

# The Kirby Report

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



October 3, 2018

**Bruce Chaulk**  
**Commissioner for Legislative Standards**



## EXECUTIVE SUMMARY

On July 19, 2018, a Member of the House of Assembly, (hereinafter referred to as the Complainant) wrote the Commissioner's Office requesting an investigation into the conduct of Dale Kirby, (MHA, Mount Scio), (hereinafter referred to as MHA Kirby) with respect to alleged violations of the Member's Code of Conduct.

The Complainant alleged a number of incidents of harassment and intimidation by MHA Kirby directed at the Complainant, and asserted that these incidents were violations of sections 1, 2, 3, 4, 5, 10 & 11 of the Member's Code of Conduct.

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

I have also considered specifically whether MHA Kirby engaged in behaviour that amounts to harassment. In doing so, I have relied on a definition of harassment as objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. In providing my opinion, it is important to note that although particular behavior may not meet the specific definition of harassment or bullying, a code of conduct violation can still be made against a member if his or her conduct as an MHA warrants such a finding based upon a review of the evidence.

In that regard, as a result of my review, I am of the opinion that MHA Kirby has violated Principle 5 of the Member's Code of Conduct, but has not violated Principles 1, 2, 3, 4, 10 and 11 of the Member's Code of Conduct as a result of the allegations raised by the Complainant.

In the circumstances of this case, that is, where the majority of the allegations have been dismissed, where the member has admitted to the conduct in question and has been cooperative throughout, and where the member has suffered a significant financial penalty in being removed from Cabinet for a significant period of time, it is my recommendation to the House of Assembly that MHA Kirby be reprimanded.

Recently, the issues of harassment and bullying in the House of Assembly have become the subject of much debate. While members are free to exercise their right to request my opinion with respect to the compliance of a member with the Code of Conduct, consideration should also be given to requiring members to undergo respectful workplace training as part of their orientation upon being elected as a Member of the House of Assembly. By proceeding in this fashion, one would hope that events such as those outlined in this report can be avoided in the future. In addition, it must be recognized that MHA's often have to continue to work with each other as investigations are taking place and often times following the release of my report. It would be beneficial if a more private restorative justice model was implemented to allow these matters to be resolved in a setting that will facilitate resolution of these important workplace issues while at the same time facilitate rehabilitation of relationships, where possible, to allow members to act in the best interests of their constituents.



## BACKGROUND

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

Subsection 36(1) states as follows:

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

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

Section 37(1) states as follows:

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

As noted by s.37(1), providing notice to the member concerned is not indicative of the start of an inquiry. An inquiry is started when the commissioner decides to conduct an inquiry and may start after the commissioner has received a response from the member concerned. Often times it is necessary to review the member's initial response to determine if there is any basis for which to proceed with a formal investigative inquiry.

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

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

**CHRONOLOGY OF EVENTS**

On July 19, 2018 a written complaint was received by the Commissioner from the Complainant. In the complaint, the Complainant requested that the commissioner conduct a formal investigation into MHA Kirby in accordance with s.36(1) of the HOAIA for an alleged violation of the Member's Code of Conduct.

On July 19, 2018, interviews were conducted by the Commissioner with the assistance of the investigator with the Complainant.

On July 23, 2018 a letter was sent to counsel for MHA Kirby requesting a written response to the complaint.

On July 31, 2018 a written response was received from MHA Kirby.

On August 1, 2018, an interview was conducted by the Commissioner and investigator with MHA Kirby.

On August 2, 2018, MHA Kirby's response was provided to the Complainant.

On August 15, 2018, the Complainant responded in writing to MHA Kirby's response.

## THE INVESTIGATION

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

- 1) Bus Policy Code Violation;
- 2) Full Day Kindergarten;
- 3) Liberal Convention/Annual General Meeting;
- 4) Christmas Break/Bar Tab;
- 5) Vote for Speaker of the House;
- 6) School in Complainant's District;
- 7) Accusation of Being a Liberal Leak; and
- 8) Impact to Complainant's Fundraiser

### 1) Bus Policy Code Violation

#### i. The Complainant

*At the beginning of the school year in September 2016, there was significant discontentment in my district regarding an announcement by Minister Kirby to more strictly enforce a bussing policy which requires families of primary and elementary students who live within 1.6 kilometres of the school to provide their own transportation, or walk, to school. This was presented by Minister Kirby as a cost-saving measure, but nonetheless, as it would be a significant departure from the practice and service provided to my constituents (...), it caused a significant uproar. Constituents held rallies, protests, and presented petitions to government to reverse its decision in areas where walking along roads with 4 lanes of traffic would be required and arguably dangerous.*

*As the MHA for the area, I attended the rallies to hear concerns, be present, and to communicate with my constituents. My responsibility to my district is to hear their concerns and represent their interests to the government. To that end, I voiced their objections to the Minister and further wrote letters to both the Premier and the Minister outlining the concerns of my constituents on their behalf, as is my responsibility as their government representative.*

*Rather than respond in a professional and respectful manner, and rather than respectfully listen to concerns raised effectually through the democratic process, the Minister sent me a text message stating:*

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

During an interview conducted during this investigation, the Complainant noted that education is of particular concern in the Complainant's District, especially regarding the school in the district. The Complainant said that constituents were against the enforcement of the bussing rule. The Complainant said that she wanted to hear their concerns, bring them back to the government and then work with the government. She said that she did not get a respectful response from MHA

Kirby, and reiterated that he sent a text message that stated: “You’re causing a fuckload of trouble for me today.” When asked for the text message, the Complainant said that she had deleted the message.

The Complainant said that MHA Kirby suggested to her that she was undermining him by bringing her concerns forward and mentioning them in the media. She said that this was how things “went downhill” with MHA Kirby, who she said would be standoffish and would not respond to her.

