

Unfinished Business:

A Final Report from the Speaker of the Legislative Assembly of British Columbia

**Darryl Plecas
Speaker of British Columbia's 41st Parliament
November 2020**

November 2020

**Unfinished Business:
A Final Report from the Speaker of the
Legislative Assembly of British Columbia**

Table of Contents

Part 1 – Executive Summary	2
A. Introduction	2
B. This Report.....	3
C. Unaddressed Issues: Summary	6
Part 2 – A Short Summary of My Reports To Date	10
A. My Two Public Reports: January 21 and February 20, 2019.....	10
B. My Memorandum of February 4, 2019	12
C. The Purpose of This Report	13
Part 3 – Post-February 2019: What Happened Next?	14
A. Justice McLachlin’s Special Investigation.....	14
B. Claims which were <i>NOT</i> Found to Constitute Misconduct.....	21
C. Mr. James’s Departure	24
D. My Proposals Regarding Reforming the Role of the Clerk.....	25
E. The <i>Police Act</i> Investigation	29
F. The Office of the Auditor General’s Review	32
G. Curiously Disappearing Data and Documents.....	34
H. Mr. Mullen’s Report and LAPS Reform	37
Part 4 – My Recommendations, and Some Proposals for Reform	39
A. Introduction	39
B. Summary of my Previous Recommendations	39
C. Proposed Reform of the Clerk’s Position.....	40
D. Proposed Reform of the Sergeant-at-Arms Position	41
E. Mandating an Independent Speaker	42
Part 5 – Conclusion	45

PART 1 – EXECUTIVE SUMMARY

A. INTRODUCTION

1. My term as Speaker of the Legislative Assembly has been an eventful and interesting experience, to say the least.

2. For better or for worse, my time as Speaker is likely to be remembered for a number of high-profile reports and investigations involving the Legislative Assembly.

3. I care, and I believe that we should all care, about British Columbia's Parliament. It is sometimes called "the people's house". This is the forum in which the products of our electoral system – that is, the governments and individual MLAs we elect – carry out their work on the people's behalf.

4. I see the role of the Speaker as being to represent, and advocate for, the independence and prominence of Parliament as a democratic institution, because to me, the Legislature is the embodiment of the success of our democratic system. The degree to which it adheres to, and exhibits, the democratic norms of transparency, independence, and governance according to rules which apply equally to all parties, is in many respects reflective of the strength of British Columbia's democracy. That has nothing to do with which party ends up with the most seats, or how many: the strength of the Legislature is different from the strength of the government from time to time. In fact, a robust Parliamentary process can, and should, act as a fetter on unilateral government, by facilitating scrutiny of a government's plans and giving opposing voices an opportunity to be heard. That is the sign of a strong democracy.

5. The Legislative Assembly is, of course, more than just a Parliament: it is also a 24/7, year-round workplace for numerous individuals. But I also see working at the Legislature, in any capacity, as more than just a "job". Everyone here – from the people working in the kitchen to the Legislative Assembly Protective Services to the library staff, the custodians, and in all the other departments – has a part to play in contributing to a well-functioning Parliament. By them doing their jobs, Parliament is best able to do **its** job. In that sense, I believe these roles have the potential to carry with them a sense of

“vocation”, not just “employment,” and I value highly the people who do them. I know that is how most of the employees of the Legislature view their work. I have often had these “unsung heroes” of the Legislature in mind over the past two years, because I have heard from many of them that they felt implicated by association, when the Legislature was in the news for all the wrong reasons, and let down by the actions of a few high-profile individuals in leadership. I want the Legislative Assembly to be a place everyone – not just people who work here, but all British Columbians – can be proud of.

6. With that in mind, for me, the task of reforming the Legislature was not about “getting rid of bad apples”, but rather, looking at the conditions and culture that permitted certain behaviours to exist. When the systems and structures which govern the Legislature as a workplace are weakened, undermined, or are opaque, it means the Legislature is not “practicing what it preaches”, and not embodying in its own affairs the kind of best practices which our highest democratic institution ought to display.

7. A guiding principle for me, during my time in office, has therefore been to push to strengthen those values, improving how the Legislature functions as a workplace and rooting out practices which undermine the integrity of our Parliament. Corruption in public office – even when it comes to perhaps seemingly small things like padding expenses – is in my view much worse in the context of the Legislative Assembly than in other workplaces, because it takes advantage of all British Columbians. British Columbians are “the boss”. They are the “owners” of this organization. They have a fundamental right to know what is going on, and to be confident that public servants are not taking advantage or improperly profiting from them.

B. THIS REPORT

8. With the recent General Election completed and a new Parliament about to be seated, my time as Speaker is now nearly complete. As I summarize below, I have tried to draw attention in the past two years to a number of issues which I felt were wrong and should be looked into. Some of those formed the basis of a criminal investigation, which is ongoing as I write this.

9. The steps taken in the past two years have been encouraging. New or revised policies introduced which relate directly or indirectly to issues raised in my Reports include, among others:

- (a) Risk Management Policy, new as of May 7, 2019 and revised as of June 16, 2020, which introduced a risk management framework to the Assembly including the provision of a formal annual risk assessment process to be overseen by Senior Management Team members (SMT) on a departmental basis;
- (b) General Expenditure Policy, revised as of May 15, 2019, which revised a policy previously in place to introduce an annual review process for delegated expense authority levels, provided further role clarity, detailed the requirements for email expense authority approval, and eliminated the ability of expense authorities to approve transactions where they are the subordinate of the payee;
- (c) Internal Audit Policy, new as of May 30, 2019, which introduced an independent and objective internal audit framework with the purpose of improving the economy, efficiency, effectiveness, and accountability of the Legislative Assembly's operations;
- (d) Liquor Control and Inventory Policy, new as of July 2, 2019, which established a set of standard pertaining to the purchase and inventory of alcohol by Legislative Assembly employees for use at official events;
- (e) Employee Travel Policy, new as of July 3, 2019, which formalized many of the Legislative Assembly's historical employee travel standards to ensure that travel expenses are economical, efficient, proper, reasonable, accountable, and subject to a thorough approval process;
- (f) Corporate Purchasing Card Policy, revised as of September 9, 2019, which transferred a number of procedural elements to an associated document,

Corporate Purchasing Card Program Administration, clarified travel related provisions, and included a cash advance prohibition;

- (g) Gifts and Honoraria Policy, new as of September 9, 2019, which established a framework for the bestowal of gifts (protocol, empathy, congratulatory) and honoraria to ensure that any bestowals, supported by a bona-fide operational rationale, are economical, proper, reasonable, and subject to a thorough approval process;
- (h) Standards of Conduct Policy, revised as of September 9, 2019, which enhanced the policy framework surrounding conflicts of interest and workplace behaviour in furtherance of respectful treatment, and modernized the policy to incorporate relatively recent developments such as the proliferation of social media;
- (i) Uniform Policy, new as of September 9, 2019, which established a framework for the provision, maintenance, and use of uniforms for employees of the Legislative Assembly;
- (j) Vacation Policy, revised as of March 9, 2020, which provided a substantive update over the previous policy, established a minimum value of 105 hours for vacation use and introduced further clarity surrounding vacation carry-over;
- (k) Parliamentary Gift Shop Policy, new as of June 30, 2020, which consolidated and updated a number of existing policy and procedural documents in a manner consistent with the Assembly's existing policy suite. The policy established acquisition guidelines, the order approval framework, pricing strategy, and the inventory management approach; and
- (l) Hospitality Policy, new as of September 10, 2020, which established a framework through which hospitality expenses, attributable to hosting external Assembly guests, may be incurred and to ensure that they are

necessary, economical, duly authorized, and compliant under tax laws and regulations.

10. Other reviews have taken place or are ongoing, including an external consultant's review of workplace culture issues in the Legislative Assembly (as discussed further below), and a review into how the Legislative Assembly Protective Services department is structured. I see those as positive steps forward.

11. My purpose, in writing this Report, is to highlight what **has not** yet been done, or inquired into. I have always said that, in order to clean up the Legislative Assembly, it is necessary to take an honest, unblinking look at what happened – certainly more than the cursory glance that has been cast over these matters, to date. And we can't cherry pick a bit of the low-hanging fruit ("*Wood Splitter! Missing Alcohol!*") and declare the job done. Those are **examples** of the underlying problem, but dealing with them does not solve the problem itself. There is work still to do. I continue to think these issues are important and deserve attention. I call on all Members of the new Parliament to push for action on these issues, and to continue my campaign to clean up British Columbia's Legislature.

C. UNADDRESSED ISSUES: SUMMARY

12. As this Report sets out, the following issues were flagged in my January and February 2019 Reports, and very little, if anything, has been done about them. I think something *should* be done about them:

- (a) Numerous whistleblowers claimed they lost their jobs at the Legislative Assembly for unfair or punitive reasons, including because they attempted to alert others to some of the misconduct by senior officials which was highlighted in my Reports. My Report recognized a pattern of abrupt, unexplained terminations of employees, and the "human cost" to such actions insofar as they undermine the confidence and self-worth (not to mention livelihood) of the individuals impacted. I called for a thorough

review of the Legislative Assembly's practices and policies around discipline and terminations, and appropriate protections for employees.

- (b) Relatedly, my investigation heard reports of a workplace culture where employees are fearful about speaking up or criticizing behaviours or practices of senior executives, even if they believe those behaviours are wrong. I therefore called on the Legislative Assembly, together with strengthening employee protections around discipline and wrongful terminations, to implement a whistleblower protection policy. Nothing concrete has been done about that.
- (c) On February 4, 2019, I delivered a short confidential memorandum to the Legislative Assembly Management Committee ("**LAMC**"), making its members aware of a new allegation I had received from a witness which raised "#MeToo" types of concerns. Given the highly sensitive nature of the allegations, and the charged atmosphere in the aftermath of my first Report, I felt that LAMC was best placed to consider this information, and act on it; and that a #MeToo-style allegation involving the Legislative Assembly deserved a cross-party response. As far as I am aware, neither the allegations, nor my memorandum, have been investigated or acted upon to date.
- (d) Notwithstanding the new policies which have been introduced, the Legislative Assembly has yet to undertake the kind of proper organizational workplace review which I believe is necessary and have been calling for since January 2019. It is true that a firm of external consultants was engaged, and a Report produced. That Report corroborates the kinds of things which caused me concern, particularly in relation to the Legislative Assembly as a workplace: it refers to "the way things were run in the past and... a workplace climate of fear, where people were afraid to speak out and did not feel secure in their jobs;" and "Perceptions of unfair employment practices were expressed, specifically that people could be summarily

dismissed seemingly without cause.”¹ But many of the recommendations of that review echo the recommendations in my own Reports. I agree that a Governance Gap Analysis would be helpful. The suggestion that an updated and detailed “Workplace Policies and Procedures ‘virtual handbook’ (or some other easily accessible resource)” would be a step forward. A “Participatory Strategic Planning Process for the entire organization” sounds very encouraging. But all of these issues, with respect, are akin to those I raised nearly two years ago. The “workplace review” which has been conducted is a helpful piece of work, as far as it goes;² but perhaps now that I, as well as external consultants, have agreed that certain concrete next steps are necessary, they might actually happen. And responding to the various examples of wrongdoing identified by introducing a policy, and then assuming the matter has been dealt with, is akin to treating symptoms and not the underlying virus: a thorough, robust “organizational health check” is needed to get to the bottom of what factors, institutionally, existed which permitted those symptoms to manifest themselves.

