

The Joyce Report

made under the
House of Assembly Accountability, Integrity and Administration Act



August 24, 2018

Bruce Chaulk
Commissioner for Legislative Standards

EXECUTIVE SUMMARY

On May 14, 2018, Colin Holloway, (MHA, Terra Nova) (hereinafter referred to as MHA Holloway) wrote the Commissioner's Office requesting an investigation into the conduct of Edward Joyce, (MHA, Humber – Bay of Islands), (hereinafter referred to as MHA Joyce) with respect to an alleged violation of the Member's Code of Conduct. MHA Holloway alleged incidents of harassment and intimidation by MHA Joyce directed at MHA Holloway and that these incidents were a violation of sections 3, 4, 5 & 11 of the Members Code of Conduct. MHA Holloway also indicated that the culture of harassment and intimidation was pervasive within the Liberal Party Caucus.

While acknowledging the seriousness of the issues raised by MHA Holloway, it must be stated that the statutory mandate of the Commissioner for Legislative Standards is to provide an opinion with respect to the compliance of a member with the provisions of the House of Assembly Accountability, Integrity and Administration Act S.N.L. 2007 c. H-10.1 (hereinafter referred to as the HOAIA) and the Member's Code of Conduct.

I have also considered specifically whether MHA Joyce engaged in behaviour that amounts to harassment. In doing so, I have relied on a definition of harassment as objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome.

Regarding the comments of MHA Joyce, I note that his intent when making the comments is largely irrelevant in an analysis as to whether or not the comments amount to harassment. I find, on their face, that such comments could be seen as objectionable and offensive comments to be made in any workplace, including the House of Assembly. That said, I also find that the comments were made at the tail end of a positive and supportive working relationship between MHA Joyce and MHA Holloway, and MHA Holloway did not deny that he too used similar language with MHA Joyce. As such I do not believe that MHA Joyce knew, or ought to have known, that his comments were unwelcome by MHA Holloway. There is no suggestion that the comments persisted after MHA Holloway first raised his complaint about MHA Joyce. As such, I do not believe that MHA Joyce harassed MHA Holloway in making these comments.

I also do not believe that by calling MHA Holloway to discuss his vote for Speaker that MHA Joyce harassed him. I find that such calls were part of the normal course leading up to the Speaker vote and I do not find that the calls were objectionable or offensive. In fact, I believe that MHA Holloway engaged in similar behaviour in support of MHA Parsons. In that regard, as a result of my review, I am of the opinion that MHA Joyce was not in violation of Principles 3, 4, 5 and 11 of the Member's Code of Conduct.

Although there is no contravention of the Member's Code of Conduct, MHA Joyce acknowledged that he would refrain from using profanity towards MHA Holloway and I would recommend that all MHA's not use profanity towards each other in the future as such language is not an acceptable practice for our elected officials.

BACKGROUND

The HOAIA Act provides the authority of the Commissioner for Legislative Standards to examine and comment on the actions of elected members of the House of Assembly.

Subsection 36(1) states as follows:

36(1) A member who has reasonable grounds to believe that another member is in contravention of the code of conduct adopted under subsection 35 (1) may, by application in writing setting out the grounds for the belief and the nature of the alleged contravention, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of the code of conduct.

Upon receipt of a request for an opinion under s.36(1) , it is incumbent on the Commissioner to conduct an initial review of the matter to determine whether or not there is any substance to the allegations and whether or not it may be necessary to engage in a formal inquiry of the matter. However, before the commissioner may start an inquiry, the commissioner is required to give the member concerned reasonable notice in accordance with s.37(1).

Section 37(1)states as follows:

37(1) Upon receiving a request under subsection 36(1), (3) or (4), or where the commissioner decides to conduct an inquiry under subsection 36(2), and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

As noted by s.37(1), providing notice to the member concerned is not indicative of the start of an inquiry. An inquiry is started when the commissioner decides to conduct an inquiry and may start after the commissioner has received a response from the member concerned.

When the commissioner decides to start an inquiry, then the results of an inquiry shall be reported no later than 90 days after beginning the inquiry in accordance with s.38(4).

In civil matters such as this one, the burden of proof is on a balance of probabilities. According to the Supreme Court of Canada in F.H. McDougall [2008] 3 S.C.R. 41 the only practical way in which to reach a factual conclusion in a civil case is to decide whether or not it is more likely than not that the event occurred. In making such a determination the evidence must always be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test. In reviewing this matter it was necessary to keep the standard of proof in mind at all times.

CHRONOLOGY OF EVENTS

On May 14, 2018 a written complaint was received by the commissioner from MHA Holloway. In the complaint, MHA Holloway requested that the commissioner conduct a formal investigation into MHA Joyce in accordance with s.36(1) of the HOAIA for an alleged violation of the Member's Code of Conduct.

On May 28, 2018 a letter was sent to counsel for MHA Joyce requesting a written response to the complaint.
On June 13, 2018 a written response was received from MHA Joyce.

On June 29, 2018, after an extensive review of proposals from professional services firms, with expertise in conducting workplace investigations, Rubin Thomlinson LLP was retained by the commissioner to assist in

investigating the complaints.

On July 19 and 20, 2018, interviews were conducted by the Commissioner with the assistance of his investigator with Member Holloway and potential witnesses.

On August 2, 2018, MHA Joyce's response was provided to MHA Holloway.

On August 3, 2018, MHA Holloway responded in writing to MHA Joyce's response.

THE INVESTIGATION

The complaint raised by the Member dealt with five specific issues. These are as follows:

- 1) MHA Pension Plan;
- 2) Inability to work on behalf of constituents;
- 3) Election of Speaker of the House of Assembly;
- 4) Isolation in role as Parliamentary Secretary; and
- 5) Culture of Harassment and Intimidation

1) MHA Pension Plan

MHA Holloway's submission:

Since being elected as the MHA for the District of Terra Nova on November 30, 2015, the atmosphere of harassment and intimidation with the Liberal Party Caucus has continued to escalate. I recollect the first intensive issue surrounded the proposal to redefine the MHA Pension Benefit Plan. Over a two week period, MHAs were convened into meetings in hopes there could be a united front on a proposal to change the Pension Plan to a Defined Benefit Plan. In that example, I was the only MHA who refused to agree and to sign a Letter of Consensus which would then be sent to the Speaker of the House of Assembly. It was during this period that I openly referred to the tactics being used by several members of Caucus as "bullying and intimidation". It was the first time that Mr. Eddie Joyce approached me to say that "as a leader around the Caucus table, I could have taken a different approach to get my message across". I now realized that my advocacy would not always be well received by others.