#### ii. MHA Kirby’s Response

*I do not recall making the specific comment to the Complainant about busing that she included in her submission. I do not dispute making the comment as the Complainant raised the issue of the 1.6km school busing policy with me and the Premier a number of times, and she and I had a number of exchanges regarding busing issues. The only specific exchange I recall the specific details of was on a Friday during the Summer of 2016. That morning I received calls from senior officials in the Department of Education, as well as staff in the Premier’s Office, advising me of a post that the Complainant had made on Facebook regarding busing in her district. In this post, the Complainant advised her constituents that she had made an agreement with the local busing contractor to change the bus route that he had been contracted to provide for the English School District. This was a legal violation of terms of the contract that the busing contractor had agreed to with the school district. I was told by Departmental staff and the Premier’s Office that the Complainant had been asked to remove the offending post from Facebook due to legal and liability concerns raised by the school district and the Department. I was initially told by the Premier’s Office that the Complainant was refusing to remove the posting. Later in the day I received a call indicating that the Complainant had agreed to delete the Facebook post.*

*There was another time when the busing issue came to the fore, as I noted above, when [the Complainant] allegedly called me a “fucking coward” at a Caucus meeting because I had exited the meeting prior to a discussion of an agenda item regarding busing policy.[sic]*

During his interview, MHA Kirby said that he began to notice that the Complainant had a hostile attitude towards him and spoke to him less. He said that he heard from the Premier’s office that the Complainant was upset. He also recounted an anecdote that he said involved the Complainant calling in to a radio show and commenting that instead of the cut-off being 1.6 km, it should maybe be a mile. He said, “That’s what people remember. My colleagues made so much fun of the Complainant about this.” I asked Minister Kirby if he could provide the name of any witness to the Complainant’s alleged comment at a Caucus meeting. He declined to provide any names.

#### iii. Complainant’s reply

*As to my complaint about his treatment of me with respect to the bus policy, I note that Minister Kirby does “not dispute making the comment.” This should end the review of this particular complaint— a specific admission to the inappropriate conduct and violation of Principles 1, 2, 3, 4 and 10 as outlined in my July 19, 2018 letter. Minister Kirby attempts to deflect attention from his conduct by referencing a FaceBook post, but I submit that whether I posted something on FaceBook or not, or whether that post was later deemed inappropriate or inaccurate, does not excuse or condone his inappropriate behaviour, nor is it related to or connected to his behaviour.[sic]*



#### iv. Factual Findings

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

The Complainant was unable to provide the text message in question. That said, she was consistent in her account of the message that MHA Kirby sent to her. Although MHA Kirby did not recall making the comment alleged by the Complainant, he did not deny making the comment either. The comment also fits within the context of their actions and interactions on this topic in a manner that rings true. Accordingly, I find that MHA Kirby sent a message to the Complainant that stated that she was causing a “fuck load of trouble” for him by being vocal about the bussing policy. I find that he also suggested to her that she was undermining her colleagues by her actions. Regarding the suggestion that MHA Kirby froze the Complainant out personally and professionally, the Complainant’s own evidence indicates that they continued to interact socially following this incident. In terms of their professional interactions, I will address her specific allegations against MHA Kirby in this context below.

## 2) Full-Day Kindergarten

### i. The Complainant

*Also, in September 2016, Government introduced full day Kindergarten. I heard a panel of MHA’s speaking about this on CBC Radio; a member from each party was present to discuss the topic with the exception of the Minister of Education. As a collegial courtesy, I sent a text message to Minister Kirby to advise him of the panel and the substance of what was being broadcasted. He replied by saying “why would I care about what they were saying”. He then told me to mind my own business and it was the responsibility of communications staff to monitor the media. Following this interaction, and coupled with the previous encounter re: bussing, the Minister “shut me out” and refused to correspond with me both personally, which is his prerogative of course, and professionally, which I submit is a violation of the Code of Conduct Principles 1, 2, 3, 4, and 10.*

*To freeze me out and refuse to work with me both as a representative of a district of the province, but also a member of his own political party, is certainly against the spirit of the legislation which would require that Minister Kirby not bring the House into disrepute. He has a responsibility as a Minister of the Governing party to appropriately and professionally address concerns brought to him by MHAs pursuant to their roles as MHAs. His behaviour in this instance is similarly a breach of Principle 2 of the Code as he has an obligation to serve his fellow citizens with integrity. To block out a particular MHA, and by extension an entire provincial district of citizens, for petty, personal, and vindictive reasons lacks any semblance of integrity required to be shown by Members. Such behaviour also undermines the democratic traditions and process in our province and as such is a breach of Principle 3 of the Code of Conduct. It’s an attempt by the Minister to circumvent the obligations of his office and instead operate under a “you scratch my back I’ll scratch yours” mentality. This tactic would surely not withstand any level of public scrutiny and is therefore a breach of Principle 4 of the Code of Conduct. Finally, and as similarly explained above, Minister Kirby has not remained politically impartial in his treatment of me as a representative of my district but rather has chosen to apply political punitive measures in response to my non-partisan advocacy as an MHA which is a violation of Principle 10 of the Code of Ethics.[sic]*

The Complainant said that following the news and events was second nature to her, given her prior history as a journalist. She said that she sent MHA Kirby a friendly email as a heads up, and his reply was rude and demeaning. When asked if she still had the messages, the Complainant said that she did not.

#### ii. MHA Kirby's Response

*The Complainant was no more or no less involved with the implementation of full-day Kindergarten than any other colleague in our Caucus. For the most part, I left the details of this work to staff in the Department of Education who had the necessary expertise. The only conversation I had with the Complainant regarding full-day Kindergarten specifically consisted of her telling me it would be a "disaster" for unspecified reasons.*

*The radio program she references in her submission aired during the first day of school in September 2016. I received a text from her demanding I listen in to members of the Opposition Parties criticizing me personally and a variety of education policies. This was my 5-year old son's first day of Kindergarten and my wife's first day back teaching after the summer holidays. Considering the significance of this being my son's first week of school in his life, I saw no reason to subject my family to this radio program and the sorts of personal attacks against me that it included. I explained to the Complainant that I would rely on the communications staff at the Department of Education to monitor the news and take their advice accordingly. She responded by making disparaging comments about their professionalism. This was something I was accustomed to since she frequently made disparaging comments about the Department's Director of Communications, Blair Medd, who she suggested was working on behalf of the PC Party to undermine me and our Government. [sic]*

