conduct the initial investigation and if it led to a viable suspect, would turn that over to the VicPD as well, providing an example of when this had occurred.

Witness 5 described having a “pretty good” relationship with SAA Lenz, but that they didn’t always agree. One example was regarding the notorious wood splitter, a purchase he said he strongly disagreed with, noting if they needed to cut wood, a chain saw would work fine. He described SAA Lenz as “fairly professional”. He described him as having lost touch with the grassroots members, that he was more concerned with interacting with politicians and other senior officers at the Legislative Assembly, and that his staff weren’t happy with SAA Lenz forgetting their core functions. Witness 5 described SAA Lenz as generally “pretty ethical.”

Regarding the 2013 liquor incident, Witness 5 said he wasn’t aware of it until several months after it occurred, as the result of a conversation with Witness 7 and SAA Lenz:

They had told me that they had loaded a bunch of alcohol that was left over from a clerk's conference into Craig's truck. And for the life of me I said, "What are you doing, that should never have happened, and Gary you know that." And Gary goes, "Well, we were ordered to by the clerk". And I said, "Well, Gary, that kind of excuse doesn't go well, especially after what happened in the second world war and the Nazis following orders that doesn't work, it's a poor excuse. It's a poor excuse to begin with". And he acknowledged that, and he knew that. And he said, "Well, I'm going to take it up with the Speaker"...

And he said, "Yes, I'm going to take it up with the Speaker and, you know, I'll talk to" – I believe to Kate – he talked to Kate about it as well, who was the deputy clerk at the time, or clerk committees. And, I said, "Okay, Gary, you're going to look after this, and you're going to sort this out because it's wrong." And he knew – and Gary knew that was wrong. I mean, anybody with common sense knows that's wrong. And I said – and I told him, I said, "How do you think the guys feel" – the guys that were asked to load this stuff into the vehicle, and having it leave the precinct? I'm pretty sure they were uncomfortable with being – to do that, and being told or instructed to do that...

But I know that on the fact of that that's wrong. Anybody would know that. You don't have to be a policeman or in law enforcement to know that's just wrong...the stuff being loaded into a private motor vehicle and then being driven off the precinct. That should never have happened...It had been paid for by legislative assembly monies, because I had been tasked to pick up the alcohol in the first place from the liquor distribution branch...and so I know that the alcohol was paid for on taxpayer dime, and Gary knew that as well....And Gary had been around long enough to know that two things will get you into trouble, alcohol and improper handling of evidence or not doing evidence custodian. How many times have you seen that in your career, Doug? Guys not handling evidence properly, or not properly disposing it or recording proper disposals, or those kinds of things. But – so Gary knew that it was wrong. And after we had that conversation, he told me that he was going to look after it and he was going to address it with the Speaker. So, all right.

Witness 5 said he characterized the incident as a “theft” and SAA Lenz nodded and said he was going to take it up with the Speaker (then Linda Reid). SAA Lenz did not suggest to Witness 5 that Mr. James had returned the liquor for a refund.

When advised that two witnesses had claimed he had been there the day of the liquor incident, Witness 5 strongly denied this. He said Witness 3 may have seen him loading alcohol to take to a conference around the same time, but he was not present when Mr. James’ truck was loaded. Regarding Witness 4, Witness 5 said his observations were probably when they were putting the liquor for the conference in the Clerk’s vault after purchasing it for the conference. Witness 5 advised that if I interviewed the staff who actually loaded the liquor into Mr. James’ truck, “I can guarantee you they’ll tell you I wasn’t [there].”

Witness 5 advised it was quite possible he had a conversation with Witness 3 after he learned of the liquor removal incident and commented on his concerns, but he didn’t remember it.

Moving to 2018, Witness 5 clearly recalled being asked by SAA Lenz to speak to Speaker Plecas about the liquor incident, and that it was May 28, because [REDACTED]. He said he told SAA Lenz he could only tell the Speaker what SAA Lenz had told him. He said he was alone with the Speaker, and that Mr. Mullen wasn’t there (as Mr. Mullen recalled).

Witness 5 stated that he told the Speaker what he knew about the liquor incident, but said he had been misquoted in saying “I’m going to lose my job over this,” and instead advised he’d said, “Someone should lose their job over this,” meaning the Clerk. He said after describing the liquor incident to the Speaker as he had to me, the Speaker asked him if there was anything else that caused him concern, and that’s when he told him about the wood splitter and trailer that had been purchased for emergency preparedness. He said he told the Speaker that he was concerned that all the other emergency preparedness items purchased had been placed into a

container at the Precinct, but he had never seen the wood splitter or the trailer that he knew had been purchased.

Witness 5 said that SAA Lenz did not tell him what he had told the Speaker about the liquor incident, or what advice he had given him. Regarding SAA Lenz's "investigation," he said SAA Lenz didn't explain to him what he was doing, but he knew he obtained a statement from Witness 7, and he was asked to provide one as well.

With respect to his statement not including his views that the incident constituted theft, he explained, "I just quickly wrote that. I was asked to write that [SAA Lenz] very quickly after I had the meeting with Mr. Plecas." He noted he wasn't interviewed, and only described what he had been told about the incident, not his opinions about it or his conversations after the fact with SAA Lenz. He said he did not know what SAA Lenz or Witness 7 put in their statements.

Regarding the missing-then-found memory stick, Witness 5 recalled that Ms. Ryan-Lloyd was assisting Neil Abraham, Justice McLachlin's associate, with various requests. He said Mr. Abraham asked him about the missing statements, but he didn't know where they were, and Mr. Abraham subsequently emailed him (on March 23, 2019) that they were supposed to be in the SAA's safe. Mr. Abraham did not advise him to look for a memory stick.

Witness 5 said he checked both safes in SAA Lenz's office (on March 25, according to his notes) in the company of Witness 6, [REDACTED], but couldn't find the statements; however, he noted he was looking for printed documents and didn't learn until much later they were supposed to be on a memory stick. He advised Mr. Abraham on March 25 by email that he couldn't find the statements.

Witness 5 was noted that SAA Lenz was "sometimes bad" in that he put files on his hard drive, rather than the network. "See, I don't do that. Everything I do goes to the network.... It's just the way I do business. I never put anything on the desktop...first of all, computers crash, and you would lose anything that you have. And, so I mean you just don't do that. They would just go on the servers. Anyway. And I don't do anything on my computer that I wouldn't want anybody to see anyway."

Witness 5 noted that after Justice McLachlin finished her investigation, he searched SAA Lenz's office again, on May 6, and that Mr. Mullen, Ms. Ryan-Lloyd, Witness 2, and another LAPS SPC [REDACTED], were also present. On this occasion, he knew they were looking for a memory stick as a result of the information from Witness 7 through Witness 9 to Ms. Ryan-Lloyd.

Witness 5 wrote in his notes that they were looking for "USB sticks in order to ascertain the statement written by Gary and Witness 7, alcohol being loaded into the clerk's truck are perhaps loaded on a USB located in the office. A subsequent search located 11 sticks, the majority of the USB sticks were found in the top right drawer of Lenz's desk, and one was found in the wooden credenza underneath the sword case [in a safe]. USB sticks were photographed

and handed over to Witness 2 to search for the aforementioned statements. Office secured at 10:56, photo attached, entry log and notated.”

Regarding the safes, Witness 5 advised that both required a code, but the batteries had worn out in the safe containing the memory stick in question, rendering the code feature inoperable, and the key was left in the safe. Witness 5 agreed with another witness’s statement that he had commented that the code hadn’t changed but said that was in reference to a second safe in the office and the memory stick with the statements was not found in that safe. Witness 5 stated that he was very concerned that the Speaker had directed him to give Mr. Mullen a key to SAA Lenz’s office, because he could not then maintain security/continuity of the office. He advised he became suspected of being involved in the memory stick going missing and being found again, as well as another document going missing, when he wasn’t able to control access to the office. He was extremely upset about this circumstance.

Witness 5 confirmed he had been with Mr. Mullen when Mr. Mullen searched Lenz’s office on April 3 and that the safes were searched, but he could not say there was no memory stick because he had been looking for printed documents. He was not certain that Mr. Mullen had taken photos but saw that he had his phone out and was not surprised by that.

Witness 5 advised, he’d be willing to take a polygraph and was adamant that he was being truthful; I found no reason to believe he was not.

Witness 5 also advised that no one else could have accessed SAA Lenz’s office with Witness 5’s key because he kept it secure, and that if the memory stick wasn’t in the safe on April 3, he had no idea how it was placed there to be found on May 6, but was extremely upset that his integrity was questioned by the Speaker and Mr. Mullen.

I found Witness 5 to be a very straightforward witness who was doing his best to be accurate but who also appeared to be trying to give SAA Lenz the benefit of the doubt. He provided reasonable explanations for his own conduct that had appeared suspicious to Mr. Mullen and to the Speaker; again, there were breakdowns in communication and some of the suspicions can likely be attributed to understandable mistakes in recollections of certain events by the Speaker and Mr. Mullen. I found Witness 5 to be a credible witness whose evidence was corroborated by other witnesses and I therefore I found it to be reliable.

#### Interview of Witness 6, [REDACTED]

On July 15, 2019 at 1:15 pm, I conducted an audio taped interview of Witness 6 at the Farris law office in Victoria. The interview is summarized below, and a full transcript is included in Attachment “R”.

Witness 3 had been [REDACTED] since February 2017. She was initially somewhat hostile and defensive with me, and stated she believed the investigation into SAA Lenz was “scraping the bottom of the barrel, really looking for something to pin on him...”

However, she became more cordial and appeared to be doing her best to cooperate and provide accurate information.

Witness 6 said she had a good relationship with SAA Lenz but hadn't worked closely with him for about a year, because [REDACTED]. Prior to that, she had been quite new in the position and was [REDACTED], so was focused on learning her new job and had no reason to question anything SAA Lenz did. She described SAA Lenz as being "great" as a [REDACTED], very supportive, a good communicator, and she respected him.

She said her only knowledge of the 2013 liquor incident was from the media, and that SAA Lenz had never discussed it with her. She described SAA Lenz's relationship with Mr. James: "They seemed to have a great working relationship...they travelled together, they had meetings together every day. It seemed to be a good relationship."

Witness 6 said she had no knowledge of SAA Lenz's 2018 investigation. She did recall Witness 5 asking her to come with him as a witness while he searched SAA Lenz's office. She said she asked him what they were looking for and Witness 5 said, "It's a statement, so it'll be on – either in an envelope or on a piece of paper." She said they looked where they were directed, in the two safes in the office, but didn't find anything. She thought that at least one of the safes was open.

On either that day or a different one, she was advised the statement might be in her safe, which they searched but didn't find the statements there either. She was not involved in the search that located the memory stick on May 6 and said she didn't know anything about it. She had no idea how the memory stick could have gotten in the safe by May 6 if it wasn't there in April.

When I asked her if Witness 5 could have been involved in something "sneaky" like that, she said, "Nope. He is as far from sneaky as you can get...Straight up guy. Honest, loyal, you know, professional...Careful in everything he does... [REDACTED]."

Although Witness 6 demonstrated a clear bias in favour of SAA Lenz and disapproved of the investigation, I found her to be a credible witness but with minimal relevant information.

#### Interview of Witness 7, [REDACTED]

Prior to interviewing Witness 7, I obtained from LAMC counsel Marcia McNeil the transcript of Witness 7's March 22, 2019 interview with Justice McLachlin, which is contained in Attachment "S".

On July 19, 2019 at approximately 9:00 am I interviewed Witness 7 at the Offices of Farris law firm in Victoria. The following is a summary of the key portions of his interview; the full transcript is included in Attachment "T".

Witness 7 is the [REDACTED] at the Legislature. For the year prior to SAA Lenz's suspension, Witness 7 reported [REDACTED]. Prior to that, from 2011, Witness 7 was the [REDACTED] and reported through Witness 8, who was then the [REDACTED], to SAA Lenz. During that time, Witness 7 dealt with SAA Lenz on an average of every second day.

Regarding the 2013 liquor incident, he said SAA Lenz contacted Witness 8 on a Friday (April 19) to ask them to load a desk, chair and liquor in Mr. James' truck for him to take to retiring Speaker Barisoff in Penticton. He said this was the second time they had been asked to load liquor into Mr. James' full-size pick-up truck. The following Monday, April 22, was the date set for the loading, and he and his staff loaded the truck. He said SAA Lenz specifically asked him to have liquor loaded in Mr. James' truck that day, and recalled it was hard liquor and some wine. He said they didn't count the amount of liquor, but it was a big, black truck and they loaded it full of from six to ten boxes. "And then hard liquor, some boxes were actually just sealed, still brand new. There were one or two boxes open...some bottles might be open too," and that there were eight to ten bottles in each box.

Witness 7 recalled this had happened once previously as well, when SAA Lenz had asked that they load Mr. James' truck with "a lot of beer and wine that day. Again, "we loaded his full truck back box. And, also, we loaded behind his driver and passenger seat also." Witness 7 said he was concerned, because he heard that the liquor went to Penticton with the desk and chair.

Witness 7 said he did discuss the incidents with SAA Lenz and told him words to the effect that it was "stupid" and "wrong" but that SAA Lenz just smiled. "He – I think he knew everything, more than us..." Witness 7 said they used to joke about the incident. He said he didn't recall seeing Witness 5 when the liquor was loaded, but, "He knew everything, because we had discussed thing many times in Gary's office...but I do remember Gary Lenz came with Witness 8 the first time, and then we start loading liquor and he just walked away." He said he couldn't remember if SAA Lenz was present when liquor was loaded the second time, but he did talk to him that morning.

Witness 7 reported that "Witness 5 always said, this is wrong. It was wrong" and that SAA Lenz was present when these conversations occurred in regular meetings in SAA Lenz's office, but that SAA Lenz just smiled, and they moved on to a different topic. Witness 7 said at no time did SAA Lenz ever give an explanation for the liquor being removed, never said it was being returned for a refund, and basically just ignored his concerns.

Regarding SAA Lenz's investigation in 2018, he said that in May or June he dictated a statement to SAA Lenz in SAA Lenz's office and SAA Lenz typed it on his computer. He said he subsequently met with Witness 5 who said, "Oh fuck, there's an investigation going on," but didn't give him any details. He said a few weeks went by, then he was in SAA Lenz's office and he asked him and Witness 5, who was also present, what was going on with his statement. He said SAA Lenz and Witness 5 both said, "Oh, nothing, there was an investigation going on and

our Premier doesn't want to proceed," and noted that Witness 5 was still upset about being involved in the matter. He specifically recalled that SAA Lenz said words to the effect that "the Premier doesn't want to proceed with this investigation."

(Witness 7 did not have occasion to tell Justice McLachlin about the conversation about the "Premier" not wanting to proceed with an investigation. This information is material because it corroborates the statements of the Speaker and Mr. Mullen that SAA Lenz was pressuring them to go to the Premier with the information about the liquor incident, which they did. Further, Witness 5 later advised me he recalled this conversation as well, but it didn't come up in his interview with Justice McLachlin either.)

Witness 7 was relieved to be told the investigation was concluded because Mr. James was "my big boss" and he was worried about how his statement would impact his career.

When asked if he had any other conversations about the investigation with SAA Lenz, Witness 7 reported that, "I did, and he did – I don't remember that it was before my statement or after, but he did actually – he said to me one time that, "Oh, the Speaker wants to investigate the whole thing". And I said, 'Who's telling the Speaker?'. He said, 'Oh, someone, he knows everything.'"

When asked why he didn't put more information in his statement, such as his concerns that the liquor removal was wrong, Witness 7 explained he had never been in such a situation, didn't know how "these things work," but said that if he'd been asked the right questions, he would have told the truth, but just described the actual loading.

Regarding the missing statements, Witness 7 advised that he had been away on holidays and then off sick when Justice McLachlin first requested the statements. When he returned, he spoke to Witness 9 and advised her his statement and SAA Lenz's had been saved to a memory stick and should be in SAA Lenz's office (which led to the May 6 search and recovery of the missing memory stick.)

Witness 7 confirmed that when SAA Lenz and Mr. James were suspended, "we changed the locks and there was only two people who had access to Gary and Craig's office. One was Mr. Speaker and the second person was Witness 5."

I found Witness 7 to be a credible witness whose memories on the key facts were very clear. In addition, his recollections were corroborated by other witnesses, and I found his evidence to be reliable.

### [Interview via Email of MLA Linda Reid Through Her Counsel](#)

On July 22, 2019 I sent an email to MLA Linda Reid – who was the Speaker from June 2013 to April 2017 – seeking a brief interview. The purpose of the requested interview was to:

1. Determine if SAA Lenz had spoken to then-Speaker Reid about the 2013 liquor incident, as Witness 5 had said he had committed to;
2. Corroborate Ms. Ryan-Lloyd's statement that she had discussed the 2013 liquor incident with Ms. Reid in the context of policy discussions;
3. Seek any other knowledge Ms. Reid had of the 2013 liquor incident.

On July 27, Ms. Reid responded by email that she was away for a few weeks and directed me to her counsel, George Cadman, Q.C. He advised that Ms. Reid would not be sitting down for an interview but that he would respond on her behalf to written questions. As a result, I corresponded with Mr. Cadman and provided him with a series of questions.

Mr. Cadman declined to provide a response to my question of whether Ms. Reid had any knowledge of the 2013 liquor incident involving Mr. James. He also declined to provide a response to my question about Ms. Reid's recollection of speaking to Ms. Ryan-Lloyd about the incident. He advised that it was his opinion that these questions were not relevant to my investigation. After I explained the purpose of the questions to the extent I could while preserving the integrity of the investigation, he responded, "I appreciate your explanation below of relevance with respect to Questions 3, 4 [regarding her knowledge of the incident, and whether she recalled Ms. Ryan-Lloyd speaking to her about it]. That said, I disagree with her need to answer the same, there will be no response to those questions."

Mr. Cadman advised the answer to whether SAA Lenz had spoken to Ms. Reid about the liquor incident was "no."

To my questions of whether she had any documents, information or knowledge relevant to my investigation, he responded that she had no such documents, knowledge or information.

Our correspondence – including the full set of questions I provided – is included in Attachment "U".

#### Interview of Witness 8, [REDACTED]

Prior to interviewing Witness 8, I requested from LAMC counsel Marcia McNeil a copy of any portion of the transcript of his March 19, 2019 interview with Justice McLachlin relevant to the 2013 liquor incident. That excerpt is included in Attachment "V".