13. In my view, the urgent need to address wrongdoing of the kind I brought to light – and not just the specific instances, but the root conditions which permitted them to happen – should not be a controversial proposition. But as I try to explain in this Report, at every turn, I ran up against an institutional mindset which was unwilling to take on cultural issues involving the Legislative Assembly. The mentality seemed to be, if it can reasonably be ignored, ignore it; and if it can’t be ignored, do the minimum to deal with it, then move on.

14. I hope that my previous Reports, and the results of the external investigations and reviews which took place in the wake of them, helped persuade people,

¹ ADR Education Partnership, “Workplace Review – Final Report: Legislative Assembly of British Columbia,” July 2020, page 6. Available at http://www.adrededucation.ca/wp-content/uploads/2020/07/Report_LegislativeAssemblyWPA_July2020.pdf

² That only 50% of employees responded to the survey that is a foundation of the report continues to worry me as to whether it is an accurate reflection of the workplace.

if that is somehow still necessary, that there was merit in my concerns. These efforts were never about particular individuals, or getting to a particular outcome: on the contrary, I felt (and feel) that British Columbians have a right to understand what is happening at their Parliament; and those entrusted to represent them have a corresponding duty to ensure that it is fit for purpose. The matters which have come to light, and which may yet come to light, are an indictment of anyone who knew more than they let on, during the time in question, and a wake-up call for the new Parliament that the issues were deeper-set than anyone wanted to admit, and that there is still work to be done.

15. Creating cultural change at an institution like the Legislative Assembly is a bit like reversing course in a cruise ship: it requires a massive, deliberate effort, a lot has to shift, and it certainly doesn't happen quickly. To reform the Legislative Assembly requires staff and elected officials (of all parties) to work together. It depends not just on having the right "rules" and "policies" in place, but on consciously working to strengthen norms and conventions around proper conduct. And that starts at the top, with senior leaders (both elected, and permanent officers) modelling best practices and behaviour.

16. I want readers of this Report to know that, although my time in office is now nearly complete, I feel cautiously optimistic about the prospects for that project. There is clearly a need for that work – and I am hopeful that the political will and ability to make it happen may be there, too. As I have summarized above, much has been done since my Reports came out. Work is ongoing – including the operational review of the Legislative Assembly Protective Services by Doug LePard and Nahanni Pollard. I expect that review will confirm what the report by my Chief of Staff, Alan Mullen, suggested earlier this year, namely that by implementing a number of intuitive changes to how the Legislative Assembly Protective Services department ("**LAPS**") is structured and staffed, significant cost savings can be achieved. My sincere hope is that the new LAMC will act on all its recommendations, whatever they turn out to be. Finally, I conclude this Report by setting out a few thoughts on the role of the Speaker, and how my own position as an "independent" (i.e. politically unaffiliated) Speaker has given me a particular insight into how that role, and with it, the independence of the Legislature as a whole, might be strengthened in the future.

PART 2 – A SHORT SUMMARY OF MY REPORTS TO DATE

A. MY TWO PUBLIC REPORTS: JANUARY 21 AND FEBRUARY 20, 2019

17. I first reported in January 2019 on how the Legislative Assembly was being managed. Once released, the contents of the report were the focus of a great deal of media attention, but it is important to remember the reason that it was drafted and released. Let me take a moment to explain how that came about.

18. On November 20, 2018, the then Clerk, Craig James, and the then Sergeant at Arms, Gary Lenz, were placed on administrative leave with pay due to the announcement of a criminal investigation. As “permanent officers” of the Legislature, they had been appointed to their roles by vote of the members of the House,³ and could be removed or placed on leave only by another a vote of the House. The vote to place them on leave was unanimous. It had been arranged through the three House Leaders, Sonia Furstenau (Green), Mike Farnworth (NDP) and Mary Polak (BC Liberals, my former party). The three House Leaders and I had met the day before with a senior constitutional lawyer. The House Leaders were informed about the criminal investigation into the activities of the two permanent officers that had arisen from my reports to the police, and the available options were discussed with legal counsel. All of the House Leaders supported placing the individuals on administrative leave and we left that meeting united in purpose, with each of the leaders heading off to ensure all of their members would also vote in support.

19. The appearance of unity proved to be only a temporary cease-fire. The day after the permanent officers were placed on leave, members of my former party began a campaign of personal attacks on me, saying that I was out of control, investigating things without a mandate, and seeing bears behind every tree. It is difficult to resist a conclusion that their approach was influenced by party-political considerations – if they could use this issue to get rid of me as the independent Speaker, the NDP would have to appoint one of their own members to replace me. The balance of power in the House was already

³ The circumstances of Mr. James’s appointment were, and are, controversial, for the reasons I set out in my January 2019 Report: paras. 196 – 201.

razor thin: if the NDP appointed a Speaker (and assuming the Liberals won the by-election to replace me in my riding, which they would have been confident of doing), it would have left the House deadlocked at 43-43, with the new Speaker likely having to be the tie-breaker on every vote. The Government's days would have been numbered. It was, no doubt, also partly personal – I wasn't popular with the BC Liberals for having left the party to sit as an independent Member of the Legislative Assembly, and become the Speaker, which had the effect of giving the NDP/Green coalition the ability to govern, albeit with the narrowest of margins.

20. Whatever was behind it, the campaign worked - the media jumped right on board and hundreds of disparaging media reports, opinions, cartoons and op-eds were published, followed by a torrent of hateful comments, emails, phone messages and letters.

21. As pressure mounted together with demands that I disclose specifics about the nature of my concerns, at a LAMC meeting in December 2018, at which I was again under attack, I promised the committee members and all British Columbians that at the Committee's January 2019 meeting – six weeks later – I would tender a report explaining some of the behaviours I had observed at the Legislature which caused me concern, and I made the now-notorious (and admittedly inelegant) promise that if reading my report didn't make British Columbians “throw up”, I would resign.

22. I worked through the Christmas break to prepare my substantive report and it was released on January 21, 2019. It had the promised effect, as people were shocked about what had been going on under their elected representatives' noses – and perhaps with their tacit acknowledgment – at the Legislature.

23. The suspended permanent officers prepared and submitted factual responses together with legal submissions in early February 2019. Those were notionally for the benefit of LAMC, but somehow made their way to the media. The responses asserted there had been no wrongdoing and advanced various explanations.

24. My view was that, in large measure, those explanations were demonstrably false in light of the information that I had reviewed in support of my Report. I therefore prepared and released a further report setting out some of the ways in which I believed that to be the case, on February 20, 2019.

B. MY MEMORANDUM OF FEBRUARY 4, 2019

25. In between, I had submitted a short follow-up report, presented as a Memorandum to LAMC on or around February 4, 2019. I do not intend to go into details about that Memorandum. I do, however, want to make the public aware of its existence, albeit in general terms, because LAMC's response in relation to it was, as far as I am aware, to do absolutely nothing. I believe LAMC's failure in that regard to take any action whatsoever is, given the nature of the issues raised, inexcusable, and representative of the institutional cultural issues I want to highlight in this current Report.

26. In summary, my February 4, 2019 Memorandum reported that I had received a credible and troubling account from a former employee of the Legislative Assembly who alleged that, some years ago, they had been the victim of the kind of behaviour by their manager which had recently been spotlighted by the "#MeToo" movement.

27. I brought this matter to LAMC because at the time in question – within the two weeks after I had released my January Report – and given all that had been said about me acting unilaterally, I believed a serious allegation of this kind should be considered by an all-party committee. The allegations, although corroborated by witnesses I believed to be credible, have not been proven. At a minimum, I would have expected someone to attempt to substantiate or refute this individual's allegations (or even speak with them), determine what internal steps were taken at the time (if any), and to consider whether something ought to be done now, which could have included, for example, an apology or *ex gratia* payment of some amount in recognition that they were treated poorly.

C. THE PURPOSE OF THIS REPORT

28. Following the release of my two Reports, the personal attacks subsided, the recall campaign died, and a few people in the media even said that an apology might be in order (although who they felt ought to be making such an apology was left ambiguous). In the aftermath of the February 2019 Report's release, I thought it was the beginning of a smooth road and a unified effort toward reform of this venerable institution. In retrospect, that hope was laughably naïve. It has been anything but.

29. Most people probably think of the Legislative Assembly as just another government office or department, with similar reporting structures and mechanisms to ensure accountability. It isn't like that. Every other government office is part of one of the ministries under which government is organized, and as such is ultimately accountable to a particular Minister, who in turn is accountable to the Executive Council (Cabinet), a committee that is chaired by the Premier. And Cabinet ultimately reports to British Columbians. If there is a scandal or overspending in one government office, it is the opposition party's job to call attention that, and the governing party then makes sure that Cabinet takes action, because mismanagement has political consequences.

