

A Report on the Public Interest Disclosures Regarding the Citizens' Representative

To The Speaker
House of Assembly

November 4, 2022

(Prepared By: Ann Chafe)



TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND	3
TIMELINES & FACTS.....	5
ADDITIONAL RELEVANT FACTS	14
LEGISLATIVE OVERVIEW.....	16
ANALYSIS AND FINDINGS	18
OBSERVATIONS	30
SUMMARY	31
RECOMMENDATIONS.....	32
APPENDIX A.....	33
APPENDIX B	35
APPENDIX C	36
APPENDIX D.....	37
APPENDIX E	40



EXECUTIVE SUMMARY

- This Report was initiated pursuant to a public interest disclosure filed with the Speaker against the Citizens' Representative (hereafter called the CR Report), respecting an allegation of gross mismanagement regarding the confidentiality and disclosure of particulars relating to the "Report on Public Interest Disclosures Regarding the Chief Electoral Officer for Newfoundland and Labrador (CEONL)."
- In accordance with Section 54(2) of the House of Assembly Accountability, Integrity and Administration Act (HOAAIAA) the matter was referred to the Commissioner for Legislative Standards, Acting, (the Commissioner) on July 8, 2022.
- The investigation, resulting in this report did not include a review of the findings of the CEONL.
- The interview and submission process associated with the CR Report included 11 interviews, between August 11, 2022 to September 26, 2022 and written submissions up to October 31, 2022.
- The Commissioner did not find gross mismanagement regarding the confidentiality and disclosure of particulars regarding CEONL.
- The Commissioner did find the Citizens' Representative:
 1. Failed to work within the provisions of the HOAAIAA, Part V1 when he intentionally disclosed confidential information that he had no authority to share.
 2. Erred in judgement when he chose to rely on procedures followed in other jurisdictions and use provisions of legislation not applicable to HOAAIAA, Part VI.
 3. Failed to recognize the consequences of disclosure would contribute to personal and professional harm to others.

- RECOMENDATIONS:

1. The Citizens' Representative apologize in writing to the Chief Electoral Officer, Mr. Bruce Chaulk, for providing information to 2 Whistleblowers that lead to actions that caused damage to Mr. Chaulk's personal and professional standing in the workplace and in the community. The apology must be issued in a timely manner, with a copy filed with the House of Assembly Management Commission.
2. The Citizens' Representative apologize in writing to the Speaker and the Clerk of the House of Assembly for providing information to 2 Whistleblowers that fueled actions that caused unnecessary stress, workload and accusations of conflict of interest and failure to act by the public, the media and some members of the House of Assembly. The apology must be issued in a timely manner, with a copy filed with the House of Assembly Management Commission.
3. The Office of the Citizens' Representative develop new policies and procedures, including investigative and reporting procedures, that distinguish the conduct of investigations and processes under the separate applicable statutes. The Citizens' Representative policies and procedures must be based on and comply with the applicable legislation passed by the House of Assembly.

BACKGROUND

Part VI of the House of Assembly Accountability, Integrity and Administration Act, (“HOAAIAA”) sets out the process allowing an employee or member of the House of Assembly to make a “disclosure” (as defined in section 54(1) of the HOAAIAA) when he or she reasonably believes he or she has information that could show a “wrongdoing” (as defined in section 54(1)(e) of the HOAAIAA) has been committed.

Section 54(2) of the HOAAIAA states that where a “disclosure” relates to the Citizens’ Representative, the investigator will be the Commissioner for Legislative Standards (the “Commissioner”).

On May 27, 2022, a public interest disclosure, was filed with the Speaker against the Citizens’ Representative, Bradley Moss (the “May 2022 Disclosure”).

On July 8, 2022, the May 2022 Disclosure was referred to the Acting Commissioner, as investigator, in accordance with subsection 54(2) of the HOAAIAA.

The May 2022 Disclosure alleged that Mr. Moss committed “gross mismanagement” regarding the confidentiality and disclosure of particulars relating to a report that had been prepared by Mr. Moss in his capacity as Citizens’ Representative, entitled the “Report on Public Interest Disclosures Regarding the Chief Electoral Officer for Newfoundland and Labrador (hereafter referred to as the “CEONL Report”).

On July 14, 2022, the Minister for Justice and Public Safety, advised the media that the May 2022 Disclosure had been filed against the Citizens’ Representative.

On August 5, 2022, Mr. Moss was served notice of the allegation of gross mismanagement in the May 2022 Disclosure (Appendix A).

The investigation, resulting in this report (hereinafter called the “CR Report”), did not include a review of the findings of the CEONL Report. However, because the May 2022 Disclosure alleges gross mismanagement by Mr. Moss in relation to the CEONL Report, it was prudent to review the CEONL

Report. Subsequent to receiving the referral from the Speaker on July 8, 2022, the CEONL Report was reviewed, including the Appendices, which took considerable time given the CEONL Report's scope and length.

Following review of the CEONL Report, the interview process began. At the conclusion of the investigation, 11 individuals had been identified and interviewed, including the Complainant and Mr. Moss. Delays occurred in scheduling and completing many of these 11 interviews, due mainly to the unavailability of interviewees because of illness, travel, conference attendance and/or summer vacation schedules. The first interview occurred August 11, 2022. The final interview occurred September 26, 2022. The last written submission was submitted on October 31, 2022.

In accordance with section 58(3) of the HOAAIAA, the acting Commissioner conducted the investigation, resulting in the CR Report, in an informal and expeditious manner as possible, while being cognizant of the rights of the parties to procedural fairness, as required by common law and as required by section 58 (4) of the HOAAIAA.