#### iii. The Complainant's Reply

*As to Minister Kirby's response regarding my Full-Day Kindergarten complaint, yet again he seems to provide an excuse that he deems as valid to justify his treatment of me. It is not relevant what he had going on at home on any given day, nor is it relevant for any member of government when it comes to their adherence to the Code of Conduct. It is not his reason for not paying attention to the program that is at issue, it is the manner in which he attacked, treated, and demeaned a colleague for daring to bring it to his attention. This is unacceptable regardless of whether his child had Kindergarten that day. I would also note that Minister Kirby again took this opportunity to make baseless and irrelevant allegations regarding my opinions on another colleague. I would again submit this is not relevant, and simply another intimidation tactic of Minister Kirby to attack me on an unrelated issue rather than to deal with the complaint at hand. [sic]*

#### iv. Factual Findings

The parties agree, and therefore I find, that there was an occasion in September 2016 when the Complainant sent a message to MHA Kirby about a radio program about full-day kindergarten, suggesting that he might want to listen to it. MHA Kirby responded by questioning why he would want to listen to the program and stating that he would allow communications staff to monitor the news and provide him advice, as necessary.

### 3) Liberal Convention/Annual General Meeting

#### i. The Complainant

*At a 'social' in November 2016 at the Liberal Convention/AGM, the Minister asked to speak with me privately. He said he "wanted to get along with me" and said "you are beautiful and I love you". I ignored the inappropriate and unprofessional overture and advised him that people in my district intended to present me with a petition regarding the bussing policy. He suggested that I not present it in the House of Assembly, as would be customary to do as an MHA on behalf of one's district, stating that I should not be as vocal on issues on behalf of my constituents because it would be harmful politically to the Premier. He added that if I didn't stop my advocacy for my Constituents, which is precisely my role and obligation as an MHA, then I should leave the Liberal Caucus.*

*It is my submission that this interaction is a violation of Principles 1, 2, 3, 4, 5 and 10. It is against the spirit of the legislation to attempt to manipulate my district representation for his political purposes; the threat of Party exclusion in an effort to restrain my district advocacy lacks any ethical integrity as required by Principle 2; it is both corrupt and undermines the democratic process to dangle party membership over an MHA in order to control and deter the communication of district dissent, which is an affront to Principle 3; certainly, such a threat would not survive public scrutiny under Principle 4; and finally to use a complimenting personal comment (on my physical appearance) as an attempt to manipulate my response to his demands and pressure in order to benefit his career a violation of Principle 5. He used his political position, one of power over me, combined with a sexually harassing comment, in an attempt to control my response and my future behaviour solely for the private benefit of his career. This constitutes a breach of the Code of Conduct.[sic]*

The Complainant said that during a social event at the convention, MHA Kirby asked to speak with her privately. She agreed. She said that MHA Kirby said that he wanted them to get along and commented, "You're beautiful, I love you. And I want us to work together, but you have to stop being so vocal." She said that she told MHA Kirby about an upcoming petition by constituents regarding the 1.6km bus rule that they wanted her to bring to the House. She said that MHA Kirby asked her to not do it and told her that she should consider leaving the party if she could not consider toeing the party line. The Complainant said that she felt thrown by his response and noted that she was a first time MHA and that MHA Kirby had been a mentor when she was a candidate.

When asked about the alleged comment that the Complainant was beautiful and that MHA Kirby loved her. She said that the comment did not feel sexual, but was more patronizing. She said that she found it strange. When asked where the conversation took place, and she said it was in a hotel room, and specifically a hospitality suite, and there was no one else in the room at the time.

## ii. MHA Kirby's Response

*The incident the Complainant describes in her submission is described as a meeting we had 'privately' with little description of the context. In reality, during the social she mentions, the Complainant asked me if I wanted to smoke marijuana with her. We proceeded to the parking lot and smoked marijuana. I do not recall making the comments she attributes to me but I also do not dispute them. They should, however, be understood in the context of the two of us smoking marijuana in the parking lot of the Hotel Gander during the Liberal Convention. I do remember that I was trying to be conciliatory and to convince her that her continuing campaign of hostility toward me, Premier Ball, and our colleagues was unhelpful to all of us. Further, any suggestion that I would tell the Complainant, at any time, not to advocate on behalf of her constituents is false. This is not something I would recommend to any one of our legislators.[sic]*

During his interview, MHA Kirby said that the interaction took place in the parking lot and that no one else was there. He said that he might have said that he loved the Complainant in "an aging punk rocker 1980's way," adding that he has been married for 15 years. MHA Kirby noted that there was a term called agape, and that was what he meant. He explained that he meant that's she was a beautiful person. He added, "This wasn't a serious conversation. We were smoking weed. It's absurd." MHA Kirby said that he did not suggest to the Complainant that she not submit the survey. I asked if he suggested that she leave the Liberal Caucus and he said that he did not remember that. He added, "But why would I tell her that she's beautiful and then tell her to leave. It doesn't make sense."

## iii. The Complainant's reply

*As to Minister Kirby's response regarding his comments at the Liberal Convention, he has provided "context" which he seems to think justifies his conduct. It does not. What does matter is that I have submitted a complaint that at a Liberal Party Convention he said to me "you're beautiful and I love you" and he explicitly states that he does not dispute making that comment. Being collegial with someone does not permit, invite or condone such comments. I wonder if Minister Kirby makes similar remarks to his male colleagues when he "is trying to be conciliatory" or trying to convince them to support a certain path, as he claims to have been doing here. Minister Kirby is under the false impression that this sort of gender-based manipulation, especially coming from someone in a politically superior position, is acceptable in a certain context. My enjoying brief moments of conciliatory interaction with Minister Kirby should not open me up to such demeaning, patronizing, and sexualizing talk. As I said, this interaction, which he does not dispute, constitutes a violation of Principles 1, 2, 3, 4, 5, and 10.[sic]*

## iv. Factual Findings

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

I find that while at the convention, MHA Kirby and the Complainant smoked marijuana together and during their conversation, MHA Kirby made a comment to the effect that he loved the Complainant in the manner in which he described

it: an “aging punk rocker 1980s way.” That is, I find that he made the comment in a friendly manner within the context of a casual conversation involving marijuana. I do not believe that the comment was intended to be sexual in nature, nor do I believe that the Complainant genuinely perceived it that way at that time. I find that during this casual conversation, MHA Kirby told the Complainant that he wished to work with her and that her approach of working against him, his colleagues, and the Premier was not helpful to any of them. While this conduct may not have been intended to be sexual in nature I do find below that this interaction was a violation of Principle 5 of the Code of Conduct.

