

The Parsons Report

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



June 25, 2019

Bruce Chaulk
Commissioner for Legislative Standards

EXECUTIVE SUMMARY

On December 7, 2018, Dale Kirby (MHA, Mount Scio), by way of email to the Commissioner's Office, requested the Commissioner investigate an alleged breach of the Code of Conduct by Pam Parsons, (MHA, Harbour Grace – Port de Grave) (hereinafter referred to as MHA Parsons). Specifically, MHA Kirby alleges that MHA Parsons violated Principles 1,2,3,4,5 and 10 of the Code of Conduct.

At the outset it must be noted that the majority of the allegations made by MHA Kirby arise out of conduct that was fully reviewed by this office and reported in the Kirby Report dated October 3, 2018 [hereinafter referred to as the "Kirby Report"]. As these allegations were fully investigated and a report was submitted and accepted by the Legislature, it would be inappropriate to revisit the factual findings made in that report unless there is new and relevant information available that could not have been brought forward during the prior investigation. In such circumstances, it would have been appropriate for MHA Kirby to voice any additional complaints he had regarding MHA Parsons during that investigation, rather than attempting to revisit matters, which have already been reviewed. As such, the factual findings made in the Kirby Report will not be revisited in this Report.

Issues that were not addressed in the Kirby Report that MHA Kirby has now asked me to address involve an allegation regarding MHA Parsons harassing a third party, an allegation that MHA Parsons influenced the termination of a public servant, and that MHA Parsons was generally hostile and harassing towards him

I am of the opinion that MHA Parsons has not violated Principles 1, 2, 3, 4, 5, and 10 of the Code of Conduct. MHA Kirby could provide no evidence that MHA Parsons played a role in the discontinuation of the employment of the public servant, he could provide no evidence, other than hearsay, that MHA Parsons engaged in general hostile and harassing behavior towards him and finally, he was not a party to the alleged harassment of a third party.

Furthermore, MHA Kirby's assertion that because most of the allegations against him had been dismissed that it meant that MHA Parsons had filed false allegations against him is simply not correct. The complaint process is designed to allow a member to request an opinion based upon what he or she believes to be reasonable grounds. The fact that a member fails to satisfy the evidentiary burden, absent specific evidence of bad faith, does not equate to an automatic finding that the member's statements were false and therefore were a violation of the Code of Conduct. To interpret the process to the contrary, would have a "chilling effect" upon members bringing what they believe to be reasonable concerns to the Commissioner for fear of retribution if their complaint is unsuccessful.

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) of the Act, 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) of the Act.

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. Often times it is necessary to review the member's initial response to determine if there is any basis for which to proceed with a formal investigative inquiry.

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

On December 7, 2018, Dale Kirby (MHA, Mount Scio), by way of email to the Commissioner's Office, requested the Commissioner investigate an alleged breach of the Code of Conduct by Pam Parsons, (MHA, Harbour Grace – Port de Grave (hereinafter referred to as MHA Parsons). Specifically, MHA Kirby alleges that MHA Parsons violated Principles 1,2,3,4,5 and 10 of the Code of Conduct.

On December 10, 2018 MHA Kirby was contacted and advised that in order to proceed with a complaint alleging a contravention of the Code of Conduct a written submission needs to be provided that contains the grounds for the belief of a code violation and the nature of the alleged contravention along with any supporting documentation.

On December 23, 2018 MHA Kirby provided me with a detailed submission providing information which he believed supported a finding of a violation of the Code of Conduct.

On January 16, 2019 MHA Kirby's complaint was provided to MHA Parsons for reply and comment.

On January 25, 2019 MHA Parsons' submitted her response to my office.

On February 8, 2019 MHA Kirby was provided with MHA Parson's response. Despite being given an opportunity to make further comments on the response of MHA Parsons, MHA Kirby declined to do so.

On March 29, 2019 Premier Ball indicated that the General Election would be held prior to June 27, 2019. On April 17, 2019 the legislature was dissolved and the General Election was held on May 16, 2109.

ISSUE:**Does the information provided to the Commissioner support a finding that MHA Parsons violated principles 1, 2, 3,4, 5, and 10 of the Code of Conduct?**

As noted above, many of the allegations made by MHA Kirby could have been brought forward during my previous investigation. It is recognized however that MHA Kirby considers his success on some of the allegations as evidence that MHA Parsons filed false allegations. A review of this issue is warranted in the circumstances.