An unforeseen delay, however, resulted when, prior to completion of this investigation, the Honourable J. Derek Green submitted a report to the Chair of the House of Assembly Management Commission entitled "Fairness, Reliability and Justification – Accountability Based on Public Interest Disclosures – Review of the Citizens' Representative Report Respecting the Chief Electoral Officer", dated September 15, 2022, (the Green Report), which was a review of the CEONL Report. Given the commentary and direction on the matter of procedural fairness in the Green Report, the Green Report was also reviewed prior to finalizing this investigation and completing this CR Report.



TIMELINES & FACTS

Based on the investigation, the following is a timeline of events and summary of material factual findings from the investigation. Note that when an interviewee is quoted below, what is quoted is a paraphrased version of what was said by the interviewee, based on notes and recollection.

Events Prior to mid-May 2022

- In March of 2021, two staff members of Elections Newfoundland & Labrador (“ENL”) (hereinafter referred to as the “Whistleblowers”) filed a disclosure under HOAAIAA, containing allegations against the Chief Electoral Officer of Newfoundland and Labrador, Bruce Chaulk (the “2021 Disclosure”).
- The 2021 Disclosure gave rise to a year-long investigation by the Citizens’ Representative, which commenced in March 2021 and ended March 15, 2022, with the filing of the CEONL Report with the Speaker of the House of Assembly (the “Speaker”) and the Clerk of the House of Assembly (the “Clerk”).
- During the investigation, Mr. Moss attended and led all interviews. Sharon Samson, Assistant Citizens’ Representative, also attended. Barry Fleming (Office of the Citizens’ Representative

legal counsel) attended most interviews, including all those described by Mr. Moss as “higher profile” interviews.

- Handwritten notes were taken during the interviews. For some interviews, they were recorded using Mr. Moss’ recording device. For one interview, Mr. Moss engaged Discoveries Unlimited to do a recording.
- It was the normal investigation practice of Mr. Moss to maintain physical control over the physical file (paper copies of documents) pertaining to an investigation, which is what he did in the CEONL Report investigation. In terms of electronic records pertaining to the investigation into the CEO of ENL, employees at the Office of the Citizens’ Representative (“OCR”) would have had access to a shared drive containing documents and records.
- Cautions were given by Mr. Moss to all interviewees not to discuss their testimony with anyone.
- In the fall of 2021, the 2 Whistleblowers and another staff member at ENL, approached representatives of the New Democratic Party to discuss what they perceived as wrongdoing in the 2021 general election. [REDACTED]

[REDACTED]

[REDACTED]

- On many occasions between March 2021 and March 2022, both Whistleblowers contacted the Citizens’ Representative seeking updates in relation to their 2021 Disclosure.
- During these contacts, Mr. Moss provided “updates” to the Whistleblowers. The “updates” included Mr. Moss advising how many witnesses had been interviewed and were left to be interviewed, where he was with the investigation, and when he hoped to submit his report to the Speaker.
- The frequency and intensity of the contacts from the Whistleblowers increased in March 2022.
- Sometime prior to March 15, 2022, Mr. Moss completed his investigation and the CEONL Report.

- About a week to 10 days before providing the CEONL Report to the Speaker and the Clerk, Mr. Moss provided a copy to Bruce Chaulk and his legal counsel. [REDACTED]
[REDACTED]
- On March 15, 2022, Mr. Moss filed the CEONL Report with the Speaker and the Clerk in accordance with Part VI of the HOAAIAA. Mr. Moss hand-delivered one copy to the offices of the Speaker and the Clerk.
- When Mr. Moss first filed the CEONL Report with the Speaker and the Clerk, the cover page of the CEONL Report included the words, “Privileged Until Tabled”.
- When the Clerk (Ms. Barnes) saw the cover page of the CEONL Report that same day, she immediately noticed the “Privileged Until Tabled” wording.
- Based on her awareness that section 58(7) of the HOAAIAA, Ms. Barnes was aware the CEONL Report would not automatically be tabled in the House of Assembly. As a result, she immediately called Mr. Moss to instruct him to remove those words from the report and re-submit it. Mr. Moss returned the same day with a replacement cover page.
- When Ms. Barnes received the updated cover page, Ms. Barnes gave her copy to the Law Clerk (Ms. Kim Hawley-George) to review. She also requested that Mr. Moss provide her with an electronic copy.
- [REDACTED]
- Following submission of the CEONL Report on March 15, 2022, for a period of about 7-10 days, on an almost daily basis, the Whistleblowers continued to contact Mr. Moss.

- [REDACTED]
- During his interview, Mr. Moss said he reached out to the Whistleblowers the same day he dropped off the CEONL Report to the Clerk and the Speaker, informing them “that the report was finished, that it was with the Speaker, that of the 35 allegations there were 10 findings, and that the report was in excess of 180 pages”. Mr. Moss did not specify what his findings were or what corrective action he recommended.
- [REDACTED]
- [REDACTED]
- On March 24, 2022, Mr. Moss wrote to the Speaker inquiring about the status of any “referral of the report” the Speaker was considering. Mr. Moss went on to state:

I am still fielding understandable inquiries from disclosers with respect to the concerns and uncertainty within the Office of the Chief Electoral Officer, which were the subject of our investigation and report. [REDACTED]

[REDACTED] We note that the purpose of the HOAAIA is, among other things, to establish an administrative framework for the House of Assembly, including public interest disclosure allegations, that is transparent and accountable. In light of this, it would be most appreciated if you could provide us with a confidential update at your earliest convenience.