With respect to the remainder of the specifics of this allegation, I do not find there is sufficient evidence to conclude that MHA Kirby specifically advised the Complainant not to submit her survey, nor do I find that he made the other alleged comments about her actions as an MHA on behalf of her constituents.

#### 4) Christmas Break/Bar tab

##### i. The Complainant

*After the House of Assembly closed for the break in December 2016, members of the Liberal Caucus went as a group for a social gathering at a local pub. Other than our group, there were only 2 other patrons at the establishment, both sitting at the bar. I had opened a tab at the outset of the evening and had not authorized any other individual to use this tab, nor would it be customary to do so in this setting. At one point when ordering on my personal tab at the bar, I was approached by one of the two patrons outside our group who said “... I want to inform you of something, because I don’t believe it is right what has been done to you. We just witnessed Dale Kirby put two rounds of drinks on your tab.”*

*It is my submission that this action, intended to bully, harass, belittle, control and demean, is a violation of Principles 1, 3, 4, 5, and 11, as well as fraudulent, and arguably illegal. It is certainly against the spirit of the legislation governing Member conduct and again attempts to undermine the political process and the democratic traditions of the province by against attempting to bully me into ceasing district advocacy. It is yet another attempt to apply punitive pressure as a response to my vocal advocacy on behalf of my constituents and this is an unethical attempt to squash that advocacy. It would not withstand public scrutiny, let alone withstand an RNC investigation. Had he taken my credit card to the bar without my permission and purchased the drinks it would be no different. His actions were a passive-aggressive attempt to bully me, make me feel like an outsider, back me into a corner in an ‘us against them’ mentality, all in an attempt to subvert the democratic process. He engaged in this personal conduct from his position of authority, knowing he could get away with it, for political gain. Members are expected to adhere to the Principles of the Code of Conduct by leadership and example, therefore I submit that this action, in front of and with the knowledge of many members of the Liberal Caucus in attendance, was a blatant example of a violation of the Code of Conduct, and therefore a violation of Principle 11 . [sic]*

During her interview, the Complainant stated that the social gathering at the former Grumpy Stump pub was “low key”. She said that members of the Liberal Caucus were present, along with two other bar patrons whom the Complainant did not know. The Complainant said that the two patrons called her aside and told her that they had seen something that they did not believe was right, specifically that they had witnessed MHA Kirby put two rounds of drinks on her bar tab. The Complainant said that she asked the bartender and the bartender confirmed it and removed the drinks from her tab. The Complainant said that Minister Andrew Parsons was present and she understood that he had stopped MHA Kirby from adding another round of drinks to her tab.

## ii. MHA Kirby's Response

*I did not add ``a round`` to the Complainant's bar tab at the Grumpy Stump. These allegations are false.  
[sic]*

During his interview, MHA Kirby again denied this allegation. He said that he heard about this allegation from Greg Mercer and two other Ministers back in April. He said that he was told by them that one of the complaints stated that he put two beer on her tab at the Grumpy Stump, and they all laughed because it seemed foolish. MHA Kirby said that he is picky with money and "would not screw with somebody else's money." MHA Kirby said that he did not have much to drink that night because he takes a painkiller for chronic pain.

MHA Kirby also wondered why the Complainant did not speak to him directly about this issue.

## iii. Minister Andrew Parson's Evidence

Minister Parsons recalled attending the former Grumpy Stump in December 2016 after the closing of the House of Assembly. He had a distinct recollection of the evening based on interactions that he had with another Member unrelated to this complaint. Minister Parsons said that he did not recall MHA Kirby purchasing drinks of the Complainant's tab. When I asked him specifically if he had intervened to prevent it from occurring on one occasion, he said that he had "no recollection of that whatsoever." He said that he may have had interactions with the Complainant that evening, but said that nothing stood out that he could recall.

## iv. Factual Findings

I was unable to interview the two patrons who allegedly told the Complainant about MHA Kirby's actions at the pub as they were strangers to the Complainant. The Complainant herself did not observe the alleged behaviour. Minister Parsons, who the Complainant understood had intervened to stop MHA Kirby's behaviour, had no recollection of any such behaviour. Accordingly, absent any compelling supportive evidence, and in light of MHA Kirby's clear denial, I do not find that MHA Kirby purchased rounds of drinks on the Complainant's tab at the former Grumpy Stump in December 2016.

## 5) Vote for Speaker of the House

### i. The Complainant

*In August 2017 following a cabinet shuffle, it was suggested to me that I should run for the position of Speaker. The Premier had publicly endorsed Perry Trimper, the Member for Lake Melville. I spoke with some of my colleagues about the possibility and potential of running for the position. One such colleague, Minister Eddie Joyce, repeatedly implied that I should not run against someone who had been publicly endorsed by the Premier. In his words, it would be detrimental to my career and could "piss people off". Minister Joyce warned me that running for the position against Trimper may result in a loss of funding for my district, as "punishment" for going against the endorsement of the Premier. However, on the day of the vote in August I learned that Minister Kirby was actively campaigning against my candidacy; I was shown a Blackberry message circulated by Minister Kirby which said:*

*"I hope you understand that should Pam succeed today in embarrassing Dwight by setting up this Confidence Vote in the government, we will likely be headed to the polls in less than a year. Better dust off your elections signs."*