The following is a summary of relevant portions of my interview with Witness 8; the full transcript is included in Attachment "W".

In 2013, Witness 8 was the [REDACTED] for the Legislative Assembly, reporting directly to SAA Lenz with almost daily contact, but moved to his current position in [REDACTED], when his interactions with SAA Lenz became limited. Witness 7 reported directly to Witness 8 in 2013.

Witness 8 said he had a good relationship with SAA Lenz and trusted him, but:

One of the things that we do at that building is we don't question, because both Witness 7 and I's position, we often interact with the Clerk or the Speaker or the Sergeant directly, and that's sort of the highest levels that we have in our organisation. So, we're quite used to getting direction from one or all three of them – not at the same time – but, you know, so we're quite used to getting that sort of direction. So, we take that sort of position – it's not our place to question if they say that you must do something, then we sort of go.

Regarding the 2013 liquor incident, Witness 8 confirmed that he received an email from SAA Lenz on Friday, April 19, 2013 asking him and Witness 7 to load Mr. James' truck with a desk and chair on Monday for transport to Penticton. He responded on April 20 that he was away that day but Witness 7 would take care of it.

Witness 8 heard after the fact that his staff had loaded a “bunch of cases of alcohol” along with the desk and chair. He said after the fact he was part of conversations about it but couldn't recall specifics of who was there:

I know at some point in the conversation we kind of went, why did we ship all this alcohol? We didn't know where necessarily it was going. What we know was the desk was going to the Speaker's place...I didn't know if the [alcohol] was going there or it was going elsewhere...but we talked about it afterwards...why did we put all this alcohol in the truck and where's that going...We kind of just thought that was a very weird sort of thing to happen...The fact that the direction from Gary was to load that stuff up, the fact that the Clerk took it, they are the Sergeant and the Clerk, we don't question what they need to do or what they do.

Upon thinking about who he would have had these conversations with, Witness 8 thought that:

probably Witness 5 and I with Gary might have had a conversation after that event, probably just – and I can only surmise that we did, because we kind of thought that was kind of a strange thing to happen. We've seen, you know, stuff at the building – stuff – you're going to ask what stuff – but, you know, you just see this sort of stuff and kind of – is that right or is that wrong, and why would they do that. It was not that we would try to judge it, but why would they do that?

Witness 8 observed that:

It just seemed odd to us. And, we couldn't wrap our head around why you would do something like that, right. Why are you taking liquor and transporting it? What is that for? What is the intent of it? Like, that's the sort of the sense that we have – that I have – I shouldn't speak for anybody else. Why are we doing that? Like, right or wrong, it just didn't seem like the right thing to do. I don't know if it's illegal, but it just didn't seem the right thing to do. Like, when you just sit back and kind of go,

wow, why? If I took alcohol and delivered it to my house, that would be a problem. But, if the Clerk is taking the alcohol from the building and delivering it, how is that really different? If it was me, I know it would be wrong.

Regarding SAA Lenz's 2018 investigation, Witness 8 was unaware of it and was not asked for a statement by SAA Lenz. He had no knowledge of the missing statements.

I found Witness 8 to be a credible and reliable witness. His memories from 2013 weren't as clear as Witness 7's, but his recollections of key issues were entirely consistent with those of Witness 7 and Witness 5, particularly regarding the content of conversations that took place following the liquor incident.

#### Interview of Witness 9, [REDACTED]

Prior to interviewing Witness 9, I requested a copy of any portion of the transcript of her interview with Justice McLachlin relevant to the 2013 liquor incident. The LAMC's counsel, Marcia McNeil, advised there was nothing relevant in Witness 9's transcript – she was not interviewed about the liquor incident.

On August 6, 2019 at 1:30 pm, I interviewed Witness 9 at the offices of Farris in Victoria. The following is a summary of the interview; a transcript of the full interview is included in Attachment "X".

Witness 9 has been in her current role since March [REDACTED]

Witness 9 sits on the [REDACTED] with SAA Lenz and interacted with him on average two times per week for regular meetings, and also for occasional unscheduled meetings regarding budget issues.

When the liquor incident occurred on April 22, 2013, Witness 9 was [REDACTED]

[REDACTED] She recalled some activity or noise and [REDACTED] see a truck being loaded. She wasn't sure what was being loaded but thinks she saw some framed pictures.

She recalled that the incident became the topic of discussion for many employees but couldn't recall who she spoke to specifically about it. She did recall that the conversations were about the former Clerk's truck "being loaded with alcohol left over from conferences, and other items. And that they were saying that it – where he took was to Penticton...and to the former Speaker's home." She couldn't recall specifically when these conversations were occurring.

Witness 9 said she had never discussed the incident with SAA Lenz and that his claim in his response to the Speaker's report that he had spoken to her about it was incorrect. She said she thinks she would recall if SAA Lenz came to her in 2013 after the incident because [REDACTED] and would have been very concerned by the circumstances. If he had come to her, she said:

Well, I would have looked into it and asked the questions. And asked the questions of who – it's like doing a little mini investigation, right. So, you go through and you've got to ask the different people as to kind of what happened. And like I say, it could work out, no, there's something, and like you say, in this example it was returned, and here's the receipt, and he was just being generous with his time and returning it. But that didn't take place.

Witness 9 confirmed that more recently she had done a full search and confirmed there was no record of a refund having been obtained for the 2013 liquor, although she had records of other liquor refunds from other occasions, like for liquor returned after a 2016 conference.

She agreed that if SAA Lenz believed the liquor was returned for a refund, he could have easily confirmed that with her, that it would be "normal" as a [REDACTED], and [REDACTED] would have records of any returns. She said that did not occur. She did recall that after that incident, in 2013/2014, that work was begun to create an "Alcohol and Gift Policy" and Witness 9 provided copies of the draft and other relevant documents, which are included in Attachment "Y".

Witness 9 also recalled that, as a result of emails from SAA Lenz and Witness 5 requesting it, work was begun on a Liquor Inventory Policy, and SAA Lenz was assigned the responsibility of creating the policy, but it was never implemented. She recalled that a person involved in creating the policies was a contractor working in financial services, [REDACTED]. She later provided a copy of an email from [REDACTED] to her sent August 19, 2013 responding to a question about whether he could get a budget document completed. His response was, "That was the plan until Gary wanted the inventory, gift and alcohol policies developed." A copy of that email is included in Attachment "Y".

Witness 9 said there was an arrangement to return any unopened liquor for a refund, but there would be a receipt, and that SAA Lenz oversaw that process assisted by Witness 5.

I asked Witness 9:

...would it be fair for me to suggest to you that if questions were being raised with Mr. Lenz by various members of staff about the appropriateness of Mr. James taking this large amount of liquor, would it be reasonable for him to come...to [REDACTED] and say, 'Hey, I need to check and see whether this liquor was returned for a refund, and if not I need to check with the Clerk and ask him where did this large

amount of liquor go?' Would that be a reasonable expectation among the Executive...?

Witness 9 responded, "Yes. I agree. Either coming to [REDACTED] or coming to [REDACTED] as a group to have that conversation. So. Yes, reasonable. Reasonable expectation."

Witness 9 said it was "the missing piece" that SAA Lenz didn't follow-up to ensure the proper steps had been taken, and said:

...the timing of [him] asking about this inventory policy makes me think that he didn't feel it's okay, or if it was Witness 5 that had initiated that, he didn't feel it was okay. Just based on the timing.

When advised that SAA Lenz had said in his interview with Justice McLachlin that he assumed the liquor was being returned for a refund and didn't have any reason to believe anything wrong had occurred, Witness 9 responded with:

I guess to me that missing element, if he thought it was returned, and if he had some concern with it that he would have followed through to confirm that it actually had been returned, or communicate out to the rest of the Executive Group. So, I've got a bit of a problem with it, in terms of it seems like he didn't follow through on all the steps.

When asked whether it was reasonable that the Special Provincial Constable responsible for security at the legislature did not take such steps, Witness 9 responded:

I guess I find it a bit hard to believe, given the initiative to – and over creating an alcohol inventory policy, and always making sure that all the Sergeant-at-Arms alcohol is counted and tagged, and all these steps that are done – I understand that when alcohol comes back from conferences, so let's say a conference at one of the hotels, and it comes back, it's all taped and sealed and counted to make sure that everything that was collected comes back and doesn't go missing. So, if you put that argument to make sure nothing's missing there, that's a lot of due diligence on that process, to not do due diligence on a truck leaving the Precinct – and if the assumption is that it would – it's being returned to the Liquor Distribution Branch, it just seems a bit odd that the Clerk would be returning it. Why would he not get staff, the staff who picked it up in the first place, to return it?

She went on to point out how unusual it would be for Mr. James to return liquor, "because...he has staff to do that, he's the highest top person in the organisation. That's a very high hourly rate to return anything really."

Regarding her expectations of SAA Lenz and what would be due diligence in these circumstances, she said:

I would think he had an opportunity – like I said, he could have communicated if he had any concerns, that would indicate that he didn't have any concerns with what was occurring. But I would expect that there would be some kind of red flags, because – and you're right in pointing that out, because that's the email that I have – it's like desks, chairs – and it just seems like a clearing out of material from the Legislative Assembly. I would be surprised that he didn't have any concern at that time when it was occurring, and particularly if there were two instances of it.

Witness 9 further explained her expectations:

I would expect the first step would be – given that he was directed by the Clerk and if he had concerns, which he should have had concerns over it based on what was loaded, that he would talk to the Clerk and find out, you know, get the proof of the record of the return to LDB. I don't know what the conversation, if they had a conversation, what it was. But to get the proof that it was returned.

If the Clerk said that he returned it, then follow through and get the record, because it would have to go through Financial Services. I think that would be reasonable. If he felt he didn't get a good response from the Clerk, then he could have brought it up with either the full Executive, including the Clerk, or the remaining maybe without the Clerk, but at least the Deputy Clerk and [REDACTED], as to kind of express his concerns.

Witness 9 also agreed that it would have been appropriate for SAA Lenz to raise any concerns with the incoming Speaker, Linda Reid.

Witness 9 pointed out that SAA Lenz and Mr. James were close and that he would have no reason to be uncomfortable speaking to him: "I think they had a close relationship...Mr. Lenz spent a lot of time with Mr. James in meetings, so I'd often go to ask the Clerk a question and the door would be shut, and when I'd ask who was in there I would be told it was Mr. Lenz."

Regarding SAA Lenz's 2018 investigation, Witness 9 was not aware of it when it occurred. She only learned of it when the RCMP began their investigation and Witness 7 advised her that SAA Lenz had taken a statement from him.

Witness 9 was aware that staff were searching for statements Justice McLachlin had requested – she believes it was Witness 2, [REDACTED], who advised her. She suggested searching the network drive but that had already been done. Then she suggested to Ms. Ryan-Lloyd that they ask Witness 7, that maybe he had a copy of his signed statement, but then learned from Witness 7 that there was no hard copy, no signed copy, and Witness 7 didn't receive a copy. Witness 9 informed Ms. Ryan-Lloyd of this, that they should be searching SAA Lenz's office for a USB stick, which she understood occurred but wasn't present for. Witness 9 sent an email to Ms. Ryan-Lloyd on June 19, 2019 documenting these circumstances and provided me a copy.

I found Witness 9 to be a credible and reliable witness with documentary records that support her recollections. Together, her recollections and documents corroborate Ms. Ryan-Lloyd's recollections that SAA Lenz was concerned after the liquor incident and wanted a policy developed. Like Ms. Ryan-Lloyd's evidence, Witness 9's evidence strongly rebuts SAA Lenz's evidence to Justice McLachlin that he assumed the liquor was being returned for a refund, and that he had no reason to believe anything wrong had occurred.

#### Interview of Witness 10, [REDACTED]

On August 15 at 10:40 am, I conducted an audio recorded phone interview of Witness 10. The purpose of the interview was to corroborate the Speaker's statement that he had attempted to meet with the Premier, as he said SAA Lenz had recommended, regarding Mr. James and the liquor incident. (Unknown to SAA Lenz, however, the Speaker also wished to discuss many other concerns about both Mr. James and SAA Lenz with the Premier.)

A summary of the interview follows; the full transcript of the interview is included in Attachment "Z".

[REDACTED] in Premier's office also joined by phone at Witness 10's request, because she had been present for the July 30, 2018 meeting with the Speaker.

Witness 10 became [REDACTED]. He advised the Premier's office was approached from the Speaker's office via Mr. Chouhan regarding information that had come to their attention that was very concerning, and they felt the Premier should know it. When Witness 10 spoke to the Premier, Premier Horgan wanted Witness 10 to take the meeting because when Craig James was appointed, he was not appointed with unanimous consent at the Legislature, but rather was put forward by the then BC Liberal Government, and Premier Horgan opposed that procedure. As a result, he felt "he should take extreme care to avoid any suggestion that he had had a partisan or a biased involvement in any way in matters that were touching on the operation of the Clerk's office."

Witness 10 confirmed he met with the Speaker, Deputy Speaker Raj Chouhan, and Mr. Mullen on July 30, 2018 at the Vancouver Cabinet office. He recalled the Speaker showed him a report of 40 to 50 pages with long list of allegations, including the 2013 liquor incident. He recalled every page had surprising material and that the liquor incident was not the most shocking part. He recalled that the key point regarding the liquor was that it was purchased with legislature funds, placed by the carton in Mr. James's pick-up truck, and delivered to the previous Speaker (Barisoff). He recalled he was told that this information was known to SAA Lenz, and he hadn't done anything about it, Witness 10 said this information was in the document he saw and was briefly part of their conversation.

He advised their meeting was brief, and his advice to the Speaker was that he should bring his information to the police so that it could be professionally assessed.

Witness 10 said the Speaker left behind a copy of his report, but he subsequently shredded it, and didn't brief the Premier until the news broke in November, nor did he have any further knowledge of the matter.

Witness 10 further advised that on November 19, 2018, the day Solicitor General Farnworth informed Premier Horgan of the appointment of two Special Prosecutors regarding financial issues at the Legislature, he wrote a memo about his July 30 meeting to Don Wright, Deputy Minister to the Premier. Witness 10 provided a copy of that memo to me and it is included in Attachment "Z".

I found Witness 10 to be a credible and reliable witness, based on his detailed and concise recollection of his meeting, and because he had written a report about the circumstances.

### Interview of Deputy Speaker Raj Chouhan

On August 15 at 1:05 pm, Mr. Chouhan returned a message I had left for him asking him to call me. I conducted a brief, non-audio recorded interview with him to determine whether an in-person meeting was necessary.

Mr. Chouhan confirmed Witness 10's recollections of the meeting. He said the meeting was brief, that he didn't recall the liquor incident being discussed specifically, and that Witness 10 was very quick to advise the Speaker that he should take his information to the police. He also advised that he had never spoken to SAA Lenz about anything to do with the liquor incident and didn't hear about it from any other source until he read Justice McLachlin's report.

Based on that information I advised Mr. Chouhan I didn't need to conduct a formal interview.

### Documentary Evidence

In addition to the documents described elsewhere in this Report, I sought other sources of documentary evidence, as follows:

#### SAA Lenz's Emails

I sought copies of relevant emails from SAA Lenz's email account, based on search criteria I provided. Legislative Assembly IT staff first searched the network and a copy of SAA Lenz's hard drive but did not find anything responsive. IT staff then searched SAA Lenz's Outlook (email) account and found nine emails that met the search criteria I had provided. Three of those emails I determined to be relevant:

1. The first is the email exchange described by several witnesses in which on Friday, April 19, 2013, SAA Lenz sent Witness 8 an email asking him to assist the Clerk with loading a

desk and chair being gifted to Mr. Barisoff on the following Monday (April 22). The email was cc'd to Witness 7 and Craig James. Both Witness 8 and Witness 7 provided copies of this email in their interviews. They both clarified that it was on this occasion they were also directed to load a significant amount of liquor into Mr. James' truck. SAA Lenz said in his evidence (Attachment "DD", at pp. 95-98) and Final Submission (Attachment "CC", p. 6) to Justice McLachlin that he observed the alcohol being loaded on this particular occasion.

2. The second is an email string that starts August 28, 2013 and ends August 29, 2013 with a subject line of "BC Wines" but which concerns the development of an alcohol policy. The string starts with discussion between Witness 3 (then [REDACTED]) and [REDACTED] (the contractor hired by Finance to develop an alcohol policy for the Legislative Assembly, as described to me by Ms. Ryan-Lloyd and Witness 9). They discuss Witness 3's suggestion of "asking the Clerk's Office to use their contacts for this. They can email out a request for information from their cross-country contacts in other Leg's...It's pretty common when one legislature wants to write a policy that they all email each other as a starting point. Might cast a bigger net than just inquiring of the other Sgts verbally."

Mr. Lenz responds in the email string when asked for his input that, "My take is this is a question we resolve in BC and at our level. We can discuss at our next meeting."

3. The third is an email string that ends with an email from SAA Lenz forwarding the string to Witness 8 on September 5, 2013. The subject of the email is "Draft Policies – Non-Capitalized and Expendable Assets and Alcohol Use at LA Events" that were being developed by [REDACTED]. The content of the email string refers to the development of an alcohol policy, including a "Gifts" policy, and a policy regarding "Alcohol Use at LA Event" for which it is noted by [REDACTED] that, "SAA having control over alcohol may really be the portion that is desired." [REDACTED] concludes his email noting, "I know this is a high priority area."

The second and third emails described above corroborate the recollections of Ms. Ryan-Lloyd and Witness 9 that SAA Lenz instigated the development of an alcohol policy because of his serious concerns about Mr. James taking the April 22, 2013 load of liquor, ostensibly to Mr. Barisoff.

Copies of these documents are included in Attachment "AA".

### SAA Lenz's Cell Phone Records

Both the Speaker and Mr. Mullen described SAA Lenz repeatedly contacting them to press them to take the information about the "theft of booze" to the Premier as leverage to force Mr. James to retire, once he had told them of the incident. Witness 5 described that the day he spoke to the Speaker about the liquor incident was May 28, 2018. Thus, I was interested in SAA Lenz's pattern of cell phone calls to the Speaker and Mr. Lenz prior to May 28 as a "baseline"; during the period May 28 to August 2, when the Speaker says he advised SAA Lenz that the July 30, 2018 meeting at the Premier's office didn't go well; and the pattern of calls following that period.