30. The Legislative Assembly functions differently. It is not part of the Executive Branch of government, overseen by Cabinet, and is therefore not subject to the checks and balances of partisan political scrutiny. Instead, administratively it is considered to be independent of politics – an institution for all Members that is not subject to partisan attacks. In other words, a scandal in the Legislature is not laid at the feet of the party in power at that time. Just look at the “scandal” I reported on as an example. The former Clerk was appointed by the BC Liberals (in a manner that was protested by the NDP at the time)⁴ and all of the conduct primarily at issue in my January 2019 report occurred under successive BC Liberal governments, yet neither the media nor the NDP nor the Greens blamed the BC Liberals for mismanaging the Legislature. I can only conclude that this was because it is a different institution, managed not by Cabinet, but by LAMC and the Speaker of the day. Even though LAMC is comprised of a majority of members

⁴ As discussed in further detail at paragraphs 194 – 199 of my January 2019 Report.

of the governing party and chaired by the Speaker, who is normally selected from the ranks of the governing party, it is not considered to be a political body, but rather an all-party committee that manages the Legislature for the benefit of all Members and all parties. Thus, there is essentially no political risk to mismanaging the Legislature, and little to no political benefit to be gained from shining a spotlight on mismanagement when it *is* discovered. And more broadly, the reason politicians haven't focused on it is because (perhaps understandably), British Columbians aren't usually focused on it. In raw terms, for politicians it's just not a vote-winner.

31. To compound the problem, the Legislative Assembly is jurisdictionally insulated from common avenues of public scrutiny and accountability. The court system, for example, has very limited jurisdiction over activities at the Legislative Assembly, and many statutory instruments that promote accountability elsewhere in government do not apply to the Legislative Assembly. For example, freedom of information laws do not apply, nor does the Ombudsperson have any jurisdiction over activities that transpire at the Legislature.

32. So where is the accountability? Our Parliament is based on the House of Commons – the great forum of democracy that fosters and represents political accountability and transparency. It is ironic that the institution that physically contains British Columbia's version of the House of Commons has been managed in a way that has little of either political accountability, or transparency. The fact is that the Legislative Assembly remains largely unsupervised and unaccountable in comparison to other government institutions. It essentially makes up its own budget and has little incentive to run efficiently. But more on that later. First, I would like to outline what has happened since the release of my reports of January and February 2019.

PART 3 – POST-FEBRUARY 2019: WHAT HAPPENED NEXT?

A. JUSTICE MCLACHLIN'S SPECIAL INVESTIGATION

33. My January 2019 Report did not come to any conclusions about the issues that had caused me concern. I produced that Report based on reviewing less than two

years' worth of documentation, in a six-week time frame. It never purported to be comprehensive, or the final word on any of these issues. What my Report did conclude was that (among other things) a root-and-branch workplace review ought to be carried out, perhaps conducted by a distinguished former judge or a Special Commissioner appointed under section 1(2)(k) of the *Legislative Procedure Review Act*.⁵

34. When LAMC received my January and February 2019 Reports, public outcry was such that it was clear that something needed to be done.

35. At its February 25, 2019 meeting, LAMC's resolutions included (among others):

"That the Committee prepare for the consideration of the House Leaders a list of specific areas of concern arising from the *Report of the Speaker* released on January 21, 2019, the related addendum to the *Report* [i.e. my Memorandum of February 4, 2019], the written responses and legal submissions from the Clerk and the Sergeant-at-Arms received on February 7, 2019, and the *Report on the Written Responses by the Speaker* released on February 21, 2019;"

and

"That the House Leaders develop and recommend an independent review process, conducted by an eminent jurist, to determine if the Clerk or the Sergeant-at-Arms has engaged in misconduct in the course of carrying out their duties for consideration and adoption by the Legislative Assembly in relation to the documents noted above."

36. Because I felt sure (based on the above) that my two main Reports as well as my February 4, 2019 Memorandum would be considered, I voluntarily recused myself from any development of the independent review process.

37. In response, on March 7, 2019, Government House Leader Mike Farnworth announced that the Right Honourable Beverly McLachlin, the former Chief Justice of Canada, had been appointed as Special Investigator.

38. My initial burst of optimism at this appointment was quickly tempered by a large dose of reality. My recommendation had been for an investigation which would go

⁵ R.S.B.C. 1996, Ch. 261.

further than I had been able to, in the limited time I had available to me. But instead, Justice McLachlin was given a focused, narrow mandate which essentially amounted to reviewing a handful of the “high profile” examples I had identified and determining if they qualified as “administrative misconduct” or not, by the suspended officers.

39. I want to be very clear that I am not criticizing Justice McLachlin or the Report she ultimately produced. I have immense respect for Justice McLachlin’s judicial career, and as to finding a “distinguished former judge” as I had suggested, the House Leaders could not have found anyone who better fit that description.

40. But the Terms of Reference drawn up by the House Leaders (the “**Terms of Reference**”) limited Justice McLachlin in how far she could actually go, in terms of getting to the bottom of what had taken place.

41. Paragraph 6 of the Terms of Reference tracked the February 25, 2019 LAMC resolution, insofar as it directed the Special Investigator to:

- (a) Review the reports provided to LAMC by Speaker Plecas, Mr. James and Mr. Lenz, namely:
 - (i) the report of the Speaker released on January 21, 2019, and exhibits;
 - (ii) the related addendum to the report of the Speaker distributed on February 4, 2019;
 - (iii) the written responses from the Clerk and the Sergeant-at-Arms received on February 7, 2019;
 - (iv) the legal submissions from the Clerk and the Sergeant-at-Arms received on February 7, 2019; and
 - (v) the report on the written responses by the Speaker released on February 21, 2019, and exhibits;

42. However, by the time the Terms of Reference reached paragraph 6, the list of Reports set out in that paragraph was redundant: that was because paragraph 1 of the Terms of Reference directed,

The Special Investigator will conduct a fair, impartial and independent investigation **of the allegations... that are outlined in Schedule “A” attached hereto.** (emphasis added)

43. As Justice McLachlin acknowledged, “I understand the matters listed in Schedule “A” to conform broadly to the allegations in the Speaker’s January Report.”⁶

44. In other words: the Terms of Reference directed Justice McLachlin to look at **all five (!)** of the Reports provided... but only to the extent relevant to investigate five particular allegations from the January Report, and no further. Any issues in the January or other Reports not related to those five matters – and there were many – were not, and according to the Terms of Reference could not, be considered.

45. The first two pages of Justice McLachlin’s Report make it clear how restricted she was, in her investigation. As she wrote,

It is important to note what this investigation is not. First, it is not a legal investigation. My mandate confines me to finding facts relating to the allegations the Speaker has made against Mr. James and Mr. Lenz. It is not my task to draw legal conclusions or provide legal opinions. When I have submitted my findings of fact, it will be for the Legislative Assembly to determine what further steps, if any, it wishes to take. Second, my investigation... is limited to administrative misconduct, i.e. conformity with Legislative Assembly rules, practices or policies. Third, my investigation is confined to the allegations in the Speaker’s January Report to the Legislative Assembly, as set out in Schedule “A” to the Terms of Reference.⁷

46. Schedule “A” to the Terms of Reference read as follows:

Did the Clerk or Sergeant-at-Arms engage in any of the following, which would constitute employee misconduct, in the course of their employment as permanent officers of the Legislative Assembly?

- (a) Improperly (and knowingly) receive improper payouts of vacation pay by reason of their failure to record vacation leave;
- (b) Improperly make purchases of a personal nature and expense them to the Legislative Assembly;

⁶ The Rt. Hon. Beverley McLachlin, P.C., C.C., “Report on the Special Investigation into Allegations Against the Clerk and Sergeant-at-Arms of the Legislative Assembly of British Columbia,” May 3, 2019 (the “**McLachlin Report**”); available at <https://www.leg.bc.ca/Documents/McLachlinReport.pdf>. See p. 2.

⁷ McLachlin Report, p.1

- (c) Improperly claim and receive retirement allowances;
- (d) Improperly remove Legislative Assembly assets and property;
- (e) Improperly use Legislative Assembly property beyond an incidental or reasonable work-related purpose.

47. It is true that the allegations summarized above are, generally speaking, five of the categories of allegations raised in my January 2019 Report. There is no doubt that they were important. But that Report raised many others as well – as did my follow-up reports (referred to at paragraphs 6(a)(ii) and (v), of the Terms of Reference).

48. Justice McLachlin explicitly acknowledged that these other matters were “out of scope”:

Some of the Speaker’s allegations involve elements raised in Schedule “A” and some do not. I have considered matters explicitly included in or potentially connected to Schedule “A”, provided they were raised in the January Report and canvassed in the interviews I conducted. The novel allegations raised in the Speaker’s supplemental February 2019 Report... fall outside the scope of Schedule “A”.⁸

49. My hope had been that all the matters raised would be looked into. In addition, I had hoped that the investigator would be asked to look into whether **similar** things had taken place **prior** to the time period canvassed in my Report – in other words, was this kind of stuff going on before 2017? Instead, though, the House Leaders framed the “Special Investigation” as simply to determine whether five issues, as raised by me, constituted “administrative misconduct.”

50. That had three particular consequences:

- (a) It meant that certain important allegations were never considered – and indeed, Justice McLachlin interpreted her mandate as expressly *excluding* those matters from consideration;
- (b) The threshold became whether the Officers had committed “administrative misconduct” – not whether (a) did they do these things; and (b) was it wrong

⁸ McLachlin Report, p. 2.

to do those things? “Administrative misconduct” is a technical term. It imposes a high threshold of proof, requiring consideration of activities against prevailing policies. But to suggest that, “there was no policy prohibiting it” cannot justify something which any reasonable person would recognize as being unacceptable (particularly in an institution in which the Clerk had a primary role in drafting the policies). I made this point in my February 2019 Report, at paragraph 6:

The conduct of these senior officers, even if notionally authorized, has brought those systemic deficiencies into stark relief. On an individual level, it represents, at best, a dramatic failure of judgment and leadership by those officers, and at worst, a pattern of deliberate improper use of public resources for their own benefit. The standard we expect of senior executives can’t be that their actions be “plausibly defensible” or “...but somebody else okayed it.” It has to be that they do what’s right.

(c) As I noted in my February 2019 Report,

I have as little desire to engage in a tit-for-tat with the suspended officers as I imagine LAMC does in adjudicating one. My motivation here is, and always has been, rooting out what I see as endemic misconduct by these two officers, and in doing so, shedding light on and hopefully improving systemic practices and protections in this important public institution.⁹

However, by limiting Justice McLachlin’s review solely to the allegations occurring within the time period covered by my January 2019 Report (which, as noted, had been prepared based on documentation from a limited time period only), and not permitting her to investigate further back in time, to see if similar activity had occurred previously – her investigation inevitably became seen as a referendum on *my* investigation: did Plecas get it right? And in the public’s eye, the standard for me to have gotten it “right” was elevated by the Terms of Reference to whether or not the conduct by the officers was found to constitute ‘administrative misconduct.’