During his interview, MHA Holloway said that there had been a commitment made by the Premier and Cabinet to review the MHA pension plan. He said that a lot of work had been done by Member Bernie Davis, the Premier's office, and Finance to move from a defined benefit plan to a defined contribution plan. He said that those options were being presented around the Caucus table. MHA Holloway noted that when he agreed to run as MHA, there was portability between his existing public service pension plan and the MHA plan. He said, "A year in, portability is going to be taken off table."

MHA Holloway said that there was a lot of pressure for people to sign on to a defined contribution plan. He said that he did his own analysis and was sharing it with members of Caucus.

With respect to the pension plan issue, MHA Holloway said that he believed that all information should be on the table for people to make informed decisions. He said that there was considerable opposition and that certain Cabinet Ministers were being pushed to intimidate and harass those individuals who were starting to think that the proposal coming forward was not the right one. He said that one Sunday night Caucus was called in for a meeting and were told that a letter was going to be drafted and sent to the speaker of House and it was going to state that there was unanimous consent for Member Davis's proposal. MHA Holloway said that he told Caucus that he would not sign the letter, and therefore they could not say that it was unanimous. He said, "That did not go over well." He said that MHA Joyce came to him about the fact that he was not being supportive of the government and was going against the Premier. MHA Holloway said, "And it's bullying

at its finest.”

I asked when MHA Joyce made the comment and MHA Holloway said that he came to him after a meeting and said that the Member was seen as a leader around the table, but that there were better ways to do what he was doing. He said that this was a private conversation.

MHA Holloway was asked, what made it bullying, and he said that they would not let it go and kept coming at him. MHA Holloway was asked what distinguished the discussion from debate about the plan, and the Member said that it got personal. For example, he said that he was told by another Member that he was not a team player, and that if he was not on board then he should get out. The Member could not recall if the latter comment was made in this context because “it was said so many times.”

MHA Joyce’s response to the allegation

In reply to this allegation, the background to this issue involves a February 2017 written request that the House of Assembly Management Commission explore moving toward a defined contribution pension plan for Members elected in 2015 forward which would reduce the Province’s aggregate liability by \$5.2 million. The Complainant apparently opposed these changes in certain MHA meetings and in response to a question by VOCCM News he made it clear the alleged statement by the Member occurred during the MHA meetings:

MICHAEL CONNORS: To what extent did you feel that was intimidation or bullying?

COLIN HOLLOWAY: Well, the number of meetings that happened time and time again is one aspect of it, but I also had been approached by a couple of individuals -you know, that sat around the table and felt that my approach was not well received and I could have taken a different approach.”

The Member states that he was not present for any MHA meetings attended by the Complainant attempting to arrive at a common ground on revisions to the MHA Pension Benefit Plan because the proposed revisions affected post 2015 newly elected MHAs, not previously elected MHAs like the Member, and because the Member is not part of the Management Commission. Therefore, the Member was not present for any pension discussions in February 2017 or thereafter and could not have made the alleged statement to the Complainant at a meeting regarding the MHA Pension Benefit Plan issue.

In terms of the specific statement complained of by the Complainant, that certain members had ‘felt that [his] approach was not well received and [he] could have taken a different approach”, even assuming for the sake of argument that the Commissioner was satisfied that a member had made such a statement to the Complainant it is difficult to understand how such a statement could ever be reasonably interpreted as harassment or bullying. It is submitted that the tone and content of the statement complained of would suggest to the reasonable bystander the provision of well-meaning advice by an experienced member of caucus to a junior member of caucus rather than harassment or intimidation.

For the reasons set out, the specific allegation that the Member failed to comply with the Code of Conduct by telling the Complainant he ‘felt that [his] approach was not well received and [he] could have taken a different approach” should be dismissed as without foundation.

MHA Bernard Davis's evidence:

MHA Davis said he did not see the report that MHA Holloway prepared about the pension plan that was leaked. He said that MHA Joyce called him about the plan and said that MHA Holloway felt he was bullied about the plan. MHA Davis said that he was one of the key players trying to change the plan and he guessed that MHA Joyce had been trying to give him a "heads up."

Factual Findings – MHA Pension Plan

In this report, I have made my findings on the balance of probabilities standard. Essentially, I have determined, based on the available evidence, whether it is more likely than not that the incident occurred. The onus to establish that the evidence supports a finding that an incident occurred rests with the complainant.

I do not find that MHA Joyce made the comments attributed to him during any of the meetings of MHA members to discuss the pension plan. The media quote noted by MHA Holloway suggests that these comments were made by others around the table, as did his written complaint, and I find MHA Joyce's evidence that he did not attend these meetings to be compelling. MHA Holloway did not dispute this in his reply. While it is possible that MHA Joyce suggested to MHA Holloway that his approach could have been better at some point, any conclusion relating to such a comment would be speculative based on the lack of clear context provided by MHA Holloway during his interview. Regardless, based on the evidence provided by the parties, I do not find that such a comment was made in relation to the pension plan in the manner suggested by MHA Holloway in his written complaint.

2) Inability to Work on Behalf of Constituents

MHA Holloway's submission

As a newly elected MHA, I have found that Mr. Joyce initially took an active interest in the challenges I was facing in this District, especially when these issues related to the behaviour of the former MHA, Mr. Sandy Collins. In the 2015 provincial Election, I won by a close margin of 54 votes. Mr. Collins, who is a political staff person within the Progressive Conservative Party office, has never accepted this outcome. He continues to meddle into the affairs of the Constituents living in the terra Nova District, thus adding to the undue stress I face each day as an MHA.