The purpose of my review was to determine if the cell phone records corroborated the Speaker and Mr. Mullen's description of events, and rebutted SAA Lenz's claim to Justice McLachlin that he was only regularly contacting the Speaker to explain the process for getting rid of the Clerk because he thought the Speaker didn't understand it.

Mr. Mullen provided me a copy of Mr. Lenz's work cell phone records. I also confirmed the Speaker's and Mr. Mullen's phone numbers. Mr. Mullen obtained these records from Legislative Assembly IT on April 30, 2019. (This was after Mr. Mullen's March 19 interview with Justice McLachlin. She concluded her interviews on March 29, and circulated her report on May 2, so did not have the benefit of reviewing these phone records.)

I examined the pattern of calls to the Speaker and Mr. Mullen's cell phones and noted the following:

- From May 14 to May 31, 2018, there were only two calls between SAA Lenz's cell phone and the Speaker's cell phone. There were none between SAA Lenz's phone and Mr. Mullen's phone. (The Legislative Session ended May 31, 2018, according to the Parliamentary calendar.)
- From Monday, June 4, to Tuesday, July 31, there were 21 calls between SAA Lenz's phone and Mr. Mullen's phone, and 22 calls between SAA Lenz's phone and the Speaker's phone, for a total of 43 phone calls.
- In the month of August, there were only two calls between SAA Lenz's phone and the Speaker's phone, and one between SAA Lenz's phone and Mr. Mullen's phone.
- From September 1 until September 25, inclusive, there was only one call between SAA Lenz's phone and the Speaker's phone, and none between SAA Lenz's phone and Mr. Mullen's.
- From September 26 to September 28, there was a flurry of calls, with 11 between SAA Lenz's phone and Mr. Mullen's and one between SAA Lenz's phone and the Speaker's. That flurry continued into October, with four calls between SAA Lenz's phone and the

Speaker's on October 5, and 13 calls between SAA Lenz's phone and Mr. Mullen's between October 8 and October 11. The total calls between SAA Lenz's cell and those of Speaker Plecas and Mr. Mullen from September 26 to October 11 was 29 calls. Mr. Mullen advised me by email on August 15, 2019 that this was a period when SAA Lenz again was pressuring them to use the information he had provided them to get rid of Mr. James:

The flurry of calls on the dates you mentioned below was regarding Lenz constantly and continually asking me if I had heard back yet from the Premier and the AG etc. He got it into his mind that we were going to execute his grand plan to remove James by having the premier/AG review the theft of Liquor amongst other things and then they would go to him and say "we are going in a different direction" and it would be time for him to go. And he would get a golden handshake and a payout and he could ride off into the sunset and we would have a party for him. All this while maintaining we under no circumstances wanted outside police involved or on the property... He would call/txt me continuously and tell me more stuff such as the "theft from the premiers vault" etc. He would give more and more details to in his mind convince the premier/AG. So it was indirectly related to the liquor incident as that was what prompted his suggestion that we go to the Premier. In addition he would continually come into my office (upward of 8 times a day) and ask me to come down to his office for the same purposes.

Copies of the phone records are included in Attachment "BB".

### Technological Evidence

In the course of my investigation, I learned that memory sticks each have a unique serial number, and that they may leave electronic "artifacts" on the hard drive of a computer in which they are opened. A private company, EFS e-Forensic Services Inc., had already been provided the memory sticks found in SAA Lenz's office containing the missing statements by the Speaker's counsel. Certain examinations had been conducted, but nothing of evidentiary value was determined. The e-Forensics report noted that if they had the computer that created the files on the stick, examinations might provide further insight.

As a result, I obtained an "image" of SAA Lenz's hard drive from Legislative Assembly IT staff and had e-Forensics examine it, but they advised it was not a true image but rather a copy of the contents of SAA Lenz's hard drive. I then sought through Legislative Assembly IT a true image of SAA Lenz's hard drive, which had been seized by the Office of the Auditor General. That image was provided to me and I provided it to e-Forensics, but they were not able to determine anything of evidentiary value.

### Interview of SAA Lenz

Prior to interviewing SAA Lenz, I requested of LAMC counsel Marcia McNeil any portion of the transcript of SAA Lenz's interview with Justice McLachlin that concerned the 2013 liquor incident and related matters. I was provided an excerpt totalling 19 pages.

On September 5, 2019 at 10:00 am, I interviewed SAA Lenz at the Vancouver offices of Farris law firm, at 700 W. Georgia, in the 25<sup>th</sup> floor "Discovery" board room. His counsel, Mr. Robert Cooper, Q.C. was present. The meeting was transcribed by court reporter [REDACTED], CSR (A). The following is a detailed summary of the interview. A full transcript is included in Attachment "II".

I started by explaining my role as an independent investigator appointed under the *Police Act*, the allegations, and confirming SAA Lenz was satisfied that he had received proper legal advice.

SAA Lenz provided his background, having served as a Reserve member of the military in 1978, including an overseas tour of duty with the United Nations. He returned to college in electronics and engineering technology, worked for BC Tel, and then began a 24-year career in the RCMP, finishing as a Staff Sergeant and the Officer in Charge of the Sidney Detachment. In his last two years, he was the RCMP's coordinator on Vancouver Island for the implementation of PRIME, the records management system now used by all police agencies in B.C.

In 2005, SAA Lenz joined the Legislature security force as a Special Provincial Constable, joining at the constable rank. Within six months, he had been promoted to staff sergeant, skipping the sergeant rank. After approximately two years, he was successful in a competition for the Deputy SAA position. Eventually, after an onerous process, he was successful in a competition for the SAA position.

SAA Lenz explained his role as an advisor to the Speaker, who is responsible for security at the Legislature. He explained how no outside agency, e.g., WorkSafe or a police agency, has any authority to come to the Precinct to conduct an investigation without coming to him, and then he gathers information for the Speaker to decide whether to provide approval.

SAA Lenz asserted that "if there's an allegation that has come forward, the role of the Sergeant would be, just a peace officer -- will be what are the reasonable and probable grounds to even initiate an investigation." (This is actually the legal standard to make an arrest, not merely initiate an investigation.) SAA Lenz emphasized that he didn't have the authority to conduct any kind of an investigation without the Speaker's approval, including looking at financial records.

I provided SAA Lenz the excerpt from his final submission to Justice McLachlin regarding the 2013 liquor incident and he confirmed it was from his submission.

SAA Lenz discussed the nature of his role and described that the “Victoria City Police and chief of police has functions and duties that are very similar to that of the Sergeant-at-Arms” but that the Chief of police reports to a police board and he reports to Parliament. He clarified that he was not saying that he is a police officer or chief, but that “the levels of responsibilities are the same.” In explaining why his salary now significantly exceeded that of a senior Victoria Police Inspector, (a paygrade he had advocated he be paid at in a memo several years previously), he explained that his responsibilities had increased greatly since then.

At this point I showed SAA Lenz his Oath of Office documents as a Special Provincial Constable and he confirmed they were his and bore his signature. He also confirmed that an unsigned copy of an MOU with Chief Constable Graham of the Victoria Police in 2009 was the one he signed, and that a newer one in 2013 with Chief Constable Del Manak bore his signature. He advised he would regularly meet with the Victoria PD Chief “as issues and things arise or just to keep in touch.” He described very professional and open relationships with the police chiefs.

I then put various names to SAA Lenz for his comments about their competence and trustworthiness.

SAA Lenz described Craig James as professional, trustworthy and respected, that he was on a first-name basis with him, and that Mr. James’ door was always open to him. He agreed he got along well with Mr. James.

SAA Lenz described having a courteous and open relationship with Ms. Ryan-Lloyd, that she was “excellent deputy clerk,” and that he had never had any reason to question her integrity or competence.

SAA Lenz described Witness 5 as “probably one of the most ethical trustworthy people I’ve ever met...He is trustworthy to the nth degree. His integrity is beyond reproach...you couldn’t have a better [REDACTED].”

SAA Lenz described Witness 7 as courteous and polite, he does his best, and that like the previously described people, they love the Assembly; he described that he was happy to have Witness 7 on his team, and that he had no reason to question his integrity or trustworthiness.

SAA Lenz described Witness 8 as capable, supportive, and a person who fulfills functions or duties he’s given.

SAA Lenz described Witness 9 as capable, “solid in her duties and functions,” that they had a professional working relationship, and that he considered her a trustworthy person.

We then moved on to the April 2013 liquor incident. I showed SAA Lenz his April 19, 2013 email asking Witness 8 to take care of having Mr. James’ truck loaded with a desk and chair for transportation to Penticton the following Monday, and he agreed it was his email. I asked SAA Lenz to tell me what he recalled of the incident. SAA Lenz said there were actually two

incidents, so I asked him to focus on the one that occurred on April 22, since there was a record of it.

SAA Lenz provided a very lengthy explanation of how liquor was purchased for conferences, and how he had always recommended an inventory policy to manage liquor, but the Clerk and Speaker at that point said no, and that position had continued up to Speaker Plecas.

SAA Lenz said that on the day the liquor was loaded in Mr. James' truck it was during business hours when the liquor stores would be open for return and that his "belief and assessment was everything was in place that it would be returned." He said there was no conversation that the alcohol was going to "Penticton or to anybody's other residence." SAA Lenz agreed it was a large load of liquor. SAA Lenz said he was not aware of Mr. James ever returning liquor for the Legislature prior to that incident but that Mr. James was a "very hands on person" and that he had been known to pick up supplies from Costco.

I asked SAA Lenz if he could recall any discussions he'd had with Witness 5 about the liquor incident. He said they were the same as the discussions with others at the Legislature, about the need for a liquor inventory policy to avoid bad optics, and that "my conversations with Witness 5 are about bad optics, not about thefts or anything along the lines."

I then put to SAA Lenz what Witness 5 had told me, that Witness 5 was:

very upset about it and that he told you that it was absolutely wrong. And then he told you that it was theft and that you needed to do something about it and that your response to him was, well, I was directed by the clerk to do it, and he said his response to you was, hey, that's the excuse that the Nazis used, you know, in Nuremberg saying, you know, the boss told me I had to do it. And that in his conversation which he explained in no uncertain terms said to you that is absolutely wrong, that you have to deal with it, and that you said, you're right, it was wrong. I will deal with it. I will go see Kate, the deputy clerk, and I will go see the speaker who -- new speaker is Linda Reid.

SAA Lenz said, "I don't recall any part of that conversation." He then went on to say that if Witness 5 believed that, "as a special provincial constable, then he has a responsibility to take that action also, and not just report it, but to follow up with it." He also denied that he told Witness 5 that Mr. James had told him the liquor was going to Mr. Barisoff, and said he had "no idea" why his recollection and Witness 5's recollection were so different, and that if the concern had been brought to him he would "move forward with it to all costs."

I asked SAA Lenz if Witness 5 had lied to me and he said "I can't talk for Witness 5" but that he did not recall the conversation. I put it to SAA Lenz that there was a difference between not recalling a conversation, and a conversation having not occurred. He then said, "I would say this conversation never happened."

I then asked SAA Lenz if he recalled speaking with Ms. Ryan-Lloyd about the liquor incident. He said he had advised her that the alcohol had been moved by the Clerk into his vehicle.

I put it to SAA Lenz that Ms. Ryan-Lloyd had told me:

you did speak to her about it shortly after the incident occurred. And that you told her you were actually quite concerned about the incident, that you were concerned that this was inappropriate. She said that you told her that the Clerk told you that he was taking the liquor to Mr. Barisoff's that you thought that it was a problem, and that actually you recommended a proactive policy around liquor and associated policies to at least prevent it from occurring in the future.

SAA Lenz said he recalled a conversation with Ms. Ryan-Lloyd in the context of optics: "it was he's going to Penticton, and, you know, if the alcohol was going to be taken there what would that be like. That would be a concern..." but that I had not portrayed their conversation accurately.

I put it to him that Ms. Ryan-Lloyd had been clear that it was about Mr. James actually taking the liquor to Penticton, not optics, and that SAA Lenz had told her that Mr. James told SAA Lenz he was taking the liquor to Mr. Barisoff.

SAA Lenz's response was that Ms. Ryan-Lloyd was mistaken. "Maybe she probably misunderstood that part of the conversation." He said Mr. James never told him the alcohol was going to Mr. Barisoff's residence and that if "the furniture is going to Craig James, what a terrible on optic."

I asked SAA Lenz, "What is the bad optics about taking the liquor and getting a refund from the liquor distribution branch and taking the desk and chair when it's a matter of record that they had been gifted to Mr. Barisoff?"

SAA Lenz's response is that when you don't have an inventory, "people will ask the questions" about where things went – that an inventory was the solution to bad optics.

I put it to SAA Lenz "or you could have just asked the Clerk, where are you taking it?"

SAA Lenz said that was true, but "there was nothing that would deem that this was being taken anywhere but where it should be taken." He added "I've had conversations with people, optics, about inventories, and, you know, later on in time people might have -- the story of, well, it probably went to Penticton or maybe it didn't go to Penticton or whatever" and he had no belief that it didn't go to the liquor distribution branch:

because I would have heard from Kate Ryan-Lloyd...if she felt this liquor had gone somewhere else she had a duty to report it to the Auditor General...To think that the clerk, the speaker, the executive, Kate Ryan-Lloyd have all conspired to get some liquor out of the back, that just doesn't ring with me. If they had concerns, then they should have brought it to my attention and said Gary we want this looked into.

I then advised SAA Lenz that Ms. Ryan-Lloyd had said that as a direct result of speaking to SAA Lenz about the incident, she had approached Mr. James and he told her directly that he had taken the liquor to Mr. Barisoff at Mr. Barisoff's direction.

SAA Lenz said he had no knowledge of that discussion and that Ms. Ryan-Lloyd should have come back to him and told him about the conversation. When I put it to him that Ms. Ryan-Lloyd said she first got the information about the liquor going to Mr. Barisoff from SAA Lenz and Mr. James confirmed it to her, he said, "Well, then she -- I'm saying I don't recall that -- not recall, but there was a mis -- how she perceived our conversation." SAA Lenz denied telling Ms. Ryan-Lloyd that Mr. James told SAA Lenz that he was taking the liquor to Mr. Barisoff, and went on to note all the options Ms. Ryan-Lloyd had for dealing with the information including asking him to look into it.

I then put it to SAA Lenz that development of a liquor policy that began soon after the April 2013 incident was directly related to it. SAA Lenz responded that:

It was related to the incident of the 22nd of the loading of the vehicle because of the issue was when you don't have the control of inventories optics take place. Rumours come up into place. You know, like, the desk is going and some of the staff are beginning -- you know, were saying, like, where is this alcohol -- you know, where was it going and along those parts. And when you have rumours of those part --that becomes the optics...I said, look, there's nothing here except that this liquor was moved in a proper fashion to be returned in that place, but if you don't have an inventory those types of things are going to spiral into place.

SAA Lenz admitted there were rumours in 2013 and 2014 that the liquor had "gone off possibly to Bill Barisoff's residence. And in my mind, that is a rumour. There was nothing to substantiate that rumour. Everything I saw and everything I heard from anybody who I dealt with indicated this was going to the liquor board."

I asked SAA Lenz who were the people he dealt with who led him to believe the liquor was returned for a refund. He responded:

Then I should correct my testimony. People didn't come to me and say, it had gone. I have no record or knowledge as to where the alcohol went. That record and knowledge would be left with the clerk's office, the speaker's office, Kate Ryan-Lloyd and financial services. The management of the alcohol was through the clerk's and the speaker's office.

I pressed SAA Lenz again on who he was referring to that led him to believe the liquor was returned. He responded:

It would be the conversations that I had with Witness 5 and Witness 7 in saying, did anybody say -- did anybody say this alcohol was going -- did the clerk or anybody identify to you that the liquor was going to Bill Barisoff's residence? No it was about the belief. So what I'm saying about -- everything

around me, including the deputy clerk, [REDACTED] or Witness 9, all these people, if there was a concern or there was an issue of -- that wasn't what I was believing, then they would have raised that with me, and I would have taken action.

SAA Lenz went on to describe how it was the responsibility of other senior staff to deal with the issue if they thought there was a problem but that wasn't what he was believing and that "I didn't get that from the deputy clerk at the end saying, yeah, like, we are out \$8,000, Gary."

SAA Lenz asserted that, "it is very clear that the sergeant has to have grounds. You don't jump on things and cause an issue unless you have some grounds. And I was -- and this was my belief. I've heard nothing from the people who were dealing with the alcohol. And if they had, then he would follow the process just like with [an MLA's] case."

I then asked SAA Lenz if he recalled having conversations with Witness 7 about the liquor removal incident. He responded "...there may have been -- there would have probably been conversations lately about rumours and I would -- that would be about it."

I put Witness 7's recollections to SAA Lenz that he recalled being in meetings with SAA Lenz, Witness 5, and Witness 8 in which Witness 7 expressed his concerns that the liquor removal was wrong, and that Witness 5 was very upset about it, and that they expressed their concerns in very strong terms. I also put it to him that each of these witnesses said that SAA Lenz never said at any time that he assumed the liquor was being returned for a refund, that the conversation centered around the liquor being taken to Mr. Barisoff. I advised SAA Lenz that I had interviewed each of these witnesses separately and that they had all provided similar descriptions of the conversations that occurred. I advised him that Witness 7 recalled that SAA Lenz hadn't responded to him, but Witness 5 said that SAA Lenz did provide him a response.

SAA Lenz responded:

There was a lot of -- there was rumour as to what had taken place. People were getting upset. You know, obviously were upset over this issue. In my mind, it had been returned. I believe I expressed that to them that it was being returned and that would be the normal process. If they were -- and this is why we talked about creating a policy so this would not happen -- you know, this optic could be...

I put it to SAA Lenz that these witnesses' recollections were very different than his and asked for his explanation. His response was:

I don't have an answer to why theirs is so different than my recollection. What I can tell you is that everything that I had seen is what I believe had taken place. What -- yes, people were obviously upset along those parts and that is one reason why at the -- let's go back. Obviously they were upset by the situation or the optic of what had occurred. I believed this was being returned. And I didn't see anything other than that. I would say, yes, my staff may feel this way. This is what I have observed

which would be consistent. I would wait to see if there was something that would come out of financial services or along those parts...And if there was anything along those lines, a variety of other people could raise issues.