*It is my position that this threat is a violation of principles 1, 2, 3, and 4 of the Code of Conduct. It is against the spirit of the legislation to threaten the jobs and livelihoods of Members in order to bully them into voting, in an open vote, the way in which you want them to vote. It completely lacks the integrity expected of the office and in no way would this survive public scrutiny. In fact, it was the public outcry after Minister Kirby's "behind the scenes" threats to colleagues that has spurred his leave of absence and the subsequent investigation into his overall conduct. It does not survive public scrutiny. Finally, it also undermines the democratic traditions of this province. It is a tradition to have an open vote for this position, regardless of whether the Premier chooses to endorse a particular candidate. In an underhanded way, Minister Kirby attempted to undermine that process and bully Members into voting in a particular direction. [sic]*

During her interview, the Complainant spoke about the Cabinet shuffle in August 2017 that led to the opening of the Speaker position. The Complainant said that she received some calls from colleagues encouraging her to run for Speaker. She noted that there had never been a female Speaker. She said that she spoke to some colleagues, including Minister Joyce. The Complainant said that Minister Joyce told her absolutely not to run, adding, "Don't go pissing people so early in her career. You need funding for your school replacement." She said that Minister Joyce also told her that she would not get the votes. The Complainant noted that she understood that Minister Joyce made contact with another Member about her on numerous occasions at this time. The Complainant said that following the vote, MHA Holloway showed her the message sent to MHA Holloway from MHA Kirby approximately one hour before the Speaker vote, quoted above. The Complainant said that the idea of the message was that the Complainant was embarrassing the Premier and that supporting the Complainant would mean going back to polls.

The Complainant said that it was meant to be a free vote, but it was a whipped vote. She said that she "didn't even campaign hard, didn't play dirty." She said that she felt that it was her democratic responsibility to put her name forward and had the right to do so without being subjected to isolation, intimidation and bullying. She added that to then see MHA Kirby's message was despicable.

#### ii. MHA Holloway

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

MHA Holloway said that he received the BBM from Minister Kirby at 12:50p.m. on the day that the vote was scheduled in the afternoon. The message said: I hope you understand that should [the Complainant] succeed today (being Election Day for the Speaker) in embarrassing Dwight by setting up this Confidence Vote in our government, we will likely be heading to the polls in less than a year. Better dust off your election signs.

MHA Holloway called it "a last ditch effort to harass and try to influence an independent vote for speaker. That was probably the epitome of the influence and skullduggery that was happening around vote for a speaker."

### iii. MHA Kirby's Response

*The August 2017 Blackberry Message I sent to Colin Holloway regarding the election of House of Assembly Speaker was my opinion regarding one of the potential outcomes of the Speaker election. [sic]*

MHA Kirby said that despite what the Complainant and MHA Holloway said publicly, the vote for Speaker was a whipped vote. He said that he was told as much by staff in the Premier's office, but would not identify the specific staff member because he is a "team player." MHA Kirby said that he was in Florida with his family at time of the vote for Speaker and could not come back in time to vote. He said that in this context he messaged MHA Holloway. He said that he had heard from colleagues that MHA Holloway was the only person supporting the Complainant and he sent the message to make MHA Holloway aware of the implications of his actions. MHA Kirby said, "It was more or less a confidence vote in the Premier. If you don't win a confidence vote then the outcome is a general election."

Regarding the election, MHA Kirby said that he thinks that the Complainant's comments to the media were outrageous, equating her potential election to Speaker to the Battle of Beaumont Hamel and Canada 150. He said that he simply did not relate to where she was coming from, noting that even if it was not a whipped vote he would not have supported her because of the constant hostility he felt from her and her lack of collegiality.

### iv. Complainant's Reply

*As to Minister Kirby's response regarding the "Speaker Vote" text message that he sent to Colin Holloway threatening him not to vote for me, once again, it is not his opinion that is at issue, it's the threatening, intimidating and controlling manner in which he has communicated it. Regardless of his opinion, he still chose a bullying or scare tactic to share his opinion in an effort to undermine my candidacy. This is the very conduct for which the Code was written. [sic]*

### v. Factual Findings

I found MHA Kirby's acknowledgement that the Speaker vote was essentially a whipped vote to be compelling in that, in the context of this allegation, it went against his self-interest. In acknowledging it, he chose not to name and assign blame to any staff, but rather presented it as an explanation for his own actions, which he also acknowledged. I find that MHA Kirby sent the BBM message to MHA Holloway, and did so in order to notify him of the potential consequences of voting against the choice of the Premier. I do not find that the email was "threatening," and note that MHA Kirby did not have the power to enact the potential consequences himself.



## 6) School in Complainant's District

### i. The Complainant

*Before being elected in my district I had been a strong advocate for a school replacement in my district. I frequently brought these concerns to the Minister. He often has made light of the situation and has been dismissive of my concerns. For example, when a school burned in the district of Fortune Bay Cape La Hune, the Minister of Education would say aloud, in front of my colleagues in the House of Assembly while debate was underway,*

*"[The Complainant], the part of the school that did not burn in Tracey Perry's district, we're going to use that as your school replacement. We're going to drive that part of the building over the road to bring to your district."*

*His comments in the House of Assembly are completely beneath the standards of integrity required by the Code of Conduct and further demonstrate his continued and sustained efforts to belittle my advocacy, minimize by voice on behalf of my constituents, and aimed at deterring future advocacy. Rather than respond to district concerns with a professionalism and an objective response about the limits of a budget or the reasoning behind policy decisions, Minister Kirby instead engages in child-like bullying behaviour that is beneath the office he holds, and brings that office, the Party, and the House into disrepute.[sic]*

The Complainant said that she had been advocating to replace the school in her district. She said that she spoke about it in House of Assembly and invited MHA Kirby to come to the school, but he downright refused. I asked if others were around when he refused and she said that it occurred in the House of Assembly, so someone might have heard, but she did not recall anyone reacting. The Complainant said that there was a fire involving a school in MHA Perry's District. She said that MHA Kirby would make light of that and joke to the Complainant that they could take the part of school that did not burn and give it to the Complainant as a ... replacement project. The Complainant said that she did not give MHA Kirby a reaction when he made this joke on multiple occasions.