Similar to most MHAs, we encounter issues that require guidance and advice, especially from a seasoned politician and Cabinet Minister like Mr. Joyce. However, for the past year, and certainly since I became appointed as the Parliamentary Secretary to the Department of Municipal Affairs and Environment, the level of support from Mr. Joyce has dramatically decreased. Over the past six months, whenever I brought a District concern to Mr. Joyce, his consistent response has been "Here he goes again! Don't have anything else to talk about other than your District ". In a number of instances, Mr. Joyce would simply tell me to "F@#\$-off".

Hearing such a response once or twice might be passed off as normal interaction between MHAs, especially when it comes to conversations amongst men for it is often said that boys will be boys. However, to consistently receive this response for many months left me with the feeling that I could not bring forward issues of concern to Mr. Joyce, as Minister of Municipal Affairs and Environment.

During his interview, MHA Holloway said that after he was elected, in December 2015, he was appointed as Parliament

Secretary to the Department of Tourism, Culture, Industry and Innovation, Minister Mitchelmore. He said that they “got along pretty good” and worked together. He said that MHA Joyce would call him on a regular basis to ask about Minister Mitchelmore.

MHA Holloway said that following the Cabinet shuffle in July 2017, he was moved to Municipal Affairs and Environment (MAE). MHA Holloway said, “Up until that point, (MHA) Joyce and I seem to have a great relationship. But the moment I came over, everything changed. While I had an active role in Department of Tourism, I had no role in MAE.”

MHA Holloway said, “In terms of representing him(the Minister) that’s normal behaviour for the Parliamentary Secretary to go represent when a Minister is not available. Secretaries are really in training for cabinet. Those opportunities were not happening. The only thing I could talk to (Minister) Joyce about were district issues, not department issues, because I know nothing about it.” MHA Holloway acknowledged that he went to a federal meeting in November 2017 on behalf of Newfoundland, but added that he had not “done one other thing.”

MHA Holloway said that he had issues about water and sewer projects, fire departments, and he would go to MHA Joyce for assistance on how to solve the problem. He said that things started to turn and Minister Joyce no longer had time for him. Subsequently, MHA Joyce said to him, “Why don’t you just fuck off?” MHA Holloway thought to himself, “Where do I go with this?”

MHA Holloway said that he did not know if others would have heard these comments. He thought that other people would have heard when walking as a group back to their offices in East Block, but said that he did not know if anyone would come forward about what was said.¹

MHA Joyce’s response to the allegation

This category concerns a general allegation of a dramatic decrease in “support” for the Complainant’s District work, and specific allegations that over the past six months the Member “consistently” responded to the Complainant’s District concerns inappropriately, and that the Member used profanity in addressing the Complainant, allegedly leading to an inability on the part of the Complainant to work on behalf of his constituents.

First, the Member confirms that he took a special interest in mentoring, encouraging and advising the Complainant while he navigated his work as a new MHA, both inside and outside the House of Assembly. That support was, to the Member’s knowledge, welcomed by the Complainant and his family, including his wife who the Member understands often communicated her appreciation for the Member’s mentorship and support of the Complainant. The Member regularly asked the Complainant to make funding announcements in his District to raise the Complainant’s profile in the District, even though as Minister he would usually make such announcements. Specifically, on September 5, 2017, during a joint federal-provincial funding announcement, the Member chose to act as MC for the event thus allowing the federal Minister Judy Foote and the Complainant to make a joint announcement on behalf of their respective governments in the Complainant’s District.

The Member denies the overall allegation that the Complainant was “unable to work on behalf of [his] constituents”. Objectively, the records of the Department of Municipal Affairs-Approved Projects records clearly contradict this allegation because since his election the Complainant has secured \$6,005,285.03 in

¹ Given that Minister Joyce acknowledged making comments of the type alleged, in an effort to balance a thorough investigation with confidentiality, I did not contact witnesses in a speculative manner to determine whether they had heard the comments.

provincial funding under the following programs, projects and grants for initiatives in his District:

1. Infrastructure Programs between 2017-05-01 and 2018-04-25: \$1,813,985.88;
2. Multi-Year Capital Works between 2017-05-29 and 2018-04-12: \$3,788,995.54;
3. 18 Special Assistance Grants between 2017-2018: \$31,736.95;
4. CEEP 2017-2018 approved funding: \$120,393.99;
5. Fire and Emergency Services 2016/17 and 2017/18: \$21,172.67; and
6. Random Island West firetruck 2017: \$229,000.00.

In terms of personal recognition of the Complainant, the Member submits he frequently singled out the Complainant for praise, especially on social media. Furthermore, the Member often invited the Complainant to attend events including in the Minister's District, the most recent of which he accepted by email on April 13th, 2018, for a June 9th, 2018 fundraising dinner in Corner Brook recognizing the Member's 25 years of public service and for which the Complainant asked to stay at the Member's house. Having made his complaint on May 1, 2018 the Complainant chose not to attend. The Member has also regularly invited the Complainant to attend meetings, including those with town councils, fire departments and local service districts from 2015 to April 26th, 2018, inclusively. As recently as June 1st, 2018, the Member spoke with Ms. Gloria Moss, Mayor for Happy Adventure, in the Complainant's district, about a water and sewer funding issue.