I asked SAA Lenz why if he thought the liquor had been returned for a refund, he didn't simply tell his staff to "rest easy boys, everything's fine, I believe the liquor was returned for a refund. Because all of them say you never said those words or anything like that."

SAA Lenz responded that "I recall saying those words. Maybe not at that meeting. But at other ones where there was discussions" and he didn't have an answer in respond to why Witness 5, Witness 7 and Witness 8 all said he didn't tell them that, and that in fact said the conversations were always about the liquor having gone to Mr. Barisoff.

I asked SAA Lenz why, given that his staff were upset and rumours were going around, he didn't simply confirm there had been refund, by checking with Mr. James or with Finance staff, then he could go back to his staff and say everything was ok.

He responded

Yes, there were some rumours. Yes, the staff had -- according to what they had said that they had -- they were upset. I didn't take it as, like, ragingly upset. They had made some comments, you know. Like, I don't know if -- I don't recall it being the way it's being portrayed in the statement. I saw no reason why this was not going any other place but to the liquor distribution branch...And I understand what you're saying and that they were upset and I should follow through...And all these parts. There is stages and steps to go through. I know what I saw. I know what I observed. The -- the -- and I know that I passed, you know, the information. I believe I had conversations with Kate and with Witness 9 and with the [REDACTED], the -- Craig's [REDACTED] that the alcohol had been removed. If there was an issue, I would have heard and I was taking the whole thing into the context.

I then put the following to SAA Lenz:

...you've said that your staff were upset. There were these conversations going on and the rumours going around. You said a number of times that you assumed from what you'd seen that the liquor was being returned but you actually haven't provided me any information at all except that that's what you assumed because liquor had been returned in the past. So you've got all this staff on one hand. You've got your assumption that the liquor was being returned for a refund because that would be a normal expectation. It just seems to me it would have been very simple to do two things. Is, number one, is to go to Mr. James, who by all accounts you had a very good relationship with and said, hey, you know, look there's these rumours floating around, I want to kill them. Did you take that liquor for a refund? Or number two, go to your [REDACTED], Witness 9 in [REDACTED] and say, can you

just pull the receipt and make sure we did get a refund for that liquor like we have on other occasions, which is why you assumed it in the first place and then be able to go back to your staff and then say, hey, guys chill out. The liquor was returned for a refund, or if it wasn't returned for a refund, which in fact we all know now it wasn't, then you could have taken appropriate action.

SAA Lenz responded that he had no authority to “demand” documents from financial services, but that he believed he had advised Ms. Ryan-Lloyd the liquor had been removed and also employee [REDACTED] and that “they have the records. They have the documentation. It is being managed by that branch and it’s their event.”

I asked SAA Lenz again why he didn’t simply ask Mr. James what happened with the liquor. His response was, “Then I would have to have the belief that there was wrongdoing on that part. I did not see the issue on that point to raise that with him. That was a decision I made at that moment in time is saying, this is not something I wanted to do at this point is to raise it with the clerk.”

I put the following to SAA Lenz:

So you've got all these upset people and the rumours going around, your own staff, you've got Mr. James who I'm told had -- by everybody that I spoke to had a close excellent working relationship with, you couldn't tell him, you know, Craig, there's some rumours going around. Can you just confirm to me that liquor went for a refund or...

SAA Lenz’s response was:

And what I would say at that time that was the decision that I made. Now that it’s been highlighted by the world and by everybody else and you look back, that would have probably might have been a very different decision I made. I can only say at that time with what I knew and what I believed, I felt this was the appropriate response to take place. If all that I -- you know, you look at now after it's been highlight and all the information that you have had the opportunity to go through, I never had that opportunity to enter into investigations or anything else because I have not had the authority to do that. You have had the opportunity to move through and gain all this information and statements. That was not available to me...

I put it to SAA Lenz that he had the same access to the same people I spoke to, that they were his colleagues. His response was, “The difference is the Speaker's given you the authority. You are acting under -- the Speaker has the authority of parliament for the security of parliament. He is the one person who can determine...”

SAA Lenz then went on to talk about how he met with the Speaker in 2018 and “explained his inventory, and we had a conversation about this thing [the 2013 liquor incident] and I

asked him, you can see Witness 5 to clarify your points and make the right decisions, and then I said, you're the only one if you deem that it's necessary, I will follow up with an investigation.”

I then advised SAA Lenz of the following:

So I'll come back to April 22nd, 2013, and you're there. You observe the boxes of sealed liquor being loaded. You assume, you say, that he's returning it for a refund. It's really hard for me to believe, you know, in the absence of an explanation that this person that you get along with very well, that it didn't come up in the conversation where it was going. Because you knew the chair and the desk was going to Mr. Barisoff. That's not in dispute. You know that's where he's going. And you assume the liquor was going to the liquor distribution branch, and I'm just saying, wouldn't it have been normal for you to in your conversation with Mr. James to have talked about where the liquor was going? Like, yeah, I'm going to drop this off first and then I'll head on my way to Penticton. That just didn't even come up in conversation?

SAA Lenz responded:

On those moments, in that -- you're looking at it from the hindsight of a time back. And I'm saying in 2013, sitting in those rooms with this – with those parts, why wouldn't I go and ask him? Is because everything that I seen at that point was following a proper process. And I understand that people may be on these parts just because staff is upset doesn't mean I go running to the speaker and clerk saying, tell me, tell me, tell me, that is not process...What I knew at that time and what I believed I made a decision. And that decision was that I believed that the liquor was being returned appropriately. All indications showed that it was being returned openly.

I put it to SAA Lenz that no else I had spoken to thought it was normal for the highest paid person at the Legislature to be returning liquor for a refund and there was nothing normal about it at all about the Clerk returning boxes of liquor to the LDB. The following exchange occurred:

So other than your assumption of that, I actually don't see what it is that has convinced you that when you've got your upset staff saying that they're concerned, and I know that you don't believe that what was said is what they've told me, but they said they told you outright this was wrong, this was theft, there was wrongdoing that you told Witness 5 that you were going to take action because of it that you agreed and so on, and you still say now, though, that all of that wasn't enough for you to make some basic inquiries, like, say Craig, what happened, you know, I just want to confirm where that liquor went...Witness 9, she said we're [REDACTED] colleagues. It would have been absolutely routine and normal for Gary to

have come to me and just said can you confirm that there was a receipt for that liquor being returned.

SAA Lenz responded that Witness 9 was:

wrong because she doesn't understand. She's not a [REDACTED] to understand the responsibilities of my office. As a sergeant-at-arms if I reach out and I request a document without the speaker's approval, that is against what I believe is my role or function. I'm conducting an investigation into somebody by pulling those documents. Because you're alluding here to is saying I'm pulling that for what purpose am I pulling that document? I'm looking to see if a theft has taken place.

I put it to SAA Lenz that making a basic inquiry for a receipt wasn't an investigation in the way he characterized it, but that if there was no refund receipt, then that might cause him to enter into an investigation, and there was no reason that then, or at any time, he couldn't go to the Speaker for permission. I further noted that Ms. Ryan-Lloyd and Witness 9 both said it would have been routine for him to ask for a receipt to be pulled.

SAA Lenz responded that he had been instructed by former Clerk MacMinn that if there were any matters involving a member, he was not to act independently without approval, and that, "This is -- if I have a concern or an along those lines or I form that opinion that I need to look into that, that is for -- there are people who have the responsibilities to do that. And that would be Ms. Ryan-Lloyd and Witness 9. That was their world to take that responsibility on." He asserted he has a process he has to follow and that "I understand what you're saying. It sounds really logical. It sounds like a nice way to do things, but in Parliament that ain't going to happen."

I put it again to SAA Lenz that he could have just gone to Mr. James and tell him you'd like to put the rumours to rest and ask him what happened with the liquor. He responded:

How does that impact relationships how does this work with this or how does it work with that? I weighed all the information that I had before me. And I looked at where the staff were. I looked at the process of how alcohol is being managed as my authorities. I looked at Witness 9 and Kate who obviously from what you're saying knew that there was some issues... And as I said, I spoke to both of them that the alcohol had been returned and was being loaded by Craig James and moving forward. If there were concerns along those parts they have a duty to manage it to bring it forward. I looked at what I believed and what I had done and what I believe I had known, and I made a decision. And that was my decision. I didn't see that this as being a theft. In my mind, yes, there are some concerns over here and let's move forward and make sure these concerns don't happen again through a policy. We worked through that part.

Regarding Witness 9's denial that SAA Lenz had reported to her that Mr. James had removed the liquor, and that she would have required due diligence to occur regarding what happened to it, SAA Lenz insisted he had spoken to her about it as part of a general conversation about outcomes from the conference that the liquor had been purchased for.

At this point, we took an hour break for lunch. After we returned, SAA Lenz started by telling me he was "floored" by the statements I'd read to him. "I mean, I am just laying on the floor going, like, I can't believe that somebody has said this. That is not my memory. That is not the way I recall it." He went on to explain at length how he lived his life "ethically, morally and I tell the truth." He went on to say that:

I believed and believe that on that 2013 Craig James and the Speaker are honest, trustworthy individuals. I had no doubt about that in my mind. I saw the movement of alcohol. In my mind that was rational. As a manager you look at all the other aspects. You look at the whole picture. You look at financial services, and the other people who are managing it. Are they ethical, moral? Will they do the right thing? Will they not do the right thing. Yeah, I believe it. At the beginning, Witness 9 and Kate and all these people I believe they would do the right thing. So if they're processing paper, that's going to be there. I also take into account my staff and my management. Yes they are upset but I don't know what so was I. The management of alcohol right from the beginning, prior before this conference is not managed correctly. And it is upsetting to see in my world of here I come from things need to be in place...I didn't deem that there was a theft. And I thought this is the best way to manage it in the overall scope for the assembly. Let's fix the problem and let's move forward. So I decided not to pursue anything further because I didn't deem that there was anything to pursue. There was no theft. But this is a mess. And it needs to move forward to let's do that.

I put the following to SAA Lenz:

So you've given me a nice little recap of where you are. So maybe I can recap where I think we are so far is that Witness 5, who you and everyone else has described as being the most ethical guy you know, and Witness 8 and Witness 7 all say the same thing. With Witness 5 being the strongest in saying, and the others saying: I remember when Witness 5 talked like that he was still upset in 2018 but in saying that Witness 5 told you in front of them, this is wrong. This is wrongdoing. How do you think the staff feel about being asked to load liquor up into Mr. James' truck? That the whole context of the conversation was everyone's belief that he was taking the liquor to Penticton along with the desk and chair, and Witness 5, who you noted, well if he believed that then he had a duty to do something about it. Well, I've been the [REDACTED] and I know what my duty would be and he says, well, he did. That he went to you and said, this is wrong. You have to do something

about it. What are you going to do about it to make this right? And that you said, you are right, Witness 5, I am going to deal with it, I'm going to go see Kate about it, and I'm going to go see the Speaker who at the time is Linda Reid.

And what -- to recap what Kate says is consistent with all of that. She says, Gary did come to see me. He was concerned about it that our staff were used in this way. Which I think is commendable. And she did too. She said look he was trying to deal with it he recommended that this policy be developed. But as a result of what Gary told me, that the liquor was being taken to Mr. Barisoff, I went and confronted [Mr. James] and I said, what are you doing taking this liquor to Mr. Barisoff? And she said, he was very -- her word "offhand" and said, well, the speaker directed me to do it...and from that flowed the development of this policy.

We've got Witness 5, Witness 7, Witness 8. Their statements are all similar and consistent with each other, and at no point inconsistent. All saying you never saying said anything about the liquor being returned for a refund. It was always the context was, this was wrong him taking this load of liquor up to Mr. Barisoff.

And then we flow into Witness 9 who also says, I'd heard all the rumours it was basically the talk of the town in the legislative precinct as I understand it. Everybody's windows look out on this courtyard where it occurred and said, lots of people were talking about this incident. And the stories were that...the clerk took the liquor to Mr. Barisoff.

So that's the context why my perspective...That I'm saying is that I've got these people, your staff, Witness 5, Witness 7, Witness 8, who all tell a very similar story, consistent, and not inconsistent in any way with what occurred. And then Kate who's saying, Gary told me the Clerk told him he was taking it to Mr. Barisoff. And that's why I went and spoke to Mr. James. Because of this wrongdoing.

I then asked SAA Lenz again if he had any explanation for why Witness 5, Witness 7, Witness 8 and Ms. Ryan-Lloyd, people he had described as credible and trustworthy, all had told me things that are very different than what he described. He responded:

...we've had conversations as me, Witness 7 and Witness 5, we'd always have our morning meetings, yes, how the alcohol was being managed was wrong, and it could be handled so much better. And they would be animated, and they would be upset. That's what I remember. I never remember issues of theft ever being mentioned. Upset, yes. My staff were upset. I understand that.

SAA Lenz went on to say that he believed that Mr. James and Mr. Barisoff were trustworthy, honest, credible and reputable and that he did not assume there had been a theft, but he went forward to try to improve things by moving forward with controls, and make that a priority.

I put it to SAA Lenz that he continually referred to his staff being upset about how liquor was “managed” but that none of them said they were upset about that, but that they were upset because they believed Mr. James took the liquor to Mr. Barisoff and they thought that was wrong, that it was a misappropriation of Legislature assets.

SAA Lenz responded that if he thought there had been a theft, he would have investigated it. He further reiterated that Witness 5 and Ms. Ryan-Lloyd were mistaken in their recollections of what occurred.

We then moved on to events in 2018.

SAA Lenz described how, prior to being suspended, he thought he had a very good relationship with Speaker Plecas, considered him a friend, and believed he was trustworthy. SAA Lenz was reluctant to answer questions about what he thought of the Speaker’s general competence as a person and his intelligence. He eventually responded, “The Speaker has a university degree. He’s able to learn...I felt prior to November that he was able to comprehend his functions. At least I believed that he understood what I was saying.”

On the advice of his counsel, SAA Lenz declined to answer similar questions about Mr. Mullen.

I then asked SAA Lenz to tell me what he recalled of his discussions in 2018 with Speaker Plecas regarding the 2013 liquor incident.

SAA Lenz advised they were reviewing the Speaker’s liquor and he brought up the importance of having a liquor inventory and explained how it would work. He said he pointed out that previously, Speaker Barisoff and Mr. James had a large conference and there was no inventory and that “there’s been an optic” and “conversations about how this alcohol was managed” and to avoid the optics the Speaker needed an inventory. He said he told Speaker Plecas that “if alcohol is ever removed, you know, taken off and you can’t explain it then it could be, you know, that could be an investigation. That could be theft.”

At this point, SAA Lenz had not mentioned that he had even raised the 2013 liquor incident with Speaker Plecas, but said the Speaker had some questions and he told him, “I can send Witness 5 up if you want because he was present during that incident, he might give you another context or scope of what it was all about” [despite Witness 5 not actually being present, and that SAA Lenz was].

I put it to SAA Lenz that Witness 5 had advised me that what he told Speaker Plecas was the same thing he had told me, and what Speaker Plecas had told me Witness 5 had told Speaker Plecas: that the 2013 liquor was wrong, that it was out and out theft, and that he was still upset about it. And during that conversation was when Witness 5 was asked if he had other concerns and he brought up the issue of the wood splitter and trailer purchased for Legislature emergency preparedness, but which had never been on the Precinct.

I put it to SAA Lenz that Witness 5's statement about his conversation with Speaker Plecas was consistent with how Speaker Plecas described it. I further put it to SAA Lenz that his recollection of his conversation with Speaker Plecas was inconsistent with Speaker Plecas's recollection, who described SAA Lenz recalling a "full blown theft," and that it came up in the context of Speaker Plecas saying he didn't trust Mr. James, wanted to get rid of him, and that SAA Lenz said he could use the liquor theft to take to the Premier as leverage to get Mr. James to retire.

At this point I agreed to a short break for SAA Lenz to consult in private with his counsel, after which SAA Lenz asked me to go over what I'd said again.

I put it to SAA Lenz that:

Mr. Plecas and Mr. Mullen said that -- I don't think that I said these words but I'll say them now said on multiple occasions, multiple conversations with you, you described what occurred on April 22nd, 2013 as a full blown theft and that they could use this information as leverage to get Mr. James to retire because the speaker had expressed that that was what he wanted was to get rid of him. He didn't trust him. And I also talked about how when Witness 5 visited him, he told me that what he said to the speaker was that it was -- that it was a theft. That it was wrong he was upset about it and speaker Plecas reported back to me the same thing. They were in agreement about what their conversation was.

SAA Lenz's response was:

But I can't speak for Witness 5 what his conversations were or what he believed. I can only say is what I believed and what I know. And theft -- Witness 5 never brought that forward to me. If he brought it forward to the speaker and he had that memory from whenever it is, that is his conversation between the speaker and himself. I don't really have a comment to that aspect because I'm not part of the that conversation. When it comes to the other aspects of the speaker and Al Mullen there were conversations relating to Craig James which is not part of this allegation. But in those conversations it was -- there's general conversations about if things go missing like alcohol and those parts that is a theft. So if they want to take that as a theft but I did not believe that there was a theft of alcohol. As I've stated earlier in my conversations and as of the 2018 I still didn't.

SAA went on to deny that he had ever said to the Speaker or Mr. Mullen that they could use the 2013 liquor incident as leverage to get Mr. James to retire, but if he has "concerns about Craig James, Bill Barisoff, the movement of the alcohol, it is his responsibility and his duty to move forward with it."

I asked SAA Lenz why Speaker Plecas would have concerns about Mr. Barisoff if SAA Lenz was satisfied that there had been no problem. SAA Lenz responded that he told the Speaker he

believed the liquor was moved to the liquor control branch but if the Speaker didn't believe that then to let SAA Lenz know and he would make queries and that he would need the Speaker's authority. He said they had further conversations and that he told the Speaker, "Look, if you have concerns on this and a variety of other issues you may have, then you need to have those conversations with the Clerk, with the Premier, whoever else you need to have those conversations with and you as that group make the decision." He said the Speaker told him he was, "totally satisfied with how the Speakers and the Clerks have managed their alcohol, and I do not need an inventory."

