

# LESTER REPORT

September 24, 2020



Commissioner for Legislative Standards

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## EXECUTIVE SUMMARY

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On April 22, 2020, MHA Gerry Byrne (MHA, Corner Brook), submitted a request for an opinion pursuant to s.36(1) of the House of Assembly Accountability, Integrity and Administration Act S.N.L. 2007 c. H-10.1 (“HOAAIA”), into the conduct of MHA Jim Lester (MHA, Mount Pearl North). At all times in relation to this matter, MHA Byrne was the Minister of the Department of Fisheries and Land Resources.

MHA Byrne alleged a series of breaches of the Code of Conduct for Members of the House of Assembly by MHA Lester. Specifically, MHA Byrne alleged that MHA Lester violated principles 2, 4, 5, 6, 7, 9, 10 & 11.

The request for opinion submitted by MHA Byrne contains a broad array of allegations against MHA Lester. The allegations focus upon MHA Lester’s conduct following the receipt of a warning ticket issued by a conservation officer following the escape and recovery of a farm animal, his participation in the 2019 Vegetable Transplant Program, Lester’s Farm Inc. application for a Crown Land Agricultural Lease known as the MUN Woodlot, and that MHA Lester did not inform appropriate authorities of a personal privacy breach.

Many of the issues identified in the request for opinion have already been addressed by government officials responsible for administering these programs. It is not my duty as Commissioner to review any penalty or recommendation that departmental officials have decided upon in relation to an individual or entity’s participation in a government program. Furthermore, it is also not my duty to review the issuance of a warning ticket by a conservation officer in relation to a lost animal. Various officials, with expertise in these areas, have already addressed these issues and to review these matters further through the lens of the Code of Conduct is unnecessary, and would be an inappropriate use of limited public resources.

While acknowledging the seriousness of the issues raised by MHA Byrne, 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 HOAAIA Act and the Code of Conduct for Members of the House of Assembly.

S.27(4) of *The House of Assembly Act* does not prevent a member that is not a Minister from engaging in employment or in the practice of a profession; carrying on a business or being a director, a partner, or holding an office, other than an office a member may not hold under this Act, so long as the member, notwithstanding this activity, is able to fulfil the member’s obligations under this part. Although these activities are not prohibited, a member must be careful not to place himself or herself in a conflict of interest. In such circumstances, significant restrictions may be placed on a member to ensure transparency and accountability.

Rather than focus upon the details of MHA Lester’s farming operations, my primary concern are the interactions that MHA Lester had with various government officials in the Department of Fisheries and Land Resources. When MHA Lester was interacting with government officials it was often difficult for them to distinguish between his two roles as a MHA and as a farmer. The failure of MHA Lester to arrange his private financial affairs in a matter that protects the public interest by establishing a blind trust or other administrative mechanism to separate his role as a farmer versus his role as an MHA, has resulted in a finding of a violation of the Code of Conduct.

Principle 5 of the Code of Conduct states that “*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*” As a result of MHA Lester

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having direct dealings with ADM Deering wherein he made the comment “*he would have to wait and see what happens after the next election*”, and continuing to engage with ADM Deering three days after this exchange occurred to suggest amending his application to allow it to proceed, a reasonable person is left with the appearance that MHA Lester was using his position as an MHA to further his private interest.

In addition, principle 6 of the Code of Conduct states that “*Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.*” Politicians need to be particularly careful when they engage with public servants who are politically impartial and MHA Lester’s conduct falls below the standard one would expect of an MHA.

Accordingly, I am of the opinion that MHA Lester was in contravention of principles 5 and 6 of the Code of Conduct. These violations could have been prevented if steps were taken by the member to organize his affairs upon taking office in a manner consistent with ensuring transparency and accountability of our elected officials. MHA Lester was honest and forthright during this inquiry and while he did not believe a blind trust was necessary, his failure to establish a trust has caused him to violate the Code of Conduct. There was no financial gain by MHA Lester and no financial loss incurred by any third party.