The Member therefore denies that his support for the Complainant has "dramatically decreased" over the past six months, the past year, or at any time such that the Complainant was "unable to work on behalf of (his) constituents". In fact, reference to the following Hansard excerpts demonstrate the mutual consistent support that the Member and Complainant have shown each other on challenging issues, as well as the Complainant's ability to work both with the Member and on behalf of his constituents:

a. Hansard of Debates in the House of Assembly

i. March 6, 2017: Complainant's speech in support of Bill 68, An Act to amend the Highway Traffic Act No. 5: Mr. Holloway: "I want to say thank you to the Minister of Service NL for bringing forward the legislation, but also to our colleague, the Minister of Municipal Affairs and Environment I know he and his staff did a tremendous amount of work on this piece of legislation so they could bring it forward-(...)".

ii. March 15th, 2017: Complainant's response to the Member for Cape St. Francis that he was afraid to go to their districts after a "hard budget":

Mr. Holloway: Now, I can tell you, I am not afraid to go in my district. I have spent many, many hours-I'm rarely at home actually, ...going throughout my district talking to people, talking about the issues, understanding the impacts of the budget that came down last year. (...) I welcome every opportunity to go out and talk to constituents of my district."

ii. February 27, 2018: The Member defended the Complainant when Mr. Lester, MHA accused him of being

a “disengaged” parliamentary secretary:

Mr. Joyce: “He had the courage to go down and face it. He’s working for the people in Terra Nova which he has always done, which he will always do. I have to applaud him for that, Mr. Speaker.”

iii. March 12th, 2018: Debate in the House regarding rezoning in Port Blanford to allow for clear cutting:
Mr. Joyce: “Just for the record, myself and the Member for Terra Nova had a press conference out in Clarenville probably about eight, nine months ago where we announced some funding for capital works. The mayor at the time from Port Blanford said it’s the first time they received funding in seven or eight years and he said it’s the best relationship they ever had with government.

iv. April 25th, 2018: Complainant’s Speech referencing nine projects that he accomplished with the \$10.9 Million in capital works funding and with the Minister’s help:

Mr. Holloway: “Myself and the Minister have been out and met with them as well to see the facility and to understand their needs.”

In reply to the allegation that “whenever” the Complainant brought a district concern to the Member “his consistent response has been ‘Here he goes again! Don’t have anything else to talk about other than your District, the Member admits that both he and the Complainant were accustomed to using this phrase as part of their normal interaction with humorous intent without either party ever taking offence or complaining about the same, either formally or informally. In fact, the Complainant himself would often proactively interrupt meetings already in progress on other agenda issues and make the self-deprecating remark, ‘Here I go again. Another district issue.’ As such, the Member submits that he believed that the Complainant accepted their reciprocal use of the phrases, ‘Here he goes again’ or ‘Here I go again’. However, as the Complainant has newly signalled, through his letters to the Commissioner, that he feels otherwise, the Member will henceforward respect his wishes to not use that phrase at any time when addressing the Complainant.

The Member acknowledges having made this remark on one occasion, not in humour, when it was warranted, during a meeting on a broader waste management file that had nothing to do specifically with the District of Terra Nova. To fully appreciate why he made this statement, the Member submits it is necessary to provide accurate context.

In a meeting with St. John’s Mayor Danny Breen, the Complainant and Jamie Chippett, the purpose of which was to discuss the issue of waste management and garbage collection for cabin owners between Clarenville and St. John’s, the Member, in his capacity as Minister of Municipal Affairs and the Environment, was trying to keep the discussion on track when the Complainant interrupted the discussion on a number of occasions to complain that a constituent had been back charged for garbage collection. In so doing, the Member submits that the Complainant had lost sight of the larger issue affecting 240,000 provincial residents and the Member admits making this remark not in humour, once, which was justified in the circumstances. Notwithstanding this sole exception, the Member states that there was never a time when he refused to discuss issues that the Complainant brought forward for the Member’s consideration.

In reply to the allegation that the Member told the Complainant “in a number of instances” to “F@3\$-off”, the Member admits that both he and the Complainant were accustomed to using the “F@3\$” word with each other as part of their “normal interaction” without either party ever taking offence or complaining

about the same, either formally or informally. As such, the Member submits that he believed that the Complainant accepted their reciprocal use of the “F@3\$” word. However, as the Complaint has newly signalled, through his letters to the Commissioner, that he feels otherwise, the Member will henceforward respect his wishes to not use this word at any time when addressing the Complainant.

For the reasons outlined above, the Member submits that the specific allegation that the Member failed to comply with the Code of Conduct by “decreasing” his support of the Complainant such that he is unable to work on behalf of his constituents and, inter alia, felt he could not bring forward issues of concern to Mr. Joyce, as Minister of Municipal Affairs and Environment, should be dismissed as being without foundation. The Member admits that he responded on one occasion to the Complainant’s complaints “here he goes again! Don’t have anything else to talk about then your District” which did not constitute harassment, intimidation or bullying in the circumstances. Finally, the Member will refrain from any profanity in the presence of the Complainant, however he notes the Complainant used the same language without complaint and admits it was their “normal interaction”.

MHA Holloway’s Reply

In response to Minister Joyce’s response, MHA Holloway wrote:

I have reviewed all 98 pages; much of which are attachments that include copies of departmental meeting invitations and funding approvals for various communities within the Terra Nova District.

My first reaction is that just because a Minister of the Crown signs off on a community’s funding application, this in no way confirms that the individual has not committed any harassment or intimidation of another individual. It simply means that the application for funds was found to be within acceptable criteria.

So, to assume that the provision of funding to a Member’s District is conditional on a positive working relation is an abuse of the power and authority as a Minister.

In response to the copies of departmental meeting invitations sent to me between December, 2017 and February, 2018 I would encourage you to seek additional confirmation for the time period of July, 2017 until June, 2018. I was appointed as Parliamentary Secretary to the Department of Municipal Affairs and Environment in July, 2017.

I assume that Mr. Joyce has provided these documents in hope that he can counter my comment about being frozen out the Department of Municipal Affairs and Environment. I would counter argue that if I was treated with fairness, there should be ample documentation to demonstration that I was being actively engagement in departmental meetings and discussions from the time I was appointed Parliamentary Secretary to this Department.

Furthermore, you should be able to acquire additional documentation to support my inclusion into departmental meetings and discussions (in the role as PS and not in response to MHA Constituency issues) from the time Mr. Joyce was removed from Cabinet until today, under the direction of Minister Andrew Parsons.

During my recent interview at your office, I stated that I continue to be frozen out of this department even

by the new Minister. I am doubtful you will be able to obtain any correspondence that indicates I am being actively engaged in my Parliamentary Secretary role.

These actions are in direct consequence of coming forward with the allegations of harassment and intimidation by Mr. Joyce and Mr. Kirby.

I wish things were different and I wish I was able to do my job as the PS to the Department of Municipal Affairs and Environment.