I asked SAA Lenz why he had even brought up an incident from 2013 if he was satisfied no wrongdoing had occurred. He responded:

The reason it was brought up is because it's a good example. So I gave other examples of Linda Reid and how she's managed her alcohol. And how other Clerks have managed -- it was one of many examples. But this one was of -- had, you know, was I found was a very excellent example because it dealt with the speaker of the house, the previous speaker a previous clerk. And why they did not have a liquor policy, what happens, rumours and other parts pull out of it.

I put the following to SAA Lenz:

They've said something very different than you. They've said, both of them when I interviewed them separately, they both said you came to them on that first occasion and then on many occasions after that and it was always the same, this was a full blown theft, you can use this as leverage to get rid of him. Here's what you need to do. Have you done it yet? Are you doing it? Described as, like, pressuring them to use that information.

SAA Lenz responded:

...what they're doing is they're -- which is consistent with the way they have done all of their accusations and allegations against me. They mix one little piece, blend it into something, and have a fact at the end of the day. And that is not in the context of how this took -- I already explained to you...I did not describe it as a theft. There was lots of conversations about liquor, alcohol...And then, you know, in the conversations, well, if that liquor had gone to Barisoff's place, you know, that would be a theft. I said that would be a theft, but I don't have that belief, but if you have that belief, this is what it could be. So if you want it looked into we will look into it.

I put it to SAA Lenz that it was a "pretty amazing coincidence" that in the particular incident of April 22, 2013 that it turned out the liquor did not go for a refund as he said he had assumed, and that it was unaccounted for. SAA Lenz repeated that what mattered was what he believed on that day. "After it was loaded onto the truck. I had a belief. I observed. I seen. And I made a

decision based on all -- as I've said before, on all these factors, and that was my decision, and I went forward with it.”

I put it to SAA Lenz that another question was whether that was a reasonable belief, and if he acted reasonably in his role as Sergeant-at-Arms and as a sworn peace officer.

He responded:

And I would say to that, if I was sitting – if you're looking at this chair, I would say, to understand the role of the Sergeant in Parliament, to ensure that members can conduct their business unfettered and without interruption, to not create havoc and chaos...which has happened with Darryl Plecas in his report...has caused chaos throughout the thing. Exactly why we have processes and systems in place so that things can be dealt with without the wild mayhem that has taken place. The Sergeant-at-Arms has to look at the whole institution.

SAA Lenz went on to reiterate that he believed Mr. James and Mr. Barisoff were trustworthy people and that Mr. Barisoff would never have accepted the liquor. “I know these people. This just doesn’t make any sense. What makes sense is it’s being returned. That’s in my mind. How do we fix it that this never happens again?”

I put the following to SAA Lenz:

What is it that you're saying you are going to ensure never happens again? Because I just go back to -- I didn't think that we needed to go over this, but all of this could have been dealt with simply by going to Craig James and saying, where did you take the liquor?...All these optics and stuff that you're saying you're concerned about, and we're going to make sure that it never happens again, and all that, all could have been dealt with by just confirming that he had taken the liquor for a refund.

SAA Lenz responded, “But what you're missing in your -- in your thinking is that these are the people who are trusted and noteworthy” and that proper controls in place would ensure such issues wouldn’t occur.

I asked SAA Lenz, “But what was it that needed to be fixed, that you were going to fix with the policy? If you didn't do anything wrong, and it's normal for the clerk to load up his truck and return it to the distribution – liquor distribution branch because he goes to...he goes to Costco and picks up things and that sort of thing, what is it that needs to be fixed?...All you had to do was verify that he had returned the liquor.”

SAA Lenz responded that he disagreed with me and provided with a very detailed description of the benefits of an alcohol inventory policy. He further stated he disagreed that he simply could have confirmed with Mr. James the liquor had been returned, saying, “And what I’m saying, as a Sergeant-at-Arms, you first have to ask yourself, do you believe there’s a theft?”

I put this to SAA Lenz:

I don't accept that, Gary. I don't believe that you have to believe that there was a theft. What you have to believe is that you had upset staff that thought something wrong had occurred, and that you could put the rumours to bed simply by going and confirming that he had done that. I don't accept that you had to have reasonable grounds to believe that a theft had occurred to go talk to your close colleague and say, I just want to confirm that you took that back to the liquor distribution branch.

SAA Lenz responded:

I made a decision, and that decision was not to talk to Craig James. I looked at it from the point that everything I saw was...And we've got the -- and my staff at the other end here, yes, they are upset and things, and I looked at it from the point of saying, we need to deal with the controls rather than go down this road. That was my decision.

After discussing briefly part of his response to the Plecas Report, we moved on in the interview to talking about SAA Lenz's 2018 conversations with Ms. Ryan-Lloyd regarding the liquor incident. I advised SAA Lenz that Ms. Ryan-Lloyd had advised me that on about four occasions in 2018, contemporaneous with SAA Lenz's conversations with Speaker Plecas about the liquor incident, SAA Lenz had spoken to her about his conversations with Speaker Plecas. I advised him she reported SAA Lenz had described the liquor incident as being very serious, and on at least one occasion described it as a "theft."

SAA Lenz said he did not recall ever describing the incident as a theft to Ms. Ryan-Lloyd.

I then put it to him that Ms. Ryan-Lloyd told me that after SAA Lenz met with Speaker Plecas, Speaker Plecas came to her and described what SAA Lenz had told him about the liquor incident. I further advised him that she said Speaker Plecas' description to her of what SAA Lenz had told him about the liquor incident was consistent with what she recalled SAA Lenz saying to her after SAA Lenz met with Speaker Plecas.

SAA Lenz's response to Ms. Ryan-Lloyd's statement was:

I don't have any response for that aspect of it because my evidence as of this date consistently is the same...I spoke to them. And if Kate remembers it, or the context of our conversation is that way, that is her memory of our conversation. I do not recall ever saying that it was a theft. We have talked about with Kate the aspect of if alcohol goes moving, and this would be a theft, that is the conversations I had with the speaker. These are conversations I have had with Kate relating to policies, but also about that event. If alcohol had gone that way, that would be a theft.

I put it to SAA Lenz that Ms. Ryan-Lloyd did not frame the conversation as a hypothetical, and that she said SAA Lenz had told her that when Mr. James had his truck loaded up with liquor and drove away, that it was a theft.

SAA Lenz responded, "I do not recall ever saying – going back – that there was a theft of alcohol."

I asked SAA Lenz whether it that he didn't recall it, or the conversation didn't happen as described. He said, "I don't believe I would ever say that, and I don't ever recall saying that to Kate."

At this point we moved on to SAA Lenz's evidence to Justice McLachlin. I put it to him that his evidence then was obviously different than what other witnesses, especially Witness 5, had reported regarding their 2013 conversations about the liquor incident. His response was, "My evidence to McLachlin is consistent with what I've given you today," and that he stood by his evidence to her.

I then moved on to what Witness 9, [REDACTED], had told me about how liquor is managed, that great care is taken to account for liquor when it is returned from a conference, that it is taped and sealed and counted to make sure nothing goes missing:

...and therefore she finds it very hard to believe your explanation to Justice McLachlin that you assumed James was returning the liquor for a refund, but did no checking to confirm that...and when I put it to her, your words and your evidence from your transcript, she said, I find that very hard to believe.

SAA Lenz responded:

I'm not aware of any of that aspect of it. In everything that -- like, for our conferences, you know...like my -- I leave it to my staff to deal with it...They would supply -- I don't see tapes on any of our exhibits of liquor that go through. We keep our own inventory, and it goes through. I'm not familiar with anything that she's saying.

I then produced for SAA Lenz a document titled "Wine and Spirits Inventory Clerk's Vault" from April 29, 2013 that Witness 9 had provided which was a spreadsheet detailing, down to individual bottles, liquor in the Clerk's Vault. I advised Witness 9 had provided this to demonstrate the care that is taken with liquor.

SAA Lenz responded, "This is the first I've seen this. I've never seen this before" and that he believed only the Sergeant-at-Arms department had a liquor inventory. We discussed the email chain regarding the development of a liquor policy in mid-2013 and how it was mentioned that by the contractor, [REDACTED], that "the biggest concern here is Gary's view that the Sergeant-at-Arms need to have control over the liquor inventory." SAA Lenz agreed that was his view, that one agency needed to be in charge of the liquor inventory for the Assembly.

I then put to SAA Lenz that it appeared to me, based on my entire investigation, that he did believe Mr. James was taking the liquor to Mr. Barisoff; it was liquor he wasn't entitled to; that he told Ms. Ryan-Lloyd of this; that she spoke to Mr. James about it, and he told her he'd been directed by Mr. Barisoff to bring it to him; that his staff were upset by it; that he didn't confront Mr. James but did take reasonable, proactive steps in terms of working on policy; and that his evidence to Justice McLachlin was not accurate. I further advised SAA Lenz that it appeared to me that the witnesses' evidence was very divergent from his, and that his evidence to Justice McLachlin was inaccurate. Specifically, in saying he assumed the liquor was being returned for a refund, and also regarding the details of his discussions with Speaker Plecas and Mr. Mullen about the 2013 liquor incident.

SAA Lenz said he made a decision and he stood by it, and he disagreed with what I had to say about the evidence.

We then moved on to the issue of SAA Lenz obtaining statements from Witness 7 and Witness 5 in which he reiterated his view that he wasn't doing an "investigation," just "getting some points down and in five years from now, if needed, I will have a look at it."

I noted that he had said in his evidence to Justice McLachlin that it was "inaccurate that you frequently communicated with individuals in the Speaker's office like Mr. Mullen about ways to get Mr. James to resign," and that the regular communications were only because SAA Lenz felt they did not have a good grasp of the process of getting rid of Mr. James.

I asked SAA Lenz what "regularly" meant. SAA Lenz described how the discussions were not about how to get rid of Mr. James, but about him wanting to know what they required of him. I referred him specifically to his evidence on p. 109 of his transcript from his interview with Justice McLachlin and read it to him:

Q: It's been suggested that as of spring 2018, you frequently communicated with individuals in the speaker's office like Mr. Mullen about ways to get Mr. James to resign. Is that accurate?

A: This is inaccurate. Goes back to the conversations that I had -- just had is that they were not satisfied with the Clerk and his issues, and I directed them to say, you should see the Premier if you find that those -- that they're inappropriate, and it is the results I was waiting for.

And then at the top of p. 110:

A: I went back to them regularly because I felt they did not have quite a good grasp of the process. That's why I kept referring them to him.

I asked him again to estimate what "regularly" meant. He then provided a long explanation of how he had no authority in this matter, and how he was asking the Speaker and Mr. Mullen what they required of him. I again referred him to his evidence: "I went back to them regularly

because I felt they did not have quite a good grasp of the process. That's why I kept referring them to him" [the Premier].

I put it to SAA Lenz that "go see the Premier seems quite simple" and asked him again what "regularly" meant. He eventually said that they would meet regularly, that it could be daily or every few days.

I pointed out to SAA Lenz that Speaker Plecas had three degrees, including a Doctorate, was formerly the research chair for the RCMP and a long-time criminology professor, and SAA Lenz going back to him more than twice was hard to understand, given the process seemed quite simple. SAA Lenz responded, "Speaker Plecas has got his degrees, and he's educated. But just as you're educated in policing, you may not know how to be a doctor." He went on to reiterate that Speaker Plecas seemed confused at times on who to see and SAA Lenz was being supportive as a Permanent Officer, giving him different options of who to speak to.

I asked SAA Lenz to estimate how many conversations about this specific issue he had in June and July 2018 with the Speaker or Mr. Mullen. He estimated about 15 times.

I asked SAA Lenz what he knew of the Speaker's meeting at the Premier's office. SAA Lenz said he believed there were several meetings, but he knew of a meeting with the Premier's [REDACTED]. At this time, SAA Lenz asserted that he was required to maintain confidentiality over conversations between himself and the Speaker on Parliamentary issues. I advised SAA Lenz that both Speaker Plecas and the Premier's [REDACTED] had described their conversation, but SAA Lenz asserted that he was bound as a Permanent Officer to confidentiality. Eventually SAA Lenz was willing to agree with my proposition that Speaker Plecas had advised SAA Lenz that the meeting at the Premier's office on July 30, 2018 didn't go well, saying, "That would be fair."

I then put the following to SAA Lenz:

And in my interviews with Plecas and Mullen, they both said that you had numerous conversations, many, many, many, conversations, not only coming to their offices. Especially Mullen said that that happened, like, multiple times a day, but many, many, phone calls, cell to cell, that you had with them. And they both said it was -- you know, it was always the same thing. In a nutshell, have you done it yet? Have you been to the premier? What are you doing? Are we going ahead with this? What's happening with it? You know, that it was always what they described was you -- I don't want to say the word pressure, but regularly pushing them to deal with this situation with Mr. James. They wanted to get rid of him, and they say you were giving them the information that you said to them they should be using as leverage to get rid of him...Mr. Mullen said...[SAA Lenz] really didn't have any reason to contact me after the end of May because the House had risen, and so...all the issues that keep you very busy were not happening anymore.

SAA Lenz responded that, “we'd have general conversations, but it was not -- and I would reinforce with them again that I needed the information. If there's stuff that I needed to be taken care of, they needed to get back to me on that.”

I then discussed SAA Lenz's cell phone records with him. I pointed out that there were very few calls in the last two weeks of May 2018 between his cell and those of Speaker Plecas or Mr. Mullen. But between May 28 (when SAA Lenz had Witness 5 speak to Speaker Plecas about the 2013 liquor incident) and July 30, the day of Speaker Plecas' meeting with Witness 10, there were 50 cell phone calls between SAA Lenz's phone and either Speaker Plecas' or Mr. Mullen's. I advised him that this was the period when he was described as frequently contacting the Speaker and Mr. Mullen about using the liquor incident to get rid of Mr. James.

I advised SAA Lenz that after the July 30 meeting that “didn't go well,” for the entire month of August, there were only two calls with Speaker Plecas' cell and none with Mr. Mullen's. I pointed out this pattern of very infrequent calls continued right up until September 26, and noted between September 26 and October 11, another flurry of 29 calls between SAA Lenz's cell and those of the Speaker and Mr. Mullen occurred. I advised SAA Lenz that Mr. Mullen reported that this new flurry of calls was when SAA Lenz was bringing new information they could use about how Mr. James had misappropriated other Legislative Assembly property.

I pointed out that obviously I didn't know the content of the calls, but that the pattern was consistent with the statements of Speaker Plecas and Mr. Mullen.

SAA Lenz responded that he was dealing with other Parliamentary issues during that time, including ones directly related to Mr. Mullen, that there was a stained glass issue going on in the building, and that June and July is “a very busy time for me as the Sergeant in the way of not the Parliamentary side, but other matters that needed to be dealt with.”

He noted correctly that the calls can go back and forth, like calling Mr. Mullen and him saying “I'll get right back to you,” i.e., generating another call. And “we might be playing telephone tag eight or ten times in a day trying to make that connection.”

I asked SAA Lenz if there was nothing going on at the Legislature in August or September that he needed to speak to the Speaker or Mr. Mullen about, given the frequency of calls he said were about various pieces of Legislature business in June and July. SAA Lenz pointed out that when the House is in session, the Speaker and Mr. Mullen are just down the hall so he wouldn't need to phone them, and that Mr. Mullen was dealing with a bunch of picture frames in his office, and there were various other issues that would account for lots of calls over the summer. SAA Lenz said he didn't think it was fair to attribute the 50 calls to discussions about Mr. James, although he said he might have called about 15 times about Mr. James. After explaining all the different reasons why there might be cell calls, SAA Lenz went on to say:

And what I can respond to that is there was – as I stated, they would come in -- like, if they're going to have that meeting, we would have that -- we're about to have

that meeting. There would be regular...quite a few calls back and forth, going back and forth. So, yes, he's accurate in that aspect of it. Because if I have to wait for the Premier and the Speaker to give me direction as to what they want. I didn't see an issue of a theft of liquor. The speaker, if he wished to pursue that, then he needed to let me know. And if him and Premier said, yes, let's have a look at that, it needs to go back through me. So, yes, I was going back and forth saying, have you had that meeting, and then Al Mullen would go, I'll get back to you on that. Give me a call back in an hour.

Regarding the new flurry of calls that began on September 26 and which Mr. Mullen alleged were SAA Lenz calling him with new information about Mr. James misappropriating Legislature property, SAA Lenz responded:

It is the responsibility of the sergeant to inform the speaker of issues that are within Parliament. If that is -- one was the removal of items from the premier's vault over to the clerk's vault. That is something -- part of -- my mandate is if there's anything in parliament that would come to the attention of the speaker, the sergeant will advise him...So my staff moved this. We advised him, and we continued to advise...It was the movement of articles.

I asked SAA Lenz again if the calls were about misappropriation of articles rather than movement of them. He responded:

My role would be to inform the speaker of the issue that these issue -- the items had been removed, and that the clerk had taken some to his office. And that that is not normal. You know, like, that is not a normal process because where is it going? We don't have an inventory process. What I advised Witness 7 at that point, I said, I want a full inventory of whatever was taken from the premier's vault made up. Everything. Including what Craig James had taken, and I will go, and I will talk to Craig. When I went into Craig's office, the items were displayed. They weren't taken anywhere. They were there. I reported that back to the Speaker.

SAA Lenz went on to say that initially he had been advising that the items had been removed from the vault by the Clerk and he didn't know where they had gone, but he later went to the Clerk's office and saw the items were there and so he then advised the Speaker that he'd located the items. He said that the Speaker and Mr. Mullen had jumped to conclusions and that they had mischaracterized what he'd said about articles the Clerk had moved. He explained:

If they want to construe that when I first came to them and saying, I'm going to look into it, that this is more stuff they can throw towards Craig James, the Speaker needs -- I followed the proper process, and I came back to it. That's how I conduct the business.

I then spoke to SAA Lenz about the statements he took and saved to a memory stick. He said he didn't mention the memory stick when asked by Justice McLachlin because he remembered the statements were on paper.

I advised SAA Lenz that Witness 7 had told me that he was very concerned about what the impact could be on him regarding his statement, that he met with SAA Lenz and Witness 5 to ask him what was happening with it, and that SAA Lenz had said, "nothing, because the Premier doesn't want to go ahead with the investigation." SAA Lenz said he did not recall that conversation, but rather recalled saying, "there's no further investigation, there's nothing else is going to be looked into this."