I recommend that MHA Lester be reprimanded and apologize to Assistant Deputy Minister Keith Deering. I also recommend that he meet with me to establish a trust containing the necessary terms and conditions to allow him to serve effectively as an MHA, while allowing his business to run successfully.

With respect to the alleged privacy breach, I am of the opinion that this complaint should be referred to the Information and Privacy Commissioner as that office has the expertise and statutory authority to investigate such matters.

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## BACKGROUND

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The HOAAIA 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.

The administrative process used by the Commissioner is designed to ensure that the request for an opinion proceeds in an efficient manner, and that all parties involved have an opportunity to make submissions.

The process begins when a written request is received by the Commissioner from a member alleging that another member has violated the code of conduct. The request has to include a cogent explanation of the allegation and what provisions of the code was violated. Specifically 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.*

When the complaint is received, the Commissioner gives the subject MHA notice and an opportunity to make a written submission.

When the response is received from the subject MHA, the Commissioner reviews all of the information and submissions by the requesting MHA and the subject MHA. When completed, the Commissioner will then decide whether to conduct an inquiry. The Commissioner will not conduct an inquiry if there are “no or insufficient grounds” or the request is frivolous, vexatious or not made in good faith. If no inquiry is required then the Commissioner will provide a certificate to the subject MHA and to the Management Commission.

If the Commissioner determines that an inquiry is necessary based on the preliminary evidence, the Commissioner, in his sole discretion, will interview witnesses as needed to determine what transpired. If anything new is derived from the interviews that was not previously provided to the subject MHA and will be relied upon by the Commissioner, then this will be provided to the subject MHA for response. Witnesses are interviewed under oath and can be compelled to attend or to produce documents by summons. The Commissioner may also ask witnesses to provide documents that are relevant to the inquiry or to provide written answers to questions.

All witnesses are entitled to retain legal counsel and to have legal counsel with them during the interview process. However, legal counsel for the subject MHA cannot attend the Commissioner interviews of other witnesses and is therefore not entitled to cross-examine witnesses or the complaining MHA.

In accordance with the legislation, the subject MHA can make submissions to the Commissioner in writing, or in person, or by counsel or other representative. The Commissioner does not have to interview any witness including the subject MHA if he does not have any follow-up questions based on the evidence received.

After all of the evidence has been reviewed the Commissioner will then prepare a written report containing the Commissioner’s opinion and if applicable the recommended penalty. The report is sent to the Management Commission and the subject MHA for tabling in the legislature.

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## CHRONOLOGY

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On April 22, 2020, MHA Gerry Byrne (MHA, Corner Brook), submitted a request for an opinion pursuant to s.36(1) of the House of Assembly Accountability, Integrity and Administration Act.

On May 6, 2020, the complaint was provided to MHA Lester and a response was requested by May 28, 2020. Subsequently, MHA Lester requested an extension to file due to the pandemic. The extension request was granted.

On June 26, 2020, MHA Lester provided a written response.

On July 16, 2020 witness interviews were conducted remotely and in person.

On August 18, 2020, MHA Lester was interviewed. (Due to scheduling difficulties with his legal counsel, this was the first available opportunity.)

On August 27, 2020, legal counsel for MHA Lester made an additional submission.

## THE COMPLAINT

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On April 23, 2020, MHA Gerry Byrne (MHA, Corner Brook), submitted a request for an opinion pursuant to s.36(1) of the House of Assembly Accountability, Integrity and Administration Act S.N.L. 2007 c. H-10.1 ("HOAAIA"), into the conduct of MHA Jim Lester (MHA, Mount Pearl North). At all times in relation to this matter, MHA Byrne was the Minister of the Department of Fisheries and Land Resources.