⁹ February Report, paragraph 71.

51. I reiterate that my purpose here is not to criticize Justice McLachlin or her Report. It is undeniable, however, that Justice McLachlin was limited not just by the Terms of Reference, but also by an ambitious timeframe which required her to report to the House Leaders “at the earliest opportunity but not later than May 3, 2019.”¹⁰

52. Time constraints, plus the limitations of the Terms of Reference, meant that Justice McLachlin could not follow up on discrepancies in the evidence she heard by recalling witnesses for further interviews. Mr. Lenz – one of the two central figures to the entire affair – was interviewed once, for a total of 1.5 hours. Justice McLachlin did not (likely due to time constraints) interview all of the witnesses that I had interviewed, in preparing my Reports, and whom I had suggested that she interview.

53. Similarly, Mr. James and Mr. Lenz were permitted to access their emails and other records and to use those materials to defend their actions, but Justice McLachlin did not require them to produce **all** records related to the ones they relied on, creating the possibility that they could selectively present documents for their responses.

54. Even still, Justice McLachlin was able to conclude that Mr. James had committed twelve instances of misconduct, in relation to the allegations considered.¹¹ Her report made a number of important observations and comments about the organizational structure of the Legislative Assembly.

55. Justice McLachlin had concluded, in relation to concerns I had raised about claiming thousands of dollars as payment “in lieu” of vacation time, or claiming expenses for electronics or gifts overseas, that there was a lack of clarity around policies relating to these issues. Mr. Lenz was therefore not found to have committed administrative misconduct, as I discuss further below. He promptly held a press conference in his back

¹⁰ Terms of Reference, paragraph 6(h)

¹¹ As set out in the McLachlin Report, the twelve findings of misconduct included in relation to expense claims for two suits, three purchases of luggage, and private insurance premiums; directing the creation of three benefits to his personal advantage outside of established protocols (the 2012 Retirement Benefit, the 2018 Resignation Benefit, and the death benefit proposed in a November 9, 2017 letter); removing alcohol from the Legislative Precinct without accounting for it, and by keeping the wood splitter and trailer and using them for personal purposes: McLachlin Report, pp. 52-53.

yard, declaring that he had done nothing wrong, and was looking forward to getting back to work.

B. CLAIMS WHICH WERE NOT FOUND TO CONSTITUTE MISCONDUCT

56. By way of reminder, it was not disputed that the following purchases at UK gift shops did occur:

Date	Location	Items	Price
06/02/18	Jubilee Shop	2 x bottles of "House of Commons" Gin; "Lady" mug; "Chief" mug; "Leader" mug; Luxury chocolates; 4 x pens; 2 x notebooks; 3 x chocolate bars; 2 x marble pen box.	\$413.98
07/02/18	Houses of Parliament	Cufflinks; notebook; chocolate bar; pens; 2 x planners	\$165.99
07/02/18	Jubilee Shop	"Memorabilia Pack", 2 x aprons; 2 x "coaster heads"; 1 x "Lady" mug; 2 x notebooks	\$175.09
08/02/18	Foyles Bookshop	"10 Must-Reads"; "Five on Brexit Island" "Five Escape Brexit Island"	\$57.70
02/08/18	National Gallery	Various purchases relating to art, including "Make Great Art on Your Own"	\$135.45
02/08/18	National Portrait Gallery	"Kings and Queens" ruler 2 x "Monarchy" card game 2 x items relating to "100 Pioneering Women"	\$77.98
02/08/18	Post Office	Various commemorative items, including packages of special stamps, 4x items about the Royal Wedding, and other items to do with the monarchy.	\$266.53
03/08/18	Houses of Parliament	4 x diaries; 2x notebooks; 4x pens; 2x chocolate bars; mustard; 8x cards; 2x books; 3x note pads; 3x watches	\$480.52
03/08/18	Post Office	8 packs of stamps	\$81.99

Date	Location	Items	Price
04/08/18	Houses of Parliament	“Quotable Churchill” “Gimson’s Prime Minister” 3x House of Lords pens	\$44.42
04/08/18	RAF Club	“100 th Anniversary” commemorative book	\$59.27
06/08/18	Jubilee Shop (@ 10:50 AM)	“Mounted print” 3x sticky notes 3x “proclamation” notebooks “Voice and Vote” guidebook	\$120.97
06/08/18	Jubilee Shop (@ 10:51 AM)	1x “proclamation” notebook	\$16.93
10/08/18	Clarkson’s of York	Cufflinks	\$33.78
11/08/18	Hatchards (Bookstore)	2x books (“Queen Elizabeth II” and “The Gunpowder Plot”)	\$42.38

57. None of the above items, or other similar purchases not listed above, all of which were billed to the taxpayer, constituted misconduct according to the McLachlin Report, due to the bare assertions by the officers that the items were not for personal use, and the lack of clear policies about buying display items and gifts while abroad.¹² However, Justice McLachlin certainly signaled that she was aware the overseas shopping did not reflect well on the Legislative Assembly. She wrote: “opinions may differ on whether the explanations provided for these purchases are compelling,” and that, “it might seem unusual to purchase display and gift items abroad for use in the Legislative Assembly, rather than from a British Columbia source.”¹³ My response to that was, and is, that any reasonable person knows that the kinds of purchases above aren’t appropriate: if they did not fall foul of the applicable policies, that in itself is a problem – both in terms of what it says about the policies, as well as, in my view, what it says about

¹² McLachlin Report, p.16.

¹³ The explanations, in broad terms, were that the items were purchased “to put on display” in the Legislative Assembly, to give to employees or members at the Clerk’s or Sergeant-at-Arms’ discretion in recognition of good service, to hand out to visiting delegations, or to provide “examples” of the kinds of souvenir items the Legislative Assembly “could have produced or sold.” The whisky cakes were allegedly to give to the Chef in the Legislative Assembly dining room, “as an example of something the kitchen might try to make.”

the judgment of the senior officers in question. The same goes for the hundreds of dollars spent on home computer and other tech equipment.¹⁴

58. As for claiming payouts for unused vacation days totaling in the hundreds of thousands of dollars, Justice McLachlin concluded that although such behaviour may have breached applicable policies, those policies were not consistently enforced, and therefore the payouts did not constitute misconduct.¹⁵ This finding applies to years in which, in Mr. Lenz's case, zero official days of holiday were used. Instead, Mr. Lenz and Mr. James would record significant overtime hours (self-reported, and based on a 35 hour work week) and then use those hours for holidays while taking a payout of their official vacation time. This concept of "overtime" for senior managers who are being paid very large salaries, is problematic in my mind. In other work environments, senior managers do not expect to always work a standard seven-hour day, every workday of the year. Moreover, longer hours at the Legislative Assembly occur on occasions when the Legislature is in session, and sometimes sits into the evening. It is in session, however, only 80-90 days per year, so the burden is scheduled well in advance, expected, and not unduly onerous. Again, claiming overtime hours as holidays and taking vacation time payouts may not have risen to the level of misconduct for the purposes of the McLachlin Report, but it reflects an approach to public resources by these officers that, in view of their very large salaries, I cannot see British Columbians being satisfied was appropriate.

59. Again, I raise these issues not to "beat a dead horse", but to emphasize that if we have a system in which these kinds of things are permissible – or, to be more precise, if these kinds of things can happen and **not** constitute clear "misconduct", then there is something obviously wrong with the system. Nevertheless, the response in many quarters was to practically express indignation that I would even raise these things. Many times, media reports cited the fact that no one "had been found guilty of any crime" – which of

¹⁴ The example of the two sets of noise-cancelling headphones bought by Mr. James is illustrative – Justice McLachlin wrote, at pp. 17-18, "[Mr. James] says the headphones were purchased to assist him in Legislative Assembly travel. I accept Mr. James's evidence that these purchases were made for Legislative Assembly purposes." No medical or other evidence was provided in support of Mr. James' statements that the headphones were used to assist with an ear condition that Mr. James says he has, and that the Legislative Assembly should accommodate that condition by paying for multiple sets of expensive headphones.

¹⁵ McLachlin Report, p.11.

course was, and is, true – to suggest that actually, no one had done anything wrong. That is, of course, flawed reasoning – actions can still be obviously wrong, even if they don't lead to a formal criminal conviction.

60. As I mentioned in my introduction, the policies implemented since the matters above came to light are encouraging. I will not list them all again, but the Liquor Control and Inventory Policy, the Gifts and Honoraria Policy, the Uniform Policy, the Employee Travel Policy, the Vacation Policy, the Parliamentary Gift Shop Policy, and the Hospitality Policy, among others, are all pertinent to the issues above and others in my Reports.

61. However: a point I have made before, but want to emphasize again, is that no “policy” is air-tight. No drafter can imagine the myriad of creative ways a motivated person can skirt around the boundaries, if so inclined. The mustard might be banned, but what if the policy doesn't say anything about artisanal jellies? A book might be 99% for personal enjoyment, but if it's 1% educational, can it be expensed? There will always be notional “grey areas” where we have a right to expect good judgement from our most senior officials. Rather than simply expecting a well-drafted policy to act as a safety net, we need institutional structures and frameworks in place to ensure proper, fully-informed oversight: of subordinate employees by managers; of managers by our senior officials; and of those officials by elected representatives who are ultimately accountable to voters.

C. MR. JAMES'S DEPARTURE

62. The key participants in Justice McLachlin's investigation were advised of the findings of her Report in advance of it being made public. On the morning of May 16 2019, Mr. James announced what he characterized as his retirement, alongside the results of the McLachlin Report being made public.

63. His prepared public statement at that time was defiant, saying, “I have had enough. I have been publicly ridiculed and vilified. My family has been deeply hurt and

continues to suffer humiliation. In an effort to put an end to that, I have decided to retire and reach a settlement with the Legislative Assembly.”¹⁶

64. It was subsequently announced by Mr. Farnworth that Mr. James had entered into a “non-financial settlement” including a mutual non-disparagement clause with the Legislative Assembly, ending his employment but not requiring him to pay back any of the benefits which Justice McLachlin had found constituted misconduct.

65. Again, I was not consulted in relation to this. I found the decision staggering. I have no idea what leverage Mr. James could have possibly had to compel a “settlement”, or indeed, what notional claim he might have been “settling,” against the Legislature. The “settlement” was announced on the very day that an independent report was tabled confirming that Mr. James had committed misconduct – which in any other workplace, to my understanding, would have presumably justified termination for cause. The fact that the House Leaders agreed that Mr. James could retain the nearly \$260,000 payout of a “retirement allowance” he obtained in 2012 despite Justice McLachlin finding that his procurement of the retirement allowance constituted misconduct designed to obtain for himself an improper financial benefit – alongside numerous other clothes, gifts, trinkets and the like – is incredulous to me.