I asked SAA Lenz how Witness 7 would have known the Premier was involved if he hadn't mentioned him. SAA Lenz responded, "I don't know why he would mention the premier. Witness 7 is part of other conversations within the larger group of the...He may have been part of other conversations where we talked about processes and how things would work. And maybe -- I don't know."

I advised SAA Lenz that Witness 5 also recalled mention of the Premier in the conversation with Witness 7. SAA Lenz responded:

I don't recall saying those words, but that could -- it could have. You know, like, if that happened all in that timeline, I may have -- I may have said that. I don't know...If I said those words, well, then I probably shouldn't have said those words because I should have referred to as the speaker. But if they said I said it, then I may have very well said that...But not in the way that he didn't want to proceed. It would have been in my mind the Speaker doesn't wish it to proceed.

Regarding saving the statements to a memory stick rather than to the Legislature network, SAA Lenz said he believed his safe was as good a place as any. He asserted that documents on the network drop off after 17 months, but then agreed this only referred to email, and that it would be backed up and safe on the network but that if he saved it to his hard drive, hard drives can crash.

I asked SAA Lenz what the policy of the Legislature was about saving official work product; he responded they were his personal notes. When I replied they were not "personal," they were about a work matter, he said as far as he knew there was no policy about how to manage it (contrary to the statement of Witness 2, [REDACTED]).

I advised SAA Lenz of the difficulty staff had in searching for the statements on his hard drive and the network and not finding them and that in his evidence and in subsequent communication through counsel he didn't mention they were on a memory stick. SAA Lenz advised the last location he believed the statements was in his safe. In summary, SAA Lenz said he simply didn't remember the statements were on a memory stick – an explanation I accepted as being reasonable.

I put Mr. Mullen's allegation, that the memory stick wasn't in his safe on April 3 but was on May 6, to SAA Lenz and asked if he had any knowledge of that. SAA Lenz said the allegation was ridiculous and he had no knowledge of where the memory stick was if it wasn't in his safe on April 3. I have no reason to disbelieve him.

At this point I advised SAA Lenz I was finished my questions, but if he had anything else he wanted to say or ask me, he could. SAA Lenz said that regarding the liquor incident, he hoped I would look at what his knowledge was at the time, that he did what he thought was best, that he did nothing out of malice or deceit or protection of people, or to make it easier for anyone. Rather, he did what he thought was right for the betterment of Parliament, its members, and for his own people.

The interview was concluded at 4:26 pm.

## RELEVANT CASE LAW

### Introduction

Many *Police Act* decisions regarding police officers and Special Municipal Constables (similar to Special Provincial Constables but appointed to work in municipal police departments for specialized purposes), are available on the website of the Office of the Police Complaint Commissioner (OPCC). However, SPCs do not fall under the jurisdiction of the OPCC, but rather are managed through Police Services in the Ministry of Solicitor General and Public Safety. I was advised by the Acting Director of Police Services that they do not maintain a repository of any discipline decisions regarding SPCs.

Therefore, I turned to decisions regarding police officers and Special Municipal Constables (SMCs) as being relevant, given that s. 9 of the *Police Act* is clear that SPCs:

Subject to the restrictions specified in the appointment and the regulations, a special provincial constable has the powers, duties and immunities of a provincial constable" and Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has

(a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and

(b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.

The following information is comprised of excerpts of *Police Act* discipline cases relevant to the misconduct alleged against SAA Lenz.

## Standard of Proof

Under the *Police Act*, evidence must be assessed on the balance of probabilities. The relevant case law is as follows:

IN THE MATTER OF THE POLICE ACT, R.S.BC. 1996, C. 367

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF CONSTABLE CHRISTOPHER CHARTERS OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION AS TO WHETHER ANY MISCONDUCT HAS BEEN PROVEN<sup>6</sup>

27. My responsibility, pursuant to s. 141(9) of the *Act*, is to decide whether any misconduct has been proven. The burden of proof is on the public hearing counsel. The standard of proof is on a balance of probabilities. This was made clear by the Supreme Court of Canada in *F.H. v McDougall*, [2008] 3 S.C.R. 41 at para. 49:

...I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

28. The Court noted earlier, however, at para. 46 that in order to satisfy the balance of probabilities standard, the evidence must be sufficiently clear, convincing and cogent:

...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

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<sup>6</sup> [https://opcc.bc.ca/wp-content/uploads/2017/04/PH2014-01\\_Adjudicator\\_Smart\\_Decision\\_Part\\_1.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/PH2014-01_Adjudicator_Smart_Decision_Part_1.pdf)

## Assessing Credibility

In the course of my investigation, I found there was a significant divergence on key issues between SAA Lenz's evidence and those of several witnesses. The relevant *Police Act* case law on assessing credibility is as follows.

IN THE MATTER OF THE POLICE ACT, R.S.BC. 1996, C. 367

AND

IN THE MATTER OF THE PUBLIC HEARING INTO THE CONDUCT OF CONSTABLE CHRISTOPHER CHARTERS OF THE VANCOUVER POLICE DEPARTMENT

NOTICE OF ADJUDICATOR'S DECISION AS TO WHETHER ANY MISCONDUCT HAS BEEN PROVEN<sup>7</sup>

Adjudicator Willam B. Smart Q.C. noted that:

A succinct summary of the task of assessing credibility was articulated by Voith J. in *Joba v. Basant Holdings Ltd.*, 2013, BCSC 1469 at para. 17:

[17] The resolution of the issues raised by this case turns on questions of credibility. Multiple factors inform an assessment of credibility; *Bradshaw v. Stenner*, [2010 BCSC 1398 \(CanLII\)](#) at para. 186, aff'd [2012 BCCA 296 \(CanLII\)](#). Amongst these factors is whether a witness' evidence "harmonizes with independent evidence that has been accepted"; *Bradshaw* at para. 186. This test accords with the well-known guidance offered in *Faryna v. Chorny*, [1951 CanLII 252 \(BC CA\)](#), [1952] 2 D.L.R. 354 at 357 (B.C.C.A.): "the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".

## Definition of Misconduct

In my investigation, I established that SAA Lenz did not conduct an adequate investigation into the April 2013 removal of liquor by Mr. James from the Legislative Precinct. This is conduct that under s. 77 of the *Police Act* would constitute Neglect of Duty. I also found that he did not tell the truth in his oral and written evidence to Justice McLachlin and in the statements he made to me, which would constitute the *Police Act* disciplinary defaults of Discreditable Conduct and Deceit. The cases below speak to the *Police Act* cases on the definition of

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<sup>7</sup> [https://opcc.bc.ca/wp-content/uploads/2017/04/PH2014-01\\_Adjudicator\\_Smart\\_Decision\\_Part\\_1.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/PH2014-01_Adjudicator_Smart_Decision_Part_1.pdf)

“misconduct” and the Disciplinary Defaults of Neglect of Duty, Discreditable Conduct, and Deceit.

*Decision on Review on the Record Pursuant to Section 141, Police Act, R.S.B.C. 1996, C. 267, as amended in the matter of the Review on the Record into the conduct of Constable Byron Ritchie of the Delta Police Department.*<sup>8</sup>

45. From the language of the Police Act, there is no threshold of “serious moral blameworthiness” for something to amount to misconduct. The legislature could have adopted a two-part test, requiring one of the listed types of misconduct and a level of moral blameworthiness on the part of the officer but it did not.

46. In sum, based on the statute’s language, it seems that misconduct is a broad category, not limited to serious misconduct involving deliberate wrongdoing.

47. Section 77 of the Police Act defines misconduct as conduct that constitutes a public trust offence.

48. Section 77(3) states that any of the conduct described in subheadings (a) through (m) constitutes a disciplinary breach of public trust when committed by a member

## Discreditable Conduct

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, c. 367 AND IN THE MATTER OF A REVIEW OF ALLEGATIONS OF DECEIT AND DISCREDITABLE CONDUCT AGAINST CONSTABLE [REDACTED] OF THE [REDACTED] POLICE DEPARTMENT<sup>9</sup>

In an earlier decision I expressed agreement with the test articulated by the Ontario Civilian Commission on Police Services in *Mancini v. Constable Martin Courage*, OCCPS #04-09, namely:

The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

PH 18-01, OPCC File: 2017-13492

In her August 27, 2018 decision after a Public Hearing, the Adjudicator, Retired Provincial Court Judge Carol Baird Ellan, described the elements of Discreditable Conduct similarly:

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<sup>8</sup> <https://opcc.bc.ca/wp-content/uploads/2018/07/18-03-Adjudicator-Threlfall-Decision.pdf>, at p. 11.

<sup>9</sup> [https://opcc.bc.ca/wp-content/uploads/2017/04/10904\\_2015-12-09\\_Notice\\_of\\_Decision.pdf](https://opcc.bc.ca/wp-content/uploads/2017/04/10904_2015-12-09_Notice_of_Decision.pdf), at p. 3.

[72] This argument cannot prevail. It is akin to an argument that if a member's actions, however dishonourable, do not become known to the public they cannot be discreditable. The element of intent in relation to the nature of discreditable conduct is an objective one: if the behaviour is of a nature that, if known to the public, would be considered dishonourable, it is discreditable.

[73] The test is whether the public would consider the behaviour likely to bring discredit on the department.<sup>10</sup>

## Deceit

OPCC File No. 2017-13441 March 19, 2019, Adjudicator David Pendleton.<sup>11</sup>

Adjudicator David Pendleton, quoting from a previous decision:

Adjudicator William Smart Q.C. in an OPCC decision dated July 30, 2014 in describing the disciplinary default of deceit said:

There is both a conduct element and a fault element to the disciplinary default of deceit. The conduct element is that the statement must be false or misleading. The fault element is that the member must know the statement is false or misleading. The member must know the statement is false or misleading; otherwise, the member does not have the requisite mental state or intention required to ground a finding of deceit.

## ANALYSIS OF THE EVIDENCE

In determining whether the allegations of an inadequate investigation, suppression of evidence and lack of truthfulness should be substantiated, I considered the case law summarized earlier in this Report, including the Supreme Court of Canada decision in *FH v. McDougall*, 2008, SCC 53. In that decision, the SCC found that:

There is only one standard of proof in a civil case and that is proof on a balance of probabilities...One legal rule applies in all cases and that is that the evidence must be scrutinized with care by the trial judge in deciding whether it is more likely than

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<sup>10</sup> [https://opcc.bc.ca/wp-content/uploads/2018/04/13492-2018-08-27\\_Adjudicators-Written-Decision\\_Part-1\\_Final\\_Baird-Ellan.pdf](https://opcc.bc.ca/wp-content/uploads/2018/04/13492-2018-08-27_Adjudicators-Written-Decision_Part-1_Final_Baird-Ellan.pdf)

<sup>11</sup> <https://opcc.bc.ca/wp-content/uploads/2019/02/13441-2019-03-19-Sec-117-Adjudicator-Decision.pdf>

not that an alleged event has occurred. Further, the evidence must always be clear, convincing and cogent in order to satisfy the balance of probabilities test.<sup>12</sup>

It is common ground that on April 22, 2013, Legislative Assembly Facilities staff, at the direction of SAA Lenz, loaded then-Clerk Craig James' pick-up truck with a large amount of liquor belonging to the Legislative Assembly that was left over from a conference. In the course of my investigation, I have concluded that there is clear and cogent evidence that satisfies the balance of probabilities test that the following occurred:

1. SAA Lenz had no credible reason to believe that Mr. James was returning the liquor to the Liquor Distribution Branch, as he later said he had assumed occurred, in his oral evidence to Justice McLachlin on March 22, 2019, in his written Final Submission, and in his interview with me. In his evidence he also advised Justice McLachlin that, "At no point do I feel that this alcohol was stolen...it was being returned."

The evidence that rebuts SAA Lenz's evidence is as follows:

- a. The witnesses Witness 5, Witness 7 and Witness 8 all provided statements that they were very concerned about the liquor incident, thought it was wrong and at Witness 5 and Witness 7 made this known to SAA Lenz. Witness 7 and Witness 5 had very clear recollections that they discussed their concerns with SAA Lenz and Witness 8 thought he "probably" had. Witness 5 was extremely clear in saying that he advised SAA Lenz in no uncertain terms that the liquor removal was wrongdoing and that he characterized it as a theft. Witness 7 also noted that Witness 5 always described the incident as "wrong." Witness 5 said that SAA Lenz agreed it was a serious matter and promised to speak to Ms. Ryan-Lloyd about it, as well as the new Speaker, Linda Reid. (Witness 5 later gave evidence to Justice McLachlin that SAA Lenz told him that Mr. James was taking the desk, chair and alcohol to Mr. Barisoff's residence. Witness 7 gave evidence to Justice McLachlin that he believed the liquor was going to Mr. Barisoff's home in Penticton.) Witness 5, Witness 7 and Witness 8 were all clear when I interviewed them that at no point did SAA Lenz tell them he assumed the liquor had been returned to the LDB for a refund.
- b. According to Ms. Ryan-Lloyd, shortly after the liquor removal, SAA Lenz informed her that Mr. James told SAA Lenz he was taking the liquor to Speaker Barisoff's home (whether this was true or not) and that he thought this was inappropriate and "wrong."

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<sup>12</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do>

- c. As a result of SAA Lenz telling Ms. Ryan-Lloyd, she spoke to Mr. James about the liquor incident, but he was very “offhand” about it, telling her he had been directed to deliver the liquor by Speaker Barisoff. Ms. Ryan-Lloyd would have had no reason to discuss the matter with Mr. James had SAA Lenz not come to her with his concerns. Ms. Ryan-Lloyd’s recollections are persuasive evidence that SAA Lenz’s oral and written evidence to Justice McLachlin that he assumed Mr. James returned the liquor to the LDB was false. (Unfortunately, Ms. Ryan-Lloyd did not have an opportunity to provide this information to Justice McLachlin when she was interviewed.)
- d. Ms. Ryan-Lloyd discussed the concerns about the liquor incident with SAA Lenz and he – to his credit – encouraged the development of a policy intended to prevent such actions in the future. Ms. Ryan-Lloyd’s recollections are corroborated by documents summarized in this Report which describe the “high priority” development of an “alcohol” policy.
- e. Ms. Ryan-Lloyd’s recollections regarding the creation of the liquor policy proposed by SAA Lenz are corroborated by those of Witness 9, [REDACTED], [REDACTED], who also recalled that SAA Lenz was concerned about the 2013 liquor removal incident, and that a draft policy developed mid-2013 by a contractor to the Finance department was a direct result of that incident. Witness 9 provided documentary evidence of the development of this policy, SAA Lenz’s involvement, that it was considered a high priority, and that a primary objective was to ensure the Sergeant-at-Arms controlled the liquor inventory. (Unfortunately, Witness 9 did not have an opportunity to provide this information to Justice McLachlin when she was interviewed.)
- f. Witness 9 denied SAA Lenz’s assertion in his written response to Speaker Plecas’ report that SAA Lenz had advised her of the liquor being removed in 2013. She was clear that if SAA Lenz had informed her, [REDACTED], [REDACTED], she would have absolutely required the matter to be investigated, including determining whether a refund had been obtained. This records search did not occur until 2019, when she determined no refund had been obtained. Witness 9 was clear that it would have been a simple matter to check to see if a refund had been obtained, and an action she would have expected SAA Lenz to take if he believed the liquor was being returned, along with other reasonable investigative steps.

- g. If SAA Lenz had a reasonable belief that Mr. James was returning the liquor to the LDB, there were several very simple and obvious steps he could have taken to verify this, as it was his sworn duty as the top law enforcement officer at the Legislative Assembly to be responsible for protecting the Legislative Precinct and its assets, and to enforce the *Criminal Code*. SAA Lenz had no credible information that the liquor was being returned, other than his alleged assumption. Further, the information about the liquor was not included in the email he sent on April 19, 2013 instructed staff to load a desk and chair into Mr. James' truck. Once he learned that liquor was being loaded, it was simply not credible that he would assume the liquor was being returned for a refund. The steps he could have and should have taken if he did truly assume the liquor was being returned would have been:
- i. Ask Mr. James what he was doing/had done with the liquor;
  - ii. Ask Speaker Barisoff if he had received the liquor and ask him for an explanation for directing it to be delivered to him if he had received it;
  - iii. Have Legislative Assembly financial records checked to see if a refund had been obtained;
  - iv. Consult with the Chief of the Victoria Police Department for advice (with whom LAPS had a Memorandum of Understanding with regarding investigations of criminal offences).
- h. Given that his own staff had raised serious concerns in 2013 about the liquor removal by Mr. James, SAA Lenz's statement that he assumed the liquor was being returned for a refund conflicts with credible and reliable evidence, and his actions did not support that assumption. SAA Lenz admitted his staff were very concerned about the incident but claimed they were upset about the lack of appropriate liquor management generally; that directly conflicts with witness evidence that their concerns were specific to their belief Mr. James was taking the liquor to Mr. Barisoff. SAA Lenz did not advise his staff the liquor was being returned and he took no steps to verify this alleged assumption so he could reassure his staff that Legislative Assembly assets had not been misappropriated and they need not be concerned. In the circumstances, it was not reasonable to assume the liquor was being returned for a refund.
2. I have concluded that Mr. Lenz did not take any of these simple steps because he did not assume the liquor had been returned for a refund. Rather, it is clear SAA Lenz knew

the liquor was not intended to be returned to the LDB because he told Ms. Ryan-Lloyd (and others) that he thought the liquor went to Mr. Barisoff. As a result, Ms. Ryan-Lloyd spoke to Mr. James, and he told her he had been directed by Mr. Barisoff to deliver the liquor to him (although Justice McLachlin determined that was untrue and Mr. James had simply failed to account for the majority of the liquor).