- On March 29, 2022, the Speaker wrote to Mr. Moss advising that having submitted his report, his duties were exhausted. And there would be no further responses to Mr. Moss regarding any decisions of the Speaker or the Clerk regarding the referral.

- [REDACTED]

- [REDACTED]

- Mr. Moss reported that a few days later, the Whistleblowers were still calling him.
- In early April 2022, Mr. Moss contacted one of the Whistleblowers and informed the Whistleblower he had written the Speaker and received an acknowledgement from the Speaker's office that they were "dealing with it", explained to the Whistleblower the options the Speaker had with the Report, explained he was not sure where it [the CEONL Report] would go [now that it was with the Speaker], and explained he could not tell the Whistleblower anything further than what had already been told.

- [REDACTED]

- Early April 2022 was the last time Mr. Moss had communications with either of the Whistleblowers.

Events from Mid-May 2022 onwards

- On May 14 or 15, 2022, the Member for Mount Pearl - Southlands, Paul Lane, received two anonymous telephone calls advising him there had been a report filed by the Citizens' Representative with the Speaker.
- MHA Lane was told the report related to allegations of a toxic work environment at ENL, including allegations of bullying, shouting, yelling, disrespect, and “total chaos” with respect to the recent election.
- The 2 callers also told MHA Lane certain details they understood about the investigation and report in terms of the number of pages of the report, the number of people interviewed, and that there were 10 findings, and a recommendation for corrective action.
- MHA Lane subsequently reported what he heard in the House of Assembly on May 16, 2022, stating:

So with that said, Mr. Chair, I received a call over the weekend from a constituent of mine, it was a lady, she was a constituent of mine. This lady told me a very, very, disturbing, upsetting story about a statutory office that reports to this House of Assembly, and she wants answers. She wants to know what's being done. I said to her: Well, what is this all about? She told me – I'm going by what the lady told me – that we have a statutory office that reports to this house of Assembly, where apparently there have been several allegations of harassment, bullying, nepotism and a whole bunch of other things. I said: Well –

...

Well, Mr. Chair, I would say the policy and the funding and so on, we are passing a bill here to fund, not just core government but to fund statutory offices of the House of Assembly that report to us. Just like any government department or agency, board and commission, we have to ensure that those departments are operating in an ethical manner and things are going properly, because the people are paying for those offices. They're paying for those

salaries. I think it's very important to point out, for this House, to understand that this is a very serious allegation that's been brought forward.

I said: is it just you? She said: 21 people. I said: 21 people? No way, 21 people. That's what she said. Twenty-one employees under the whistleblower act have made a complaint to the Office of the Citizens' Representative. I said: No way. When did this happen? She said: It happened quite some time ago and that's why I'm calling you. I said: Why? She said: Because it was made quite some time ago. There's a report that has been completed. There are 10 recommendations for correction and nothing has happened. I said: Well, I haven't seen any report. She said: Well, it went to the House of Assembly almost two months ago. I said: No way. It cannot be. I checked with my colleagues on the Management Commission. They don't know anything about it.

...

Source: Hansard

May 16, 2022, HOUSE OF ASSEMBLY PROCEEDINGS, Vol. L No. 54

- Subsequent to May 16, 2022, MHA Lane was contacted by five or six other individuals who expressed support for his actions. Mr. Lane did not obtain their names but advised one caller said he was calling on behalf of [REDACTED]
- During his interview for this investigation, MHA Lane stated the callers were all anonymous, including the two Whistleblowers. They did not volunteer their identities and he did not ask their names.
- Towards the end of his interview, MHA Lane changed his earlier information, saying there might have been one or two callers who said their name, but he did not write the name(s) down and that he could not recall them.
- In a subsequent interview, one of the Whistleblowers informed [REDACTED] did provide [REDACTED] name to MHA Lane.



- During his interview MHA Lane said he recalled being told by one of the callers that the alleged report contained 20-21 recommendations [it is more likely he was told that there were 10 recommendations as this aligns with all other evidence gathered during this investigation], that 20-21 witnesses/complainants had been interviewed as part of the investigation, and that the report was 170 pages in length.
- Between May and June, 2022, three Members of the House of Assembly (MHA Lane, MHA David Brazil and MHA James Dinn) provided media interviews and issued social media statements on the topic of workplace conditions at Elections NL without having seen the CEONL report.
- In a May 18, 2022, CBC news article, MHA Lane is quoted as saying: “I’m told it [a Whistleblower report about a senior official and toxic workplace culture at Elections Newfoundland and Labrador] concerns bullying, harassment, nepotism, and a whole bunch of issues. I’m told that there were 10 findings in that report, and I’m told that it was involving 21 employees. I’m very concerned about potentially the toxic workplace that they’re working in as we speak”.
- In June 2022, MHA Dinn provided interviews with the media where he referenced the need “to address the serious allegations that are filed by 21 people at that office (ENL) of harassment, workplace harassment, abuse and bullying”. He furthered commented on restoring faith in the electoral system, saw the suspension of Bruce Chaulk as an important move in regaining the

peoples trust, and suggested the Report sat on the Speaker's desk for 3-4 months. MHA Dinn had not seen the CEONL Report.