Factual findings - Inability to work on Behalf of Constituents

The parties agree that following the 2015 election, MHA Joyce provided support and mentorship to MHA Holloway as a newly elected MHA.

MHA Joyce also provided ample evidence that funding has continued to go to MHA Holloway's District and that MHA Joyce had spoken positively of MHA Holloway in public. In his reply, MHA Holloway commented on, but did not dispute, this evidence. That said, the fact of the existence of such funding and comments is not determinative of the larger question of MHA Joyce's behaviour.

The parties also agree that there were times when MHA Joyce made comments to MHA Holloway, when he tried to talk about local issues, to the effect of, "Here he goes again, doesn't have anything to talk about other than his District." MHA Joyce acknowledged as much but characterized all but one occasion as having "humourous intent." He also acknowledged using the word "fuck" with MHA Holloway and did not deny telling MHA Holloway to "fuck off", although again he said that he had humourous intent. In both instances, in reply to MHA Joyce's account, MHA Holloway did not dispute the context for the comments suggested by MHA Holloway. As such, I find that MHA Joyce made the alleged comments to MHA Holloway and, on all but one occasion, did so in a joking manner.

3) Election of the Speaker of the House of Assembly

MHA Holloway's submission

I recall shortly after being appointed Parliamentary Secretary to the Minister of Municipal Affairs and Environment in July, 2017, when the topic of who would be the next Speaker of the House of Assembly began to percolate throughout Caucus. As you might appreciate, there were a number of names being suggested, including MHA Pam Parsons.

In making her decision to put her name on the ballot, MHA Parsons called me and asked if I would support her application to be the next Speaker. In reflecting on the process followed in 2015 when MHA Tom Osbourne became Speaker for the 48th General Assembly, I agreed to give my support to MHA Parsons. Being a newly elected MHA, in 2015, there is no doubt the learning curve was steep. While I was trying to be open, honest and fair to my colleagues, I was surprised to learn that the Premier publicly supported former Cabinet Minister Perry Trimper and his bid to become the next Speaker. I immediately found myself in quite the quandary.

It was also my understanding that the election of the Speaker was a free vote and it was a secret ballot. It is also not typical for a Premier to openly endorse one candidate over another. Having weighted out all factors, I openly communicated to MHA Parsons that I would support her.

Once it was known publicly that I was supporting MHA Parsons, I began receiving telephone calls from Mr. Joyce (a total of 11 between July 15 and July 31, 2017) aiming to discourage my support for her. Each telephone call focused on discrediting Ms. Parsons in her ability to perform the role as Speaker should she be successful in the election. Mr. Joyce often used phrases such as “She (Pam) is not worthy of being the Speaker” or “Pam’s success would be a vote against the Premier”. I found that there was a deliberate attempt to cause a negative support for MHA Parsons by members of our Caucus.

While I continued to reiterate to Mr. Joyce that it was my understanding MHAs were free to vote as they wish, the telephone calls kept coming.

The election of the new Speaker for the House of Assembly took place on August 8, 2017. On that day, @ 12:48 p.m. (42 minutes before the House of Assembly would reconvene) I received a BBM message from Mr. Dale Kirby stating:

“I hope you understand that should Pam succeed today (being Election Day for the Speaker) in embarrassing Dwight by setting up this Confidence Vote in our government, we will likely be heading to the polls in less than a year. Better dust off your election signs ‘

In my estimation, Mr. Kirby’s message was a direct threat aimed to deter any MHA from voting in support of MHA Pam Parsons.

As you know, MHA Pam Parsons was not successful in her bid to become the Speaker of the House of Assembly. As a consequence for her perceived defiance, and my support of her (another act of perceived defiance), the seating chart in the House of Assembly was changed. Originally, following the 2015 Provincial Election, MHA Parsons was seated in the third row directly behind the Premier. I, like other Parliamentary Secretaries, was seated in the last seat in the second row, directly behind MHA Steve Crocker.

However, following the election of the Speaker, when all MHAs returned to the House of Assembly for the Fall 2017 Session, both MHA Parsons and I were moved to the last two seats in the third row; isolated from the rest of Caucus. Personally, I felt this was a direct consequence for not following orders and further solidifies my claim that harassment and intimidation continued to exist in the Liberal Party Caucus.

MHA Holloway said that after getting elected in November 2015, he received calls from two individuals who were both looking to be elected Speaker. Member Holloway told one individual he would support him. He said that two years later, in 2017, he understood that the vote for Speaker “is private, no one should be influencing it.” He said that MHA Parsons called him and told him that she was interested in being Speaker. He said that he told her that he would support her. He said that the Premier then went public and said that he was supporting Perry Trimper. MHA Holloway said, “My understanding is that’s unheard of. Immediately I started to hear that people should follow who the Premier is endorsing. For policy or budget there’s a certain partisanship. Electing a speaker is a free vote, you should be able to do what you wish.”

MHA Holloway said that over a two-week period he received calls from MHA Joyce every couple of days in which he was told that he was going against the Premier. He said that MHA Joyce also had the goal of discrediting MHA Parsons during these calls.

MHA Holloway said that after the House of Assembly reconvened in November 2017, the seating had been changed and he had been moved to the very last desk before the door. He said that he and MHA Parsons were isolated from everyone

else. MHA Holloway said that he commented to MHA Joyce that the move was a direct consequence of supporting MHA Parsons, but MHA Joyce did not agree.

MHA Joyce's response to the allegation

In response, the Member specifically denies calling the Complainant eleven times between July 15th, 2017 and 31st, 2017 to discuss support for a different candidate than the one supported by the Complainant for the Speaker's position. As a matter of public record, the vacancy for the Speaker's position was created because of a cabinet shuffle on July 31st, 2017 and the Member therefore could not possibly have called the Complainant about the election for the Speaker's position issue at any time between July 15th and 31st, 2017.