The Complaint of MHA Kirby is divided into 9 separate and distinct categories which he claims support a violation of the principles of the Code of Conduct. These are as follows:

1. False Allegations About School Busing Petition;
2. False Allegations about Full-Day Kindergarten Program;
3. False Allegations about Twitter Account;
4. False Allegations Regarding “Bar Tab”;
5. False Allegations about public servant [name withheld];
6. False Allegations about Gender Convention;
7. Alleged Sexually-Suggestive Text Messages;
8. General Hostile and Harassing Behavior;
9. Using False Allegations to Engage Harassment;

MHA Parsons has submitted that while the Commissioner found there was insufficient evidence to support a finding of fact with respect to many of the statements she made in her July 18, 2018 submission, this in and of itself does not establish that the allegations were false. I agree with this submission.

The complaint process is designed to allow a member to request an opinion based upon what he or she believes to be reasonable grounds. The fact that a member fails to satisfy the evidentiary burden, absent specific evidence of bad faith, does not equate to an automatic finding that the member’s statements were false and therefore were a violation of the Code of Conduct. To interpret the process to the contrary, would have a “chilling effect” upon members bringing what they believe to be reasonable concerns to the Commissioner for fear of retribution if their complaint is unsuccessful.

False Allegations About School Busing Petition

In the Kirby Report, the issue of the Bus Policy Code violation was dealt with in detail. The crux of the complaint was that MHA Kirby responded to MHA Parsons regarding the busing issue with a text message which read as follows:

“You are causing a fuck load of trouble for me, being vocal about this 1.6km bussing policy. There are ways to do things but undermining your colleagues isn’t one of them I assure you” [sic]

MHA Kirby’s response to this allegation stated, in part, as follows:

I do not recall making the specific comment to the Complainant about busing that she included in her submission. I do not dispute making the comment as the Complainant raised the issue of the 1.6km school busing policy with me and the Premier a number of times, and she and I had a number of exchanges regarding busing issues.

As noted in the Kirby Report, “Although MHA Kirby did not recall making the comment alleged by the Complainant, he did not deny making the comment either. The comment also fits within the context of their actions and interactions on this topic in a manner that rings true. Accordingly, I find that MHA Kirby sent a message to the Complainant that stated she was causing a “fuck load of trouble” for him by being vocal about the busing policy.”

In light of the foregoing, it is clear that MHA Parsons advocacy for her constituents regarding the school busing issue formed an intricate part of the factual matrix upon which my findings in the Kirby report were based. As this issue regarding MHA Parsons advocacy has already been decided, and given the factual findings on my previous report, I am not prepared to find that MHA Parsons made a false allegation regarding the submission of the school bus petition. It is clear that MHA Kirby’s conduct was meant to influence MHA Parsons’ behavior in the manner in which she represented her constituents. In any event, there is insufficient evidence to suggest that the statements regarding the presentation of a petition were knowingly false, dishonest, or contrary to the code of conduct when viewed in light of MHA Kirby’s interactions with MHA Parsons.

False Allegations about Full-Day Kindergarten

Similar to the allegations regarding the School Busing Petition, this issue was also addressed in the Kirby Report. Furthermore, as noted above, the failure of a member to meet the burden of proof does not in and of itself equate to a finding that the member knowingly made a false statement.

In the Kirby Report, a finding of fact was made that MHA Parsons sent a message to MHA Kirby about a radio program about full day kindergarten, suggesting that he may want to listen to it. MHA Kirby responded by questioning why he would want to listen to the program and stating that he would allow communications staff to monitor the news and provide him advice, as necessary. The Kirby Report continued by stating that “MHA Kirby was dismissive of the Complainant, regarding the busing policy and the radio show, and spoke to her in an insensitive manner.”

Given the previous findings regarding the interactions of the members regarding this issue it was not unreasonable for MHA Parsons to be under the impression that she was not included in the Department of Education’s plans for the implementation of full-day kindergarten in September 2016. Given the absence of any evidence of bad faith, and/or a deliberate attempt to discredit MHA Kirby, I am not prepared to revisit this issue in this report or conclude that MHA Parsons knowingly made a false allegation in violation of the Code of Conduct.