The request for an opinion submitted by MHA Byrne alleged a series of breaches of the Code of Conduct by MHA Lester. These breaches include:

1. That MHA Lester did contradict the Code by contacting and [tormenting] a Peace Officer in the course of the Officer's duties for the Member's personal benefit;
2. That MHA Lester did not take due care and consideration of a farm animal in his possession causing a trespass to neighbors, causing the potential for a human health and public safety issue arising from an unattended animal remaining at large exposing crops to potential contamination as well as motor vehicle traffic hazards as well as a neglect to the animal;
3. That MHA Lester did not take reasonable action to inform appropriate authorities of a personal privacy breach as would be expected of a Public Office Holder in contradiction of the Code;
4. That MHA Lester did avail of government farm vegetable transplant program and did abuse and waste these public resources to the detriment of other farmers and in a manner against the public interest thereby contradicting the Code;
5. That MHA Lester abused his position of trust and perceived power over civil servants in the matter of his

future eligibility to the vegetable transplant program;

6. That MHA Lester did apply for government Crown Land resources and did conduct himself inappropriately with senior staff in the course of his dealings with the Department of Fisheries and Land Resources in contradiction of the Code.

According to the submission of MHA Byrne, the conduct of MHA Lester violated Principles 2, 4, 5, 6, 7, 9, 10, and 11 of the Code of Conduct for Members of the House of Assembly. (See appendix A)

## PRELIMINARY REVIEW

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The request for an opinion received from MHA Byrne was provided to MHA Lester for his review and response.

Upon review of MHA Lester's response, it was determined that an inquiry would be necessary to provide my opinion, and witness interviews were scheduled. All witness interviews were conducted at the Office of the Commissioner for Legislative Standards, remotely and in person, and individuals affirmed that the evidence they were providing was the truth.

## THE INQUIRY

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On July 16, 2020, conservation officer Scott Martin, Assistant Deputy Minister of the Department of Fisheries and Land Resources, Keith Deering, and the Deputy Minister of the Department of Fisheries and Land Resources, Tracy King, were interviewed. Subsequently, on August 18, 2020, MHA Lester was interviewed in the presence of his legal counsel, Jerome Kennedy, Q.C.

MHA Lester provided a response to the allegations on June 26, 2020 wherein he denied the allegations of MHA Byrne. Subsequently, on August 27, 2020 MHA Lester's legal counsel submitted a further written submission on his behalf.

The request for opinion submitted by MHA Byrne contains a broad array of allegations against MHA Lester. The allegations focus upon MHA Lester's conduct following the receipt of a warning ticket issued by a conservation officer following the escape and recovery of a farm animal, his participation in the 2019 Vegetable Transplant Program, and Lester's Farm Inc. application for a Crown Land Agricultural Lease known as the MUN Woodlot. Many of the issues identified in the request for opinion have already been addressed by government officials responsible for administering these programs. It is not my duty as Commissioner to review any penalty or recommendation that departmental officials have decided upon in relation to an individual or entity's participation in a government program. Furthermore, it is also not my duty to review the issuance of a warning ticket by a conservation officer in relation to a lost animal. Various officials, with expertise in these areas, have already addressed these issues, and to review these matters further through the lens of the Code of Conduct, is unnecessary and would be an unnecessary use of limited public resources.

MHA Byrne also raised an alleged privacy breach in his request for opinion and stated the following:

*To be clear, I was never aware that Honourable Member Jim Lester or anyone else was aware of the ticket filed against me until contacted by the media about it until some weeks after the Lester incident. Information about an uncontested charge is privacy protected and not subject to any form of public disclosure. Dissemination of this information to anyone outside of having authority to have it is a breach of the Access to Information and Protection of Privacy Act. I was made aware of the MHA Lester situation as I am the Minister and, more specifically, because of the accusation which MHA Lester has made. The Deputy Minister indicated to me that she was under an obligation to provide me the facts in full at that point.*

With respect to the alleged privacy breach, I did not conduct an inquiry into this matter as I believe it should be referred to the Information and Privacy Commissioner for an investigation. That office has the expertise and statutory authority to investigate such matters. The extent of my inquiry was to ask MHA Lester about the source of the information, MHA Lester responded that it was common knowledge.

Rather than focus upon the details of MHA Lester's farming operations, my primary concern is the interactions that MHA Lester had with various government officials in the Department of Fisheries and Land Resources. As will become apparent, the failure of MHA Lester to establish a blind trust or other administrative mechanism to separate his role as a farmer versus his role as an MHA, has resulted in a finding of violations of the Code of Conduct.