In fact, the Member's phone records indicate that he called the Complainant six times in the overall time frame, not eleven times, only three of which occurred between July 31st and August 8th, 2017 and could have related to the election for Speaker of the House:

(1) July 20th-26th, 2017: The Member made three calls, all of which probably related to the best of his recollection to asking the Complainant to announce funding for a Fire Hall in the Complainant's district at the Come Home Year festivities;

(ii) July 31st-August 8th, 2017: The Member made three calls to the Complainant and confirms that he discussed the election of the Speaker of the House during those calls. In the first call, the Member recalls asking the Complainant to support MHA Trimper and ending the call reminding the Complainant that it was a free vote. During the second call, the Member recalls advising the Complainant that he was told that MHA Parsons had been, inaccurately, representing to other members that the Member supported her candidacy, and asking the Complainant to request MHA Parsons to stop using his name. During the third call, the Member recalls making a final pitch in support of MHA Trimper and ending the call by advising the Complainant that he was free to do as he wished but that, "When it's over, let's move on", or words to that effect.

The Member specifically denies referring to MHA Parsons "unworthy" or saying that "Pam's success would be a vote against the Premier". He further denies that any of the three calls were made to criticize MHA Parsons but rather to advocate on behalf of another member, MHA Perry Trimper. The Member submits that it is common for Members to call a colleague requesting support for a Member in a contested vote, and it is noteworthy that the Complainant made many calls himself to others in support of MHA Parsons. It is clear and obvious from the phone records however that the Complainant's allegation regarding the number of calls he received in July 2017 is exaggerated, which begs the question of whether the Complainant's recollection of the calls themselves is equally exaggerated and unreliable.

Finally, in response to the allegation that the Complainant and MHA Parsons were moved for their "perceived defiance" of the wishes of the Liberal caucus that MHA Trimper be elected Speaker, the Member submits there is no allegation let alone evidence that the Member exercised control over the seating arrangement in the House or was responsible for the decision to move the Complainant. Even if the Complainant was moved because of his support of MHA Parsons, which amounts to supposition as it is not supported by any evidence, the fact remains that your determination of the Member's compliance with the Code of Conduct must be judged based solely on the evidence in support of the allegations made against the Member personally and not based on the Complainant's allegations against other members or in

relation to the Liberal caucus generally.

For the reasons outlined above, the Member submits that the specific allegation that the Member failed to comply with the Code of Conduct by calling the Complainant eleven times between July 15th, 2017 and July 31st, 2017 aiming to discourage his support of MHA Parsons is clearly exaggerated based on the Member's phone records and, therefore, his recollection of the calls is rendered equally unreliable and the allegation must be dismissed. As to the allegation the Complainant was moved because of his support of MHA Parsons, which amounts to supposition as it is not supported by any evidence, this is not an allegation made against the Member personally and therefore cannot ground any determination by you that the Member failed to comply with the Code of Conduct.

Factual Findings – Election of the Speaker of the House of Assembly

Given the nature of the vote, MHA Joyce's relationship with the Premier, and his own admissions, I find that there were at least three occasions when MHA Joyce contacted MHA Holloway by phone and sought his vote for Member Trimper for Speaker. I believe that in doing so he noted that a vote for Member Parsons would be a vote against the Premier, as such messaging would align with the messaging of Minister Kirby, who was working to a similar purpose. While he likely spoke about Member Parsons' qualifications for the role, I decline to make findings as to the specific language used or whether he specifically called her "unworthy." I again note that when MHA Joyce denied such language, Member Holloway did not address his denial in his written reply to my office.

It is worth noting that MHA Parsons, in running for Speaker, contacted MHA Holloway and sought to gain his vote. MHA Holloway had no issue with such a call and acknowledged telling her that he would support her. Also, given that Minister Kirby, who was in Florida, was aware that MHA Holloway was supporting MHA Parsons, I find it likely that MHA Holloway was also speaking with other Members about supporting MHA Parsons for Speaker.

Regarding the relocation of MHA Holloway's seat in the House of Assembly, I do not find that MHA Holloway provided any credible evidence that such a move would be the result of a decision by MHA Joyce.

4) Isolated in Role as Parliamentary Secretary

MHA Holloway's submission

In December, 2015 I was initially appointed as Parliamentary Secretary to the Minister for Tourism, Culture, Industry and Innovation. In that role, I was active in supporting Minister Mitchelmore in fulfilling his Mandate. I would represent the Minister at formal events, meet with dignitaries, host departmental meetings and participate fully in the decision-making process.

However, after July, 2017, when I was appointed as Parliamentary Secretary to the Minister of Municipal Affairs and Environment, my role and ability to contribute to the Department significantly changed. Contrary to how I operated in the Department of Tourism, Culture, Industry and Innovation, I did not have an active role. I have not been invited to represent the Minister at formal events (with the exception of attending an F/P/T Meeting in Vancouver, B.C.), I do not attend Departmental meetings and I am not part of the decision-making process.

While my office is located directly outside the Ministerial Suite, and while I am free to come and go within the area, I have not formal role.

To further add to the feelings of worthlessness, following the public release of my allegation of harassment and intimidation, and the appointment of Minister Andrew Parsons to the Department of Municipal Affairs and Environment, I have been completely frozen out of this Department.

For the past three weeks, I have witnessed Mr. Parsons attending Departmental meetings, but he has not engaged me in any briefings or meetings. It appears the harassment and intimidation situation has only been magnified by my efforts to come forward with these complaints.

As noted above, during his interview, MHA Holloway said that after he was elected, in December 2015, he was appointed as Parliament Secretary to the Department of Tourism, Culture, Industry and Innovation, with Minister Mitchelmore. He said that they “got along pretty good” and worked together. He said that MHA Joyce would call him on a regular basis to ask about Minister Mitchelmore.

MHA Holloway said that following the Cabinet shuffle in July 2017, he was moved to Municipal Affairs and Environment (MAE). Member Holloway said, “Up until that point, (Minister) Joyce and I seem to have a great relationship. But the moment I came over, everything changed. While I had an active role in Department of Tourism, I had no role in MAE.”

MHA Holloway said, “In terms of representing him that’s normal behaviour for the Parliamentary Secretary to go represent when a Minister is not available. Secretaries are really in training for cabinet. Those opportunities were not happening. The only thing I could talk to (Minister) Joyce about were district issues, not department issues, because I know nothing about it. MHA Holloway acknowledged that he went to a federal meeting in November 2017 on behalf of Newfoundland, but added that he had not “done one other thing.”