False Allegations about Twitter Account

This issue was also addressed in the Kirby Report wherein it was found that “the allegation that MHA Kirby was responsible for the Twitter account in question was speculative in that neither the Complainant nor any witness had evidence to support the claim that the account might belong to MHA Kirby. Absent any evidence from Twitter, which they declined to provide to the RNC, there is no basis on which to conclude that MHA Kirby directly or indirectly controlled the Twitter site that called the Complainant a Liberal leaker.”

In the present complaint, MHA Kirby alleges that MHA Parsons’ conduct regarding the twitter account constitutes a violation of the Code of Conduct. I am not prepared to make a finding based upon the evidence before me. The context of this issue involved MHA Parsons’ contacting the Royal Newfoundland Constabulary to make a complaint as she feared for her safety. In her submission to my office she indicated that she did not know who was behind the twitter account.

MHA Parsons’ concerns were serious enough for her to contact the police to commence an investigation. When viewed in the context of what was occurring at the time between the parties, and her explicit acknowledgement that she could not confirm if MHA Kirby was behind the twitter account, I am not prepared to find that she knowingly made a false

allegation based upon this evidence. There was a significant amount of press attention and speculation given to the issue of the twitter account at that time and there was no clear and definitive statement provided to me wherein MHA Parsons stated MHA Kirby was behind the account. In effect, the contrary is true in that she was careful to point out that she did not know if this was indeed the case.

False Allegations regarding “Bar Tab”

This issue was also addressed in the Kirby Report. The issue was investigated in its entirety and MHA Parsons could not satisfy the burden of proof. MHA Parsons in her submission to my office indicated that she stands by the allegation she made in July 2018 and points out that “unsubstantiated is not the same as false.” In my opinion, if a member has an honest belief regarding the conduct of another member they are permitted to seek the opinion of my office. If this belief turns out to be unsubstantiated by the evidence it does not automatically equate to knowingly making a false statement. Absent new evidence or evidence of bad faith on the part of MHA Parsons I am not prepared to address this issue further.

False Allegations regarding Gender Convention

This issue was also dealt with in the Kirby Report. The factual findings appear at page 10 of the report and read as follows:

The parties agree that while at a Liberal convention, they had a one-on-one conversation, although they provided different locations and context for the interaction. I found MHA Kirby’s evidence relating to this conversation to be compelling in that he provided details that did not paint him in the best light and which formed a more coherent story than that of the Complainant. I note that the Complainant did not deny the context provided by MHA Kirby in her reply, but rather stated that it did not justify the conduct. As such, I found that the way she initially presented the meeting in her complaint to be somewhat disingenuous. I also note that her evidence during her interview, that a particular comment was not sexual in nature, did not align with her written reply that alleged that the same comment was “sexualizing talk.” To that end, I have preferred MHA Kirby’s evidence on this allegation.

I find that while at the convention, MHA Kirby and the Complainant smoked marijuana together and during their conversation, MHA Kirby made a comment to the effect that he loved the Complainant in the manner in which he described it: an “aging punk rocker 1980s way.” That is, I find that he made the comment in a friendly manner within the context of a casual conversation involving marijuana. I do not believe that the comment was intended to be sexual in nature, nor do I believe that the Complainant genuinely perceived it that way at that time. I find that during this casual conversation, MHA Kirby told the Complainant that he wished to work with her and that her approach of working against him, his colleagues, and the Premier was not helpful to any of them.

It is noteworthy that in the Kirby Report both of the parties appear to have been consuming marijuana at the time their interaction was occurring. This factual context may help to explain the differing accounts of where the comments made by MHA Kirby were made. It is understandable that the memories of the parties of the conversation in question may be less than exact given this context. In the Kirby Report I found that the comments were indeed made by MHA Kirby and that they were not intended to be sexual in nature. This conclusion was based in part, on MHA Parsons’ presentation of the evidence wherein during her interview she indicated that a particular comment was not sexual in nature, which did not align with her written reply that alleged that the same comment was “sexualizing talk”. Therefore, her evidence was somewhat disingenuous.

After an examination of this issue in the Kirby Report the evidence of MHA Kirby was accepted over MHA Parsons. In the

circumstances of the Kirby Report, the fact that there was an inconsistency in the member's position did not alter the fact that the comments were made by MHA Kirby and that he was subsequently found in violation of Principle 5 of the Code of Conduct. While there was a finding that the comments of MHA Parsons were "somewhat disingenuous" given the context of the conversations and the interactions between the parties, I do not find her presentation of her evidence to rise to the level of a violation of the Code of Conduct. If I had thought that to be the case, I would have made such a finding in the Kirby Report.