### **1) MHA Lester's interaction with Conservation officers**

On or about January 6, 2020, conservation officers were made aware of a cow roaming at large in the Cochrane Pond Road and the Trans-Canada Highway area. According to the evidence of conservation officer Scott Martin, attempts were made by conservation officials, MHA Lester, and employees of MHA Lester, to locate the roaming cow. However, a snowstorm delayed the search effort and the cow was not found until January 10, 2020. Upon finding the cow it was transported back to MHA Lester's farm. MHA Lester then contacted the Chief Veterinarian's Office to have the cow examined.

On January 13, 2020 conservation officers met with MHA Lester at Lester's Farm, Pearltown Road. The cow was observed in the barn eating and was examined later in the day by a veterinarian. However, during this meeting conservation officials decided to issue a written warning to MHA Lester under the *Animal Health and Protection Act*. The issuance of this warning caused a disagreement between MHA Lester and conservation officer Martin.

Conservation officer Martin was questioned about this incident during his interview, and the email he provided to his superiors describing the incident on February 7, 2020. The email reads as follows:

*On Wednesday February 5, 2020 at 2:52 p.m. while on my way back from a snow mobile patrol I received a text message from Jim Lester asking me to please contact him at my convenience. I arrived back to the office around 3:15 p.m. and made contact with Mr. Lester. Jim Lester was wishing to give me the heads up that he was writing a letter to acknowledge he was not in agreement with a written warning that he had received for a violation of the animal health act regarding a cow that had been at large for some time. Mr. Lester stated he would be dropping by the Paddy's Pond office to either deliver me a copy of this letter and possibly get me to sign it, this part is unclear however if asked to sign I will not be signing any letter put forth by Mr. Lester. Mr. Lester also stated during the conversation that he had received word from a source that the Minister/or the minister's office*

*had been applying political pressure to have him charged or served a summary offence ticket for this matter in retaliation for some information that they had in regards to Minister Byrne.*

*As per the e-mail from Jason on February 6, 2020; I was caught off guard by this and advised that I had no idea what pressure he was speaking about and that politics was beyond me and my duties and did not concern me in any way. As for his written warning, I am totally fine with a disagreement however again he was told that it was a written warning and subsequent offences would be dealt with accordingly as per the situation arises.*

*Also as previously stated the L&C division conducted an internal review of the handling of this file and both Jason and I were advised that our actions were sound, my investigation and actions given the details surrounding this file were all supported by their division.*

*To conclude, I feel like this matter has gone way outside of our normal procedures. This situation is bringing forth politics into a non-partisan matter where a peace officer is conducting his or her duties. Furthermore, I feel like we have been put under a microscope and my practices picked apart, I am confident I am conducting myself in a proper and professional manner and this file is closed in my opinion. Anymore contact to myself by Mr. Lester will be directed to Susie Bugden, the Ministerial Liaison to the Hon. Gerry Byrne as per Colin Carroll's direction.*

During his interview, conservation officer Martin confirmed that the contents of the email were accurate and there was nothing he wished to change or clarify.

In discussing his interactions with MHA Lester, conservation officer Martin stated that over the years his interactions with MHA Lester had always been cordial and they had an understanding that when he was dealing with MHA Lester, he was dealing with "Farmer Jim" and not "MHA Lester". According to conservation officer Martin, MHA Lester was very upset following the issuance of the written warning. His anger was not directed at conservation officer Martin personally, but with the fact that he had received a written warning.

Conservation officer Martin advised that he was subsequently requested to transfer his files to the department's legislation and compliance division for review. The review concluded that conservation officers had acted appropriately.

Conservation officer Martin concluded his interview by advising that because he was dealing with a "political person" he did start to second guess his actions, but confirmed that he did not feel that MHA Lester tried to influence him in any way because of his stature.

When interviewed, MHA Lester confirmed that his issue with the ticket was that it indicated that he "permitted" the cow to roam and according to MHA Lester he did not "permit" this to occur.