MHA Holloway said that his sense was that on the “8th floor”, the Premier was sending the message that MHA Holloway did not have his full support. He noted that MHA Joyce and the Premier were very tight, and “it was like I was almost being frozen out.”

MHA Holloway said that after Minister Parsons took on the added portfolio of MAE, to this day he had not spoken to Minister Parsons, nor had they engaged in meetings. He said, “In my view, that’s just a continuation of intimidation, bullying and harassment that’s so pervasive. I’ve said publicly that it’s not only Liberal government, it’s across all parties. It just happens that I made complaints against 2 cabinet ministers who’ve risen above other people in their tactics.”

MHA Joyce’s response to the allegation

In response, the Member denies the allegation that he “isolated” the Complainant after July 2017 and submits that, up to and including April 26th, 2018, when the Member was removed from Cabinet and stepped down from caucus, the Complainant was invited to every Departmental meeting and, as outlined above, was regularly called upon, and regularly accepted, invitations to represent the Member at formal events, including making funding announcements on the Member’s behalf in the Complainant’s district.

As to the Complainant’s allegation that, following the public release of his allegation and the appointment of Minister Andrew Parsons, he has been “completely frozen out of this Department”, the Member submits that he has since April 26th, 2018 been sitting as an Independent, removed from both caucus and cabinet, and, therefore, has no knowledge of the same. The Member submits that a Parliamentary Assistant or Secretary assists the Minister to whom he or she is assigned in the manner that the Minister directs and that may be prescribed by the Lieutenant-Governor in Council. Given the flexible and fluid nature of the

Complainant's position, the Member is not able to comment upon what assistance, if any, Minister Parsons may have required of the Complainant since April 26th, 2018. Even if the Complainant was "frozen out of the Department", which amounts to supposition as it is not supported by any evidence, the fact remains that your determination of the Member's compliance with the Code of Conduct must be judged based solely on the evidence in support of the allegations made against the Member personally and not based on the Complainant's allegations against other members or in relation to the Liberal caucus generally.

For the reasons outlined above, the Member submits that the specific allegation that the Member failed to comply with the Code of Conduct by the Member "isolating" the Complainant in his role as Parliamentary Secretary is completely without foundation and should be dismissed. As to the allegation the Complainant was subsequently "frozen out of the Department", which amounts to supposition as it is not supported by any evidence, this is again not an allegation made against the Member personally and therefore cannot ground any determination by you that the Member failed to comply with the Code of Conduct.

MHA Bernard Davis's evidence:

MHA Davis said that he had not observed as many interactions between MHA Holloway and Joyce as one would think, considering that MHA Holloway was the Parliamentary Secretary. He added, "But different relationships may interact differently." He said that he had not seen any negative interactions between them in public or in private.

MHA Holloway's Reply

As noted above, in response to Minister Joyce's response, Member Holloway wrote:

I have reviewed all 98 pages; much of which are attachments that include copies of departmental meeting invitations and funding approvals for various communities within the Terra Nova District.

My first reaction is that just because a Minister of the Crown signs off on a community's funding application, this in no way confirms that the individual has not committed any harassment or intimidation of another individual. It simply means that the application for funds was found to be within acceptable criteria.

So, to assume that the provision of funding to a Member's District is conditional on a positive working relation is an abuse of the power and authority as a Minister.

In response to the copies of departmental meeting invitations sent to me between December, 2017 and February, 2018 I would encourage you to seek additional confirmation for the time period of July, 2017 until June, 2018. I was appointed as Parliamentary Secretary to the Department of Municipal Affairs and Environment in July, 2017.

I assume that Mr. Joyce has provided these documents in hope that he can counter my comment about being frozen out the Department of Municipal Affairs and Environment. I would counter argue that if I was treated with fairness, there should be ample documentation to demonstration that I was being actively engagement in departmental meetings and discussions from the time I was appointed Parliamentary Secretary to this Department.

Furthermore, you should be able to acquire additional documentation to support my inclusion into

departmental meetings and discussions (in the role as PS and not in response to MHA Constituency issues) from the time Mr. Joyce was removed from Cabinet until today, under the direction of Minister Andrew Parsons.

During my recent interview at your office, I stated that I continue to be frozen out of this department even by the new Minister. I am doubtful you will be able to obtain any correspondence that indicates I am being actively engaged in my Parliamentary Secretary role.

These actions are in direct consequence of coming forward with the allegations of harassment and intimidation by Mr. Joyce and Mr. Kirby.

I wish things were different and I wish I was able to do my job as the PS to the Department of Municipal Affairs and Environment.

Factual Findings – Isolated in Role of Parliamentary Secretary

MHA Holloway alleged that since July 2017, in his role as Parliamentary Secretary, he has not had an active role, had not been invited to represent the Minister at formal events, and did not attend Departmental meetings or take part in the decision-making process. While it is possible that he has had a less active role than he had previously in another Ministry, the evidence provided by MHA Joyce indicates that he was regularly invited to Departmental meetings during the time period in question. It is beyond the scope of this process to determine the degree to which MHA Holloway participated in these meetings, but it is clear that he was invited to attend. As such, regarding the broader allegations, I do not find the evidence sufficient to conclude that MHA Joyce isolated Member Holloway in his role as Parliamentary Secretary.

5) Culture of Harassment and Intimidation

MHA Holloway's submission

The culture of harassment and intimidation is pervasive within the Liberal Party Caucus. In just over two and half years, I have counted at least six instances when MHAs have been told that "if he/she does not support the direction or decision, there is the door and you best get out".

For the past six months, the culture of harassment and intimidation has continued with new comments for Members to leave the Liberal Caucus should he or she not support the consensus of the group. I can appreciate and encourage diversity in opinion. As leaders and advocates for our respective electoral districts, MHAs are often tasked with finding the right balance between bringing forward issues of concern on behalf of their Constituents and being part of a unified team which is trying to do what is best for the Province. But, the level of verbal abuse, harassment and intimidation goes well beyond these interactions.