Allegations about Public Servant [Name Withheld]

In this aspect of the Complaint MHA Kirby alleges that MHA Parsons made frequent disparaging comments about [name withheld]'s professionalism and he "speculated" whether these comments played some role in the discontinuation of [name withheld]'s employment.

There are mechanisms in place whereby public servants can seek re-dress if they feel they have been dealt with inappropriately by an MHA or superior in the course of their employment. If a public servant wishes to bring such a matter forward to the competent authority that is the decision of the public servant. If following such a workplace investigation evidence appears which may demonstrate a violation of the Code of Conduct, I have the statutory jurisdiction to initiate my own investigation into the matter. It would be inappropriate and an inefficient use of public resources at this stage, based upon the evidence submitted, for me to comment upon this matter any further at this time.

Alleged Sexually-Suggestive Text Messages Sent to Third Party

MHA Kirby alleges that MHA Parsons sent unsolicited, sexually-suggestive text messages to a third party [name withheld]. According to MHA Kirby, it is his understanding that the alleged unwanted digital advances have served to make [name withheld] who received the text messages uncomfortable. MHA Parsons denied the allegation and stated in her response, *"I have never, out loud or in a text message, sent unsolicited or unwanted sexually suggestive text messages to anyone"*.

I agree with MHA Kirby that unwanted sexual texting may be a form of digital abuse which may be disrespecting and harassing. However, it must also be recognized that such interactions are deeply personal to the individuals involved. Given the nature of this allegation, I would generally expect [name withheld] who allegedly received the messages to come forward and file a complaint. By proceeding in such a fashion, my office can ensure that it is receiving detailed and accurate evidence with a full appreciation on the entire factual matrix. This process would also help to ensure that the burden of proof is satisfied instead of relying upon hearsay and speculation. While there may be instances in the future where a Commissioner may take it upon his or her own initiative to review such conduct, given the evidence before me and out of respect of the privacy of [name withheld] who is alleged to have received the text messages, this issue will not be addressed further at this time.

General Hostile and Harassing Behaviour

With respect to this issue, MHA Kirby's allegation that MHA Parsons referred to him as a "fucking coward" at a caucus meeting is based upon hearsay. Furthermore, MHA Parsons explicitly denies making any such statement and in addition denies any deliberately angry and malevolent eye contact and any attempt to make MHA Kirby feel uncomfortable. The evidence presented by MHA Kirby is not sufficiently clear, cogent, or convincing to meet the balance of probabilities standard. No additional evidence was provided by MHA Kirby despite being invited to make comment on MHA Parsons's submission. In light of the foregoing, the evidence provided by MHA Kirby is insufficient to establish a violation of the Code of Conduct.

Using False Allegations to Engage in Harassment

This submission by MHA Kirby questions the timing of MHA Parsons complaint that resulted in the findings that formed the basis of the Kirby Report. While MHA Parsons did wait a number of months to file her complaint, there is no time limit in the statute which required MHA Parsons to act sooner. While it would be prudent for members to bring complaints forward as soon as possible, it is also recognized that there may be many deeply personal and valid reasons why a member may delay, including the possibility that a member may prefer to address another member individually rather than engage in a formal public process. The fact that there was a delay by MHA Parsons does not lead to the conclusion that she engaged in a coordinated effort to publicly discredit the member.

With respect to the suggestion that MHA Parsons made false allegations to harass MHA Kirby, the evidence is insufficient to conclude that this was the case. MHA Parsons made a complaint against MHA Kirby. MHA Kirby's conduct was reviewed and he was found to have violated Principle 5 of the Code of Conduct. There is nothing in the evidence to suggest that MHA Parsons acted maliciously, in bad faith, or for reasons other than what she believed to be conduct by MHA Kirby that was deserving of sanction. While there will always be discrepancies in the evidence, the fact that a party fails to meet the burden of proof or is inaccurate on particular details, is insufficient to warrant a finding of a pattern of inappropriate conduct based on false allegations.

CONCLUSION

I am of the opinion that MHA Parsons has not violated Principles 1, 2, 3, 4, 5, and 10 of the Code of Conduct. MHA Kirby could provide no evidence that MHA Parsons played a role in the discontinuation of the employment of the public servant, he could provide no evidence, other than hearsay, that MHA Parsons engaged in general hostile and harassing behavior towards him and finally, he was not a party to the alleged harassment of a third party.