- In August 2022, as part of this review, Mr. Dinn advised that he had no one contact him regarding the CEONL Report and had no knowledge of the Report. MHA Dinn said his comments were a result of media reporting and speculating about what might have happened.
- In June 2022, MHA Brazil provided interviews with the media where he indicated having heard about alleged report and having "a citizen reach out to say that they had made a complaint to the Citizen's Rep about an officer of the House". MHA Brazil also stated "the environment there (ENL) is obviously very toxic and very worrisome for these people socially and mentally". MHA Brazil had not seen the CEONL Report.
- In August 2022, MHA Brazil as part of this review advised that in May 2022, while at [REDACTED] Pub in downtown St. John's he was sent a gift of a jug of beer by a person in the Pub and then approached by this individual who told MHA Brazil [REDACTED] and another complainant have gone to the Citizens' Representative with complaints against the CEO.
- One of the Whistleblowers did validate the encounter in the Pub with MHA Brazil and advised [REDACTED] was never contacted by either MHA Brazil or his staff after.
- Kyle Rees, President of the New Democratic Party (NDP) advised that any time an election is called the NDP is constantly on alert to identify situations or issues that could later lead to a court challenge. When 3 staff members from ENL approached the NDP with complaints regarding the last general election, he was very interested in what they had to say. Mr. Rees advised he did not know about the Citizens' Representative's investigation until April 2022.
- [REDACTED]

- On June 28, 2022, Bruce Chaulk was placed on leave from his position as Chief Electoral Officer/Commissioner for Legislative Standards. Duties of both roles were split among 2 people on an acting basis.

ADDITIONAL RELEVANT FACTS

- As of May 18, 2022, (the date of the first Media report) neither the Speaker, the Clerk, the Law Clerk, Bruce Chaulk nor his legal counsel had disclosed any information about the CEONL Report.
- Representatives of the NDP party, on different occasions, contacted Mr. Moss to inquire about an alleged investigation (pertaining to Mr. Chaulk), to which Mr. Moss responded he “would neither confirm nor deny whether an investigation was ongoing”.
- Mr. Moss acknowledged that in his role as Citizens’ Representative, he reports to and serves the House of Assembly.

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- [REDACTED]
- [REDACTED]

LEGISLATIVE OVERVIEW

This investigation, into gross mismanagement by the Citizens' Representative, in terms of the CEONL Report, falls under the provision of HOAAIAA Part VI, Public Interest Disclosure. Part VI of the HOAAIA is the instrument for a “disclosure” by an officer of the House of Assembly, a person employed in the House of Assembly, or a statutory officer of the House of Assembly, when such a person “reasonably believes that he or she has information that could show that a wrongdoing has been committed”.

Section 54 1. (e) and 54. 2.

(e) “wrongdoing”, with respect to a member, the speaker, an officer of the House of Assembly and a person employed in the House of Assembly service and the statutory offices, means

- (i) an act or omission constituting an offence under this Act,*
- (ii) gross mismanagement, including of public money under the stewardship of the commission, in violation or suspected violation of a code of conduct,*
- (iii) failure to disclose information required to be disclosed under this Act, or*
- (iv) knowingly directing or counseling a person to commit a wrongdoing described in subparagraphs (i) to (iii).*

(2) Notwithstanding paragraph (1)(c), where a disclosure relates to the citizens' representative, the commissioner shall be the investigator for the purposes of this Part.

Section 58 of the HOAAIAA outlines the requirements on the investigator, and includes:

58. (3) The investigation of an allegation made in a disclosure shall be conducted as informally and expeditiously as possible.

(4) The investigator shall ensure that the right to procedural fairness of all persons involved in an investigation is respected, including a person making a disclosure, witnesses and a person alleged to be responsible for wrongdoings.

(5) An investigator is not required to investigate a disclosure and may cease an investigation where he or she is of the opinion that

(a) the disclosure reveals allegations that are frivolous or vexatious or the disclosure has not been made in good faith;

(b) the disclosure does not provide adequate particulars about the alleged wrongdoing as required under subsection 55 (2); and

(c) there is another valid reason for not investigating the disclosure.

(6) Where, during an investigation, the investigator has reason to believe that another wrongdoing has been committed, he or she may investigate that wrongdoing in accordance with this Part.

(7) Upon completing an investigation, an investigator shall report, in writing, to the clerk and the speaker on his or her findings and recommendations about the disclosure and the wrongdoing.

Section 58(1) outlines what occurs when an investigation report recommends corrective action.

58. (1) The investigator shall carry out investigations of matters related to allegations in a disclosure made under this Part.

Section 58 (7) of the HOAAIAA clearly sets out that role of the Citizens' Representative is to investigate, provide procedural fairness, write a report with recommendations, and file the report with the Speaker and the Clerk.

(7) Upon completing an investigation, an investigator shall report, in writing, to the clerk and the speaker on his or her findings and recommendations about the disclosure and the wrongdoing.

(8) Where the matter being investigated involves the clerk, the investigator shall give a copy of the report to the speaker.

(9) Where the matter being investigated involves the speaker, the investigator shall give a copy of the report to the chairperson of the audit committee.

(10) The speaker, or the chairperson of the audit committee shall, if the report recommends corrective action,

(a) refer the report to the auditor general, the Attorney General, the Minister of Finance or other appropriate official to take appropriate action; or

(b) refer the report to the commission.