Recently, as part of the present investigation into harassment behaviour by Mr. Joyce and Mr. Kirby, I met with Premier Ball and I expressed my concern over how negative comments such as the ones about "getting out or there's the door" are unwelcomed by many members in Caucus.

During his interview, MHA Holloway was asked for examples of comments or behaviour that he felt fell under the general culture of harassment. He said that "for some others, sitting around caucus table, they think it's ok to harass, bully people, ok to have your thinking influence others at all costs." He noted that after allegations of harassment were raised in the House of Assembly by the opposition, an email was sent by Minister Kirby that said, "You better come forward." He also

noted, “We go into a Caucus meeting the next day. They wanted to confiscate the phones. Graham Letto and Brian Warr are saying cough up your phone. They want to know who’s talking to media. And I’m sitting there thinking that stuff in my phone is between me and my constituents, go get a court order.” MHA Holloway said that he told Minister Kirby that he could not believe that he sent the email the previous night “given the atmosphere right now, with people at table talking about being harassed by another cabinet minister.”

MHA Holloway added, “Many days where I wished I didn’t even open my mouth, life would have been easier. I hope this is a good investigation. I don’t wish anybody any ill will or harm. But I do expect people to be accountable for their actions.”

MHA Joyce’s response to the allegation

First, the Member denies the existence of a culture of harassment and intimidation within the Liberal Party Caucus and he has not witnessed, experienced nor participated in any such conduct at any time, including in the last 2’2 years or in the past six months. During caucus debates, he has observed that discussions can be very animated and, sometimes, confrontational when MHAs advocate passionately, frankly and openly on behalf of their constituents but, in the circumstances, this constitutes neither harassment nor intimidation. Secondly, the Member has no knowledge of the “six incidents” to which the Complainant is referring, nor of the persons involved and, therefore, is unable to comment upon the same, save and expect to deny ever participating in such conduct. Thirdly, the Member has no knowledge of the alleged “recent” meeting with the Premier to which the Complainant is referring and, therefore, is not able to comment upon the same.

In terms of this category of allegations, even if a “culture of harassment and intimidation” existed, which once again amounts to supposition as it is not supported by any evidence, the fact remains that as Commissioner you have the statutory power to investigate and determine whether the Member failed to comply with the Code of Conduct, and your determination of our client’s compliance or non-compliance with the Code of Conduct must be judged based solely on the evidence in support of the allegations made against the Member personally and not based on the Complainant’s allegations against other named or unnamed members relating to their conduct or in relation to the Liberal caucus generally.

For the reasons outlined above, the Member submits that Complainant’s allegation of a “culture of harassment and intimidation” within the Liberal Caucus is not an allegation that the Member failed to comply with the Code of Conduct, it is a general allegation of systematic issues which have no relevance to the Member’s conduct. This general allegation, which once again amounts to supposition as it is not supported by any evidence, is not an allegation made against the Member personally and therefore cannot ground any determination by you that the Member failed to comply with the Code of Conduct.

Factual Findings- Culture of Harassment and Intimidation

In his written complaint, MHA Holloway did not identify under this heading any additional specific behaviours of MHA Joyce that contributed to a culture of harassment or intimidation. When we met and I asked for examples, under this allegation MHA Holloway did not identify any specific actions of MHA Joyce and as such I make no findings relating to his conduct.

Conclusions:

In summary, I have found MHA Joyce engaged in the following behaviour:

- Commented to MHA Holloway on several occasions with humorous intent, “Here he goes again, doesn’t have anything to talk about other than his District,” when MHA Holloway tried to speak to him about local issues.
- Used the word “fuck” with humorous intent when speaking to MHA Holloway, and on at least one occasion told him to “fuck off.”
- Called MHA Holloway on at least three occasions and sought his vote for MHA Trimper for Speaker.

The relevant sections of the Code of Conduct for Members of the House of Assembly are as follows:

Code of Conduct

Commitments:

Members of this House of Assembly recognize that we are responsible to the people of Newfoundland and Labrador and will responsibly execute our official duties in order to promote the human, environmental and economic welfare of Newfoundland and Labrador.

Members of this House of Assembly respect the law and the institution of the Legislature and acknowledge our need to maintain the public trust placed in us by performing our duties with accessibility, accountability, courtesy, honesty and integrity.

Principles:

3) Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.

4) Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

5) Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

11) Members should promote and support these principles by leadership and example.

I have also considered specifically whether MHA Joyce engaged in behaviour that amounts to harassment. In doing so, I have relied on a definition of harassment as objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome.

Regarding the comments of MHA Joyce, I note that his intent when making the comments is largely irrelevant in an analysis as to whether or not the comments amount to harassment. I find, on their face, that such comments could be seen as

objectionable and offensive comments to be made in a workplace, and in particular as a member of the House of Assembly. That said, I also find that the comments were made at the tail end of a positive and supportive working relationship between MHA Joyce and MHA Holloway, and MHA Holloway did not deny that he too used similar language with MHA Joyce. As such I do not believe that MHA Joyce knew, or ought to have known, that his comments were unwelcome by MHA Holloway. There is no suggestion that the comments persisted after MHA Holloway first raised his complaint about MHA Joyce. As such, I do not believe that MHA Joyce harassed or bullied MHA Holloway in making these comments.

I also do not believe that by calling MHA Holloway to discuss his vote for Speaker that MHA Joyce harassed him. I find that such calls were part of the normal course leading up to the Speaker vote and I do not find that the calls were objectionable or offensive. In fact, I believe that MHA Holloway engaged in similar behaviour in support of MHA Parsons.

Looking at the specific language of the Code of Conduct, all of the evidence presented, I do not find that the actions of MHA Joyce towards MHA Holloway violate any of the excerpted sections above. Specifically, I do not believe that my findings indicate unethical political practices or unlawful behavior by MHA Joyce that would undermine the public trust or bring discredit to his office.

Accordingly, while I find that MHA Joyce engaged in some, but not all, of the behaviours alleged by MHA Holloway, I do not conclude that his behaviour towards MHA Holloway, violated the Code of Conduct for Members of the House of Assembly.