### ii. MHA Kirby's Response

*Comments I made to the Complainant regarding the "school that burned" were humorous in nature and nothing more than that. At the time that I made these comments she laughed and appeared to believe they were humorous.[sic]*

MHA Kirby said that practically every caucus member was there when he made these jokes and said that the Complainant laughed in response. He said, "It was mind-numbingly boring in there... it was a good opportunity to go over and have a laugh." He acknowledged that he might have made the joke more than once, and even embellished it by joking that they could make it a fundraiser for the Complainant, at which she could "wear a "[the Complainant]" Cam and broadcast it on internet and raise money of you doing a walkathon with the burned school, and on and on."

I asked if he remembered what the Complainant said in response, other than laughing, and he said no, but that it was a "go on don't be so foolish" sort of thing. He called this allegation the Complainant "scraping the bottom of the barrel." He noted that the Complainant came to his house at least twice following this incident. He said that she had no reservations about approaching him in those contexts to smoke marijuana together, adding, "It's like we're friends."

iii. MHA Bernard Davis' Evidence

MHA Davis said that everyone jokes about the school in the Complainant's district, as the Complainant would talk about it 40 times a day. He added, "That's typical, you fight for the things in your district. The Complainant probably did it more vocally than I would do. It worked I guess, the school is going to be built."

iv. The Complainant's reply

*With respect to Minister Kirby's commentary about providing my district the school which had burned, he has once again admitted to making the offending comments. Whether or not he thinks his comments are humorous, or whether he is under the believe that I thought they were humorous, which I did not, his comments are still completely beneath the standards of integrity required by the Code of Conduct. It shows his continued effort to minimize my voice and my position within Caucus and shows a complete lack of professionalism and respect toward the people in my district for whom these issues are of great importance. His dismissive "humour" on something that many in my district have petitioned him for, rallied for, and fiercely advocated for, constitutes behaviour beneath the office he holds, bringing the office into disrepute.[sic]*

v. Factual findings

I find, based on his admission that MHA Kirby commented to the Complainant on more than one occasion, in response to her advocacy for school replacement in her District that they were going to use the part of the school that did not burn during a fire in another district as the replacement school. I find that MHA Kirby intended his comments to be jokes. I find, based on the evidence of MHA Davis (who did not comment on the specific joke in question but who acknowledged a culture of joking on the subject), that others likely received MHA Kirby's comments as jokes as well. I do not believe, in this context and in light of their social relationship, that the Complainant expressed a negative reaction to the comments or otherwise made clear that the comments were unwelcome.

## 7) Accusation of Being a Liberal Leak

### i. The Complainant

*Similarly, and as reported publicly, there was an incident in late April 2018 when Opposition Leader Davis asked the Premier if he was aware of harassment and bullying happening within the Liberal caucus. That evening, after the House of Assembly closed for the day, Minister Kirby sent an email to some members of caucus expressing disapproval of those unknown members who had allegedly spoken to Paul Davis about bullying and harassment. Minister Kirby expressed anger at what he called betrayal and demanded that those individuals come forward and admit to the rest of the caucus. It was an intimidating message and, consistent with his previous behaviour, was intended to isolate individuals with dissenting views or independent positions in an effort to punish those positions. It is my submission that intentional bullying and intimidating email is a violation of the Code of Ethics requiring him to act with integrity.*

*In the days following the harassment revelation in the House of Assembly, an anonymous Twitter account (“@WackJobNL”) began sending public harassing messages to me and some of my colleagues, referring to us as ‘Liberal Leaks’. The tweets were slanderous, insulting, defamatory and even threatening. One tweet with my name attached made reference to physical violence against a woman. I will not speculate the inference that the user was attempting to draw, but violence against me was arguably suggested. I have filed a complaint with the RNC to determine who is behind the fake account, however it has been suggested to me and publicly that Minister Kirby is behind the account. I do not know if this is indeed the case, but this approach aligns with his history of bullying and punitive social pressure in order to manipulate my professional actions.[sic]*

The Complainant said that when allegations of harassment came out, she received an email from MHA Kirby demanding to know who put forward the allegations. She said that the message and tone was “Who is the leak?”, versus concern that harassment may be happening in caucus. The Complainant said that she did not, and remained silent until her recent complaint.

The Complainant said that next day at a caucus meeting, MHA Kirby was very angry. She said that it was very intimidating and uncomfortable. She said that MHA Kirby suggested that everyone turn over the phone to ascertain who had disclosed information to the media.

The Complainant said that over the subsequent long weekend, she was told by people on social media about a Twitter account (@wackjobNL) that accused the Complainant and Holloway of being Liberal leaks. She acknowledged that she had no proof that MHA Kirby was involved, although one observer suggested publicly that he was. The Complainant said that she found the situation unnerving, and reported it to the Royal Newfoundland Constabulary. She also asked for an escort her to car after Caucus meeting on Sunday night.

### ii. MHA Holloway

In a separate complaint, Member Holloway wrote:

The issue of harassment reached a pivotal point in mid-April, 2018 when MHA Sherry Gambin-Walsh came forward with allegations against Mr. Joyce. As that situation was unfolding, the media was reporting on information which may have come from within the Liberal Party Caucus.

On April 24, 2018 the following email was sent to several MHAs within the Liberal Caucus by Mr. Kirby:

If someone in the Caucus actually planted these harassment allegations with Paul Davis (Leader of the Official Opposition) or any other Opposition MHA, the person or persons have a moral obligation to reveal this to the rest of us.

On April 25, 2018, during a Caucus meeting, the issue of the possible leaking of information to the public came up for discussion. At that time, I indicated to MHA Kirby that I thought his email to me, (and others as I later learned), was inappropriate.