ANALYSIS AND FINDINGS

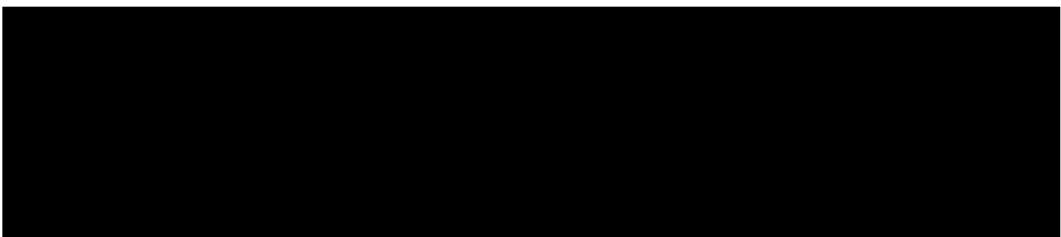
Mr. Moss, in his capacity as the Citizens' Representative, investigated the 2021 Disclosure containing allegations against Bruce Chaulk, and provided the CEONL Report to the Speaker and the Clerk on March 15, 2022. Mr. Moss recommended “corrective action”, however, there were no specific recommendations in his CEONL Report as contemplated by section 58(7). This referenced in the Green Report.

While the absence of specific recommendations is not within the scope and mandate of this investigation, what is within the scope and mandate of this investigation, however, is whether Mr. Moss

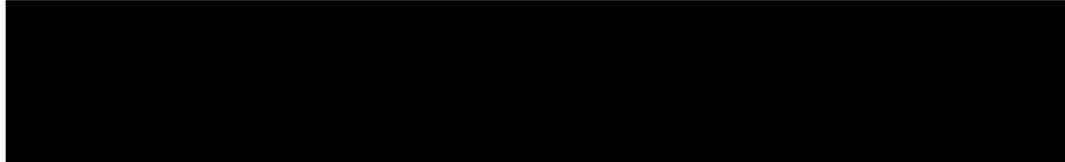
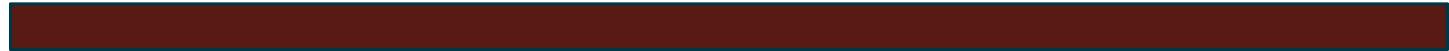
committed “gross mismanagement” regarding the confidentiality and disclosure of particulars relating to the CEONL Report.

The investigation revealed that Mr. Moss disclosed certain details about the investigation and the Report to one of the Whistleblowers, who then shared it with other witnesses who were part of the CEONL Report investigation. The Whistleblower also shared these details with MHA Lane, who ultimately reported the details in the media and in the House of Assembly (though not exactly as it was reported to him by the Whistleblower). The details about the Report that Mr. Moss shared with the Whistleblower were as follows:

- 1) the process that they had participated in had been completed;
- 2) that the CEONL Report had been provided to the Speaker on March 15, 2022;
- 3) that the Report dealt with in excess of 30 allegations;
- 4) that of the 30 allegations, there were 10 findings;
- 5) that corrective action was recommended;
- 6) the Report was in excess of 170 pages; and
- 7) 21 witnesses were interviewed as part of the investigation,
(hereafter referred as to the “Disclosed Details”).



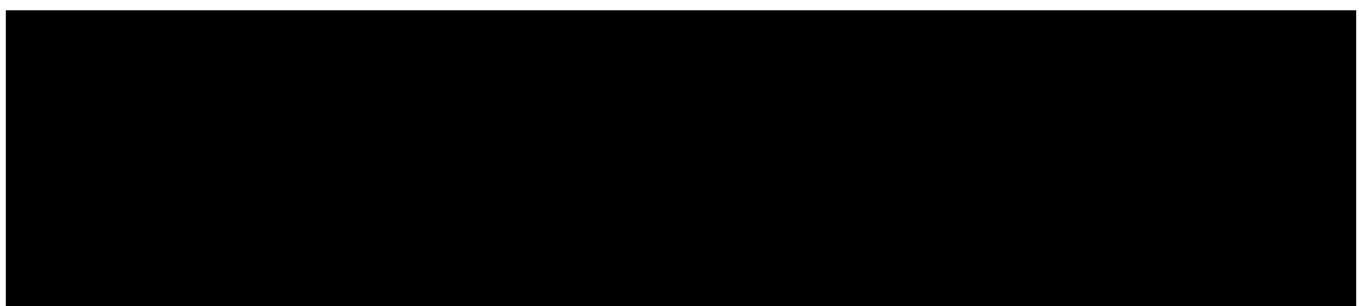
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Mr. Moss had no legislative authority or mandate to provide the Disclosed Details. Section 58(7) of the HOAAIAA is clear – once Mr. Moss provided the CEONL Report to the Speaker and the Clerk on March 15, 2022, his role was complete. [REDACTED]



The question to be determined is whether Mr. Moss committed “gross mismanagement” within the meaning of section 54(1)(e) of the HOAAIAA by providing the Disclosed Details to the Whistleblowers when he did. [REDACTED]



Gross mismanagement is not defined in the HOAAIAA, nor is it defined in other whistleblower legislation in this Province, including the *Public Interest Disclosure and Whistleblower Protection Act*, SNL 2014, c. P-37.2.

What then does “gross mismanagement” mean? In an October 2022 Case Report by the Office of the Public Sector Integrity Commissioner of Canada regarding a Disclosure of Wrongdoing (under the Public Servants Disclosure Protection Act) at Global Affairs Canada, it states:

The factors that my Office considers in investigating an allegation of gross mismanagement under paragraph 8(c) of the Act include, but are not limited to:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than minor wrongdoing or negligence;
- management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- management action or inaction that poses a serious threat to public confidence in the integrity of the public service, and that does not primarily concern a personal matter, such as individual harassment complaints or individual workplace grievances;
- the deliberate nature of the wrongdoing; and
- the systemic nature of the wrongdoing.

These factors are not statutorily applicable in this Province, nor are they an exhaustive list of potentially relevant factors. They do, however, provide some guidance on the meaning of “gross mismanagement” from a reputable statutory body, and they assisted in guiding this investigation.