MHA Lester indicated in his written submission that he was not upset personally with conservation officer Martin, and when the above-noted accusation came to light he apologized for unknowingly causing conservation officer Martin any discomfort.

## **2) MHA Lester's interaction with ADM Keith Deering**

MHA Lester's interactions with Assistant Deputy Minister Keith Deering centered around the Agricultural Areas of Interest program. This program was designed to ensure prime agricultural land is made available to commercial farmers, part-time commercial farmers or new farmers under a Crown Land Agricultural Lease. The program accepted

applications from farmers on a request for proposals process. Successful applicants pay a lease fee which is non-negotiable and set by government.

MHA Lester, on behalf of Lester's Farm Inc., filed an application for the lease of Crown Land known as the MUN Woodlot. The application was signed by MHA Lester and filed on January 10, 2018.

In April 2020, the Department decided that it would be cancelling existing applications for the MUN Woodlot and would be proceeding with a request for proposals process. According to an email dated April 6, 2020 from Keith Deering to Deputy Minister Tracy King, this was done for several reasons. First of all, the way the existing applications were delineated basically cut off access to all but one parcel and the department felt that by re-drawing block boundaries four parcels could be established using the existing roadway as a boundary. This would allow up to four title holders with road access. Secondly, by using the road right-of-way it could provide the opportunity for all title holders to have access to irrigation from the pond in the northeast end of the property. Thirdly, the way the current applications were submitted would effectively orphan a substantial portion of the property on the west end, without any opportunity for road access. Finally, there was a substantial amount of public interest in this property.

As a result of the cancelling of the MUN Woodlot applications, MHA Lester was in contact with Assistant Deputy Minister Keith Deering regarding the matter. According to Mr. Deering, MHA Lester was "rattled" by this decision. Mr. Deering described his interactions with MHA Lester in his email to Deputy Minister Tracy King on April 6, 2020:

*Mr. Lester was disappointed in this decision. He talked about taking the department to court, but said that this would be a waste of his time and money. He did say at least a couple of times that this would not be the end of the discussion. He said initially that he would not be submitting a proposal to the RFP process but later indicated that he probably would but that it would be under a new company name, that has no financial history and would not likely be able to compete with other proponents. He indicated he didn't think it was fair for the department to continue to support existing farm operations (with good financial credentials) at the expense of supporting operations like his. He felt that this approach was only eroding his opportunity to grow and compete.*

*His final comment to me (in this conversation) was that he was going to have to sit down with his family, who were already facing a difficult year, and give them this bad news and then **lets see what happens after the next election.** [Emphasis Added]*

During his interview, Mr. Deering qualified the statement "lets see what happens after the next election", by advising that MHA Lester did not say, lets see what happens to "you" after the next election. However, ADM Deering was clear in his evidence that he did feel threatened.

On April 9, 2020, MHA Lester emailed Mr. Deering again regarding this issue. This email stated, in part, as follows:

*In light of your reasoning for cancelling my lease application I have put much thought in to your concerns and would like you to consider the following. I would propose the consideration of amending my application to address the three points you highlighted as concern foremost to amend the western boundary to extend my application to include the "orphaned property" as you describe it. Secondly, as to your concern of the access road being available to the whole AOI I propose to move my eastern boundary west to align with the access road. This boundary would be amended from the northern most point to the gate of the "tree farm" from the gate of the tree farm continuing south the application would remain as is. Thirdly, in reference to your concern of the access to the waterbody aka witch hazel pond for irrigation purposes, this may not be necessary as there is a*

*substantial tributary of the Manuel's river which runs south to north along the eastern boundary this water body has more than enough capacity for irrigation purposes however if deemed absolutely necessary a right of way could be established in the area of the lowest consideration of natural field shapes to avoid fragmentation of valuable productive land. I look forward to your comments and reply.*

In response to this issue, MHA Lester stated the following in his June 25, 2020 response:

*I had been advocating for change on this policy long before I became an MHA and personally believe that changes will strengthen the agriculture industry. I asked if ADM Deering was listening and he replied "yes". I continued to express my thoughts on policy changes that could help farmers. I stated that we may not see them under this administration and we would have to see what would happen next election.*

MHA Lester's legal counsel also addressed this issue in his August 27, 2020 submission:

*The comments to ADM Deering – Mr. Lester admits that he made the comment to Mr. Deering that they would have to wait and see what happened after the next election. Mr. Lester said that this was not meant as a threat in any way. He simply meant that if a new government was elected they might have a different view on the program which they were discussing. Mr. Lester informed the Commissioner that he recently spoke to Mr. Deering and Mr. Deering was willing to further discuss this matter with the Commissioner. Mr. Lester asks the Commissioner to avail of Mr. Deering's offer.*

### **3) MHA Lester's interaction with Dave Jennings, Director, Agricultural Production and Research Division**

As a result of MHA Lester's farming operation involvement in the 2019 Vegetable Transplant Program he had several interactions with Dave Jennings, Director, Agricultural Production and Research Division.

On November 29, 2019, Mr. Jennings wrote MHA Lester advising, in part, as follows:

*I am writing to inform you that your farm's (Lester's Farm Chalet) eligibility for the 2020 Vegetable Transplant Program will be conditional, as a result of non-compliance with the expectations of the 2019 Program. Follow-up inspections during this past growing season have determined that a large percentage of transplants received by your farm were subjected to various forms of neglect, rendering them unproductive.*

*Congruently, your farm has been assessed under the "serious non-compliance" category according to the Agriculture Production and Research Division's policy regarding the use of plant material at the Centre for Agriculture and Forestry Development in Woodale.*

*Attached is your inspection report, which outlines the results of your inspections. According to the policy, for the next three growing seasons, your farm will only receive transplants after all other compliant clients have been served.*

*In addition, future applications to the Vegetable Transplant Program will have to include a detailed planting plan that demonstrates proper and complete use of material requested.*

MHA Lester responded to Dave Jennings by email dated December 9, 2019. The email read as follows:

*In response to your letter of November 29 I find your comments and assessment particularly offensive and disingenuous. Foremost there was not [sic.] inspection report attached secondly there has been a documented deviation confirmed by your staff of acreage between that of the report you allegedly have Vrs the the [sic.] the actual acres planted. Further to that the final inspection was actually completed the end of November when the majority of crops had been harvested fields had been flooded and no cultivation possible. I would appreciate a call from you to discuss this further to correct the issue.*

MHA Lester subsequently followed up with Dave Jennings on his LinkedIn account stating:

*Hello Dave re  
the transplant program dflr staff have been in and measured an additional 8 acres of crops planted via the program I would appreciate the report be amended and our farms status within the program be appropriately stated.*

In response to this issue, MHA Lester stated, in part, as follows in his June 25, 2020 response:

*I have and continue to disagree with DFLR as it pertains to the status of our participation of the program. I was never made aware of the non-compliance status until several producers contacted me following a meeting hosted by DFLR in Central Newfoundland where the Minister of DFLR allegedly stated and repeated, “there was only one farm found to be in non-compliance and he will never receive any assistance from this department again.” This was at the same meeting where the Minister was seen to engage in a shouting match with several farmers.*

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*Upon being advised of the non-compliance status, I immediately contacted Dave Jennings of DFLR and requested the information to substantiate the 45% grade, as my calculations of land used and plants planted would have been 90%. DFLR staff returned and re-measured the area planted and discovered that there were fields planted and not recorded. Further to that the assessment of plant density was off by 35% as the DFLR allocated 16” spacing and we plant at 12” for large crops such as broccoli, cabbage, brussel sprouts and kale. Although I made repeated requests for a copy of the report through Mr. Dave Jennings, I did not receive a copy. I did receive a copy of a letter of non-compliance signed by Dave Jennings saying that report was attached; however, there was no report attached to the letter. I emailed and called and even messaged him but with no reply.*