### iii. MHA Kirby's Response

Regarding the email, MHA Kirby wrote:

*The May 2018 email I sent to my Liberal Caucus colleagues was an expression of my concern regarding the proper process for reporting complaints after allegations arose during Question Period in the House of Assembly.[sic]*

He also wrote:

*The only Twitter account I have is the inactive account @dalegkirby. Any suggestions otherwise are false. [sic]*

During his interview, MHA Kirby said that he had never had a Twitter account other than his own inactive account, which he had previously identified as @dalegkirby. He said that he did not know who @wackjobNL was and said that it was absurd to suggest that it was affiliated with him. MHA Kirby called the complaints against him a political campaign to personally destroy and discredit him. He said that he could not believe what he read in the Complainant's statement, noting, "It's like she scraped the bottom of the barrel to find every interaction I had with her to play it in a way." He noted that the Premier's office had directed him to "try and be nice to the dissidents within Caucus." He said that he tried his damndest, but "obviously it didn't work."

### iv. The Complainant's reply

*In Minister Kirby's response regarding his May 2018 email, he again states he was expressing concern or opinion in his defence. His concern or opinion is not at issue. What is at issue is the threatening and bullying manner in which he shares that opinion, to intimidate others into not expressing any opinion other than the one he tells them to. His intention was to silence dissenters, deter them from disclosing abuse, and to scare people into compliance and acceptance of his treatment of them. [sic]*

### vi. Factual Findings

Regarding the May email about the leak, I find that MHA Kirby sent that email, which he acknowledges having done. That said, the allegation that MHA Kirby was responsible for the Twitter account in question was speculative in that neither the Complainant nor any witness had evidence to support the claim that the account might belong to MHA Kirby. Absent any evidence from Twitter, which they declined to provide to the RNC, there is no basis on which to conclude that MHA Kirby directly or indirectly controlled the Twitter site that called the Complainant a Liberal leaker.

## 8) Impact to Complainant's fundraiser

### i. The Complainant

*During the same weekend, I was informed that Minister Kirby had been phoning and texting members of the Liberal caucus and others to encourage them to boycott an upcoming district association fundraiser I was hosting. This again is an attempt to corrupt the political process by using his position of party authority to cease all objection coming through me from my district. It's a punitive measure in response to my continued district advocacy and an attempt to silence district representation process. Further, he has been asking around about the chances of my re-election, specifically, asking if funding were pulled for the [school replacement] would hurt my chances of re-election. It is an egregious violation of Principles 1, 2, 3, 4, 5, and 11 if he is suggesting that he would pull funding already allocated to a district to serve its needs in order to serve his own political career. The people of Newfoundland and Labrador are not pawns in his game for power and control, and he has an obligation to them whether he can control me or not. If he is suggesting he will govern in such a way as to rig an election in favour of a candidate he can control, that is much more than a Code of Conduct violation. It is an abuse of office, and abuse of power, and a violation of his obligation to serve his fellow citizens above his own personal career. [sic]*

The Complainant said that the same night, she met with the Premier and expressed her concerns. She said that she received a phone call by someone who wished to remain anonymous, who told her that MHA Kirby was discouraging them from attending a fundraiser in the Complainant's district. She said that MHA Kirby later admitted to her that he did this.

### ii. MHA Kirby's Response

*On two separate occasions in March and April of 2018 members of the Liberal Party advised me that they had been approached by the Complainant regarding her desire to organize a campaign to vote against Premier Ball and remove him as Leader of the Liberal Party at the June 2018 Party AGM. In both cases these individuals indicated they did not support the Complainant's campaign against the Premier and I indicated likewise. In both cases we agreed that it did not make sense to contribute financially to someone who did not support the Party leadership and was actively campaigning to disrupt what we considered to be our re-election efforts. [sic]*

MHA Kirby said that the Complainant was upset about losing the Speaker election. He said that anger festered and festered, then morphed into a whisper campaign to get rid of the Premier by orchestrating a vote against him at the June 2018 Liberal convention. MHA Kirby said that he had heard from colleagues in March and April 2018 who said that they had heard that the Complainant was organizing a vote against the Premier in June.

MHA Kirby said that loyalty was very important to him in life. When he heard this in March, MHA Kirby said that the Complainant and another Member were sitting next to him in Caucus and he raised the issue in front of everybody, that there was an effort to organize some sort of coup at the June 2018 convention. He said that he did not mention anyone by name, but said that if someone was saying that, they should not be in the room. MHA Kirby said that he heard about similar behaviour in April.

MHA Kirby said that when this started to "fall apart" in April, referring to the complaints made against him and Minister Joyce, he saw it all as a continuation of the same political campaign by the Complainant and another Member, to peel off some of the Premier's most ardent supporters and to get people to not go to the convention to support the Premier.

### iii. Factual findings

I find, based on MHA Kirby's admission, to which the Complainant provided no reply, that in the spring of 2018, MHA Kirby believed that the Complainant intended to organize a campaign to vote against the Premier and attempt to remove him as Leader of the party at the June AGM. I find that he raised this issue generally at a meeting and then was advised that the behaviour continued. I make no findings as to whether the Complainant was actually engaging in this behaviour, but I believe that MHA Kirby was told that she was and believed it.

In this context, I find that MHA Kirby decided to no longer assist the Complainant in her fundraising efforts and discussed this with others. Given that both the Complainant and MHA Kirby declined to provide names of other MHAs who were involved in these incidents, I have insufficient evidence to conclude whether MHA Kirby actively discouraged others from assisting the Complainant as well.

### SUMMARY OF FINDINGS

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

- Sent a message to the Complainant that stated that she was causing a “fuck load of trouble” for him by being vocal about the busing policy, and suggested to her that she was undermining her colleagues by her actions.
- After the Complainant sent a message to MHA Kirby about a radio program about full-day kindergarten, suggesting that he might want to listen to it, responded by questioning why he would want to listen to the program and stating that he would allow communications staff to monitor the news and provide him advice, as necessary.
- Commented to the Complainant, while they smoked marijuana together at a convention, that he loved her, in a friendly, non-sexual manner. During the same conversation, told the Complainant that he wished to work with her and that her approach of working against him, his colleagues, and the Premier was not helpful to any of them.
- Commented to the Complainant on more than one occasion, in response to her advocacy for school replacement in her District, that they were going to use the part of the school that did not burn during a fire in another district as the replacement school.
- Sent a BBM message to MHA Holloway on the day of the Speaker vote in order to warn him of a potential consequence of voting against the choice of the Premier.
- Sent an email to the Complainant and others after the media reported that a Liberal MHA might have leaked harassment allegations that said if someone in the Caucus actually planted the harassment allegations with the Leader of the Official Opposition, the person or persons have a moral obligation to reveal themselves.
- Declined to assist the Complainant in her fundraising efforts and discussed this with others.