The Green Report contains useful guidance as to the meaning of “gross mismanagement” in the context of section 54.(1)(e) of the HOAAIAA:

Gross mismanagement is not a stand-alone ground for finding wrongdoing. Under s. 54(1)(e), it is tied to violation of suspected violation of a code of conduct (*in this case the Code of Conduct for Employees of the House of Assembly Service*). The scope of the term gross mismanagement therefore also indirectly determines the nature and severity of any Code violation that will justify a finding of wrongdoing. It is an important concept...

...

The prefix “mis-” involves the negation of, or detraction from, the suffix to which it is attached. It means “wrongly, badly or unsuitably,” Expressing a negative connotation. Its presence in the word “mismanagement” suggests that the management under consideration must not be just poorly or less than perfectly done but must be wrongly or unsuitably done. It must be a negation or contradiction of any reasonable management standards or antithetical to recognized management practices.

For the purposes of Part VI, however, even if there is “mismanagement”, it must amount to “gross” mismanagement before it will attract the appellation “wrongdoing.” “Gross” connotes notions of being unattractively large, obvious, and unacceptable. In other legal contexts, such as in gross negligence, it is used in the context of a “marked departure” from acceptable standards or reckless disregard for them. It could be said that there is an aspect of moral blameworthiness associated with the behaviour. That raises the bar even further.

The word “wrongdoing,” of which the term gross mismanagement forms a subset, itself connotes individual fault rather than mere inadvertent failure to meet performance standards. While a word in a statutory definition can be stretched to include more than its ordinary meaning, there is no indication of this here. In fact, the other forms of wrongdoing mentioned in the definition are offences, statutory breaches and knowingly counselling other wrongdoing. In my view, the use of the word wrongdoing gives meaning to the use of gross mismanagement in the definition

Green Report at pages 48-50

[REDACTED]

[REDACTED]

i)

[REDACTED]

ii)

[REDACTED]

After Mr. Moss provided the Whistleblowers with the Disclosed Details, the Whistleblowers then contacted MHA Lane, which ultimately resulted in the matter being raised in the House of Assembly and reported in the media. MHA Lane's disclosure resulted in the matter being reported in the House of Assembly and the media before the Speaker was able to fulfill his statutory mandate by passing the CEONL Report to the appropriate authority who would decide how much and when information in the CEONL Report would be disclosed to Whistleblowers or otherwise, keeping in mind principles of procedural fairness, not only owed to the 2 Whistleblowers, but also owed to Mr. Chaulk.

[REDACTED]

INVESTIGATIVE PROCESSES

The Citizens' Representative can conduct investigations under 3 different scenarios:

- HOAAIAA Part V – applicable to Members of the House of Assembly
- HOAAIAA Part V1 – applicable to Employees of the House of Assembly
- Public Interest Disclosure and Whistleblower Protection Act – applicable to employees of government, Crown Boards and Agencies (*Whistleblower Act*).

While all three types of investigations may utilize similar methods of inquiry, the language in the legislation differs in terms of how a report and the information resulting from a report, is handled.

HOAAIAA Part VI (Public Interest Disclosures) differs from the provisions of Part V (Ethics and Accountability).

Under Part V, Ethics and Accountability, Code of Conduct for Members (of the House of Assembly) reports may be tabled in the House of Assembly, subject to circumstances giving rise to the report and the prescribed roles of the House of Assembly Management Commission (Sections 38, 39, 40.) and the Privileges and Elections Committee (Sections 42.3, 42.4, 42.5, 42.6, 42.7). Only the House of Assembly can discipline Members of the House of Assembly.

Likewise, the process under the *Public Interest Disclosure and Whistleblower Protection Act* (the "Whistleblower Act") is different than the process in Part VI of the HOAAIAA. In the *Whistleblower Act*,

the definition of “employee” – who would be the individual making a whistleblower complaint – means “an employee or officer of the public service” and “public service” is defined “a department or a public body”

Whistleblower Act

Citizens' representative's report re investigation

Section 18. (1) Upon completing an investigation, the citizens' representative shall prepare a report containing his or her findings and any recommendations about the disclosure and the wrongdoing.

(2) The citizens' representative shall give a copy of the report to the chief executive of the appropriate department or public body.

(3) Notwithstanding subsection (2), where the matter being investigated involves the chief executive, the citizens' representative shall give a copy of the report,

(a) in the case of a department, to the minister responsible; or

(b) in the case of a public body, to the board of directors and the minister responsible.

(4) The citizens' representative shall report on the result of his or her investigation to the employee whose disclosure initiated the investigation in the manner and at the time the citizens' representative considers appropriate.

Section 18(4) of the *Whistleblower Act* specifically requires that the Citizens' Representative disclose his report to the Whistleblower employee in a manner and at a time the Citizens' Representative considers appropriate. The *Whistleblower Act* has been in place since 2014. [REDACTED]