D. MY PROPOSALS REGARDING REFORMING THE ROLE OF THE CLERK

66. During Mr. James’s suspension, his duties had been performed by the Acting (previously “Deputy”) Clerk, Kate Ryan-Lloyd.

67. After Mr. James’s departure from the Legislature became official, it became necessary to appoint a new Clerk, and the timing and process that unfolded was, in my view, problematic. None of what follows should be taken as criticism of Ms. Ryan-Lloyd,

¹⁶ Bethany Lindsay, Tanya Fletcher, “B.C. Legislature Clerk Craig James retires as spending report finds he committed misconduct,” (CBC, Updated May 16, 2019). Available at <https://www.cbc.ca/news/canada/british-columbia/update-expected-this-week-in-bc-legislature-spending-scandal-1.5134726>

who in my experience has a remarkable level of efficiency, depth of knowledge, and capability.

68. When it was announced that a committee was being appointed to select a new Clerk, I understood that many people considered Ms. Ryan-Lloyd would be a leading candidate for that role, but as I explained in my January 2019 Report, the process by which permanent officers were appointed, in my view, was a fundamental factor contributing to a lack of transparency, and ultimately, many of the other issues which flowed from it, at the Legislature.

69. Following the McLachlin Report and Mr. James's departure, I wrote to LAMC to remind them of the importance of conducting a broader Workplace Review. A primary motivator for my recommendation that one be conducted was my hearing from many former employees that they felt the termination of their employment at the Legislature was unfair and uncalled for. The former employees who were terminated without cause or explanation were generally not high-profile individuals and their terminations were largely not deemed "newsworthy". However, the impact of their terminations was very significant for them and for their families, and I wanted the Legislative Assembly to review their files, to consider if they had been fairly treated, and to see if any broader changes to the Legislative Assembly's employment practices would be appropriate in light of that. I was of the view that we needed to implement greater protections for security of tenure, and establish fair processes for hiring, discipline and terminations.

70. In addition, Justice McLachlin had found the workplace policies and procedures of the Legislative Assembly are in many cases vague, unclear, or otherwise not fit for purpose. I told LAMC that I thought it was important that we carry out a comparative review of policies and procedures from other Canadian jurisdictions to see what we could usefully adopt here in BC. That, I suggested, should include a salary review: there is evidence that (a) the previous Clerk took steps to dramatically increase the pay of the Sergeant at Arms and other senior officers, by 'pegging' them to the salary of the Chief Judge of the Provincial Court; and (b) the BC Clerk and Sergeant at Arms

are the best paid, for their positions, in Canada.¹⁷ These salaries, I said, should be benchmarked against other Canadian equivalents, to see if they are appropriate.

71. Finally, I made the point that, in my view, the Legislative Assembly should consider restructuring the responsibilities of the Clerk before steps were taken to hire Mr. James' replacement. The change, in summary, would be to divide the "parliamentary" and "organizational management" aspects of the Clerk's role.

72. In the United Kingdom, a change was recently made to the role of the Clerk of the House of Commons, whereby the elements of the job that were strictly management in nature were moved to a new position of Director General.¹⁸ In making this change, it was recognized that the knowledge and skillset required for managing the procedures and workings of the House was a very different skillset from that of managing the "corporate" side of Parliament's undertaking (finance, facilities, human resources, food services, etc.). In "the old days" when parliaments were smaller institutions with a smaller administrative apparatus and less of a public presence, a Clerk may have been capable of directly managing all aspects of the institution as well as proceedings in the House. In a modern parliament, however, where there are a significant number of employees, facilities, services and public engagement, not to mention required oversight of a substantial budget, it seems misguided to suggest that someone could be considered qualified to manage that organization, simply on the basis of an expertise in parliamentary procedure and customs. Instead, it makes sense for a senior manager with business, finance, or public administration education and experience to supervise the corporate elements of the public institution and be the head of the Executive Committee, while maintaining, as a separate officer, the traditional role of Clerk as the top expert in the laws and customs of the Assembly as a parliamentary body.

73. As I explained in my memorandum, in my view, the lessons we had learned (and will continue to learn) from Mr. James' conduct as Clerk over the last ten years

¹⁷ See paras. 209 – 219 of my January 21, 2019 Report.

¹⁸ See: <https://www.parliament.uk/documents/commons-commission/HoCCommission-Annual-Report-2014-15-HC341.pdf>

supported a similar approach. People have often said to me that this Legislative Assembly is run like the Vatican, with the concentration of power into the Clerk's office, the lack of oversight and disclosure of his spending, the lack of modern protections for employment, the inapplicability of freedom of information legislation, and the institution not being subject to review by the Ombudsperson. I appreciate that the work of the House is special, and it requires the privileges and immunities that have historically been accorded to it so that its important work continues in the great democratic tradition from which it is descended. That will always remain the case. However, the corporate side of the Legislative Assembly needs to modernize and embrace current expectations for transparency, accountability and fairness for those who work here and for the taxpayers who pay for it all.

74. Accordingly, I urged LAMC to consider, perhaps jointly with the selection committee, whether a restructuring of the role of the Clerk in the fashion that has occurred in the United Kingdom was warranted. This consideration ought to have been done before hiring a new Clerk, because we would not want to invite constructive dismissal-type claims by hiring a new person and then attempting to change their salary or scope of duties thereafter.

75. I also questioned the need for the Clerk and Sergeant at Arms to be "permanent officers" as established by the provincial *Constitution Act*. That term has resulted in some confusion over whether they can be removed by the Legislative Assembly at pleasure, or only with some level of "cause". In my view it is the former, but it should be made clear. The Clerk and Sergeant at Arms should never be political appointees. It may well be appropriate for there to be a degree of stability and continuity in those positions, provided the necessary trust in the incumbents is upheld. However, the language of "permanent officers" interferes with the need for the clear lines of reporting and responsibility that were recommended by Justice McLachlin. Accordingly, I suggested that LAMC recommend to the Legislative Assembly that the term "permanent officer" be amended in the legislation, and that LAMC begin the process of amending policies to clarify the roles, responsibilities and reporting within the Legislative Assembly, as recommended by Justice McLachlin.

76. That memorandum went nowhere. LAMC did not even respond. Notwithstanding we were making our way past an event widely described as the “Legislature Scandal”, my proposals for reform were not even discussed and I did not receive a response to the memorandum, either formally or otherwise.

E. THE POLICE ACT INVESTIGATION

77. In that same memorandum, I advised LAMC that a *Police Act* complaint had been initiated in relation to two matters concerning Mr. Lenz. The circumstances of that proceeding are fully set out in Investigator Doug LePard’s report, which was eventually released, in redacted form.¹⁹

78. The complaint investigated by Mr. LePard had two components. The first was Mr. Mullen’s contention (he was the complainant) that Mr. Lenz had failed to adequately investigate the misappropriation by Mr. James of a large amount of liquor owned by the Legislative Assembly in April 2013. While Justice McLachlin had looked at that issue in the context of whether the Clerk had committed administrative misconduct, Mr. Mullen’s concern (which I shared) was that Mr. Lenz, as a Special Provincial Constable, had positive duties to investigate that incident and that he failed to comport himself in accordance with those duties.

79. The second part of Mr. Mullen’s complaint related to a data stick that Justice McLachlin was told contained three witness statements Mr. Lenz had collected memorializing observations about the Clerk’s removal of a significant amount of alcohol from the Legislature in 2013. The data stick was said to be in a safe in the Sergeant-at-Arms’ office. Justice McLachlin asked that the witness statements be retrieved and provided to her, but the Acting Sergeant-at-Arms, Randy Ennis, subsequently reported the safe was empty.

80. That worried me, so I asked my Chief of Staff, Alan Mullen, to verify that the safe was empty. Together with Mr. Ennis, Mr. Mullen attended the Sergeant-at-Arms’

¹⁹ LePard Report: https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/LAMC/2019-10-08/LePardReport_Redacted.pdf

office, looked in that same safe, and confirmed it was completely empty. He took photos of the empty safe. Justice McLachlin proceeded to conclude her investigation and issue her report on May 3, 2019 without reference to the witness statements.

81. Then, on the morning of May 6, 2019 – i.e. three days after the delivery of Justice McLachlin’s Report – Mr. Mullen was asked to re-attend the Sergeant at Arms’ office with Mr. Ennis, the Acting Clerk, a LAPS Staff Sergeant, and a member of the Legislature’s IT team. Lo and behold, there was a data stick in the safe which was subsequently found to have the three witness statements on it.

82. That raised to the essential question of how did the data stick suddenly reappear like that? None of the senior managers could explain it, so Mr. Mullen considered the question of who benefited from this strange episode. In his view, the circumstances pointed to Mr. Lenz. Although Mr. Lenz was on administrative leave, the links Mr. Mullen saw to Mr. Lenz in this matter were:

- (a) The missing statements were typed by him;
- (b) They were relevant to his evidence to Justice McLachlin as to the extent of his knowledge about the alcohol removal;
- (c) The statements were kept on a data stick in his safe;
- (d) The Special Investigation was directed to the data stick, in his safe;
- (e) The statements went missing from his safe;
- (f) After the Special Investigation concluded, the statements reappeared in his safe;
- (g) The data stick was discovered in the safe despite that the safe had been confirmed to have been completely empty only a month prior.

83. Accordingly, Mr. Mullen believed that the matter of the data stick also warranted investigation under the *Police Act* (because Mr. Lenz was a Special Provincial Constable).

84. Mr. Mullen therefore made a complaint under the *Special Provincial Constable Complaint Procedure Regulation*, and delivered it to me, as the supervisor of the Sergeant-at-Arms for the purposes of his security-related duties at the Legislative Assembly. In accordance with that regulation, I appointed Mr. LePard to be the outside, independent investigator of the complaint. After 35 years' service, Mr. LePard had retired as the Deputy Chief responsible for the Investigation Division in the Vancouver Police Department, following which he served for two and a half years as the Chief of the Metro Vancouver Transit Police. I knew that, as a seasoned investigator, he would leave no stone unturned.