3. I have further concluded that SAA Lenz did not tell Justice McLachlin the truth when he said orally on several occasions (at pp. 96 and 98 of his transcript) that he assumed Mr. James had returned the liquor to the LDB. (The relevant excerpt of his transcript is included in Attachment “DD”.) He repeated those untruthful statements in his interview with me.
4. In addition, SAA Lenz made a written submission to Justice McLachlin in which he stated that regarding the 2013 incident of Mr. James’ truck being loaded, he “saw the alcohol and was present when it was loaded into the Clerk’s vehicle along with other staff members” and that he “assumed the alcohol was being returned for refund from where it was purchased...” and that he is “not aware of any theft of alcohol (at p. 6).” I have concluded that this aspect of SAA Lenz’s written submission was untruthful. (A copy of the relevant excerpt from SAA Lenz’s written submission is contained in Attachment “CC”.) He repeated those untruthful statements in his interview with me. Further, he at first stated to me that “everything I saw and heard from anybody who I dealt with indicated this was going to the Liquor Board,” but when asked for specifics, stated, “Then I should correct my testimony. People didn’t come to me and say, it had gone. I have no record or knowledge as to where the alcohol went.”
5. SAA Lenz had ceremonial, managerial and operational duties at the Legislative Assembly. He also had a clear, sworn duty as Special Provincial Constable to protect the assets of the Legislative Assembly, to investigate possible provincial statute and *Criminal Code* offences that occurred at the Legislative Precinct, and to perform these duties “faithfully, honestly and impartially.” In a memo SAA Lenz wrote in 2010, he asserted that an independent review had determined his duties and responsibilities were most similar to those of the Quebec Legislature Sergeant-at-Arms, who was a senior Inspector from the Quebec Provincial Police. He further asserted that he therefore should receive the same compensation as a Victoria Police Department senior Inspector. His compensation now significantly exceeds that of a senior Victoria Police Department Inspector. (A copy of this memo is included in Attachment “HH”.)
6. If SAA Lenz honestly believed, as he claimed in his written submission to Justice McLachlin (at p. 25), that he couldn’t initiate an investigation without the Speaker’s

approval, then he could have sought approval from the new Speaker, Linda Reid, who became the Speaker in June 2013. But I also reject the suggestion (as did the Acting Clerk, Ms. Ryan-Lloyd, and [REDACTED], Witness 9) that SAA Lenz could not have taken simple, reasonable steps such as having Witness 9 check to see if a refund had been obtained. In any case, the issue is moot because I have concluded SAA Lenz did not check to see if a refund had been obtained because he never assumed the liquor had been returned. In my interview of SAA Lenz, despite describing Witness 5 as extremely ethical, and the other witnesses as trustworthy, he claimed they were all mistaken or blamed them for not taking appropriate action based on what they knew.

7. In April and May 2018, when Speaker Plecas confided in SAA Lenz that he did not trust Mr. James and wanted to get rid of him, SAA Lenz informed both Speaker Plecas and Mr. Mullen of the “full blown theft” of liquor that Mr. James had committed in 2013. There would have been no reason for SAA Lenz to bring this issue up in the circumstances if he believed that nothing wrong had occurred. Yet SAA Lenz said in his evidence to Justice McLachlin that the 2013 liquor incident only came up in the context of him recommending a liquor inventory policy to the Speaker, and that when he spoke to the Speaker he was “satisfied that nothing happened”, i.e., he didn’t believe Mr. James had done anything inappropriate in taking the liquor in 2013. The evidence to the contrary is as follows:
  - a. Both Speaker Plecas and Mr. Mullen had clear recollections that they had many discussions with SAA Lenz in which he described the liquor removal incident in very strong terms as a theft, that it could be used as leverage to make Mr. James retire, and that they should go to the Premier to make this happen. SAA Lenz’s revelations about the incident were not “new” as he had expressed his serious concerns about the incident back in 2013 to Ms. Ryan-Lloyd and Witness 9, and had agreed with Witness 5 that the liquor removal was inappropriate and constituted wrongdoing.
  - b. For SAA Lenz’s evidence that he only discussed the incident in the context of a recommendation for a liquor inventory policy to be true, Speaker Plecas and Mr. Mullen have to be lying; their versions of events are too divergent with SAA Lenz’s to be explained by honestly but mistakenly remembering the same events differently. But not only do the Speaker and Mr. Mullen corroborate each other, there is strong independent corroboration for Speaker Plecas’ and Mr. Mullen’s consistent version of events, including:

- i. On May 28, 2018, SAA Lenz had Witness 5 also speak to Speaker Plecas about the 2013 liquor incident, and he too described his hearsay knowledge of it to the Speaker as a theft and wrongdoing, corroborating Speaker Plecas' recollections;
- ii. After SAA Lenz informed the Speaker of the incident, he advised Ms. Ryan-Lloyd that he had informed Speaker Plecas about the 2013 incident, and when discussing it with her in 2018, described it in strong terms and on at least one occasion as a "theft";
- iii. Speaker Plecas and Mr. Mullen both described how SAA Lenz met with them and contacted them many times, pressuring them to meet with the Premier to use the information about the "liquor theft" as leverage to get rid of Mr. James. SAA Lenz gave evidence to Justice McLachlin that he was only meeting with them regularly because Speaker Plecas had asked him what the process was to get rid of Mr. James and he had to go "back to them regularly because I felt they did not have quite a good grasp of the process" (Lenz transcript of interview with Justice McLachlin, p. 110). SAA Lenz's explanation that Speaker Plecas couldn't understand the simple process of going to see the Premier defies logic. This is especially true given Speaker Plecas was formerly the RCMP Senior University Research Chair and Director for the Centre for Public Safety and Criminal Justice Research at the University of the Fraser Valley, and holds two degrees in criminology from Simon Fraser University and a doctorate in higher education from the University of British Columbia.
- iv. On July 30, 2018, the Speaker and Mr. Mullen, along with the Deputy Speaker, Raj Chouhan, did in fact – as they said they were urged to by Mr. Lenz – attend the Premier's office for a meeting with [REDACTED], Witness 10. Witness 10 had a clear recollection that the Speaker had a report with many serious allegations against both Mr. James and SAA Lenz, including the liquor incident, and recalled reading and/or being told that SAA Lenz had taken no action after the misappropriation of the liquor.

- v. The recollections of the Speaker and Mr. Mullen are further corroborated by SAA Lenz's cell phone records, which show that in the period between the Speaker being informed of the liquor incident on May 28, 2018 and his meeting with Witness 10 on July 30, 2018, there were a combined 43 calls between SAA Lenz's cell phone and the cell phones of Speaker Plecas and Mr. Mullen. Mr. Mullen noted that there was no reason for SAA Lenz to be contacting him over the summer because the House had risen at the end of May, and that getting rid of Mr. James was the only topic.

As a baseline, in the last two weeks of May, there were only two calls between SAA Lenz's cell and the Speaker's cell, and none with Mr. Mullen. And after the meeting with Witness 10, from August 1 until September 25, there was only a combined total of four calls between SAA Lenz's cell and the cell phones of the Speaker and Mr. Mullen.

From September 26 to October 11, there was another flurry of 28 calls between SAA Lenz's cell and those of the Speaker and Mr. Mullen. During this time Mr. Mullen advised SAA Lenz was providing them more information about misappropriation of Legislative Assembly property by Mr. James and he was now urging them to speak to the Attorney General about it. Mr. Mullen also described in-person visits as occurring frequently, sometimes multiple times in a day, about getting rid of Mr. James.

(Unfortunately, SAA Lenz's cell records were not available to Justice McLachlin at the time of her investigation.)

- vi. After SAA Lenz informed the Speaker of the 2013 liquor incident, he conducted an "investigation," in that he wrote a brief statement, had Witness 7 dictate a statement to him about his involvement, and obtained one from Witness 5. He at first denied to Justice McLachlin that it was an "investigation," but when confronted with Witness 7's evidence that he had described it as an investigation to him, he claimed Witness 7 may have misunderstood what he was doing and conceded it was an investigation of some kind.

- vii. Witness 7 also said in his statement to me that when he asked what had become of his statement, SAA Lenz told him nothing was happening because the “Premier” didn’t want to go forward with the investigation. Witness 7 could only have known efforts were being made to take the information about the 2013 liquor incident to the Premier because SAA Lenz told him that, which rebuts SAA Lenz’s evidence about the nature of his investigation. (Unfortunately, Witness 7 did not have occasion to provide this evidence to Justice McLachlin.)
- viii. When I interviewed SAA Lenz, his explanations for the evidence that he had not told the truth to Justice McLachlin were that everyone else was mistaken; to deny the evidence of multiple witnesses; and to continue to deny that he had suggested Speaker Plecas and Mr. Mullen use information about the “theft” of liquor by Mr. James in 2013 as leverage to get rid of him. Instead, SAA Lenz suggested he may have said hypothetically to Speaker Plecas, Mr. Mullen, and Ms. Ryan-Lloyd that if the liquor hadn’t been returned it would be theft, but he never believed that to be true. SAA Lenz’s statements regarding the 2013 liquor removal and his 2018 discussions with the Speaker and others were not reasonable explanations, and were strongly rebutted by credible witness evidence.

## CONCLUSION

The allegation that SAA Lenz failed to properly investigate the 2013 liquor incident:

As the Sergeant-at-Arms, and essentially the “chief” of LAPS, SAA Lenz had a clear responsibility for taking appropriate action in his role as a Special Provincial Constable, and to set an excellent example for his subordinates. He swore an Oath of Allegiance and Office as a Special Provincial Constable under the *Police Act* to uphold the responsibilities of his office “faithfully, honestly and impartially.” These duties included preventing “all offences against the persons and properties of Her Majesty’s subjects” and enforcing provincial statutes and the *Criminal Code* at the Legislative Precinct.

It was not “normal” for Mr. James to return liquor to the LDB. It is not believable and defies logic that SAA Lenz would not ask any questions about where the liquor was going. This is particularly so because SAA Lenz did not advise his staff that liquor was to be loaded in Mr. James’ truck when he advised them that the desk and chair being gifted to Speaker Barisoff were to be loaded. SAA Lenz failed to take even minimal, reasonable steps to determine what

happened with the liquor he directed to be loaded into Mr. James' truck on April 22, 2013, and to ensure it was properly accounted for. He therefore failed in his sworn duty as Special Provincial Constable and the Sergeant-at-Arms, the top law enforcement official at the Legislature. There is clear and cogent evidence that SAA Lenz did not take any investigative action because he already knew Mr. James was not returning the liquor to the LDB for a refund and that neither Mr. James nor Mr. Barisoff – if he believed that was the liquor's destination – had any right to it.

In all the circumstances, SAA Lenz's actions were inappropriate and would support substantiation of the disciplinary default of Neglect of Duty, contrary to section 77(3)(h) of the *Police Act*, in that he conducted himself in a manner that he knew, or ought to have known, would be likely to bring discredit on the Legislative Assembly Protective Service and the Legislative Assembly.

It should be noted that there is evidence that SAA Lenz did consider the matter a serious one and took steps to ensure such an act would be prevented in the future. These steps included advising the Deputy Clerk and proposing and working towards various policies regarding the handling of liquor and gifts of legislative assets. Therefore, I do not consider SAA Lenz's failure to adequately investigate the liquor incident to be at the most serious end of the range of misconduct.

In addition, I question whether it is appropriate to impose significant disciplinary measures against SAA Lenz for conduct not at the most serious end of the range that occurred more than six years ago, even though it only became known to his supervisor – Speaker Plecas – in 2018. I note, in particular, section 6(1)(c) of the *Special Provincial Constable Complaint Procedure Regulation*, which provides that:

**6 (1)** A supervisor may refuse to investigate or further investigate a complaint against a respondent if the supervisor is satisfied that...

(c) the complaint concerns an act or omission that, to the knowledge of the complainant, occurred more than 6 months before the complaint was made.

While the decision by the supervisor to investigate an act or omission that occurred more than six months earlier is a discretionary one, the age of the misconduct is a factor that should be considered in determining what disciplinary measures should be taken against SAA Lenz for this finding of Neglect of Duty.

### The allegation that SAA Lenz was involved in the suppression of evidence:

If proven, the alleged conduct could constitute the disciplinary default of Discreditable Conduct. The mystery of the travels of this memory stick, which was allegedly not in SAA Lenz's safe on April 3, 2019, but was clearly there on May 6, 2019, after Justice McLachlin had completed her investigation, is concerning. Only Mr. Mullen and Witness 5 had keys to SAA Lenz's office. Therefore, the three most plausible explanations for these circumstances are:

1. Mr. Mullen removed the memory stick before searching the safe on April 3, 2019 and then replaced the memory stick in time for it to be found on May 6, 2019.
2. Witness 5 removed the memory stick before Mr. Mullen searched the safe on April 3, 2019 and then replaced the memory stick in time to find it on May 6, 2019.
3. Mr. Mullen, because he was not looking for a memory stick on April 3, somehow didn't see it when he searched and photographed the safe in question.

Other than having opportunity, because he had access to SAA Lenz's office, there is absolutely no evidence that Mr. Mullen was involved in making the memory stick disappear and there would be no benefit to him to do so. In fact, he believed there may have been a different outcome regarding SAA Lenz had Justice McLachlin had access to the statements on the memory stick. I reject as a possible explanation that Mr. Mullen was involved.

Other than having access to Mr. Lenz's office, there is absolutely no evidence that Witness 5 was involved in making the memory stick disappear and then appear again. He strongly denied it, it would be completely out of character for him based on the statements of several witnesses, including SAA Lenz, and there would be no benefit to him. There is no credible evidence that Witness 5 was involved, and I therefore also reject this explanation.

Even if one accepted the hypothesis that Witness 5 was responsible on behalf of SAA Lenz, it is difficult to see what the benefit to SAA Lenz would be: He knew Witness 5 had his own copy of his statement, and Witness 5 and Witness 7 were likely just as capable at giving evidence in 2019 as they were in writing a statement in 2018 about an incident that occurred in 2013. In fact, SAA Lenz and Witness 7 both gave evidence to Justice McLachlin that was more detailed than their written statements and not inconsistent with them. In other words, there is no evidence to suggest Justice McLachlin's investigation was compromised by the missing memory stick.

While SAA Lenz's failure both in person to Justice McLachlin and later through his counsel to clarify that statements from himself, Witness 7 and Witness 5 were on a memory stick, not on paper, is curious, his explanation that he simply forgot to mention this is an explanation that

could reasonably be true. SAA Lenz strongly denied all knowledge of the memory stick going missing, and obviously could not have been physically involved because he had no access to his office. There is no evidence to substantiate the allegation that he was involved in the memory stick not being in the safe on April 3 but being there on May 6, after Justice McLachlin completed her investigation.

While it is difficult to believe that Mr. Mullen missed the memory stick on April 3, 2019, especially because he took photographs, this is still the simplest explanation. Mr. Mullen was not looking for a memory stick and that could have contributed to him not seeing it. The principle of Occam's Razor – that given a choice between a simple explanation and a complex one, the simple one is more likely to be correct – may be apt here. I know that this will be an unsatisfactory explanation to some, but it is the one that best fits with the circumstances. There may be other explanations, but I have not been able to identify them.

I find that the allegation that SAA Lenz engaged in discreditable conduct by suppressing evidence is not substantiated.

#### Whether SAA Lenz was Untruthful in his Oral and Written Statements to Justice McLachlin:

On March 22, 2019, when SAA Lenz was interviewed by Justice McLachlin, in response to her questions about his conversations in 2018 with Speaker Plecas about the 2013 liquor incident, he said (at p. 96 of his transcript) that it was in the context of recommending an alcohol inventory system and that:

And this is where the conversation first initiated with speaker about Craig James. At no point do I feel that this alcohol was stolen. At my point – I didn't know where it went, but it was being returned.

SAA Lenz's statement that he believed the liquor was being returned is demonstrably false, based on the totality of the evidence I gathered (see previous Analysis section).

Further along in the interview, when he was asked where he thought the liquor was going, he responded (at p. 98 of his transcript):

Wherever the clerk obtained the alcohol, it was unopened, and it could be returned. And that was my assumption at that time that this alcohol would be returned for reimbursement.

Again, as set out in the Analysis, the statement that he assumed the alcohol would be returned for reimbursement is demonstrably false.

When he was asked why he had taken a statement from Witness 7, he responded (at p. 100 of his transcript):

After my conversation with the Speaker in – conversation about inventories and other parts, I realized that this may become an issue down the road. I did not have any statements of that time. In the event that this would ever become an issue, an investigation, or along those parts, I wanted to be sure that we have something firmly documented. As such, did I miss something? Did Witness 7 hear from Mr. James that he was taking alcohol to Penticton? I wanted confirm the facts of the assumptions I had at that time. So I asked Witness 5, Witness 7, and myself to put a document together that validated what I believe I knew.

In this section of his interview SAA Lenz was again making the statement that his “assumptions at the time” were that Mr. James was returning the liquor. This is demonstrably false.

In his written submission to Justice McLachlin, SAA Lenz wrote (at p. 6):

- SAA saw the alcohol and was present when it was loaded into the Clerk’s vehicle along with other staff members.
- SAA was not involved in the purchasing of the alcohol nor did the purchasing come from his budget.
- To date the SAA does not know where the alcohol went, once it left the precinct.
- The SAA assumed the alcohol was being returned for refund from where it was purchased, as another Legislative branch had done after a conference, as noted in...
- SAA was not aware of any alcohol being purchased by the former Speaker Bill Barisoff.
- SAA is not aware of any theft of alcohol.

SAA Lenz’s statement in his written submission that he “assumed the alcohol was being returned for refund...” is demonstrably false, based on the credible evidence set out earlier in this Report.

SAA Lenz’s untruthful oral statements and written submissions to Justice McLachlin regarding the 2013 liquor incident – including with respect to his conversations with Speaker Plecas and Mr. Mullen in 2018 – constitute an egregious breach of public trust.

For Justice McLachlin (or any investigator) to be able to carry out her work effectively, she needed to be able to rely upon those she interviewed to be truthful. This is particularly true

of a peace officer who swore an oath to “faithfully, honestly and impartially perform my duties as a Special Provincial Constable.”

As was pointed out in the Adjudicator’s findings in the case of Chief Constable Elsner of the Victoria Police Department (described in more detail in Appendix “A”), the fact that SAA Lenz’s evidence to Justice McLachlin was not under oath is not a barrier to a finding of a disciplinary default. Then-Police Complaint Commissioner Stan Lowe, Q.C., wrote in his summary of the Elsner case:<sup>13</sup>

On the second allegation (misleading the internal investigator), this too was “high on the scale of seriousness,” even though the statement was not made under oath and did not affect any other person’s jeopardy, unlike the third allegation.