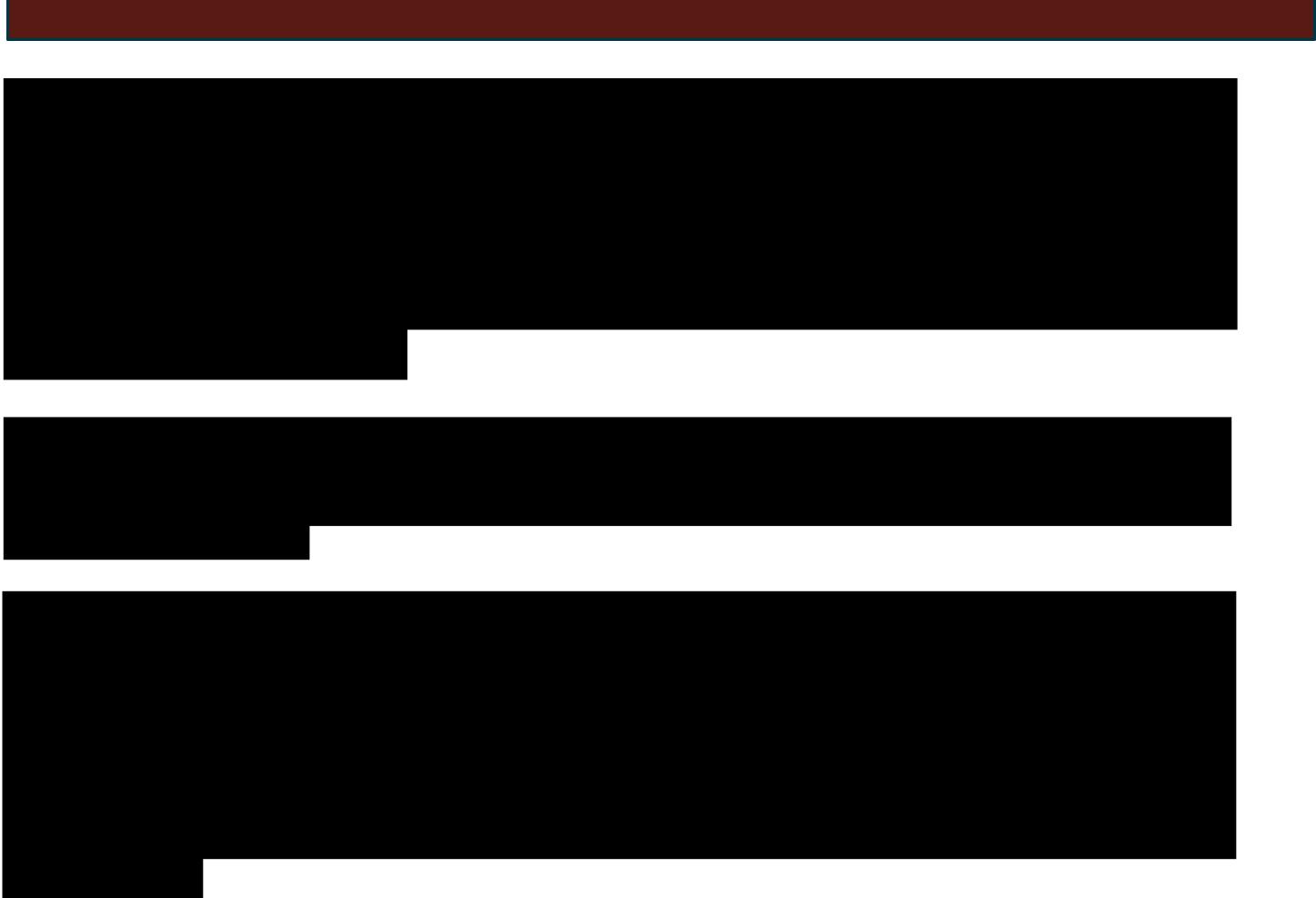
[REDACTED]. The vast majority of Public Interest Disclosures,

brought to the Citizens' Representative, are made under the *Whistleblower Act* where the provisions of Section (18) have remained the same since 2014. To date, the Citizens' Representative Office has only been engaged 3 times under Part VI (HOAAIAA).

The requirement to report to the Whistleblower is **not**, part of Part VI of the HOAAIAA. For reasons that are well outside the scope or mandate of this investigation, the legislature in this Province decided on a different process for disclosures under Part VI of the HOAAIAA in terms of a reporting process.

While other jurisdictions may have statutes and statutory mechanisms requiring that Whistleblowers be updated on the status of an investigation, this is **not** a provision under Part VI of the HOAAIAA.

The role of the Citizens' Representative is clear under section 58(7) HOAAIAA Part VI. Upon completing an investigation, the Citizens' Representative is to provide the report to the Speaker and the Clerk. The HOAAIAA does not indicate that the Citizens' Representative has authority to disclose details about the report. It is the role of the Speaker to determine where a report goes and the role of the body to whom the report is referred to take action.



Armed with the Disclosed Details, and their own information, combined with their speculation and deduction, the Whistleblowers initiated contact with Member Lane who raised the existence of the report in the House of Assembly, indicating there were “several allegations of harassment, bullying, nepotism and a whole bunch of other things”. In a vacuum, absent the context of the full report, such terms were highly explosive, igniting a media frenzy, [REDACTED]

Following MHA Lane’s report to the House of Assembly on May 16, 2022, Mr. Chaulk was frequently referred to in the media and on social media as the person responsible for a toxic worksite at Elections

NL, along with allegations of nepotism, harassment, bullying and wrongdoing in the last general election. Mr. Chaulk's suspension from his position was a public event, welcomed by opposition parties.

Following MHA Lane's report to the House of Assembly on May 16, 2022, The Speaker was accused by MHA Lane of mishandling a serious situation and accused of being in a conflict of interest. MHA Brazil suggested the report was not handled in a timely and transparent manner by the Speaker's Office and that officials should have done more. MHA Dinn accused the Speaker of not being impartial and not inspiring confidence or public trust.

Public opinion attacked the Speaker and his Office in the press and on social media.