85. When I appointed Mr. LePard, I informed LAMC of the complaint and the appointment of the investigator, but otherwise kept the fact of the *Police Act* investigation, and Mr. LePard's appointment, confidential, out of respect for this being a workplace matter.

86. However, then-BC Liberal-leader Andrew Wilkinson, and then-Liberal House Leader Mary Polak, proceeded to go to the press and decry the investigation, calling for it to be stopped. Mr. Wilkinson went to the media and called my actions a "witch hunt."²⁰ Again, their focus was on the messenger, not the message: I would have thought that the need to look into subject matters of the complaint would have been uncontroversial, and a matter that transcended partisan politics. Again, I was disappointed.

87. Meanwhile, Mr. LePard carried on with his investigation in a detailed and thorough matter without arbitrary time constraints. In his September 9, 2019 report,²¹ Mr.

²⁰ For example, see Jon Woodward, "New police act probe may come to B.C. legislature: notes", CTV News, May 30, 2019; Available at <https://bc.ctvnews.ca/new-police-act-probe-may-come-to-b-c-legislature-notes-1.4445185>

²¹ Doug LePard, O.O.M., M.A., "Investigation Report pursuant to *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98, In the Matter of Allegations Regarding the Conduct

LePard wasn't able to determine what happened to the data stick²², but he did conclude that Mr. Lenz failed to properly investigate the alcohol incident, concluding that he,

“...failed to take even minimal, reasonable steps to determine what happened with the liquor he directed to be loaded into Mr. James' truck on April 22, 2013, and to ensure it was properly accounted for. He therefore failed in his sworn duty as Special Provincial Constable and the Sergeant-at-Arms, the top law enforcement official at the Legislature (...) In all the circumstances, SAA Lenz's actions were inappropriate and would support substantiation of the disciplinary default of Neglect of Duty, contrary to section 77(3)(h) of the *Police Act*.”²³

88. More problematically, Mr. LePard also found that Mr. Lenz's account of the matter to Justice McLachlin had not been truthful, and that he continued to be untruthful in his evidence to Mr. LePard. In that respect as well, his conduct fell below the standard expected of Special Provincial Constables under the *Police Act*, and constituted (Mr. LePard concluded), “an egregious breach of public trust.”²⁴ As Mr. LePard wrote, “I find that sergeant-at-arms Lenz's false oral and written statements to Justice McLachlin constitute misconduct that is at the most serious end of the range of misconduct under the *Police Act*.”²⁵

89. After being informed of Mr. LePard's findings, and prior to the LePard Report being released publicly, Mr. Lenz retired on October 1, 2019.

F. THE OFFICE OF THE AUDITOR GENERAL'S REVIEW

90. Meanwhile, the Office of the Auditor General of British Columbia had been working on a report of its own. Because my Reports raised matters concerning financial misappropriation and expenditures generally, including a call for an audit into related issues, one of the recommendations adopted by LAMC after our January 21, 2019 meeting was:

of Special Provincial Constable Gary Lenz”, September 9, 2019 (the “**LePard Report**”). Available at: https://www.leg.bc.ca/content/CommitteeDocuments/41st-parliament/LAMC/2019-10-08/LePardReport_Redacted.pdf

²² As a result, Mr. LePard did not substantiate the complaint against Mr. Lenz in relation to the data stick.

²³ LePard Report, pp. 96-97.

²⁴ LePard Report, p. 100

²⁵ LePard Report, p. 104

That the Acting Clerk undertake to develop the scope and terms of a comprehensive financial audit to address matters contained in the Report by the Speaker, for the consideration and approval of the Committee. Once the Committee has approved the scope and terms of the audit, an Auditor General from another Canadian jurisdiction shall be invited to undertake the work. The resulting audit report shall be made public.²⁶

91. That prompted cries of indignation and a threat to resign from British Columbia's own Auditor General, who apparently perceived a lack of confidence among LAMC members that BC's Office of the Auditor General ("**OAG**") could do this work in-province. LAMC back-tracked, and gave BC's OAG the mandate: in its February 21, 2019 meeting, LAMC rescinded its January 21, 2019 resolution respecting a comprehensive financial audit, and resolved instead,

That the Committee support the commitments by the Auditor General of British Columbia of an audit of the Legislative Assembly offices, as outlined in her January 25, 2019 letter to the Committee.

92. Although the OAG's process (nor its progress) was shared with me, I was optimistic that it would be a thorough review because I was told they had eight accountants working on the matter, and they were asking my office and the Legislative Assembly's financial department for an exhaustive set of records. I was particularly hopeful that they would be reviewing the Legislative Assembly's financial records back to 2011, as I had recommended in my January 2019 report. I had only been given access to limited financial records for the past two years, and I was confident that the spending behaviour that was revealed in those years had been going on for many years prior.

93. On September 19, 2019, the OAG's report was released, and I was, frankly, very disappointed. What we received wasn't the "comprehensive financial audit" that I had expected. In my view, the public learned little to nothing of substance from the OAG's Report which I had not identified in my January Report. In particular, the OAG's investigation did not look back in time any further – for example, to the period 2011 – 2017, than my Report had.

²⁶ Per Hansard: <https://www.leg.bc.ca/documents-data/committees-transcripts/20190121pm-LAMC-Victoria-n6>

94. While the Auditor General doesn't take instruction from LAMC and was asserting her jurisdiction to conduct the review, in the context of threatening to resign if an Auditor General from another province was retained to conduct the review, I had expected that the OAG's work would be at least roughly responsive to the request LAMC had made. In particular, I had provided the OAG with what I considered to be compelling evidence of highly problematic behaviour, in the form of expenses receipts which appeared on their face to have been doctored – but these were not mentioned.

95. Instead, what the OAG produced, in September 2019, was a report titled, "Expense Policies and Practices in the Offices of the Speaker, Clerk, and Sergeant-at-Arms." You can read it yourself, but to my mind, it was a report that is vague and uninformative.²⁷ The OAG is one office which can offer some independent scrutiny of the Legislative Assembly. Its work is extremely important. So to see a finished product which recommended that the Legislative Assembly should have "a comprehensive policy framework in place to govern financial practices and how policies are to be authorized,"²⁸ was admittedly underwhelming.

96. The frustration for me was that, unless the criminal process looked at the financial records for the years 2011 – 2017, it appeared no one would do so.

G. CURIOSLY DISAPPEARING DATA AND DOCUMENTS

97. The unavailability of certain information and documents has long troubled me. I mentioned above how a USB stick containing investigation reports that Justice McLachlin was looking for disappeared from a safe, and only reappeared after her report was released. That is just one of a number of similar episodes. By way of further examples:

- (a) I previously had a need to review archived email records relating to certain events referred to in my Reports, which occurred in 2018. The Legislature's

²⁷ Office of the Auditor General, "Expense Policies and Practices in the Offices of the Speaker, Clerk and Sergeant-at-Arms"; September 19, 2019 ("**OAG Report**"); Available at https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC_Expense-Policies-Procedures-Offices-Speaker-Clerk-Sergeant-at-Arms_FINAL.pdf

²⁸ OAG Report, Recommendation 1

email server backs up on to archived tapes, but for some reason, the section of tape for May 2018 has been deleted. That month was particularly important in the context of certain issues addressed in my report. This was explained to me as being the result of a malfunction with an “update patch” which meant that the archiving process did not work properly, which was apparently not detected until after the fact. That may be, but the coincidence of the malfunction impacting this important month, alongside other instances of data being deleted, was notable to me.

- (b) Separately, certain important original documents went missing from an office. For example, I became aware during the course of my investigations about a report authored by the RCMP in the late 1980s which apparently examined allegations relating to spending by a Legislature official. That report, although described to me by a witness, is nowhere to be found.
- (c) I recently learned that the LAPS staff have a separate computer server from the main Legislative Assembly servers, on which they keep a running log of events and interactions involving LAPS which occur at the Legislative Precinct. Its existence was never disclosed to me, to Justice McLachlin, or to Mr. LePard, even though that log presumably contains notes about a number of important events or interactions referred to in my January 2019 Report (including the removal of alcohol, and potentially others).
- (d) I have also recently learned that there is a locked special storage room in a building near the Legislature to which only the Sergeant at Arms has a key.

98. These are only some of the relevant examples I am aware of. Nor am I the first person to have been worried about such things. As I explained in my January 2019 Report, the former Director of Human Resources specifically retained a copy of her 2013 investigation report to then-Speaker Linda Reid relating to the issue of the 2012 retirement allowances, in anticipation that (a) it might be necessary, someday; and (b) her “officially submitted” version might not be available when needed (as she had previously apparently seen other documents “disappear”). That is exactly what happened.

But for the copy of the report that she retained, I would not have had the documentary evidence needed to review the retirement allowance issue properly, nor would I have known that this issue had been previously considered by Speaker Reid, and investigated.

99. Against that backdrop, and knowing that there was an ongoing RCMP investigation, I took steps to simply preserve and secure copies of the hard-drives of senior managers at the Legislature (with their consent, and including my own hard-drive), in case they became relevant to that investigation. My rationale was that the hard-drives had a high likelihood of containing records that could be required for the criminal investigation and as a result they needed to be preserved and protected. When I did so, rather than responding with concern for preserving the integrity of the criminal investigation, the BC Liberals reacted with outrage at the steps I had taken, and the next day, members of their caucus each took turns reading from a script demanding that I be replaced as Speaker.

100. One who bucked that trend was MLA Dan Ashton. Instead of the prepared script, Mr. Ashton said this:

I would just like to say that my Dad brought me up to ensure that the best pillow is always a clean conscience. He always told me to treat everybody else how you like to be treated. I would like to say, Hon. Speaker, to yourself, to the government — including the opposition, including the Leader of the Opposition, the leader of the government and the Leader of the Third Party — there's a pallor hanging over this House, the House of the people. It has to be addressed. It has to be addressed now.

We're leaving this place, the House of the people. We're leaving it until October. This will continue to haunt us. It will not only haunt us during the time that we're away, but it is going to haunt us for our tenure. We have all been elected here. We've all been elected here to represent the people at home. I beg of you, Hon. Speaker, to the Premier and to the members of the government, to the Leader of the Opposition and to the Leader of the Third Party, let's put our collective heads together and resolve the issues so that we can continue to govern the way that we have been elected to do by the people that we represent.

101. I agree. The House did have a pallor over it. But rather than all parties putting heads together, as Mr. Ashton had called for (a sentiment with which I fully agreed), I found myself banging my head against the same wall, over and over again.