Mr. Lowe also quoted directly from the adjudicator, retired judge Carol Baird Ellan, who found Chief Elsner guilty of Discreditable Conduct for misleading the investigator, and noted in her decision:

...In addition, this misconduct strikes at the heart of the integrity of the disciplinary investigative process and displays disrespect for a core value of policing, that of testimonial trustworthiness...

I have concluded that the evidence that SAA Lenz was untruthful in his oral evidence to Justice McLachlin regarding the 2013 liquor incident and his 2018 conversations with Speaker Plecas and Mr. Mullen is clear and cogent, and meets the balance of probabilities evidentiary standard. I have also concluded that the evidence that SAA Lenz was untruthful in his written submission to Justice McLachlin is clear and cogent, and meets the balance of probabilities evidentiary standard.

SAA Lenz’s oral and written statements to Justice McLachlin therefore appear to substantiate the disciplinary default of Discreditable Conduct for, conducting himself “in a manner that the member knows, or ought to know, would be likely to bring discredit [on the Legislative Assembly Protective Service and the Legislative Assembly], contrary to section 77(3)(h) of the *Police Act*, and Deceit, “by providing an oral or written statement that, to the member’s knowledge, is false or misleading” contrary to section 77(3)(f)(i)(A) of the *Police Act*.

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<sup>13</sup> “Summary Informational Report – Review of the Investigations and Disciplinary Process Concerning Frank Elsner.” Available at <https://opcc.bc.ca/wp-content/uploads/2018/10/2018-09-26-Summary-Informational-Report.pdf>.

## THE DIFFERENCES BETWEEN MY FINDINGS AND JUSTICE MCLACHLIN'S

In coming to these findings of misconduct, I wish to clarify why my findings regarding this public trust investigation under the *Police Act* differ from those of Justice McLachlin, who did not find SAA Lenz had committed misconduct with respect to his lack of investigation in 2013 of the removal of liquor by Mr. James.

First, although it wasn't binding on me, I had the benefit of reading Justice McLachlin's report before I began my investigation, and of reviewing excerpts of the transcripts of relevant witness interviews before I conducted interviews of those same witnesses. Justice McLachlin's extraordinary report was of great benefit to my investigation, despite our different mandates.

I will also briefly describe the key differences in our mandates.

1. Justice McLachlin's mandate was an "administrative" one, in which she had to determine whether policies, rules, or processes of the Legislature had been violated by SAA Lenz as an employee of the Legislative Assembly. Justice McLachlin's terms of reference made no mention of the Special Provincial Constable legislative regime.
2. My mandate flows from the *Special Provincial Constable Complaint Procedure Regulation of the Police Act*. SAA Lenz has ceremonial, managerial, and operational duties as an employee of the Legislative Assembly that are governed by the Legislature's policies. He also has sworn duties as a Special Provincial Constable. These duties are "public officer" duties that are governed by legislation, including the *Police Act*. My role was to conduct an investigation pursuant to the *Special Provincial Constable Complaint Procedure Regulation of the Police Act*. Extensive experience in policing and *Police Act* matters is essential for a *Police Act* investigation.
3. The process for my investigation under the SPC Regulation was different from that of Justice McLachlin's investigation, including that it was not constrained by the time pressures she had, or the directions she had as to what she should refer to and rely on.
4. As a result, the evidentiary record was different. I had the benefit of the June 2018 statements obtained by SAA Lenz that were not available to Justice McLachlin, was able to gather witness evidence regarding the liquor incident that was more extensive than Justice McLachlin's, and was able to gather documentary evidence that was not available to her.
5. While I did find SAA Lenz committed misconduct regarding his inadequate investigation of the 2013 liquor incident in relation to his duties under the *Police Act*, I did not find that his conduct was at the serious end of the range regarding neglect of duty. I therefore questioned whether there should be any disciplinary measures imposed as a

result of such historical conduct, given the mitigating circumstances. In terms of outcome, I believe my findings should not have a different result than Justice McLachlin's findings regarding the SAA Lenz's inadequate investigation of the 2013 liquor incident.

6. However, as matters unfolded in my investigation, the evidence pointed to a lack of truthfulness by SAA Lenz to Justice McLachlin, which gave rise to an independent concern that I was compelled to raise as a disciplinary issue. Indeed, this information overwhelmed the analysis of the underlying complaint. What was revealed in my investigation was a lack of forthrightness to the Speaker, to SAA Lenz's fellow employees, and to Justice McLachlin about the 2013 liquor incident, in circumstances where forthrightness was an essential component of SAA Lenz's duties and obligations as a Special Provincial Constable.
7. The allegations by Mr. Mullen necessarily led me to an investigation into SAA Lenz's conduct during Justice McLachlin's investigation, which allowed for an analysis in light of the evidence from other witnesses. I have found that misconduct occurred with respect to SAA Lenz's repeated untruthful evidence – both orally and in writing – to Justice McLachlin during her investigation, regarding the 2013 liquor incident and his conversations with Speaker Plecas and Mr. Mullen. This finding was based largely on evidence not provided to Justice McLachlin during her investigation.
8. My investigation also allowed me to interview SAA Lenz in detail about the statements he made to Justice McLachlin during her investigation. The results of that interview demonstrated that SAA Lenz's statements were not accurate, and were in conflict with the evidence of several credible witnesses, including witnesses that Justice McLachlin interviewed, but not about the liquor incident in 2013, or SAA Lenz's conversations about it the liquor incident in 2018.

## DISCIPLINE MEASURES

The *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98 sets out that:

- (1) After considering the results of the investigation, the supervisor may impose one or more of the following disciplinary or corrective measures in relation to the respondent concerned:
  - (a) dismissal;
  - (b) suspension without pay for not more than 5 scheduled working days;
  - (c) direction to work under close supervision;
  - (d) direction to undertake special training or retraining;
  - (e) direction to undertake professional counseling;
  - (f) written reprimand;
  - (g) verbal reprimand.

I find that SAA Lenz's false oral and written statements to Justice McLachlin constitute misconduct that is at the most serious end of the range of misconduct under the *Police Act*. This aggravating factor should be considered in deciding on the appropriate disciplinary or corrective measures, as provided for in section 8 of the *Special Provincial Constable Complaint Procedure Regulation*. It is not part of my mandate to recommend discipline; however, it may be helpful for SAA Lenz's supervisor to have guidance on the appropriate penalty and corrective measures. Therefore, I have provided information in this regard in Appendix "1" to this Report.

I also note that the Speaker, SAA Lenz's supervisor, is a key witness in this matter and cannot be considered a disinterested or unbiased party. In fairness to SAA Lenz regarding discipline, I recommend that before making a final decision on discipline, the Speaker consider obtaining independent advice from a credible party with a strong background in *Police Act* matters.

## APPENDIX “1”: INFORMATION REGARDING PENALTY OR CORRECTIVE MEASURES

The Sergeant-at-Arms fulfills an important ceremonial role steeped in tradition at the Legislative Assembly, but also leads a force of 43 Special Provincial Constables (and a large number of non-sworn staff), making LAPS larger than three of the 11 municipal police departments in B.C. (and close to the size of a fourth) in terms of sworn strength.<sup>14</sup> Further, under the same *Police Act* Regulation that guided my investigation, SAA Lenz is responsible for overseeing discipline investigations and imposing any discipline on his subordinates. This is a significant responsibility and one that arguably requires that he exemplify the highest standards of behavior himself.

The following information is provided for SAA Lenz’s Supervisor’s consideration.

There is very little guidance as to the appropriate penalty for misconduct committed by senior law enforcement officials as most cases available on the OPCC website concern constables doing “street-level” police work. Fortunately, former Police Complaint Commissioner Stan Lowe, Q.C., released on September 26, 2018 a comprehensive report on the discipline matter of former Chief Constable Frank Elsner of the Victoria Police Department.

Former Chief Elsner was found to have committed various disciplinary defaults – including Deceit – for conduct related to an inappropriate relationship with a subordinate’s wife. The report is titled, “Summary Informational Report – Review of the Investigations and Disciplinary Process Concerning Frank Elsner.”<sup>15</sup> This is a valuable resource because it speaks to the heightened expectations for a Chief Constable, a position somewhat similar to the position of Sergeant-at-Arms, in that he is the top law enforcement official for the Legislative Assembly and commands a department of Special Provincial Constables.

I have extensively quoted relevant portions of the Mr. Lowe’s report below:

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<sup>14</sup> The municipal police departments for Central Saanich, Nelson City, and Oak Bay all have fewer than 25 sworn officers. The Port Moody PD has 51 sworn officers. <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/police-resources.pdf>, p. 10.

<sup>15</sup> Available at <https://opcc.bc.ca/wp-content/uploads/2018/10/2018-09-26-Summary-Informational-Report.pdf>.

At page 4:

Ultimately, the former chief was found to have committed a total of eight acts of misconduct under the *Police Act*. The retired judges found the following misconduct (and imposed the following discipline):

**Discipline Authority Retired Chief Judge Carol Baird Ellan:**

1. *Discreditable Conduct* by misleading a subordinate in connection with the disciplinary investigation: 30 days' suspension, demotion to rank of constable, and training on ethical issues.
2. *Discreditable Conduct* by providing misleading information to the internal investigator: Dismissal from policing.
3. *Deceit* by attempting to have a witness provide a false statement to the investigator: Dismissal from policing.
4. *Discreditable Conduct* by engaging in conduct with the spouse of a member under his command, which constituted a breach of trust and conflict of interest: Dismissal from policing.
5. Inappropriate use of police department equipment and facilities: Dismissal from policing.

At pp. 5-6:

Ontario Court of Appeal Justice Michael H. Tulloch, released his report on the Independent Police Oversight Review in Ontario in 2018. In his report he addressed the concept of "policing by consent":

6. *"Policing by Consent" involves giving considerable authority to police officers with the consent of the public, thereby providing officers with the powers and legal defences unavailable to other citizens. In essence, the police are simply citizens in uniform who ensure the welfare of the community. ...*

8. *Policing by consent recognizes that the exercise of special powers by the police depends on public approval, also known as legitimacy. The public's acceptance of the police's role in society as legitimate is based on public trust and requires the respect and*

*cooperation of the public. ...*

*35. The public's voluntary conferral of powers on the police comes with a commensurate right to ensure that those powers are being used properly and effectively. This requirement of accountability has led to the increased adoption of various models of civilian oversight of police around the world. While in many jurisdictions police initially resisted civilian oversight, most police today recognize its value.*

At pp. 6-7:

The concept of independent civilian oversight applies for all officers. As a matter of logic and principle, the public wants to know and trust that the police are doing their jobs properly, but if not, that there will be a meaningful and fair process to address misconduct. Just as the public expects the police discipline process to work effectively for a young constable, the public has the same expectation for the highest ranking officer, the Chief Constable. Put differently, there is no reason to think that the need for independent civilian oversight is diluted or lowered just because the case involves the Chief Constable. In some respects, given the prominence and influence of the police chief, there is a particular need for the Chief Constable to be accountable and be seen to be accountable.

...In a police department with a chain of command structure, it is vital that the most senior officer does not merely “command respect” — in the sense of requiring it — but also that the officer earn and keep the respect of his or her officers. The rank structure is vital to the operation of modern-day police departments. Police officers have an organizational loyalty to the department and the office of Chief Constable, which survives any particular leader. (Indeed, in the BC *Police Act* setting, there are provisions that require this organizational loyalty.) But for the department to be truly effective, that organizational loyalty must be supplemented by an individual loyalty. And that can only occur when the Chief Constable demonstrates integrity and ethics of the highest order.

At p. 7:

***The office of Chief Constable***

As noted by Discipline Authority Retired Judge Baird Ellan in her disciplinary measures decision issued on July 23, 2018:

*The standard of conduct for a Chief Constable is higher than that for other members in the department. He is required to set the example.*

This view is supported in the law. The Ontario Civilian Police Commission expressed the same view in a case involving the chief officer of the Timmins Police Service. The chief appeared before a conduct hearing at which he admitted to *Discreditable Conduct*. (He had cancelled two traffic tickets issued by an officer against a Timmins city councillor.) The Commission observed, at paras. 16 and 28:

*The role of a chief of police is vital in the functioning of police services in the Province of Ontario. A chief of police is the highest-ranking officer of his or her service and is therefore held to the highest standard of conduct. Implicit in the Commission's prior decisions is the principle that with high rank and responsibility comes great accountability.*

...

*An integral function of a chief of police is the management of his or her police officers. The Chief is expected to do this not only through the chain of command but also through exemplifying the conduct expected of the officers in the force.*

At p. 17

The retired judge concluded that the former chief either was aware, or ought to have been aware, that misleading the husband in this manner would likely bring discredit on the department. She emphasized that there is an expectation that the Chief Constable will be aware of and follow ethical guidelines:

*It cannot be overlooked that the former chief's job, under the Police Act, included acting as a Discipline Authority in relation to conduct investigations. The Police Act was part of his job description, as was the BC Police Code of Ethics and the code of ethics of the relevant department. In my view the former chief cannot be heard to say that he hadn't read the Act or all of the relevant codes of ethics and applicable professional standards...*

At pp. 17-18

The second allegation of *Discreditable Conduct* involved the former chief giving inaccurate information to the senior lawyer appointed to conduct the internal

investigation into his conduct in the fall of 2015. Specifically, the former chief told the internal investigator that he had told the husband about an incident involving physical contact with the spouse of the affected officer, and also that there were a number of Twitter messages “back and forth.” In a later interview with the internal investigator, the former chief tried to back away from these assertions once he was challenged; he said he did not remember whether he had told the husband those things or not.

With respect to this allegation, Retired Judge Baird Ellan concluded that the former chief’s explanations were not credible and that he had intended to deceive the investigator. She wrote:

*It becomes clear on reviewing the former chief’s evidence that he is caught in a web of untruths. Where he finds himself facing contradictory evidence, he tailors his statements to reveal only that part of the truth he feels he must, to address the established facts with which he is faced. His statements reflect many obvious efforts at obfuscation, in my respectful view.*

*Reading the statements in sequence and in context, they disclose a clear intent to mislead not only the internal investigators, but the external investigators, as well. He appears, in his statements and his testimony, to have considered himself justified in presenting to her any version of the events that would assist him to achieve a favourable outcome.*

...

*I have no hesitation in concluding that for a Chief Constable to deliberately mislead the investigator on an internal discipline investigation, in which he is the subject, is misconduct.*

In the course of finding this allegation to be substantiated, Retired Judge Baird Ellan referred to the duty imposed on police officers under s. 101 of the *Police Act*, to cooperate in relation to an external *Police Act* disciplinary investigation. She wrote:

*While the internal process is not governed by Section 101, I do not think that leads to a conclusion that the former chief had no obligation to be forthright and responsive in his interviews with the investigator. Police constables have a high standard in relation to providing information within the context of legal proceedings. There is authority for the proposition that providing a false statement in an administrative investigation can be a criminal obstruction of justice: *R. v. Wijesinha*, [1995] 3 SCR 422, 1995 CanLII 67 (SCC). There is also authority for the fact that police officers have a duty of integrity in*

*investigative proceedings: R. v. Dosanjh, 2006 BCPC 574. I would observe that Chief Constables have an identical duty of integrity, but that it is combined with a duty to exemplify high standards.*

At p. 19:

***Disciplinary measures for misconduct***

In finding these three allegations to have been proven, the retired judge went on to consider the appropriate disciplinary or corrective measures for the former chief. In her decision on disciplinary measures, issued on April 18, 2018, Retired Judge Baird Ellan considered the framework under s. 126 of the *Police Act* and the aggravating and mitigating circumstances of the case.

Dealing with the first allegation, for giving misleading information to the husband, she found this to be “a deliberate attempt to avoid personal jeopardy” which “may also have amounted to a criminal offence.” Although it arose at a time when emotions were high, she considered this misconduct to be “high on the scale of seriousness.” On the second allegation (misleading the internal investigator), this too was “high on the scale of seriousness,” even though the statement was not made under oath and did not affect any other person’s jeopardy, unlike the third allegation. In regards to the third allegation, for attempting to have person “A” make a false statement, the retired judge concluded that “not only was the motive self-serving, but the former chief sought to enlist a subordinate into joining him in the deception of the investigator.” She went on to state:

*The former chief’s actions were not only grounded in self-interest but reflected a lack of respect for “A’s” own integrity and potential liability. In addition, this misconduct strikes at the heart of the integrity of the disciplinary investigative process and displays disrespect for a core value of policing, that of testimonial trustworthiness. Moreover, it is an abdication of the exemplary moral and ethical standards required of a Chief Constable. I consider the misconduct in relation to this allegation of deceit to be very high on the scale of seriousness.*

The retired judge then considered the former chief’s record of employment, including the 30-day concurrent suspensions imposed by Retired Judge Pitfield (summarized below), the impact of the discipline on the former chief, and the likelihood of future misconduct. In addressing this last point, she said it was “difficult to conclude at this point that the former chief has gained significant insight into the nature or the

seriousness of his misconduct.” Likewise, she had “difficulty concluding that he can be said to have taken full responsibility for his actions.” Retired Judge Baird Ellan then reviewed a series of *Police Act* decisions dealing with similar misconduct sanctions, noting that they supported dismissal “in cases of deceit involving multiple incidents of deliberate untruthfulness.” The retired judge also considered the former chief’s testimony regarding the devastating impact of the investigation and the publicity both to him and his family, concluding that “the consequences the former chief has experienced would appear to flow less from the fact of the investigation or any measures that might be imposed on him than from his choice of how to respond to the investigation.”

In summary, the retired judge imposed the following disciplinary measures:

- On the first allegation, 30 days’ suspension, demotion to the rank of constable, and training on ethical standards.
- On each of the second and third allegations: Dismissal from policing.

At p. 22:

In articulating the standard to be expected of a Chief Constable, she wrote:

*... the applicable ethical standards require all officers to specifically consider whether they are in a conflict of interest. In addition, the former chief’s employment contract requires him to set a high ethical level of conduct for the Department. These materials set the objective standard for an officer in the position of chief of a police department, and in particular, the former chief.*

At p. 26:

In addressing the remaining misconduct allegations, Retired Judge Pitfield addressed both factually what was proved, and objectively what standard was to be used in considering whether the proven conduct amounted to “*Discreditable Conduct*.” He wrote:

*Whether conduct was likely to bring discredit on the VicPD must be determined objectively by reference to the standards that the community should reasonably expect of its police department generally, and of one holding the office of Chief Constable in particular.*