OBSERVATIONS

Media reports resulting from the Disclosed Details led to the Chief Electoral Officer being placed on leave from his employment. [REDACTED]

The Speaker and the Clerk of the House of Assembly have been subject to accusations within the House of Assembly, the press and the public, of bias, failure to act, hiding a report and ignoring serious allegations of bullying and harassment.

SUMMARY

Mr. Moss did not commit “gross mismanagement” within the meaning of section 54(1)(e) of the HOAAIAA, but he exercised poor judgment when he provided the Disclosed Details to the Whistleblowers. The consequences of this action contributed to personal and professional harm to individuals involved.

Despite the pressure the 2 Whistleblowers placed on the Citizens’ Representative to account for the status of his report, the Citizen’s Representative should not have provided information other than the Report was completed and was submitted to the Speaker and the Clerk. The legislation states that if a report recommends corrective action, it is the Speaker who determines where to refer the report.

[REDACTED] The Speaker’s authority under Part V1 of HOAAIAA is limited and does not provide for public disclosure or tabling of the CEONL Report in the House of Assembly.

[REDACTED]

RECOMMENDATIONS

- The Citizens' Representative apologize in writing to the Chief Electoral Officer, Mr. Bruce Chaulk, for providing information to 2 Whistleblowers that lead to actions that caused damage to Mr. Chaulk's personal and professional standing in the workplace and in the community. The apology must be issued in a timely manner, with a copy filed with the House of Assembly Management Commission.
- The Citizens' Representative apologize in writing to the Speaker and the Clerk of the House of Assembly for providing information to 2 Whistleblowers that fueled actions that caused unnecessary stress, workload and accusations of conflict of interest and failure to act by the public, the media and some members of the House of Assembly. The apology must be issued in a timely manner, with a copy filed with the House of Assembly Management Commission.
- The Office of the Citizens' Representative develop new policies and procedures, including investigative and reporting procedures, that distinguish the conduct of investigations and processes under the separate applicable statutes. The Citizens' Representative policies and procedures must be based on and comply with the applicable legislation passed by the House of Assembly.

APPENDIX A

Chafe, Ann

From: Chafe, Ann
Sent: Friday, August 5, 2022 3:26 PM
To: Moss, Bradley; 'Barry Fleming'
Subject: Investigation of Public Interest Disclosure

Dear Mr. Moss & Mr. Fleming,

I write to you in my capacity as the Commissioner for Legislative Standards (Acting).

On July 8, 2022, this Office was notified in accordance with Subsection 54(2) of the House of Assembly Accountability, Integrity and Administration Act (the "HOAAIAA") of a public interest disclosure filed with the Speaker of the House of Assembly, alleging that there are reasonable grounds to believe there was gross mismanagement by the Citizens' Representative in failing to ensure confidentiality and failing to ensure the particulars of the Report on Public Interest Disclosures Regarding the Chief Electoral Officer of Newfoundland and Labrador (the "Report") were not disclosed publicly, inconsistent with subsection 58(7) of the HOAAIAA. The reasonable grounds relied on include comments made by some Members of the House of Assembly regarding the Report.

Under Part VI (Public Interest Disclosure), subsection 54(2) of the HOAAIAA, I am the designated investigator. The investigation will include, but not be limited to, receiving information from you as Citizens' Representative.

Following my meeting with the individual who made the public interest disclosure, I will contact you to arrange a time for us to meet as part of my investigation. At present, I intend to discuss the following with you: the OCR's processes and security protocols of public disclosure intake, interviews, documentation, access to documentation (including the Report itself and any documents relating to the Report), and production and publication of the Report; and how these processes and security protocols were applied with respect to the Report and the investigation leading to the Report. While this is not an exhaustive list of discussion items, any questions or topics I intend to discuss with you will be limited to the issues of confidentiality and disclosure of the Report and/or aspects of the Report. As additional information becomes available to me, I may advise you of additional questions/topics for discussion. I may also request that you provide me with certain documents and records.

Please note my mandate does not include a review of the findings of the Report.



Please contact me if you have any questions. In the meantime, I will contact you in the near future to propose dates for us to meet.

Sincerely,

Ann Chafe

(Original signed copy to follow)

APPENDIX C



HOUSE OF ASSEMBLY
Newfoundland and Labrador

OFFICE OF THE SPEAKER

March 29, 2022

CONFIDENTIAL

Bradley J. Moss
Citizens' Representative
VIA EMAIL

Dear Mr. Moss:

RE: Report Pursuant to Part VI of the *House of Assembly Accountability, Integrity and Administration Act* (the HOAAIAA)

I acknowledge your letter of March 24, 2022 requesting an update respecting referral of the report noted above.

In response to your request, I would refer you to Part VI of the House of Assembly Accountability, Integrity and Administration Act, which, as you know, is the authority under which this report was prepared. In contrast to the Public Interest Disclosure and Whistleblower Protection Act (section 19 refers), Part VI of the HOAAIAA does not authorize the request you have made, nor does it require a response to it.

The House of Assembly Accountability, Integrity and Administration Act is a prescriptive legislative regime and the Speaker and Clerk act at all times within the scope of their authority under it. I have been advised that your responsibilities in this matter further to the authority given to you by the Legislature under the HOAAIAA were exhausted with the submission of your report.

This matter is under advisement and there will be no further response to your office regarding any decisions the Clerk and I make regarding referral.

Many thanks to you and your office for your diligence in the preparation of this Report.

Regards,

Honourable Derek Bennet, MHA
Speaker of the House of Assembly

cc: Sandra Barnes, Clerk

Confederation Building, P.O. Box 8700, St. John's, Newfoundland & Labrador, A1B 4J6, Tel: (709) 729-3404, Fax: (709) 729-4820