H. MR. MULLEN'S REPORT AND LAPS REFORM

102. Another example of the challenges of reforming the Legislative Assembly arose when, in the Spring of 2019, I asked Mr. Mullen to co-ordinate a preliminary study of the LAPS operations and cost. Mr. Mullen had identified that taxpayers were spending a huge sum of money every year to guard the Legislative Precinct, based on what appeared to be staffing inefficiencies and unnecessary overtime pay. It appeared to him that there were significant efficiencies, and consequential savings, that might be achieved.

103. For example, the number of armed officers employed in LAPS was greater than a number of municipal police forces in the province. Those forces were responsible for guarding entire municipalities, while LAPS was responsible for roughly two acres of land with a couple of buildings on it. Furthermore, the Legislative Assembly is in session for only 80-90 days per year, but the security force employed was basically consistent all year round. Each year, we saw that huge amounts of money were being paid in overtime to LAPS members, yet the schedule appeared to be very predictable. It looked to us that there were significant savings to be had if LAPS was organized differently, potentially in the magnitude of more than a million dollars each year.

104. We raised these observations with various people, but the response we received was underwhelming – there seemed to be little interest in the issue. Accordingly, it was clear to me that my office would need to do a preliminary investigation of the matter and determine if our observations had merit. We would then prepare a report for LAMC's consideration and hopefully the issue would gain traction and changes could be made to organize and run LAPS more efficiently and cost effectively. To do that, I asked Mr. Mullen to co-ordinate the investigation and he in turn did that. As one component, he felt it would be useful to meet directly with other legislatures' security personnel and discuss their security protocols in order to properly understand the challenges faced and solutions being employed. Mr. Mullen made arrangements to meet with a number of different heads of security at legislatures in Canada and the US. Based on the availability of the interviewees and the proximity of the facilities, he priced out the trip and determined it

would be cheapest if he drove. He prepared a proposal which was approved by all of the appropriate people in the Legislative Assembly, including LAMC itself.

105. Once again, rather than recognize that this was work that needed to be done (and in my view ought to have been done many years ago), Ms. Polak, Liberal House Leader and a member of LAMC, instead chose to approve the expenditure, but then after Mr. Mullen had left, go to the press and raise questions about its validity. Liberal MLA Jas Johal ridiculed the trip as Mr. Mullen's "excellent summer adventure",²⁹ and others piled on – the media reports rolled in one after the other. The then-Leader of the BC Liberals, Andrew Wilkinson, said similar things.

106. This carried on until Mr. Mullen's report was delivered to LAMC in February 2020, providing an excellent overview of the inefficiencies and overspending in LAPS, comparing its operations with other legislatures, and proposing a variety of potential solutions that could have the potential to save the taxpayers significant amounts of money each year. The silence from the critics was deafening, and the attacks in the media stopped. Now the only obvious question was why had a model which guaranteed annual overspending, to the tune of millions of taxpayers' dollars, been allowed to go on under LAMC's nose for so many years.

107. As I had hoped, Mr. Mullen's report motivated LAMC to take the next step and retain experts in the security field to conduct a comprehensive site-specific operational review to determine how best to cut the excess spending while maintaining an appropriate level of security and protection.

108. I didn't want that process to be subject to the usual delays, particularly because LAPS was proposing to apply to certify as a union which could provide important protections, but might also make subsequent departmental restructuring more complicated. Accordingly, in February 2020 I proposed to co-ordinate the operational review, and I arranged for consultants Dr. Nahanni Pollard and Doug LePard to propose

²⁹ Douglas Quan, "B.C. speaker defends \$13,000 road trip derided as 'excellent summer adventure'", *National Post* (online) August 15, 2019. Available at <https://nationalpost.com/news/canada/b-c-speaker-defends-13000-road-trip-derided-as-excellent-summer-adventure>

a budget and timeline for such a review. LAMC decided instead to strike a sub-committee to study the matter. The committee processes, together with Covid-19, created delays, but the proposed operational review finally got underway in September, and I look forward to seeing the results and some action on this important issue.

PART 4 – MY RECOMMENDATIONS, AND SOME PROPOSALS FOR REFORM

A. INTRODUCTION

109. As I leave this office, I want to conclude this Report by setting out two things. First, I have summarized recommendations made previously which have yet to be addressed, but which I believe are important. My impression from speaking to British Columbians is that they believe, having seen a number of high-profile departures from the Legislative Assembly in the news, that the issues raised in my Report were all addressed. That is not the case. Second, I would like to put forward some proposals for institutional reform that I maintain should be carefully considered by the new Parliament and in particular the new LAMC, when it is formed. Achieving these reforms will be difficult, because as I have set out above, the entrenched institutional approach at the Legislative Assembly is to do nothing and carry on hoping no further challenges or scandals occur. There are no big partisan political wins here, and so the forces of maintaining the *status quo* are strong, but that is not good for British Columbia. Change is needed in the way the Legislative Assembly is managed.

B. SUMMARY OF MY PREVIOUS RECOMMENDATIONS

110. As noted above, my January 2019 Report recommended a comprehensive workplace review. In addition to assessing the specific allegations raised in that Report (which I had hoped would span a broader time period than the two years I was able to address), I recommended that the workplace review:

- (a) review relevant Legislative Assembly workplace policies and governance frameworks, including but not limited to those relating to hiring practices,

remuneration of employees and officers, performance reviews, discipline and termination, and reporting structures and oversight. Notwithstanding the wealth of new or revised policies in the past two years, none of those issues – which appeared from my initial investigation to be potentially so problematic – have been directly addressed; and

- (b) consider whether there is merit in changing the appointment process for Permanent Officers of the Legislative Assembly, including (for example) imposing a requirement that those roles be subject to an open competition process or that they be appointed by the Legislative Assembly based on the unanimous recommendation of a special committee with membership from all parties.

111. In recognition of the many former employees who had reported feeling fearful of speaking up, I wrote in my January 2019 Report that, “in addition to implementing appropriate employment protections, it is also essential that mechanisms, including effective whistleblowing provisions, are put in place to allow for concerns from employees to be voiced and received by those responsible for addressing such matters.” I still believe that the Legislative Assembly should have a Whistleblower Policy.

C. PROPOSED REFORM OF THE CLERK’S POSITION

112. The first two proposals I have raised before, but reiterate here to consolidate my thoughts on these matters. As noted above, I believe serious consideration should be given to isolating the Clerk’s responsibilities to the procedures in the House, Hansard, and related matters, and creating a new position of Chief Administrative Officer responsible for overseeing the finances, human resources, maintenance, and facilities. As noted, these logically reflect two different skillsets, derived from two different educational and experiential backgrounds. The Clerk is typically an expert in parliamentary matters, and public administrators typically have education and training in public administration.

113. The efficiencies of having people with the appropriate training working in their respective fields should pay for itself. Presumably a reduction in the size of the Clerk's staff would result, which would provide the necessary funds for the Chief Administrator's position and staff. Both of these senior officers would report to the Speaker and LAMC.

D. PROPOSED REFORM OF THE SERGEANT-AT-ARMS POSITION

114. My second proposal relates to the office of the Sergeant-at-Arms, and was contained in a letter I wrote to LAMC transmitting Mr. Mullen's report on January 15, 2020. My proposal is to isolate the ceremonial components of the Sergeant-at-Arms' role into that position and create a new Director of Security position to serve as the head of LAPS.

115. As I wrote at that time, in British Columbia, the position of Sergeant-at-Arms has morphed from (historically) a purely ceremonial function adopted from the Westminster Parliament, with responsibility for the Chamber and its immediate environs, to also acting as the head of security and (until recently) facilities management for the entire Legislative Precinct. Those overlapping functions have, I believe, contributed to some confusion and also some of the problems that my January 2019 and February 2019 Reports, and the subsequent investigations detailed. In addition, it has resulted in the Sergeant at Arms position being historically reserved for a narrow group of former police or military officers.

116. In my view, it would serve British Columbia well to separate the "ceremonial" and "security" functions of the Sergeant-at-Arms role.³⁰ The Sergeant-at-Arms role would retain its traditional, ceremonial function in keeping with parliamentary history and tradition, perhaps on a sessional basis, and a new full-time Director of Security role would be created. Both would be compensated appropriately, which would likely be less than the salary and benefits currently bestowed on the Sergeant-at-Arms position.

³⁰ One change, namely removing Facilities Management from under the auspices of the Sergeant-at-Arms department, has already been implemented by the Acting Clerk [*now Clerk*] of the House. The Facilities Manager and his team now report to the Executive Finance Officer

117. If alternative models are pursued following the operational review of LAPS, such as security being provided by seconded officers from a police department, the separation of ceremonial and security functions would be even more appropriate.

118. Separating the responsibilities previously overlapping within the Sergeant-at-Arms role will clarify reporting structures and responsibilities, and open up the sessional, ceremonial function to a much broader range of candidates that reflect the diversity of British Columbians.

E. MANDATING AN INDEPENDENT SPEAKER

119. My third proposed for reform is to mandate that the Speaker be independent of partisan politics.

120. A bit of background about Speakers: the English parliament has had a presiding officer since at least 1258 – almost as long as the parliament itself has existed. The title of “Speaker” has been traced to 1377. Over the centuries, the Speaker came to be viewed as the embodiment of the House’s privileges, rather than being an agent of the Crown. A famous incident shortly prior to the English Civil War recounts King Charles I entering parliament to search for some MPs he suspected of treason. He demanded to know if the Speaker knew where they were, and was told by the Speaker, “May it please your Majesty, I have neither eyes to see nor tongue to speak in this place but as the House is pleased to direct me.” In other words: “I work for them; not you!” It was the first time the Parliament (through its chief officer) had stood up to the Crown.

121. Since the mid-19th century, neutrality and impartiality have come to be seen as key components of the role of the Speaker in all Commonwealth jurisdictions. The rationale for that is clear: as the moderator of proceedings in the House, and the chief officer of the Parliament, the Speaker is relied on to maintain decorum and uphold the rules which govern proceedings. Speakers serve the whole Parliament, and the parliamentary system, itself: not whomever happens to be governing from time to time. That system would be weakened if the Speaker was simply an agent of the government, just as the integrity of any sports game would be undermined if the home team got to

appoint one of their own players as the referee. It took the English Crown a few centuries to accept the wisdom of that principle, though: between 1394 and 1535, seven Speakers were executed by beheading. In my experience, the value in having an independent Speaker is something governments still need to be reminded of from time to time: when the Speaker and the government are too close, the whole system is weakened.