*As a citizen of this province, regardless of my MHA status, I deserve the right to see the evidence of accusations against me. Further to my rights as a citizen, it is also my right to respectfully disagree with Public Service employees. I asked Mr. Jennings to update the report found online but to date no change has been made.*

*I totally and univocally feel my rights have been violated, my reputation tarnished, and the Minister or his designate have instructed members of the Public Service to withhold information specific to me and my ability to counter the above-mentioned slights to my character. Despite the report noting 67% compliance, it still remains online at 45%. The first time I seen the Transplant Report was upon receiving the package from you, the Legislative Commissioner.*

MHA Lester’s legal counsel also addressed this issue in his August 27, 2020 submission as follows:

*Mr. Lester stated he attempted to contact Mr. Jennings on his personal social media account because Mr.*

*Jennings refused to take his telephone calls or answer his e-mails. Mr. Lester also stated that he was informed that officials within the department were told not to talk to him. This is consistent with his actions which could be expected of a Minister who was openly and publicly hostile to Mr. Lester. While it would have been preferable that Mr. Lester not deal with Mr. Jennings the way he did it was also inappropriate for Mr. Jennings to refuse to answer Mr. Lester's e-mails and phone calls. While Mr. Lester may have acted out of frustration he did not breach the Act or Code of Conduct.*

## ANALYSIS AND RECOMMENDATIONS

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As noted above, as Commissioner it is not my role to engage in an analysis of the conduct of government officials regarding the administration of government programs. If a person is aggrieved by an act done or omitted relating to a matter of administration in or by a department or agency of government a written complaint may be submitted to the Citizens' Representative pursuant to s.15 of the *Citizens' Representative Act*. My role is to provide an opinion with respect to the conduct of MHA Lester and his compliance with the Code of Conduct.

Upon review of the evidence, the conduct of MHA Lester in his dealings with conservation officer Martin do not rise to the level necessary to establish a code violation. MHA Lester was upset with the ticket and raised his concern with conservation officer Martin. Conservation officer Martin was clear that MHA Lester did not try to influence him because of his stature as an MHA.

The conduct of MHA Lester in his interactions with Dave Jennings regarding the Vegetable Transplant Program are concerning, but also do not rise to the level of a violation of the Code of Conduct. This interaction centered around a disagreement regarding the penalty handed to the farm pursuant to the Vegetable Transplant Program and findings in a report. There is insufficient evidence that MHA Lester was using his position as an MHA in any way to influence the decision of Dave Jennings.

The conduct of MHA Lester in his interactions with Assistant Deputy Minister Keith Deering are concerning and establish code violations.

Principles 5-6 of the Code of Conduct read as follows:

**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.**

**Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.**

Prior to engaging in an analysis of MHA Lester's conduct in relation to these Principles, the comments of MHA Lester's legal counsel at the conclusion of his August 27, 2020 submission are worth repeating:

*If the Commissioner finds that there are breaches of the Act or Code of Conduct (which is denied by Mr. Lester) then the problem stems from Mr. Lester having direct conduct with civil servants in the Department of Fisheries and Land Resources. While it is Mr. Lester's position that a blind trust is neither practical or necessary he*

recognizes that steps should be taken to avoid the perception in the future that Mr. Lester is abusing his status as an MHA. Mr. Lester makes the following recommendations:

- (1) That any future dealings with officials in the Department of Fisheries and Land Resources in relation to his farming business be carried out by his son and/or daughter;
- (2) Mr. Lester will only have direct contact with a designated official (ADM or DM) and only when issues cannot be resolved by his representatives through contact with department officials;
- (3) Prior to having any personal involvement in applying for any government programs or grants Mr. Lester will write the Commissioner and ask the Commissioner to review the matter, provide guidance and impose conditions, if he deems it necessary.

Principle 5 of the Code of Conduct states that “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.” As a result of MHA Lester having direct dealings with ADM Deering wherein he made the comment “he would have to wait and see what happens after the next election”, and continuing to engage with ADM Deering three days after this exchange occurred to suggest amending his application to allow it to proceed, a reasonable person is left with the appearance that MHA Lester was using his position as an MHA to further his private interest. Politicians need to be particularly careful when they engage with public servants who are politically impartial and MHA Lester’s conduct falls below the standard one would expect of an MHA.