## Code of Conduct

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

### *Code of Conduct*

#### *Commitments:*

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

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

#### *Principles:*

- 1. Members shall inform themselves of and shall conduct themselves in accordance with the provisions and spirit of the Standing Orders of the House of Assembly, the House of Assembly Accountability, Integrity and Administration Act, the Members' Resources and Allowances Rules, the Elections Act, 1991, the House of Assembly Act and this Code of Conduct and shall ensure that their conduct does not bring the integrity of their office or the House of Assembly into disrepute.*
- 2. It is a fundamental objective of their holding public office that Members serve their fellow citizens with integrity in order to improve the economic and social conditions of the people of the province.*
- 3. Members reject political corruption and refuse to participate in unethical political practices which tend to undermine the democratic traditions of our province and its institutions.*
- 4. Members will act lawfully and in a manner that will withstand the closest public scrutiny. Neither the law nor this code is designed to be exhaustive and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.*
- 5. Members will not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.*
- 10. Members should promote and support these principles by leadership and example.*
- 11. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the House of Assembly.*

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



## ANALYSIS

My findings relating to several actions of MHA Kirby - specifically the message about the speaker vote, email about the leaked allegations, and non-attendance at the Complainant's fundraisers - are rooted in his stated belief in the importance of loyalty. All three findings indicate attempts to prevent or respond to acts of perceived disloyalty by the Complainant and others. That said, I do not believe that his actions rose to the level of objectionable or offensive behaviour that would support a finding of harassment or bullying. I believe that they fall within the scope of behaviour that exists in a political environment in which debate about decisions rightfully occurs, and individuals seek to persuade their colleagues to support their desired outcomes, or the desired outcomes of party leadership. Even the email sent about the harassment allegations was not about stifling complaints of harassment, but rather was about responding to possible leaks of information to the opposition party.

Regarding the findings relating to the conversation at the convention, I found that MHA Kirby's comments were not intended to be sexual in nature. I also found that there was insufficient evidence to conclude that MHA Kirby told the Complainant not to advocate for her constituents or threatened her should she continue to do so. However, while MHA Kirby did not intend the comments to be sexual in nature, it is clear that he was acting in his capacity as a Member of the House of Assembly and used language intended to attempt to convince the Complainant to support his position. His conduct in using the language he did at the Liberal convention in an effort to garner the support of the Complainant was inappropriate, poor judgment, and in my opinion a violation of Principle 5 of the Code of Conduct. Principle 5 states as follows:

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

By approaching the Complainant and communicating in the manner he did at the Liberal Convention MHA Kirby was attempting to garner support for his position for private reasons. Communicating in such a manner to the Complainant brings discredit to his office and is to be discouraged.

I found that there were two private conversations by text between MHA Kirby and the Complainant, regarding the busing policy and the radio show, in which MHA Kirby was dismissive of the Complainant and spoke to her in an insensitive manner. In one text, MHA Kirby said that the Complainant was causing a "fuck load of trouble" for him by being vocal about the busing policy, and suggested to her that she was undermining her colleagues by her actions. In the other, he brushed off her suggestion that he listen to a particular radio show about full-day kindergarten. While MHA Kirby may have lacked professionalism during these exchanges, I do not believe that his comments rose to the level of objectionable or offensive behaviour that would support a finding of harassment or bullying.

Lastly, regarding the comments about the replacement school, I found MHA Kirby's "jokes" to be in very poor taste. That said, even if I were to conclude that the jokes amounted to offensive behaviour, I do not believe that the Complainant let MHA Kirby know that his jokes were unwelcome by her. I also do not believe that, within the context of where these jokes were occurring, MHA Kirby ought to have known that his jokes would be unwelcomed by the Complainant or other MHAs. As such, I do not believe that in making these comments that MHA Kirby harassed the Complainant.

In reaching my conclusions, I considered that members of the public, particularly those in the district in which the school fire occurred but elsewhere as well, would likely be upset to hear that MHA Kirby, who was Minister of Education at the time, made jokes about the burned school openly within the House of Assembly. While such jokes may disappoint constituents, I do not believe that they are of such a degree as to "bring the integrity of their office or the House of Assembly into disrepute." I believe that this language in the Code of Conduct is intended to target behaviour of broader



public impact and greater seriousness. I base this conclusion on the language found elsewhere in the Code of Conduct that refers to concrete actions that are against the law, speaks of responsibly executing public duties, and references actions that have tangible consequences for constituents.

Accordingly, while I find that MHA Kirby engaged in some, but not all, of the behaviours alleged by the Complainant, the only principle of the Code of Conduct that was violated is Principle 5 arising out of MHA Kirby's comments at the Liberal Convention.

Section 39 of the HOAIA authorizes the Commissioner to recommend a penalty. In the circumstances of this case, that is, where the majority of the allegations have been dismissed, where the member has admitted to the conduct in question and has been cooperative throughout, and where the member has suffered a significant financial penalty in being removed from Cabinet for a significant period of time, it is my recommendation to the House of Assembly that MHA Kirby be reprimanded.

Recently, the issues of harassment and bullying in the House of Assembly have become the subject of much debate. While members are free to exercise their right to request my opinion with respect to the compliance of a member with the Code of Conduct, consideration should also be given to requiring members to undergo respectful workplace training as part of their orientation upon being elected as a Member of the House of Assembly. By proceeding in this fashion, one would hope that events such as those outlined in this report can be avoided in the future. In addition, it must be recognized that MHA's often have to continue to work with each other as investigations are taking place and often times following the release of my report. It would be beneficial if a more private restorative justice model was implemented to allow these matters to be resolved in a setting that will facilitate resolution of these important workplace issues while at the same time facilitate rehabilitation of relationships, where possible, to allow members to act in the best interests of their constituents.