122. I did not set out to be a “reforming” Speaker. When I started in the role, I didn’t have any depth of knowledge as to what it involved. But as many people have now read, in the reports I published in January and February 2019, I soon observed a lot of practices which did not seem right to me. I saw an entrenched culture of entitlement and greed. And I saw how partisanship, once it got into the bones of a place, can taint offices that ought to be in the service of all parties, and all members.

123. During my time in office, I have come to believe that those problems were partly caused, or at least exacerbated, by how the Speaker is chosen in BC. In the UK, candidates for Speaker are nominated from all political parties, not necessarily just the government (the current Speaker, Sir Lindsay Hoyle, was previously a member of the opposition Labour party). The Speaker in the UK has to be nominated by members representing at least three parties, and upon accepting the appointment, the Speaker gives up party politics forever. To do that, they resign from their party, and while they are allowed to seek re-election as an independent (typically unopposed), they never go back to serving as a “party MP”. As a result, the Speaker in the UK hasn’t been put in place by any one party, and the Speaker’s future career prospects don’t depend on any one party either. They become a servant of the Parliament as a whole and if their work as such meets with approval, they stand a high likelihood of being re-elected and re-appointed to carry on as Speaker.

124. In BC, things are very different. The Speaker is supposedly chosen by secret ballot, but this is preceded by MLA’s having the opportunity to exclude themselves from consideration as a candidate for Speaker by filling out and returning a form. Accordingly, while all members are theoretically eligible to be considered as candidates for the office, what typically happens in practice is that the government decides who is

going to be Speaker, and except for the MLA that has been tapped to be Speaker, the government whips the rest of their members into returning the form taking themselves out of the running. By the time it gets to the “secret ballot”, there’s only one candidate left – so the vote might technically be secret, but the result certainly isn’t a surprise. A consequence is that there is at least a perception – real or imagined – that the government has installed “their person” as the referee of proceedings, or that the office is a reward for past loyalty, or bestowed with the expectation of future favours.

125. I am convinced that reforms could and should be made to make the office of British Columbia’s Speaker more independent.

126. The Speaker needs to have the confidence of the whole House – not just the government. And the election of a Speaker shouldn’t just be a rubber-stamping exercise: we need to leave single-candidate “elections” to the North Koreans of this world. So I propose that at the start of each Parliament, a **minimum of two candidates** must be nominated; and each candidate must be nominated by **at least six MLAs**, among them representatives of **two or more parties**.

127. That would ensure (a) that MLAs have a genuine choice, in terms of options for Speaker; and (b) that each candidate has at least some support, across the aisle. It would hopefully filter out any candidates considered extremely partisan.

128. But how to ensure the successful candidate doesn’t feel pressured to toe the party line, once in office? **I am proposing two ways: first**, that BC adopt the UK’s model, whereby Speakers resign their party membership upon election to that Office. The Speaker must be, *and be seen to be*, impartial. They shouldn’t be attending caucus meetings, party conferences, or be privy to any of the strategy and planning of party politics – particularly as an election looms. **Second** – and relatedly – I propose that Speakers serve for a single term, lasting one Parliament only, and that under a new convention they not seek re-election. I believe such a convention will tend to produce the kind of candidates the public and the House as a whole should want serving as Speaker: long-serving, experienced Parliamentarians, nearing the end of their time in elected office, who are respected and trusted on all sides, and who are content for their final chapter to

be service in what is arguably Parliament's most honoured role. The public should not want serving as "referee" anyone who aspires to future party-political success – the temptation to gain political ground and favour is simply too great, and the opportunities to do so are many. Finally, imposing a one-term limit would be liberating for the Speaker (as it has been, for me): there can be no threat of their former party exerting any leverage or improper pressure, if the Speaker resigns party membership and commits not to seek re-election.

129. I believe that our whole system of democracy is strengthened when it is *Parliament*, not the government of the day, to whom the Speaker serves. One of our highest democratic values is *Parliamentary* sovereignty – not *Government* sovereignty. Indeed, the rules of parliamentary procedure exist in some ways as a check against untrammelled majority rule: while a majority government can do many things, it must do them within the rules.

130. With an *independent* Speaker, those rules have vitality and force. Without one, they can wither. For that reason, I believe that adopting the proposals above would be to the long-term benefit of the Legislative Assembly as an institution and to the British Columbia public as a democratic society. I encourage my colleagues in the Legislature to consider them.

PART 5 – CONCLUSION

131. It will surprise no one to learn that my time in office has not been what I expected.

132. My belief, when I agreed to become Speaker, was that I could do some good by ensuring fair process in the House. Like many Speakers, I expected to use my role to promote collegiality, attempt to reduce the partisan showmanship which serves no useful purpose, and hopefully better enable parliament to do its job through how I handled debates in the Chamber.

133. I am proud of what I did "in the Chair", and the efforts I made to ensure the parties had equal speaking time in the House and adjudicate disputes fairly. I expect,

however, that I will be better remembered for my actions outside the Chamber. Ultimately, my hope is that those actions will come to be seen as better enhancing the functioning of the Legislative Assembly, and contributing to strengthening British Columbia's parliamentary system.

134. It has not been easy. Part of that is inherent in the situation – trying to navigate the delicate balance between the media's desire to report on a matter with a high degree of public interest and the legitimate expectation, and indeed right, of British Columbians to know what is going on in their Parliament. In addition, the importance of parliamentary privilege and maintaining the principle of parliamentary sovereignty had to be balanced with ensuring that important issues are properly and impartially investigated, including by outside parties if necessary, while taking into account the privacy rights of individuals and the need to respect the confidentiality of, and not taint, a criminal investigation which was, and is, still ongoing.

135. I noted above that there is a big difference between knowing that conduct is wrong, and a criminal conviction in relation to the conduct. It cannot be solely matters in the latter category that we, as a Parliament and as a society, decide to "care" about.

136. However, amidst everything else that has been going on, incidents which on their own would have certainly merited an investigation, might appear unremarkable. When dozens of examples are brought to light at the same time, as was the case with my Reports – in that symphony of wrongdoing, it's easy to lose track of the individual notes. The entirety of it can start to wash over you, and it all loses its force, prompting a kind of "scandal fatigue."

137. I respectfully suggest that all Parliamentarians need to resist that impulse. Elected representatives, as well as the staff who work at the Legislative Assembly full time, can never allow themselves to become inured to that kind of culture. All of it matters. Every time we shrug and decide that doing the right thing is too hard, or too personally or politically risky, or too minor in the grand scheme of things, or can't someone else look into it, our system as a whole suffers a tiny crack, and is ever so slightly weakened. Over time, those attitudes and patterns of avoidance become entrenched, to the point where it

takes an upheaval of the kind which has taken place over the past two years to move the needle – and even then, it has been difficult.

138. Furthermore, the nature of an adversarial, partisan system is that, inevitably, people identify the weaknesses that form in our democracy and seek to exploit them to gain an advantage. Someone benefits from the “shrug”, or the turning of a blind eye. Perhaps a favour is exchanged, an indulgence granted, to ensure that the blind eye is turned again, and again.

139. What that leads to is a state of affairs where people aren’t just passively avoiding taking on hard problems, but instead, certain of them have a keen interest in actively opposing any attempt to change things. That is what I experienced. The level of invective, personal mudslinging, and attempts to ignore the “message” and take down the “messengers”, all in response to our efforts to shed light on these issues, were relentless.

140. I mention this not to try to garner any sympathy, or because I feel sorry for myself. Politics is not for the faint of heart, and after a career as a criminologist, prison judge, and elected official, I – and I know this is true of Mr. Mullen as well – have developed what Hillary Clinton used to call “rhinoceros skin.” We can take it.

141. But I raise it only because it is symptomatic of the kinds of obstacles someone faces when they attempt to take on this kind of an entrenched culture on their own. The personal attacks are hurtful, of course – but more interesting, to me, is what they say about the health of the system as a whole. The response by the BC Liberals to every step I took over the past two years was quite obviously coloured by their personal animus towards me. But who does that benefit, ultimately, if a party’s dislike of one individual takes precedence over an interest anyone in their caucus might have had in taking on matters so obviously of public importance? I know who it hurts – every British Columbian taxpayer.

142. At the same time, I was surprised and heartened by how many people did support my efforts. I could not begin to name them all, but they included elected Members of all parties who spoke publicly in support of the steps I had taken; permanent staff at

the Legislative Assembly who assisted me, or who provided information to Justice McLachlin, Mr. LePard, the ADR Review, or (most importantly) the criminal investigators, and the countless British Columbians who approached me or wrote to me to tell me they appreciated what I was doing. That gave me, and Mr. Mullen, renewed courage during some difficult times. All of those people know who they are, and I am grateful to them.

143. But to conclude, I mention them not simply to express my sincere gratitude. I also include reference to them because what their support confirmed for me is that this kind of work, for all the reasons I have set out in this Report, takes a team effort. The nature of the problem calls for a collective approach – by elected and full-time officials and by other staff at the Legislative Assembly, but also through British Columbians applying pressure and confirming this is something they care about. Voters, ultimately, offer the “carrot” or the “stick” which moves political will. So we all have a part to play in this.

144. Like any great challenge and opportunity – and I suggest there can be none greater in a democratic society than the chance to contribute to building a better kind of system of government – this is a race that never ends. My leg of the race will soon be run. I am handing over the baton, and I look forward with optimism to seeing how my successors in office, and all British Columbians, move forward.

Darryl Plecas
Speaker of British Columbia's 41st Parliament
November 2020

In Memoriam

Photo by Darshan Photography

Dermod Travis

1960 – 2020

I would like to conclude by paying tribute to Dermod Travis, citizens' advocate and public watchdog, who most recently served as Executive Director of IntegrityBC. While I knew Mr. Travis by reputation prior to my joining the Legislature, I came to know him personally over the past two years through the matters which were the subject of my main Reports. While I certainly cannot pretend to come close to matching his longevity of service or the wide range of causes he championed, Mr. Travis and I shared the values of transparency and integrity in public office, and a mutual belief in the need to scrutinize those who govern us. After his passing, he was described as selfless and persistent, a tireless crusader, and a "thorn in the side" of BC's politicians. And take it from me: they need it. We all need it. British Columbia needs more Dermod Travises. He will be missed, and this Report is dedicated to him.

-DBP, November 2020