In the August 27, 2020 submission, MHA Lester’s legal counsel stated, “Mr. Lester admits that he made the comment to Mr. Deering that he would have to wait and see what happens after the next election.” Therefore, there is no dispute that the comment was made. While MHA Lester states that his comment was directed at policy change, the evidence clearly establishes that the comment was made at a time when MHA Lester was attempting to further his personal interests in the MUN Woodlot. MHA Lester suggested I discuss the matter further with Mr. Deering. During the interview, which was under oath, Mr. Deering was very clear that he felt threatened. As there was no dispute the inappropriate comment was made, no further inquiry was necessary.

A violation of Principle 5 of the Code of Conduct has been established.

The discussion and evidence above regarding a violation of Principle 5, also establishes a violation of Principle 6.

If MHA Lester had taken steps upon his election to establish a blind trust or other appropriate mechanism to ensure that he would not have direct dealings with government officials, this entire unfortunate event could have been avoided. MHA Lester believes that a blind trust was not practical or necessary. Respectfully, I disagree. A blind trust or an administrative mechanism similar to the one suggested by MHA Lester’s legal counsel, likely would have prevented MHA Lester from placing himself in a position that is contrary to the Code of Conduct. The private affairs of members need to be arranged in a manner that enhances public confidence and trust in government, and MHA Lester’s failure to put his affairs in order diminishes the trust citizens have in elected officials.

All members should be aware of s.38(2) of the *House of Assembly Act*. This section reads as follows:

**38 (2) The commissioner may make a recommendation to a member that in order to fulfil the member’s obligations under this Part, the member sell a private interest at arm’s length, place the private interest**

**in a trust on those terms and conditions that the commissioner may specify, with or without those other arrangements to be made that will ensure that the member's obligations under this Part are fulfilled.**

It is noteworthy, that this section of the Act authorizes me to recommend to a member that they place a private interest in trust "on those terms and conditions" that the Commissioner may specify. This section encourages full disclosure to the Commissioner while providing a mechanism for members to fulfill their duties in a transparent fashion in keeping with the public interest.

Section 39 of the HOAIAA reads as follows:

**39. Where the commissioner determines that a member has failed to fulfil an obligation under the code of conduct, he or she may recommend in the report under section 38**

**(a) that the member be reprimanded;**

**(b) that the member make restitution or pay compensation;**

**(c) that the member be suspended from the House of Assembly, with or without pay, for a period specified in the report; or**

**(d) that the member's seat be declared vacant.**

In the present case there has been a finding of a violation of Principle 5 and 6 of the Code of Conduct. These violations could have been prevented if steps were taken by the member to organize his affairs upon taking office in a manner consistent with ensuring transparency and accountability of our elected officials. MHA Lester was honest and forthright during this inquiry and while he did not believe a blind trust was necessary, his failure to establish a trust has caused him to violate the Code of Conduct. There was no financial gain by MHA Lester and no financial loss incurred by any third party.

I recommend that MHA Lester be reprimanded and apologize to Assistant Deputy Minister Keith Deering. I also recommend that he meet with me to establish a trust containing the necessary terms and conditions to allow him to serve effectively as an MHA, while allowing his business to run successfully.

## APPENDIX A: MEMBERS CODE OF CONDUCT

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### *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:

1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the *House of Assembly Accountability, Integrity and Administration Act*, the Members' Resources and Allowances Rules, the *Elections Act, 1991*, the *House of Assembly Act* and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.
2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.
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.
6. Members will carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.
7. Members will base their conduct on a consideration of the public interest. They are individually responsible

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for preventing conflicts of interest and will endeavour to prevent them from arising. Members will take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

8. In performing their official duties, Members will apply public resources prudently and only for the purposes for which they are intended.
9. Members will not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
10. Members should have regard to the duty of public service employees to remain politically impartial when carrying out their duties.
11. Members should promote and support these principles by leadership and example.
12. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.